

Annex 1 – Ably Terms of Service

Your acceptance of these Terms is required in order for you to access and use the Ably Solution. By registering with Ably, or by using the Ably Solution in whole or in part, you are entering into a legally binding agreement with us. Please read these Terms carefully. If you do not agree to these Terms, you cannot use the Ably Solution. We reserve the right at our discretion to propose modifications to these Terms periodically. We will notify you of such changes via an email sent to the email address we have on file for you or via other notification mechanisms. Your continued use of and access to the Ably Solution after notice of such modifications indicates your acceptance of and agreement to the modified Terms. If you violate any of these Terms, your permission to use the Ably Solution automatically terminates, unless such violation is waived by us in writing in our sole discretion.

You may not use the Ably Solution if you are barred from doing so under the laws of the United States or other countries including the country in which you are resident or from which you use the Ably Solution. You affirm that you are over the age of 13; the Ably Solution is not intended for children under 13.

1 Defined Terms

"Ably Solution": the services, features, functionality, data and content made available to you as set forth in an Order, as well as the Client Software and any related documentation and other materials, and any upgrades, enhancements, customizations, error corrections, deprecations, and other changes to any of the foregoing that we may from time to time in our sole discretion provide to you or incorporate into such services, software, features, functionality, materials or content.

"Access Information": user name, password, and other log-in information for access to the Ably Solution.

"Application": the software application owned or controlled by you, and configured, using the Client Software, to utilize the Ably Solution.

"Client Software": the software for use on your computer or device (server and client) that we provide as part of the Ably Solution, as may be updated or modified by us in our sole discretion on one or more occasions.

"Content": text, images, graphics, photos, video, audio, and any other content, information or data, created, derived from or accessible via use of the Ably Solution, or otherwise made available by and to Ably end users.

"Data Protection Laws" means the Data Protection Act 1998, the European Union's General Data Protection Regulation, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and all applicable laws and regulations relating to the processing of personal data as amended, re-enacted, replaced or superseded from time to time.

"Evaluation Trial": provision of the Ably Solution free of charge, including provision of the free account level of service.

"Order": the online signup page or separate ordering form (as may be amended), digitally or physically accepted by you, setting forth the Evaluation Trial and/or subscriptions you have purchased for access to the Ably Solution, terms regarding Services, if any, and other associated terms.

"Other Applications": any Application, Content and online or offline software, products, services, functionality, text, video, audio, data, hardware, network and content not developed or provided by us, including any of the foregoing that is owned or licensed by you or is processed, made available or enabled for use and display via the Ably Solution.

"Personal Data" has the meaning given in the Data Protection Laws.

"Professional Services": services we perform to enable the training, setup and/or integration of the Ably Solution, as specified in the Order.

"Privacy Policy": the privacy policy available at <https://www.ably.io/privacy>, as may be amended on one or more occasions.

"Services": the Professional Services and the Support Services.

"Service Level Agreement" or **"SLA"**: the service level agreement set forth in section 8.0 below.

"Support Services": the support and maintenance services described in section 7.2 below.

"Terms": these Ably Terms of Service and the Order, if any, referencing this agreement, as well as the Ably Privacy Policy.

"Terms": these Ably Terms of Service and the Order, if any, referencing this agreement, as well as the Ably Privacy Policy.

"We", "us", "our" or "Ably": Ably Real-time Ltd., organized under the laws of England.

"You" or "your": the individual using the Ably Solution, or clicking "accept" or "agree" (or otherwise demonstrating acceptance of the Terms) where indicated, and thereby becoming bound by these Terms, and the company or other legal entity represented by such individual and/or that accepted an Order, and all affiliates thereto.

2 Subscriptions to the Ably Solution

2.1 Availability. Subject to your compliance with these Terms, including payment obligations, we will make available a subscription to the Ably Solution to you pursuant to these Terms and in accordance with the applicable Order(s) during the term of your subscription. You acknowledge that your decision to use the Ably Solution is not reliant or dependent on the availability of any future functionality or features, or on any oral or written public or private comments or representations made by us.

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2.2 Evaluation Trial. Any data, personalizations, integrations, adaptations, customizations or other materials generated during the Evaluation Trial will be permanently lost at the end of the Evaluation Trial unless you purchase to the applicable Ably Solution. Except as the parties may otherwise agree in the Order, we are under no obligation to provide Services during or in support of the Evaluation Trial. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, THE EVALUATION TRIAL IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, and the SLA does not apply to any Evaluation Trial. You must cancel the Evaluation Trial by the end of the stated number of days in the Evaluation Trial offer to avoid incurring charges, unless we notify you otherwise. If you do not cancel at the end of the Evaluation Trial period, we may charge you for the subscription.

2.3 Consent to Emails. You agree and consent to receive email messages from us, which may be transactional, for account management purposes, or for communications relating to or provided as part of the Ably Solution, including notifications related to your subscriptions, Services, administrative notices and service announcements or changes.

2.4 Reservation of Rights. We retain all right, title and interest in and to the Ably Solution and our Content, and all associated intellectual property rights. We grant no licensed rights to our patents. The user interface, user experience, icons, presentation layer and elements, reports, layouts, and screen displays of or generated by the Ably Solution are our copyrightable content, our trade dress and our trademarks and servicemarks, and will not be reproduced, distributed, or displayed except for your own personal use or business operations in accordance with these Terms.

