

ABBYY Terms of Service

Last updated: 01 April 2020

These Terms of Service (“**Terms**”) govern Your use of ABBYY’s Service. “**You**” and “**Your**” refer to any person who uses the Service. If Your organization has authorized or otherwise permits You to use the Service for its benefit, “**You**” also includes Your organization. The term “**use**” includes accessing, downloading or utilizing any component of the Service.

CAREFULLY READ THESE TERMS BEFORE ACCEPTING THEM. BY CLICKING THE BOX INDICATING YOUR ACCEPTANCE OF THESE TERMS, BY EXECUTING A SIGNUP FORM THAT REFERENCES THESE TERMS, OR BY USING THE SERVICE, YOU ACCEPT THESE TERMS AND CONCLUDE A LEGALLY BINDING CONTRACT BETWEEN YOU AND ABBYY.

IF YOU ACCEPT THESE TERMS ON BEHALF OF AN ORGANIZATION, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND YOUR ORGANIZATION TO THESE TERMS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT CLICK ON THE ACCEPT BOX AND DO NOT USE THE SERVICE.

1. Definitions

- 1.1. “**ABBYY**” means the ABBYY legal entity with whom You have entered into these Terms according to the following provisions:
 - 1.1.1. If You are located in a member of the European Economic Area, Switzerland or United Kingdom, or any territory or dependency thereof, You agree that You are entering into these Terms with **ABBYY Europe GmbH**, a company duly incorporated under the laws of Germany having its registered office at Landsberger Str. 300, 80687 Munich, Germany;
 - 1.1.2. If You are located in Australia, New Zealand, Papua New Guinea, Christmas Island, Cocos (Keeling) Islands, Cook Islands, Fiji, Niue, Norfolk Island, or Tokelau, You agree that You are entering into these Terms with **ABBYY PTY LTD.**, a company duly incorporated under the laws of Australia having its registered office at suite 502 level 5, 140 Bourke Street, Melbourne VIC 3000;
 - 1.1.3. If You are located in Japan, You agree that You are entering into these Terms with **ABBYY Japan Co. Ltd.**, a company duly incorporated under the laws of Japan having its principle place of business at 890 5-14 Shinyokohama 2-chome, Kouhoku-ku, Yokohama, Kanagawa, 222-0033, Japan; and
 - 1.1.4. If You are located in the USA, North America, South America, or any other jurisdiction not covered by the region-specific terms above (except Special Jurisdictions), You agree that You are entering into these Terms with **ABBYY USA Software House Inc.**, a California corporation having its principle place of business at 890 Hillview Court, Suite 300, Milpitas, California 95035, USA.
- 1.2. “**Account**” means a collection of data associated with a particular Authorized User of the Service. Each Account comprises a user name, user password, user contact data (including, but not limited to e-mail),

and defines various settings for use of Service. An Account is a sub-entity of a Tenant. Account doesn't include Uploaded Data.

- 1.3. **“Administration & Monitoring Station”** is a web component allowing You to manage the settings and see statistics for Your Tenant.
- 1.4. **“Affiliate”** means any corporation, company or other legal entity that is under the Control of, under common Control with or Controls one of the parties to these Terms, but constitutes an Affiliate only so long as such Control exists. “Control” and its variants “Controlled by” or “under common Control with” means having more than fifty percent (50%) of the power, directly or indirectly, to vote the outstanding voting securities or partnership interests of the entity, to elect the directors, or otherwise to direct or cause the direction of the entity’s management and policies, whether by voting power, contract, or otherwise.
- 1.5. **“Appendix”** means a certain appendix to these Terms, which is considered as an integral part of these Terms and the terms and conditions of which shall prevail over these Terms in case of any discrepancy and inconsistency between these Terms and relevant Appendix. **Appendix A – FlexiCapture Cloud APIA** hereto concerns ABBYY FlexiCapture Cloud API Web-service and related terms and conditions, including without limitation Service usage model, specific rights granted and restrictions imposed on You with regard to the Service.
- 1.6. **“Applicable Law”** means all applicable laws, ordinances, regulations, rules, orders, and other requirements of governmental authorities having jurisdiction.
- 1.7. **“Authorized User”** means any of Your employees, representatives, consultants, contractors or agents whom You have authorized to use the Service on Your behalf and who has been supplied a unique user name and user password by You, or by ABBYY or a Partner at Your request.
- 1.8. **“Data Processing Addendum”** or **“DPA”** means the Data Protection Addendum that regulates terms and conditions of ABBYY’s processing and storage of Uploaded Data.
- 1.9. **“Data Processing Location”** means geographical location where Uploaded Data is processed and stored.
- 1.10. **“Documentation”** means the user manuals and other materials relating to the functionality or operation of the Service, excluding Service Marketing Materials.
- 1.11. **“Intellectual Property Right”** means all rights of any nature in patents, registered designs, registered trademarks and service marks, and all extensions and renewals thereof, unregistered trademarks and service marks, business and company names, unregistered designs, internet domain names and email addresses, design rights, topography rights, rights in inventions, utility models, database rights, know-how and copyrights (including moral rights); applications for any of the foregoing and the right to apply for any of the foregoing in any country; rights under licenses, consents, orders, statutes or otherwise in relation to the foregoing; rights of the same or similar effect or nature which now subsist; and the right to sue for past and future infringements of any of the foregoing rights.
- 1.12. **“Order”** means an ordering document specifying the Services to be provided to You hereunder that is entered into between You and ABBYY, and includes a description of what is being ordered, Service specifications, quantity, price, Service levels, payment terms, Subscription Term and other terms and conditions. Once signed or otherwise accepted by both You and ABBYY, each Order shall be incorporated by reference and be subject to these Terms. In case of any discrepancy, these Terms shall prevail over the Order.
- 1.13. **“Partner”** means an entity or individual who is authorized by ABBYY to market, promote or resell the Service on behalf of ABBYY.

