General Terms and Conditions for the use of an Abacus Test Environment (September 2023)

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1.   General information

1.1   These are the General Terms and Conditions (GTC) of Abacus Research AG, Abacus-Platz 1, 9300 Wittenbach, (Abacus) for the use of a test environment.

1.2   In order to use this service, you must agree to these GTCs and confirm that you have read and understood the Abacus Privacy Policy by clicking on the corresponding checkbox. The owner of the test account (Owner) hereby declares that they have read, understood, and accepted these GTCs as well as Abacus' Privacy Policy. The user relationship with Abacus shall commence upon registration for a test account.

1.3   This offering is intended exclusively for businesses. By accepting these GTCs, the Owner confirms that they will use the services as a business for a self-employed professional or commercial activity and not as a consumer, and that they are authorized to enter into the contractual relationship for this purpose. If they use an email address of their employer or company they shall be deemed entitled to represent the employer or the company.

1.4   These GTCs are without prejudice to other provisions applicable to the use of Abacus Business Software or ither Abacus services or other third-party providers, and apply in addition to these provisions.

2.   The Test Environment

2.1   The test environment provides the Abacus business software (applications) selected by the owner.

2.2   In order to use the test environment, the owner has completed registration by providing certain data and confirmed these GTCs. Multiple companies cannot use a test account, each company must open its own test account.

2.3   After successful registration, a test account is opened, to which the Owner can log in using password-protected logins. The Owner receives the user name and password from Abacus. Depending on the test environment, access data for 2 different roles (supervisor and employee) are provided.

2.4   The test environment is only active and usable for a limited period of time. The duration of use is at the discretion of Abacus.

2.5   The Owner is responsible for the use of the test environment and for the data entered into the test environment. Only test data should be used; the entry of personal data should be avoided as far as possible. The test environment must not be used as a productive environment.

2.6   The Owner must ensure by appropriate measures that their users comply with the contractual obligations as far as is relevant. They are responsible for their (mis)behaviour.

2.7   All data of the test environment will be deleted upon termination of use, after expiry of existing back-up periods. This does not apply to data that Abacus is obliged or entitled to retain.

3.   Scope of Use of the Test Environment

3.1   The scope of use of the test environment includes the free use of the selected Abacus Business Software via the Internet including the storage of the Owner's data within the scope of hosting as well as the use of the Abacus subscriptions (applications) provided, if applicable.

3.2   In their user account, the Owner can manage (create, delete, activate, change, deactivate) their users and applications and use other functionalities provided there.

3.3   The Owner is familiar with the respective essential functionalities of the applications. He/she acknowledges them as correct, appropriate and suitable for use in accordance with the contract.

3.4   The Owner can activate Abacus subscriptions for its employees in some test environments, for example for AbaClik. AbaClik is a mobile app provided by Abacus that allows you to record working hours, expenses, services, and all types of information, assign projects, customers, or employees, and synchronize with the Abacus Business Software. The AbaClik mobile app can be downloaded free of charge for iOS and Android from the respective App Stores. If data from AbaClik is to be collected in the test environment, a connection will be established once the user has logged in using the e-mail address and password stored in their test account. The user must agree to this data being exchanged in order to use the connection. For synchronisation with the application, Abacus subscriptions for the AbaClik users have to be purchased. These are free of charge in the test environment. Information on how data is processed in AbaClik can be found in the Privacy Statement for mobile applications from Abacus.

3.5   Abacus shall provide the necessary infrastructure (hardware and software) for the test environment and the applications used. This infrastructure will be provided "as is." The Owner is not entitled to ongoing updates or functional enhancements. However, Abacus is always striving to improve and develop them further. Abacus can add new functionalities or change or remove existing functionalities at any time without reason. This does not give rise to any claims by or rights of the Owner.

3.6   The Owner is aware and accepts that the test environment and applications will be operated and made available in the same release for all Owners and will be introduced at the same time for all Owners.

