

## IMPETUS SOFTWARE LICENSE AND SERVICES AGREEMENT

IMPORTANT - CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THIS IMPETUS SOFTWARE LICENSE AND SERVICES AGREEMENT FOR ANKUSH SOFTWARE (THIS "AGREEMENT"). BY CLICKING "I ACCEPT," OR PROCEEDING WITH THE INSTALLATION OF THE ANKUSH SOFTWARE VERSION SELECTED ("SOFTWARE"), OR USING THE SOFTWARE YOU ("LICENSEE") ARE INDICATING THAT LICENSEE HAS READ, UNDERSTAND AND ACCEPT THIS AGREEMENT WITH IMPETUS TECHNOLOGIES, INC. ("IMPETUS"), AND THAT YOU AGREE TO BE BOUND BY ITS TERMS. IF LICENSEE DOES NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, COPY OR OTHERWISE USE THE SOFTWARE, CLICK ON THE "I DISAGREE" BUTTON AND THE INSTALLATION PROCESS FOR THE SOFTWARE WILL NOT CONTINUE AND LICENSEE WILL NOT BE ABLE TO USE THE SOFTWARE. THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE THE DATE THAT LICENSEE ACCEPTS THIS AGREEMENT.

1. Scope of Agreement. This Agreement sets forth the terms and conditions under which Licensee may purchase from Impetus: (i) licenses to use the Software and (ii) support and maintenance services ("**Technical Support**"). The Software and services ordered by Licensee will be specified in one or more online order forms (each, an "**Order Form**"). Each Order Form will be governed by the terms of this Agreement and the term "Agreement" herein, includes the terms of this Agreement and all Order Forms. The terms on any other purchase order, confirmation, or similar document submitted by Licensee to Impetus will have no effect and are hereby rejected.

2. Software.

(a) License Grant. Subject to Licensee's compliance with the terms and conditions of this Agreement, Impetus hereby grants Licensee a limited, personal, revocable, non-transferable, non-sublicensable, non-exclusive license during the term of this Agreement, to: (i) use the Software limited to the number of platforms, devices, users or other restrictions set forth on the applicable Order Form; (ii) use the user documentation accompanying the Software in conjunction with Licensee's authorized use of the Software; all for Licensee's internal business use only. The Software will be made available to Licensee under this Agreement in object code only; no source code is provided to Licensee under this Agreement. The Software (and any future Software bug fix or minor enhancement or new version that Impetus may make available to Licensee from time-to-time and which are included in the defined term "Software") will be deemed accepted upon Impetus making the Software available to Licensee.

(b) Restrictions. Licensee may not, and will not permit or induce any third party to: (i) decompile, reverse engineer, disassemble or otherwise attempt to reconstruct or discover the source code, underlying ideas or algorithms of any components of the Software; (ii) alter, modify, translate, adapt in any way, or prepare any derivative work based upon the Software; (iii) rent, lease, network, loan, pledge, encumber, sublicense, sell, distribute, disclose, assign or otherwise transfer the Software or any copy thereof; or (iv) use the Software in commercial timesharing, rental or other sharing arrangements; (v) remove any proprietary notices from the Software or any related documentation or other materials furnished or made available hereunder. In addition, Licensee agrees to comply with all applicable local, state, national, and international laws, rules and regulations applicable to Licensee's use of the Software.

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(d) Proprietary Rights. Impetus or its licensors retain all right, title and interest in and to the Software and related documentation and materials, including, without limitation, all patent, copyright, trademark, and trade secret rights, embodied in, or otherwise applicable to the Software, whether such rights are registered or unregistered, and wherever in the world those rights may exist. Licensee shall not commit any act or omission, or permit or induce any third party to commit any act or omission inconsistent with Impetus' or its licensors' rights, title and interest in and to the Software and the intellectual property rights embodied therein or applicable thereto. All materials embodied in, or comprising the Software, including, but not limited to, graphics, user and visual interfaces, images, code, applications, and text, as well as the design, structure, selection, coordination, expression, "look and feel", and arrangement of the Software and its content, and the trademarks, service marks, proprietary logos and other distinctive brand features found in the Software ("**Impetus Marks**"), are all owned by Impetus or its licensors; Licensee is expressly prohibited from using the Impetus Marks. Title to the Software shall not pass from Impetus to Licensee, and the Software and all copies thereof shall

at all times remain the sole and exclusive property of Impetus. There are no implied rights or licenses in this Agreement. All rights are expressly reserved by Impetus.

