

LICENSE AGREEMENT

BY AND BETWEEN

CITY OF ALAMEDA,
a charter city and municipal corporation

AS LICENSOR

and

AMBER KINETICS INC.,
a California corporation

AS LICENSEE

DATED April 1, 2014

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| <i>Exhibit</i> | |
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| A | LICENSE AREA |
| B | COMMENCEMENT LETTER |
| C | ACKNOWLEDGMENT OF RECEIPT |
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LICENSE AGREEMENT

BASIC LICENSE INFORMATION

License Date: April 1, 2014

Licensor: City of Alameda,
a charter city and municipal corporation

Licensor's Address: City of Alameda
Alameda City Hall
2263 Santa Clara Ave
Alameda, CA 94501
Tel: (510) 748-4509
Attn: City Manager

Licensee: Amber Kinetics Inc., a California corporation

Licensee's Address: 32920 Alvarado-Niles Blvd., Suite 250, Union City, CA 94587-8108
Attn: Chief Executive Officer

License Area: That certain unimproved lot located at 641 West Red Line Avenue, Alameda, CA, consisting of approximately 10,000 square feet of land, as depicted on **Exhibit A**.

Length of Term: twenty-four (24) months

Estimated Commencement Date: April 15, 2014

Estimated Expiration Date: April 14, 2016

| <i>Fees:</i> | <i>Months</i> | <i>Base Monthly Fees</i> |
|--------------|---------------|--------------------------|
| | 1-24 | \$1,000.00 |

Administrative Fee: Five Thousand Dollars (\$5,000.00)

Taxes and Utilities: Licensee shall pay all costs for services and utilities to the License Area, as defined in the License. Licensee shall pay any taxes (including possessory interest taxes) levied on or against the License Area or its personal property.

Security Deposit: None

Broker: Cushman & Wakefield

Permitted Use: Test site for electrical storage systems including construction of two (2) 8' x 8' x 10' (L x W x H) precast concrete vaults and surface shed to house related electrical and communications equipment.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into by and between CITY OF ALAMEDA, a charter city and municipal corporation (“City” or “Licensor”) and AMBER KINETICS INC., a California corporation (“Licensee”). The Basic License Information, the Exhibits and this License Agreement are and shall be construed as a single instrument and are referred to herein as the “License”.

1. GRANT OF LICENSE.

In consideration of the stated conditions and agreements, Licensor hereby grants permission to Licensee to carry out the Permitted Use within the License Area described in the Basic License Information and depicted Exhibit A attached hereto.

2. LICENSE AREA.

2.1 License Area. The License Area is as specified in the Basic License Information. Said License Area is located on property commonly referred to as the former Naval Air Station Alameda (“Property”). The License Area has the address and contains the square footage specified in the Basic License Information; provided, however, that any statement of square footage set forth in this License is an approximation which Licensor and Licensee agree is reasonable and no economic terms based thereon shall be subject to revision whether or not the actual square footage is more or less.

2.2 Possession. Licensee accepts the License Area in “AS IS” “WITH ALL FAULTS” condition and configuration without any representations or warranties by Licensor, and with no obligation of Licensor to make alterations or improvements to the License Area. Licensee acknowledges that neither Licensor nor any agent of Licensor has made any representation or warranty with respect to the suitability of the License Areas for the conduct of Licensee’s business. Licensor shall not be liable for any latent or patent defects in the License Area. If required for the conduct of Licensee’s business, Licensee shall be responsible for requesting an inspection and obtaining a Certificate of Occupancy from the City of Alameda.

2.3 Licensors’ Reserved Rights. Licensor hereby reserves the right, and at any time and from time to time, to enter the License Area without notice at any time for purposes of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under the License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties. In connection with any of the foregoing activities, Licensor shall use reasonable efforts to minimize any interference with Licensee’s use of the License Area. Licensor shall not be liable in any manner and Licensee hereby waives any claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damages arising out of Licensor’s entry into the License Area.

2.4 Demising Fence. Licensee shall, at its sole cost and expense, maintain at all times a fence around the entire perimeter of the License Area. This obligation

includes maintaining or replacing any existing fencing and installing any new fencing as may be necessary to fully enclose the License Area. Any such new fencing shall comply with such specifications (e.g. height and color) as may be required by the Community Development Department.

3. **TERM.**

The term of this License ("**Term**") shall be for the period specified in the Basic License Information, commencing on the later of (a) the Estimated Commencement Date or (b) the date upon which Licensor makes the License Area available for the use and occupancy of Licensee ("**Commencement Date**"). Unless earlier revoked by Licensor or terminated by Licensee, this License shall terminate at midnight on the last day of the twenty-fourth (24th) full calendar month following the Commencement Date ("**Expiration Date**"). Promptly following the Commencement Date, Licensor and Licensee shall enter into a letter agreement substantially in the form attached hereto as **Exhibit B**, specifying and confirming the Commencement Date and the Expiration Date; if Licensee fails to execute and deliver such letter agreement to Licensor within ten (10) business days after Licensor's delivery of the same to Licensee, said letter agreement will be deemed final and binding upon Licensee. Licensor may revoke this License, and Licensee may terminate this License, in their discretion at any time prior to the end of the Term upon sixty (60) days advance written notice to the other party. The right to revoke or terminate this License before the end of the Term as provided in the previous sentence shall be in addition to any right of a party to terminate this License provided elsewhere in this License Agreement.

4. **FEEs.**

4.1 **Base Fees.** As payment for use of the License Area, the Licensee shall pay to the Licensor, One Thousand Dollars (\$1,000) per month for the Term ("**License Fee**"). The License Fee shall be paid without prior notice or demand. The License Fee shall be paid to the Licensor at the offices of PM Realty Group, property manager, located at 101 W. Atlantic Avenue, Alameda, CA 94501, or such other place as Licensor shall direct. One full installment of the License Fee together with the Administrative Fee shall be payable upon execution of this License by Licensee and the License Fee shall be applied to the first full month of the Term. If the Term commences on a day other than the first day of the calendar month or ends on a day other than the last day of the calendar month, the License Fee for any such partial month shall be prorated at the rate of one-thirtieth of the monthly License Fee for each day of the period.

4.2 **Additional Fees.** As use in this License, the term "**Additional Fees**" shall mean all sums of money that are due and payable by Licensee under the terms of this License including, but not limited to, Licensee's share of Utilities in accordance with Article 7 of this License. The term "Fees," as used herein, shall mean all Base Fees, Additional Fees and all other amounts payable hereunder from Licensee to Licensor. Unless otherwise specified herein, all Fees shall be due and payable by Licensee on or before the date that is thirty (30) days after billing by Licensor. If possessory use or personal property taxes are imposed, Licensee shall pay the taxes so levied in accordance with Article 8 below.

4.3 Interest Rate. If any portion of License Fee or Additional Fees shall be due and unpaid for more than five (5) days, it shall bear interest from the date such payment was originally due until paid at the lesser of: (a) an annual rate equal to the maximum rate permitted by law or (b) ten percent (10%) per annum. Payment of such interest shall not excuse or cure any Default by Licensee.

4.4 Late Charge. If any payment of License Fee or any part thereof to be made by Licensee to Licensor pursuant to the terms of this License shall become overdue for a period in excess of five (5) days after written notice from Licensor that the same is past due, a late charge of five percent (5%) of such past due amount shall be paid by Licensee for the purpose of defraying the expense incident to handling such delinquent payment. Nothing herein or in the imposition or acceptance of a late charge by Licensor shall be construed as a waiver of any rights of Licensor arising out of any default of Licensee; the right to collect any late charge or interest is separate and apart from any rights or remedies of Licensor relating to any default by Licensee.

