**SOFTWARE AS A SERVICE AGREEMENT**

**(v.2022.07.01)**

THIS SOFTWARE AS A SERVICE AGREEMENT (THE “AGREEMENT”) GOVERNS YOUR SUBSCRIPTION, ACCESS AND USE OF OUR SERVICES.

BY PURCHASING A SUBSCRIPTION (“ORDER”) FOR THE SERVICES THROUGH US OR A RESLLER, YOU INDICATE YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT AND THE ORDER, IN YOUR CAPACITY AS A LEGALLY AUTHORIZED SIGNATORY OF YOUR ORGANIZATION (“YOU”, “YOUR”, “CUSTOMER” OR “YOUR ORGANIZATION”). THIS AGREEMENT IS ENTERED INTO BETWEEN YOU AND NULLABLE, INC., A DELWARE CORPORATION (HEREINAFTER REFERRED TO AS “NULLABLE”, “WE”, “US” OR “OUR” WHICH EXPRESSIONS SHALL INCLUDE ITS AFFILIATES, SUCCESSOR IN INTEREST, ASSIGNS AND ITS SUBSIDIARIES).

YOU MAY NOT ACCESS THE SERVICES IF YOU ARE OUR COMPETITOR, EXCEPT WITH OUR PRIOR WRITTEN CONSENT. IN ADDITION, YOU MAY NOT ACCESS THE SERVICES FOR PURPOSES OF MONITORING THE AVAILABILITY, PERFORMANCE OR FUNCTIONALITY FOR BENCHMARKING OR COMPETITIVE PURPOSES.

WE MAY UPDATE THIS AGREEMENT, FROM TIME TO TIME AND POST AT OUR WEBSITE (WWW.AWAREHQ.COM/AGREEMENTS).

**1. Definitions**

As used in this Agreement:

1. “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
2. “**Confidential Information**” has the meaning set forth in Section 11.
3. **“Collaboration** **Platform**” means third-party software platforms Customer is licensed to use to allow employees, contractors and service providers to collaborate, communicate, or store, such as, but not limited to, Microsoft Teams, Slack, Workplace by Meta and other enterprise social networks or collaboration tools.
4. “**CP Data**” means Collaboration Platform data and may include, but is not limited to: (a) messages and content on the Collaborative Platform(s), (b) personally identifiable information about CP Users such as names, location, IP address, domain, and time and date from which the CP User accesses the SaaS Platform and the Collaborative Platform(s), and (c) methods by which the CP User uses the Collaborative Platform(s).
5. “**CP Users**” means Customer’s Collaboration Platform Users.
6. “**Cutomer Data**” means data provided by Customer from its Collaboration Platform(s) but specifically excludes Machine Learning of Nullable and pre-exisiting IP of Nullable.
7. “**Customer Users**” means any authorized user of Customer including employees, contractors or service providers.
8. “**Documentation**” means the user manuals and technical documents delivered, or made available through the SaaS Platform.
9. “**Effective Date**” means the date the Order(s) is signed by Customer or if no signature or when Nullable provides Customer access to the SaaS Platform as outlined in the specific Order(s).
10. “**Machine Learning**” means processes and algorithms Nullable develops from and applies to Customer’s use of the Services or from CP Data that is ingested and is anonymized, de-identified and non-aggregated data.
11. “**Order**” means a Nullable order form or quote for the purchase of Nullable products and services that has been executed by the parties.
12. “**Set Up Services**” means services provided by Nullable to assist Customer with onboarding and utilization of the SaaS Platform including Documentation or training.
13. “**Software as a Service** **Platform”** (“**SaaS Platform**”) means the platform that Nullable provides to Customer to access the code via website.
14. **“SaaS Services”** means the services that Nullable provides to Customer via the SaaS Platform.
15. “**Support Services**” means the Customer Success Services as defined in Exhibit A to assist the Customer in utilizing the SaaS Platform.
16. “**Term**” means time period of the Agreement or Order as specified in Section 13 or the Order.
17. “**Third Party Content**” means content produced by a third party that is not Customer or Nullable.
18. **“Third Party Service Providers”** means the third parties that Nullable relies on to provide the underlying cloud infrastructure or authentication services for the SaaS Platfrom.
19. “**Third Party Sources**” means links to third-party materials and other resources provided by third parties that are not Customer or Nullable.
20. “**Use Data**” means data collected by the SaaS Platform about Customer’s Users and how they interact with the SaaS Platform.

