

Amptive STANDARD TERMS AND CONDITIONS

These terms and conditions (the “**Terms and Conditions**”) are between Amptive, Inc., a California corporation (“**Amptive**”), and **Client** who uses one or more of **Amptive’s** services and/or software (“**Client**”). By using any of **Amptive’s** services and/or software or executing any **PFSA**, **Client** understands, confirms, and agrees to the terms of these **Terms and Conditions**, and any updates to the **Terms and Conditions** that **Client** is given any notice of, electronically or otherwise.

1. PROJECT DESCRIPTION

A description of the services **Amptive** will provide to **Client** hereunder is contained in a Project Functional Specification Addendum (“**PFSA**”). **Client** agrees to be bound by the terms of any applicable **PFSA**. These **Terms and Conditions** shall apply to and control all services performed by **Amptive**, whether in connection with a **PFSA** or not, unless agreed otherwise in writing. **Client** acknowledges that defined Timeline and Milestones for project completion in the **PFSA** are estimated and not guaranteed.

2. REVISIONS AND CHANGE ORDERS

Change Orders: Any modification or correction requested by **Client** other than **Task Rejection** is considered a “**Change Order**”. **Amptive** is not obligated to perform a **Change Order** that it determines at its sole discretion to not be feasible. If **Amptive** accepts a **Change Order**, then **Amptive** will inform the **Client** of the increased charges and delays that this **Change Order** will cause. **Client** then has the option to proceed with the **Change Order**. If **Client** chooses to proceed, then, **Amptive** will append the new change requests, cost, and timelines to the **PFSA** in a change order document (“**COD**”) as an attachment to the **PFSA**. **Client** shall pay the initial down payment defined in the **COD** and **Amptive** will commence work per the **COD**. Any **Change Order** may delay or postpone all **Milestones** specified in the **PFSA**. **Amptive** is not required to make any changes during **External QA** beyond those required under this section. **Client** may at **Amptive’s** sole discretion be required to accept any update(s) made to **Amptive’s Software** or other services.

3. Amptive SOFTWARE AND LICENSE

Software Defined: “**Software**” is defined to include without limitation any code, whether developed or provided by **Amptive**, in any programming language; any design work, whether developed or provided by **Amptive**, in any format; and all graphics, photos, images, or icons that are created or provided by **Amptive**. The data in a database that is created by **Client** is not part of the **Software**. All graphics, photos, images, icons, HTML code, CSS code, or software codes that are provided by **Client** to be used in the Project are not considered as part of the **Software** and remain the property of the **Client**. All copyrighted content, graphics, photos, images, icons, codes, and systems that are provided by a third party (like a brand manufacturer) to be used on **Client’s** website are subject to the copyright holder’s usage policy and if such policy does not exist or not provided then they will remain the property of providing third party.

License: **Amptive** hereby grants **Client** a revocable, personal, non-transferable and non-exclusive right and license to use the **Software** (the “**License**”). **Client** may not directly, or through a third party do any of the following: copy, modify, use a modified version of, create a derivative work from, resell, duplicate, copy, sell, trade, exploit for commercial or private purposes, reverse engineer, or reverse assemble any portion of the **Software**, use of the **Software**, or access to the **Software**; otherwise attempt to discover any source code; sell, assign, sublicense, grant a security interest in or otherwise transfer any right in **Software**. **Client** will not access **Software** other than through the interface provided by **Amptive** to access **Software**.

Assignment: **Client** may not assign or otherwise transfer any rights or obligations relating to **Software** or license(s) and their benefits under these **Terms and Conditions** to any party without the written consent of **Amptive**, whose consent can be withheld at **Amptive’s** sole discretion. Any consent provided by **Amptive** shall be in writing executed by all parties including the assignee or successor whereby such assignee or successor agrees to be bound to these **Terms and Conditions** and the **PFSA**.

4. BROWSER COMPATIBILITY

Client acknowledges that **Amptive** only supports and tests systems for the last two versions of browsers developed by IE, Firefox, Chrome, and Safari as of the date of the execution of these **Terms and Conditions** (if executed), execution of the **PFSA**, or commencement of work, whichever is earlier, and no other browsers. If compatibility changes on future versions of these browsers, **Client** shall be required to retain **Amptive** and pay **Amptive's** charges to resolve compatibility issues.

5. AUTHORIZATION AND COOPERATION BY CLIENT

Client hereby authorizes **Amptive** to commence work described in the **PFSA**, if any, and agrees to cooperate with **Amptive** by using its best efforts and by making available to **Amptive** all of the reasonably necessary materials, content, concepts, access to FTP or control panels, media assets, and any other resources needed by **Amptive** to commence its services under these **Terms and Conditions**. Failure by **Client** to provide such items in a timely manner shall result in delays in the completion of the various **Milestones** and the deadlines approximated by **Amptive**, which **Amptive** is not liable for.

