

## **AWACOMMERCE TERMS OF SERVICE**

### **Introduction.**

These terms (“Terms”) govern your use of AwaCommerce, a software integration solution created and licensed by Awalabs LLC (“Awalabs”). AwaCommerce shall be hereinafter referenced as “the Services.” You accept these Terms by entering into an agreement with Awalabs for your access and use of the Services or by using the Services. These Terms are binding on you and your Affiliates, and may be updated at any time. You and Awalabs may be referenced herein as “the parties” and each as a “party.”

Awalabs may revise these Terms at any time without notice to you. The revised Terms will be effective when posted. You can review the most current Terms at <https://awacommerce.com/terms-of-service.html>

If you have a signed Master Services Agreement and/or Statement of Work with Awalabs, the terms of such Agreement or Statement of Work shall take precedence over these Terms in case of conflict.

### **1. Definitions.**

“Affiliate” means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with you, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party, for so long as such control exists.

“Confidential Information” means, except as set forth in the following sentence: (a) Customer Data; (b) the terms of these Terms and (c) any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with these Terms, that: (i) in the case of information in tangible form, is marked “confidential” or “proprietary;” (ii) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the receiving party within ten (10) days following disclosure; (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary; and (iv) will include any reproduction of such information in any form or medium, or any part of such information. Notwithstanding the foregoing, the following shall not be Confidential Information: (i) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the receiving party; (ii) information that was rightfully in the receiving party’s possession without restriction prior to disclosure; (iii) information that was rightfully disclosed to the receiving party by a third party without restriction; (iv) information that was independently developed by employees and/or contractors of the receiving party who did not have access to and without use of or reference to the disclosing party’s Confidential Information; and (v) aggregate data collected or generated by Awalabs or on behalf of Awalabs regarding Awalabs’ products and services (for purposes of providing or improving Awalabs products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other purposes) that does not contain any personal information and other customer-specific information.

“Customer Data” means all electronic data or information submitted to Awalabs in connection with the Services by you or by Users.

“Help Documentation” means the online English language help center documentation describing the Services’ features, which may include User Guides which may be updated from time to time.

“Term” means the duration specified in the applicable Statement of Work during which you have procured the right to access and use the Services.

“Professional Services” means the general consulting, implementation and/or training services to be provided to you by Awalabs respecting the Services and pursuant to a Statement of Work.

“Statement of Work” means an Awalabs Statement of Work, renewal notification or order form in the name of and executed by you and accepted by Awalabs which specifies the Services and any Support Services and/or Professional Services to be provided by Awalabs.

“Support Services” means the supplemental, fee-based technical support services to be provided to you pursuant to the terms for Support Services, defined in a Master Service Agreement and Statement of Work.

“Third Party Applications” means applications, integrations, services, or implementation, customization and other consulting services related thereto, provided by a party other than Awalabs, that interoperate with the Services.

“Users” means individuals who are authorized by you to use the Services pursuant to these Terms or as otherwise defined, restricted or limited in a Statement of Work. Users include but are not limited to your employees, consultants, contractors and agents.

“You” or “you” means the company which accesses and uses the Services, as described in the first paragraph of these Terms, as well as its Affiliates, agents, employees, contractors, and all other persons or entities acting on its behalf and with its authorization to so act.

## **2. Grant of License.**

Subject to your compliance with these Terms and Awalabs’ receipt of advance payment of all applicable fees for the Services, Awalabs grants you a non-exclusive, non-transferable, revocable, limited license to use the Services for business purposes during the Term.

You agree that you will not reverse engineer the Services, nor commercially exploit the Services except as part of the normal business operations for which the Services are provided. You grant to Awalabs a limited, royalty-free, non-transferable license to use any content and materials which you provide for the sole purpose of providing the Services. If you choose to provide any suggestions about the Services, you assign to Awalabs without restriction all right, title, and interest in any materials contained in your suggestions.

For the sole purpose of performing the Services, you authorize Awalabs to access your Netsuite account. Awalabs complies with all security and data privacy procedures imposed by NetSuite related to such access.