2.5 Your Content. You retain all right, title and interest in and to your Content and all associated intellectual property rights.

3 Use of Ably Solution

3.1 **Necessary Systems.** Access to and ability to effectively use the Ably Solution or Services is conditioned on your procurement of all necessary system, hardware, software, operating environment, Other Applications, connectivity, and network access. You acknowledge that use of the Ably Solution requires connection to, and data transfers over, the network and therefore may impact your data usage charges imposed by your wireless operator or other service provider, and may impact usage limitations imposed by Other Applications. You shall comply with our [Acceptable Use Policy](#).

3.2 **Feedback.** You agree that we may freely use and exploit in perpetuity any feedback, requirements, recommendations, ideas, bug fixes, ratings, comments, suggestions, or improvements, that you, or any employee or agent thereof, may at any time disclose or submit to us relating to the Ably Solution or the Services for our business purposes, including for product licensing, support and development, without any obligation or payment to you. If you voluntarily provide any such feedback to us, you warrant that you have full right and authority to do so and that our use of such feedback will not infringe or violate third party rights.

3.3 **Information.** You hereby consent to our collection and use of anonymized ~~meta~~data (for analytical, for diagnostic purposes, for information and usage statistics) concerning or arising from your use of the Ably Solution in order to provide the functionality of the Ably Solution, for product development and marketing purposes, and for verifying Terms compliance. We may use automated means to isolate information from your Content in order to help detect and protect against spam and malware, or to improve

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the Ably Solution. The foregoing will not be construed as an admission that consent to such data collection activity is legally required. You represent and warrant that all information that you submit to us in connection with the Ably Solution, including account and billing information, is accurate, complete and truthful, and that you will promptly update any information provided by you that subsequently becomes inaccurate, incomplete, misleading or false.

3.4 Unauthorized Use. You will not use the Ably Solution or participate in any activities via the Ably Solution in a manner that is likely to be prohibited by law or these Terms or violative of third party rights in any applicable jurisdiction, including intellectual property rights. Your use of the Ably Solution must be in compliance with applicable law. You are solely responsible for the accuracy, quality and legality of the Other Applications. You shall not use, or enable or permit the use of the Ably Solution to store or transmit infringing, libelous, pornographic, offensive or otherwise unlawful or tortious material or data or in violation of privacy rights, or to transmit malicious code, viruses, time bombs, Trojan horses, or similar mechanisms, scripts, agents, bots or programs. You shall not use or access the Ably Solution: (a) if you are a direct competitor of us or operating on behalf of such a direct competitor; or (b) for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes.

3.5 Notifications to You. For purposes of service messages and notices about the Ably Solution to you, we may place a banner notice across site pages to alert you to certain changes such as modifications to these Terms. Alternatively, notice may consist of an email from us to an email address associated with your account, even if we have other contact information. You also agree that we may communicate with you in relation to your account and these Terms through your account or through other contact information that you have provided to us, including email, mobile number, telephone, or delivery services. We may propose changes to these Terms from time to time, and will notify you as provided by this section. If you object to the changes, and are under a paid subscription, you must notify us within thirty days after receiving notice of the changes. If you notify us as specified in this section, then the proposed changes to the Terms will not come into effect until such time as the paid subscription to the Ably Solution is renewed after expiration of the current subscription.

3.6 Notifications to Us. If you believe that you are entitled or obligated to act contrary to these Terms under any mandatory or applicable law, you agree to provide us with detailed and substantiated explanation of your reasons in writing at least thirty days before you so act, to allow us to assess whether we may, at our sole discretion, provide an alternative remedy for the situation, though we are under no obligation to do so.

4 Client Software

4.1 License to Use. Subject to your compliance with the obligations of these Terms, we hereby grant to you a non-sublicensable, non-transferable, and non-exclusive license to (a) install and use the applicable components of the Client Software on any computing device (owned by you or in your exclusive possession) on which the Client Software is intended to run, and any Ably documentation and APIs, for your internal or personal use in support of your business operations, in the development and testing of your Application, and in setting up the Ably Solution in your environment; and (b) reproduce and distribute copies of the applicable components of the Client Software (designated by us as client libraries suitable for such use), solely as permanently embedded in your Application, and solely for the purpose of utilizing the Ably Solution.

- 4.2 Updates. Client Software may update automatically on your computer or device. Updates may be required for your continued use of the Ably Solution. You agree to accept such updates subject to these Terms unless other terms accompany the updates. If so, those other terms will apply. We are not obligated to make any updates available and do not guarantee that we will support the version of the Client Software that you are currently using.
- 4.3 Unauthorized Use. Except as set forth above, you shall not (a) copy the Client Software except as required to load on to the device described above; (b) distribute to or share use of the Client Software with any third party; or (c) sublicense, rent, lease, or commercially host the Client Software. All rights not expressly granted in this section are reserved to us. You will have no right or license to the Client Software other than the rights expressly granted by us.
- 4.4 Ownership. We and our licensors retain all right, title and interest in the Client Software and associated intellectual property rights, and all copies of the Client Software. The structure, sequence, organization and code of the Client Software constitute our and our licensors' valuable trade secrets and copyrighted confidential information.
- 4.5 Reverse Engineering. You shall not reverse engineer, modify, decompile, disassemble or otherwise attempt to derive the source code, interfaces or other information from the Client Software, except and only to the extent that: (a) such activity is expressly permitted by directly applicable law notwithstanding this limitation; and (b) it is essential to engage in such activity in order to obtain information needed to achieve interoperability of independently created software with the Client Software; and (c) we have not made such information available to you under reasonable terms and conditions. Any information supplied to or obtained by you under this section as a result of reverse engineering may only be used by you for the purpose described in this section, and will not be disclosed to any third party or used to create any software that is substantially similar to the Client Software. You shall not circumvent or bypass any technological protection measures in or relating to the Ably Solution or enable access by unauthorized third party applications.
- 4.6 Open Source. Certain components or libraries included in or bundled with the Client Software may be covered by open source licenses. We will attempt to provide a list of such open source components upon your reasonable written request. To the extent required by such open source licenses, the terms of such licenses will apply in lieu of the terms of this section, solely with respect to those libraries or components that are licensed under such open source licenses.