(e) Inspection Right. During the term of this Agreement and for one (1) year thereafter, Impetus or its designated agent may inspect Licensee's facilities and records to verify Licensee's compliance with the terms of this Agreement. Any such inspection will take place only during Licensee's normal business hours and upon at least one (1) day prior written notice from Impetus. Licensee shall reasonably cooperate with such audit and shall make such personnel and records available as Impetus may reasonably request. Impetus will give Licensee written notice of any non-compliance, including any use of the Software or services beyond that authorized under this Agreement and without limiting Impetus' remedies arising from such unauthorized use, Licensee shall promptly: (i) cease such unauthorized use; (ii) pay Impetus any additional fees due to the extent Licensee's use of the Software has exceeded the scope purchased by Licensee; and (iii) reimburse Impetus' reasonable, documented costs incurred in conducting such inspection. Audits may be conducted no more than twice per year.

3. Technical Support And Services. Any consulting services shall be subject to a separate written agreement between Licensee and Impetus. Licensee may elect to purchase Technical Support. If Licensee purchases Technical Support, as indicated on an Order Form, Impetus or Impetus's affiliates will provide Technical Support for the applicable period of time set forth in each Order Form, all in accordance with Impetus' then-current Technical Support terms as provided by Impetus to Licensee. Impetus may add to, change or remove any part, term or condition of the Technical Support Terms at any time without prior notice to Licensee; provided however, that any such changes which occur during the then-current Technical Support term (as specified in the applicable Order Form) which materially diminish the benefit of the Technical Support, will not take effect for Licensee until the start of the next Technical Support term.

#### 4. Fees & Payment Terms.

(a) Fees. The fees payable by Licensee and due dates for the Software license and Technical Support, and the applicable Software license period, will be set forth in each Order Form. Recurring fees shall be paid in advance as set forth in the applicable Order Form. Any non-recurring fees for shall be payable on the dates set forth in the applicable Order Form. New versions of the Software may be purchased by Licensee pursuant to a new Order Form.

(b) Payment Terms. All payments under this Agreement shall be made in currently available funds and payments may be made by check, wire transfer, or by such other means as Impetus may specify from time-to-time. Unless otherwise expressly agreed by Impetus and specified in the applicable Order Form, all fees are payable in the currency of the United States of America. All fees specifically exclude (and Licensee is responsible for) any and all applicable sales, use and other taxes, other than taxes based on Impetus' income. Any amounts due under this Agreement which are not paid within thirty (30) calendar days of their due date shall be subject to a late payment charge of the lower of: (i) one and one half percent (1.5%) per month (and shall thereafter bear interest at a rate of eighteen percent (18%) per annum until paid); and (ii) the highest interest rate permitted by applicable law. Each party is responsible for its own expenses under this Agreement. All fees payable under this Agreement are non-refundable. Impetus will not issue any invoices for the fees due hereunder unless expressly requested by Licensee; provided however, that all fees are automatically due as set forth in this Section 4 irrespective of the date of issue of any invoice.

(c) Changes to Fees. Impetus may change its fees and payment terms at its discretion; provided however, that such changes will not take effect for Licensee until the start of the next Software license or Technical Support term. Impetus will provide prior written notice to Licensee of any changes to the fees that affect the Software and Technical Support Licensee has purchased, including as sent to Licensee's e-mail address.

#### 5. Term & Termination.

(a) Term. Subject to termination as set forth in this Section 5, the term of this Agreement and each Order Form will commence on the Effective Date and will continue for the period of time as set forth in an Order Form under this Agreement. The term of the Software license and the term of Technical Support (and the corresponding fees for both) may be renewed in a new Order Form. This Agreement shall automatically terminate upon the expiration of the last Order Form hereunder.

(b) Termination. Either party may terminate this Agreement immediately without further notice if the other party breaches its obligations under this Agreement and does not remedy such breach within thirty (30) calendar days of the date on which the breaching party receives written notice of such breach from the non-breaching party.

