

Terms and Conditions



This document sets forth the terms and conditions ("Terms and Conditions") under which Amplience authorizes use by Customer of the Amplience Software Service and any other products and services covered by an Order Form entered into between Customer and Amplience. Customer's issuance of an Order Form to Amplience is Customer's agreement to pay for the Amplience Software Service and any other products and services ordered and Amplience's acceptance of the Order Form, in writing or by delivering the ordered Amplience Software Service and products and services, is Amplience's agreement to provide the Amplience Software Service and products and services, in each case in accordance with these Terms and Conditions and the applicable Order Form. These Terms and Conditions shall be deemed incorporated in each accepted Order Form and each such Order Form shall be governed by these Terms and Conditions.

1 Amplience Software Service

1.1 Subject to these Terms and Conditions, Amplience grants Customer a non-transferable and nonexclusive right to access and use the content creation and management tools made available by the Amplience Software Service and covered by an accepted Customer Order Form, for Customer's own content creation and management requirements. The foregoing grant includes a nonexclusive and non-transferable license to use underlying Amplience software and standard documentation solely as part of and in connection with use of the Amplience Software Service (references below to the Amplience Software Service, include the software and documentation). The Amplience Software Service is made available to Customer as a subscription service through a web portal. Customer will be responsible for providing the content, equipment, connectivity, and other infrastructure requirements necessary to access and use the Amplience Software Service. The Amplience Software Service is provided on a (i) number of visits; (ii) number and type of modules; (iii) number of users; (iv) use periods; (v) analytics; and/or (vi) other basis, as set forth in the Order Form. The term "visit" as used here means a page request or series of page requests from the same uniquely identified visitor involving up to two-hundred and fifty object request. A visit may be considered ended when no requests have been recorded during an 30-minute time period or after 12 hours of continuous activity.

1.2 Customer retains all rights in the Customer images, videos, documents, and other content that it uploads and uses with the Amplience Software Service. Amplience retains all rights in the Amplience Software Service, including in the analytical methods, templates, content, organization, graphics, design, compilation, technology and other components of the Amplience Software Service (including the Amplience web portal and website), and any enhancements, improvements, and other changes thereto. Amplience stores Customer content only incidental to and in connection with the provision of access to and use of the Amplience Software Service. All intellectual property rights, whether registered or unregistered, evidenced by or embodied in and/or attached/ connected/ related to the Amplience Software Service 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. The license granted to Customer does not include the software source code.

2 Set-Up, Provisioning, and Other Services

If indicated in the Order Form, Amplience will set-up and provision Customer supplied systems to access and use the Amplience Software Service and where this is the case Customer will provide access for Amplience authorized personnel to carry out these tasks. Fees for such services are set forth in the Order Form and are in addition to the Amplience Software Service subscription fees. Implementation of the Amplience Software Service will include use of content-based tracking modules and the external tracking of events by the Amplience Software Service data center for the purpose of producing event analytics. 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. Customer will be responsible for the management, operation, and security of its systems, including back-up, of all databases and applications. Delay caused by a failure of Customer to provide necessary resources or timely responses to requests for information or approvals or otherwise caused by a failure of Customer to meet a material obligation, may impact applicable charges and schedule. Any requirements identified during set-up and provisioning that are outside the scope of standard account set-up and provisioning services are not included under this Order Form and will be provided under a separate mutually agreed upon Statement of Work covering the additional work. Amplience will perform additional services pursuant to separate mutually agreed Statement(s) of Work ("SOW"), such SOW which will be subject to these Terms and Conditions. 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. Either party may propose changes to the scope of an SOW, but neither party will be bound by any proposed change until both parties have agreed on the change in writing. In the event Amplience provides set-up, provisioning, or any other products or services, Customer receives a nonexclusive and non-transferable limited license to use the products or 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 Restrictions

