

# Terms of Service

## Software as a Service (SaaS) Agreement

This agreement (“Agreement”) is between you (“you” or “Customer”) and Aible Inc. (“Aible”) from which you are procuring software as a service subscription(s) and/or related services (“Services”) and governs your use of the Services. This Agreement is the entire agreement on this subject and merges and supersedes all related prior and contemporaneous agreements. By agreeing to these terms, you represent and warrant that you have the authority to accept this Agreement, and you also agree to be bound by its terms. This Agreement applies to all purchases of Services entered into under this Agreement, whether purchased directly from Aible or through the Google Cloud Marketplace, Azure Marketplace, Azure AppSource, AWS Marketplace or similar marketplaces. Each party's acceptance of this Agreement was and is expressly conditional upon the other's acceptance of the terms contained in the Agreement to the exclusion of all other terms. Aible reserves the right to modify this Agreement at any time by providing notification to Customer.

## TERMS AND CONDITIONS

# 1. SERVICES AND SUPPORT

1.1 Subject to the terms and conditions of this Agreement, Aible will provide Customer with access to the Services through the internet. The Services are subject to modification from time to time at Aible's sole discretion, for any purpose deemed appropriate by Aible. Aible will use reasonable efforts to give Customer prior written notice of any such modification.

1.2 Aible will undertake commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven (7) days a week. Notwithstanding the foregoing, Aible reserves the right to suspend Customer's access to the Services: (i) for scheduled or emergency maintenance, or (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to Aible.

1.3 Subject to the terms hereof, Aible will provide reasonable support to Customer for the Services from Monday through Friday during Aible's normal business hours, 8:00 am to 6:00 pm Pacific Time. Each Aible Customer will have access to support via the relevant Aible Customer Support

Portal: <https://aible.zendesk.com/hc/en-us> or <https://community.chataible.com>.

## 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, and will not permit any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to the Services (“Software”) (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Services or Software; use the Services or Software for timesharing or service bureau purposes or for any purpose other than its own use; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any European privacy laws, intellectual property, consumer and child protection, obscenity or defamation).

2.2 Customer will cooperate with Aible in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Aible may reasonably request. Customer will also cooperate with Aible in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Services.

2.3 Customer hereby agrees to indemnify and hold harmless Aible against any damages, losses, liabilities, settlements and expenses (including without

limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services. Although Aible has no obligation to monitor the content provided by Customer or Customer's use of the Services, Aible may do so and may remove any such content or prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Aible will indemnify, defend, and hold Customer, its affiliates and its and their directors, officers, employees and agents and its respective successors, heirs, and assigns (collectively, the “Customer Parties”) harmless from and against any liability, damage, loss, or expense (including reasonable attorneys’ fees and expenses) (collectively, “Losses”) incurred by or imposed upon any of them in connection with any third-party claim, action, or proceeding (a “Claim”) arising from or relating to (a) an allegation that that the Software, the Services, or Customer’s permitted use of the foregoing, infringes, violates, or misappropriates any third party’s intellectual property or other proprietary rights.

2.5 Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer's knowledge or consent.

2.6 Customer further acknowledges, agrees to and is bound by any Privacy Policy on Aible's website (as it may be updated from time to time), except to the extent expressly and directly in conflict with the terms hereof.

2.7 Customer acknowledges and agrees that the Services operate on or with or using application programming interfaces (APIs) and/or other services operated or provided by third parties (“Third Party Services”). Customer also understands that these Third Party Services may provide processing of Customer meta-data. Aible is not responsible for the operation of any Third Party Services nor the availability or operation of the Services to the extent such availability and operation is dependent upon Third Party Services.

2.7a If the Customer chooses to provide required Third Party Services under a separate agreement with their own provider, Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Services and for complying with any applicable terms or conditions thereof. Aible does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party's terms and conditions.

2.8 Customer shall comply with all applicable export laws, restrictions, and regulations of any United States or foreign agency or authority and will not

export or re-export, or authorize the export or re-export of any product, technology or information, including the Software, it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations.

### 3. CONFIDENTIALITY

3.1 Customer understands that Aible has disclosed or may disclose information relating to Aible's technology or business (hereinafter referred to as “Proprietary Information” of Aible). Customer hereby agrees that Proprietary Information shall include the Services offered by Aible including any functionality, documentation and/or materials.

3.2 Customer agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own Proprietary Information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. Aible agrees that the foregoing will not apply with respect to any information that Customer can document (a) is or becomes generally available to the public

without any action by, or involvement of, Customer, or (b) was in its possession or known by it prior to receipt from Aible, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of Aible. Nothing in this Agreement will prevent Customer from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that Customer gives Aible reasonable prior notice of such disclosure to contest such order. In any event, Aible may collect data with respect to and report on the aggregate response rate and other aggregate measures of the Services' performance (including as specified in Section 4.4 below).

3.3 Customer hereby agrees not to provide to Aible any personally identifiable information (PII) or any Protected Health Information (PHI). Customer acknowledges that Aible does not wish to receive, and shall not require access to any PII, PHI or other similar data from Customer, and, unless the parties specifically agree otherwise in writing, Aible may reasonably presume that any unrelated information received from Customer is not PII, PHI or other similar data.