5. **USE; COMPLIANCE WITH LAWS.**

5.1 Use. The License Area shall be used and occupied only for the Permitted Use specified in the Basic License Information and for no other purpose. If the Basic License Information limits the time and location of activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written authorization is granted by Licensor.

5.2 Compliance with Laws. Licensee shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended, (42 U.S.C. Section 1201 et seq. [the "ADA"]) (collectively, "Laws") pertaining to Licensee's use and occupancy of the License Area and the conduct of its business. Licensee shall be responsible for making all improvements and alterations necessary to bring the License Area into compliance with applicable ADA requirements and to ensure that the License Area remain in compliance throughout the Term of this License. Licensee shall not commit, or suffer to be committed, any waste upon the License Area or any public or private nuisance, nor shall Licensee store any materials on the License Area which are visible from areas adjacent to the License Area, unless otherwise specifically set forth in this License. Licensee shall not permit any objectionable odor to escape or be emitted from the License Area and shall ensure that the License Area remain free from infestation from rodents or insects. Neither Licensor nor any Licensor Related Party (as defined below) shall be liable for (a) loss or damage to any vehicle or other personal property parked or located upon or within the License Area, whether pursuant to this license or otherwise and whether caused by fire, theft, explosions, strikes, riots or other cause whatsoever or (b) injury to or death of any person in, about or around the License Areas or any vehicle parked or stored thereon whether caused by fire, theft, assault, explosion, riot or any other cause whatsoever and Licensee hereby waives any claims for, or in respect to, the above.

5.3 Compliance with Restrictions. The License Area is located on property known as the former Naval Air Station Alameda, which was conveyed to the City by the United States of America, acting by and through the Department of the Navy by a quitclaim

deed dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**"). Said Quitclaim Deed conveyed the License Area subject to certain covenants, conditions, restrictions, easements, and encumbrances as set forth therein. The License Area are further encumbered by those certain restrictions set forth in the Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-5677266 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**"). Copies of the Quitclaim Deed and Declaration of Restrictions have been delivered to Licensee and, concurrently with the execution of this License, Licensee shall sign and return to Licensor the Acknowledgment of Receipt, attached hereto as **Exhibit C**. Use of the License Area is further restricted by the National Environmental Protection Act Record of Decision ("**ROD**") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions contained therein. A copy of the ROD is available for review at Licensor's office during normal business hours. The covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances set forth in the Quitclaim Deed, Declaration of Restrictions and the ROD, as they effect the License Area, are collectively referred to herein as the "**Restrictions**." Any use of the License Area shall comply with the Restrictions and a failure to so comply shall constitute a Default under this License.

5.4 Use Permit. Licensee shall maintain a City of Alameda Use Permit and other applicable City permits and approvals for the intended use of the License Area (collectively "**Use Permit**").

6. [INTENTIONALLY OMITTED]

7. **UTILITIES.**

7.1 Payments for Utilities and Services. Licensee shall contract directly with the providers of, and shall pay all charges for, water, sewer, gas, electricity, heat, cooling, telephone, refuse collection, janitorial, pest control, security and monitoring services furnished to the License Area, together with all related installation or connection charges or deposits ("**Utilities**"). Licensor makes no representations about the availability of any Utilities to the License Area. Licensor shall not be liable for any reason for any loss or damage resulting from an interruption of any of the Utilities.

7.2 No Liability of Licensor. Except in the case of Licensor's gross negligence or willful misconduct, in no event shall Licensor be liable or responsible for any loss, damage, expense or liability, including, without limitation, loss of business or any consequential damages, arising from any failure or inadequacy of any service or utility provided to the License Area, whether resulting from any change, failure, interference, disruption or defect in supply or character of the service or utility provided to the License Area, or arising from the partial or total unavailability of the service or utility to the License Area, from any cause whatsoever, or otherwise, nor shall any such failure, inadequacy, change, interference, disruption, defect or unavailability constitute an actual or constructive eviction of Licensee, or entitled Licensee to any abatement or diminution of License Fees or otherwise relieve Licensee from its obligations under this License.

8. **PERSONAL PROPERTY AND POSSESSORY INTEREST TAXES.**

8.1 Licensee's Tax Obligation. Licensee shall pay all Taxes (as hereinafter defined) levied or imposed against the License Area or Licensee's personal property or trade fixtures placed by Licensee in or about the License Area during the Term ("**Personal Property Taxes**").

8.2 Possessory Interest Taxes. If the interest created by this License becomes subject to property taxation under the laws of the State of California, the party in whom the possessory interest is vested shall be obligated for the payment of the taxes levied on such interest. Any such taxes so levied upon Licensee's possessory interest shall be paid by Licensee in accordance with the instructions of the taxing authority. This notice is included in this License pursuant to the requirements of section 107.6 (a) of the Revenue and Taxation Code of the State of California.

8.3 Payment. Licensee shall pay any Personal Property Taxes or Possessory Interest Taxes in accordance with the instructions of the taxing entity. Licensee shall pay the Personal Property Taxes originally imposed upon Licensor, upon Licensor's election, either (a) annually within thirty (30) days after the date Licensor provides Licensee with a statement setting forth in reasonable detail such Taxes, or (b) monthly in advance based on estimates provided by Licensor based upon the previous year's tax bill. All Personal Property Taxes originally imposed upon Licensor and payable by Licensee with respect to the License Area shall be prorated on a per diem basis for any partial tax year included in the Term. Licensee's obligation to pay Taxes during the last year of the Term shall survive the termination of this License.

9. **ALTERATIONS.**

9.1 Licensor Consent Required. Licensee shall not make any alterations, improvements, excavations or additions (each an "**Alteration**") in or about the License Area or any part thereof without the prior written consent of Licensor, which consent may be granted, withheld or conditioned upon Licensor's sole and absolute discretion.

9.2 Alterations. Any Alterations to the License Area shall be at Licensee's sole cost and expense, and made in compliance with all applicable Laws and all reasonable requirements requested by Licensor. Prior to starting work, Licensee shall furnish Licensor with plans and specifications; names of contractors reasonably acceptable to Licensor; required permits and approvals; evidence of contractors and subcontractors insurance in amounts reasonably required by Licensor and naming Licensor, the managing agent for the License Area and such other persons or entities as Licensor may reasonably request, as additional insureds; and any security for payment in performance and amounts reasonably required by Licensor. In addition, if any such Alteration requires the removal of asbestos, an appropriate asbestos disposal plan, identifying the proposed disposal site of all such asbestos, must be included with the plans and specifications provided to Licensor. Licensee shall reimburse Licensor for any sums paid by Licensor for third party examination of Licensee's plans for Alterations. Licensor's approval of an Alteration shall not be deemed a representation by Licensor that the Alteration complies with Law. Upon completion, Licensee shall furnish Licensor with at least three (3) sets of "as built"

plans for the Alterations, completion affidavit and full and final unconditional waivers of liens and will cause a Notice of Completion to be recorded in the Office of the Recorder of the County of Alameda. Any Alteration shall at once become the property Licensor; provided, however, that Licensor, at its option, may require Licensee to remove any Alterations prior to the expiration or sooner termination of this License. If Licensee serves a request in writing together with Licensee's request for Licensor's consent to any such alterations ("**Removal Request**"), Licensor will notify Licensee at the time of Licensor's consent to any such Alterations as to whether Licensor requires their removal. The foregoing notwithstanding, any underground vaults or other structures, lines, conduits or cabling which may be installed by Licensee on or about the License Area for its Permitted Use shall be removed by Licensee prior to the expiration or sooner termination of this License without the need for any further notice from Licensor and the License Area shall be graded and compacted to substantially the same condition it was when Licensee first took possession of the License Area. All costs of any Alterations (including, without limitation, the removal thereof, if required) shall be borne by Licensee. If Licensee fails to promptly complete the removal of any Alterations and/or to repair any damage caused by the removal, Licensor may do so and may charge the reasonable costs thereof to Licensee. All Alterations shall be made in a workmanlike manner, in accordance with Licensor's then-current guideline for construction, and Licensee shall maintain appropriate liability and builders' risk insurance throughout the construction. Licensee shall indemnify, defend, protect and hold Licensor harmless from and against any and all claims for injury to or death of persons or damage or destruction of property arising out of or relating to the performance of any Alterations by or on behalf of Licensee. Under no circumstances shall Licensor be required to pay, during the Term (as the same may be extended or renewed) any and ad valorem or Property Tax on such Alterations, Licensee hereby covenanting to pay all such taxes when they become due.

