

# Amplience Software-As-A-Service (SaaS) Agreement

Version v20250214

THIS AGREEMENT is dated [DATE]

## IS BY AND BETWEEN

**Amplience (UK) Limited** incorporated and registered in England and Wales with company number 07144140 whose registered office is at Sixth Floor Tower House, 10 Southampton Street, London, United Kingdom, WC2E 7HA ("**Amplience**"); and

[XXX] incorporated and registered in England and Wales with company number [XXX] whose registered office is at [XXX] ("**Customer**").

## RECITALS

- A. Amplience has developed a subscription-based software platform with capabilities for Content Management (CMS) and Digital Asset Management (DAM), designed to empower customers to create, modify, and manage digital content seamlessly across their eCommerce platforms. This platform is made available by Amplience to subscribers, supporting enhanced content delivery and streamlined management of digital assets for an optimized online experience.
- B. The Customer wishes to use the Amplience service in its business operations.
- C. Amplience has agreed to provide its service to the Customer and, where applicable, Customer Affiliates subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants hereinafter set forth, the parties agree to the terms and conditions hereof and cause this Agreement to be executed and effective as of the date of last signature below (the "Effective Date").

|                                      |                                       |
|--------------------------------------|---------------------------------------|
| Signed for and on behalf of Customer | Signed for and on behalf of Amplience |
| Signature:                           | Signature:                            |
| Name:                                | Name:                                 |
| Title:                               | Title:                                |
| Date:                                | Date:                                 |

# **Amplience Software-As-A-Service (SaaS) Agreement**

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## **Terms and Conditions**

### **1 DEFINITIONS**

In this Agreement the following words and expressions shall have the meanings set out below. Additional terms may be defined in the context of particular provisions of this Agreement:

**“Affiliate”** means an entity that controls, is controlled by or shares common control with, Amplience or the Customer, where the control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

**“Agreement”** means the above introduction, Recitals and Signatures, these Terms and Conditions, and any exhibits or schedules to this Agreement attached to or otherwise incorporated by reference herein, as well as any Orders arising under or referencing this Agreement.

**“Confidential Information”** means all information which is marked or designated as confidential or should otherwise be considered confidential due to its nature (and includes, without limitation, pricing and discounts, the intellectual property and business practices of each party, each party’s trade secrets, and information received from others that a party is obligated to treat as confidential. Confidential Information does not include information that was (a) previously known to the receiving party without restriction, (b) received by a party from a third party without restriction, (c) independently developed without use of the disclosing party’s Confidential Information, or (d) information that becomes publicly available through no fault of the receiving party.

**“Content Distribution Network”** means a geographically distributed network of servers used to deliver digital content (including software, data, media, and other materials) to end users based on their geographic location, network proximity, or other routing factors, for the purpose of improving availability, reliability, and performance.

**“Customer Data”** means all electronic data and information submitted by or on behalf of Customer to the SaaS Solution, excluding Usage Data (as defined under Clause 2.5 of these Terms and Conditions).

**“Customer Personal Information”** means all Customer Data relating to an identified or identifiable natural person, household, or device.

**“Documentation”** means the service descriptions, user guides and release notes regarding the use or operation of the SaaS Solution which are located at: <http://www.....>

**“DPA”** means the Amplience Data Processing Agreement located at: <https://www.....> or as otherwise separately agreed and executed by the parties.

**“Force Majeure Event”** means events that include, but are not limited to, acts of God, terrorism, fire, explosion, flood or other natural catastrophe, acts, orders, or regulation, strikes or labor difficulties, or acts of terrorism, in each case to the extent not occasioned by the fault or negligence of the delayed Party.

**“Host Data Centre”** means the data centre where the SaaS Solution is hosted.

**“Marketplace”** means an online e-commerce site operated by a third party that brings sellers and buyers together in one place and which for the purposes of this Agreement is authorised to market the SaaS Solution and/or Amplience Professional Services.