5 Access Information & Content

- 5.1 Access Information. You are wholly responsible for maintaining the confidentiality of Access Information and wholly liable for all activities occurring under such Access Information. You will not transfer to any party Access Information, or use access information of another, without our prior written consent. You will immediately notify us of any unauthorized use of Access Information or any other breach of security via email sent to support@ably.io. We will not be liable for any loss or damage arising from lost or forgotten Access Information (including associated loss of data and content), for failure to comply with this section or from unauthorized use of the Access Information.
- 5.2 Responsibility for Content. All Content is your sole responsibility and the responsibility of the user from which such Content originated. We will have no responsibility or liability for the deletion or failure to store any Content or user data. We reserve the right to mark as "inactive" and archive accounts that are inactive for an extended period of

time. It is your sole responsibility to back up all Content and end user data. We may preserve and disclose Content if required to do so by law or judicial or governmental mandate or as reasonably necessary to protect the rights, property or safety of us, users and/or the public. In the event that you elect not to comply with a request from us to remove certain Content, we may disable the Application until compliance is secured. If you become aware of any violation of our Acceptable Use Policies by an end user of the Application, you shall immediately terminate such end user's account for your Application. We reserve the right to terminate end user Ably accounts or disable the Application in response to a violation or suspected violation of these Terms or our Acceptable Use Policies.

- 5.3 Use of Content. Each Ably Solutions user may be exposed to Content that is offensive, indecent, objectionable, illegal, infringing, false or erroneous. You will bear all risks associated with the use of any Content, including any reliance on the quality, integrity, accuracy, completeness, or usefulness of such Content. We may refuse or delete any Content, including Content of which we become aware that fails to fulfill the purpose of the Ably Solution, is in breach of these Terms, is otherwise contrary to law, or is otherwise inappropriate in our discretion. We do not guarantee the accuracy, integrity or quality of any Content. Under no circumstances will we be liable in any way for any Content, including, but not limited to, liability for any errors, inaccuracies, or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content. We will have no obligation or liability to you or any Ably user to maintain, store, or license Content, protect and maintain Content owners' intellectual property rights, or to enforce these Terms. You hereby waive and release any claims you may have against us arising or resulting from use or misuse of Content or your inability to effectively use Content, your failure to comply with these Terms, or for any act, omission, or conduct of any Ably user.
- 5.4 Propriety of Content. You shall not, and shall ensure that none of your end users, transmit Content or otherwise conduct or participate in any activities on or via the Ably Solution which is likely to be prohibited by law, or is violative or in breach of third party rights in any applicable jurisdiction, including without limitation laws governing libel and defamation, encryption of software, the export of technology, the transmission of obscenity or the permissible uses of intellectual property. You shall not and shall ensure that none of your end users, upload, download, display, perform, transmit, or otherwise distribute any Content, or otherwise engage in any activity in connection with the Ably Solution, that (a) is hateful, offensive, racist, bigoted, libelous, defamatory, obscene, abusive, pornographic, lewd, erroneous, stalking, or threatening; (b) advocates or encourages conduct that could constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or foreign law or regulation; (c) constitutes infringement of the intellectual property rights of any party, including rights to the use of name and likeness, or violation of a right of privacy; (d) creates an impression that is incorrect, misleading, or deceptive, including without limitation by impersonating others or by otherwise misrepresenting identity or affiliation with a person or entity; or (e) divulges other people's private or personally identifiable information without their express authorization and permission. You represent and warrant that you have all necessary rights and licenses to transmit your Content, and that all Content you submit is accurate and not misleading to the best of your knowledge, is not confidential or privileged, and is not in violation of third party rights. We may, in our sole discretion, terminate the Ably Solution as to any Content that we believe in our sole judgment is not in compliance with these Terms.
- 5.5 Account Data. While we will endeavor to back up data, we have no responsibility or liability for the deletion or failure to store any Content. You acknowledge and agree that your Content will not be retrievable or accessible except via your authorized use

of the Ably Solution, and that we are under no obligation to compile and return to you your Content, including if you elect to deactivate your account, except as we may otherwise agree in writing.

5.6 License to Content. You hereby grant to us the perpetual, irrevocable, worldwide, royalty-free, fully paid-up, sublicensable, non-exclusive right and license to use, reproduce, modify, create derivative works of, perform, display and distribute Content for purposes of providing the Ably Solution.