9.3 Excavations. In the event Licensee intends to perform any Alterations requiring excavations below the surface of the License Area or construction of a permanent structure on the License Area, Licensee must determine the actual location of all utilities using standard methods (i.e., potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to Licensor for approval (which shall also include the approval of other applicable governmental authorities). The application shall include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structure will be constructed in these areas. Licensee shall be responsible for complying with the provisions of the City of Alameda's Marsh Crust Ordinance, and if required, shall obtain a Marsh Crust Permit. Licensee shall also comply with the Covenant to Restrict Use of Property Environmental Restrictions, recorded June 6, 2013 as Series No. 2013-199838 of Official Records of the County of Alameda and the Site Management Plan for Alameda Point.

9.4 Liens. Licensee shall pay when due all claims for labor or materials furnished Licensee for use in the License Area. Licensee shall not permit any mechanic liens or any other liens against the License Area, Licensee's personal property or Alterations for any labor or materials furnished to Licensee in connection with work performed on or about the License Area by or at the direction of Licensee. Licensee shall indemnify, hold harmless and defend Licensor (by counsel reasonably satisfactory to Licensor) from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Licensee. In the event that Licensee shall not, within ten (10) days following the

imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Licensor shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien. All such sums paid by Licensor and expenses reasonably incurred in connection therewith, including attorneys' fees and costs, shall be payable to Licensor by Licensee on demand.

10. MAINTENANCE AND REPAIR OF LICENSE AREA.

10.1 Maintenance and Repair by Licensee.

(a) Licensee Maintenance. Licensee shall, at its sole costs and expense, maintain the License Area in good repair and in a neat and clean condition, including making all necessary repairs and replacements.

(b) Licensee Repair. Licensee shall further, at its own costs and expense, repair or restore any damage or injury to all or any part of the License Area caused by Licensee or Licensee's agents, employees, invitees, licensees, visitors or contractors, including but not limited to repairs or replacements necessitated by (i) the construction or installation of improvements on, about or to the License Area by or on behalf of Licensee and (ii) the moving of any property into or out of the License Area. If Licensee fails to make such repairs or replacement within fifteen (15) days after notice from Licensor, then Licensor may, at its option, upon prior reasonable notice to Licensee (except in an emergency) make the required repairs and replacements and the costs of such repairs or replacement shall be charged to Licensee as Additional Fees and shall become due and payable by Licensee within thirty (30) days.

11. ENVIRONMENTAL PROTECTION PROVISIONS.

11.1 Hazardous Materials. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive problems and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the state in which the License Area are located or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the state where the License Area is located, and any other environmental law, regulation or ordinance now existing or hereinafter enacted. "**Hazardous Materials Laws**" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous

Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

11.2 Reportable Uses Required Consent. Except as permitted in this Article 11, Licensee hereby agrees that Licensee and Licensee's officers, employees, representatives, agents, contractors, subcontractors, successors, assigns, subtenants, concessionaires, invitees and any other occupants of the License Area (for purposes of this Article 11, referred to collectively herein as "**Licensee Representatives**") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the License Area or transport to or from the License Area without the express prior written consent of Licensor, which consent may be limited in scope and predicated on strict compliance by Licensee of all applicable Hazardous Materials Laws and such other reasonable rules, regulations and safeguards as may be required by Licensor (or any insurance carrier, environmental consultant or lender of Licensor, or environmental consultant retained by any lender of Licensor) in connection with using, generating, manufacturing, refining, producing, processing, storing or disposing of Hazardous Materials on, under or about the License Area. In connection therewith, Licensee shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Licensee or any of Licensee's Representatives of Hazardous Materials on the License Area, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the License Area. The foregoing notwithstanding, Licensee may use ordinary and customary materials reasonably required to be used in the course of the Permitted Use, ordinary office supplies (copier, toner, liquid paper, glue, etc) and common household cleaning materials, so long as such use is in compliance with all Hazardous Materials Laws and does not expose the License Area or neighboring property to any meaningful risk of contamination or damage or expose Licensor to any liability therefor.

11.3 Remediation Obligations. If at any time during the Term, any contamination of the License Area by Hazardous Materials shall occur where such contamination is caused by the act or omission of Licensee or Licensee's Representatives ("**Licensee's Contamination**"), then Licensee, at Licensee's sole cost and expense, shall promptly and diligently remove such Hazardous Materials from the License Area or the groundwater underlying the License Area to the extent required to comply with applicable Hazardous Materials Laws. Licensee shall not take any required remedial action in response to any Licensee's Contamination in or about the License Area or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Licensee's Contamination without first obtaining the prior written consent of Licensor, which may be subject to conditions imposed by Licensor as determined in Licensor's sole discretion. Such prior written consent shall not be required to the extent the delay caused by the requirement to obtain consent may increase the damage to the License Area or the risk of harm to human health, safety or security caused by the Licensee Contamination. Licensor and Licensee shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this License. In addition to all other rights and remedies of Licensor hereunder, if Licensee does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Licensee's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Licensee's

Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Licensor, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Licensee shall reimburse Licensor within fifteen (15) business days of Licensor's demand for reimbursement of all amounts reasonably paid by Licensor (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by proof of payment by Licensor of the amounts demanded. Licensee shall promptly deliver to Licensor, copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the License Area as part of Licensee's remediation of any Licensee's Contamination. The foregoing notwithstanding, "Licensee's Contamination" shall not refer to or include any Hazardous Materials that were not clearly introduced to the License Area by Licensee or Licensee's Representatives. As an example, if lead dust or asbestos are found on the License Area, unless there is clear evidence that Licensee introduced those Hazardous Materials to the License Area, those Hazardous Materials shall not be considered "Licensee's Contamination," and it shall not be Licensee's responsibility to take remedial action relating to such Hazardous Materials.

11.4 Environmental Permits. Licensee, its contractors, assigns or subtenants shall be solely responsible for obtaining, at their cost and sole expense, any environmental permits required for Licensee's operations under the License, independent of any existing permits held by Licensor. Licensee shall not conduct operations or activities under any environmental permit that names Licensor as a secondary discharger or co-permittee. Licensee shall provide prior written notice to Licensor of all environmental permits and permit applications required for any of Licensee's operations or activities. Licensee acknowledges that Licensor will not consent to being named a secondary discharger or co-permittee for any operations or activities of Licensee, its contractors, assigns or subtenants. Licensee shall strictly comply with any and all environmental permits (including any hazardous waste permit required under the Resource Conservation and Recovery Act or its state equivalent) and must provide, at its own expense, any hazardous waste management facilities complying with all Hazardous Material Laws.

11.5 Licensor's Inspection Right. Licensor shall have the right to inspect the License Area for compliance with environmental, safety, and occupational health laws and regulations, regardless of whether Licensor is responsible for enforcing or complying with them. Licensee shall have no claim against Licensor, or any officer, agent, employee, contractor or subcontractor of Licensor by reason of entrance of such Licensor officer, agent, employee, contractor or subcontractor onto the License Area.