- 1.14. **“Representative”** of a party means that party’s employees, contractors, suppliers, agents, Affiliates, or other representatives.
- 1.15. **“Service”** means “ABBYY FlexiCapture Cloud” Web-service accessible via <https://flexicapture.com> and all of ABBYY’s proprietary technology (including software, hardware, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) made available to You by ABBYY as part of the Service, as well as Documentation. Any reference to “Service” shall include any component of the Service. Only for ABBYY FlexiCapture Cloud API the term “Service” shall have the meaning given in the **Appendix A – FlexiCapture Cloud APIA**.
- 1.16. **“Service Fee”** means the fees (as specified in each invoice or otherwise) payable by You to ABBYY for the use of the Service.
- 1.17. **“Service Level Agreement”** or **“SLA”** means a certain agreement between You and ABBYY, which is available at <https://www.abbyy.com/en-eu/flexicapture-cloud/sla/> and which defines the general availability of the Service (“Service Level”) and the related terms and conditions. The SLA constitutes the integral part of these Terms. In case of contradiction between the terms of the SLA and those of these Terms, the terms of the SLA shall prevail.
- 1.18. **“Software Maintenance and Upgrade Assurance Terms”** or **“SMUA”** means certain ABBYY terms and conditions for providing technical support, maintenance and upgrade assurance services to You. The SMUA terms are available at <https://www.abbyy.com/smua/> and constitute the integral part of these Terms. In case of contradiction between the terms of the SMUA and those of these Terms, the terms of the SMUA shall prevail.
- 1.19. **“Service Marketing Material”** means picture samples, demo samples, user’s guides, notification texts and other marketing materials made available to You.
- 1.20. **“Special Jurisdiction”** include Russia, members of the Commonwealth of Independent States.
- 1.21. **“Station”** means a part of the Service that can be installed as a separate software application, or as a thin browser-based client, or as a mobile app, and solves one or more tasks constituting the functionality of the Service.
- 1.22. **“Subscription”** means Your commitment to make payment(s) to ABBYY for use of the Service during the Subscription Term according to the fees stated in the applicable Order; and in consideration of such payment, ABBYY’s commitment to make the Service and technical support available to You during the Subscription Term.
- 1.23. **“Subscription Term”** means the time period during which You are entitled to use the Services and for which you have committed to pay the Service Fees stated in the Order.
- 1.24. **“Third Party Software”** means certain software developed and owned by third parties that is used in the Services. Third Party Software use related terms and conditions are available at <https://www.abbyy.com/flexicapture-cloud/third-party-software/> (“TPS T&C”). The TPS T&C is obligatory for You. TPS T&C shall prevail
- 1.25. **“Tenant”** means a group of Authorized Users sharing the common sub-system dedicated to You with its specific documents, data, projects, and processing rules. The Service is a multitenant environment.
- 1.26. **“Uploaded Data”** means any data, information, or material uploaded by You, Authorized Users or End Users to the Service.

2. **Service Scope**

- 2.1. **Scope.** ABBYY grants to You a limited, non-exclusive, revocable, non-transferable, royalty-bearing right to use the Service solely for Your own internal business purposes, on the condition and so long as You comply with these Terms. Any right that ABBYY grants hereunder is revocable in accordance with these Terms. ABBYY reserves any right that ABBYY does not expressly and unambiguously grant to You hereunder.
- 2.2. **Modifications.** ABBYY may add or remove features to or from the Service, or modify the design of existing features of the Service, at any time, at its sole discretion, without notice to You. ABBYY may update the Documentation from time to time at its sole discretion without notice to You, and it is Your responsibility to monitor the Documentation for updates.
- 2.3. **Limits.** To ensure the efficient and stable operation of the Service, ABBYY may impose reasonable limits on Your use of the Service, including with respect to maximum size of a file uploaded to the Service, maximum download and upload rates, and connection timeouts.
- 2.4. **Resources.** Unless otherwise specified in these Terms, ABBYY may determine at its sole discretion the appropriate resources that it will use to provide the Service, on an as-available basis. ABBYY sometimes utilizes the services or products of a limited number of third parties, whether companies or individual subcontractors as well as ABBYY Affiliates (“Approved Contractors”) which have been determined by ABBYY to meet its standards. In order to most effectively meet Your needs, ABBYY may assign or subcontract all or part of ABBYY’s performance obligations and rights towards the provision of any portion of the Service under these Terms to an Approved Contractor.
- 2.5. **Trial Service**
 - a. Upon Your request, ABBYY grants You and You accept a non-exclusive, non-transferable, non-assignable, royalty-free license to use the trial version of the Service solely for the duration of the trial period and solely for the internal evaluation and testing purposes in order to assess the suitability of the Service for Your internal business needs. You shall be fully liable to ABBYY for all acts and omissions of any Authorized Users / End Users.
 - b. You shall not use any results or outputs acquired through the usage of the trial Service in regular business activities and/or in a commercial operating environment, including, without limitation, in a way that can generate direct or indirect revenue.
 - c. The trial Service has limited functionality and Your access to the functionality of the trial Service is restricted in duration which could not last more than 100 (one hundred) days and/or a maximum permissible volume of pages for processing which could not be more than 5,000 (five thousand) pages, unless otherwise agreed by the Parties. The expiration of time or pages render the trial Service unusable and may render any material prepared using the trial Service inaccessible until You have purchased a Subscription for the Service.
 - d. No maintenance or technical support is provided for the trial Service. The trial Service is provided as a convenience and You agree that ABBYY is not obligated to provide any technical support, phone support, or updates for the trial Service usage. You may, however, request assistance from ABBYY to install and activate the trial Service or help with other questions or problems experienced during the use of the trial Service. ABBYY may, but is not obligated to, respond to such requests.
 - e. After expiration of the trial period the Service shall immediately stop functioning. In order to continue using the Service, You shall have to either get a new trial license for the Service, or buy a Subscription to the Service.

3. **General Obligations**

- 3.1. **General Restrictions.** To the fullest extent permissible under Applicable Law, You will not, and will not permit or authorize third parties, directly or indirectly, to:
- a. use the Service for any purpose or activity prohibited under Applicable Law;
 - b. rent, sublicense, transfer or resell the Service;
 - c. probe, scan or test the vulnerability of the Service;
 - d. circumvent or disable any technical features or security measures of the Service;
 - e. monitor data or traffic on the Service;
 - f. take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Service, such as a denial-of-service attack (DoS) or distributed denial-of-service (DDoS) attack;
 - g. use the Service for CAPTCHA breaking;
 - h. use the Service in any way not described in the Documentation;
 - i. reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Service or any software (including the Stations), documentation or data related to or provided with the Service;
 - j. impersonate any person or entity, falsely state or otherwise misrepresent Your affiliation with any person or entity, or use or provide any fraudulent, misleading or inaccurate information, in connection with the Service;
 - k. transmit to ABBYY or its service providers, or transmit via the Service, any software or materials that contain any viruses, worms, Trojan horses, logic bombs, defects, or other material which is malicious, destructive or technologically harmful;
 - l. reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, correct errors in, or create derivative works based on the Service or any software (including the Stations) related to or provided with the Service or Service Marketing Materials without ABBYY's prior written approval;
 - m. make it possible for any person not entitled to use the Services to access and/or use the Service or any software (including the Stations) related to or provided with the Service; or
 - n. use Service Marketing Materials for any purpose other than to use the Service in accordance with these Terms.
- 3.2. **Actions by Authorized Users.** You must arrange for a unique user name to be supplied to each Authorized User. You are solely responsible and liable for all actions and omissions of all Authorized Users and must take all appropriate measures to ensure that Authorized Users only add or remove subscriptions to the Service, make payments, request Service functionality, or engage in any other activity in connection with the Service with Your prior consent. You are solely responsible and liable for maintaining the confidentiality of all user names and passwords and for any unauthorized use of any Authorized User's user name or password.
- 3.3. **Unauthorized Use.** You shall: (a) immediately notify ABBYY of any unauthorized use of any user name, password or other Account information relating to the Account or any other known or suspected breach of security related to the Service; and (b) report to ABBYY immediately and use Your best efforts to immediately stop any unauthorized use, copying or distribution of any part of the Service.
- 3.4. **Export Compliance.** You are solely responsible for the authorization and management of the Accounts across geographic locations and agree to comply strictly with all applicable export control laws and other

Applicable Laws. Without limiting the generality of the foregoing sentence, You agree not to export, re-export, transmit, or cause to be exported, re-exported or transmitted, any Service or Service Marketing Materials to any jurisdiction, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited under Applicable Law, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the United Nations.