**2. Changes to this Agreement.**

Nullable reserves the right to modify this Agreement. Nullable will post the most current version of these terms at [www.awarehq.com/agreements](http://www.awarehq.com/agreements) (the “**Site**”).  If Nullable makes material changes to this Agreement, Nullable will notify You via the Site and/or by email to the address associated with your account.  Your continued use of our SaaS Platform and SaaS Services after Nullable publishes or sends a notice about our changes to this Agreement means that You are consenting to the updated Agreement. If You do not accept the changes, you must stop using and cancel your account by email to [nullable\_legal@awarehq.com](mailto:nullable_legal@awarehq.com)**, which will be subject to Section 13 below.**

**3.** **SaaS Platform License and Restrictions.**

**3.1** **License**. Subject to the terms of this Agreement and the applicable Order, Nullable grants Customer a limited, worldwide, nonexclusive, non-transferable, and revocable (pursuant to Section 5.4 and Section 13) license to access and use the SaaS Platform and SaaS Services solely to manage its and its Affiliates’ internal business operations. Customer may permit its Affiliates to use the SaaS Platform to manage its Affliates’ internal business operations provided that Customer is liable to Nullable for those acts and omissions of its Affiliates in connection with such use which, if done or not done by Customer would be a breach of this Agreement. Customer’s Affiliates may place Orders with Nullable under the terms of this Agreement. Support Services identified in Exhibit A are provided at no additional charge.

**3.2** **Restrictions**. Customer shall not (a) alter, modify, adapt, translate, copy, reproduce, imitate, distribute, publish, or resell the SaaS Plaform or any related materials, including but not limited to the trademarks and copyrights of Nullable, or to make derivative works of the SaaS Platform, or its content or permit others to do so; (b) provide unauthorized access to or use of the SaaS Platform; (c) bypass any technical measures used to prevent or restrict access to any portion of the SaaS Platform; (d) reverse engineer, decompile or disassemble the SaaS Platform, or to convert into human readable form any of the contents of SaaS Platform not intended to be so read, including but not limited to, using or directly viewing the underlying code for the SaaS Platfrom; (e) use any data mining, robots, or similar automated data gathering and extraction tools to access the SaaS Platform; (f) compromise or attempt to compromise the integrity of the SaaS Platform; (g) interfere with or attempt to interfere with the proper working of the SaaS Platform; (h) to attempt to gain unauthorized access to any portion of the SaaS Platform, or any systems or networks connected to the SaaS Platform through hacking, cracking, mining, phishing or by any other means; (i) use the SaaS Platform for any purpose that is unlawful or prohibited by this Agreement or to solicit the performance of any illegal activity, to stalk or harass other users of the SaaS Platform, or to engage in any other activity which knowingly or negligently infringes the rights of Nullable or any other third parties; or (j) take any action other than ordinary use of the SaaS Platform that intentionally imposes an unreasonable or disproportionately large load on the infrastructure of the SaaS Platform or any systems or networks connected to the SaaS Platform.

**4. Intellectual Property Rights.**

**4.1** **SaaS Platform, SaaS Services, Documentation, Machine Learning and Use Data are Nullable Intellectual Property.** Unless otherwise expressly indicated, all content in or associated with the SaaS Platform, SaaS Services, Machine Learning, Use Data, and Documentation, including images, illustrations, designs, icons, photographs, video clips, text and other material, is the property of Nullable or its suppliers, licensors, partners or affiliates and is protected by United States and international copyright laws. Customer agrees that it will not take any actions inconsistent with Nullalbe’s ownership of the SaaS Platform, SaaS Service, Documentation, Machine Learning, and Use Data, or its content.

**4.2** **Set Up Services**. Except for any Customer Confidential Information, Customer Data or Customer provided materials, Nullable shall own all intellectual property rights under U.S. and international law in Doumentationused during the Set Up Services. However, any Customer Confidential Information contained in the Set Up Services shall be subject to Section 11 and Nullable shall have no rights in the Customer Confidential Information other than to use it to prepare and provide the Set Up Services. Customer shall have a limited, non-exclusive, non-transferable (except as set forth in Section 14.4), revocable license to use the Documentation solely in connection with its use of the SaaS Platform and SaaS Services.

**4.3** **Trademarks**. The trademarks, logos, and service marks displayed by the SaaS Platform are owned by Nullable and other third parties, and the trade dress of the SaaS Platform is owned by Nullable. All trademarks not owned by Nullable are the property of their respective owners, and, where used by Nullable, are used with permission. Nullable’s trademarks and/or trade dress may not be copied, imitated or used, in whole or in part (including use in metatags or in hidden text), without prior written permission. Customer agrees that it will not take any actions inconsistent with Nullable’s ownership of, or any third party’s ownership of, the trademarks and trade dress used on the SaaS Platform.

