AMPOOL SOFTWARE LICENSE AGREEMENT

(DEVELOPER EDITION)

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    1.1   "Authorized Persons" means trained technical employees and contractors of Licensee who are subject to a written agreement with Licensee that includes use and confidentiality restrictions that are at least as protective as those set forth in this Agreement.

    1.2   "Confidential Information" means all non-public information disclosed in written, oral or visual form by either party to the other. Confidential Information may include, but is not limited to, services, pricing information, computer programs, source code, names and expertise of employees and consultants, know-how, and other technical, business, financial and product development information. "Confidential Information" does not include any information that the receiving party can demonstrate by its written records (1) was rightfully known to it without obligation of confidentiality prior to its disclosure hereunder by the disclosing party; (2) is or becomes publicly known through no wrongful act of the receiving party; (3) has been rightfully received without obligation of confidentiality from a third party authorized to make such a disclosure; or (4) is independently developed by the receiving party without reference to confidential information disclosed hereunder.

    1.3   "Documentation" means any administration guides, installation and user guides, and release notes that are provided by Ampool to Licensee.

    1.4   "Error" means a failure of a Software to operate as described in the Documentation.

    1.5   "Intellectual Property Rights" means patents, design patents, copyrights, trademarks, Confidential Information, know-how, trade secrets, moral rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

    1.6   "Node" means a single computing machine or equivalent instance in public cloud which does not exceed any of the following component elements: (a) one motherboard; (b) 2 CPU sockets; (c) 12 processing cores; (d) 24 vCPU; and (e) 192 GB of RAM). Nodes must owned or leased by Licensee or an entity controlled by, controlling or under common control with Licensee.

    1.7   "Open Source Software" means software delivered to Licensee hereunder that is subject to the provisions of any open source license agreement, which may include, without limitation, the GNU Lesser General Public License and the Mozilla Public License.

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    1.9   "Third-Party Software" means certain software Ampool licenses from third parties and provides to Licensee with the Software, which may include Open Source Software.

    1.10   "Update" means a revision of a Software to correct one or more Errors.

    1.11   "Upgrade" means a revision of a Software to improve its existing functionality.

2. **LICENSE GRANT AND RESTRICTIONS**

2.1   License. Subject to Licensee's compliance with the terms and conditions of this Agreement, Ampool grants to Licensee a non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement under Section 14.11(Assignment), non-sublicensable license to install and use one (1) copy of the Software, in object code form only, solely for Licensee's own internal use and solely on a single Node. Use of the Software on additional Nodes requires Licensee to enter into a separate license and may require payment by Licensee of applicable fees.

2.2   License Restrictions. Except to the extent permitted under this Agreement, Licensee will not nor will Licensee allow any third party to: (i) copy, modify, adapt, translate or otherwise create derivative works of the Software or the Documentation; (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software; (iii) rent, lease, sell, assign or otherwise transfer rights in or to the Software or Documentation; (iv) remove any proprietary notices or labels from the Software or Documentation; or (v) publicly disseminate performance information or analysis (including, without limitation, benchmarks) relating to the Software. Licensee will comply with all applicable laws and regulations in Licensee's use of and access to the Software and Documentation.

2.3   Responsibility for Use. The Software and Documentation may be used only by Authorized Persons and in conformance with this Agreement. Licensee shall be responsible for the proper use and protection of the Software and Documentation and is responsible for: (i) installing, managing, operating, and physically controlling the Software and the results obtained from using the Software; (ii) using the Software within the operating environment specified in the Documentation; and; (iii) establishing and maintaining such recovery and data protection and security procedures as necessary for Licensee's service and operation and/or as may be specified by Ampool from time to time.

2.4   United States Government Users. The Software licensed 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 and this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (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.

3.   **SUPPORT**

Ampool may, but is under no obligation to, provide maintenance or support of the Software. By accepting this Agreement, Licensee also agrees that Ampool will be under no obligation to provide any Updates and Upgrades to the Software.

4.   **TERM AND TERMINATION**

4.1   Term. This Agreement and Licensee's right to use the Software commences on earlier of the date that Licensee: (a) installs Software, (b) begins using Software or (c) otherwise demonstrates assent to this Agreement, and shall continue until terminated by either party (the "Term").

4.2   Termination. This Agreement may be terminated by either Party upon fifteen (15) days prior written notice. Ampool may terminate this Agreement with immediate effect if Licensee is in default of any of the terms and conditions of this Agreement or if Licensee (1) becomes insolvent, (2) files a petition in bankruptcy, (3) is subject to the filing of an involuntary petition for bankruptcy which is not rescinded within a period of forty-five (45) days, or (4) materially breaches its obligations of confidentiality hereunder.

4.3   Effects of Termination. Upon termination or expiration of this Agreement for any reason, (i) all licensed rights granted in this Agreement will immediately cease; and (ii) Licensee will promptly discontinue all use of the Software and Documentation and return to Ampool any Ampool Confidential Information in Licensee's possession or control.