3.5. **Data.** You represent and warrant that: (a) You, End Users have all necessary rights, consents and permissions to upload any and all Uploaded Data to the Service; and (b) Your, End Users' and ABBYY's use of Uploaded Data as contemplated in these Terms will not violate any Applicable Law or any contract or obligation to which You, End Users are bound, and will not infringe or misappropriate the Intellectual Property Rights, privacy rights, or any other right of any person.

3.6. **Data Processing Addendum.**

- a. The DPA shall apply if and to the extent ABBYY processes Uploaded Data on Your behalf. You hereby authorize ABBYY to process Uploaded Data according to the terms and conditions of the DPA depending on Your location and the Data Processing Location(s) chosen by You during or after the registration with the Service.
- b. You may choose one or more Data Processing Locations as follows: Europe, USA or Australia.
- c. The following DPA shall be applicable to You:
 - i. if You are from one of the countries listed in the section 1.1.1 of the Terms the Standard GDPR DPA https://www.abbyy.com/terms-of-service/dpa_gdpr/ shall apply to You regardless of Your choice of Data Processing Location;
 - ii. if You are from one of the countries listed in the sections 1.1.2, 1.1.3 and 1.1.4 of the Terms and You choose Your Data Processing Location to be in one of these countries listed in the sections 1.1.2, 1.1.3 and 1.1.4, then the Universal DPA https://www.abbyy.com/terms-of-service/dpa_universal/ shall apply to You. Should You require processing of the Uploaded Data in accordance with GDPR requirements, You shall separately inform ABBYY about this by sending a notice to privacy_eu@abbyy.com, in which case the Universal DPA with GDPR Addendum shall automatically apply;
 - iii. if You are from one of the countries listed in the sections 1.1.2, 1.1.3 and 1.1.4 of the Terms and You choose Your Data Processing Location to be in one of the countries listed in the section 1.1.1 of the Terms, then the Universal DPA with GDPR Addendum https://www.abbyy.com/terms-of-service/dpa_universal_gdpr/ shall apply to You.
- d. The DPA forms an integral part of these Terms, and in the event of a conflict between any provision in the DPA and any provision in these Terms, the DPA shall control and govern to the extent of the conflict.

4. **Pricing and Terms of Payment**

4.1. **Prepayments.** If You are required to pay a deposit or prepayment to ABBYY before ABBYY provides any portion of the Service to You, ABBYY's obligations under these Terms are conditional upon its receipt of such deposit or prepayment.

4.2. **Overages.** You shall pay subsequent amounts due for amounts in excess of the fixed Service Fees specified in the Order (e.g., amounts in excess of the Subscription volume purchased) at the end of each

billing period specified in the Order (e.g., at the end of each calendar quarter) or at the end of the Subscription Term whichever comes earlier unless otherwise mentioned in applicable Order.

- 4.3. **Post-payments.** In case of a post-payment, You shall pay ABBYY the Service Fees at the end of each billing period (as mentioned in the Order), during which such Service Fees were accrued, based on the invoice issued by ABBYY. The Service Fees are due and payable to ABBYY within 10 (ten) days from the date of the invoice. ABBYY may also require You to provide Service use report, which should be provided on the day of the payment.
- 4.4. **Service Use Reports.** The Service use report is in written and contains at a minimum the following information: (i) Your name; (ii) the time period covered by the report; (iii) the date You started to use the Service; (iv) the Subscription price; (v) the total amount of pages consumed and the Service Fees due and payable by You to ABBYY for the covered reporting period; and (vi) the Data Processing Location.
- 4.5. **Audit Rights.** ABBYY may undertake a substantive audit procedure of Your records to verify compliance with these Terms no more than once every twelve (12) months. Such audit is to be carried out at ABBYY's expense. If the audit reveals an underpayment of Service Fees by You, ABBYY will invoice You for the shortfall and You shall pay ABBYY the full amount of the underpayment within fifteen (15) days from the shortfall invoice date. If the post audit verified records reveals an omission greater than five (5) percent from the payments or other fees submitted by You, You will, in addition to paying the difference in fees, also reimburse ABBYY's auditing expenses. You shall provide ABBYY or its designee with all reasonable cooperation and assistance to facilitate the audit, including providing ABBYY or its designee with access to any books, records, computers, or other information that relates to or may relate to the Service, and, where applicable, the actual page volume usage for the months that are the subject of the audit. You shall, during the Subscription Term and for a period of 3 (three) years thereafter, maintain accurate and complete books and records of the use of the Service by You.
- 4.6. **Delinquent Payments.** If Your Account falls into arrears, delinquent invoices are subject to interest of one and one-half percent (1.5%) per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection.
- 4.7. **Taxes.** You will pay ABBYY or Partner all applicable Service Fees, plus all customs duties, if applicable, and sales and use tax, value-added tax (VAT), Goods and Service Tax, Service tax, Business Tax and other similar taxes that ABBYY is required under Applicable Law to charge You or otherwise pay in connection with providing the Service to You ("**Indirect Taxes**"). If any Applicable Law requires You to withhold tax amounts from the Service Fee to ABBYY, You shall withhold such an amount of tax from the payments which you are only legally obligated to withhold, taking into consideration all exemptions, reliefs and reductions, at the rate of withholding tax under Applicable Law or at the rate as a result of applying any double tax treaty in force at the time of the Service Fee payment. You will effect such withholding, remit such withheld tax amounts to the appropriate tax authorities and promptly provide ABBYY with tax receipts evidencing the payments of such withholding tax amounts and all other supporting documents as may be required by ABBYY to claim for tax credit in its jurisdiction.

You will be invoiced for applicable Service Fees and Taxes on a regular basis, and all payments are due within 30 days of transmission of the invoice. You shall pay all amounts invoiced in accordance with the terms of the invoice by means of electronic transfer. You are responsible for any outgoing bank transfer charges associated with the payments You make hereunder. You may not set off payments due to ABBYY against any amounts ABBYY may owe to You. Service Fees are non-refundable and non-cancellable.

- 4.8. **Changes.** ABBYY may change the prices and charges associated with the Service and payment procedure at any time by giving You at least 30 days of prior notice. Such revised prices and payment terms will be binding on You once they come into effect.