**4.4** **Customer Intellectual Property**: All Customer Data that is in the Collaboration Platform(s) from Customer Users is and remains the exclusive property of Customer but excludes Machine Learning and Use Data.

**5. Customer Responsiblities.**

**5.1 Customer Users**. Customer may allow Customer Users to use the SaaS Platform and SaaS Services provided that (a) such use is within the scope of the license and quantities purchased by Customer, (b) and Customer is responsible and liable for all acts and omissions of the Customer Users with respect to the SaaS Platform and SaaS Services that, if done or not done by Customer, would be a breach of this Agreement or an Order.

**5.2** **Customer** **Data Storage and Customer Responsiblity**. Customer may store its Collaboration Platform content on the SaaS Platform. The SaaS Platform may periodically make back-up copies for the specific purpose of providing the functions of the SaaS Platform, however such back-ups are not intended to replace Customer’s obligation to maintain regular data backups or redundant data archives. Customer is solely responsible for collecting, inputting and updating all data stored on the SaaS Platform, and for ensuring that such data does not, to its knowledge, infringe or misappropriate the copyright, trade secret, trademark or other intellectual property right of any third party. If the Order states where Customer’s data is to be stored, Nullable will not move the data from the specified region without notifying Customer, except if Nullable is required to do so by law or legal process. Customer is responsible for providing access to Nullable to any CP Data or Collaboration Platform. Nullable is not responsible or liable to Customer for any CP Data or information from the Collaboration Platform that is not provided by the Customer to Nullable. You represent and warrant that you have provided adequate notices and obtained the necessary permissions and consents to provide Customer Data to Us for use and disclosure pursuant.

**5.3** **Audit.** Nullable shall implement reasonable controls to ensure compliance with the authorized use of the Saas Platform including the number of Customer Users. Customer agrees and Nullable reserves the right to audit Customer’s use of the SaaS Platform to improve its quality and to verify Customer’s compliance with the Agreement, including the number of Customer Users. Customer agrees to pay any shortfall in fees revealed by such audit within thirty (30) days of receipt of invoice.

**5.4** **Compliance with Laws.** Customer shall comply with all applicable local, state, national, and foreign laws, rules, and regulations (“laws”) in connection with its use of the SaaS Platform, collection and other processing of all Customer Data, and performance under this Agreement, including those laws related to employment, data privacy and protection, and international activities. Customer acknowledges that Nullable exercises no control over the Customer Data transmitted by Customer or Customer Users to or through the SaaS Platform. Nullable may impose limits on the use or access to the SaaS Platform as required by applicable law. You agree not to use, and not to encourage or allow any Customer Users to use, the SaaS Platform to encourage any abusive, fraudulent, illegal, unlawful, or other activities that materially interfere with the business or activities of Nullable or others; if you engage in these activities, Nullable reserves the right to revoke your license to the SaaS Platform and SaaS Services.

**6. Third Party Content and Sources.**

**6.1** **Third Party Content**. Customer understands that the people using the SaaS Platform and SaaS Service may be exposed to Third Party Content that is offensive, indecent, or objectionable. Under no circumstances will Nullable be liable in any way for any content not provided by Nullable, including, but not limited to, any errors or omissions in any Third Party Content, or for any loss or damage of any kind incurred as a result of the use of any Third Party Content posted, emailed, transmitted, or otherwise made available via the SaaS Platform or SaaS Services.

**6.2** **Third Party Sources**. The SaaS Platform may contain links to Third Party Sources, which Nullable may not directly control, and which may have separate usage rules and guidelines. Nullable does not endorse and is not responsible or liable to Customer for any content, advertising, products, or other materials on or available from Third Party Sources.

**6.3** **Disclaimers**. The opinions expressed in Third Party Content or by Third Party Sources are not those of Nullable. Nullable (a) makes no representations or warranties regarding any Third Party Content or Third Party Sources, including without limitation, the accuracy, completeness, reliability, or appropriateness of the Third Party Content or Third Party Sources or whether the Third Party Content or Third Party Sources violate the rights of any other person or entity and (b) does not endorse or support the Third Party Content or Third Party Sources. For added certainty, Customer acknowledges and agrees that its use of Third Party Content and Third Party Sources is at its sole risk and that Nullable shall have no liability for damages of any kind to Customer in connection with or related to the Third Party Content and Third Party Sources.