3.7   The Owner may only use the test environment and the applications within the framework of the selected scope of use and the described purposes themselves as well as with Users authorized by the Owner. The functions may be used via telecommunication (Internet) using a browser or mobile Abacus apps compatible with the test environment and the applications throughout the user relationship.

3.8   Other third parties are not permitted to use the test environment and the applications directly or indirectly, unless Abacus has given its prior written consent. The Owner is therefore not permitted to make their passwords used to access this website available to other third parties or to allow these third parties to use them in any way. If Abacus does not give its consent, regardless of the reasons, the Owner does not have any claims as a result of this decision.

3.9   The test environment and the applications are hosted on Abacus servers and operated and maintained by a service provider contracted by Abacus. For use in accordance with the contract, the Owner shall be provided with the storage space required to use their data, depending on the scope of use.

3.10   Abacus can call in third-party providers or additional subcontractors to ensure proper fulfilment of the obligations resulting from the user relationship at any time. Data of the Owner can be passed on to them, as far as necessary for the cooperation. The Owner hereby agrees to this.

3.11   It is the Owner's responsibility to clarify whether the test environment and the applications satisfy the requirements of their company. Abacus does not guarantee whether these meet their requirements. The Owner and their users are responsible for fulfilling the technical requirements needed to use the test environment and the applications.

4. Additional Services

4.1 Within the framework of the test environment and the applications, additional services may be used provided that the corresponding requirements are met. This may be subject to separate contractual provisions, which the Owner accepts when using the respective service or interface (API) and upon its activation.. This includes services from payment providers or DeepCloud AG. The contractual and privacy policy provisions of these providers shall apply. **To avoid incurring costs, the payment options offered via DeepPay and Yapeal should not be used.**

4.2 When using or activating such additional services, the Owner hereby expressly authorizes the parties involved to access, exchange, and process the data and documents required.

4.3 Abacus reserves the right to restrict, suspend, or (permanently) terminate the use of such additional services at any time. Abacus will exercise this right to the extent necessary in particular if anomalies in access behavior, faults, or dangers are detected, if other systems are restricted, if (urgent) maintenance work needs to be carried out, or in the case of violations of data security or other emergencies, unusual attacks, breaches of contract, or for comparable reasons, and in cases of force majeure. This does not give rise to any claims (including claims for damages) by or rights of the Owner.

4.4 Abacus is not responsible for the handling and processing of data when additional services are used. Abacus shall not accept any liability in this regard.

5. Rights of use, intellectual property rights

5.1 Abacus shall grant the Owner a personal, non-exclusive, non-transferable, non-cedable, simple, geographically, and time-limited right to use the test environment and the applications for the duration of the user relationship for their own use. This means that only the Owner and users authorized by the Owner can access it. The scope of the right of use is determined by the Abacus subscriptions used in each case and by the applications used.

5.2 The Owner is forbidden to make the software for this purpose accessible to unauthorized third parties in any form, to make it available, to rent it out, to make it available to a third party for joint or sole use, to grant sublicenses for it, to transfer it, or to use it in any other way without written consent of Abacus. Furthermore, they are not entitled to use the software for any other use other than that offered by Abacus herein.

5.3 The Owner may not circumvent the limitation of the scope of their rights granted by Abacus to the software used by integrating their own program components into this software. In particular, they are not entitled to expand the number of authorized users by programming their own user interface ("Interface").

5.4 Abacus has the right to license interfaces and report generators for the purpose of exporting data from the test environment and the applications to third-party systems, which could be processed there. The Owner may only use such interfaces to programs, also of other providers, to the Abacus Software or report generators if Abacus has given its prior written consent. Such is also the case whenever interfaces and report generators are primarily used to view or print out the data via a third-party system so that Users of the third-party system can view and use that data.

5.5 With regard to third-party software used, the licensing provisions of this third party shall apply if they contain additional restrictions.

5.6 The Owner shall immediately inform Abacus in writing if third parties claim property rights (for example, copyrights or patent rights) against them due to the use of the applications. They must not take any legal action without authorization from Abacus. The Owner shall cede all defense measures, such as the defense against the claims of the third party, to Abacus at their own expense, as long as the claims are not based on a breach of duty by the Owner or their users (for example, if an application is used contrary to the contract).