5. **Confidentiality**

- 5.1. **Confidential Information.** Each party (as the “**Disclosing Party**”) may disclose or make available Confidential Information to the other party (as the “**Receiving Party**”). ABBYY’s “**Confidential Information**” means information in any form or medium (whether oral, written, electronic, or other) consisting of or relating to its technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, including any written or oral information disclosed by ABBYY in relation to the Service, in each case whether or not marked, designated, or otherwise identified as “confidential”. Your “**Confidential Information**” means any information that You provide to ABBYY which has been marked, designated, or otherwise identified as “confidential”. Notwithstanding the above, Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the Receiving Party in connection with these Terms; (b) was or becomes generally known by the public other than by the Receiving Party’s or any of its Representatives’ noncompliance with these Terms; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any of the Disclosing Party’s Confidential Information.
- 5.2. **Protection of Confidential Information.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:
- a. not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with these Terms;
 - b. except as may be permitted by and subject to its compliance with these Terms, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with these Terms; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under these Terms; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth herein;
 - c. safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;
 - d. promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps with Disclosing Party to prevent further unauthorized use or disclosure; and
 - e. ensure its Representatives’ compliance with, and be responsible and liable for any of its Representatives’ non-compliance with the terms set forth herein.
- 5.3. **Trade Secrets.** Notwithstanding any other provisions of these Terms, the Receiving Party’s obligations hereunder with respect to any Confidential Information that constitutes a trade secret under any Applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under such Applicable Law other than as a result of any act or omission of the Receiving Party or any of its Representatives.
- 5.4. **Compelled Disclosures.** If the Receiving Party or any of its Representatives is compelled by Applicable Law to disclose any Confidential Information then, to the extent permitted by Applicable Law, the

Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this section, the Receiving Party remains required by Applicable Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

5.5. **Residual Information**. It is important for ABBYY to be able to use its skills, experience, expertise, concepts, ideas, and know-how learned or acquired while providing the Service for You, itself or any of its clients in the ordinary course of its business. Therefore, You agree that ABBYY is entitled to retain and use without restriction any of the generalized knowledge, techniques, methodologies, practices, processes, skills, experience, expertise, concepts, ideas, and know-how learned or acquired by ABBYY's personnel in the course of providing the Service for You hereunder solely to the extent that they are retained in intangible form in the unaided memory of the personnel of ABBYY without intentionally memorizing such information or using any Your Confidential Information to refresh its recollection ("**Residual Information**"). Nothing in these Terms is to be construed as to prevent ABBYY from being able to do so, and further, such retention and use of Residual Information shall not be construed as a breach of these Terms.

6. **SMUA**

- 6.1. Technical support for the Service will be provided by ABBYY in accordance with ABBYY's then current SMUA terms.
- 6.2. Any Personal Data provided by You to ABBYY in course of or for the purposes of providing You with technical support, software maintenance or alike will be processed in accordance with Privacy Policy available at <https://www.abbyy.com/privacy/>.

7. **Termination**

- 7.1. **Term and Termination**. These Terms shall be effective upon the earlier of the following: (a) the date You accept these Terms; or (b) the date You first use the Service. These Terms shall continue in effect for as long as You use or access the Service or until these Terms are terminated in accordance with this section.
- 7.2. **Subscription Term**. The Subscription Term shall commence on the start date specified in the applicable Order and continue for the term specified therein and any renewals thereto (if any). Except as otherwise specified in the relevant Order, Subscription will automatically renew for additional periods equal to the expiring Subscription Term or for one year (whichever is shorter), unless either party gives the other written notice (e-mail shall be deemed acceptable) at least 30 days before the end of the relevant Subscription Term. Notwithstanding anything to the contrary, any renewal in which Subscription volume or Subscription length for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.
- 7.3. **Termination by ABBYY**. Without prejudice to ABBYY's other rights and remedies under these Terms or Applicable Law and without liability to You, ABBYY has the right to suspend the Service, suspend or

terminate the performance of any of its obligations under these Terms, and terminate these Terms immediately at any time if any of the following applies:

- a. You have failed to pay invoices when due and continue such payment default for 15 days or more after receipt of ABBYY's written notice of late payment;
- b. You become bankrupt or insolvent, or suffer any similar action in consequence of indebtedness or go into voluntary or compulsory liquidation;
- c. You dispute or contest, directly or indirectly, the validity, ownership or enforceability of any Intellectual Property Right of ABBYY or its Affiliates or its licensors, or counsels, procures or assists any other person to do so;
- d. ABBYY reasonably determines that You have violated these Terms or that Your use of the Service violates Applicable Law, misappropriates or infringes the Intellectual Property Rights of a third party, or poses a threat to the security or performance of ABBYY's network or to any of its clients or suppliers; or
- e. You are subject to a change of Control and it is no longer reasonable to expect ABBYY to adhere to these Terms due to the change of Control, in which case ABBYY shall not unreasonably delay negotiations for a new Service agreement with the anticipated owner of Your organization.

When reasonably practicable and permitted by Applicable Law, ABBYY will provide You with advance notice of any such suspension or termination.

- 7.4. **Termination by You.** You may terminate these Terms if ABBYY violates any material provision of these Terms and if such violation is not cured within 30 days of ABBYY's receipt of written notice from You advising it of the alleged violation. You may contact ABBYY technical support team to deactivate Your Account and cease Your use of the Service with a 60 (sixty) days written notice to ABBYY. The DPA may contain other grounds for termination by You.
- 7.5. **Partners.** If You purchased the Service directly from a Partner, Partner may have a right to revoke the Service, limit Your access to it or delete some or all of the Uploaded Data. All disputes between You and such Partner, whether or not relating to any information, data or forms available on or through the Service, will be settled by and between You and such Partner. ABBYY bears no responsibility for resolving such disputes and has no obligation to be involved in any way in any such dispute.

8. **Consequences of Termination**

- 8.1. **Consequences.** Upon termination of these Terms:
 - a. all rights granted to You hereunder, including any active Subscription, will immediately terminate without giving rise to any right for You to receive or demand any compensation for goodwill, Authorized Users' expenses, or any other payment of any nature from ABBYY or its Affiliates or Representatives;
 - b. You shall be required to return (or, with ABBYY's prior written consent, destroy and certify such destruction in writing) all copies of materials that embody ABBYY's Intellectual Property Rights and all copies of ABBYY's Confidential Information provided in connection with these Terms;
 - c. ABBYY will invoice You for any outstanding amounts due and payable by You, and You shall pay all such amounts in accordance with the Terms herein;
 - d. You shall no longer have access to Your Account;