**7. Payment and Taxes.**

**7.1** **Payment**. Customer shall pay Nullable the fees set forth on the applicable Order. All fees are in US dollars and payable as documented on the Order form. Except as expressly provided herein or on the applicable Order form, payment obligations are non-cancelable and fees paid are non-refundable. Customer agrees to pay to Nullable the fees specified in each Order. Customer will be invoiced promptly following delivery of credentials allowing the use of the SaaS Platform and SaaS Services or prior to the commencement of any renewal period.

Customer shall make all payments due to Nullable in full, without offset, within thirty (30) days from the date of Customer receiving each invoice or such other period (if any) stated in a signed Order. Nullable reserves the right to charge a late penalty of 1.5% per month (or the maximum rate permitted by law, whichever is the lesser) for any amounts payable to Nullable by Customer that are not subject to a good faith dispute and that remain unpaid after the due date until such amount is paid.

**7.2** **Taxes**. Customer is responsible for all taxes, charges, and duties applicable to each transaction, including without limitation any sales, use, Value Added Tax (VAT), customs, excise, and similar taxes and duties imposed by any federal, state, provincial, local, or other government entity, excluding taxes based on Nullable’s income or employment. If any VAT or other taxes is so chargeable, the Customer shall pay it directly at the same time as it pays the relevant fee. If local law requires Nullable to collect taxes in any territory where Customer is using the SaaS Platform, then the appropriate amount will be added to the applicable invoice.

**8. Use Data and CP Data; Required Disclosure.**

**8.1** **Use Data and CP Data.** Customer acknowledges that the SaaS Platform collects and uses Use Data and CP Data. The CP Data may include but not be limited to: (a) messages and content on the Collaborative Platform(s), (b) personally identifiable information about CP Users such as names, location, IP address, domain, and time and date from which the CP User accesses the SaaS Platform and the Collaborative Platform(s), and (c) methods by which the CP User uses the SaaS Platform or Collaborative Platform(s). Customer agrees and consents to Nullable’s collection and use of the Use Data and CP Data to analyze Customer’s use of the SaaS Platform and SaaS Services and for Machine Learning purposes and make the SaaS Platform and SaaS Services more effiecent and effective.

**8.2** **Required Disclosure.** Customer agrees that Nullable may access, preserve, and disclose Use Data, CP Data, and Customer’s account information if required to do so by law or if Nullable has a good faith belief that such access, preservation, or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any such Use Data or CP Data violates the rights of third parties; (d) respond to Customer’s requests for services under this Agreement; or (e) protect the rights, property, or personal safety of Nullable and others. Before taking any action as permitted by this Section 8.2, Nullable will provide prior written notice to Customer to the extent it is practicable and permitted by law or the applicable legal process.

**9. Export and OFAC Obligations by Customer.**

The SaaS Platform is subject to the export controls, laws, and regulations of the United States (the “Export Controls”) and Executive Orders and regulations administered by the Office of Foreign Assets and Controls (“OFAC”). Customer represents and warrants that neither it, its Affliates, nor, to its knowledge, its Customer Users are persons to whom the export of software from the U.S. is prohibited by the Export Controls or OFAC. Customer agrees that it shall use and access the SaaS Platform in strict conformance with the Export Controls and OFAC and agrees, without limiting the generality of the preceding sentence that, the SaaS Platform may not be accessed by (i) a national or resident of, any other country to which the United States has embargoed goods; or (ii) anyone on the United States Treasury Department’s list of Specially Designated Nations or the U.S. Commerce Department’s Table of Deny Orders. Customer agrees to promptly reimburse Nullable for any fines, penalties, or legal costs it incurs caused by Customer’s breach of this Section 9.

**10. Maintenance.**

For the duration of the license granted by this Agreement and the applicable Order, Nullable shall make new versions and releases of the SaaS Platform, including corrections, enhancements and upgrades, available to Customer if and when Nullable makes them generally available as part of its customer support program without additional charge. For clarity, the foregoing new versions and releases do not include new functionality or new features to the SaaS Platform, unless documented on the Order. Nullable will respond to communications from Customer as outlined in Exhibit A. Nullable shall have the right to limit such responses if Nullable reasonably determines that the volume of such non-error related requests for assistance is excessive or overly repetitive in nature.