5.7 All intellectual property rights to the applications (including the Abacus software used for this purpose), to content, text, images, photos, videos, logos, or other information from Abacus, including its websites, belong exclusively to Abacus or the specifically named holders of rights. Written consent of the rights holders must be obtained in advance for any further use of any intellectual property rights. All Abacus documentation made accessible to the Owner in the context of the user relationship are considered as intellectual property of Abacus.

6. Obligations of the Owner and their authorized Users

6.1 In the event of a fee-based use of a service, the Owner shall owe the compensation provided for this purpose in accordance with the current price quotations. The payment obligation is determined by the scope used in each case. Otherwise, the use of the test environment is free of charge.

6.2 The Owner undertakes to strictly comply with its obligations under these GTCs. The Owner shall indemnify Abacus from all claims of third parties that are based on a non-contractual or illegal use of the test environment and the applications by themselves or their users, and shall hold Abacus harmless. In such a case, Abacus reserves the right to claim damages or assert other claims.

6.3 The owner shall not have the right to compensation if access to the test environment is blocked by official or court order or following non-contractual or illegal use of an application.

6.4 The Owner as well as their authorized users have the following obligations in particular:

6.5 They shall provide a sufficient connection or bandwidth and fulfil other technical requirements needed to be able to use the test environment and applications within the scope of the selected scope of use.

6.6 They undertake to protect their systems against misuse, attacks and malware in accordance with the current state of the art and minimise the risk of unauthorised access to the applications and on the end devices used for this purpose by using appropriate security measures (e.g. use of an up-to-date anti-virus program, firewall, spam filter).

6.7 They shall ensure sufficient access protection. Strong passwords according to the system specifications shall be used. As a general rule, login data must be changed regularly and immediately if there is reason to believe that unauthorised third parties have gained knowledge thereof.

6.8 They shall immediately provide notification of disruptions in use and provide support services as possible in order to be able to remedy the disruptions.

6.9 Abacus must be informed immediately of any suspected misuse of the test environment or an application in order to arrange for the test account to be blocked. A message can be sent to info@abacus.ch.

6.10 The Owner and Users will not store any data or information in the test environment or any application that violates these GTsC or applicable law. They shall comply with the relevant legal provisions, in particular those concerning data protection, competition, and intellectual property rights.

6.11 The Owner shall be solely responsible for the content of the data posted into or generated in the test environment and applications by them and their users. Abacus is not obliged to check the content for legality or lawfulness, but reserves the right to view, change, or delete this content at any time without notifying the Owner in the event of suspicion of unlawful access. In the event of an order from a government agency or court, Abacus is obliged to hand over or grant access to this content.

6.12	The owner shall himself provide for a data backup to restore their data in the event of an accidental loss.
6.13	The Owner shall decide independently what data is processed and stored in the test environment and whether the existing level of data security attained through technical and organizational measures put in place by Abacus for the test environment is sufficient for their data. No productive data is to be used by the Owner in the test environment.

7. Use of a productive environment

7.1	If an Owner wishes to use the applications in the future (after the end of the use of the test environment), they shall inform Abacus of this. Abacus will provide the owner with possible solutions and is also entitled to pass on the Owner's contact details to an Abacus solution partner so that the latter can contact the Owner in this regard.

8. Prices

8.1	The use of the test environment and the applications within the scope of this usage relationship is free of charge, with the exception of any third-party services that may be activated for a fee.

9. Data backup

9.1	The Owner shall be responsible for the storage of data and documents entered in the test environment within the framework of the legal regulations. They acknowledge that data and documents are not archived by Abacus. The Owner shall be responsible for creating and maintaining an appropriate data backup of the data and documents. Abacus does not provide a corresponding recovery function.
9.2	During the user relationship, Abacus can create a data backup of the data and documents stored in the test environment and applications according to usual procedures and strives to avoid data loss as far as possible.
9.3	The Owner can back up their data and documents by exporting data at any time and before deleting the test environment.