- e. You shall uninstall, delete and destroy all Stations and copies of Stations installed on Your computer(s). You shall then email to ABBYY a confirmation via a letter of destruction signed by Your authorized Representative; and
 - f. If reasonably possible, ABBYY will inform You in advance and give You the opportunity to export Uploaded Data from the Service.
- 8.2. **Uploaded Data.** Upon termination of these Terms, ABBYY will have no obligation to maintain or forward any Uploaded Data and ABBYY may delete Uploaded Data from the Service at its sole discretion. Notwithstanding the foregoing, You authorize ABBYY to retain Uploaded Data on the Service following the expiration or termination of these Terms for as long as necessary for ABBYY to perform its obligations under these Terms, subject to any obligations under Applicable Law including data protection laws to retain Uploaded Data for a longer or shorter period of time.
- 8.3. **Account.** Upon termination of these Terms, ABBYY will retain the Account for 1 (one) year following such termination except for the cases, when retaining the Account for a longer or shorter period of time is necessary for ABBYY in order to perform its obligations under these Terms, subject to any obligations under Applicable Law including data protection laws, or is otherwise required under the Applicable Law.
- 8.4. **Survival.** The termination of these Terms shall not have any effect on provisions that are expressed to operate or to be in force after termination, or any right of action already accrued to ABBYY in respect of any breach by You. Without limiting the generality of the preceding sentence, the following provisions will survive any expiration or termination of these Terms: sections 1, 3, 4.2, 4.3, 4.6, 4.7, 5, 7, 8, 9, 10, 11, 12, sections 1 and 7 of the **Appendix A – FlexiCapture Cloud API**.
- 8.5. **Consequences for a Subscription Termination.** Upon termination or expiration of a particular Subscription, You shall have no right to use the Service unless You purchase a new Subscription. In case of a Subscription termination or expiration, the Terms shall remain in full force and effect unless duly terminated by any of the parties.
- 8.6. **Refund or Payment upon Termination.** If the Terms or any active Subscription is terminated by You before the Subscription expiration date, You shall, to the extent permitted by Applicable Law, pay ABBYY any unpaid fees covering the remainder of the Subscription Term. If any discounts were applied to Your Subscription, You shall also pay ABBYY an amount equivalent to the sum of such discount. The provisions of this section 8.6 shall not apply if the termination is based on the section 7.4 above.

9. **Ownership of Intellectual Property Rights**

- 9.1. **Ownership.** You acknowledge that the Service and Service Marketing Materials are owned, controlled or licensed by or to ABBYY, are and remain the proprietary information of ABBYY and its Affiliates, suppliers and licensors, and are protected by Applicable Law. You acknowledge that all Intellectual Property Rights relating to the Service and Service Marketing Materials (other than Uploaded Data) are, as between You and ABBYY, solely and exclusively owned by ABBYY. All modifications, enhancements or changes to the Service and Service Marketing Materials are and shall remain the property of ABBYY and its licensors and suppliers, without regard to the origin of such modifications, enhancements or changes. No ownership rights in the Service or Service Marketing Materials are granted, and ABBYY reserves all right, title and interest therein and thereto. Use of the Service or Service Marketing Materials does not grant You a license to any Intellectual Property Rights or other rights of ABBYY or its Affiliates or licensors or any third parties, whether express, implied, by estoppel or otherwise, or grant You the right to make or have made any products, or to use the Service or Service Marketing Materials beyond the scope of these Terms. You will not challenge the ownership or rights in

and to the Service or Service Marketing Materials, including without limitation all copyrights and other proprietary rights. Nothing in these Terms limits ABBYY's ability to enforce its Intellectual Property Rights.

- 9.2. **Feedback.** If You provide to ABBYY comments regarding the Service or ideas on how to improve it (“**Feedback**”), please note that by doing so, You also hereby assign all right, title, and interest worldwide in Feedback to ABBYY and agree to assist ABBYY, at ABBYY's expense, in perfecting and enforcing ABBYY's rights thereto and ownership thereof. You acknowledge and agree that ABBYY may use and incorporate Feedback into the Service or for other business purposes without compensation to You and without restriction.
- 9.3. **Use of Your Organization's Name.** ABBYY may identify You in its advertising and marketing materials as a customer of the Service, and may use Your trademarks, trade names, service marks, and logos in such materials subject to Your reasonable guidelines. Furthermore, ABBYY may disclose to the public some or all of the Service features that You are using.

10. **Limited Warranty and Disclaimers**

- 10.1. **No Infringement of Laws.** Each party represents and warrants to the other that it has the legal authority to enter into these Terms with the other, and its execution and delivery of these Terms does not violate Applicable Law or any other agreement to which it is a party or by which it is otherwise bound.
- 10.2. **Internet Delays.** ABBYY shall not provide You or Authorized Users / End Users with an Internet connection or with any hardware and software required to connect to the Internet, and ABBYY is not liable for the quality of Your or Authorized Users' / End Users' Internet connection or the quality of the hardware and software that You or Authorized Users / End Users use to access the Internet. ABBYY is not liable for any malfunction or other problems in telephone networks or services, computer systems, servers, providers, computer hardware, software, or telecoms equipment, or for any malfunction in the operation of e-mail and scripts, howsoever caused, or other damage resulting from such problems. ABBYY shall not be liable for any delay, malfunction, missed or late delivery, removal or loss of any of Your information provided to ABBYY, including but not limited to Uploaded Data, resulting from the situations described in this section 10.2.
- 10.3. **Loss of information.** You acknowledge that You may be transmitting information over a public computer network and that ABBYY shall not be liable for any loss of information transmitted in this manner.
- 10.4. **No warranties for third party software products.** ABBYY makes no warranties for any Third Party Software products.
- 10.5. **Warranty disclaimer.** EXCEPT FOR ANY WARRANTY, CONDITION OR EXPRESS REPRESENTATIONS STATED IN THESE TERMS AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ABBYY MAKES NO REPRESENTATION, WARRANTY, CONDITION, OR GUARANTEE, EITHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, OF ANY KIND, INCLUDING WITH RESPECT TO THE MERCHANTABILITY, RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, FITNESS FOR ANY PURPOSE, OR COMPLETENESS OF THE SERVICE OR ANY DATA, NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ADDITIONALLY, ABBYY DOES NOT REPRESENT OR WARRANT THAT:
 - a. THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA;

- b. ANY STORED DATA OR UPLOADED DATA WILL BE OR REMAIN ACCURATE OR RELIABLE;
- c. THE RESULTS OBTAINED BY USING THE SERVICE ARE ACCURATE, COMPLETE OR USEFUL;
- d. THE OPERATION OF THE SERVICE OR THE PROVISION AND AVAILABILITY OF THE SERVICE WILL BE CONTINUOUS AND/OR UNINTERRUPTED OR FREE FROM ERROR;
- e. THE SERVICE, THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR OR END USER'S REQUIREMENTS OR EXPECTATIONS;
- f. ERRORS OR DEFECTS WILL BE CORRECTED; OR
- g. THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

10.6. **AS IS.**

- a. If You have entered into these Terms with any ABBYY legal entity other than ABBYY Europe GmbH, the following rules shall apply to You instead of section 10.6(b):

THE SERVICE AND ALL DATA ARE PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS.

- b. If You have entered into these Terms with ABBYY Europe GmbH, the following rules shall apply to You instead of section 10.6(a):

The Service and all data are provided to You strictly on an "AS IS" basis without a warranty of any kind ("*keine Beschaffheitsgarantie*") except a potential mandatory statutory warranty.

10.7. **Service Level Claims.** The Service Levels are solely specified by ABBYY. You hereby agree that ABBYY may unilaterally amend or change the Service Levels.

