

Amperity Data Diagnostic Terms of Service

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These Amperity Data Diagnostic Terms of Service (“**Diagnostic Terms**”) are entered into as an agreement between you and Amperity, Inc. (“**Amperity**”) and govern your use of and access to, and Amperity’s provision of, any services, products or functionality that may be made available to you by Amperity at no charge or on a fully discounted, free basis (“**Diagnostic Services**”). These Diagnostic Terms consist of: (1) the terms and conditions set forth below and any documents referenced in these terms and conditions, (2) any terms and conditions set forth in an ordering document, online order or other sign-up or registration process that Amperity enables specifying the Diagnostic Services to be provided by Amperity and any documents referenced therein (including, but not limited to, the Service Description Guide) (“**Order**”).

If you are accepting these Diagnostic Terms using an email address from an organization or entity: (a) you will be deemed to represent that party, (b) your acceptance of these Diagnostic Terms will bind such organization or entity to these Diagnostic Terms, (c) you represent and warrant that you have authority and have obtained all necessary rights, consents and authorizations to agree to these Diagnostic Terms on behalf of such organization or entity, (d) the rights granted to you are expressly conditioned upon such representation and warranty being true, and (d) the word “**you**” or “**Customer**” in these Diagnostic Terms will refer to such organization or entity. Otherwise, “you” refers to the individual who is accessing or using the Diagnostic Service in their individual capacity.

BY INDICATING YOUR ACCEPTANCE TO THESE DIAGNOSTIC TERMS (SUCH AS BY CHECKING A BOX WHICH INDICATES YOUR ACCEPTANCE TO THESE DIAGNOSTIC TERMS, WHICH MAY BE HYPERLINKED) OR ACCESSING OR USING ANY DIAGNOSTIC SERVICE, YOU AGREE TO BE BOUND BY THESE DIAGNOSTIC TERMS. IF YOU DO NOT AGREE TO THESE DIAGNOSTIC TERMS, YOU SHOULD NOT ACCESS OR USE ANY DIAGNOSTIC SERVICE.

1. DEFINITIONS

“**Affiliate**” means any corporation, partnership, or other legal entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party, for so long as such entity has control, is controlled or under common control with a Party. For purposes of the definition of Affiliate, “control” means the direct possession of a majority of the outstanding voting securities of an entity.

“**Aggregate Data**” means aggregated and anonymized data derived from Customer Data or data, or information derived from Customer’s or its Affiliates’ or their Users’ use of the Diagnostic Services, in all cases that does not personally identify Customer or its Affiliates or their customers or Users.

“**Agreement**” means any Order terms, these Diagnostic Terms, the then current version of the Amperity Service Description Guide, and documents or Documentation referenced in the foregoing.

“**Amperity’s Acceptable Use Policy**” means the terms currently located at <https://amperity.com/amperity-acceptable-use-policy> and may be updated by Amperity from time to time, and is incorporated into these Diagnostic Terms by reference.

“**Amperity Data**” means any and all tangible materials, data, text, images, materials, photos, audio, videos, reports, analyses, outputs, deliverables, information, or other forms of communication made available by Amperity to Customer in connection with the Diagnostic Services, excluding Customer Input Data.

“**Amperity Data Processing Addendum to the Terms**” or “**DPA**” means the terms currently located at <https://amperity.com/dpa> and may be updated by Amperity from time to time, and is incorporated into these Diagnostic Terms by reference

“**Amperity Property**” means (a) the Diagnostic Services and all technology, software, products, configurations, processes, algorithms, user interfaces, know-how, techniques, designs and intellectual property used by or for Amperity in providing the Diagnostic Services; (b) Amperity Data; (c) the Amperity name, all Amperity logos, and the product names associated with the Diagnostic Services; (d) any modification, configuration or derivative of any of the foregoing; and (e) any intellectual property rights embodied in any of the foregoing.

“**Customer Data**” means: (a) Customer Input Data, and (b) data derived from the Customer Input Data and processed or reformatted by and output from the Diagnostic Services, excluding any component of the Diagnostic Services, Amperity Data or Amperity’s Confidential Information.

“**Customer Input Data**” means all data made available by Customer or its Affiliates or their Users (or by any third party on their behalf) to Amperity or otherwise provided by Customer or its Affiliates or their Users (or by any third party on their behalf) pursuant to the Agreement, including but not limited to such data entered into the Diagnostic Services.