6 Other Applications

6.1 Responsibility. You are solely responsible for the Other Applications. Under no circumstances will we be liable in any way for Other Applications, including, but not limited to, liability for any errors or omissions in any Other Applications, or for any loss or damage of any kind incurred as a result of the use of the Other Applications. You hereby waive and release any claims you may have against us arising or resulting from use, misuse, alteration or loss of Other Applications. If the providers of Other Applications cease to make the Other Applications available for inter-operation with the corresponding features of the Ably Solution on reasonable terms or otherwise, we may cease providing such features or the Ably Solution without entitling you to any refund, credit or other compensation.

6.2 Use of Your Content. If you install or enable Other Applications for use with the Ably Solution, you acknowledge that providers of the Other Applications may access your Content as required for the inter-operation of such Other Applications with the Ably Solution. We will not be responsible for any disclosure, modification or deletion of your Content resulting from any such access by Other Applications or from enabling Other Applications to interoperate with the Ably Solution.

6.3 Other Applications Terms. You may be subject to additional terms and conditions that may apply when you use Other Applications, or affiliate or third party content or services.

7 Services

7.1 Professional Services. Subject to your compliance with these Terms, including payment obligations, we will provide the Professional Services as set out in the Order.

7.2 Support Services. Subject to your compliance with these Terms, including payment obligations, we will provide the Support Services to the extent set forth in the Order:

- We will use commercially reasonable efforts to provide email help desk, query and incident support, in support of your use of the Ably Solution, during the hours of 0900 to 1700 local London time during normal business days (excluding Ably and public holidays). Error reports and incidents must be logged via email sent to support@ably.io. You will use commercially reasonable efforts to minimize repetitive support inquiries.
- All support incidents and error reports will be in a format specified by us, and will include all information requested by us in order to reproduce and diagnose the problem.
- You represent and warrant that you have full right and authority to disclose to us any Authorized User or third party data or information for Support Services purposes.
- Prior to initiating any support request of any kind, you must first have attempted to determine the cause of and resolve the issue directly with

the Authorized User in question. Only if the issue cannot be resolved after reasonably diligent efforts by capable and skilled IT personnel retained by you may you then initiate a support request with us as specified in this section. You will use reasonable efforts to reproduce the problem and gather all relevant and helpful information.

- We will use commercially reasonable efforts to correct as soon as possible any delay, defect, failure or unavailability of the Ably Solution.
- We may provide other services as set forth in the Order Form, including training or set-up assistance.
- We will implement for your benefit all upgrades, enhancements, ports, bug fixes, and new releases to the Ably Solution when and if, in our sole discretion, developed by us. We will use commercially reasonable efforts to perform scheduled maintenance during off hours so as to minimize disruptions. In the event of any unscheduled or emergency maintenance, we will make every reasonable effort to minimize the impact on you, but cannot guarantee no negative impact on use in the event of such unscheduled or emergency maintenance.
- We may provide other services as set forth in the Order, including training or set-up assistance.

7.3 **Rights** We retain all right, title and interest in and to the Ably Solution and any "Services Deliverables", defined as deliverables, software, materials, data, information or content provided to you in connection with your use of the Ably Solution, or developed as part of the Services, and all associated intellectual property rights. We grant to you, for as long your subscription to the Ably Solution is in effect, a non-exclusive, non-transferable, worldwide license to use such Services Deliverables solely for your internal operations in connection with your authorized use of the Ably Solution. The licenses set forth in this section are the only licenses granted to you with respect to the Services Deliverables or associated intellectual property rights.

8 Service Level Agreement

8.1 **Exclusive Remedy.** This section 8.0: (a) states your sole and exclusive remedy and Ably's sole obligation in the event of any delay, error, fault, failure or unavailability of the Ably Solution for any reason; and (b) applies only if the Ably Solution is subject to downtime per section 8.2.

8.2 **Warranty.** Subject to 8.5, Ably warrants solely to you that the Ably Solution will achieve 100% uptime. The term "uptime" as used in this section means general availability of the intended functionality of the Ably Solution.

8.3 **SLA.** As your sole and exclusive remedy, and our entire liability, for failure to comply with the uptime warranty of section 8.2, we will issue to you "Service Credit(s)", defined as a monetary credit, as set out in the table in section 8.6 below, against subscription fees due for the next full month following the month in which warranty noncompliance occurred. Service Credits will be granted upon confirmation of entitlement. Service Credits are not transferable and may be redeemed only against future payments otherwise due to us.

8.4 **Process.** In order to receive Service Credits, you must notify us within thirty days from the first occurrence of warranty non-compliance in order for you to receive a Service Credit, via email to support@ably.io. Your notification must include the dates and times of alleged unavailability, including request logs that corroborate the claimed outage.

8.5 **Exclusions.** Your entitlement to Service Credits will not apply in the following circumstances: (a) downtime caused by the performance of internet services, networks or traffic exchange or control points controlled by entities other than us, or caused by network latency; (b) downtime caused by your acts, omissions, connections or equipment; (c) if the Ably Solution becomes unavailable as a result of circumstances or causes beyond our reasonable control, including any force majeure event; (d) suspension or termination as permitted in this Agreement; or (e) suspension or termination for emergency reasons, as required by law or any governmental authority or agency, or as needed in order to prevent or ameliorate violations or infringements of third party rights or applicable law.