10.8. **Consideration of Service Level Claims.** ABBYY will use all information reasonably available to it to validate any Your claim and make a good faith judgment regarding whether the Service did not meet the Service Levels. If it did not, ABBYY will provide You with a credit based on the amount of pages that were not processed in time due to the incident You reported. ABBYY will choose at its own discretion the form of this credit. You agree that any such credit constitutes Your exclusive remedy for any failure by ABBYY to not provide the Service in accordance with these Terms.

11. **Limitation of Liability and Indemnification**

11.1. **Limitation of Liability.**

- a. If You entered into these Terms with any ABBYY legal entity other than ABBYY Europe GmbH, the following rules shall apply to You instead of section 11.1(b) to the fullest extent permitted by Applicable Law:
 - i. IN NO CASE SHALL ABBYY, ITS AFFILIATES, AND ITS AND THEIR REPRESENTATIVES BE LIABLE FOR INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, EXEMPLARY, TREBLE, CONSEQUENTIAL OR SPECIAL DAMAGES

(INCLUDING THE LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL) WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY.

- ii. IN NO EVENT SHALL ABBYY'S TOTAL AND CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED TO THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL FEES PAID BY YOU UNDER THESE TERMS FOR THE SERVICE, IN EITHER CASE EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN CASE IF YOU HAVE OBTAINED A LICENSE TO USE THE TRIAL VERSION OF THE SERVICE, ABBYY'S TOTAL AND CUMULATIVE LIABILITY TO YOU UNDER THESE TERMS SHALL BE LIMITED TO THE SUM OF FIFTY UNITED STATES DOLLARS (U.S. \$50) OR THE TOTAL AMOUNT YOU PAID FOR THE TRIAL SERVICE, WHICHEVER IS GREATER.
- iii. THESE LIMITATIONS SHALL APPLY DESPITE THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PROVISIONS OF THIS SECTION ALLOCATE RISKS UNDER THESE TERMS BETWEEN ABBYY AND YOU. ABBYY'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY. YOU ACKNOWLEDGE AND AGREE THAT THIS LIMIT ON LIABILITY CONSTITUTES AN ESSENTIAL PART OF THESE TERMS AND THAT ABBYY WOULD NOT BE ABLE TO PROVIDE THE SERVICE WITHOUT SUCH LIMITS. THIS SECTION SHALL NOT BE SUBJECT TO ANY DISCLAIMER OR PROVISION SET FORTH IN THESE TERMS.

b. If You entered into these Terms with ABBYY Europe GmbH, the following rules shall apply to You instead of section 11.1(a) to the fullest extent permitted by Applicable Law:

- i. ABBYY's statutory liability for damages shall be limited as follows: (1) ABBYY shall be liable only up to the amount of damages as typically foreseeable at the time of entering into the purchase agreement in respect of damages caused by a slightly negligent breach of a material contractual obligation required for the appropriate execution of the agreement and (2) ABBYY shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation. ABBYY shall not bear any liability beyond the limits set above in this section 11, especially not in cases of consequential damages, loss of revenue or profits, punitive damages or any other special damages.
- ii. The above limitation of liability also applies in respect of the personal liability of the employees, representatives and agents of ABBYY.
- iii. The limitation of liability set forth above shall not restrict any mandatory statutory liability, in particular, to liability under the German Product Liability Act, liability for assuming a specific guarantee, liability for damage arising from a grossly negligent breach of duty or liability for culpably caused injuries to life, body or health.

11.2. **Defense of Claims**. You shall defend ABBYY and its Affiliates and Representatives, and each of its and their respective Representatives, officers, directors, successors, and assignees (each, an "**ABBYY Indemnitee**") against any allegation or claim that directly or indirectly arises out of or relates to any of the following (individually, a "**Claim**", and collectively, the "**Claims**"):

- a. Any information that You provide to ABBYY, including any processing of Uploaded Data by or on behalf of ABBYY in accordance with these Terms;
- b. Any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on Your behalf or any Authorized User, including ABBYY's

compliance with any specifications or directions provided by or on behalf of You or any Authorized User to the extent prepared without any contribution by ABBYY;

- c. Your breach of any of Your representations, warranties, covenants, or obligations under these Terms; or
- d. Any act or omission by You, any Authorized User / End User, Your Representatives, or any third party on Your behalf, including any negligent acts or omissions, willful misconduct, or strict liability thereof.

11.3. **Indemnification by You.** You shall indemnify and hold harmless each ABBYY Indemnitee against any damages, liabilities, assessments, losses, costs, and other expenses (including reasonable attorneys' fees and legal expenses) incurred by that ABBYY Indemnitee relating to any Claim, including:

- a. All damages, liabilities, assessments, losses, costs, and other expenses (including reasonable attorney fees and legal expenses) finally awarded against an ABBYY Indemnitee in any proceeding relating to any Claim;
- b. All out-of-pocket costs (including reasonable attorneys' fees) incurred by an ABBYY Indemnitee in connection with the defense of any Claim (other than attorneys' fees and costs incurred without Your consent after You have accepted defense of such Claim); and
- c. If any Claim is settled between You and the third party, all amounts agreed to by You as part of such settlement.

11.4. **Process.** ABBYY shall give You reasonable notice of each Claim for which it wants indemnity, except that failure to provide such notice will not release You from any obligations hereunder except to the extent that You are materially prejudiced by such failure. ABBYY will also give You its reasonable cooperation in the defense of each Claim, at Your expense. You may not use any counsel that would have a conflict of interest in representing ABBYY's interests to defend any Claim. An ABBYY Indemnitee may participate in the defense of a Claim at its own expense. You will not settle any Claim without the relevant ABBYY Indemnitees' prior written consent, which may not be unreasonably withheld. You shall ensure that any settlement You make of any Claim is made confidential, except where not permitted by Applicable Law. Your duty to defend is independent of Your duty to indemnify.

11.5. **Indemnification by ABBYY.** Subject to section 11.1, ABBYY shall indemnify You from and against losses incurred by You that arise out of or result from, or are alleged to arise out of or result from any claim that the Service violates the Intellectual Property Rights of a third party in the U.S.A, European Union or Australia. If any portion of the Service is, or in ABBYY's opinion is likely to become, the subject of an Intellectual Property Rights infringement claim, then ABBYY, at its sole option and expense, will either: (A) obtain for You the right to continue using the Service under these ; (B) replace the Service with products that are substantially equivalent in function, or modify the Service so that it becomes non-infringing and substantially equivalent in function; or (C) refund You the portion of the Service Fees paid to ABBYY for the portion of the Subscription Term during which You may no longer use the Service. THE FOREGOING SETS FORTH ABBYY'S EXCLUSIVE OBLIGATION AND LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING THE INDEMNIFICATION OBLIGATIONS STATED IN THIS SECTION 11.5 HEREIN.

12. **Miscellaneous Provisions**

12.1. **Assignment.** ABBYY may assign and transfer its rights and obligations hereunder (or any part thereof) to a third party at any time without notice to You or Your consent. You may not assign or transfer any of the rights or responsibilities set forth herein without the express written consent of ABBYY, and any purported attempt to do so shall be deemed void.