**“Order Form”** means an Amplience quotation or a statement of work accepted by the Customer through either: (i) Customer’s signature on the relevant document; or (ii) the issuance of a purchase order or other ordering document which references the quotation or details the SaaS Solution together with agreed pricing.

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**“Professional Services”** means consulting services provided by Amplience including, but not limited to, implementation services, implementation support, best practices consultations, and integration efforts as further described in, and subject to, **Section 3.2 (Professional Services)** below.

**“SaaS Solution”** means the internet-accessible software-as-a-service offering hosted by Amplience, its Affiliates or service providers, that has been purchased for Customer’s use under an Order and made available to Customer over a network.

**“Statement of Work” / “SOW”** (where applicable) means a document describing a mutually agreed Professional Services engagement prepared by Amplience.

**“Subscription Term”** means the period of use of the Service as defined in the respective Order Form;

**“Support”** means the Amplience support and maintenance services as described in the Amplience Support Policy located at <https://www.....>

**“Term”** means the time period from the Effective Date of this Agreement as set forth above until the date this Agreement terminates in accordance with **Section 11**.

**“Users”** means any employees or independent contractors of the Customer or the Customer’s Affiliates that the Customer authorizes to use the SaaS Solution on the Customer’s behalf to support the Customer’s internal business purposes.

**“Visits”** means a page request or series of page requests from the same uniquely identified visitor involving up to two-hundred and fifty object requests. A visit may be considered ended when no requests have been recorded during a 30-minute time period or after 12 hours of continuous activity.

## **2. RIGHTS TO ACCESS AND USE THE SAAS SOLUTION**

2.1 Subject to these Terms and Conditions, Amplience grants the Customer a limited (during the Subscription Term), non-transferable (except in accordance with **Section 12** Assignment), non-sublicensable and non-exclusive right to access, install, execute and/or use the SaaS Solution which includes the content creation and management tools made available , for the Customer’s own content creation and management requirements in support of its internal business operations and solely in accordance with the applicable Documentation.

2.2 The Amplience SaaS Solution is made available to the Customer as a subscription service through a web portal. The Customer is responsible for providing the content, equipment, connectivity, and other infrastructure requirements necessary to access and use the SaaS Solution.

2.3 The right to access and use the SaaS Solution is measured by: (i) number of Visits; (ii) type of modules; (iii) number of users; (iv) use periods; and/or (v) other basis, as set forth in the applicable Order Form. The Customer may, under the grant and license to the Customer, permit its affiliates and third-party contractors to access and use the SaaS Solution, in a manner consistent with the grant and license, for the exclusive benefit of the Customer and its Affiliates, and Users with the Customer remaining responsible to Amplience for the acts and omissions of its Affiliates and Users. Nothing in this Agreement or otherwise grants to the Customer access to the Amplience source code.

2.4 **Restrictions.** Except as expressly permitted in these Terms and Conditions, Customer and its Affiliate and Users may not themselves or through any third party: (i) resell, rent, lend, sell, sublicense, or otherwise make the SaaS Solution, or any part thereof available to any third party, or use the SaaS Solution to provide service bureau, time-sharing or other services to third parties; (ii) decompile, disassemble, benchmark, reverse engineer or otherwise attempt to derive the source code used or embodied in the SaaS Solution, which for the avoidance of doubt includes the related algorithms, methods, and techniques, except to the extent expressly authorized by applicable law where such authorization is not subject to contractual waiver; (iii) use or copy, republish, modify or develop any derivative work or any other software program, based upon all or any part of the SaaS Solution, or any