8.6 Service Credits.

Monthly Uptime Percentage	Credit
100%	None
99.999% to 97.0%	5% of the monthly subscription fee
96.999% to 95.0%	10% of the monthly subscription fee
94.999% to 92.0%	20% of the monthly subscription fee
< 91.999%	30% of the monthly subscription fee

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9 Payment

9.1 **Subscriptions.** You will pay to us the fees listed, on the dates specified, in the Order. Current pricing information and FAQs can be found here. You may be subject to a data transfer limit or overage charges as disclosed in the pricing page. Charges are solely based on our measurements of your use of the Ably Solution, unless otherwise agreed to in writing. Unless otherwise specified in the Order, subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereafter. By providing us with a billing account, you represent and warrant that you: (a) are authorized to use the billing account that you provided and that any payment information you provide is true and accurate; and (b) authorize us to charge you using your billing account. We may bill you in advance, at the time of purchase, shortly after purchase, or on a recurring basis for subscriptions. We will notify you in advance of any change in the amount to be charged for recurring subscription services. We may bill you at the same time for more than one of your prior billing periods for amounts that have not previously been processed. You may not develop multiple Applications to simulate or act as a single Application or otherwise access the Ably Solution in a manner intended to avoid incurring fees.

9.2 **Orders.** All payments are non-refundable (except as may otherwise be specified in the Order or these Terms) and are exclusive of taxes, bank service fees, or currency exchange settlements. Payments will be made via the method designated by us. In the event you are delinquent in the payment of any invoice for a period of more than ten business days, we may at our option accelerate your unpaid fee obligations so that all payments are immediately due and payable under the subscription, and suspend access to the Ably Solution and the Services until such accelerated payments and all overdue payments (including interest) are made in full. Notwithstanding any other

provision of this Agreement, including section 14.8, nothing herein will be deemed to preclude us from filing a fees and expenses collection action at any time in any court of competent jurisdiction. Payments to us will be made without deduction, counterclaim or set-off of any kind. Any payments that are not timely paid as provided hereunder will, at our option, bear interest at the rate of the lower of (a) ten percent per annum; or (b) the highest rate permitted by applicable law. You shall reimburse our costs of collecting fees owed under these Terms, including court costs and reasonable attorneys' fees.

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9.3 **Billing Statement.** The details of your charges are set forth in the online billing statement we provide on the account site. This is the only billing statement we provide. It is your responsibility to print or save a copy of each billing statement and retain such copies for your records. If we make an error on a charge to your billing account, you must contact us with the details within 120 days from when the error first appears on your billing statement. We will then promptly investigate the charge. If you do not inform us of the issue within that time, you release us from all liability and claims of loss resulting from the error and we will not be required to correct the error or provide a refund.

9.4 **Response to Process.** If we are required to respond to a subpoena or other formal request from a third party or a governmental agency for records or other information relating to the Ably Solution or services we have performed or solutions we have provided for you or on your behalf, or to testify by deposition or otherwise, you shall reimburse our time and expenses incurred in accordance with our then-current time and expense rates.

9.5 **Taxes.** You will bear and be responsible for the payment of all taxes, including all sales, use, value-added, rental receipt, personal property or other taxes and their equivalents which may be levied or assessed in connection with these Terms or provision of the Ably Solution and Services (excluding only taxes based on our net income). If we are required to pay or collect any such taxes or other charges for which you are responsible under this section, the appropriate amount will be invoiced to and paid by you. To the extent you are required by local law to withhold or deduct taxes based upon our income from any payment(s) owed hereunder, such payment(s) will be increased (grossed up) in such amounts as would have been received by us as if no such withholding or deduction were required.

10 Ably Solution Integrity

10.1 **Prohibited Acts.** You are prohibited from breaching or attempting to breach any security features of the Ably Solution, including, without limitation: (a) accessing content or materials not intended for you, or logging onto a server or account that you are not authorized to access; (b) attempting to probe, scan, or test the vulnerability of the Ably Solution, or any associated system or network, or to breach security or authentication measures without proper authorization; (c) interfering or attempting to interfere with use of the Ably Solution by any user, host, or network, including, without limitation, by means of submitting a virus, overloading, "flooding," "spamming," "mail bombing," or "crashing"; (d) publishing or linking to malicious content intended to damage or disrupt another user's browser or computer or to compromise a user's privacy or anonymity; (e) forging any TCP/IP packet header or any part of the header information; (f) accessing or tampering with non-public areas of the Ably Solution, our computer systems, or the technical delivery systems of us or our providers; (g) publish, post, upload or otherwise transmit any data, material, information or content that contains any viruses, trojan horses, worms, time bombs, corrupted files or

programming routines or mechanisms that are intended to damage, interfere with, monitor, intercept or expropriate any systems, data, information or property; (h) accessing or attempting to access the Ably Solution by any means (automated or otherwise) other than through the currently available, published or enabled interfaces that are provided by us, unless you have been specifically allowed to do so in a separate agreement with us; or (i) attempting to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human-perceivable form any of the source code or other information used by us in providing the Ably Solution.

10.2 **Illicit Access.** You shall not attempt to gain unauthorized access to other accounts, computer systems or networks connected to any of our servers, through hacking, password mining or any other means. You shall not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Ably Solution, which is for your personal/internal and individualized use only. Without limiting the generality of the foregoing, you shall not publish, distribute or transmit to the general public via any medium the Ably Solution, except through and as otherwise authorized by us, and you will not engage in "framing," "mirroring," or otherwise reproducing or simulating the appearance or function of the Ably Solution. You shall not remove any copyright, trademark or other proprietary rights notices associated with or visible via use of the Ably Solution.