- 12.2. **Dispute Resolution.** The following procedure shall be observed to resolve any dispute arising between You and ABBYY under these Terms or otherwise. If You have reason to believe that Your rights and interests have been violated in connection with Your use of the Service, You may send a complaint to ABBYY at FC_cloud@abbyy.com. ABBYY shall seek to respond to the complaint within 20 business days of receipt of the complaint. The response shall be sent to Your e-mail address as indicated in the complaint. If the parties fail to resolve the dispute in this manner, the dispute shall be resolved in accordance with these Terms. ABBYY is not obligated to respond to anonymous complaints or complaints from users who cannot be identified with the data they provided to register.
- 12.3. **Waiver.** The failure of either party to enforce compliance with any provision of these Terms shall not constitute a waiver of such provision unless accompanied by a clear written statement that such provision is waived. A waiver of any default hereunder or any of these Terms shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. Except as expressly provided herein to the contrary, the exercise of any right or remedy provided in these Terms shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.
- 12.4. **Severability.** If any part of these Terms is found to be or should become illegal, unenforceable, or invalid, the remaining portions of the Terms will remain in full force and effect. If any material limitation or restriction on the grant of any rights to You under these Terms is found to be illegal, unenforceable, or invalid, the right granted will immediately terminate.
- 12.5. **Interpretation.** The headings appearing at the beginning of any sections contained in these Terms have been inserted for identification and reference purposes only and must not be used to construe or interpret these Terms. Whenever the singular number is used in these Terms and when required by the context, the same will include the plural and vice versa, and the masculine gender will include the feminine and neuter genders and vice versa. The words “include,” “includes” and “including” will be deemed to be followed by “without limitation.” Each party to these Terms acknowledges that it has had the opportunity to review these Terms with legal counsel of its choice, and there will be no presumption that ambiguities will be construed or interpreted against the drafter. All the terms and periods herein are calculated as calendar periods, unless otherwise expressly specified.
- 12.6. **No partnership or agency.** Nothing in these Terms or any circumstances associated with it or its performance give rise to any relationship of employment, agency or partnership between You and ABBYY.
- 12.7. **Entire Agreement.** These Terms (along with any and all associated Appendices) is the final and complete expression of the agreement between these parties regarding Your usage of the Service. These Terms supersede all previous oral and written communications regarding these matters, including any marketing materials or documentation provided by ABBYY prior to the execution of these Terms, unless specifically referred to and incorporated in these Terms. No employee, agent, or other representative of ABBYY has any authority to bind ABBYY with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in these Terms. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter these Terms. All of these Terms apply both to the Service as a whole and to any of the Service’s separate parts.
- 12.8. **Contact Us.** Should You have any questions concerning these Terms, or if You desire to contact ABBYY for any reason, please contact Your ABBYY sales representative or Partner.
- 12.9. **Notices.** Any notices or communications required or permitted to be given by these Terms must be (a) given in writing and (b) personally delivered or mailed, by prepaid, certified mail or overnight courier,

or transmitted by electronic mail transmission, to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party (in Your case, this shall be the electronic mailing address provided on registration or any subsequently update thereto). Notice shall be deemed to have been given, if by post, on the date that the notice is delivered, and if by e-mail, when the recipient acknowledges having received that email by return email sent to the email address of the sender or by another method, with an automatic “read receipt” constituting acknowledgement of an email for the purposes of this section. In the case of change of address, the party whose address has changed shall provide written notification to the other party in respect of such change and communicate the new address to the other party.

- 12.10. **Index**. ABBYY may list and publish in different materials and on the Internet Your name and in an index of clients/products that use technology developed by ABBYY.
- 12.11. **Amendment to these Terms**. ABBYY may unilaterally change these Terms effective as of any time, including immediately, where such changes: (a) are required to comply with Applicable Law; or (b) do not: (i) result in a violation of Your rights hereunder; or (ii) otherwise have a material adverse impact on Your rights under these Terms, as reasonably determined by ABBYY. Otherwise, ABBYY may unilaterally change these Terms by notifying You with at least 30 days’ prior notice before the changes will take effect by either: (a) email; or (b) alerting You via the service interface. If You object to any such change, You must terminate the Account(s) and stop using the Service. ABBYY is not required to notify You about editorial changes.
- 12.12. **Force Majeure**. If the performance of the provisions of these Terms or any obligation herein is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the party obliged to perform it, the party so affected, upon giving prompt notice to the other party, shall not be liable for any delay or failure to perform the provisions of the Terms or any obligations herein to the extent of such prevention, restriction or interference, but the party so affected shall use its best efforts to avoid or remove such causes of non-performance and shall resume the performance of the provisions and obligations as soon as possible after such causes are removed or diminished.
- 12.13. **Special Jurisdiction**. If You are located in Russia or a member of the Commonwealth of Independent States, please contact ABBYY for information about the availability of the Service in Your region.

13. **Governing Law and Forum**

- 13.1. **ABBYY USA Software House, Inc.** If You entered into these Terms with ABBYY USA Software House, Inc., these Terms shall be governed by and construed in accordance with the laws of the State of California, without regard to or application of its conflicts of law principles. Any action or proceeding arising out of or relating to these Terms shall be brought exclusively in a state or federal court of competent jurisdiction situated in Santa Clara County, California and You consent to the exclusive personal jurisdiction of such courts for such purpose. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Terms.
- 13.2. **ABBYY Europe GmbH**. If You entered into these Terms with ABBYY Europe GmbH, these Terms shall be governed by and construed in accordance with the laws of the Federal Republic of Germany excluding the Convention for the International Sale of Goods. The parties, if You are a merchant, a legal person under public law, or a special asset (*Sondervermögen*) under public law, shall submit any and all disputes, controversies or differences that in the opinion of a party cannot be settled amicably, to the court of Munich, Germany. This clause shall in no event be construed so as to deprive a party to institute interim injunction proceedings at a different court of another country.

- 13.3. **ABBYY Pty. Ltd.** If You entered into these Terms with ABBYY Pty. Ltd., these Terms shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia, without regard to or application of its conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Terms. Any action or proceeding arising out of or relating to these Terms shall be brought exclusively in a state or federal court of competent jurisdiction situated in New South Wales, Australia, and You consent to the exclusive personal jurisdiction of such courts for such purpose.
- 13.4. **ABBYY Japan Co. Ltd.** If You entered into these Terms with ABBYY Japan Co. Ltd., these Terms shall be governed by and construed in accordance with the laws of Japan, without regard to or application of its conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Terms. Any action or proceeding arising out of or relating to these Terms shall be brought exclusively in a state or federal court of competent jurisdiction situated in Tokyo District Court, and You consent to the exclusive personal jurisdiction of such courts for such purpose.

Appendix A – FlexiCapture Cloud API

The following terms in this **Appendix A – FlexiCapture Cloud API** are in addition to the Terms and shall apply to You only if You purchase ABBYY FlexiCapture Cloud API.