11.6 Hazardous Materials Handling Plan. Prior to the execution of this License, Licensee shall complete, execute and deliver to Licensor an Environmental Questionnaire Disclosure Statement (the "**Environmental Questionnaire**"), in the form of **Exhibit E** attached hereto. To the extent Licensee intends to store, use, treat or dispose of Hazardous Materials on the License Area, Licensee shall prepare and submit together with the Environmental Questionnaire a Hazardous Materials Handling Plan (the "**Hazardous Materials Handling Plan**"). For a period of fifteen (15) days following Licensor's receipt of the Environmental Questionnaire and Hazardous Materials Handling Plan, if applicable, Licensor shall have the right to approve or disapprove such documents. The failure of Licensor to

approve such documents shall be deemed Licensor's disapproval thereof. Licensor approval of the Environmental Questionnaire and the Hazardous Materials Handling Plan shall constitute approval for Licensee's use of the Hazardous Materials set forth therein in compliance with Hazardous Materials Laws and the Hazardous Materials Handling Plan. Following approval of the Hazardous Materials Handling Plan, Licensee shall comply therewith throughout the Term. To the extent Licensee is permitted to utilize Hazardous Materials upon the License Area, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws and the Hazardous Materials Handling Plan and Licensee shall promptly provide Licensor with complete and legible copies of all the following environmental items relating thereto: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for hazardous materials; orders, reports, notices, listing and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of hazardous materials; and all complaints, pleadings and other legal documents filed by or against Licensee related to Licensee's use, handling, storage or disposal of hazardous materials. If, in conjunction with Licensee's Permitted Use of the License Area, Licensee desires to commence the use, treatment, storage or disposal of previously undisclosed Hazardous Materials, prior to such usage thereof, Licensee shall notify Licensor thereof, by written summary detailing the scope of such proposed usage and updating the Hazardous Materials Handling Plan to the extent required by such proposed usage. For a period of fifteen (15) days following Licensor's receipt of such notice, Licensor shall have the right to approve or disapprove of such documents. The failure of Licensor to approve of such documents within such time period shall be deemed Licensor's disapproval thereof.

11.7 Hazardous Materials Indemnity. In addition to any other provisions of this License, Licensee shall, and does hereby agree, to, indemnify and hold harmless Licensor from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal arising from Licensee's occupancy, use or operations, or any other action by Licensee or its contractors, employees, agents, assigns, invitees, or subtenants giving rise to liability, civil or criminal, or any other action by Licensee or its contractors, employees, agents, assigns, or subtenants giving rise to responsibility under any Hazardous Materials Laws. Licensee's obligations hereunder shall apply whenever Licensor incurs costs or liabilities for Licensee's activities or for the activities of Licensee's contractors, employees, agents, assigns, invitees, or subtenants as provided hereunder. This provision shall survive the expiration or termination of this License.

12. ASSIGNMENT AND SUBLETTING.

This License is personal and non-assignable by Licensee. Any attempt to sublease the License Area or assign any of Licensee's interests under this License shall be null and void and shall constitute a Default within the meaning of Article 17.

13. INDEMNITY AND WAIVER OF CLAIMS.

13.1 Licensee Indemnification. Licensee shall indemnify, defend and hold Licensor and Licensor Related Parties harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys' fees, costs and disbursements) (collectively referred to as "**Losses**"), arising from (a) the use of, or any activity done, permitted or suffered in or about the License Area (b) any activity done, permitted or suffered by Licensee or Licensee's agents in or about the License Area (c) any act, neglect, fault, willful misconduct of Licensee or Licensee's agents, or (d) from any breach or default in the terms of this License by Licensee or Licensee's agents, except to the extent such claims arise out of or relate to the gross negligence or willful misconduct of Licensor. If any action or proceeding is brought against Licensor by reason of any such claim, upon notice from Licensor, Licensee shall defend the same at Licensee's expense by counsel reasonably satisfactory to Licensor. As a material part of the consideration to Licensor, Licensee hereby releases Licensor and its trustees, members, principals, beneficiaries, partners, officers, directors, employees, property managers, Mortgagees and agents ("**Licensor Related Parties**") from responsibility for, waives its entire claim of recovery for and assumes all risks of (i) damage to property or injury to person in or about the License Area from any cause whatsoever except to the extent caused by the gross negligence or willful misconduct of Licensor or any Licensor Related Parties, or (ii) loss resulting from business interruption or loss of income at the License Area.

13.2 Waiver of Claims. Except in the event of its own gross negligence or willful misconduct Licensor shall not be liable to Licensee and Licensee hereby waives all claims against Licensor and Licensor Related Parties for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the License Area from any cause. Without limiting the foregoing, neither Licensor nor any Licensor Related Party shall be liable for and there shall be no abatement of Fees for (a) any damage to Licensee's property stored with or entrusted to any Licensor Related Party, (b) loss of or damage to any property by theft or any other wrongful or illegal act, or (c) any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the License Area or from the pipes, appliances, appurtenance or plumbing works thereof or from the roof, street or surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the License Area or from any other cause whatsoever, (d) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the License Area or (e) any latent or other defects in the License Area. Licensee agrees that in no case shall Licensor or any Licensor Related Party be responsible or liable on any theory for any injury to Licensee's business, loss of profits, loss of income or any other form of consequential damage.

13.3 Survival/No Impairment. The obligations of Licensee under this Article 13 shall survive any termination of this License. The foregoing indemnity obligations shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this License, to the extent that such policies cover the peril or currents that results in the claims that is subject to the foregoing indemnity.

14. **INSURANCE.**

14.1 Licensee's Insurance. On or before the commencement of the term of this License, Licensee shall procure and maintain for the duration of this License, insurance against claims for injuries to persons or damages to property which may arise from or in connection with Licensee's operation and use of the leased premises. The cost of such insurance shall be borne by Licensee. Licensee shall maintain the following types of insurance with limits no less than the following as set forth below.

(a) Commercial General Liability Coverage. \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The policy shall be endorsed to provide Fire Legal Liability or Damage to Rented Premises coverage, as well as for Products and Completed Operations.

(b) Automobile Liability Coverage. If Licensee owned or leased vehicles are operated on or about the License Area, Licensee shall, at Licensee's expense, maintain in full force and effect during the term of this License Commercial Automobile Liability providing coverage for any vehicle owned by Licensee and used in the conduct of its business. Such policy shall be in an amount of not less than One Million Dollars (\$1,000,000) combined single limit.

(c) Property Insurance Coverage. Coverage against all risks of loss (excluding flood and earthquake). \$1,000,000 in Property Insurance Coverage of the License Area with no coinsurance penalties shall apply and coverage shall extend to include any Licensee improvements or betterments.

(d) Worker's Compensation Insurance. As required by law, with Employer's Liability coverage with limits of not less than \$1,000,000.

(e) Commercial Pollution Legal Liability. Coverage with limit of not less than \$1,000,000 per occurrence.

14.2 Additional Insured. The City of Alameda and PM Realty Group L.P., together with such other parties as Licensor may from time to time designate, shall be named as an additional insured under all insurance coverage's, except on worker's compensation policies. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

14.3 Notice of Cancellation. Licensee's insurance policies shall be endorsed to require the insurer to provide the Licensor with at least thirty (30) days' written Notice of Cancellation.

14.4 Sufficiency of Insurance. The insurance limits required by the Licensor are not represented as being sufficient to protect Licensee. Licensee is advised to

consult Licensee's insurance broker to determine adequate coverage for Licensee. Licensee's insurance policy shall be endorsed stipulating that Licensee's insurance is primary, and that the Licensor's self-insurance program and excess insurance policies shall not be called upon to contribute to a loss that should otherwise be paid by Licensee's insurer.