10. Access to and Availability of the Test Environment

10.1	The Owner shall be solely responsible for their access and the access of their users to the test environment. Abacus shall not assume any liability for the network operators (Telecommunications Provider, Provider) and shall not accept any liability for the hardware and software required by the Owner and their users to use the test environment.
10.2	Abacus strives to achieve the highest possible availability of the test environment and shall apply the usual business diligence according to the current state of the art.
10.3	Restrictions due to the following events are not included in the target availability: Carrying out technical maintenance or repair measures, protecting the security and integrity of the systems and servers and existing capacity limits, programme corrections, any updates or changes to the functions of software, restrictions imposed by other systems, official or court orders, acts or omissions of the Owner or its users, epidemics, pandemics or cases of force majeure, problems attributable to server suppliers or hosting partners, defence against attacks by pirates, hackers, viruses or other malware events, breaches of data security or to defend against other dangers.
10.4	In such cases, Abacus is entitled to restrict the operation of or access to the test environment and applications and/or the functions and additional services offered therein at any time and without prior notice or to interrupt this for an unlimited period of time without any claims or rights arising for the Owner, with the exception of mandatory legal liability claims. The Owner will be notified of these interruptions or restrictions as quickly as possible.
10.5	Abacus is committed to eliminating interruptions as quickly as possible and endeavours to keep them as short as possible and, if possible, schedule them at appropriate times.
10.6	Services provided by Abacus free of charge can be suspended, interrupted, or terminated at any time and without prior notice. This does not give rise to any claims by or rights of the Owner or their Users.

11. Support

11.1	If the Owner has questions about the technical requirements, the functionalities of the test environment and the applications, or if there are malfunctions in their use, they can contact Abacus Support.
11.2	No (confidential) data should be sent with support requests, only the request or a description of a possible technical malfunction. You can get support by contacting our Support Team via live chat during normal business hours (Monday to Friday from 8:00h-12:00h und 13:00h-17:00h), by sending an e-mail (ticket system), or by referring to the existing documentation.
11.3	Abacus uses a support ticket system of a provider as a further order processor for support. Expert employees from Abacus are available for this purpose.
11.4	Abacus reserves the right to charge the Owner for support requests according to the current hourly rates.

12. Abuse, Breach of Contract, Force Majeure

12.1	Abacus can protect itself from contractual or illegal use with suitable technical and organisational measures. In case of suspicion of a violation of existing contractual or legal obligations or in case of storage of illegal contents or in case of other misuse by the Owner or its users, Abacus is entitled to immediately restrict or block access to the test environment and the applications and to delete contents. Further rights of Abacus are reserved.
12.2	Blocking access alone does not constitute any termination of the user relationship. Abacus can grant the Owner access to the Applications again if the Owner has ceased the non-contractual or illegal use.
12.3	In the event of disruptions, delays or interruptions to the test account or the Applications due to force majeure (such as landslides, earthquakes, severe weather, storms, floods, other natural disasters, terrorism, epidemics, pandemics) or other circumstances or events, which substantially limit Abacus or, as the case may be, third-party providers in their provision of services or make their provision of services impossible (such as sabotage, hacker attacks, danger of misuse, conspicuous flow of information, war, an embargo, strike, lockouts, fire, explosions, power failure, laws, regulations, decisions or orders of governmental authorities, shutdowns, failures of communication networks, of server or infrastructure providers or gateways of other operators, even if such failure occurs at Abacus's suppliers or subcontractors or their subcontractors), Abacus shall have the right to block access to the test account and to restrict Applications, to interrupt as well as to postpone the provision of services for the duration of such event or its consequences and to extend such period of time by a reasonable period of time until provision of services can be resumed.
12.4	Abacus is released from its performance obligations for this duration. If such a case continues without interruption for a period of more than 30 days, the contractual relationship may be terminated by either party. In no case is the Owner entitled to damages or other claims against Abacus if such a circumstance is beyond the reasonable control of Abacus.