Except as expressly permitted in these Terms and Conditions, Customer may not itself or through any third party: (i) redistribute, sell, lease, license, share log-in information (identifier and password) or otherwise make available the Amplience Software Service, any component thereof, or any Amplience products or deliverables, to any third party; (ii) decompile, disassemble, or reverse engineer the Amplience Software Service or any Amplience products or deliverables, in whole or in part, except to the extent expressly authorized by applicable law where such authorization is not subject to contractual waiver; (iii) use, copy, reproduce, write or develop any derivative, works, derivative software or any other software program based upon all or any part of the Amplience Software Service, or any Amplience products or deliverables, or Amplience Confidential Information (defined below); (iv) modify, bypass, or interfere with any operational element the Amplience Software Service or any component thereof; (v) use the Amplience Software Service for any purpose other than for Customer's own content creation and management requirements as covered by an accepted Order Form; (vi) grant a security interest in or otherwise encumber any component of the Amplience Software Service; (vii) upload or use on the Amplience Software Service (a) content, information, or data with respect to which 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 Customer has not obtained authorization 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); or (viii) use the Amplience Service in a manner that damages, disables, overburdens, or impairs the Amplience Software Service or Host Data Center or Content Distribution Network (defined below) including by introducing a virus, worm, or other harmful software code or similar files into the Service.

4 Fees

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 fifteen (15) days from the invoice date. Amplience will charge interest at the rate that is the lesser of 1.5% per month 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. Customer will also be responsible for all costs associated with collecting the outstanding amounts, including reasonable attorney's fees. In addition, in the event of late payment, Amplience may block Customer's use of the Amplience Software Service (with all fees due hereunder continuing to accrue during the period when use is blocked); require reasonable assurances to secure Customer's payment obligations; or, with written notice to Customer, terminate any subscription term, in addition to any other remedies available to Amplience hereunder and by law. Fees and charges are quoted and payable in Great British Pounds (GBP) or such other currency as indicated in the Order Form, in immediately available funds. 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"). Customer is responsible for paying all Taxes associated with Customer's receipt and use of the Amplience Software Service and any other products and services ordered by Customer and the payments made hereunder. If a jurisdiction in which Customer conducts business requires Customer to deduct or withhold separate taxes from any amount due to Amplience, Customer must notify Amplience in writing. Amplience will then increase the gross amount of the Amplience invoices so that, after Customer's deduction or 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 Warranty and Limitation of Liability

5.1 Amplience warrants that the Amplience Software Service will perform materially in accordance with the Amplience Software Service description set forth in the standard documentation made available to Customer. For any breach of such warranty, Customer's exclusive

remedies are: correction and restoration of access to the Service within a reasonable time, at no additional charge, to the extent reasonably necessary to meet the Amplience Software Service description; and if Amplience is unable to fulfil its obligations on a commercially reasonable basis through correction of the Service, Customer may recover any fees paid in advance for use of the Service that was not made because of the breach of warranty. The Amplience Software Service works with Customer's internal systems and input and Amplience makes no warranty about these systems and/or content. The Amplience Software Service also relies on third party internet, distribution, and computing infrastructures and, for certain services, third party social media sites, and Amplience makes no warranty concerning their performance and shall have no liability connected to such infrastructures or sites or use thereof. Third party software components of the Amplience Software Service are included as part of the Service as-is and the terms and conditions associated with such components are provided with the components or otherwise made available on or through the Amplience web portal or website. Amplience provides no warranty and shall have no liability in connection with any third-party software other than the limited obligation to repair or replace such third party software components or provide a refund to meet the Amplience Software Service performance warranty set forth above. The warranty set forth above is made to and for the benefit of Customer only. EXCEPT AS SET FORTH ABOVE, AMPLIENCE MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO ANY SERVICES, SOFTWARE, OR MATERIALS FURNISHED, MADE AVAILABLE, OR USED BY AMPLIENCE.

5.2 Amplience is providing tools for the creation and management of content only. Customer acknowledges that it retains full discretion and responsibility for the results of the use of the tools, including with respect to compliance with applicable laws and the rights of content owners and that Amplience will have no liability in connection therewith.