6. PAYMENT TYPES AND TERMS

(A) Project payments are those set forth in **PFSA's** Project Payments section ("Project Payments"). Except as otherwise set forth herein, if any Project Payments are not received on the above agreed to due dates, then, in addition to and not excluding any other remedies available to **Amptive**, **Amptive** may at its sole discretion: (a) deem **Client** in breach of these **Terms and Conditions**, any other **PFSA**, and/or any other agreement between the parties, (b) stop work and change **Timeline** and **Milestones** dates, (c) charge **Late Fees** (as defined below), (d) institute **Deactivation** (as defined below), (e) charge a **Deactivation Fee** (as defined below), and/or (f) demand payment for entire project, as outlined in section 7 of these **Terms and Conditions**.

(B) **Recurring Service and License Payments** (also known as "Service and License Payments" or "Recurring Payments") are for ongoing services and licenses listed in **PFSA** under the **Recurring Service and License Payments** or similar section, including without limitation: "i-Data - Product Data Integration and Management + on page SEO", "Prepaid Engineering Hours", "Build CMS License Fee", (collectively referred to as "Service and License Payments"). All recurring invoices will be generated by **Amptive** on the 15th of every month for the following month and distributed via **Amptive's** invoice system. Except as otherwise set forth herein, if any **Service and License Payments** are not received on the 1st of the month as defined on **Amptive** invoices or within the 5 day grace period, then, in addition to and not excluding any other remedies available to **Amptive**, **Amptive** may at its sole discretion: (a) deem **Client** in breach of these **Terms and Conditions**, any other **PFSA**, and/or any other agreement between the parties, (b) stop work and change **Timeline** and **Milestones** dates, (c) charge **Late Fees** (as defined below), (d) institute **Deactivation** (as defined below), (e) charge a **Deactivation Fee** (as defined below), and/or (f) demand payment for entire project, as outlined in section 7 of these **Terms and Conditions**.

(C) **Extra Services**, which may include design, engineering, or other one-time services such as data entry or module setups, (collectively, "Extra Services") by **Amptive** will be invoiced and distributed via **Amptive's** invoice system. **Clients** will have NET 30 to pay invoiced services. Except as otherwise set forth herein, if any payments for **Extra Services** are not received by the agreed to due dates, then, in addition to and not excluding any other remedies available to **Amptive**, **Amptive** may at its sole discretion: (a) deem **Client** in breach of these **Terms and Conditions**, any other **PFSA**, and/or any other agreement between the parties, (b) stop work and change **Timeline** and **Milestones** dates, (c) charge **Late Fees** (as defined below), (d) institute **Deactivation** (as defined below), (e) charge a **Deactivation Fee** (as defined below), and/or (f) demand payment for entire project, as outlined in section 7 of these **Terms and Conditions**.

Late Fees: With respect to any invoice for services rendered by **Amptive** to **Client**, including but not limited to any **Project Payments**, **Recurring Payments**, **Service and License Payments**, **Extra Services**, and/or any one-time payments, if **Amptive** does not receive payment from **Client** on or before the agreed upon due date, **Client** shall incur a late fee of \$50.00 ("Late Fee").

Deactivation: In the event 30 days elapse from the time a **Late Fee** is incurred and **Client** has not yet paid both the then due amount, including applicable **Late Fee**, **Amptive** expressly reserves the right to deactivate and halt any and all websites and/or services provided to **Client** with respect to any and all agreements or **PFSA's** between the parties ("Deactivation"). Such deactivation shall result in a \$250.00 charge ("Deactivation Fee").

Per the requirements and deadlines of the **Timeline** and **Milestones** section of the **PFSA**, if **Client** fails to meet or is late to meet any of the requirements or deadlines, **Client** understands and agrees that the work done by **Amptive** may be delayed accordingly. However, regardless of the **Client's** failure to meet or tardiness in meeting the requirements and deadlines of the **Timeline** and **Milestones** set forth in the **PFSA**, the **Recurring Service and License Payments** that shall become effective on the **Launch Date** will still become effective on the **Launch Date**, regardless of any delay.

Any and all payments made by Client to Amptive under these Terms and Conditions are non-refundable. All maintenance and technical support not explicitly provided for herein or in a PFSA are subject to regular Design or Engineering charges as set forth in the PFSA. All fees attributable to declined credit cards, wire transfers, and bounced checks by Client are considered expenses and will be invoiced to Client with no requirement for Client approval. Payments are due as set forth in the PFSA, or upon receipt of any invoice if not specified in a PFSA, unless otherwise agreed in writing. A 1.5% per month finance charge or the maximum charge allowed by law, whichever is less, will be incurred on invoice(s) 30 days or more past due. Amptive may change billing practices, including, but not limited to, the date on which such billing will occur and the types of charges that will be included in such bills at any time. Where Client agrees to a minimum commitment period in a PFSA with Amptive, Client may not cancel such agreement without paying to Amptive Termination Charges (as outlined in section 7 below).