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Amplience products or deliverables, or Amplience Confidential Information; (iv) remove, modify, or obscure any copyright, trademark, or other proprietary notices contained in the SaaS Solution; (v) install an instance of the SaaS Solution in any country that has data residency or data transmission restrictions including, but not limited to, Russia and the People's Republic of China; (vi) modify, bypass, or interfere with any operational element of the SaaS Solution; (vii) use the SaaS Solution for any purpose other than for the Customer's own content creation and management requirements as covered by an accepted Order Form; (viii) upload or use on the SaaS Solution (a) content, information, or data which the Customer doesn't own or otherwise hold all necessary rights to upload and use; (b) personal data or personally identifying or identifiable data or information that is not for the viewing by, or publishing to, an unspecified audience and for which the Customer has not obtained authorisation from the data subject for uploading and use in full knowledge that it will be published to an unspecified audience; or (c) under any circumstances, special category personal data (as defined under Article 9 of Regulation (EU) 2016/679); (ix) use the SaaS Solution in a manner that damages, disables, overburdens, or impairs the SaaS Solution or Host Data Centre or Content Distribution Network including by introducing spyware, ransomware, timebombs, viruses, worms, or other harmful or malicious code or similar files into the SaaS Solution; (x) access or use the SaaS Solution to build a similar or competitive product; or (xi) use the SaaS Solution in connection with any activities or content that (a) infringe or misappropriate the intellectual property or proprietary rights of others; (b) is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that promotes violence, illegal activity or offers or disseminates fraudulent goods, services, schemes, or promotions; or (c) violates any laws or regulations, including those related to spamming, privacy, data protection, intellectual property, consumer and child protection, pornography, obscenity or defamation.

2.5 Amplience may collect, retain, disclose, and use, during and after the Term for purposes of Amplience's business, usage data that is derived from the operation of the SaaS Solution, including patterns identified through the use of the SaaS Solution and algorithms, log data, and data regarding the performance and availability of the SaaS Solution ("Usage Data").

### **3. SET-UP, PROVISIONING, AND OTHER SERVICES**

3.1 If indicated in the Order Form, Amplience will set-up and provision the Customer supplied systems to access and use the SaaS Solution in accordance with an agreed Statement of Work (SOW). Fees for such activity will be set forth in the respective Order Form or the SOW and are in addition to the SaaS Solution subscription fees. Any requirements identified during set-up and provisioning that are outside the scope of standard account set-up and provisioning services will be provided under a separate mutually agreed upon SOW covering the additional work. Unless otherwise agreed in a SOW, Amplience's fees will be billed on a time and materials basis and Amplience's reasonable expenses in performing the services will be reimbursed at actual cost.

3.2 The Customer may purchase additional Professional Services pursuant to separate mutually agreed SOWs, which will be subject to these Terms and Conditions. In the event Amplience provides set-up, provisioning, or any other services, Customer receives a nonexclusive and non-transferable limited license to use the deliverables delivered to Customer as a result of the services only in connection with and to the extent of Customer's right to use the Amplience Software Service, and except for such right to use, Amplience retains all right, title and interest in the deliverables and results of the services, including all intellectual property rights therein.

3.3 The Customer may terminate any Professional Services order hereunder by giving not less than **ten (10) days prior written notice** to Amplience; termination shall be effective **ten (10) days** after Amplience's receipt of the notice. If the Customer delays the scheduled start of contracted Professional Services, the Customer shall reimburse Amplience for any actual non-refundable costs incurred (including for expenses and contractors) due to the delay. If the Customer terminates Professional Services before the agreed end of a Professional Services engagement as set forth in a SOW, the Customer shall pay

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Amplience for any Professional Services completed but not yet paid for prior to the termination date, as well as reasonable and actual costs (including for expenses and contractors) incurred by Amplience through the effective date of the termination.

### **4. CUSTOMER RESPONSIBILITIES**

4.1 Amplience is providing tools for the creation and management of content only. The Customer retains discretion and responsibility for the results of the use of the SaaS Solution and is responsible for complying with applicable laws, regulations, standards, and other legal and governmental requirements, including, without limitation, with respect to the rights of content owners and for meeting website and other accessibility requirements, including WCAG, and Amplience will have no responsibility or liability whatsoever in connection with these. The foregoing will apply notwithstanding any consulting, support, or other input from Amplience.

4.2 The Customer shall ensure that it has all necessary rights, permissions, and consents to upload, process, and use any Customer Data within the SaaS Solution and the Customer shall not upload or transmit any Customer Data that infringes the rights of any third party or violates any applicable laws or regulations.