**11. Confidentiality.**

**11.1** Each party agrees that during the Term (as defined in Section 13) and for three (3) years following the end of the Term, it shall: (a) use Confidential Information only for the purpose for which it was provided by the disclosing party (“**Purpose**”); (b) maintain such Confidential Information in confidence and make reasonable efforts to not disclose such Confidential Information except to its employees, affiliates, contractors, third-party service providers, consultants or advisors (“**Representatives**”) who have a need to know such Confidential Information for the Purpose (provided that (i) such Representatives are bound by written obligations consistent with the provisions of this Section and (ii) the receiving party shall be responsible for any breach of this Section 11 by its Representatives); and (c) use the same degree of care that it uses to protect its own confidential information of a similar nature, but not less than reasonable care. “**Confidential Information**” means any technical, business, marketing, sales, affiliate, customer, licensor or other supplier, financial, pricing, employee or other information which is either (i) marked or identified as confidential at the time of disclosure or (ii) of a nature reasonably understood to be confidential provided the disclosing party generally treats it as confidential. The parties agree that all SaaS Platform (including without limitation its design, layout, architecture and code), and all trade secrets included in the SaaS Platform shall be Confidential Information and subject to this Section 11 in perpetuity.

**11.2** The obligations under this Section 11 will not apply with respect to information that the receiving party can demonstrate: (a) was in its possession at the time of receipt of this Agreement, without any obligation of confidentiality with respect thereto; (b) is or becomes generally available to the public through no breach of this Section 11 by the receiving party or its Representatives; (c) following receipt of such information under this Agreement, is received from a third party under no duty of confidentiality; or (d) is independently developed by or for the benefit of the receiving party without use of or resort to Confidential Information of the disclosing party. The receiving party may disclose Confidential Information to the extent required to comply with applicable law or any judicial or governmental order or process, provided that the receiving party, to the extent legally permitted, promptly notifies the disclosing party in writing, and in advance, of such required disclosure and reasonably cooperates with the disclosing party, at the disclosing party’s expense, in its efforts to limit such disclosure or obtain a protective order or other confidential treatment with respect thereto.

**12. Warranty; Disclaimer; Limitation of Liability; Indemnification; Resolution of Disputes.**

**12.1** **Warranties – SaaS Platform**. Nullable warrants that throughout the Term the SaaS Platform (a) shall be free from any viruses or other malicious code (“Malware”), and (b) will perform substantially as described in the Documentation. Should Customer report a breach of the warranty stated this Section 12.1, Nullable shall use commercially reasonable efforts to correct the malfunction or provide a reasonably accepted workaround in a time reasonable under the circumstances and in consideration of the impact of the nonconformance on Customer.

THE REMEDIES STATED IN THE PRECEDING PARAGRAPH ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES AND NULLABLE’S SOLE AND EXCLUSIVE OBLIGATIONS IN CONNECTION WITH THE WARRANTIES PROVIDED IN THIS SECTION 12.1.

The warranty set forth in this Section 12.1 does not apply if the SaaS Platform has been: (a) altered, except by Nullable or a third party with Nullable’s consent; (b) configured, operated, repaired, maintained or used other than in accordance with this Agreement and the Documentation or other Nullable written instructions; or (c) subjected to misuse, negligence, or willful damage by the Customer of Customer User. Further, this warranty will not apply to non-conformities caused by any software not provided by Nullable or a third party with Nullable’s consent.

**12.2 Warranty – Availability.**  Nullable warrants to Customer that the production environment monthly availability percentage for the SaaS Platform will be 99.9% in any subscription month (“Production Environment Monthly Uptime Percentage”). Production Environment Monthly Uptime Percentage is available at [status.awarehq.com.](https://status.awarehq.com/) Unavailability caused by regularly scheduled SaaS Platform maintenance windows as communicated to Customer with reasonable notice of no less than twenty-four (24) hours are not counted as unavailability events for purposes of calculating Production Environment Monthly Uptime Percentage. Unavailability which is determined to have been caused by any of Nullable’s Third Party Service Providers, or by an outage of the underlying Collaboration Platform or its application programming interface, will not be counted as an unavailability event for purposes of calculating Production Environment Monthly Uptime Percentage.

**12.3** **Disclaimer**. THE WARRANTIES PROVIDED IN SECTION 12 ARE THE ONLY WARRANTIES PROVIDED UNDER THIS AGREEMENT. NULLABLE DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, OWNERSHIP OR QUIET ENJOYMENT OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. FOR ADDED CERTAINTY BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING NULLABLE DOES NOT WARRANT THAT THE SAAS PLATFORM WILL PERFORM WITHOUT INTERRUPTION, BE ERROR-FREE, OR WILL MEET YOUR REQUIREMENTS.