5.3 IN NO EVENT WILL AMPLIENCE 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, 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 AMPLIENCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AMPLIENCE'S MAXIMUM LIABILITY IN CONNECTION WITH OR ARISING OUT OF ANY ORDER FORM, THESE TERMS AND CONDITIONS AND/OR THE FURNISHING, PERFORMANCE OR USE OF ANY PRODUCTS, MATERIALS, OR SERVICES, FOR ANY AND ALL COSTS, LIABILITY, AND DAMAGES, WILL NOT, IN ANY EVENT, EXCEED IN THE AGGREGATE THE SUBSCRIPTION FEES PAID BY CUSTOMER TO AMPLIENCE DURING THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF ONE OR MORE REMEDIES, EXCLUSIVE OR OTHERWISE, FAILS OF ITS ESSENTIAL PURPOSE.

6 Confidentiality

Each party agrees that at all times during the applicable subscription term(s), and thereafter, each party will hold in confidence, and will not, other than for purposes of Customer's authorized use of the Amplience Software Service, use or disclose to any third party any Confidential Information of the other party. The term "Confidential Information" shall mean all non-public information that each party designates as being confidential, which the nature of the information or circumstances of disclosure makes reasonably clear should be treated as confidential, and in the case of Amplience, the Amplience Software Service, including the software and documentation. "Confidential Information" 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. This Section does not impose obligations with respect to 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. The obligations set forth in this Section 6 shall continue until such time that the Confidential Information comes under one of the exceptions contained in (a)-(d), notwithstanding the expiration or termination of Customer's Order Form(s) and these Terms and Conditions, for any reason. In the event of actual or threatened breach of this Section 6, 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 money 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 Amplience Software Services 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.

7 Term and Termination

7.1 Customer's subscription and license to use the Amplience Software Service 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 periods set forth in the Order Form or for additional twelve (12) month periods if no period is 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 thirty (30) days before commencement of the next term. The subscription fees for each Renewal Term (i) may be increased by written notice provided not less than forty (40) days prior to the start of each Renewal Term; and (ii) in the absence of such written notice or other agreement between the parties, will automatically increase by seven percent over the fees charged for the preceding twelve month period. 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.

7.2 Amplience may terminate the Agreement, between the Customer and Amplience, immediately with written notice to Customer, without liability, if the Host Data Center or Content Delivery Network terminates or changes its provision of products or services to Amplience or otherwise requires significant changes to the Amplience Software Service and, if, after no less than commercially reasonable efforts, no replacement is available on a commercially reasonable basis within a reasonable time; or Amplience determines that termination is necessary to comply with any law, regulation, or request of a governmental entity. In the event Amplience terminates the Agreement in accordance with this Section 7.2, Amplience will have no liability in connection with such termination, except that Amplience will refund any fees pre-paid for use of the Amplience Software Services after the effective date of termination.

7.3 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, 5.3, 6, 7.3, 8, 9, and 10 will survive expiration or termination of Customer's subscription for any reason.

8 Host Data Center, CDN, and Use of the Platform

8.1 The Amplience Software Service relies upon the availability and service of data centers where the Amplience Software Service is hosted ("Host Data Center") and Content Delivery Networks (CDN). Amplience uses leading Host Data Centers and CDNs. The current Host Data Center has its own Acceptable Use Policy (set forth at <http://aws.amazon.com/aup/>). Use of the Amplience Software Service must comply with the Acceptable Use Policy, such policy which is incorporated herein by reference. The Host Data Center may modify the Acceptable Use Policy with prior notice (which may be website notice). If Customer violates the Acceptable Use Policy or authorizes or helps others to do so or Customer's use of the Amplience Software Service otherwise causes loss, damage, or liability to the Host Data Center or CDN, Customer will hold Amplience harmless from any damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to such violation or use and Amplience may suspend, terminate, or otherwise restrict access to and use of the Amplience Software Service. Amplience or the Host Data Center may, with respect to Customer content and use of the Amplience Software Services, monitor content and/or use when required in order to respond to an alleged violation of the Host Data Center's Acceptable Use Policy or pursuant to any legal process or statutory requirement. Amplience shall have no responsibility or liability for service level, security, or other failures of the Host Data Center or CDN. Amplience may change its Host Data Center and/or CDN in which case the foregoing shall apply to the replacement service.