“**Documentation**” means the then-current applicable technical documentation such as user manuals that is supplied by Amperity to assist its customers in the use of the Diagnostic Services and is generally made available to Customer through the Diagnostic Services as updated from time to time accordance with these Diagnostic Terms, excluding any third-party content and content published in user forums posted on such website and content related to any future functionality or features.

“Effective Date” means the date on which the earlier of the following occurs: (a) the date you accept these Diagnostic Terms, or (b) the date you access or use any Diagnostic Service.

“Representatives” means directors, officers, employees, outside consultants, advisors or in the case of Amperity to its independent contractors or subcontractors.

“Third-Party Applications” means online, web-based applications or services and offline software products or other Customer Data sources and Customer-directed Customer Data destinations, if applicable, that are provided by third parties and interoperate with the Diagnostic Services.

“Users” means any individual that is an employee, agent, contractor, or representative of Customer or Customer’s Affiliates to whom Customer or its Affiliate grants access to or authorization to use the Diagnostic Services

2. DIAGNOSTIC SERVICES

2.1. **Diagnostic Services.** Subject to the terms of these Diagnostic Terms, Amperity shall make available to Customer the Diagnostic Services ordered by Customer in the Order during the Diagnostic Period. The **“Diagnostic Period”** means the period commencing on the date Amperity gives Customer access to the Diagnostic Services and ending upon the end of the Diagnostic period specified in the Order or if no Diagnostic period is specified in the Order, then 30 days from your acceptance of an Order, unless either Party terminates the Diagnostic Period or if the Diagnostic Period is otherwise terminated pursuant to these Diagnostic Terms (the **“Diagnostic Period”**).

2.2. **Switching to Paid Version.** If you decide to obtain from Amperity a paid version of the Diagnostic Services, then such paid version shall be governed by a separate agreement between you and Amperity. You acknowledge and agree that the paid version of the Diagnostic Services may not be identical to the Diagnostic Services.

3. USAGE RIGHTS; OWNERSHIP

3.1. **Grant of Rights.** Subject to the terms of these Diagnostic Terms, Amperity hereby grants to Customer, solely during the Diagnostic Period, a non-exclusive, non-transferable worldwide right to access and use the Diagnostic Services and Amperity Data, for the sole purpose of Customer’s internal evaluation of the Diagnostic Services in determining whether to procure a paid version of the Diagnostic Services (**“Permitted Purpose”**). Customer hereby grants to Amperity during the Diagnostic Period or if Customer signs up for a paid version of the Amperity Services then during the relevant subscription term, a worldwide, non-exclusive, non-transferable royalty-free right to host, access, use, display, transmit, distribute and otherwise use Customer Data to: (a) provide the Diagnostic Services pursuant to the Diagnostic Terms; (b) fulfill Amperity’s obligations under the Diagnostic Terms; (c) exercise and enforce its rights under the Diagnostic Terms, including, without limitation, under Section 8.2; and (d) comply with all applicable laws.

3.2. **Ownership.** As between the Parties, Customer retains ownership of all right, title and interest in and to all Customer Data, and all intellectual property rights therein, subject to the express rights granted to Amperity in the Diagnostic Terms. Customer acknowledges and agrees that as between Amperity and Customer, Amperity or its licensors or suppliers retain ownership of all right, title and interest in and to the Amperity Property. Except as otherwise expressly authorized herein or by Amperity in writing, the non-exclusive use rights set forth in the Diagnostic Terms are the entirety of Customer’s rights in connection with the Amperity Property, and such rights shall terminate upon the termination or expiration of the Diagnostic Terms. Customer shall not remove any Amperity trademark, logo, or other mark or identifier from the Diagnostic Services or Amperity Data made available to Customer, and no right or license is granted to Customer to use the trademarks of Amperity or any third party.