14.5 Insurer Acceptability. Licensee's insurers must be domiciled in the United States of America. They must meet a minimum A.M. Best & Co. rating of A: VII and a Standard and Poors Rating (if rated) of at least BBB. In the event that a proposed insurance company is not rated by A.M. Best & Co. or Standard and Poors, said insurance carrier must be domiciled in the State of California and approved by Licensor.

14.6 Certificate of Insurance. On or before Licensee takes possession of the License Area, Licensee shall furnish to Licensor certificate(s) of insurance reflecting that the insurance required by this Section is in force, accompanied by an endorsement(s) showing the required additional insured satisfactory to Licensor.

15. **DAMAGE OR DESTRUCTION.**

15.1 Definitions.

(a) **"License Area Partial Damage"** shall mean damage or destruction to the improvements on the License Area, other than Licensee owned trade fixtures, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Licensor shall notify Licensee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, License Area Partial Damage shall not include damage to turf and fence, and/or other similar items which Licensee has the responsibility to repair or replace pursuant to the provisions of Section 10.1.

(b) **"License Area Total Destruction"** shall mean damage or destruction to the License Area, other than Licensee owned trade fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Licensor shall notify Licensee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the License Area, other than Licensee owned trade fixtures, which was caused by an event required to be covered by the insurance described in Section 14.1, irrespective of any deductible amounts or coverage limits involved. Licensee shall assign to Licensor any such insurance proceeds.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Licensor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Laws governing the License Area, and without deduction for depreciation.

(e) **"Hazardous Material Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a

Hazardous Material as defined in Section 11.1, in, on, or under the License Area which requires repair, remediation, or restoration.

15.2 Partial Damage - Insured Loss. If a License Area Partial Damage that is an Insured Loss occurs, the Licensor shall, at Licensor's expense, repair such damage (but not Licensee's trade fixtures) as soon as reasonably possible and this License shall continue in full force and effect; provided, however, that Licensee shall, at Licensor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Licensor shall make any applicable insurance proceeds available to Licensee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, Licensee shall promptly contribute the shortage in proceeds (except as to the deductible which is Licensee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Licensor shall have no obligation to fully restore the unique aspects of the License Area unless Licensee provides Licensor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Licensor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this License shall remain in full force and effect. If such funds or assurance are not received, Licensor may nevertheless elect by written notice to Licensee within 10 days thereafter to: (a) make such restoration and repair as is commercially reasonable with Licensor paying any shortage in proceeds, in which case this License shall remain in full force and effect, or (b) have this License terminate 30 days thereafter. Licensee shall not be entitled to reimbursement of any funds contributed by Licensee to repair any such damage or destruction. License Area Partial Damage due to flood or earthquake shall be subject to Section 15.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

15.3 Partial Damage - Uninsured Loss. If a License Area Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Licensee (in which event Licensee shall make the repairs at Licensee's expense), Licensor may either: (a) repair such damage as soon as reasonably possible at Licensor's expense, in which event this License shall continue in full force and effect, or (b) terminate this License by giving written notice to Licensee within 30 days after receipt by Licensor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Licensor elects to terminate this License, Licensee shall have the right within 10 days after receipt of the termination notice to give written notice to Licensor of Licensee's commitment to pay for the repair of such damage without reimbursement from Licensor. Licensee shall provide Licensor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this License shall continue in full force and effect, and Licensor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Licensor does not make the required commitment, this License shall terminate as of the date specified in the termination notice.

15.4 Total Destruction. Notwithstanding any other provision hereof, if a License Area Total Destruction occurs, this License shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Licensee, Licensor shall have the right to recover Licensor's damages from Licensee.

15.5 Damage Near End of Term. If at any time during the last 6 months of this License Term (or the last 6 months of any Renewal Term) there is damage for which the cost to repair exceeds Ten Thousand Dollars (\$10,000), whether or not an Insured Loss, Licensor may terminate this License effective 60 days following the date of occurrence of such damage by giving a written termination notice to Licensee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Licensee at that time has an exercisable option to extend this License, then Licensee may preserve this License by, (a) exercising such option and (b) providing Licensor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Licensee's receipt of Licensor's written notice purporting to terminate this License, or (ii) the day prior to the date upon which such option expires. If Licensee duly exercises such option during such period and provides Licensor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Licensor shall, at Licensor's commercially reasonable expense, repair such damage as soon as reasonably possible and this License shall continue in full force and effect. If Licensee fails to exercise such option and provide such funds or assurance during such period, then this License shall terminate on the date specified in the termination notice and Licensee's option shall be extinguished.

16. CONDEMNATION.

If the whole or if any material part of the License Area is taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a "Taking"), and (a) such Taking renders the License Area unsuitable, in Licensor's reasonable opinion, for the purposes for which they were constructed; or (b) the License Area cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Licensor may, at its option, to terminate this License as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the License Area is taken and if the License Area remaining after such Taking and any repairs by Licensor would be untenable (in Licensee's reasonable opinion) for the conduct of Licensee's business operations, Licensee shall have the right to terminate this License as of the date possession vests in the condemning party. The terminating party shall provide written notice of termination to the other party within 30 days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If only a part of the License Area is subject to a Taking and this License is not terminated, Licensor, with reasonable diligence, will restore the remaining portion of the License Area as nearly as practicable to the condition immediately prior to the Taking. Licensee acknowledges that no possessory estate has been created by this License and Licensee hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws. Licensor shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or

made in connection with any such Taking, except for any compensation as may be separately awarded Licensee for its personal property.

17. **DEFAULT.**

17.1 Events of Default. The occurrence of any of the following shall constitute a “**Default**” by Licensee:

(a) Licensee fails to make any payment of any License or Additional Fees when due, if payment in full is not received by Licensor within five (5) days after written notice that it is past due.

(b) Licensee abandons the License Area as defined in Section 1951.3 of the California Civil Code.

(c) Licensee fails timely to deliver any subordination document or estoppel certificate requested by Licensor within the applicable time period specified hereinbelow.

(d) Licensee violates the restrictions on Transfer set forth in Article 12.

(e) Licensee ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors’ rights; all or substantially all of Licensee’s assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or Licensee consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Licensee or for all or any substantial part of Licensee’s assets.

(f) Licensee fails to perform or comply with any provision of this License other than those described in (a) through (e) above, and does not fully cure such failure within fifteen (15) days after notice to Licensee or, if such failure cannot be cured within such fifteen (15) day period, Licensee fails within such fifteen (15)-day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice.

17.2 Remedies. Upon default by Licensee, Licensor shall, without further notice or demand of any kind to Licensee or to any other person, in addition to any other remedy Licensor may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee’s right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Licensor may take any and all actions to enforce Licensee’s obligations.

17.3 Licensor’s Right to Perform Licensee’s Obligations. If Licensee is in Default of any of its non-monetary obligations under this License, in addition to the other rights and remedies of Licensor provided herein, then Licensor may at Licensor’s option, but without any obligation to do so and without further notice to Licensee, perform any such term,

provision, covenant or condition or make any such payment and Licensor by reason of doing so shall not be liable or responsible for any loss or damage thereby sustained by Licensee. If Licensor performs any of Licensee's obligations hereunder in accordance with this Section 17.3, the full amount of the costs and expense incurred or the payments so made or the amount of the loss so sustained shall be immediately be owed by Licensee to Licensor, and Licensee shall promptly pay to Licensor upon demand, as Additional Fees, the full amount thereof with interest thereon from the day of payment by Licensor the lower of ten percent (10%) per annum, or the highest rate permitted by applicable law.