3.4 Customer will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by Aible prior to such disclosure.

## 4. INTELLECTUAL PROPERTY RIGHTS

4.1 Except as expressly set forth herein, Aible alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Service or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Service and/or the Software, which are hereby assigned to Aible. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. Customer is hereby granted a non-exclusive, nontransferable, revocable right to use the Resulting Data, as defined below, for its internal use only. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service or Software, or any intellectual property rights. “Resulting Data” means analytical output, chat transcripts, prediction models and select performance data for the models developed. Resulting Data may include, at Aible’s discretion, additional information about the models, including Jupyter notebooks, additional model metrics, model coefficients, scored datasets, or other relevant information.

4.2 Customer is not required to provide any suggestions, ideas, enhancement requests, recommendations or other feedback (“Feedback”) related to the Services or any test features, services or products to which Customer is given access. If Customer does so, Customer hereby relinquishes and disclaims any and



all rights, interest and title in and to any Feedback, and understands and agrees that Aible may use and/or incorporate into its Services any Feedback free of any obligation to Customer.

4.3 Aible may obtain, have access to or process certain content/data provided by or on behalf of Customer (“Content”) only to perform its obligations under this Agreement. Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all Content distributed through the Services and the intellectual property rights with respect to that Content. If Aible receives any notice or claim that any Content, or activities hereunder with respect to any Content, may infringe or violate rights of a third party (a “Claim”), Aible may (but is not required to) suspend activity hereunder with respect to that Content and Customer will indemnify Aible from all liability, damages, settlements, attorney fees and other costs and expenses in connection with any such Claim, as incurred.

4.4 Subject to Section 10 hereof, Aible may use meta-data collected in connection with Customer’s use of the Service, in anonymized and aggregated form, solely for its internal business purposes, including for purposes of optimizing Aible’s products and services and may disclose such meta-data for external purposes, including as statistics in marketing its products and services.

“Anonymized” means data that cannot be used to directly or indirectly identify Customer or Customer’s users of Aible’s products or services.

## 5. PAYMENT OF FEES

5.1 Fees paid hereunder are non-refundable and shall be billed in U.S. Dollars. Except as otherwise set forth in an Order Form, fees due hereunder will be billed to Customer’s credit card and Customer authorizes the card issuer to pay all such amounts and authorizes Aible (or its billing agent) to charge the credit card account until Customer or Aible cancels or terminates the Services as set forth herein; provided that if payment is not received from the credit card issuer, Customer agrees to pay all amounts due upon demand. Customer must provide current, complete and accurate billing and credit card information. Customer agrees to pay all costs of collection, including attorney’s fees and costs, on any outstanding balance. In certain instances, the issuer of the credit card may charge a foreign transaction fee or related charges, which Customer shall be responsible to pay. Late payments may be subject to a service charge equal to the lesser of 1.5% (one and one-half percent) per month of the amount due or the maximum amount allowed by law.

5.2 Fees may include Subscription Fees and / or Usage Based Fees according to the Plan selected by the user.

## 6. TERM & TERMINATION

6.1 Service Term: Subject to earlier termination as provided below, the initial term of this Agreement shall be 12 months(s) (the “Initial Term”) except as otherwise set forth in an Order Form. Following the Initial Term, this Agreement will automatically renew for successive renewal terms of 12 months(s) at the then prevailing Aible list price (each, a “Renewal Term”, and together with the Initial Term, the “Service Term”) unless either party gives the other party notice of non-renewal at least ninety (90) days prior to the end of the then-current term. Customers who wish to lock in pricing for up to three (3) years, can do so with a prepayment.

6.2 In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business.

6.3 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability.

## 7. WARRANTY DISCLAIMER

THE SERVICES AND AIBLE PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED “AS-IS,” WITHOUT ANY WARRANTIES OF ANY KIND. AIBLE (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

## 8. LIMITATION OF LIABILITY

IN NO EVENT WILL AIBLE (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN

CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF AIBLE HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF AIBLE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE THE FEES PAID TO AIBLE HEREUNDER IN THE THREE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 9. MISCELLANEOUS

Miscellaneous Provisions. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Aible's prior written consent. Aible may transfer and assign any of its rights and obligations under this Agreement

with written notice to Customer. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Aible in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Aible will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the laws of the State of California, U.S.A. without regard to its conflict of laws provisions. The federal and state courts sitting in Santa Clara County, California, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement, provided that either party may seek injunctive relief in any court of competent jurisdiction.

## 10. OTHER TERMS

The following additional terms shall apply:

- By accepting this Agreement, Customer agrees to receiving marketing materials from Aible regarding product documentation, product updates or similar materials. Customer may opt out of receiving such notifications at any time by clicking on the unsubscribe link in the email.
- Customer shall allow Aible and representatives of potential customers of Aible, reasonable access to Customer's personnel for the

purposes of evaluating and correcting any problems relating to the Aible Services.

- Any use of a quote by Customer regarding Customer's participation in Aible Services will be made by Aible only with the written approval by the Customer.