4.4   Survival. The following Sections of this Agreement will remain in effect following the expiration or termination of these General Terms for any reason: 4.3 (Effects of Termination), 4.4 (Survival), 5 (Third Party Software) 5 (Confidentiality), 7 (Fees and Delivery), 8 (Ownership), 9 (Audits), 10 (Disclaimer of Warranties), 11 (Limitations of Liability), 12 (Indemnification), 13 (Export) and 14 (General).

5.   **THIRD PARTY SOFTWARE**

Certain Third-Party Software provided with the Software is subject to various other terms and conditions imposed by the licensors of such Third-Party Software. The terms of Licensee's use of the Third-Party Software is subject to and governed by the respective Third-Party Software licenses, except that this Section 5 (Third-Party Software), Section 10 (Disclaimer of Warranties), Section 11 (Limitations of Liability), and Section 14 (General) of this Agreement also govern Licensee's use of the

Third-Party Software. To the extent applicable to Licensee's use of such Third-Party Software, Licensee agrees to comply with the terms and conditions contained in all such Third-Party Software licenses.

6. **CONFIDENTIALITY**

Licensee shall not use any Ampool Confidential Information except as expressly permitted by this Agreement or as expressly authorized in writing by Ampool. Licensee shall use the same degree of care to protect the Ampool's Confidential Information as it uses to protect its own Confidential Information of like nature, but in no circumstances less than a commercially reasonable standard of care. Licensee may not disclose Ampool's Confidential Information to any person or entity other than to Authorized Persons who need access to such Confidential Information solely for the purpose of fulfilling Licensee's obligations or exercising Licensee's rights hereunder. The foregoing obligations will not restrict Licensee from disclosing Confidential Information: (1) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the receiving party required to make such a disclosure gives reasonable notice to the disclosing party prior to such disclosure; and (2) on a confidential basis to its legal and financial advisors. Ampool may identify Licensee in its customer lists in online and print marketing materials.

7. **FEES AND DELIVERY**

7.1 Fees. There shall be no fees payable by Licensee for the use of the Software as permitted under the terms of this Agreement.

7.2 Taxes. Licensee will be responsible for payment of any taxes, levies or duties related to Licensee's use of the Software and Documentation, excluding only U.S. taxes based solely upon Ampool's net income. If Ampool has the legal obligation to pay or collect taxes for which Licensee is responsible pursuant to this Section 7.2, Ampool will invoice the amount of such taxes to Licensee and Licensee agrees to pay such amount, unless Licensee provides Ampool with a valid tax exemption certificate authorized by the appropriate taxing authority.

8. **OWNERSHIP; REFERENCE**

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8.2 Licensee Reference. Licensee hereby agrees to serve as a reference for Ampool's potential customers, analysts or investors via phone and/or email, and to participate in case studies as reasonably requested..

9. **AUDITS**

During the term of this Agreement and for a period of one (1) year thereafter, Licensee will maintain complete and accurate books, records and electronic backups in connection with its use of the Software and Documentation, in sufficient detail to permit Ampool to verify Licensee's compliance with the terms and conditions of this Agreement. Ampool and its agents will have the right to inspect Licensee's facilities, equipment and records, including access to the Software and Documentation (no more than twice annually) to verify compliance with the terms and conditions of this Agreement. Any such audit will be conducted during regular business hours at Licensee's offices and will not interfere unreasonably with Licensee's business activities. All information disclosed to Ampool shall be treated as Licensee Confidential Information.

10. **DISCLAIMER OF WARRANTIES**

Warranty Disclaimer. THE SOFTWARE AND THIRD-PARTY SOFTWARE ARE PROVIDED ON AN AS-IS BASIS. AMPOOL MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THE SOFTWARE OR THIRD-PARTY SOFTWARE, OR TO AMPOOL'S MAINTENANCE, PROFESSIONAL OR OTHER SERVICES. AMPOOL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. AMPOOL AND ITS SUPPLIERS AND LICENSORS DO NOT WARRANT OR REPRESENT THAT THE SOFTWARE OR THIRD-PARTY SOFTWARE WILL BE FREE FROM BUGS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE. THIS DISCLAIMER SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

11. **LIMITATIONS OF LIABILITY**

    11.1   <u>NO CONSEQUENTIAL DAMAGES</u>. NEITHER AMPOOL NOR ITS LICENSORS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF AMPOOL OR ITS LICENSORS OR LICENSEE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF THE LICENSING, PROVISION OR USE OF SOFTWARE OR THE RESULTS OF THE USE OF SOFTWARE.