## **3. Restrictions on Use.**

These Terms grant you no right, license or title to any intellectual property owned by Oracle

Corporation, Oracle America, Inc., NetSuite Inc., or their foreign or domestic Affiliates (collectively, "NetSuite"). Your right to access and use the Services is dependent on your maintenance of a fully paid and current license to access and use NetSuite's SuiteCommerce or SuiteCommerce Advanced software platforms. If you do not have such a license, your access to AwaCommerce is unauthorized and Awalabs may take any appropriate measures to prevent your infringement of the intellectual property rights of NetSuite.

Each party agrees to comply with all applicable export and data protection laws.

You shall not and shall not permit any Affiliate, User or other third party to: (a) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Services or any part thereof or otherwise attempt to discover any source code or modify the Services in any manner or form unless expressly allowed in the Help Documentation; (b) access or use the Services to circumvent or exceed account limitations or requirements; (c) use the Services for the purpose of building a similar or competitive product or service, (d) obtain access to the Services for purposes which are, in the sole judgment of Awalabs, harmful to its business interests or contrary to the intent of these Terms; (e) use the Services in a manner that is in violation of any third party rights of privacy or intellectual property rights; (f) issue or participate in any press release or other public statement related to the Services without prior written consent of Awalabs; (g) publish, post, upload or otherwise transmit data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (h) use or permit the use of any tools in order to probe, scan or attempt to penetrate the Services. You shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with these Terms, including without limitation those related to privacy, electronic communications and anti-spam legislation. The foregoing restrictions shall be referenced collectively as the "Acceptable Use Policy." Awalabs has the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy. Except as permitted by this Agreement, no part of the Services may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. You shall not do any "mirroring" or "framing" of any part of the Services, except as specifically authorized or directed by Awalabs personnel (for example, for "sandbox" testing purposes).

You shall ensure that all access and use of the Services by Users is in accordance with these Terms. Any action or breach by any of such User shall be deemed an action or breach by you.

#### **4. Fees and Payment Terms.**

All fees for the Services are to be paid in advance. In case of non-payment, Awalabs may, in its sole discretion, suspend or terminate your access to the Services. Unpaid fees are subject to a finance charge of one percent (1.0%) per month or the maximum amount permitted by law. In case of a fee dispute which necessitates the involvement of legal counsel, you agree to pay Awalabs' reasonable attorneys fees and costs. Awalabs does not accept payment by check.

#### **5. Intellectual Property Rights.**

All rights, title and interest in and to the Services (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the

Services provided or developed by Awalabs) are owned exclusively by Awalabs or its licensors. Except as provided in this Agreement, the rights granted to you do not convey any rights in the Services, express or implied, or ownership in the Services or any intellectual property rights thereto. You grants Awalabs a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by you or any Users related to the operation or functionality of the Services. Any rights in the Services or Awalabs' intellectual property not expressly granted herein by Awalabs are reserved by Awalabs. Awalabs service marks, logos and product and service names are marks of Awalabs (the "Awalabs Marks"). You agree not to display or use the Awalabs Marks in any manner without Awalabs' express prior written permission. The trademarks, logos and service marks of Third Party Application providers ("Marks") are the property of such third parties. You are not permitted to use these Marks without the prior written consent of such third party which may own the Mark. As between you, Awalabs and the third party, all rights, title and interest in and to all intellectual property rights in the Services are owned or held exclusively by Awalabs or its licensors. You may not delete or in any manner alter the copyright, trademark, and other proprietary rights notices appearing in or on the Services as provided.

Each party represents and warrants that it owns or holds a valid license to use, license, and/or sublicense any intellectual property (including software code, graphics, designs, trademarks, and text) which it provides to the other party in connection with the Services. Each party agrees to hold harmless, protect, and defend the other party, its employees, officers, agents, successors, and assignees from any claim or suit resulting from use of such intellectual property in accordance with these Terms.

Awalabs may monitor the Services to facilitate Awalabs' operation of the Services; to help resolve customer service requests; to detect and address threats to the functionality, security, integrity, and availability of the Services as well as any content, data, or applications in the Services; and to detect and address illegal acts or violations of the Acceptable Use Policy. Awalabs' monitoring tools do not collect or store any Customer Data. Awalabs does not monitor, and does not address issues with, non-Awalabs software, except as otherwise specified in a Master Services Agreement and/or Statement of Work. Information collected by Awalabs' monitoring tools may be used for license management purposes.