11 Disclaimer of Warranties, Limitation of Liability & Indemnity

11.1 **Disclaimer.** TO THE MAXIMUM EXTENT POSSIBLE UNDER APPLICABLE LAW, except as set forth in the SLA, **WE DISCLAIM ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE ABLY SOLUTION OR THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT** Specifically, we make no warranty that (a) the Ably Solution or Services will meet your requirements, goals or needs, (b) Ably Solution access will be uninterrupted, timely, secure or error-free, or (c) any errors or deficiencies in the Ably Solution or Services will be corrected. We have no responsibility or liability for the deletion of or failure to store your Content or to ensure that your Content is accurate or complete. **It is your sole responsibility to back up and maintain the accuracy and completeness of your Content.** Because no online system is perfectly secure or reliable, the internet is an inherently insecure medium, and the reliability and security of hosting services, internet intermediaries, your internet service provider, and other application or service providers cannot be assured, you accept such inherent security risks associated with your use of the Ably Solution.

11.2 **Exclusion.** **Notwithstanding any other provision of these Terms, our maximum cumulative aggregate liability for all claims, liabilities or obligations arising under or relating to the "Subject Matter" (defined as these Terms, their performance or non-performance, end users, Content, Other Applications, Services, Services Deliverables, and the Ably Solution), regardless of the number of claims or the theory of liability, whether for breach of these Terms, including breach of warranty, or in tort or otherwise, will not exceed all amounts paid by you to us under these Terms, if any, during the six-month period preceding the occurrence of the claim or event giving rise to liability. We will not be liable for any indirect, punitive, special, incidental or consequential damages, or liable for interruption of business, downtime, loss of profits, revenue, use, data, or other economic advantage, in connection with, related to or arising out of the Subject Matter, regardless of the theory of liability, whether for breach of this Agreement, including breach of warranty, or in tort or otherwise, even if we have been previously advised of the possibility of such damages. Liability for**

damages will be so limited and excluded, regardless of the validity or efficacy of any remedy provided herein and even if any remedy fails of its essential purpose. The provisions of this section allocate the risks under these Terms between the parties and each party has relied upon the limitations set forth herein in determining whether to enter into this relationship. The parties have voluntarily agreed to define the parties' rights, liabilities and obligations respecting the Subject Matter exclusively in contract pursuant to these Terms, and each party expressly disclaims that such party is owed any duties or are entitled to any remedies not expressly set forth in these Terms. The foregoing limitations and exclusions apply to the maximum extent permitted by applicable law.

11.3 Indemnification. You hereby agree to fully indemnify, defend and hold harmless Ably, its affiliates, and officers, directors, employees and agents of Ably and its affiliates, from and against any and all claims, losses, damages, judgments, awards, costs, liabilities, expenses, sanctions, and fees (including our reasonable in-house and external lawyers fees and costs) directly or indirectly caused by or incurred by reason of a third party allegation, lawsuit, claim or proceeding, arising out of or related to (a) Content or Other Applications; (b) your end users or any conduct or activity of your end users; (c) breach of these Terms; (d) infringement of intellectual property rights; or (e) your business activities. We may assume the exclusive defense and control of any matter for which you are required to indemnify us at your expense, and you agree to cooperate with our defense of these claims. You shall not settle or compromise any such claims without our prior written consent.

11.4 General Release. You further agree that these Terms waive and release any claims that would otherwise be preserved by operation of section 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." You understand that you are releasing us from all claims, whether known or unknown to you, and whether or not you suspect that those claims may exist at this time.

12 Term & Termination

12.1 Term. Access to the Ably Solution commences upon acceptance of or as applicable the date set forth in the Order and will continue in effect as specified in the Order. These Terms will remain in effect for as long as any Evaluation Trials or subscriptions are in effect. If automatic renewals are allowed in your jurisdiction, we will inform you by email before automatically renewing your subscription. Once we have informed you that your subscription will be automatically renewed, we may charge you the then current price for the renewal term. We will also remind you that we will bill your specified billing account for the subscriptions renewal, whether it was on file on the renewal date or provided later. We will also provide you with instructions on how you may cancel the subscription. You must cancel the subscription before the renewal date to avoid being billed for the renewal.

12.2 Termination. In addition to sections ~~14.1~~, ~~14.2~~ and ~~14.3~~, a subscription will be terminable for cause as follows: (a) in the event of a material remediable breach of these Terms; in such an event, the non-defaulting party will give notice of such default and opportunity to cure if the breach is remediable or reasonably capable of cure, and if the remediable breach is not substantially cured within thirty days from receipt of such written notice, the non-defaulting party may notify the defaulting party in writing of the immediate termination of all applicable subscriptions; or (b) immediately upon

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written notice of material breach of sections 3.4, 4.0, 5.0, 7.3, 9.0 or 10.0. We may terminate a subscription immediately upon written notice in the event your or any of your end user's manner of using the Ably Solution exceeds normal and reasonable usage, including via unauthorized automated (non-human) initiated requests, or otherwise, and such excessive or detrimental use has not been corrected by you within one business day of our written notice to you. We may additionally terminate a subscription upon written notice to you if you (c) become the subject of a legal proceeding under a law relating to insolvency or bankruptcy; or (d) or your property becomes under the control of a custodian or equivalent under applicable law, or is assigned for the benefit of creditors; or (e) generally fail to pay your debts as they become due or acknowledge in writing that you are unable to do so.