8.2 Amplience may collect information about use of the Amplience Software Service, including use and performance data. Amplience shall own such information and this information may be used to derive statistical and performance information related to the provision, operation, and use of the Amplience Software Service for use by Amplience to support and improve the Service, develop additional products and services, and otherwise for Amplience's business purposes. Amplience may make such information publicly available in an aggregated and anonymous manner that

does not include information that would enable the identification of Customer.

9 User Generated Content

When ordered under an accepted Customer Order Form, the Ampliance Software Service can be used to upload User Generated Content for use by Customer, from a Customer site or the third-party site(s) identified in the Order Form. The term "User Generated Content," as used here, means content generated by consumers and other users of Customer's product(s) for which Customer has all rights necessary to upload and use the content through and in conjunction with use of the Ampliance Software Service. User Generated Content may only be uploaded through the Ampliance Software Service in compliance with the terms and conditions set by (i) the owners of the User Generated Content; (ii) the third-party site(s), including those terms relating to use of site APIs; and (iii) applicable laws, regulations, and rules. Use of the Ampliance Software Service to upload User Generated Content requires the use of hashtags and Customer is responsible for implementing a hashtag campaign that meets the foregoing compliance requirements. Customer is solely responsible for all User Generated Content that is uploaded, stored, shared, posted, published, displayed, or transmitted through or in conjunction with use of the Ampliance Software Service, as well as for the use of all such User Generated Content and consequences thereof, including, without limitation, to the owners of the User Generated Content. Customer must comply with the terms of use for the third-party site APIs, such terms of use which are incorporated herein by reference, which include, but are not limited to a requirement to cease using User Generated Content within 24 hours of the owner's request and to comply with any other terms and conditions that the owner has attached to the User Generated Content. Customer agrees not to use the Ampliance Software Service to upload or use any User Generated Content that (i) infringes any intellectual property or other proprietary rights of any party; (ii) Customer does not have a right to upload under any law, regulation, or rule; (iii) breaches a privacy right or poses or creates a privacy or security risk to any person; (iv) is not properly age-screened or age-gated; (v) is unlawful, harmful, tortious, pornographic, libelous, or otherwise improper; or (vi) that is in violation of the third party site(s) terms and conditions, including API terms of use. Customer agrees to indemnify and hold Ampliance and its affiliates, officers, employees, directors, and agents harmless from all liability, losses, damages, costs, and expenses of any kind, including reasonable attorneys' and consultants' fees, arising out of or connected to Customer's uploading of User Generated Content from third party site(s) and use of User Generated Content, including use of the Ampliance Software Service in connection such uploading and use. Without derogating from the foregoing, Ampliance may suspend or terminate use of the Ampliance Software Service to upload User Generated Content from third party site(s) if the third party site(s) prohibit, block, or limit access to or use of the site(s) in a way that makes continued use impossible or impractical; continuing the use could create substantial legal claims, including, without limitation, of copyright infringement, or Ampliance otherwise determines that it is necessary in order to comply with the terms and conditions of the third party site(s) or Ampliance's legal obligations, in which case Ampliance will refund any fees paid in advance for the upload service, on a pro rata basis, for the period of suspension or period remaining after termination and such refund will be the exclusive remedy.