4.3 The Customer is solely responsible for the accuracy, completeness, quality, and legality of all Customer Data uploaded to the SaaS Solution and Amplience shall have no liability for any errors, omissions, or inaccuracies in the Customer Data.

4.4 The Customer is responsible for maintaining its own backup copies of all databases and applications and for the Customer Data before uploading it to the SaaS Solution and the Customer acknowledges that Amplience does not provide a data backup or recovery service unless expressly agreed in writing.

4.5 The Customer shall use the SaaS Solution in compliance with all applicable laws, regulations, and the Amplience acceptable use policy ("AUP"). The Customer shall take appropriate measures to prevent unauthorized access to its account and shall be responsible for any actions taken using its credentials.

4.6 The Customer personnel, including all necessary subject-matter experts, network access, and other resources required to support delivery of the services must be available and remain consistent during the Order Term.

4.7 The Customer will be responsible for the management, operation, and security of its own systems.

4.8 Delay caused by a failure of the Customer to provide necessary resources or timely responses to requests for information or approvals or otherwise caused by a failure of the Customer to meet a material obligation, may impact applicable charges and timescales.

### **5. FEES AND PAYMENT**

5.1 The Customer will pay the subscription and other fees and charges specified in the accepted Order Form. Unless otherwise stated in the Order Form, invoices will be issued on or around the Effective Date and payment shall be made on or before thirty (30) days from the invoice date. Except as expressly provided otherwise in this Agreement, fees are non-refundable, non-cancellable and not subject to set-off.

5.2 Fees and charges are quoted and payable in the currency indicated in the Order Form. The fees and charges set forth in the Order Form do not include taxes, duties or similar governmental assessments of any kind, including but not limited to sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). The Customer is responsible for paying all Taxes associated with the Customer's receipt and use of the SaaS Solution and any other products and services ordered by the Customer and the payments made hereunder. If a jurisdiction in which the Customer conducts business requires the Customer to deduct or withhold separate taxes from any amount due to Amplience, the Customer must notify Amplience in writing. Amplience will then increase the gross amount of the Amplience invoices so that, after the Customer's deduction or

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withholding for taxes, the net amount paid to Amplience will not be less than the amount Amplience would have received without the required deduction or withholding.

5.3 If any undisputed fees remain unpaid by their due date, Amplience may charge interest at the rate that is the greater of a rate per annum equal to 4% above the Base Lending Rate of the Bank of England, or the maximum legal rate, compounded monthly, on overdue invoices for each month or partial month that invoices remain unpaid after the payment due date. The Customer will also be responsible for all costs associated with collecting the outstanding amounts.

5.4 In addition to any other rights or remedies it may have under this Agreement or by matter of law, in the event of late payment, Amplience may block the Customer's use of the SaaS Solution (with all fees due hereunder continuing to accrue during the period when use is blocked) and/or suspend any Professional Services work, until all overdue amounts are paid in full.

5.5 If the Customer purchases a subscription to the SaaS Solution or any Professional Services through Marketplace, the Market place terms and conditions will govern the purchase transaction, and this Agreement will govern the Customer's use of such SaaS Solution and/or Professional Services. In such case, the Customer's payment obligations for the SaaS Solution and/or any Professional Services will be as arranged through the Marketplace, and not with Amplience. However, if the Customer fails to pay Marketplace for the SaaS Solution and/or any Professional Services, Amplience retains the right to enforce the Customer's payment obligations and collect any amounts owed, directly from the Customer.