Awalabs may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes.

As between Awalabs and you, all title and intellectual property rights in and to the Customer Data is owned exclusively by you. You acknowledge and agree that in connection with the provision of the Services, Awalabs may store and maintain Customer Data for a period of time consistent with its standard business processes (in general, provision of the Services does not involve the collection or storage of any Customer Data). Awalabs shall act as your data processing agent and process your Customer Data only on behalf of you and in accordance with your instructions and directions. You own all Customer Data. You are solely responsible and liable for the Customer Data, and you will control access to and management of the Customer Data through your NetSuite account, including access by any authorized users and any other third party services providers that you engage, enable or procure. Awalabs shall have no responsibility or liability whatsoever with respect to any activities, acts and omissions of third parties. You must abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Services, including those related to United States and other applicable export regulations, data privacy, international communications and the transmission of technical or personal data. Neither the Services nor the data accessed on the Services may be exported or re-exported directly or indirectly by you or your users in violation of any such export laws or used for any purposes prohibited by such export laws.

## **6. Support and Maintenance.**

Awalabs will provide you with Help Documentation and other resources, at its sole discretion, to assist in your use of the Services. Awalabs also offers optional “for fee” training classes, professional services consultation, and customer support services for the Services.

You may access Support Services and Professional Services related to the Services upon request, if accepted by Awalabs, and upon full execution of a Master Services Agreement and Statement of Work between you and Awalabs.

## **7. Updates and Changes.**

Awalabs may make modifications to the Services or particular components thereof from time to time and will use commercially reasonable efforts to notify you of any material modifications. Awalabs reserves the right to discontinue offering the Services at the conclusion of your then-current subscription term.

## **8. Confidentiality, Data Usage and Law Compliance.**

Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except as expressly permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, 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 the Disclosing Party or (e) is required by law.

Each party agrees to comply with all applicable export and data protection laws.

## **9. Warranties, Disclaimers and Duties.**

Awalabs warrants that the Services conform in all material respects to the Help Documentation and that the Services do not, to Awalabs’ knowledge, infringe on any third-party intellectual property right. Awalabs represents and warrants that the Services will be maintained and delivered in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing similar services. Because software development is a dynamic industry and because Awalabs performs services on demand, you acknowledge your sole responsibility to ensure that the Services correspond to your business needs.

You are responsible for all activity occurring under your user accounts and will notify Awalabs immediately of any unauthorized use of any password or account or any other known or suspected breach of security. You are responsible for obtaining, maintaining, and supporting all internet access, computer hardware, and other equipment and services needed for access to the Service.

You agree that: (i) Awalabs is not acting on your behalf as a Business Associate or subcontractor; (ii) the Services may not be used to store, maintain, process or transmit protected health information ("PHI") and (iii) the Services will not be used in any manner that would require Awalabs to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA"). In the preceding sentence, the terms "Business Associate," "subcontractor," "protected health information" or "PHI" shall have the meanings described in HIPAA.

During the Term, the Services will meet the service level specified in the Master Services Agreement or Statement of Work. If the Services fail to achieve the service level, then you will be entitled, as your sole and exclusive remedy, to a credit for the Services. The Service's system logs and other records shall be used for calculating any service level events.

Awalabs shall maintain commercially reasonable administrative, physical and technical safeguards for the Services at all times. The operation of and access to the Services may be interfered with by numerous factors outside of Awalabs' control and Awalabs will not be liable for any such costs, losses, expenses, damages, or liabilities arising out of or related to any delay or failure in performance under these Terms resulting directly or indirectly from causes beyond Awalabs' reasonable control.