7. TERMINATION

(A) Project Payments: **Client** understands and agrees that Project Payments are not subject to cancellation for any reason. In the event **Client** wishes to cease Project Payments, **Client** will still be liable for any remaining unpaid amounts agreed to in connection with any Project Payments. Payment of such remaining unpaid amounts will still be due at the originally agreed upon dates, but **Client** may make any remaining payments prior to such due dates. Any payments not made on or before the originally agreed upon due dates shall be subject to Late Fees, Deactivation, and Deactivation Fees.

(B) Service and License Payments: **Client** may cancel the Recurring Service and License Payments at any time, for any reason. If **Client's** Service and License Payments are subject to a Term, any cancellation of such Service and License Payments prior to the expiration of the Term will be subject to the lesser of 1) payment of Six (6) months' worth of Service and License Payments, or 2) payment of the remaining amount due under the Term. Such payments shall still be due monthly at the originally agreed upon dates, but **Client** may make any remaining payments prior to such due dates. Any payments not made on or before the originally agreed upon due dates shall be subject to Late Fees, Deactivation, and Deactivation Fees.

(C) Extra Services: **Client** understands and agrees Extra Services are being provided at an hourly or project-by-project rate, and that any Extra Services, once commenced, are non-refundable.

Client expressly authorizes **Amptive** to charge **Client's** credit card or other payment method on file for the termination fees outlined above in this section (fees collectively referred to as, "**Termination Charges**").

Return of Data: If these **Terms and Conditions** are terminated for any reason except **Client's** breach and/or all **Amptive** services are completed, and if all **Termination Charges** and other charges, costs, expenses, and fees have been paid in full to **Amptive**, then any code or material that is not considered by **Amptive** as **Amptive Software**, data, or material and that was provided to **Amptive** by **Client**, may be transferred to the **Client**, upon **Client's** request.

Right of Termination: **Amptive** may terminate, remove, and/or modify **Software**, license(s), project(s), service(s), or provision thereof, for any reason, including but not limited to: (a) breach or violation of the **Terms and Conditions**, related documents or other agreements; (b) requests by law enforcement, other government agencies, or third parties (e.g., brands); (c) nonpayment of fees, (d) disagreement of parties hereto.

Opportunity to Cure: If **Client** believes **Amptive** has breached these **Terms and Conditions**, **Client** must give **Amptive** written notice of the breach and ten (10) business days from receipt of such notice to cure prior to commencing suit, arbitration, action or claim.

8. PAYMENT METHODS AND ASSOCIATED FEES

(A) Project Payments: **Client** understands and agrees that **Client** must have a credit card or ACH bank payment method (individually and collectively, "Auto-Pay Method") on file at any point in time in which **Client** has an active Project Payments services agreement with **Amptive**. In the event a credit card is used, a transaction fee of 3.75% shall be applied to each payment made. In the event **Client's** Auto-Pay Method is declined at the time **Amptive** attempts to charge such Auto-Pay Method at the appropriate due date, **Client** shall be charged an additional fee of \$50.00 ("Declined Payment Fee"). If a **Client's** credit card is declined twice, **Client** shall be obligated to provide an ACH bank payment method.

(B) Service and License Payments: **Client** understands and agrees that **Client** must have a credit card or ACH bank payment method (individually and collectively, "Auto-Pay Method") on file at any point in time in which **Client** has an active Service and License Payments or other recurring services agreement with **Amptive**. In the event a credit card is used, a transaction fee of

3.75% shall be applied to each payment made. In the event **Client's** Auto-Pay Method is declined at the time **Amptive** attempts to charge such Auto-Pay Method at the appropriate due date, **Client** shall be charged an additional fee of \$50.00 ("Declined Payment Fee"). If a **Client's** credit card is declined twice, **Client** shall be obligated to provide an ACH bank payment method.

(C) Extra Services: For any Extra Services or other one-time services provided to **Client** by **Amptive**, **Client** will not be required to have an Auto-Pay Method on file. Such one-time services may include services such as custom engineering, one-time data entry, or one-time module setups. Such one-time services may be payable by credit card, AHS bank payment method, or by check. Any payments made by check shall be deemed late if such check does not arrive at **Amptive** by the applicable due date. Any Extra Services payments deemed late constitute a breach of these **Terms and Conditions** and shall be subject to the penalties outlined in section 6 above.

Client hereby expressly consents to **Amptive** charging any Auto-Pay Method on file for any then due charges, including any transaction fees, pursuant to these **Terms and Conditions**.

9. NOTICE FOR INVOICES

Client shall provide to **Amptive**, upon execution of any agreement for, including but not limited to, any Project Payments, Recurring Payments, Service and License Payments, Extra Services, and/or any one-time services, a current and valid email address. **Client** will be liable for payment of any invoices electronically mailed to the email address originally provided by **Client** to **Amptive**. In the event **Client** wishes to change their designated email address, **Client** may notify **Amptive** in writing of such change. Irrespective of any written notice of change in designated email address, **Client** understands and agrees that they will be liable for any payments, including any applicable penalties associated with late payment (as outlined in sections 6 and 7 of this agreement), of any invoice electronically mailed to the original email address provided by **Client**.