### **6. WARRANTIES AND REMEDIES**

6.1 Amplience warrants that during the Subscription Term the SaaS Solution will perform materially in accordance with the Documentation. For any breach of this warranty, the Customer's exclusive remedy and Amplience's sole liability and option shall be for Amplience to correct the non-conforming SaaS Solution to the extent reasonably necessary to meet the warranty, at no additional charge to the Customer, which may include providing the Customer with a manual work-around or in the event that Amplience is unable to correct the non-conformance after good-faith efforts and within a commercially reasonable timeframe, the Customer shall be entitled to terminate the applicable SaaS Solution subscription and Amplience will refund to the Customer a pro-rata portion of any prepaid fees attributable to the non-conforming SaaS Solution. The SaaS Solution works with the Customer's internal systems and input and relies on third party internet distribution and computing infrastructures, and for certain services on third party social media sites, Amplience makes no warranty in relation to these.

6.2 The warranty contained within Clause 6.1 shall not apply to the extent that any non-conformance is caused by the use of the SaaS Solution contrary to the Amplience's instructions, or where the Customer has failed to perform any of its obligations under this Agreement, or where such claim has arisen as a result of a modification or alteration of the SaaS Solution by any party other than Amplience or Amplience's duly authorised contractors or partners.

6.3 To the maximum extent permitted by law, the warranty contained in Clause 6.1 is exclusive and takes the place of all other express or implied warranties or conditions including warranties or conditions of merchantability, satisfactory quality, and fitness for a particular purpose. Amplience does not warrant that the operation of the SaaS Solution will be error free or uninterrupted nor does Amplience warrant any non-Amplience application with which the SaaS Solution may interoperate. The limited warranties provided in this Clause 6 are the sole and exclusive warranties provided to the Customer in connection with this Agreement.

6.4 Each party warrants that it has obtained and complied with all consents, approvals, and license and that it has full power and authority and has (and shall have) undertaken all requisite corporate and other action to approve the signature and performance of this Agreement.

6.5 Each party further warrants that it is of sound financial standing and not aware of any circumstances which may adversely affect that financial standing in the future; and that there are no actions, suits or proceedings or regulatory investigations pending or threatened against or affecting it before any court

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or administrative body or arbitration tribunal that might affect its ability to meet and carry out its obligations under the Agreement.

6.6 The SaaS Solution works with the Customer's internal systems and input and Amplience makes no warranty about these systems and/or content. The SaaS Solution (i) relies on third party internet, distribution, and computing infrastructures; and (ii) interfaces with, uses, and incorporates third party software, including open source software, and third-party products and services, including those selected by the Customer for generation of the Customer content, and Amplience provides no warranty and shall have no liability for such infrastructures, products and services, or software, except that the availability of such infrastructures and any software provided by Amplience shall be taken into account in computing the availability of the SaaS Solution for purposes of issuing service credits to the Customer.

### **7. CONFIDENTIALITY**

7.1 Both parties undertake to protect any Confidential Information of the other party using at least the same degree of care it uses to protect its own confidential information of like nature, and in any event not less than a reasonable degree of care.

7.2 Each party may disclose the other party's Confidential Information: a) to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out its obligations under this Agreement and in such case shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this Clause 7; and b) as may be required by law, court order or any governmental or regulatory authority.

7.3 In the event of actual or threatened breach of this Clause 7, the non-breaching party will have no adequate remedy at law and will be entitled to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages, in addition to other available remedies. At the earlier of the disclosing party's first request or the expiration or termination of Customer's subscription to the SaaS Solution for any reason, the receiving party shall return or destroy (and confirm in writing such destruction) all Confidential Information (including all copies, summaries, extracts or other reproductions) of the disclosing party.

### **8. LIMITATION OF LIABILITY**

8.1 Nothing in this Agreement shall exclude or limit either party's liability for a) death or personal injury caused by the negligence of either party, its officers, employees or contractors; b) fraud or fraudulent misrepresentation; c) breach of Confidentiality (Clause 7); d) breach of Intellectual Property Rights (Clause 9); breach of Rights to Access and Use the SaaS Solution (Clause 5); and any other liability which may not be excluded by law.

8.2 In no event will either party be liable for any loss of profits, loss of use, business interruption, loss of reputation, loss of data or content, content corruption, cost of cover, loss of goodwill, or indirect, special, incidental or consequential damages of any kind in connection with or arising out of an accepted Order Form, SOW, these Terms and Conditions, or the furnishing, or the performance or use of any products, materials, or services, whether alleged as a breach of contract or tortious conduct, including negligence, or otherwise, even if it has been advised of the possibility of such damages.