13.	**Warranty and Liability**

13.1 The test environment and the applications are of a quality that is usual for corresponding software. The rights of use are granted in these General Terms and Conditions exist as they are made available within the scope of this contractual relationship. Abacus shall guarantee the Owner a faithful and careful execution of the services according to the terms of these General Terms and Conditions.

13.2 Services provided free of charge are provided without any claims to performance or warranty. Abacus has the right to discontinue, change, or require payment for services offered free of charge. In such a case, Abacus will inform the Owner in good time.

13.3 At no point in time, either specifically or in general, shall Abacus ensure uninterrupted or fault-free use of a test environment and application. In particular, Abacus shall not guarantee that the use of the test environment as the result of spam, malware, spyware, hackers, phishing attacks, and the like will not affect the Owner or its users or that the infrastructure of the Owner or its users will not be damaged or otherwise harmed. Potential problems or defects must be reported to Abacus immediately.

13.4 Any liability on the part of Abacus and any warranty for the use of the test environment and the applications (incl. the software used, updates, hosting, etc.) is excluded - to the extent permitted by law. This also applies, if applicable, to all additional services when using the test environment, in particular to additional services of DeepCloud AG.

13.5 The Owner shall be solely responsible for securing the data backup. Abacus shall not accept any liability for data of the Owner sent, received, or stored in Abacus systems that has been disclosed, reduced in quality, or deleted through no fault of the Owner.

14.	**Data Protection and Confidentiality**

14.1 The parties agree to comply with the provisions of relevant data protection laws, in particular to keep confidential, protect, and use any personal data that may become known during the performance of the contractual services exclusively for the purpose for which they were disclosed.

14.2 The Owner acknowledges that data of the Owner as well as its documents may be viewed by Abacus, providers of additional services, if any, and other authorised third parties, in particular when providing their services and in support cases. The Owner agrees to the transfer of their data to these parties.

14.3 As far as Abacus processes personal data of the Owner in the context of the use of the test environment and the applications (for example, when hosting) or can access this data (for example, when providing support), Abacus shall be processor for the Owner in terms of data protection regulations. Abacus will process and use this data only for the performance of the user relationship with the Owner. Abacus is bound to the instructions of the Owner in this regard and will follow them.

14.4 By accepting these GTCs, the Owner also accepts the provisions of the Data Processing Agreement (DPA) in its current version. The current version of the DPA, is valid at any given time and can be downloaded in a printable format.

14.5 Abacus uses processors to obtain required services such as hosting the test environment, conducting webinars, providing support, or customer satisfaction surveys. This processor is carefully selected and commissioned by Abacus. They are bound to their instructions and are regularly monitored. They only receive data to the extent necessary to perform the order processing specifically agreed upon. Processing takes place in Switzerland or in an EU or EEA Member State, whereby an adequate level of data protection is guaranteed. For data processed outside these countries, Abacus provides appropriate safeguards such as the completion of standard data protection clauses or consent is obtained for data to be transferred abroad.

14.6 How Abacus processes data as a data protection controller is described in its GTCs. The current version published on the website shall apply.

14.7 Information marked as confidential by Abacus or information that can be recognized as confidential from the circumstances is to be considered a business and trade secret of Abacus and to be kept confidential. The Owner will not use such information for their own purposes, transmit it to unauthorized third parties in whole or in part, transfer it, or otherwise make it available.

15.	**Data security**

15.1 The test environment, the applications and, if applicable, the additional services are provided via the Internet. State-of-the-art encryption mechanisms are used for data transmission.

15.2 Abacus shall use appropriate technical and organizational measures, which are especially appropriate to the state of the art, the type, and extent of the data processing when using the applications as well as possible risks involved with their use. This includes the use of security measures such as firewalls or antivirus programs to protect the Owner's data. All communication that takes place through Abacus or by means of Abacus software is, wherever possible, only carried out through protected communication channels. Abacus may carry out checks at regular intervals with regard to possible threats to data security.