    11.2   <u>LIMITS ON LIABILITY</u>. NEITHER AMPOOL NOR ITS LICENSORS SHALL BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN AN AMOUNT EQUAL TO ONE HUNDRED DOLLARS ($100) WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

    11.3   <u>THIRD PARTY SOFTWARE</u>. NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY IN THIS AGREEMENT, AMPOOL SHALL NOT BE LIABLE FOR ANY DAMAGES REGARDING THE USE OR OPERATION OF ANY THIRD-PARTY SOFTWARE FURNISHED UNDER THIS AGREEMENT.

    11.4   <u>LIMITATION OF ACTIONS</u>. IN NO EVENT MAY LICENSEE BRING ANY CAUSE OF ACTION RELATED TO THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE LIABILITY.

    11.5   <u>ESSENTIAL PURPOSE</u>. LICENSEE ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 11 (LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE..

12. **INDEMNIFICATION**

Licensee shall defend Ampool and its officers, directors and employees ("<u>Ampool Indemnified Parties</u>") from and against any and all damages, costs, expenses which arise out of or relate to: (i) Licensee's use or alleged use of Software and/or Documentation other than as permitted under this Agreement, (ii) any modification or derivative works of the Software or Documentation made by or for Licensee, (iii) any use or combination of the Software with any technology, software or hardware not supplied by Ampool. Licensee shall pay all damages, costs and expenses, including attorneys' fees and costs (whether by settlement or award of by a final judicial judgment) incurred by the Ampool Indemnified Parties from any claims that are subject to indemnification under this Section.

13. **EXPORT**

The Software, Documentation and related technical data may be subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee shall comply with all such regulations and agrees to obtain all necessary licenses to export, re-export, or import the Software, Documentation and related technical data.

14. **GENERAL**

    14.1   <u>No Agency</u>. Ampool and Licensee each acknowledge and agree that the relationship established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to: (1) give either party the power to direct or control the day-to-day activities of the other; (2) deem the parties to be acting as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (3) permit either party or any of either party's officers, directors, employees, agents or representatives to create or assume any obligation on behalf of or for the account of the other party for any purpose whatsoever.

    14.2   <u>Compliance with Laws</u>. Each party agrees to comply with all applicable laws, regulations, and ordinances relating to their performance hereunder. Without limiting the foregoing, Licensee warrants and covenants that it will comply with all then current laws and regulations of the United States and other jurisdictions relating or applicable to Licensee's use of the Software and Documentation including, without limitation, those concerning Intellectual Property Rights, invasion of privacy, defamation, and the import and export of Software and Documentation.

    14.3   <u>Force Majeure</u>. Except for the duty to pay money, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, riots, fires, flood, storm, explosions, acts of God, war, governmental action, earthquakes, or any other cause which is beyond the reasonable control of such party.

14.4   Notices. Ampool may give notice to Licensee by means of a general notice through electronic mail to Licensee's e-mail address on record with Ampool, or by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service to Licensee's address on record with Ampool. Licensee may give notice to Ampool by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service addressed to Ampool, Inc., 3945 Freedom Circle, Suite 540, Santa Clara, CA 95054, Attention: Legal Dept.. Notice shall be deemed to have been given upon receipt or, if earlier, two (2) business days after mailing, as applicable. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

14.5   Governing Law; Venue and Jurisdiction. This Agreement shall be interpreted according to the laws of the State of California without regard to or application of choice-of-law rules or principles. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Santa Clara County, California and the parties hereby consent to the personal jurisdiction and venue therein.

14.6   Injunctive Relief. The parties agree that monetary damages would not be an adequate remedy for the breach of certain provisions of this Agreement, including, without limitation, all provisions concerning infringement, confidentiality and nondisclosure, or limitation on permitted use of the Software or Documentation. The parties further agree that, in the event of such breach, injunctive relief would be necessary to prevent irreparable injury. Accordingly, either party shall have the right to seek injunctive relief or similar equitable remedies to enforce such party's rights under the pertinent provisions of this Agreement, without limiting its right to pursue any other legal remedies available to it.

14.7   Entire Agreement and Waiver. This Agreement and any exhibits hereto shall constitute the entire agreement and contains all terms and conditions between Ampool and Licensee with respect to the subject matter hereof and all prior agreements, representations, and statement with respect to such subject matter are superseded hereby. This Agreement may be changed only by written agreement signed by both Ampool and Licensee. No failure of either party to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches.

14.8   Severability. In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law and the other provisions of this Agreement will remain in full force and effect. The parties further agree that in the event such provision is an essential part of this Agreement, they will begin negotiations for a suitable replacement provision.

14.9   Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered (including by facsimile), shall be deemed an original, and all of which shall constitute one and the same agreement.

14.10   Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their respective successors and permitted assigns.

14.11   Assignment. Neither party may, without the prior written consent of the other party (which shall not be unreasonably withheld), assign this Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so shall be a material default of this Agreement and shall be void. Notwithstanding the foregoing, Ampool may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of Licensee in connection with a merger, reorganization or sale of all or substantially all relevant assets of the assigning party; in each case provided that such successor assumes the assigning party's obligations under this Agreement.