12.3 Effect. Upon termination for cause by us, you will pay any unpaid fees covering the remainder of the term of all Orders after the effective date of termination. Termination will not relieve you of the obligation to pay fees payable to us for the period prior to the effective date of termination. The rights of either party under this section 11 are in addition to any other rights and remedies permitted by law or under these Terms. Breach of these Terms may result in pursuit of all available remedies for intellectual property rights (including copyright infringement), the availability of which you hereby acknowledge.

12.4 Survival. Access to and rights of use associated with the Ably Solution will terminate upon termination of any subscription. Sections 2.4, 2.5, 3.2, 3.3, 3.4, 3.5, 3.6, 4.3, 4.4, 4.5, 5.0, 6.0, 9.0, 10.0, 11.0, 12.3, 12.4 and ~~14.0~~ will survive any termination or expiration of these Terms or any subscription.

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13 Data Protection

13.1 You agree to the collection and processing of Personal Data in connection with the use of the Ably Solution.

13.2 Each party will comply with the Data Protection Laws, to the extent applicable.

13.3 For the purposes of these Terms, if and to the extent that we process any Personal Data on your behalf when performing our obligations, you shall be the data controller and we shall be a data processor and in any such case:

- Each party acknowledges that we may accept data published to our platform, and transmit that data to permitted recipients, and allow access to this data for at least two minutes, and longer if you explicitly enable the history feature of our platform. To the extent that any Content includes Personal Data, this may also be processed during the term of this agreement, solely for the purpose of us providing the Ably Solution to you.

13.4 We shall:

- process the Personal Data only to the extent necessary for the purposes of performing our obligations under these Terms and otherwise in accordance with your documented instructions;
- ensure that all persons authorised by us to process the Personal Data are committed to confidentiality obligations which cover the processing;
- have at all times during the term of this agreement appropriate technical and organisational measures to secure the Personal Data, with particular regard to its accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access;
- not engage another processor of the Personal Data without your prior consent, save for the data storage and hosting service providers needed to provide the Ably Solution which are deemed to be approved by you for the purpose of these Terms;
- at your election, delete or return all Personal Data to you, and delete all existing copies at the end of this agreement, unless applicable law requires their retention;
- make available to you all information reasonably necessary to demonstrate compliance with the obligations set out in this clause, and allow for and contribute to reasonable audits, including inspections, conducted by you or your representative; and
- without undue delay after becoming aware of a Personal Data security breach, notify you.

13.5 You shall:

- provide clear and comprehensible written instructions to us for the processing of Personal Data to be carried out under these Terms;
- advise end users when their Personal Data may be transferred outside of the EEA, if appropriate, and that such jurisdictions may not have appropriate safeguards in place with respect to their Personal Data, and of the possible risks associated with such transfers;

- ensure that you have all the necessary licences, permissions and consents from data subjects (as defined in the Data Protection Laws) so that we may lawfully use, process and transfer the Personal Data in accordance with these Terms on your behalf; and
- indemnify on demand, defend and us hold harmless against all loss, liability, damages, costs, fees, claims and expenses which we may incur or suffer by reason of any breach of this clause 13.5 by you.

14 General Provisions

14.1 Service Discontinuance/Modification. We may from time to time modify or discontinue access to, temporarily or permanently, any part, feature, or functionality of the Ably Solution. We will not be liable for any such modification, suspension or discontinuance, even if certain features or functions, your settings, and/or any Content you have contributed or have come to rely on, are permanently lost.

14.2 Account Termination. We may terminate your account for cause, including without limitation for: (a) violation of these Terms; (b) abuse of Ably resources or any attempt to gain unauthorized entry to the Ably Solution; (c) use of the Ably Solution in a manner inconsistent with its purpose; (d) any Ably user's request for such termination; or (e) requirements of or for failure to comply with applicable law, regulation, court or governing agency order, or ethical requirements. We may in addition terminate the availability of the Ably Solution or Content for our own business reasons, including if we elect to cease being in the business of providing it. We will not be liable for any termination of Ably user's access to the Ably Solution or Content. After account termination, you will not attempt to register a new account without our permission.

14.3 Account Deactivation. You may deactivate your account any time without refund. Deactivation is your sole means of terminating your account and may require payment of cancellation charges.

14.4 Trademarks: Media. You are granted no right, title or license to any third party trademarks by these Terms, or to any of our trademarks or servicemarks. We reserve all right, title and interest in and to our trademarks, servicemarks, trade names, domain names, and similar identifiers, including Ably™. You hereby authorize us to disclose in our websites, marketing collateral, and corporate presentations that you have selected Ably and purchased the use of Ably's solutions and services.

14.5 US DMCA If you believe that your work has been copied and is accessible via the Ably Solution in a way that constitutes copyright infringement in the United States, you may notify us by providing the following in writing:

- identification of the copyrighted work that you claim has been infringed;
- identification of the material that is claimed to be infringing and information reasonably sufficient to permit us to locate the material;
- your name, address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and

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Advertising. The Ably Solution may display advertisements or announcements and you consent to such display. [¶](#)

- a statement, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.

