

TERMS

All Barron Lighting Group products and divisions' products – NET 30 Days, unless otherwise quoted in writing from Barron Lighting Group. A late fee of 2% and Interest of 2% per month plus any Attorney's fees and costs will be assessed on all past due accounts. Any applicable payment discounts shall not apply to other charges such as shipping, taxes or insurance.

FREIGHT ALLOWANCE

Barron Lighting Group products may be combined on an order to qualify for freight allowance. For shipments outside the contiguous United States, contact factory for applicable terms & conditions. All shipments are F.O.B. our plants, vendors, Distribution Centers or Field Warehouses: All orders for Barron Lighting Group products having a distributor price of \$2,500 or more for one consignee for one shipment qualify for freight allowance (excluding inverters unless otherwise noted). All Barron Lighting Group orders having a distributor price less than \$2,500 will be assessed freight and handling charges. **ALL SHIPMENTS** – For all orders that qualify for freight allowance, we reserve the right to select the carrier and to route shipments at our discretion. We will ship in the manner selected by the customer provided the customer assumes any additional transportation costs. **PARTIAL RELEASES** – If an order has multiple releases specified by the Buyer, each release will be treated as individual orders, relative to freight allowance and minimum billing.

LEAD TIMES

The shipment date is an approximation for the date of shipment. Please consult with our Customer Service Department for delivery information if specific timing is critical. Barron Lighting Group cannot be held responsible for delayed delivery and will not accept any back charge or penalty (including expedited freight) without prior managerial written approval.

TRANSPORTATION CLAIMS

Our products are tested for mechanical defects prior to shipping. Our packaging is regularly inspected for both apparent and concealed damages sustained by improper handling. Title passes to purchaser upon delivery by us to the carrier, and all claims for damages or shortages in transit shall be made by purchaser with delivering carrier. Bills of Lading marked with "Shippers Load and Count" do not constitute a transfer of liability for the freight or damages from the consignee to Barron Lighting Group. Barron Lighting Group will not honor credit for short shipment or damages that are not reported within five (5) business days of receipt of shipment.

PACKAGING

The company reserves the right to optimize packaging at our discretion.

PRICES

Prices are subject to change without notice. In the event of a price increase, all accepted orders on hand will be filled at lower prices provided such orders are released for shipping prior to the effective date of the price increase. If the orders are not released for shipment prior to the price increase, the orders will be billed at prices in effect at the time of shipment. Special quoted orders that cannot be released for shipping prior to the price increase may be subject to an increase in price. Orders marked HOLD or HOLD FOR RELEASE will be billed at the prices in effect on the date that shipment is requested. Typographical or clerical errors including but not limited to published price sheets, quotations, orders, or acknowledgment are subject to correction.

TAXES

Buyer will pay any and all applicable sales tax or use tax, if any, plus any other applicable federal, state, or local taxes. All prices, quotations, orders and agreements are subject to said taxes and will be added to the invoice unless legal proof of exemption is provided.

RETURN OF GENERAL MERCHANDISE

GUARDIAN G3/G3 PRO material is non-stock, manufactured upon placement of purchase order and is therefore non-cancelable and non-returnable.

LIMITED WARRANTY

Barron Lighting Group warrants all products sold hereunder to be free from defect in manufacturing, under normal and proper storage, installation, and use, calculated from the date of shipment (excluding fuses and lamps). All items including batteries must be installed within 6 months from the date of shipment and be stored in temperatures between 0-25C for the battery warranty to be in effect.

Barron Lighting Group shall not be liable for damages that result from deliveries that do not occur within a customer's specified time frame or for any delay or default in delivering products where occasioned by any cause beyond the control of Barron Lighting Group, including without limitation embargoes; shortages of labor, raw materials, or fuel; fires; floods; accidents; acts of war; or other similar causes.

On products and/or components furnished by Barron Lighting Group, but manufactured by others, Barron Lighting Group passes through any warranty from the manufacturer thereof and makes no separate or additional warranty. Warranty limitations are the same as above.

BATTERY WARRANTY

Exitronix batteries are warranted as illustrated on each specification sheet. The Pro Rata Warranty Period for batteries begins on the date the full warranty ends. A battery determined to be defective during the Pro Rata Warranty Period shall be repaired or replaced at a cost equal to the net price in effect at the time, reduced by the percentage obtained in multiplying 20% by the number of full years remaining in the total warranty period. Such repair or replacement at this adjusted price shall be the purchaser's exclusive remedy.