15.3 The Owner undertakes to protect its systems with appropriate measures, in accordance with the current state of the art, to protect against misuse**.**

16.	**Customer satisfaction, promotional measures**

16.1 Abacus is interested in the satisfaction of the Owner and their users when using the test environment and applications. For this reason, Abacus may enquire by e-mail or electronically whether its services have been provided satisfactorily. Furthermore, Abacus may provide the owner and their users with information concerning the test environment and applications, such as information about maintenance, new features, or user options. Contact data of the Owner or user stored in the user administration shall be used for this purpose. You can opt out of receiving these e-mails at any time by contacting sending a message to Abacus.

16.2 Abacus is entitled to send information about the applications or its own similar contractual products, or about the additional services offered by the test environment, to the Owner by e-mail or mail, or to contact them by telephone. There is a right to object to the sending of such e-mails or telephone inquiries at any time. The Customer can unsubscribe by using the unsubscribe link in the e-mail or they can directly object to the subscription at Abacus.

16.3 Abacus may pass on contact details of the owner to a company of the Abacus Group (companies are listed at www.abacus.ch) in Switzerland or Germany, to DeepCloud AG and to solution partners of Abacus. Any promotional measures shall comply with the statutory requirements.

17.	**Duration and termination of the user relationship**

17.1 This contract shall come into force when the Owner has accepted these GTCs after they have successfully registered, at the latest with registration to the test environment. The user relationship with Abacus is concluded for the duration of the test period.

17.2 The Owner may terminate the use of the test environment at any time by written notice or by email to Abacus.

17.3 Abacus reserves the right to terminate the user relationship at any time, in whole or in part, without giving reasons, with immediate effect.

17.4 Both parties reserve the right to terminate the contract for good cause. Good cause shall be deemed to include, in particular, reasonable suspicion of misuse of the test environment and application and any violation of the existing contractual provisions by the Owner or its users.

17.5 After termination of the user relationship, Abacus will block access to the test environment and the applications within 5 (five) working days. Applications that are deactivated individually shall be blocked immediately.

17.6 The Owner has no extraordinary termination rights if the provision of services, especially the availability of an the test environment or an application, is delayed, limited, or interrupted.

17.7 The Owner is solely responsible for planning the termination of use of the test environment and the applications. They shall be **responsible for backing up their own data in good time before the end of the user relationship and deleting the corresponding data, or hereby authorizing** Abacus to delete the data at the end of the user relationship. Access to the Owner's data files is excluded after termination of the user relationship, as these are irrevocably and completely deleted after expiry of existing back-up periods. Data that Abacus is obliged to store for a period of time, as well as data that is still needed for the settlement or collection of the services provided, shall be excluded from the deletion.

18.	**Other Provisions**

18.1 Abacus is entitled to change these GTC, the scope of use of the test environment and applications as well as their prices at any time and will give notice of any changes at least one month in advance in writing or by other means (e.g. within the News or by e-mail to the e-mail address provided by the Owner).

18.2 They shall be considered accepted if the Owner does not terminate the user relationship at the next possible date within 7 (seven) calendar days after notification. The Owner has no claims against Abacus in case of a change.

18.3 Price adjustments shall take place at the beginning of each calendar month.

18.4 The offsetting of claims of the Owner by the Owner against claims of Abacus is excluded.

18.5 The Owner may not transfer any rights from this user relationship to third parties. Abacus is entitled to transfer all rights and obligations from this user relationship to third parties. The Owner hereby agrees to a possible assignment or transfer of these rights and obligations.

18.6 Any general business or license terms and conditions of the Owner are excluded.

18.7 Should individual provisions of these General Terms and Conditions prove to be ineffective or invalid, this shall not result in the ineffectiveness or invalidity of the remaining provisions, but these shall be replaced by provisions that come as close as possible to their economic intent. The same will apply in the event of a gap or omission.

18.8 Swiss law will apply to the exclusion of the provisions of private international law and the Vienna Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes arising from this user relationship is The City of St. Gallen, Switzerland.

18.9 These GTC are available in different languages. In the event of deviations or contradictions, the German version of the General Terms and Conditions shall take precedence.