(c) Effects of Termination. Upon the termination of this Agreement for any reason: (i) the licenses granted under this Agreement in respect of the Software shall immediately terminate; (ii) Impetus' obligations to perform the Technical Support shall immediately terminate; (iii) Licensee shall pay to Impetus the full amount of any outstanding fees due hereunder; and (iv) within ten

(10) calendar days of such termination, each party shall destroy or return all Confidential Information of the other party in its possession, and will not make or retain any copies of such information in any form, except that the receiving party may retain one (1) archival copy of such information solely for purposes of ensuring compliance with this Agreement. Notwithstanding the foregoing, the following terms shall survive the termination of this Agreement, together with any other terms which by their nature are intended to survive such termination: Sections 2(c) (Restrictions), 2(d) (Proprietary Rights), 2(e) (Inspection Right), 4 (Fees & Payment Terms), 5(c) (Effects of Termination), 6(a) ("Confidentiality"), 6(b) (Non-Solicitation), 6(c) (Feedback), 7(c) (Disclaimer of Warranties), 8 (Indemnification), 9 (Limitation of Liability) and 11 (General).

6. Confidentiality, Non-Solicitation, Feedback & Publicity.

(a) Confidentiality. "**Confidential Information**" means any proprietary information received by the other party during, or prior to entering into, this Agreement that is marked as confidential or proprietary. The Software and any non-public technical and business information of a party shall be deemed Confidential Information, whether or not marked. Confidential Information does not include information that (a) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure. Licensee and Impetus will maintain the confidentiality of Confidential Information. The receiving party of any Confidential Information of the other party agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party shall protect the secrecy of and prevent disclosure and unauthorized use of the disclosing party's Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event shall use less than reasonable care. The receiving party may disclose the Confidential Information of the disclosing party if required by judicial or administrative process, provided that the receiving party first provides to the disclosing party prompt notice of such required disclosure to enable the disclosing party to seek a protective order. Upon termination or expiration of this Agreement, the receiving party will, at the disclosing party's option, promptly return or destroy (and provide written certification of such destruction) the disclosing party's Confidential Information.

(b) Publicity. During the term of this Agreement, Licensee hereby agrees that Impetus shall have the right, but not the obligation, to include Licensee's name and logo as a customer who uses the Software and/or Technical Support in marketing materials promoting the Software and/or Technical Support.

7. Warranties & Disclaimer of Warranties.

(a) General Representations and Warranties. Each party represents and warrants to the other party that: (i) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and (ii) it has complied, and will in the future comply, with all applicable laws, rules and regulations in connection with the performance of this Agreement.

(b) Limited Software Warranty. Impetus represents and warrants to Licensee that: (i) the first version of the Software licensed under the initial Order Form will materially conform to Impetus' published documentation for a period of one (1) year from the date Licensee is first permitted to access and use the Software and (ii) any subsequent versions of the Software licensed under renewal Order Forms will materially conform to Impetus' published documentation for a period of sixty (60) days from the date Licensee is first permitted to access and use that version of the Software. For the avoidance of doubt: (a) if Licensee purchases or receives a new version of the Software, the warranty for the first version of the Software licensed under the initial Order Form shall cease to apply and (b) no warranty shall apply for the first version of the Software licensed under the initial Order Form during the term of a renewal Order Form. Licensee's sole and exclusive remedy, and Impetus' sole and exclusive liability for any breach of this warranty will be, at Impetus' sole discretion, to fix and remedy the Software with a bug fix or minor enhancement on condition that Licensee promptly notifies Impetus in writing of any alleged breach of this warranty within such warranty period. This warranty applies solely to the extent that the Software is used for its intended purpose and in accordance with Impetus' instructions. This warranty is null and void to the extent the Software: (i) fails to conform with this warranty as a result of its use with any third party hardware or software; or (ii) is used for an unintended purpose, is used other than in accordance with its published documentation or specifications, or is otherwise used in breach of this Agreement.

(c) Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION 7: (I) THE SOFTWARE AND SERVICES ARE PROVIDED TO LICENSEE ON AN "AS IS" BASIS, WITH ANY AND ALL FAULTS, AND WITHOUT ANY WARRANTY OF ANY KIND; AND (II) IMPETUS EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IMPETUS DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL MEET LICENSEE'S REQUIREMENTS, OR THAT THE