Pro Rata Example: Battery concern develops at the beginning of year four of a five year warranty (One year full, 4 Pro Rata = Five year total warranty period). Net Battery Cost: \$10.00. Each year of the five year warranty is valued at 20%; therefore you would subtract 60% (20% for each of the three years the battery has been in service in this example) from the \$10.00 net cost, or \$6.00. The Pro Rata Warranty would cover \$4.00 or 40% of the remaining battery value.

Should a defect in the unit or batteries occur within the specified full warranty period, Barron will repair or replace equipment without charge at Barron's discretion. Such repair or replacement shall be the purchaser's exclusive remedy. Our liability extends only to the repair or replacement of the defective part. Buyer is responsible for all costs to de-install defective products and re-install replacement or repaired products and Barron Lighting Group will not be liable for labor or other costs related to de-installation or re-installation.

THE FOREGOING WARRANTY TERMS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. BARRON LIGHTING GROUP MAKES NO REPRESENTATIONS OR WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, AND BARRON LIGHTING GROUP EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO DISTRIBUTOR OR SUPPLIER OF BARRON LIGHTING GROUP HAS THE AUTHORITY TO MODIFY OR AMEND THIS LIMITED WARRANTY.

LIMITATION OF LIABILITY

The foregoing limited warranty provides the purchaser's sole and exclusive remedy relating to Barron Lighting Group's products. The total liability of Barron Lighting Group on any and all claims of any kind, whether in contract, warranty, tort (including negligence), strict liability or otherwise, arising out of or in connection with, or resulting from, Barron Lighting Group's performance or breach of the foregoing limited warranty or from Barron Lighting Group's sale, delivery, repair, or replacement of any products, or the furnishing of any services, shall in no event exceed the purchase price allocable to the specific product which gives rise to the claim, and any and all such liability shall terminate upon the expiration of the limited warranty set forth above. IN NO EVENT SHALL BARRON LIGHTING GROUP BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER AS THE RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY).

CANCELLATION CHARGE

All order cancellation requests must be made in writing and accepted by Barron Lighting Group. Orders for custom product that have not started production are subject to fees and charges associated with the procurement, tooling and staging methods utilized in preparation for production. Orders that have entered into the production state may not be cancelled unless we are reimbursed for work already performed. If Barron Lighting Group allows for said cancellation, full reimbursement of any special materials, tooling etc. purchased by our company to satisfy an order will be due in full. If an order is cancelled after shipment or if delivery is refused at destination, all warehousing, delivery, disposition and return costs will be charged to the customer.

GENERAL

Barron Lighting Group price sheets are not offers to sell, and possession of a price sheet does not entitle one to purchase. Barron Lighting Group shall not be bound to sell any products unless it shall (in its sole discretion) accept submitted purchase orders. Specifications are subject to change without notice. Consult factory for verification. The compliance of our product to individual project specifications and the approval for their use is not warranted by our company. If purchaser does not pay the purchase price within the time periods set forth above, Barron Lighting Group reserves the right to assess a finance charge on any unpaid, past due balance up to the maximum legal rate. If any amount due Barron Lighting Group is collected by, or attempted to be collected through an attorney at law, Barron Lighting Group shall be entitled to recover all collection expenses, including attorney's fees.

Any credits administered by the Barron Lighting Group will be in the form of a credit memo. Credit memos must be used within one year from the date of issuance.

GOVERNING LAW

These Terms & Conditions and Agreement shall be governed by the laws of the State of Arizona. Buyer consents to the personal jurisdiction and venue of the courts of the State of Arizona. Any legal or equitable claim of any nature arising hereunder will be filed and maintained in the state or federal courts in the State of Arizona and Buyer agrees that such courts are a convenient forum for adjudication. In the event that suit is necessary to recover amounts owed Barron Lighting Group, Buyer shall be liable for reasonable attorney's fees, interest and costs of collection. No agreement or understanding varying the terms and conditions hereof shall be binding upon either party hereto unless in writing attached hereto and signed by duly authorized representatives of both parties. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