The Service is provided "AS IS" and the entire risk as to satisfactory performance, accuracy, and effort is with you. Awalabs does not warrant that the operation of the Service will be error free or uninterrupted. AWALABS HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

## **10. Indemnification.**

Awalabs agrees to indemnify, defend, and hold you harmless against any liabilities, damages and costs payable to a third party arising out of a third party claim alleging that the Services infringe any third party intellectual property right. Notwithstanding the foregoing, Awalabs will have no obligation under this section or otherwise with respect to any infringement claim to the extent based upon (i) any unauthorized use, reproduction, or distribution of the Services or any breach of this Agreement by you, (ii) any combination of the Services with other products, equipment, code, software, content, uses or data not supplied, authorized or recommended by Awalabs, (iii) any modification of the Services by any person other than Awalabs or its authorized agents or contractors or (iv) any activity after Awalabs has provided you with a work around or modification that would have avoided such issue without materially adversely affecting the functionality or availability of the Services (collectively, the "Excluded Claims").

If Awalabs reasonably believes that all or any portion of the Services, or the use thereof, is likely to become the subject of any infringement claim, suit or proceeding, Awalabs will procure, at its expense, for you the right to continue using the Services in accordance with the terms hereof, replace or modify the allegedly infringing Service to make it non-infringing, or, in the event the preceding is infeasible or not commercially practicable, Awalabs may, in its sole discretion, terminate this Agreement upon written notice to you and refund to you any prepaid amounts for unused Services.

You agree to indemnify, defend, and hold harmless Awalabs against any liabilities, damages and costs (including reasonable attorneys' fees) payable to a third party arising out of an Excluded Claim or a third party claim alleging that any of the Customer Content infringes any third party intellectual property right, that you have breached any of your representations or warranties hereunder or your use of any Services is in violation of applicable law.

The party seeking indemnification (“Indemnified Party”) shall provide the other party (“Indemnifying Party”) with prompt written notice upon becoming aware of any claim, suit or proceeding subject to indemnification hereunder and shall provide reasonable cooperation to Indemnifying Party in the defense of or investigation of any claim, suit or proceeding. The Indemnifying Party, at its option, will have sole control of such defense, provided that the Indemnified Party is entitled to participate in its own defense at its sole expense. Indemnifying Party shall not enter into any settlement or compromise of any such claim without the Indemnified Party’s prior written consent, which shall not be unreasonably withheld, except that Indemnifying Party may without such consent enter into any settlement of a claim that resolves the claim without liability to Indemnified Party and without impairment to any of Indemnified Party’s rights or requiring Indemnified Party to make any admission of liability.

#### **11. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY OR ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS FOR ANY LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH DAMAGES SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH HEREIN. THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY AND ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL SUBSCRIPTION FEES PAID FOR THE SERVICE GIVING RISE TO THE LIABILITY DURING THE TWO MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OUT OF WHICH THE LIABILITY AROSE. BOTH PARTIES ACKNOWLEDGE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON THEIR LIABILITY. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO: (A) FEES DUE UNDER THESE TERMS; OR (B) EITHER PARTY’S DEFENSE AND INDEMNITY OBLIGATIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY’S FAILURE TO COMPLY WITH THESE TERMS.

#### **12. Term and Termination.**

These Terms are in effect for as long as you access the Services. Your subscription to the Services shall renew automatically for successive one-year terms unless you or Awalabs give written notice prior to the end of the then-current Term. Any payment obligations you incur prior to termination of your access to the Services shall survive termination of your access. At its sole discretion, Awalabs may suspend or terminate your access to the Services for breach of these Terms.

#### **13. Governing Law and Dispute Resolution.**

This Agreement shall be governed in accordance with the laws of the State of Wyoming, without regard to its choice of law provisions. Any dispute hereunder shall be brought in the state or federal courts located within the State of Wyoming. You waive any right under your local laws to have these Terms

presented in a local language and accept these English-language Terms as binding and authoritative.

#### **14. Miscellaneous Provisions.**

Each party is an independent contractor of the other for purposes of these Terms. Nothing in these Terms shall be construed to create a partnership, joint venture or agency relationship between the parties. If you undergo a change of control (for example, through a merger, acquisition, or sale or lease of all or substantially all of its relevant assets) or assign the Agreement, (a) you will provide written notice to Awalabs within seven days after the change of control or assignment becomes effective; and (b) Awalabs may terminate the Agreement within 30 days of such notice. If any provision of these Terms is found unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. Except for you, Awalabs, and their respective successors and assignees, there are no third-party beneficiaries to these Terms.