10 Miscellaneous

10.1 These Terms and Conditions, together with any accepted Customer Order Forms, 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. These Terms and Conditions, together with any accepted Customer Order Forms, do not confer a benefit on any third party, are not intended to be enforceable by any third party, and there are no third-party beneficiaries thereunder. All rights not expressly granted to Customer are retained by Ampliance. No terms, provisions or conditions of any purchase order, acknowledgment or other business form will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, these Terms and Conditions, regardless of any failure of the other party to object to such terms, provisions or conditions. These Terms and Conditions and any accepted Customer Order Form may not be amended, except by a writing signed by both parties. Any waiver of the provisions of these Terms and Conditions or of a party's rights or remedies hereunder must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of these Terms and Conditions or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights and will not in any way affect the validity of the whole or any Submission of an Order Form by Customer to Ampliance indicates Customer's conclusive and irrevocable acceptance of and agreement to these Terms and Conditions.

part of these Terms and Conditions or prejudice such party's right to take subsequent action. If any provision of these Terms and Conditions is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision will be deemed stricken and the remainder of these Terms and Conditions will continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the parties; the parties will replace the severed provision with the provision that will come closest to reflecting the intention of the parties underlying the severed provision but that will be valid, legal, and enforceable. No exercise or enforcement by either party of any right or remedy, including termination, will preclude the enforcement by such party of any other right or remedy hereunder or that such party is entitled by law to enforce. 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 Customer, in whole or in part. Any assignment or transfer made contrary to the foregoing shall be null and void. Ampliance may issue a press release stating that Customer is using the Ampliance Software service and refer to Customer on the Ampliance web site.

10.2 Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in accessing and using the Ampliance Software Service and any other products and services provided by Ampliance. Without limiting the foregoing, (i) Customer represents that it is not named on any US government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit any party to access or use the Ampliance Software Service, products, or services in violation of any US export embargo, prohibition or restriction. Customer will provide Ampliance with copies of any export registrations and filings with the United States government.

10.3 These Terms and Conditions and any accepted Customer Order Forms will be governed by and construed in accordance with the laws of England and Wales without regard to principles of conflict of laws and without regard to the United Nations Convention on the International Sale of Goods. The parties agree that the courts of and located in England shall have exclusive jurisdiction over any action arising out of or connected to any provisions contained herein and any Order Form, and waive objection to venue in these courts, and any such action shall be brought and prosecuted only in these courts. 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.

10.4 Special Terms for the People's Republic of China: In connection with the delivery of content to the PRC, Ampliance's responsibility is strictly limited to making commercially reasonable efforts to facilitate such delivery. Customer acknowledges and agrees that: (i) it receives no guarantee or warranty that content delivery services will be delivered from within the PRC; (ii) content delivery services may be delivered from any geography that the associated CDN determines to be the appropriate geography for performance and availability purposes; (iii) Customer is responsible for and shall comply with all applicable laws in the PRC, including but not limited to any license and registration requirements, including for .cn Sites, and agrees to supply documentation and registration information (including origin IP addresses) requested by the associated CDN; (iv) Ampliance is not responsible or liable for any acts of a government authority or network that may prevent delivery of content, including delivery from a specific geography, or such authority filtering, blocking, altering, or damaging content or data; (v) Customer will be solely responsible for abiding by any laws, policies, and regulations that apply to Customer's content implemented by a government authority (including, without limitation, in the event adherence delays delivery of content); (vi) Customer authorizes disclosure of the originator of Customer content to government authorities upon inquiry by such authorities; (vii) Ampliance's CDN may deliver all or part of the CDN services through the use of third party suppliers who may collect their own log files; (viii) the amount of traffic available for delivery of content to the PRC may be limited or restricted and end users in the PRC may experience issues with latency, timeouts, and download speeds; (ix) certain products and features that Ampliance's CDN makes generally available, are not available in connection with delivery in the PRC; and (x) Customer may be required, from time to time, to take additional steps to have content delivered in the PRC, including, without limitation, as required by Ampliance's CDN (such CDN which may be changed by Ampliance from time-to-time in which case the foregoing will apply to the replacement CDN). Ampliance will have no responsibility or liability arising out of or connected to the foregoing issues.