**12.5** **Limitation of Liability**.

EXCEPT FOR (A) AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO NULLABLE’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12.6, WHICH SHALL NOT EXCEED ONE MILLION DOLLARS ($1,000,000), OR (B) CUSTOMER’S VIOLATION OF NULLABLE’S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY — WHETHER IN CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY — ARISING FROM A BREACH OF THIS AGREEMENT OR ANY ORDER EXCEED THE AMOUNT PAID OR OWED BY CUSTOMER TO NULLABLE DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO CUSTOMER, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATION MAY NOT APPLY TO CUSTOMER, AND CUSTOMER MAY HAVE ADDITIONAL RIGHTS.

**12.6** **Indemnity**.

Nullable shall, at its expense, indemnify, defend, and hold harmless Customer and its affiliates and their respective directors, officers, employees, successors, and assigns from any claim by a third party alleging that the SaaS Platform infringes, misappropriates, dilutes, or otherwise violates the intellectual property rights of the third party (“**IP Claim**”) by doing the following. Nullable shall (a) defend the IP Claim at its sole expense, (b) pay any settlement or final judgment of the IP Claim, and (c) reimburse Customer for any reasonable and necessary legal or administrative expenses it may incur in responding to the IP Claim. The preceding sentence states Nullable’s sole and exlclusive obilgations with respect to an IP Claim.

Customer agrees that it shall (a) promptly provide written notice to Nullable following its receipt of the IP Claim, (b) authorize Nullable to assume sole control of the settlement of the IP Claim, and (c) provide Nullable with such reasonable assistance with the IP Claim as Nullable may reasonably request. No delay or failure to notify Nullable shall relieve Nullable of its obligations under this Section 12.6 except where Nullable has suffered active prejudice by such delay or failure. Nullable shall have no obligations for any IP Claim that is based on (a) a modification of the SaaS Platform not made by Nullable or a third party with Nullable’s consent or (b) a combination of the SaaS Platform with a third-party product other than those stated in the Documentation as being required or compatible with the SaaS Platform. If Customer’s use of the SaaS Platform and SaaS Services is enjoined or if Nullable reasonably believes it will be, Nullable shall, at Nullable’s sole discretion, either (a) obtain the right for Customer to continue to use the enjoined component(s) of the SaaS Platform, (b) replace the enjoined components of the SaaS Platform with non-infringing components, or (c) if neither of the preceding options are commercially reasonable for Nullable to provide, then Nullable may terminate the affected license and refund to Customer the fees paid for the terminated licenses, amortized over a five (5) year period starting on the initial date of delivery of the applicable SaaS Platform.

**13.** **Term and Termination.**

**13.1** **Term**. The term of the Agreement shall commence on the Effective Date and automatically renew for another year period on the anniversary date of the Effective Date, unless earlier terminated by either party in accordance with this Section 13 or unless either party gives thirty (30) days’ notice of non-renewal prior to the anniversary date of the Effective Date. The term of each subscription for the SaaS Platform and SaaS Services shall be as specified in the applicable Order. Except as otherwise specified in an Order, subscriptions will automatically renew for additional one year terms, unless either party gives the other written notice (email may be used ([nullable\_legal@awarehq.com](mailto:nullable_legal@awarehq.com)) – effective upon receipt of our acceptance of the email) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order, renewal of promotional or one-time priced subscriptions will be at Nullable’s applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any SaaS Platform or SaaS Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term’s per-unit pricing. No refunds of any kind shall be provided.

**13.2** **Termination for Cause**. Either party may terminate this Agreement and any licenses granted hereunder upon written notice if the other party has materially breached the terms of this Agreement (including any Order hereunder) and failed to cure such breach within thirty (30) days of delivery of written notice of such breach by the non-breaching party (which notice shall specify the nature of such breach in reasonable detail).

**13.3** **Suspension**. Nullable may, in a timeframe appropriate to the circumstances suspend Customer’s use of the SaaS Platform and SaaS Services as a Service if it reasonably believes that such use creates a significant security or legal risk to Nullable or its other customers.

**13.4** **Termination for Insolvency**. Either party may terminate this Agreement and any licenses granted hereunder, upon written notice if the other party: (a) becomes insolvent; (b) files a petition, or has a petition filed against it, under Chapter 7 of the U.S. bankruptcy code; or (c) ceases to carry on business in the ordinary course.