17.4 Severability. This Article 17 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

18. [INTENTIONALLY OMITTED]

19. **SURRENDER OF LICENSE AREA.**

At the termination of this License or Licensee's right of possession, Licensee shall remove Licensee's property including any temporary structures erected by Licensee, furniture, fixtures, equipment or cabling installed by or for the benefit of Licensee from the License Area, and quit and surrender the License Area to Licensor, broom clean, and in good order, condition and repair, ordinary wear and tear and damage which Licensor is obligated to repair hereunder excepted. Except as otherwise provided at Section 9.3, Licensor may, by notice to Licensee not less than sixty (60) days prior to the Expiration Date (except in the event of a termination of this License prior to the scheduled Expiration Date, in which event no advance notice shall be required) require Licensee, at Licensee's expense, remove any Alterations and repair any damage caused by such removal. If Licensee fails to remove any of Licensee's property, or to restore the License Area to the required condition, Licensor, at Licensee's sole cost and expense, shall be entitled (but not obligated) to remove and store Licensee's property and/or perform such restoration of the License Area. Licensor shall not be responsible for the value, preservation or safekeeping of Licensee's property. Licensee shall pay Licensor, upon demand, the expenses and storage charges incurred. If Licensee fails to remove Licensee's property from the License Area or storage, within 30 days after notice, Licensor may deem all or any part of Licensee's property to be abandoned and, at Licensor's option, title to Licensee's property shall vest in Licensor or Licensor may dispose of Licensee's property in any manner Licensor deems appropriate.

20. **HOLDING OVER.**

If Licensee does not surrender possession at the end of the Term or sooner termination of this License, Licensee shall indemnify and hold Licensor harmless from and against any and all losses or liability resulting from delay in Licensee so surrendering the License Area including, without limitations, any loss or liability resulting from any claim against Licensor made by any succeeding tenant or prospective tenant founded on or resulting from such delay. In addition to the foregoing, Licensee shall reimburse Licensor its reasonable attorneys' fees and costs incurred in enforcing Licensee's obligations under this Article, which include but

are not limited to, any attorneys' fees and costs incurred in an unlawful detainer, ejectment or other legal proceeding to compel Licensee to relinquish the possession of the License Area.

21. **MORTGAGES.**

Licensee accepts this License subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the License Area and any ground lease(s) or other agreements or covenants running with the land now or subsequently arising upon the License Area, and to renewals, modifications, refinancing and extensions thereof (collectively referred to as a "**Mortgage**"). The party having the benefit of a Mortgage shall be referred to as a "**Mortgagee**". This clause shall be self-operative, but upon request from a Mortgagee, Licensee shall, within ten (10) days written request therefor from Licensor, execute a commercially reasonable subordination agreement in favor of the Mortgagee.

22. **ESTOPPEL CERTIFICATE.**

Within ten (10) days after written request therefor, Licensee shall execute and deliver to Licensor, in a form provided by or satisfactory to Licensor, an estoppel certificate stating, that this License is in full force and effect, describing any amendments or modifications thereto, acknowledging that this License is subordinate or prior, as the case may be, to any Mortgage and stating any other information Licensor may reasonably requests, including the Term, the monthly Fees, the date to which Fees has been paid, the amount of any security deposit or prepaid rent, whether either party hereto is in default under the terms of the License, and whether Licensor has completed any construction obligations hereunder. Any such estoppel certificate may be relied upon by any person or entity purchasing, acquiring an interest in or extending finance. If Licensee fails to provide such certificate within ten (10) days as herein provided, such failure shall at Licensor's election, constitute a Default and Licensee shall be deemed to have given such certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Licensor to a prospective purchaser or mortgagee or deed of trust holder.

23. [INTENTIONALLY OMITTED]

24. **NOTICE.**

All notices shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the party's respective Notice Address(es) set forth in the Basic License Information. Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Licensee has vacated the License Area or any other Notice Address of Licensee without providing a new Notice Address, 3 days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party written notice of the new address.

25. **LABOR PROVISIONS.**

25.1 Equal Opportunity. During the Term of this License, and with respect only to employment or employees at the License Area, Licensee agrees as follows:

(a) Licensee will not discriminate against any employee of Licensee or applicant for employment because of race, color, religion, sex or national origin. The employees of Licensee shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Licensee agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

(b) Licensee will, in all solicitations or advertisements for employees placed by or on behalf of Licensee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Licensee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Licensor, advising the labor union or worker's representative of Licensee's commitments under this Equal Opportunity Clause and shall post copies of notice in conspicuous places available to employee and applications for employment.

25.2 Convict Labor. In connection with the performance of work required by this License, Licensee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

26. **MISCELLANEOUS.**

26.1 Governing Law. This License shall be interpreted and enforced in accordance with the Laws of the State of California and Licensor and Licensee hereby irrevocably consent to the jurisdiction and proper venue of such state.

26.2 Severability. If any section, term or provision of this License is held invalid by a court of competent jurisdiction, all other sections, terms or severable provisions of this License shall not be effected thereby, but shall remain in full force and effect.

26.3 Attorneys' Fees. In the event of an action, suit arbitration or proceeding brought by Licensor or Licensee to enforce any of the other's covenants and agreements in this License, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding. Without limiting the generality of the foregoing, if Licensor utilizes the services of an attorney for the purpose of collecting any Fees due and unpaid by Licensee or in connection with any other breach of this License by Licensee following a written demand of Licensor to pay such amount or cure such

breach, Licensee agrees to pay Licensor reasonable actual attorneys' fees for such services, irrespective of whether any legal action may be commence or filed by Licensor.

26.4 Force Majeure. Whenever a period of time is prescribed for the taking of an action by Licensor or Licensee (other than the payment of Fees), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of the performing party ("**Force Majeure**").

26.5 Sale. Licensor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License and in the License Area. Upon transfer, Licensor shall be released from any further obligations hereunder and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations, provided that any successor pursuant to a voluntary, third party transfer (but not as part of an involuntary transfer resulting from a foreclosure or deed in lieu thereof) shall have assumed Licensor's obligations under this License.

26.6 Signs. Licensee shall not place any sign upon the License Area without Licensor's prior written consent, which consent shall not be unreasonably withheld. All signage shall comply with Licensor's signage design criteria, as exist from time to time. In addition, any style, size, materials and attachment method of any such signage shall be subject to Licensor's prior written consent. The installation of any sign on the License Area by or for Licensee shall be subject to the provisions of this License. Licensee shall maintain any such signs installed on the License Area. Unless otherwise expressly agreed herein, Licensor reserves the right to installed, and all revenues from the installation of, such advertising signs on the License Area, including the roof, as do not unreasonably interfere with the conduct of Licensee's business.

26.7 Brokers. Licensor and Licensee each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiating or making of this License except for the Broker specified in the Basic License Information. Each party agrees to indemnify and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any other broker or brokers to a commission in connection with this License as a result of the actions of the indemnifying party.

26.8 Access by Licensor. In addition to access provided by this License, Licensor shall be allowed access to the License Area at all reasonable times throughout the term of this License, for any reasonable purpose. Licensee shall not change any existing locks, or attach any additional locks or similar devices to any door or window, without providing to Licensor one set of keys therefor. All keys must be returned to Licensor at the expiration or termination of this License. Licensee shall have no claim against Licensor for exercise of its rights of access hereunder.