4. CUSTOMER OBLIGATIONS AND RESTRICTIONS

4.1. **Customer Data and Network Performance.** Customer is solely responsible for the accuracy and content of all Customer Data and entering Customer Data into the Diagnostic Services. Customer represents, warrants, and shall ensure that: (a) Customer has obtained, and will continue to have, all necessary rights, consents, and permissions in Customer Data, and has made and will continue to make all necessary disclosures and notices, in accordance with applicable laws (including, without limitation, any exports, restrictions, national security controls and regulations), to grant the rights to Amperity with respect to such Customer Data under the Diagnostic Terms and to enable Amperity to use and process such Customer Data as contemplated under the Diagnostic Terms; and (b) that Customer Data, and Amperity’s use or other processing of such Customer Data in accordance with the terms of the Diagnostic Terms, will not and does not violate the rights of any third party or any applicable laws. Without Amperity’s express prior written consent in each instance, Customer shall not (and shall not allow any User or third party to) send or transmit to Amperity any Customer Data that include, without limitation, raw credit, bank card information or other regulated cardholder data pertaining to any individuals or any regulated patient, medical or other protected health information (including as defined under Health Insurance Portability and Accountability Act, as amended and supplemented (**“Restricted Data”**)). Amperity will have no liability under the Diagnostic Terms relating to Restricted Data that is processed in violation of the foregoing sentence. Customer is responsible for procuring and maintaining the network connections that connect Customer to the Diagnostic Services.

4.2. **DPA.** The parties agree to comply with the DPA, which is incorporated by reference and forms part of these Diagnostic Terms.

4.3. **Authorized Users; Use of Diagnostic Services.** Customer is and shall remain solely responsible and liable for the use and confidentiality of its and its Users’ credentials that are used to access the Diagnostic Services. Customer shall ensure that: (a) only authorized Users are permitted to use the Diagnostic Services; (b) its and its Users’ use of the Diagnostic Services comply with all applicable laws, the Diagnostic Terms, and the Documentation; (c) it and its Users comply with Amperity’s Acceptable Use Policy; and (c) it otherwise takes all commercially reasonable steps to protect the Diagnostic Services and the Documentation from unauthorized use and/or access. Amperity shall not be responsible or liable for any deletion, correction, damage, destruction, or loss of Customer Data that does not arise from a breach of its security obligations under these Diagnostic Terms, including but not limited to any disclosure of Customer Data by Customer or its Users.

4.4. **Third-Party Applications.** The Diagnostic Services may interact with, and access Customer’s and Third-Party Applications and related information used by Customer in connection with the Diagnostic Services, including but not limited to access to Customer Data and related sources.

Customer shall make any such Third-Party Applications, data sources, Customer Data, and information available to Amperity and the Diagnostic Services as necessary to use the Diagnostic Services as contemplated in the Diagnostic Terms, including without limitation obtaining all required licenses, permissions, access, and credentials. Customer shall be solely responsible for ensuring compliance with third-party terms of use, privacy policies, and contractual obligations in making such Third-Party Applications, Customer Data and related sources, and other information available to Amperity. If Customer transfers or causes the transfer of Customer Data or Amperity Data from the Diagnostic Services to a Third-Party Application or other location, such transfer constitutes a distribution by Customer and not by Amperity.

5. CONFIDENTIALITY

5.1. **Confidential Information.** During the term of the Diagnostic Terms, each Party (a **“Disclosing Party”**) may disclose its confidential and proprietary information to the other party (a **“Receiving Party”**). **“Confidential Information”** of the Disclosing Party, means information disclosed by the Disclosing Party to the Receiving Party under the Diagnostic Terms that is either: (a) clearly marked or otherwise clearly designated as confidential or proprietary; or (b) should be reasonably understood by the Receiving Party to be the confidential or proprietary information of the Disclosing Party. For the avoidance of doubt, the Amperity Property (excluding the Amperity name, all Amperity logos, and the product names associated with the Diagnostic Services to the extent they are public) is the Confidential Information of Amperity, and Customer Data is the Confidential Information of Customer.

5.2. **Confidential Treatment.** A Receiving Party shall hold in confidence and shall not disclose (or permit its personnel to disclose) any Confidential Information to any person or entity except to its Representatives who have a need to know such Confidential Information in the course of the performance of their duties for the Receiving Party and who are bound by a duty of confidentiality no less protective of the Disclosing Party’s Confidential Information than the terms of this Section 5. The Receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another party without the prior written consent of the Disclosing Party or unless expressly permitted under the Diagnostic Terms. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party’s Confidential Information in the same manner as it protects its own proprietary information of a similar nature and sensitivity, but in no event shall less than reasonable care be used. Customer further agrees that it shall not use or access the Diagnostic Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes, and shall not publicly post any analysis or reviews of the Diagnostic Services without Amperity’s prior written approval.