8.3 Subject to Clauses 8.1 and 8.2 above, each party's maximum liability for any damages of whether in contract or tort (including negligence) or otherwise and whether in connection with or arising out of this Agreement or any collateral contract will not, exceed in the aggregate an amount equal to one hundred percent (100%) of the fees paid or payable by the Customer to Amplience under the specific Order Form or SOW to which the claim relates, in the twelve month period preceding the event giving rise to the liability or where the claim arises in the first year of the relevant Order Form or SOW, an amount equal to one hundred percent (100%) of the fees payable in the first year of the Order Form or SOW as applicable.

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8.4 The foregoing limitations of liability shall apply even if one or more remedies, exclusive or otherwise, fails of its essential purpose. The parties have taken the foregoing limitations into account in entering this Agreement and intend that they will apply to the extent permitted by law.

### **9. INTELLECTUAL PROPERTY RIGHTS**

9.1 All intellectual property rights, whether registered or unregistered, evidenced by or embodied in and/or attached/ connected/ related to the SaaS Solution and each part thereof, other Amplience products, the results of any services, and any enhancements, improvements, and other changes thereto, are and shall be owned exclusively by Amplience which includes the analytical methods, templates, content, organization, graphics, design, compilation, technology and other components of the SaaS Solution (including the Amplience web portal and website), and any enhancements, improvements, and other changes thereto. The license granted to Customer does not include the software source code.

9.2 The Customer retains all rights in the Customer images, videos, documents, and other content that it uploads and uses with the SaaS Solution. The Customer provides permission and authorisation to Amplience to use this data as required to be able to provide the product and services in the Order Form, and for the purposes of training or enhancement of the product and services. Amplience stores the Customer content only incidental to and in connection with the provision of access to and use of the SaaS Solution.

### **10. INDEMNIFICATION**

10.1 Amplience shall, at its expense, defend or settle any claim or action brought against the Customer by a third party, alleging that the SaaS Solution, when used within the scope of this Agreement, actually infringes any copyright, trademark, or trade secret of the third party ("Claim"), and shall indemnify the Customer for all damages and costs (including reasonable legal fees) finally awarded by a court of competent jurisdiction or paid to a third party in accordance with a written settlement agreement entered into by Amplience in connection with the Claim.

10.2 The indemnity at Clause 10.1 is conditional upon the Customer giving prompt written notice to Amplience of any such Claim of infringement and giving Amplience sole control of the defence and settlement of the Claim, and the Customer may not settle or compromise the Claim, except with the prior written consent of Amplience. The Customer shall give Amplience such assistance and information as Amplience may reasonably require to settle or oppose the Claim.

10.3 In the event that a Claim is brought or threatened, or in the reasonable opinion of Amplience is likely to be brought, Amplience may, at its sole option and expense: (i) procure for the Customer the right to continue use of the SaaS Solution; (ii) modify or replace the SaaS Solution with another service having substantially the same or better capabilities; or if the foregoing options are not reasonably practicable, (iii) terminate this Agreement, or the applicable Order Form require the cessation of use of the SaaS Solution, and repay to the Customer the fees paid by the Customer in advance for use of the SaaS Solution that was not made due to the termination, in which case Amplience and the Customer will then be released from any further obligation to the other under this Agreement, except for obligations that survive termination.

10.4 The foregoing obligations shall not apply to the extent the infringement arises out of or relates to use of the SaaS Solution other than in accordance with the applicable Documentation and this Agreement; any modification or enhancement of the SaaS Solution not made by Amplience; implementation of the Customer's written directions; use of the SaaS Solution in combination with any other product, service, or device, if the infringement would have been avoided by the use of the SaaS Solution without the other product, service, or device.