10. TAXES

If at any time, under the laws of the United States, any state or any political subdivision thereof, a tax or excise or other tax (except income tax), however described, is levied or assessed against **Amptive** on account of any sum to be paid under these **Terms and Conditions**, all such tax or excise or other taxes shall be paid by **Client**. **Client** shall pay the amount thereof within thirty (30) days after demand thereof accompanied by delivery to **Client** of a copy of any tax statement.

11. DELAYS

Except as otherwise set forth herein, if **Client** unreasonably delays responding to **Amptive's** requests, and such delay prevents the **Amptive's** work or services hereunder from moving forward, then, in addition to and not excluding any other remedies available to **Amptive**, **Amptive** may at its sole discretion, (a) deem **Client** in breach of these **Terms and Conditions**, any applicable **PFSA**, and/or any other applicable agreement of the parties, (b) cancel, disconnect, and/discontinue any existing projects and/or services, (c) move any **Milestone(s)**, (d) adjust any deadlines or time frames as it deems necessary, regardless of the length of **Client's** delay, (e) may terminate any agreement between the parties, including any **PFSA** or these **Terms and Conditions**.

12. PRODUCT DATA CREATION AND UPDATES

"**Data Management**" **PFSA**, refers to the product data created and managed by the Amptive data team. Amptive will perform up to a maximum of 500 initial product data creations (including product variations) for each brand mentioned in the "i-Data Brands Management" section of **PFSA**. Additionally, Amptive may perform up to 500 product data updates (price adjustment, adding new items, and disabling discontinued items) per year for each of the brands mentioned in the "Data Management" **PFSA**. For each "Brand" defined in the "i-Data Brands Management" section of **PFSA**, **Client** agrees to pay a setup fee plus monthly fees defined in the "i-Data Brands Management" section of the **PFSA**. For payment terms, please refer to Section "Payment Types and Terms".

"**Individual Product Data One-Time Addition**" on the **PFSA** refers to the product data created on a one-time -basis by Amptive data team. Amptive will **not** update this data once the data is created. Future updates will be subject to additional charges. **Client** agrees to pay a setup fee plus a one-time data entry fee defined in the "Individual Product Data One-Time Addition" section of the **PFSA**. For payment terms, please refer to Section "Payment Types and Terms".

If **Client** hires Amptive for the above Data creation and management services, then **Client** confirms, acknowledges and represents:

- **Client Has Necessary Authorizations:** That Client is an authorized retailer of any brand/manufacture that Client is requesting to display product information about, and that Client has proper permission to display and use this content, including product images, product specifications, product descriptions, brand logos and brand names on Client's website.
- **Proof of Permissions:** Before Amptive launches any brand related data on Client's website, Amptive requires explicit permission and instruction from the brand's representative on how to manage the product data via either (a) a written representation from a brand's representative that clearly states the permissions and instructions, or (b) a signed Letter of Consent (Amptive's approved form) by a brand's representative.
- **Liability:** That Client DOES NOT hold Amptive responsible and instead holds itself responsible and agrees to indemnify and defend Amptive for anything on Client's website, any copyright infringement for product data entry, display, and any other use on Client's website and Client acknowledges and confirms that it is Client's sole responsibility to check and review that this data entry complies with each respective copyright holder's requirement and policy at all time and Client will provide proper and authorized data sources to Amptive. If there are any copyright issues that come to Client's attention at any time, then it is Client's responsibility to remove or request removal of the data at fault in a timely manner.
- **Authorization to Contact Brands:** Client authorizes Amptive to contact brands mentioned in the i-Data table independently or on Client's behalf for any reason, including to obtain product images and specifications on Client's behalf and to insert logos, product images, and specifications of brands mentioned in i-Data table on Client's website.
- **Brand Authorization and Policy Changes:** If there is any change regarding any data (including without limitation authorization and data policies of brands), Client will notify Amptive in a timely manner. If it is not feasible for Amptive to make any necessary changes, then data for the brand will be deleted from Client's websites.
- **Right to Delete Without Notice:** Amptive reserves the right to disable or delete all or a portion of product data without notice for any of the following reasons: (a) Client's failure to timely pay, (b) Client is not authorized to use product data, (c) the brand or another claimed owner of the data requests that Amptive remove material from Client's website, and/or (d) another product data issue is found and/or reported to Amptive.
- **Graphics Not Included:** The cost of creating banners of graphics like those found on a brand's website are not included in the cost of product data creation and updates. Design, creation, or adjustment of such banners is subject to additional cost.
- **Warranties, Errors, and Changes:** Amptive does not warrant the accuracy of the information (item specifications, item prices, item description, Meta tags, and collection names) it may gather and/or insert into Client's website. Additionally, Client acknowledges that errors can exist in product data, and that Amptive shall not be held responsible for any such errors or damages resulting to Client or its customers from such errors. Client agrees it is Client's responsibility to report the product data errors and updates in detail to Amptive via Amptive's ticketing system. Product data errors include only product specification errors, product price errors, product description errors and product image errors. Amptive will attempt to apply the reported Product Data updates according to the following terms: (a) If the reported Product Data update clearly separates new items, discontinued items, and price changes from the previous updates, and it contains detailed product specifications, then this
- **Product Data update may take 15 – 45 business days;** and (b) If the reported Product Data update does not separate new items, discontinued items, and price changes from the previous updates, but still contains detailed product specifications, then this Product Data update may take 45 – 60 business days.
- **Product Pricing:** Amptive may or may not provide product prices. If Amptive provides item prices, then Amptive does not guarantee the accuracy of product prices. Amptive reserves the right to remove product prices at any given time if errors found in product prices cannot be fixed at Amptive's sole discretion.