26.9 Waiver of Right to Jury Trial. Licensor and Licensee waive their respective rights to trial by jury of any contract or tort claim, counterclaim, cross-complaint, or

cause of action in any action, proceeding, or hearing brought by either party against the other on any matter arising out of or in any way connected with this License, the relationship of Licensor and Licensee, or Licensee's use or occupancy of the License Area, including without limitation any claim of injury or damage or the enforcement of any remedy under any current or future law, statute, regulation, code, or ordinance. Licensor and Licensee agree that this paragraph constitutes a written consent to waiver of trial by jury within the meaning of California Code of Civil Procedure Section 631(f)(2), and Licensee does hereby authorize and empower Licensor to file this paragraph and/or this License, as required, with the clerk or judge of any court of competent jurisdiction as a written consent to waiver of jury trial. If the waiver set forth in this Section 26.9 is determined by any court to be invalid because it was executed prior to the commencement of any action, then Licensor and Licensee each covenant and agree to execute and deliver to the other, within five (5) days of a written request by the other, a waiver of the right to trial by jury similar in terms and scope to the waiver set forth in this Section 26.9 at such time following the commencement of such action as such waiver, if then made, would be valid.

26.10 Recordation. Neither this License, nor any memorandum, affidavit nor other writing with respect thereto shall be recorded by Licensee or by anyone acting through, under or on behalf of Licensee. Any recording thereof in violation of this provision shall make this License null and void at Licensor's election.

26.11 Paragraph Titles. The paragraph titles use herein are not to be considered a substantive part of this License, but merely descriptive aids to identified the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

26.12 Authority. If Licensee is a corporation, partnership, trust, association or other entity, Licensee and each person executing this License on behalf of Licensee does hereby covenant and warrant that (a) Licensee is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Licensee has and is duly qualified to do business in California, (c) Licensee has full corporate, partnership, trust, association or other power and authority to enter into this License and to perform all Licensee's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this License on behalf of Licensee is duly and validly authorized to do so. Upon execution hereof, Licensee shall provide Licensor with a written certification of its Corporate Secretary or other appropriate authorizing officer or partner attesting that at a duly noticed meeting of its Board of Directors or other governing body a resolution has been unanimously adopted approving Licensee's execution hereof, thereby binding itself to the terms of this License and identifying the person(s) authorized to execute this License on behalf of Licensee.

26.13 [Intentionally Omitted]

26.14 Asbestos Notification for Commercial Property Constructed Before 1979. Licensee acknowledges that Licensor has advised Licensee that, because of their age, buildings on the Property may contain asbestos-containing materials ("ACMs"). If Licensee undertakes any Alterations as may be permitted by Article 9, Licensee shall, in addition to complying with the requirements of Article 9, undertake the Alterations in a manner that

avoids disturbing any ACMs that may be present. If ACMs are likely to be disturbed in the course of such work, Licensee shall encapsulate or remove the ACMs in accordance an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7.

26.15 Lead Warning Statement. Licensee acknowledges that Licensor has advised Licensee that buildings built before 1978 may contain lead-based paints (“LBP”). Lead from paint, paint chips and dust can pose health hazards if not managed properly. Subject to Article 9 of this License, Licensee may at its sole cost and expense, have a state certified LBP Inspector complete a LBP inspection and abatement and provide an abatement certification to Licensor. Licensor has no specific knowledge of the presence of lead-based paint in the License Area.

26.16 OFAC Certification. Licensee represents, warrants and covenants that: (a) Licensee and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “**Specially Designated and Blocked Person,**” or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; (b) Licensee acknowledges that the breach of this representation, warranty and covenant by Licensee shall be an immediate Default under the License.

26.17 Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Licensor hereby discloses that the License Area have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

26.18 Time of the Essence. Time is of the essence of this License and each and all of its provisions.

26.19 Entire Agreement. This License contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this License, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. It is specifically understood and agreed that this License supersede and replaces the Original License. No provision of this License may be amended or added except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

26.20 Rules and Regulations. Tenant shall faithfully observe and comply with any rules and regulations governing its use and occupancy of the License Area as Landlord may, from time to time, promulgate.

26.21 Relocation Benefits. Licensee acknowledges that upon the expiration or earlier termination of this License, for any reason other than a Taking as defined at Article 16, Licensee shall, and hereby does, waive any and all claims for relocation benefits, assistances and/or payments under Government Code Sections 7260 et seq., California Code of

Regulations Sections 600 et seq., 42 U.S.C 4601 et seq., 29 C.F.R. Sections 121 et seq. and 49 C.F.R Sections 24.1 et seq. (collectively the “**Relocation Assistance Laws**”). Licensee further acknowledges and agrees that upon the expiration or earlier termination of this License for any reason, other than a Taking as hereinabove defined, no claim shall arise, nor shall Licensee assert any claim for loss of business goodwill (as that term is defined at CCP §1263.510) and no compensation for loss of business goodwill shall be paid by Licensor.

26.22 Environmental and Planning Documents. Licensee acknowledges that its use of the License Area and any Alterations thereto shall comply with the terms, conditions and requirements of: (a) the Environmental Impact Report for Alameda Point and the Mitigation Monitoring and Reporting Program adopted pursuant thereto; (b) the Master Infrastructure Plan; (c) the Town Center and Waterfront Precise Plan (as applicable); and (d) any Transportation Demand Management Plan as may currently exist or as may subsequently be adopted by the City Council.

26.23 Subdivision and Development of Property. Licensee acknowledges that, without any form of representation or warranty, Landlord (or its successor) may cause the Property to be subdivided or existing parcels to be assembled to facilitate the sale, development or redevelopment of portions of Property which may or may not include those portions of the Property upon which the License Area is located. As a material inducement for Landlord to enter into this License, Licensee agrees not to take any actions, oral or in writing, in opposition to such activities, or the planning thereof by Licensor or its successor.

26.24 Counterparts. This License may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

Licensor and Licensee have executed this License as of the day and year first above written.

(Signatures on following page)

LICENSOR:

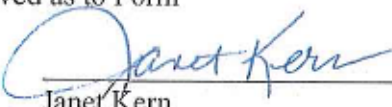
City of Alameda,
a charter city and municipal corporation

By: 

John Rasso
City Manager

Date: 3/5/14


Approved as to Form

By: 

Janet Kern
City Attorney

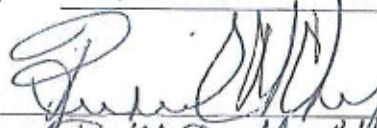
LICENSEE:

Amber Kinetics Inc.,
a California corporation

By: 

Name: Edward Chiao
Title: CEO

Date: 4/10/14

By: 

Name: RICHARD M. CHONKA

Date: 4/14/14

EXHIBIT A
LICENSE AREA

Exhibit A: Premises

Dated: March 28, 2014
By and Between: (Lessor) City of Alameda
(Lessee) Amber Kinetics, Inc., a California corporation
Address of Premises: _____, Alameda, CA 94501



EXHIBIT B

COMMENCEMENT LETTER

Date: May 19, 2014

Re: License dated as of May 5, 2014, by and between City of Alameda, as Licensor, and Amber Kinetics, Inc., a California corporation, as Licensee.

Dear Sirs:

In accordance with the terms and conditions of the above referenced License, Licensee accepts possession of the License Area and agrees:

1. The Commencement Date of the License is May 5, 2014;
2. The Expiration Date of the License is May 4, 2016.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention.

Sincerely,


Agreed and Accepted:


Licensor:

Licensor:

City of Alameda

Amber Kinetics, Inc.

By: 
 Name: John A. Russo
 Title: City Manager

By: 
 Name: Seth Sanders
 Title: CTO, Board Member

Approved as to Form


Janet C. Kern
 City Attorney

EXHIBIT C

ACKNOWLEDGMENT OF RECEIPT

Pursuant to that certain License Agreement entered to by and between City of Alameda, a charter city and municipal corporation ("Licensor") and Amber Kinetics Inc., a California corporation ("Licensee") dated as of April 9, 2014 ("License") Licensee hereby acknowledges that Licensor has provided it with copies of the following documents:

- Quitclaim Deed from the United States of America, acting by and through the Department of the Navy to the City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("Quitclaim Deed");
- Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-5677266 in the Office of the County Recorder of Alameda County ("Declaration of Restrictions ").