10.5 The indemnification obligations set forth in this Clause 10 state the Customer's exclusive remedy and the entire liability of Amplience with respect to any claim or action for infringement or misappropriation of third-party intellectual property rights of any kind.

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10.6 The Customer shall, at its expense, defend or settle any claim or action brought against Amplience by a third party, alleging a violation of a User's or third party's rights arising from or related to the Customer Data, including the Customer's provision of the Customer Data to Amplience or Amplience's use of the Customer Data in connection with the provision of the SaaS Solution in accordance with this Agreement. The Customer will indemnify Amplience for all damages and costs (including reasonable legal fees) finally awarded by a court of competent jurisdiction or paid to a third party in accordance with a written settlement agreement signed by the Customer, in connection with any such claims, demands, suits, or proceedings.

### **11. TERM AND TERMINATION**

11.1 Customer's subscription and license to use the SaaS Solution begins on the subscription commencement date set forth in the accepted Order Form and will continue for the subscription term set forth in the Order Form ("Initial Term"). Thereafter, the term will automatically renew for successive renewal terms for the period set forth in the Order Form (each a "Renewal Term"), unless either party gives written notice to the other that it will not renew the term, at least sixty (60) days before commencement of the next term. The subscription fees for each Renewal Term will automatically increase year-on-year by the greater of five percent or RPI over the fees charged for the preceding twelve-month period.

11.2 Either party may terminate the Amplience Software Service subscription: (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, except that in the case of non-payment, Amplience may terminate in accordance with Section 4 if full payment is not made when due; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.3 Within thirty (30) days after the expiration or termination of Customer's subscription for any reason, Customer shall return or destroy (and certify in writing to such destruction) all Amplience software, documentation, and Confidential Information (including all copies, summaries, extracts or other reproductions) to Amplience. Sections 4, 6, 7.2, 8, 9, 10, and 11 will survive expiration or termination of Customer's subscription for any reason.

### **12. GENERAL**

**Governing Law** Each party agrees to the governing law applicable to this Agreement in accordance with the table set out in Schedule 1, without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts.

**Assignment.** Neither these Terms and Conditions nor any rights under these Terms and Conditions and/or any Customer Order Form may be assigned or otherwise transferred by the Customer, in whole or in part. Any assignment or transfer made contrary to the foregoing shall be null and void.

**Independent Contractors.** The Customer and Amplience are independent parties. Nothing in this Agreement shall be construed to create a partnership, association, trust, joint venture, agency, or other entity or similar legal relationship between the parties. Neither party will have any rights, power, or authority to act or create an obligation, express or implied, on behalf of another party.

**Rights of Third Parties.** A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

**Entire Agreement.** These Terms and Conditions, together with any accepted Customer Order Forms and or SOWs, contain the entire agreement of the parties and supersede all previous communications, representations, understandings and agreements, oral or written, between the parties with respect to said subject matter.

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**Notices.** Any notice required or permitted hereunder or required by law must be in writing and must be delivered in person, sent by first class registered mail, or air mail, as appropriate, or sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address as detailed in Schedule 1.

**Severance.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision will be deemed severed from the remainder of this Agreement, but all remaining provisions will continue in full force and shall be valid, legal, and enforceable.

**Waiver.** The parties agree that no failure by either party to enforce the performance of any provision in this Agreement shall constitute a waiver of the right to subsequently enforce that provision or any other provisions of this Agreement. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

**Force Majeure.** Neither party will be liable, except as specified in this clause, for any failure to perform, delay in performing or imperfect performance of any obligation under this Agreement, except for failure to pay any undisputed fees that are due and payable, to the extent that such failure, delay or imperfect performance is caused by a Force Majeure Event. If either party is affected by a Force Majeure Event it shall: (i) promptly notify the other party of the nature of the Force Majeure Event, the nature of any actual or anticipated failure, delay or imperfect performance and the anticipated consequence and length of such failure, delay or imperfect performance; (ii) use all reasonable endeavours to mitigate the effects of such failure, delay or prevention on the performance of its obligations under this Agreement; and (iii) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

**Publicity.** The Customer agrees to collaborate with Amplience in good faith to create a case study within the first twelve (12) months of the Effective Date and to participate in a press release regarding its use of the SaaS Solution. Any such case study or press release shall be subject to the Customer's prior written consent, which shall not be unreasonably withheld or delayed. Amplience may reference the Customer's name and logo in its marketing materials, including on its website and in presentations, provided that such use is in accordance with any brand guidelines.