13. SYSTEM BACKUPS AND RECOVERY (FOR SELF-HOSTING CLIENTS ONLY)

Client acknowledges and agrees that the CMS or R-CMS software and other **Software** and services provided by **Amptive** will only be installed on third party servers that are provided by **Amptive**. Access to these servers by **Client** is prohibited, except through the interface that is provided by **Amptive**.

Software will only be installed on **Client's** web server if **Amptive**, at its sole discretion, allows it. Where it is allowed, **Client** is responsible for all costs associated with hardware, data, and other recovery in case of failure. **Client** will create a hardware and software backup system on its own web server to regularly back up the content and the database.

Client shall perform beta testing to ensure that **Software** and/or services provided by **Amptive** are compatible with **Client's** computer and/or electronic systems before launching **Amptive Software** and/or services on its systems. **Amptive** will, at its own discretion, provide reasonable assistance at the engineering fee rate to **Client** to enable **Client** to determine whether the **Software** and/or services are compatible with and will function on **Client's** computer and/or electronic systems and hardware and software backup systems.

In the event that a crash or error occurs on **Client's** server due to the **Software** and/or Service failure, **Client** shall notify **Amptive** which shall reasonably assist **Client** in restoring the server at the engineering fee rate. **Client** shall provide **Amptive** with access to **Client's** server or restricted areas of the system, as necessary for **Amptive** to diagnose, repair, and/or restore such systems as needed.

14. INDEMNITY

(A) **Client** agrees to indemnify, defend and hold **Amptive** and its subsidiaries, affiliates, directors, officers, agents, employees, partners, shareholders, predecessors, successors, assignees, licensees and licensors harmless from and against any and all losses, damage, liability, claim, demand, suit, cause of action, debt and expense, including reasonable attorneys' fees, due to, in connection with, or arising out of services or softwares provided by **Amptive** to **Client** under these **Terms and Conditions** or otherwise, **Client's** use of or connection with the services provided by **Amptive**, **Client's** violation of any and all terms of these **Terms and Conditions**, or **Client's** violation of any rights of any third party.

(B) ADA Indemnification. **Client** hereby agrees to indemnify and hold **Amptive** and its respective successors and assigns and its respective members, officers, directors, employees, agents, representatives, contractors, subcontractors and attorneys harmless against any and all claims, suits, actions, proceedings, damages, expenses, demands, losses, costs, fines or liabilities of whatever kind or nature (including, without limitation, arising from personal injury, death or property damage) in any way related to or arising out of the violation or non-compliance by Leasehold Owner with, or Leasehold Owner's failure to use reasonable efforts to cause any person or entity operating, leasing, subleasing, possessing, using or controlling all or any portion of the Premises to comply with, any applicable federal, state or local law, rule, regulation or order related to the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.).

15. BUGS AND ISSUES IN THE SYSTEM

Client is required to report any bugs, issues, and problems to **Amptive** via **Amptive's** designated ticketing system within three (3) calendar days of **Client** detecting such issues. **Amptive**, at its sole discretion, may decide whether the reported issue is within the scope of the project, whether there is a charge to fix it, and whether the **Client** must submit a written request for **Change Order**.

16. PROPRIETARY RIGHTS; COPYRIGHTS; CONFIDENTIALITY

Client acknowledges and agrees that all **Software**, source codes, brochures, creations, pricing information, technical information, supply sources, customer lists, and other documents and items, developed and/or provided by **Amptive** ("**Confidential Material**") contain proprietary and confidential information are trade secrets, are legally and entirely owned, controlled, and/or licensed by **Amptive**, irrespective of whether **Amptive** has or has not filed for copyright or patent protection for such items, and are protected by these **Terms and Conditions** and applicable intellectual property and other laws. **Client** agrees that **Client** will not, at any time (to the greatest extent permitted by law), copy, remove, use, view, or disclose any **Confidential Material** or the terms of these **Terms and Conditions** to any third party, except as expressly authorized by **Amptive**.