5.3. **Exceptions.** Notwithstanding anything to the contrary, the obligations of the Receiving Party set forth in this Section shall not apply to any information of the Disclosing Party that: (a) is or becomes a part of the public domain through no wrongful act of the Receiving Party; (b) was in the Receiving Party’s possession free of any obligation of confidentiality at the time of the Disclosing Party’s communication thereof to the Receiving Party; (c) is developed by the Receiving Party completely independent from the Confidential Information of the Disclosing Party; or (d) is required by law or regulation to be disclosed, but only to the extent and for the purpose of such required disclosure after providing the Disclosing Party with advance written notice, if reasonably possible, such that the Disclosing Party (at the Disclosing Party’s expense) is afforded an opportunity to contest the disclosure or seek an appropriate protective order. In addition, the obligations of Amperity set forth in this Section shall not apply to any suggestions for product or service improvement or modification or other feedback in connection with any present or future product or service, or reports about any errors, problems, or defects in provided by Customer (**“Feedback”**) (provided such Feedback does not identify Customer or contain any Customer Data), and, accordingly, neither Amperity nor any of its customers or business partners shall have any obligation or liability to Customer with respect to any use or disclosure of such suggestions.

5.4. **Injunctive Relief.** Notwithstanding any other provision of the Diagnostic Terms, both Parties acknowledge that any disclosure or use of the Disclosing Party’s Confidential Information in a manner inconsistent with the provisions of the Diagnostic Terms may cause the Disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, in addition to any other remedy to which the Disclosing Party may be entitled hereunder, at law or equity, the Disclosing Party shall be entitled to seek an injunction to restrain such use in addition to other appropriate remedies available under applicable law.

5.5. **Prior Agreements.** This Section 5 supersedes all prior agreements, proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating to each Party’s obligations with respect to Confidential Information.

6. NO WARRANTIES; LIMITATION OF LIABILITY.

During the Diagnostic Period, the Diagnostic Services are provided “as-is” without any warranty of any kind, are not subject to any service level agreements agreed upon between the Parties, and Amperity shall have no indemnification obligations or liability of any type with respect to the Diagnostic Services, unless such exclusion of liability is not enforceable under applicable law, in which case Amperity’s liability with respect to such Diagnostic Services shall not exceed USD two million dollars (\$2,000,000.00). Limitations of liability under the Agreement do not apply to Customer’s liability and indemnification obligations to Amperity under the Agreement, with regards to (i) any damages caused to Amperity arising out of Customer’s use of the Diagnostic Services during the Diagnostic Period, and (ii) any breach by Customer of these Diagnostic Terms. Without limiting the foregoing and in addition to any disclaimer of warranty and representations in the Agreement, Amperity and its Affiliates do not represent or warrant to Customer that (a) Customer’s use of the Diagnostic Services during the Diagnostic Period will meet Customer’s requirements, nor that (b) Customer’s use of the Diagnostic Services during the Diagnostic Period will be uninterrupted, timely, secure or free from errors.

7. TERM, TERMINATION AND SUSPENSION

7.1. **Term.** These Diagnostic Terms will commence on the Effective Date and will continue until the earlier of termination of the Diagnostic Terms under Section 7.2 or elsewhere in these Diagnostic Terms or expiration or termination of the Diagnostic Period.

7.2. **Termination.** Customer may terminate the Diagnostic Terms or Diagnostic Period at any time and for any reason upon written notice to Amperity. Amperity may terminate the Diagnostic Terms or Diagnostic Period at any time and for any reason, upon written notice to Customer. The

Diagnostic Terms and Diagnostic Period will immediately terminate upon the commencement of any subscription purchased by Customer of any Amperity products or services.

7.3. Effect of Termination. Termination of these Diagnostic Terms shall automatically terminate the Diagnostic Period. Upon any termination or expiration of the Diagnostic Period, Amperity shall no longer provide the Diagnostic Services to Customer, and Customer shall promptly cease and cause its Users to promptly cease using the Diagnostic Services. Termination of the Diagnostic Period by Amperity shall not prejudice any rights or remedies available to Amperity for any breach of these Diagnostic Terms by Customer. Sections 1, 2.2, 3.2, 4.1, 5, 6, 7 and 8 of these Diagnostic Terms shall survive the termination or expiry of the Diagnostic Period for any reason.