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8. Indemnification. Licensee shall indemnify, defend and hold harmless Impetus and its officers, directors, employees, shareholders, contractors and agents, and its and their respective officers, directors, employees, agents, representatives, and contractors (each, a "**Impetus Party**"), from and against any and all liability and costs (including, without limitation, attorneys' fees and costs) incurred by any Impetus Party in connection with any actual or alleged claim arising out of, or relating to: (i) Licensee's breach of this Agreement, any or any applicable law, rule or regulation; (ii) Licensee's use of the Software and Technical Support, (except to the extent Impetus is responsible for the event giving rise to Licensee's liability under this Section 8(a)); and (iii) Licensee's gross negligence, fraudulent misrepresentation or willful misconduct. Counsel Licensee selects for the defense or settlement of a claim must be consented to by Impetus prior to counsel being engaged to represent any Impetus Party. Licensee and Licensee's counsel will cooperate as fully as reasonably required, and provide such information as reasonably requested, by Impetus in the defense or settlement of any claim. Impetus reserves the right, at its own expense, to assume the exclusive defense or settlement, and control of any matter otherwise subject to indemnification by Licensee. Licensee shall not in any event, consent to any judgment, settlement, attachment, or lien, or any other act adverse to the interests of any Impetus Party without the prior written consent of each relevant Impetus Party.

9. Limitation of Liability.

(a) Consequential Damages Waiver. UNDER NO CIRCUMSTANCES, SHALL ANY IMPETUS PARTY BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, RELIANCE, OR CONSEQUENTIAL DAMAGES, (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE) ARISING OUT OF OR RELATING TO THE USE AND/OR INABILITY TO USE THE SOFTWARE OR SERVICES, REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED AND EVEN IF AN IMPETUS PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Limitation of Damages. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL THE IMPETUS PARTIES' TOTAL CUMULATIVE LIABILITY TO LICENSEE OR ANY THIRD PARTY FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF FEES PAID BY LICENSEE TO IMPETUS DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE IMPETUS PARTIES' LIABILITY.

(c) Failure of Essential Purpose. THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY EVEN IF THIS AGREEMENT OR ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO LICENSEE. IN SUCH EVENT, THE LIABILITY OF THE IMPETUS PARTIES FOR SUCH DAMAGES WITH RESPECT TO THE SOFTWARE AND SERVICES WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW IN SUCH JURISDICTION. The sections of this Agreement that address indemnification, limitation of liability and the disclaimer of warranties allocate the risk between the parties. This allocation of risk is an essential element of the basis of the bargain between the parties.

10. Government Rights. The Software licensed to Licensee under this Agreement is "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

11. General. Licensee acknowledges that the laws and regulations of the United States of America and foreign jurisdictions may restrict the export and re-export of certain commodities and technical data of United States of America origin, including the Software.

Licensee agrees that it will not export or re-export the Software without the appropriate United States or foreign government licenses or permits. This Agreement, including all attachments, shall constitute the entire agreement between Impetus and Licensee relating to the subject matter hereof and shall supersede all prior negotiations, agreements, and understandings between the Parties. No waiver of any provision of this Agreement shall be effective unless made in writing. In addition, no waiver by either Party of any breach of any provision of this Agreement shall be construed as a waiver of any subsequent breach or as a continuing waiver of such breach of this Agreement. In addition, no failure to enforce any contract term shall be deemed a waiver of future enforcement of that or any other term. No modifications or additions to this Agreement shall be binding on either Party unless in writing and signed by the Party against whom enforcement is sought. In the event of any conflict between the provisions of this Agreement and any Order Form hereto, the conflicting provisions shall govern in the following order: (i) the Order Form, (ii) this Agreement. The provisions of this Agreement shall be severable. If any provision of this Agreement is held invalid or unenforceable in any relevant jurisdiction, then (i) such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, (ii) the application of such provision in any other circumstances shall not be affected, and (iii) the application of the remaining provisions of this Agreement shall not be affected by such application. This Agreement may not be assigned by either Party without the express prior written consent of the other Party. Any attempted assignment without such consent will be null and void and of no effect, except that, upon written notice to the other Party, either Party may assign all or portions of this Agreement to a subsidiary or successor to its business (whether by merger, a sale of all or substantially all of its assets relating to this Agreement, a sale of a controlling interest of its capital stock, or otherwise). No remedy or election of remedy under this Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or equity. To the extent permitted in the relevant jurisdiction, no action relating in any way to performance or nonperformance of this Agreement may be brought by Licensee more than one (1) year after the performance hereunder. If either Impetus or Licensee employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws provisions and each of the Parties shall be subject to personal jurisdiction in the State of California.