17. NON-SOLICITATION

Client acknowledges that **Amptive** has invested significant time and money in recruiting and training its employees and that **Amptive** would incur additional time and money in recruiting, hiring and training a replacement in the event that **Client** solicits and hires a **Amptive** employee. Therefore, **Client** and **Amptive** agree that should **Client**, at any time before the date that is one year after all **Amptive** services for **Client** have been completed, **Amptive** products delivered, and other **Amptive** contractual obligations to **Client** performed, directly solicit for employment any employee of **Amptive** (and where the employee accepts employment with **Client**) or otherwise disrupt, damage, impair, or interfere with **Amptive's** business by raiding **Amptive's** employees, the parties agree that **Client** shall pay as liquidated damages to **Amptive** an amount equal to one (1) year of the employee's compensation with **Amptive**. The parties agree that **Amptive's** damages would be difficult to calculate but the amount identified herein as liquidated damages is a reasonable estimation of such damages and does not constitute a penalty.

18. LIMITED WARRANTY

Amptive provides **Client** the following limited warranties:

- a. For the portion of **Software** which incorporates a third-party code is used, **Amptive** has the right to license the use of such code to **Client** and that such **Software** does not infringe any third party rights; and
- b. That the **Software** will perform as described in the **PFSA**.

This constitutes the entire warranty. **Amptive** does not make any other warranty unless written and signed by both parties.

19. DISCLAIMERS

a. Disclaimers Of Warranties

CLIENT EXPRESSLY UNDERSTANDS AND AGREES THAT:

I. EXCEPT AS OTHERWISE SET FORTH HEREIN, **Amptive** AND ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, OWNERS, AND LICENSORS MAKE NO WARRANTY THAT THE **SOFTWARE** WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE. **Amptive** CANNOT GUARANTY OR WARRANTY THE RETURN OF ANY DATA IN THE EVENT OF A SYSTEM FAILURE, AND THEREFORE **CLIENT** MUST EXERCISE CAUTION IN PROVIDING DATA TO **Amptive**.

II. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM **Amptive** OR THROUGH OR FROM THE **SOFTWARE** SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN **THESE** TERMS AND CONDITIONS.

b. Disclaimer Relating Product Data Integration And Management

Amptive DOES NOT WARRANT OR REPRESENT THAT THE DATA IT INTEGRATES OR USES UNDER THESE **TERMS AND CONDITIONS** WILL CONTINUE TO BE AVAILABLE IN THE **SOFTWARE**, OR WILL CONTINUE TO BE DEVELOPED, PRODUCED, LICENSED, OR DISTRIBUTED WITH OR AS PART OF THE **SOFTWARE** OR AT ALL, OR THAT IT WILL NOT BE MODIFIED, REPLACED, ADDED TO, REDUCED, OR DISCONTINUED. THESE **TERMS AND CONDITIONS** WILL REMAIN IN FULL FORCE AND EFFECT REGARDLESS OF THE STATUS, CONTENTS OR AVAILABILITY OF THE PRODUCT DATA. IN THE EVENT **Amptive** IS UNABLE, AS A RESULT OF ITS LICENSE OR OTHERWISE TO UTILIZE THE PRODUCT DATA BEING TERMINATED FOR ANY REASON, **CLIENT** SHALL, UPON RECEIPT OF WRITTEN NOTICE FROM **Amptive**, IMMEDIATELY DESTROY THE PRODUCT DATA AND ANY OTHER DATA **CLIENT** PREVIOUSLY OBTAINED FROM **Amptive** AND SHALL PROVIDE PROOF OF SUCH DESTRUCTION TO **Amptive**. **Amptive** ALSO DOES NOT WARRANT THE ACCURACY OF THE PRODUCT DATA IT OBTAINS FROM VARIOUS MANUFACTURERS NOR DOES **Amptive** WARRANT THE ACCURACY OF THE DATA IT MANIPULATES FROM THE DATA PROVIDED BY THE MANUFACTURERS OR THE DATA **CLIENT** IS REQUESTING **Amptive** TO MANAGE. **CLIENT** ACKNOWLEDGES THAT ERRORS CAN EXIST IN SUCH PRODUCT DATA, INCLUDING THOSE CONTAINING THE MANIPULATED DATA, AND THAT **Amptive** SHALL NOT BE RESPONSIBLE FOR ANY SUCH ERRORS OR DAMAGES RESULTING TO **CLIENT** OR ITS CUSTOMERS FROM SUCH ERRORS.