1. **Definitions**

- 1.1. **“Code Samples”** means the source code of sample applications that use the Service, as may be made available by ABBYY.
- 1.2. **“End User”** means a person or legal entity using Your Solution in accordance with the End User Agreement.
- 1.3. **“End User Agreement”** means a written agreement between You and an End User that governs the rights and obligations of End User’s use of Your Solution.
- 1.4. **“Project”** means a specific set of files that contain settings for importing, processing, and exporting documents that may be uploaded to the Service.
- 1.5. **“Service”** means “ABBYY FlexiCapture Cloud API” Web-service accessible via <https://www.abbyy.com/flexicapture-login/> and all of ABBYY’s proprietary technology (including software, hardware, services, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) made available to You by ABBYY as part of the Service, as well as ancillary online or offline services, audio, visual and text information.
- 1.6. **“Service Software”** means the software that operates the Service or its component parts.
- 1.7. **“Your Solution”** means an application software or software service incorporating or using the Service, operated by You or Your behalf, that is capable of sharing an account with the Service, generally through an application program interface (API).
- 1.8. **“Your Functionality”** means the set of capabilities that You make available through Your Solution for End Users utilizing the Service.

2. **Scope**

For only “ABBYY FlexiCapture Cloud API” Web-service, ABBYY grants to You a limited, non-exclusive, revocable, non-transferable, royalty-bearing right to use the Service solely for integrating in Your Solution and distributing to the End Users subject to these Terms and in each case for use solely with and as part of Your Solution. Any right that ABBYY grants hereunder is revocable in accordance with these Terms. ABBYY reserves any right that ABBYY does not expressly and unambiguously grant to You hereunder.

3. **Distribution right**

- 3.1. **Distribution within Your Solution.** Notwithstanding anything to the contrary in these Terms, You may provide End Users with access to the Service and the Service functionality only as part of Your Solution. Except as expressly permitted herein, any distribution of the Service or any of its component parts on a standalone basis is prohibited. End Users shall not be permitted to access online or offline, including without limitation download, install or have installed the Service or its component parts. End Users shall not be provided with direct access to the Service, shall not use it on a standalone basis, and shall not have any right or license to use the Service or the Service functionality separately from Your Solution.

- 3.2. **Distribution Restrictions.** Other than as expressly permitted under the sections 2 and 3 in this Appendix A – **FlexiCapture Cloud API** and in addition to other restrictions provided in these Terms, ABBYY does not grant You the right to distribute or create derivative works of the Service, to sublicense its rights or obligations hereunder, or otherwise to permit others to use, reproduce, create derivative works of, display, perform or distribute the Service in any manner nor to embed, bundle or otherwise incorporate the Service with other products or services for third parties (including without limitation Your Affiliates, Authorized Distributors, and End Users), without prior written consent from ABBYY. Customer acknowledges and agrees that ABBYY may condition its consent upon the execution of a separate written agreement or the payment of additional fees (or both).
- 3.3. **Copyright notices.** The copyright notices in the Service shall be faithfully reproduced in each copy of the Service distributed in or with Your Solution exactly as provided to You by ABBYY. Each End User Agreement entered into between You or Your authorized distributors on the one hand and End User on the other shall identify ABBYY as a third party beneficiary, and You shall take all steps necessary and cooperate with ABBYY to ensure that those agreements are enforced at all times.

4. **Code Samples Restrictions**

Except as otherwise explicitly provided in these Terms:

- a) Code Samples are the property of ABBYY and shall at all times remain with ABBYY;
- b) You may include the Code Samples in Your Solution;
- c) You may study, modify and provide the Code Samples to End Users in binary code as part of Your Solution or provide in-house access to the Code Samples, provided that Your Solution use the Code Samples solely for processing the results obtained with the Service;
- d) ownership of modifications to the Code Samples shall remain with the party making such modifications;
- e) if You disclose modifications made to the Code Samples by sending them to ABBYY or by any other means, ABBYY shall deem to have been granted an irrevocable, non-exclusive, perpetual, transferable, royalty-free license to make, use, sell, offer to sell, import, license, sub-license, and assign its license to Your modifications to the Code Samples, without remuneration due to You. You represent and warrant that the aforementioned rights granted to ABBYY shall be free of any third party rights or encumbrances and that You have obtained all necessary rights to grant the rights to ABBYY and that You have, if applicable, paid all necessary remuneration to the authors of such modifications. If You do not wish to transfer to ABBYY the license to the modifications to the Code Samples, You shall not disclose to ABBYY the source code of such modifications.

5. **End User Agreement Terms**

Your End User Agreement shall contain minimal terms in favor of ABBYY that substantially meet the following requirements:

- a) statements that Your Solution utilizes the Service, referred to by ABBYY exact name;
- b) End User is granted only a non-exclusive, non-transferable right to use the Service only within Your Solution.
- c) ABBYY shall not be liable to the End User for any general, special, direct, indirect, consequential, incidental, or lost profits or other damages arising out of or related to the Service;

- d) End User will not: (a) decompile or reverse engineer the Service Software; (b) modify, publish, transmit, license, sublicense, transfer, sell, distribute, reproduce, create derivative or collective works from, or in any way otherwise exploit the Service Software or make the Service Software available, in whole or in part; (c) disclose results of any services or program benchmark tests without ABBYY's prior written consent; (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Service available to any third party other than as expressly permitted under these Terms; (e) transmit files, content, photographs, videos, personal or technical data or any other type of information or data (collectively, "User Content") that is defamatory or libelous; (f) transmit any User Content that it has no rights to, or for which transmission would constitute infringement of third-party Intellectual Property Rights; or (g) transmit any viruses, malicious code, Trojans, worms, corrupted files, or any other similar software that may damage the operation of another's computer, data or property, or transmit any other harmful or code technology;
- e) all disputes between You and End Users, whether or not relating to any information, data or forms available on or through the Service, will be settled by and between You and End User. ABBYY bears no responsibility for resolving such disputes and has no obligation to be involved in any way in any such dispute;
- f) End User shall comply with all applicable legal requirements regarding privacy and data protection; and
- g) You shall provide sufficient notice to, and, if legally required, obtain sufficient consent and authorization from End Users providing personal data and any other information to ABBYY in the course of using Your Solution in order to permit the processing of such data by ABBYY. The notice shall include the following statement: "Notwithstanding the above, ABBYY is not responsible for compliance with the data protection laws applicable to End Users or its industry and not generally applicable to information technology service providers or providers using critical infrastructure (e.g. financial or credit institutions, health and safety institutions, professional unions or associations, religious organizations)."

6. Performance of Your Solution

In addition to any warranty disclaimers in these Terms, ABBYY cannot warrant the performance of any of Your Solution created by or for You using the Service, nor does ABBYY make any representations or warranties with respect to performance of the Service in Your Solution.

7. Ownership Warranty

You warrant that You are the exclusive owner of all rights to Your Solution and that Your Solution does not infringe any third party's Intellectual Property Rights.