**Export Controls.** The Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in accessing and using the SaaS Solution and any other products and services provided by Amplience. The Customer represents that it is not named on any US government list of persons or entities prohibited from receiving exports, and the Customer shall not permit any party to access or use the SaaS Solution, products, or services in violation of any US export embargo, prohibition or restriction.

**Anti-Bribery.** Each party shall comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010. Neither party shall, directly or indirectly, offer, give, solicit, or accept any bribe, inducement, or improper financial or other advantage in connection with this Agreement. Each party shall maintain adequate procedures to prevent bribery and corruption and, upon reasonable request, provide evidence of such procedures to the other party. Any breach of this clause shall be deemed a material breach of this Agreement, entitling the non-breaching party to terminate the Agreement with immediate effect.

**Insurance.** Each party shall maintain, at its own expense, appropriate insurance coverage to cover its respective liabilities under this Agreement. Upon request, a party shall provide the other with evidence of such insurance.

**Dispute Resolution.** If any dispute arises in connection with this Agreement, the parties shall each nominate a senior representative who shall, within seven (7) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting, the parties will attempt to settle the dispute by mediation in accordance with the commercial mediation rules of the relevant arbitration association set out in the table in Schedule 1 in effect at the time such mediation is commenced. To initiate the mediation, a party must give notice in writing ("ADR

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Notice”) to the other party requesting mediation. The mediation will start not later than fifteen (15) days after the date of the ADR Notice. The mediation shall take place in the city set out in Schedule 1 and apply the governing law set forth in Schedule 1 to the mediation.

**Data Protection.** The parties agree to comply with the DPA incorporated into this Agreement, including Amplience’s Security Standards set forth therein. In the event of a conflict between the terms of the DPA and this Agreement, the terms of the DPA shall govern.

**Non-Solicitation.** Neither party shall, during the term of this Agreement and for a period of twelve (12) months after its termination or expiry, directly or indirectly solicit, entice, or attempt to solicit or entice any employee, consultant, or contractor of the other party with whom they had material contact in connection with this Agreement, to leave their employment or engagement. This restriction shall not apply to general recruitment advertisements or solicitations that are not specifically targeted at the other party’s personnel.

**Variation.** These Terms and Conditions and any accepted Customer Order Form may not be amended, except by a writing signed by both parties.

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## **SCHEDULE 1**

### **AMPLIENCE NOTICES, GOVERNING LAW AND JURISDICTION**

| Customer Domiciled In          | Amplience Contracting Entity                                                         | Address for Notices                                                                                                        | Governing Law              | Courts Having Exclusive Jurisdiction | Arbitration Association and Place of Arbitration                                          |
|--------------------------------|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------------------|-------------------------------------------------------------------------------------------|
| Europe, Middle East or Africa  | Amplience (UK) Limited, registered in England and Wales. Registered Number: 07144140 | Legal Department, Amplience (UK) Limited, Sixth Floor Tower House, 10 Southampton Street, London, United Kingdom, WC2E 7HA | England                    | England                              | London Court of International Arbitration (LCIA) having its seat of arbitration in London |
| North America or South America | Amplience Inc. registered in Delaware, United States or America.                     |                                                                                                                            | California                 | California                           | International Center for Dispute Resolution having its seat in San Francisco, California  |
| Asia Pacific region            | Amplience (UK) Limited, registered in England and Wales. Registered Number: 07144140 |                                                                                                                            | New South Wales, Australia | New South Wales, Australia           | The Institute of Arbitrators & Mediators Australia having its seat in Sydney              |