The above writing must be electronically or physically signed by you as the owner of the content claimed to be infringed or the owner's authorized agent. If we receive such a claim, we may refuse or delete the applicable content, or terminate the applicable user's account in accordance with these Terms. Our designated agent to receive notification of claimed infringement under the Digital Millennium Copyright Act of 1998 is available at:

Copyright Infringement Agent c/o Ably
 Sean Hogle PC
 1000 4th Street, Suite 875
 San Rafael, CA 94901
copyright@ably.io

We may remove content alleged or in our judgment to be infringing or otherwise illegal, without prior notice and at our sole discretion. In appropriate circumstances, we may also terminate a user's account if the user is determined to be a repeat infringer. In addition to forwarding your notice to the person who provided the allegedly illegal content, we may send a copy of your notice (with your personal information removed) to Chilling Effects (www.chillingeffects.org) for publication and/or annotation. If you believe that a notice of infringement has been improperly submitted against you, you may submit a counter-notice, electronically or physically signed by you, and containing the following:

- identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- your name, address, and telephone number;
- a statement, made under penalty of perjury, that you have a good faith belief that the removal of the material was a mistake or misidentified; and
- a statement that you consent to the jurisdiction of Federal District Court (i) in the judicial district where your address is located if the address is in the United States, or (ii) for the Northern District of California (San Francisco County), if your address is located outside the United States, and that you will accept service of process from the complainant submitting the infringement notice or his/her authorized agent.

14.6 London-Based. The Ably Solution is controlled by Ably from its offices in London, England. We make no representation that the Ably Solution is appropriate for use in other jurisdictions. Your use of or access to the Ably Solution will not be construed as our purposefully availing ourselves of the benefits or privileges of doing business in any other state or jurisdiction other than England.

14.7 Governing Law. The Subject Matter (as defined in section 11.2), and any disputes between us and related to or concerning any of the foregoing (including tort as well as contract claims, and whether pre-contractual or extra-contractual) will be governed by the laws of England.

14.8 Dispute Resolution. **(A) Any disputes between or claims brought by you or us arising out of or related to the Subject Matter (including tort as well as contract claims, and whether pre-contractual or extra-contractual, as well as the arbitrability of any disputes (subject to section 14.8(B) below) will be referred to**

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and finally settled by binding arbitration before the International Court of Arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce in effect at the time of arbitration except as inconsistent with this section. The arbitration will be conducted by telephone, on-line and/or based solely upon written submissions where no in-person appearance is required. If in-person appearance is required, such hearings will be held in London, England. The arbitrator will apply the law specified in section 14.7 above. All awards may if necessary be enforced by any court having jurisdiction. The existence of any dispute, the existence or details of the arbitration proceeding, and all related documents, materials, evidence, judgments and awards therein, must be kept confidential. Except as required by law, no party will make any public announcements with respect to the proceeding or the award, except as required to enforce same. The parties hereby waive the right to a trial by jury and agree to only bring claims in an individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. All disputes will be arbitrated only on an individual basis and not in a class, consolidated or representative action. The arbitrator does not have the power to vary these provisions. All claims (excluding requests for injunctive or equitable relief) between the parties must be resolved using arbitration in accordance with this section. Should either party file an action contrary to this section, the other party may recover lawyers' fees and costs associated with enforcing this section, provided that the party seeking the award has notified the other party in writing of the improperly filed claim, and the other party has failed to withdraw the claim in a timely fashion. (B) Notwithstanding the foregoing, nothing in this section will preclude the right and ability to bypass arbitration and file and maintain at any time an action for recovery of injunctive or provisional relief in any court of competent jurisdiction under the laws applicable thereto.

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- 14.9 Limitation. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the Subject Matter must be filed within one year after such claim or cause of action arose, or be forever barred.
- 14.10 Assignment. These Terms will not be assigned, delegated, or transferred by you, in whole or in part, whether voluntarily, involuntarily, by merger, consolidation, dissolution, sale of assets, or otherwise, without our prior written consent. Any such purported assignment, delegation or transfer without such written consent will be void. We may at any time assign these Terms without prior consent or notice. These Terms will be binding on, and inure to the benefit of, the parties and their respective and permitted successors and assigns.
- 14.11 Injunctive Relief. You acknowledge and agree that breach of these Terms, or any unauthorized use, disclosure or distribution of the Ably Solution, may cause irreparable harm to us, the extent of which would be difficult to ascertain, and that we will be entitled to seek immediate injunctive relief (in addition to any other available remedies), in any court of competent jurisdiction under the applicable laws thereto.
- 14.12 Miscellaneous. The Terms constitute the entire agreement between you and us and govern your use of the Ably Solution and Services, superseding any prior agreements, understandings, communications or proposals. If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms remain in full force and effect. No waiver of any provision of these Terms will be deemed a further waiver or continuing waiver or such provision or any other provision, and our failure to assert any right or provision under these Terms will not constitute a waiver of such right or provision. In the event of any conflict or inconsistency between these Terms and any Ably website page (including any page describing or summarizing your

or our rights, obligations, and/or these Terms), these Terms will control. Nothing herein will be deemed to create an agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship of any kind between us and any user or other person or entity, nor do these terms extend rights to any third party. The parties hereto confirm that they have requested that these Terms and all attachments and related documents, if any, be drafted in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.