**13.5** **Effect of Termination**. Upon termination of this Agreement or an Order, any payment obligations incurred by Customer prior to the effective date of termination shall survive and be payable in accordance with the applicable payment terms of this Agreement or the applicable Order(s). Upon any termination of this Agreement, any licenses granted shall terminate, Customer shall stop using the SaaS Platform as of the effective date of the termination, and Customer shall return or, at Nullable’s election, destroy and certify the destruction of all copies of the applicable SaaS Platform and Documentation in Customer’s, its affiliates’ or any third party’s possession. Upon any expiration or termination of this Agreement, each party shall promptly return or destroy, and cause its Representatives to return or destroy, all copies of the disclosing party’s Confidential Information. Upon the request of the disclosing party, the receiving party shall provide the disclosing party with written confirmation that all such Confidential Information has been returned or destroyed. Notwithstanding the return or destruction of the Confidential Information received from the disclosing party, the receiving party and its Representatives will continue to be bound by their obligations of confidentiality under Section 11.

**14. General Terms.**

**14.1** **Entire Agreement**. This Agreement represents the entire understanding between the parties regarding Customer’s use of the SaaS Platform and supersedes all other prior or contemporaneously entered into agreements, express or implied, between the parties. If any provision of this Agreement is determined to be invalid or unenforceable for any reason whatsoever, the remainder of this Agreement shall be enforced to the extent possible, and the offending provision shall be treated as though not a part of this Agreement. Nullable’s failure to act with respect to a breach of this Agreement does not constitute a waiver of its rights with respect to that breach or any subsequent breach, nor shall it constitute a waiver of any other rights under this Agreement. In the event any term contained herein conflicts with a term in an Order, the most recent Order controls. Any rights not expressly granted herein are reserved.

**14.2** **Governing Law and Venue**. This Agreement is governed by and construed in accordance with the laws of the State of Delaware, USA, without giving effect to any principles of conflicts of law. Customer hereby agrees that any controversy or claim arising out of or relating to this contract or the breach thereof, shall be settled by binding arbitration in the State of Delaware, USA. Customer hereby consents to the exclusive jurisdiction and venue of the courts of the State of Delaware or, if appropriate, a United States District Court for the District of Delaware for any other residual claims. In the event of arbitration or litigation arising out of or relating to this Agreement, or the services provided under this Agreement, the prevailing party shall be entitled to recover attorney’s fees, and all other related and reasonable expenses incurred in such arbitration or litigation, from the other party.

**14.3** **Copies**. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

**14.4** **Assignment**. Except in connection with a change of control event such as a merger or acquisition, neither party may assign this Agreement or an Order without the other party’s express written consent which will not be unreasonably withheld, conditioned, or delayed. Any attempted assignment in conflict with the preceding sentence shall be considered ineffective and void.

**14.5** **Excused Performance**. Each party’s performance under this Agreement or an Order will be excused for as long as the performance is made impracticable as a result of an unforeseeable event outside of its reasonable control which would not have been prevented by reasonable precautions or cannot be reasonably circumvented by the nonperforming party through the use of alternate sources, workaround plans or other means, such as a natural disaster, accident, strike, external infrastructure failure, or the negligent or malicious acts of a third party.

**14.6. Publicity.** During the term of this SaaS Agreement, Nullable may include Customer’s name and logo in its customer lists, including on its website. To the extent Customer provides standard trademark usage guidelines, Nullable shall use Customer’s name and logo in accordance with such guidelines.

**14.7** **Notices.** Notices in connection with this Agreement may be sent to: Nullable: [nullable\_legal@awarehq.com](mailto:nullable_legal@awarehq.com) or Attn: Legal, 111 Liberty St, Suite 102, Columbus, Ohio 43215. Customer: To the email or address on the Order.

**14.8 Surviving Provisions.** Section 3 “SaaS Platform License and Restrictions,” Section 4 “Intellectual Propety,” Section 5 “Customer Responsiblities,” Section 7 “Payment and Taxes,” Section 8 “Use Data and CP Data; Required Disclosure,” Section 11 “Confidentaility,” Section 12 “Warranty; Disclaimer, Limitation of Liablity; Resolution of Disputes,” and Section 14 “General Terms” will survive any termination or expiration of this Agreement. This Agreement does not supersede, release, waive, amend, or in any way alter any release or waiver you have given to us or in any way release you from any obligation you owe Us, and, for the avoidance of doubt, nothing in this Agreement or otherwise shall in any way affect or impair the effectiveness of this statement.