7.4. Deletion of Customer Data Upon Termination. Within thirty (30) days following termination or expiration of the Diagnostic Period, Amperity shall have no further obligation to store or make available Customer Data to Customer and will delete such Customer Data, and upon Customer's written request, Amperity will provide Customer with Amperity's confirmation of Customer Data deletion.

8. GENERAL

8.1. Entire Agreement. The Diagnostic Terms constitute the, complete and exclusive agreement between the parties related to the subject matter of the Diagnostic Terms and supersede, terminate and extinguish all prior and contemporaneous agreements (including but not limited to any confidentiality or non-disclosure agreements), rights granted, discussions, correspondence, negotiations, promises, arrangements, proposals, quotes, marketing materials, due diligence documentation, representations, purchase orders and understandings, whether written or oral, concerning the subject matter of the Diagnostic Terms. Any amendments, additions, or modifications to the terms of the Diagnostic Terms must be set forth in a written document signed by both Parties. Other than as expressly set forth in the Diagnostic Terms, each Party acknowledges that, in entering into the Diagnostic Terms, it has not relied and is not relying on, and each Party shall have no claim or remedies (including but not limited to any claims for misrepresentations) for, any representation, statement, understanding, agreement, commitment, assurance, warranty or collateral contract of any person (whether party to the Diagnostic Terms or not), whether written, oral or otherwise, and whether made by or on behalf of the Parties prior to the date of these Diagnostic Terms. Each party waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, statement, understanding, agreement, commitment, assurance, warranty, or collateral contract. If any provision of the Diagnostic Terms is held prior to be illegal, invalid, or unenforceable, the provision will be enforced to the maximum extent permissible to affect the original intent of the parties, and the remaining provisions of the Diagnostic Terms will remain in full force and effect. To the extent any translation is provided to a Party, it is provided for convenience purposes only, and in the event of any conflict between the English and translated version, where permitted by law, the English version will control and prevail. Nothing in this Section 8.1 operates to limit or exclude any liability for fraud or fraudulent misrepresentation.

8.2. Feedback. In the event Customer provides Amperity with Feedback, Customer hereby grants to Amperity an irrevocable, fully paid-up, non-exclusive, royalty-free, perpetual, and worldwide license to use, reproduce, distribute, create derivative works of, publicly perform, and publicly display such Feedback in any medium or format.

8.3. Assignment. The Diagnostic Terms shall be binding upon and for the benefit of Amperity, Customer, and their respective permitted successors and assigns. Except as expressly stated in the Diagnostic Terms, neither Party may otherwise assign its rights or delegate its duties under the Diagnostic Terms either in whole or in part without the prior written consent of the other Party and any attempted assignment or delegation without such consent will be void. Amperity may use independent contractors, subcontractors, or other third parties in connection with the provision of Diagnostic Services under the Diagnostic Terms.

8.4. Governing Law; Claims Limitation. The Diagnostic Terms and any claims (including but not limited to any non-contractual claims) shall be governed by and construed in accordance with the laws of the State of Washington, USA without regard to its conflict of law provisions. The parties hereby irrevocably consent to the non-exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Seattle, Washington or New York, New York for the purpose of adjudicating any action or proceeding to enforce the term of the Diagnostic Terms. The United Nations Convention on Contracts for the International Sales of Goods and any conflicts of law principles and the Uniform Information Transaction Act (where enacted) will not apply to the Diagnostic Terms. Either Party must initiate a cause of action for any claim(s) relating to the Diagnostic Terms and their subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

8.5. Notices. All notices will be in writing and given when delivered to the address set forth in the Order as to Customer (email is sufficient) and to Amperity at 1201 2nd Avenue, Suite 1000, Seattle WA. Notices from Amperity to Customer may also be in the form of an electronic notice to Customer's authorized representative or administrator designated in the Order.

8.6. No Third-Party Beneficiaries. Nothing contained in the Diagnostic Terms is intended or shall be construed to confer upon any third party any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such third party.