c. Hosting, Tools, And Utilities

Amptive, AT ITS SOLE DISCRETION, MAY USE THIRD PARTIES FOR HOSTING, TOOLS, AND UTILITIES, INCLUDING HOSTING A **CLIENT'S** WEBSITE. **Amptive** DOES NOT MAKE ANY WARRANTY OR ASSURANCES WITH REGARD TO THE ACCURACY, WEBSITE UP-TIME, FUNCTION, OR AVAILABILITY OF SERVICE, RESULTS, OR OUTPUT THAT DERIVES FROM THE USE OF ANY THIRD PARTY HOSTING, TOOLS, AND UTILITIES. **Amptive** IS NOT RESPONSIBLE AND CANNOT IN ANY WAY BE HELD LIABLE FOR ANY DOWN TIME, ERRORS, DAMAGES, CLAIMS, LAWSUITS, ACTIONS, ARBITRATIONS, DISPUTES, OR FAILURES OF OR CAUSED BY ANY THIRD PARTY SERVICE IT USES. **CLIENT** AGREES TO RESPECT THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WHEN USING ANY HOSTING, TOOLS, OR UTILITIES THAT MAY BE MADE AVAILABLE IN CONNECTION WITH SERVICES PROVIDED BY **Amptive**, **SOFTWARE**, OR **Amptive PRODUCTS**. **Amptive** IS NOT A HOSTING COMPANY AND IF HOSTING IS PROVIDED AS PART OF THE SERVICE TO THE **CLIENT**, THEN **CLIENT** IS BOUND TO THE TERMS AND CONDITIONS OF THE THIRD PARTY HOSTING COMPANY FOR USING SUCH SERVICE, WHICH **CLIENT** MUST OBTAIN A COPY OF FROM **Amptive** OR ELSEWHERE AND REVIEW.

d. *LIMITATION OF LIABILITY*

CLIENT EXPRESSLY UNDERSTANDS AND AGREES THAT **Amptive** AND ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS, SHAREHOLDERS, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO **CLIENT** FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, RESULTING FROM ANY CLAIMS, INCLUDING BUT NOT LIMITED TO: (i) THE USE OR THE INABILITY TO USE THE SOFTWARE AND THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF **CLIENT'S** TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SOFTWARE OR SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SOFTWARE OR SERVICE PROVIDED TO **CLIENT** UNDER THESE **TERMS AND CONDITIONS**. **CLIENT** WAIVES ANY RIGHTS, LEGAL OR OTHERWISE, TO THE EXTENT INCONSISTENT WITH THE TERMS OF THESE **TERMS AND CONDITIONS** AND PERMISSIBLE BY LAW.

NOTWITHSTANDING ANY OTHER PROVISION OF THESE **TERMS AND CONDITIONS**, **CLIENT** AGREES THAT THE TOTAL AMOUNT RECOVERABLE FROM **Amptive** FOR ANY REASON IN CONNECTION WITH, ARISING OUT OF, OR IN RELATION TO THESE **TERMS AND CONDITIONS**, INCLUDING BREACH OR VIOLATION HEREOF, SHALL BE LIMITED THE TOTAL AMOUNT ACTUALLY PAID BY **CLIENT** TO **Amptive** FOR SERVICES RENDERED. **CLIENT** HEREBY EXPRESSLY AGREES TO WAIVE ANY AND ALL AMOUNTS IT MAY BE ENTITLED TO RECOVER AGAINST **Amptive** THAT EXCEED THE AMOUNT PAID BY **CLIENT** TO **Amptive** UNDER THESE **TERMS AND CONDITIONS**. FOR THE PURPOSES OF COMPUTING THE TOTAL RECOVERY **CLIENT** MAY BE ENTITLED TO, THE AMOUNT PAID BY **CLIENT** TO **Amptive** PROVIDER SHALL NOT INCLUDE ANY AMOUNTS PAID BY **CLIENT** TO **Amptive** UNDER OTHER AGREEMENTS BETWEEN THE PARTIES.

20. MISCELLANEOUS:

- a) **CLIENT'S OWN INVESTIGATION:** **Amptive** makes no warranties, guarantees or representations other than those specifically contained herein. **Client** acknowledges and agrees that it has not relied on any representation, warranty or guaranty of **Amptive** in entering into these **Terms and Conditions** other than those specifically contained herein and is depending solely on its own investigation and analysis of the services to be provided under these **Terms and Conditions**.
- b) **NECESSARY ACTS:** All parties to any **PFSA** and these **Terms and Conditions** shall perform any and all acts as well as execute any and all documents that may be reasonably necessary to fully carry out the provisions and intent of these **Terms and Conditions**.
- c) **SUCCESSORS AND ASSIGNS:** Except as otherwise expressly provided herein, these **Terms and Conditions** shall be binding upon, and shall benefit, the parties and their respective heirs, executors, administrators, successors and assigns.
- d) **JOINT AND SEVERAL LIABILITY:** If **Client** consists of more than one person or entity, then the obligations and liabilities of each such person or entity to **Amptive** shall be joint and several among them.
- e) **GOVERNING LAW:** These **Terms and Conditions**, any **PFSA**, the services provided by **Amptive**, and the legal relations among the parties shall be interpreted, construed and governed by the laws of the State of California, without giving effect to any conflicts of law that would cause the application of the law of any jurisdiction other than the State of California.
- f) **WAIVER:** No delay or omission in the exercise of any right or remedy of **Amptive** upon any default by **Client** shall impair such right or remedy or be construed as a waiver of such default. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of these **Terms and Conditions** will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy.
- g) **VENUE, JURISDICTION:** The parties agree that any suit, action or proceeding arising out of or relating to these **Terms and Conditions**, any **PFSA**, the services provided by **Amptive**, or the interpretation, performance or breach of any **PFSA** or these **Terms and Conditions**, may only be brought in a United States District Court of California or in the state courts of California located

in Los Angeles, and each party submits to the jurisdiction of those courts and waives any and all rights to jurisdiction or venue that it may have in those courts in any such suit, action or proceeding in any other appropriate forum.