**14.9** **Federal Government End Use Provisions**. We provide the SaaS Platform and SaaS Services, including related software and technology, including technical data, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the SaaS Platform include only those rights customarily provided to the public as defined in this Agreement.This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement. The terms of this Agreement supersede and are in lieu of any FAR, DFARS, or supplemental regulations to the FAR.

**Exhibit A**

**Support Services/Training**

During the Order Term, Nullable shall provide the following Support Services:

1. **SUPPORT SERVICE CONTACT INFORMATION; SEVERITY DESIGNATIONS AND RESOLUTION TIMES**. Nullable shall provide Customer with the Nullable’s Advanced Support Services described in this Exhibit.
2. Contact Information. Customer can reach the Customer Success Team (“CST”) by:

* General Support Email ([support@awarehq.com](mailto:support@awarehq.com)); or
* Log a support ticket via the SaaS Platform (“Log a Support Ticket”)

1. Severity Designations. The Parties agree to use the following severity levels to determine the severity level of any failure of the SaaS Platform. CUSTOMER MUST PROVIDE NOTICE TO NULLABLE VIA THE METHODS OUTLINED IN SECTION 1(a) ABOVE (“ESCALATION AVENUES”). Customer acknowledges that any issues with Customer’s Collaboration Platforms (which are run by third parties) is outside of Nullable’s control and Nullable is not able to control these third-party Collaboration Platforms and cannot be responsible if the SaaS Platform fails to work if the Collaboration Platforms are unavailable or not responding, in this instance the below Severity Designations do not apply:
2. Severity 1 ‑ Error renders the SaaS Platform inoperable. The SaaS Platform cannot be used and no usable work‑around exists. Resulting situation is critical to the business.
3. Severity 2 ‑ The SaaS Platform cannot be used or impacts Customer operations, but a usable work‑around exists. Resulting situation has some material and adverse impact on the business, and the work‑around allows business to continue with restrictions.
4. Severity 3 ‑ The SaaS Platform causes Customer negligible immediate impact, yet is desirable to resolve the failure because of restrictions to operations or usability issues to Customer personnel.
5. Resolution Times. For the SaaS Platform only, if the issue lies with a third-party Collaboration Platforms or one of Nullable’s Third Party Service Providers, the following times do not apply, Nullable and Customer agree to the following response times schedule for errors reported to Nullable utilizing the above severity designations previously defined.
6. Severity 1 ‑ For Severity Level 1, Nullable’s response time will be one hundred twenty (120) minutes from the receipt of Customer’s initial reporting of an issue via the Escalation Avenues, with email updates every one-hundred twenty (120) minutes ­­(or upon a significant development). An action plan will be developed generally within two (2) hours after recreation of the error condition. Nullable targets to solve the problem within two (2) business days of recreation of the error condition.
7. Severity 2 ‑ For Severity Level 2, Nullable’s response time will be eight (8) hours from the receipt of Customer’s initial reporting of an issue via the Escalation Avenues with email updates approximately every 8 hours (or upon a significant development). An action plan will be developed generally within one business day after recreation of the error condition. Nullable targets to solve the problem within five (5) business days of recreation of the error condition.
8. Severity 3 ‑ For Severity Level 3, Nullable’s response time will be forty-eight (48) hours from the receipt of Customer’s reporting of the issue via the Escalation Avenues with weekly email updates. Nullable shall solve the problem within its next Release,

**2. UPDATES**. All updates to the SaaS Platform outlined in the Order are made available by Us to You at no additional cost. As part of Support Services, Nullable will use commercially reasonable efforts to continue to ensure that the SaaS Platform maintains compatibility with then current operating systems, databases and other third-party technologies with which the SaaS Platform is intended to interoperate (“Core Technologies”). Nullable shall make those modifications necessary to the SaaS Platform to enable Customer to continue to use the SaaS Platform with Core Technologies, as the Core Technologies continue to be upgraded and updated. Nullable shall maintain a development path and schedule for the SaaS Platform that takes into consideration developments and changes to Core Technologies to ensure interoperability. Updates that impact business processes will be communicated to Customer thirty (30) days in advance. All other updates will automatically be pushed to all customers, and You may access Documentation regarding the update(s) via the SaaS Platform. Notwithstanding the foregoing, updates exclude any new modules (that introduce new functionality) that are not outlined in the Order.

**3. TRAINING**. Customer will have access to the Aware Help site with documentation and videos. Throughout the duration of Customer’s contract, Customer can engage in interactive product tours and personalized checklists to help them during enablement and onboarding. If Customer needs assistance, they will have access to CST via [support@awarehq.com](mailto:support@awarehq.com) or logging a ticket via the SaaS Platform.