Pursuant to Section 5.3 of the License, Licensee acknowledges receipt of the above referenced documents and agrees that its use of the License Area (as defined in the License) shall comply with the restrictions set forth in said documents and failure to do so shall constitute a Default under the License.

Amber Kinetics Inc.,
a California corporation


By: 
 Its: Edward S. Chiao
 Date: 4/9/14

EXHIBIT E

ENVIRONMENTAL QUESTIONNAIRE

The purpose of this form is to obtain information regarding the use, if any, of hazardous substances in the process proposed on the premises to be leased. Any such use must be approved in writing by Landlord. Prospective tenants should answer the questions in light of their proposed operations on the premises. Existing tenants should answer the questions as they relate to ongoing operations on the premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form.

Your cooperation in this matter is appreciated. Any questions should be directed to, and when completed, the form should be mailed to:

PM Realty Group L.P.
Attn: Property Manager
101 West Atlantic Avenue
Alameda, California 94501
(510) 749-0304; (510) 749-1095 fax

1. General Information.

Name of Responding Company: Amber Kinetics, Inc.

Check the Applicable Status: _____

Prospective Tenant Existing Tenant

Mailing Address: 32920 Alvarado-Niles Rd, Suite 250
Union City, CA 94587

Contact Person and Title: Ed Chiao, CEO

Telephone Number: () 408-206-0834

Alameda Point Address of Proposed Premises to be Leased: _____

641 West Red Line Ave, Alameda, CA

Length of Lease Term: 24 mos

Your Standard Industrial Classification (SIC) Code Number: _____

Describe the proposed operations to take place on the property, including principal products manufactured, services and a brief process flow description to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

Installation and testing of electrical energy storage
System

2. Use and/or Storage of Hazardous Materials.

2.1 Will any hazardous materials be used or stored onsite?

Hazardous Wastes Yes No
Hazardous Chemical Products Yes No

2.2 Attach the list of any hazardous materials/wastes to be used, stored, or generated the quantities that will be onsite at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

2.3 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet?

Yes No

If yes please provide Material Safety Data Sheets (MSDS) on such materials.

2.4 Has your business filed for a Consolidated Hazardous Materials Permit from the Alameda County Environmental Management Department?

Yes No

If so, attach a copy of the permit application.

2.5 Are any of the chemicals used in your operations regulated under Proposition 65?

Yes No

If so, describe the actions taken, or proposed to be taken, to comply with Proposition 65 requirements. _____

2.6 Do you store or use or intend to store or use acutely hazardous materials above threshold quantities requiring you to prepare a risk management plan (RMP)?

Yes No

2.7 Describe the procedures followed to comply with OSHA Hazard Communication Standard requirements. _____

Amber does not use any hazardous chemicals

3. Storage Tanks and Pumps.

3.1 Are any above or below ground storage of gasoline, diesel, or other hazardous substances in tanks or pumps being used as a part of your present process or proposed for use on this leased premises?

Yes No

If yes, describe the materials to be stored, and the type, size and construction of the pump or tank. Attach copies of any permits obtained for the storage of such substances. _____

3.2 If you have an above ground storage tank (AST), do you have a spill prevention containment and countermeasures (SPCC) plan?

Yes No Not Applicable

3.3 Have any tanks, pumps or piping at you existing facilities been inspected or tested for leakage?

Yes No Not Applicable
If so, attach the results.

3.4 Have any spills or leaks occurred from such tanks, pumps or piping?

Yes No Not Applicable
If so, describe. _____

3.5 Were any regulatory agencies notified of any spills or leaks?

Yes No Not Applicable

If so, attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.6 Have any underground storage tanks, sumps or piping been taken out of service or removed at the proposed facility or facilities that you operate?

Yes No Not Applicable

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. Spills.

4.1 During the past year, have any spills occurred on any site you occupy?

Yes No Not Applicable

If so, please describe the spill and attach the results of any process conducted to determine the extent of such spills.

4.2 Were any agencies notified in connection with such spills?

Yes No Not Applicable

If no, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes No Not Applicable

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or

groundwater sampling done upon completion of the clean-up work _____

5. Waste Management.

5.1 Has your business filed a Hazardous Material Plan with the Alameda County Environmental Management Department?

Yes No

5.2 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes No

If yes: EPA ID# _____

5.3 Has your company filed a biennial report as a hazardous waste generator?

Yes No

If so, attach a copy of the most recent report filed.

5.4 Are hazardous wastes stored in secondary containments?

Yes No

5.5 Do you utilize subcontractors for lighting/electrical, plumbing, HVAC, pest services, landscaping and/or building maintenance services?

Yes No

If yes, do any of these subcontractors store, mix or utilize chemicals on site?

Yes No

If yes, what types and quantities? _____

Attach the list of the hazardous waste, if any, generated or to be generated at the premises, its hazard class and the quantity generated on a monthly basis.

Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. _____

N/A

Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for offsite shipments of hazardous waste. _____

N/A

Is any treatment, processing and recycling of hazardous wastes currently conducted or proposed to be conducted at the premises:

Yes No

If yes, please describe any existing or proposed treatment, processing or recycling methods. _____

Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.

6. Wastewater Treatment/Discharge.

6.1 Will your proposed operation require the discharge of wastewater to (answer Yes or No to each of the following)?

No storm drain NO sewer
No surface water NO no industrial discharge

6.2 Does your business have a Sewer Use Questionnaire on file with Alameda County Sanitation District?

Yes No

6.3 Is your wastewater treated before discharge?

Yes No Not Applicable

If yes, describe the type of treatment conducted.

6.4 Does your business conduct operations outside the building or store materials outside?

Yes No Not Applicable

6.5 Do you have a Storm Water Pollution Prevention Plan (SWPPP)?

Yes No Not Applicable

6.6 Does your business have a General Permit for storm water discharge associated with industrial activity?

Yes No Not Applicable

6.7 Does your business operate under a National Pollution Discharge Elimination System (NPDES) Permit?

Yes No Not Applicable

Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

7. Air Discharges.¹

7.1 Do you have or intend to have any air filtration systems or stacks that discharge into the air?

Yes No

7.2 Do you operate or plan to operate any of the following types of equipment, or any other equipment requiring an air emissions permit (answer Yes or No to each of the following)?

| | | |
|--|------------------------------|--|
| Spray booth | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Dip tank | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Drying oven | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Incinerator | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Other (please describe) | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Boiler | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| I/C Engine | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Emergency Backup Generator | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Processes that apply coatings, inks, adhesives or use solvents | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

7.3 Do you emit or plan to emit any toxic air contaminants?

Yes No

7.4 Are air emissions from your operations monitored?

Yes No

If so, indicate the frequency of monitoring and a description of the monitoring results.

No emissions

Attach copies of any air emissions permits pertaining to your operations on the premises.

8. Enforcement Actions, Complaints.

8.1 Has your company, within the past five years, ever been subject to any agency enforcement actions, administrative orders, or consent decrees?

Yes No

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions.

¹ NOTE: Businesses will have to comply with prohibitory rules regardless of whether they have or need a permit.

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes No

8.3 Have there ever been, or are there now pending, any lawsuits against the company regarding any environmental or health and safety concerns?

Yes No

8.4 Has any environmental audit ever been conducted at your company's current facility?

Yes No


If so, discuss the results of the audit. _____

8.5 Have there been any problems or complaints from neighbors at the company's current facility?

Yes No

Please describe: _____

The undersigned hereby certifies that all of the information contained in this questionnaire is accurate and correct.

a _____
By: 
Title: CEO
Date: 4/9/14