h) **CONTRACTUAL STATUTE OF LIMITATION:** Client agrees that, irrespective of any law or statute to the contrary, any claim or cause of action that Client may have against Amptive, that arises out of these Terms and Conditions or is related to the services provided by Amptive, must be filed within six (6) months after such claim or action arose and that the discovery rule shall not apply to extend the six months' time period agreed upon in these Terms and Conditions for Client to assert its claims. Any claim not filed within the six (6) month period will be deemed lapsed and Client will be barred from asserting such claim.

i) **ENTIRE AGREEMENT:** These Terms and Conditions and any related PFSA contains all of the terms and conditions agreed on by the parties on its subject matter. These Terms and Conditions supersedes all prior negotiations, discussions, correspondence and agreements between the parties on its subject. These Terms and Conditions cannot be modified or changed except by written instrument signed by all parties hereto. The parties may have entered into a separate agreement relating to services or projects not contemplated by these Terms and Conditions and such other agreements shall neither be superseded nor affected by these Terms and Conditions unless otherwise stated herein.

j) **SEVERABILITY: HEADINGS:** If any portion of these Terms and Conditions is held invalid or inoperative, the other portions of these Terms and Conditions shall be deemed valid and operative and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The headings herein are for reference only and are not intended to describe, interpret, define or limit the extent or intent of the Terms and Conditions or of any part hereof.

k) **EXECUTION:** A PFSA or the Terms and Conditions may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

l) **NOTICES:** All notices and reports permitted or required to be delivered by a party shall be deemed delivered: (i) when delivered in person; (ii) one business day after transmission by facsimile or other electronic system; or (iii) three business days after deposit in the United States Mail by Registered or Certified Mail, return receipt requested, postage prepaid and addressed as follows:

- m) If to Amptive: Amptive, Inc., 21133 Victory Boulevard Suite #222, Canoga Park, California 91303.
- n) If to Client: Client shall provide the address in writing to Amptive, or by email or other means if no address is provided.
- o) Either party shall have the right to change the address for notice by delivering a notice to the other party in accordance with the provisions of this paragraph.

p) **CLIENT'S REPRESENTATIVE'S AUTHORITY TO EXECUTE AGREEMENT:** Client hereby represents that, in the event it is a corporation, or a limited liability company, or any other entity, that its Directors, Officers, Managing Members and such other required persons have passed a resolution authorizing Client to accept and agree to any applicable PFSA and these Terms and Conditions and that the party(ies) executing the PFSA and thereby accepting these Terms and Conditions have the authority to do so on behalf of Client and that Client will not later assert any defenses that the party executing these Terms and Conditions on its behalf was not authorized to act on its behalf.

q) **INDEPENDENT CONTRACTOR:** Amptive is an independent contractor. Nothing in these Terms and Conditions will be construed as creating any joint venture, partnership, employment, or agency relationship between Amptive and Client.

r) **FORCE MAJEURE:** Amptive shall not be liable to Client for any default or delay in the performance of any of its obligations under these Terms and Conditions, including failure of the services provided to Client under these Terms and Conditions, resulting directly or indirectly from forces or events beyond Amptive's control, including, without limitation, fire, flood, accident, acts of God, labor disputes, acts of war or terrorism, interruptions of transportation or communications, supply shortages, failure by any third party to perform any commitment relating to the production or delivery of any equipment, materials or services, or power or telephone failure or inability to obtain access to any website included in the services included under these Terms and Conditions.

s) this paragraph.

t) **AMENDMENT:** From time to time Amptive may modify the terms of this Agreement. In the event Amptive does modify any terms of this Agreement, which Amptive has the express authority to do, Amptive shall notify Client in writing of such changes.

u) **SURVIVAL:** Except as otherwise expressly provided in these **Terms and Conditions**, all representations, obligations of **Client**, warranties, and covenants contained in these **Terms and Conditions**, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of these **Terms and Conditions**, will survive the termination of these **Terms and Conditions** forever or until the maximum time allowed by either Federal, State, or local law, whichever is longer. Such surviving provisions include without limitation the termination provisions, payment obligations, disclaimers, non-solicitation, proprietary rights, confidentiality, all **Amptive** rights relating to **Software** and licensing, and **Amptive** rights relating to data integration and management.

v) **ATTORNEYS FEES:** In the event of any action to recover any fees owed under these **Terms and Conditions** or any **PFSA**, the prevailing party shall be entitled to recover their reasonably incurred fees, costs, and expenses. Except as explicitly provided for in this section, attorney's fees and expenses are not recoverable in any other lawsuit, claim, arbitration, or dispute.

SERVICE PROVIDER

Amptive, INC.

a California corporation

By: _____,

Its: _____

Signature

Date: _____

CLIENT:

a _____ company

By: _____,

Its: _____

Signature

Date: _____