

## FIRST AMENDMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT ("First Amendment") dated as of January \_\_, 2016 (the "Effective Date") is entered into by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("City" or "Licensor") and AMBER KINETICS, INC., a California corporation ("Licensee"), with reference to the following:

### RECITALS

A. Licensor and Licensee entered into that certain License Agreement dated as of April, 2014 (the "License Agreement") whereby Licensor granted Licensee a license (the "License") to occupy that certain unimproved lot located at 641 West Red Line Avenue, Alameda, California, consisting of approximately 10,000 square feet of land (the "License Area"); and

WHEREAS Licensee has requested and Licensor has agreed to extend the Term upon the terms and conditions and as otherwise as set forth in this First Amendment.

### AGREEMENT

1. Recitals. The Recitals set forth above are incorporated herein as though set forth in full herein.

2. Expanded License Area. The License Area is expanded for the duration of the Extended Term to include the are depicted on **Exhibit A** attached hereto.

3. Extended Term. The Term of the License shall be extended for twenty-four (24) months and shall terminate at midnight on May 4, 2018.

4. Amendment to License Fees. Commencing on May 5, 2016 the fee for use and occupancy of the License Areas shall be Two Thousand Two Hundred and 00/100 Dollars (\$2,200.00) per month, which shall be paid in accordance with Article 4 of the License Agreement except that the address for PM Realty Group, Property Manager, is now 950 West Mall Square, Room 239, Alameda, CA 94561.

5. Miscellaneous.

(a) This First Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

(b) Except as herein modified or amended, the provisions, conditions and terms of the License shall remain unchanged and in full force and effect.

(c) In case of any inconsistencies between the provisions of the License and this First Amendment, the provisions of this First Amendment shall govern and control.

(d) As of the Effective Date of this First Amendment, Licensee represents and warrants to Licensor that: (a) there are no defaults on the part of Licensor under the License and there are no events currently existing (or with the passage of time, giving of

notice or both, which would exist) which would be deemed a default of Licensor, and (b) there are no claims against Licensor, including without limitations, claims of credit, offset or deduction from or against the rent due under the License.

(e) Capitalized terms used in this First Amendment shall have the same definitions as set forth in the License Agreement to the extent that such capitalized terms are defined therein and not redefined in this First Amendment.

(f) Licensee hereby represents to Licensor that Licensee has dealt with no broker in connection with this First Amendment, other than Cushman & Wakefield California, Inc. (representing Licensor). Licensee agrees to defend, indemnify and hold Licensor harmless from any and all claims of any brokers claiming to have represented Licensee in this First Amendment. Licensor hereby represents to Licensee that Licensor has dealt with no broker in connection with this First Amendment, other than Cushman & Wakefield California, Inc.. Licensor agrees to defend, indemnify and hold Licensee harmless from all claims of any brokers claiming to have represented Licensor in connection with this First Amendment.

(g) If Licensee is a corporation, partnership, trust, association or other entity, Licensee and each person executing this First Amendment 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 the state or county 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 First Amendment and to perform all of Licensee's obligations hereunder and (d) each person (and all of the persons if more than one signs) signing this First Amendment on behalf of Licensee is duly and validly authorized to do so. At execution hereof and upon Licensor's request, Licensee shall provide Licensor with evidence reasonably satisfactory to Licensor confirming the foregoing representations and warranties.

(h) Licensor 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) the Alameda Point Transportation Demand Management Plan.

(i) This First Amendment may be executed in multiple counterparts each of which is deemed an original but together constitutes one and the same instrument. This First Amendment may be transmitted in "pdf" format and each party has the right to rely upon a pdf counterpart of this First Amendment signed by the other party to the same extent as if such party had received an original counterpart.

IN WITNESS WHEREOF, Licensor and Licensee have duly executed this First Amendment as of the Effective Date set forth above.

**LICENSOR:**

CITY OF ALAMEDA,  
a charter city and municipal corporation

By: 

Elizabeth D. Warmerdam  
Interim City Manager

**LICENSEE:**

AMBER KINETICS, INC.  
a California corporation

By: 

Name: Edward Chiao

Its: CEO

By: 

Name: CFO, RICHARD M. CHONG

Its: \_\_\_\_\_

Approved as to Form

By: 

Farimah Brown  
Sr. Assistant City Attorney



Exhibit A: License Area

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