INTELLECTUAL PROPERTY AND CONFIDENTIALITY

Buyer agrees that all information furnished by Barron Lighting Group in connection with the sale of items will be confidential. The Buyer agrees not to disclose any such information to any other person, or use such information for any purposes other than performance hereunder. Buyer acknowledges and agrees that the Barron Lighting Group Mark and all copyrights, patents and other Barron Lighting Group intellectual property are owned exclusively by Barron Lighting Group. Buyer will not adopt or attempt to register any trademark, service mark, trade name, company name, internet domain name or other proprietary designation that is identical or confusingly similar to any of Barron Lighting Group Mark. Buyer will not make, use or copy any Barron Lighting Group material that is the same or substantially similar to any Barron Lighting Group copyright or patent. Provided that Buyer is in good standing with Barron Lighting Group and not in breach of this Agreement, and subject to compliance with the Minimum Advertised Pricing and Internet Advertising Policy, the foregoing will not prevent Buyer from: (a) accurately identifying the Barron Lighting Group products as offered for sale to consumers by Buyer provided that all such use of the Barron Lighting Group Mark by Buyer will inure to the benefit of Barron Lighting Group; and (b) using Barron Lighting Group photographs and descriptions of Barron Lighting Group products solely to promote sales of the Barron Lighting Group products. Any other use of any Barron Lighting Group Mark or Barron Lighting Group copyrighted material is prohibited without Barron Lighting Group's prior written consent. Buyer and Barron Lighting Group are independent contractors. Buyer will not hold itself out as an agent of Barron Lighting Group or otherwise misstate or misrepresent its relationship to Barron Lighting Group.

ACCEPTANCE

Acceptance of orders can be made only at our headquarters on the basis of these terms and conditions of sale. Barron Lighting Group will not accept orders that require customer furnished components.

ENTIRE AGREEMENT

Except as expressly agreed in writing signed by Barron Lighting Group, the terms and conditions stated above shall constitute the entire sales agreement between Barron Lighting Group and the purchaser. Any contrary or additional terms or conditions submitted by the purchaser (other than the description of the products being ordered and the requested quantities, shipping date, and shipping location contained in purchaser's purchase order) shall be deemed to be of no force or effect and are hereby rejected. Purchaser's submission of a purchase order shall indicate purchaser's acknowledgment of and in agreement with these Terms and Conditions.

Barron Lighting Group reserves the right to change these Terms and Conditions of Sale without notice.

GUARDIAN G3 SOFTWARE TERMS & CONDITIONS

These Standard Terms & Conditions (the “**Standard Terms**”) set forth the general legal terms under which Barron Lighting Group (“**BLG**”) provides the Software and, together with the associated Transaction Record, form a binding agreement (“**Agreement**”) between BLG and the individual or organization identified in the Transaction Record (“**Licensee**”). In the event of a conflict between these Standard Terms and any terms and conditions set forth in an applicable Transaction Record, these Standard Terms shall control unless such Transaction Record expressly (i) identifies the affected provision of these Standard Terms and (ii) states its intent to supersede that affected provision of the Standard Terms. Any terms of any related purchase order or similar form provided or referenced by Licensee shall be of no force or effect, even if later signed by the Parties. If no Transaction Records exist, Licensee’s use of the Software shall constitute acceptance of these Standard Terms.

1. DEFINITIONS

Capitalized terms not defined in this Section 1 shall have the meanings set forth in elsewhere in these Standard Terms and/or the Transaction Record.

- 1.1. “**Authorized User**” means any individual to whom Licensee has granted access to use the Software on Licensee’s behalf under the rights granted to Licensee pursuant to this Agreement. Example Authorized Users may include, without limitation, Licensee’s employees, consultants, contractors, or agents.
- 1.2. “**Documentation**” means any user instructions and other such instructional information provided by BLG for use with the Software, which may be updated from time-to-time.
- 1.3. “**Equipment**” means the equipment and/or hardware with which the Software is used.
- 1.4. “**Equipment Data**” means data generated by the Equipment.
- 1.5. “**Licensee Data**” means any all data, information, images, and other materials provided to BLG or otherwise allowed to be accessed by BLG (other than Equipment Data), whether directly, indirectly, or through the Software, by Licensee or its Authorized Users in connection with this Agreement.
- 1.6. “**Software**” means BLG’s Guardian G3 software application together with any Updates and Documentation.
- 1.7. “**Source Materials**” means human readable source code for all software embodied in the Software on electronic media and all macros, specialized routines, procedures, applicable technical documentation, and related materials.
- 1.8. “**Third-Party Materials**” means software, including open source software, that is contained in or provided with the Software and is licensed by a third party under its own terms of use.
- 1.9. “**Transaction Record**” means any document such as a quote, purchase order, invoice, click-through acknowledgement, terms and conditions of sale, or other document or acceptance or registration screen that would, when taken together constitute an offer and acceptance of a contract, for the purchase of equipment and/or the use of Software together therewith.
- 1.10. “**Update**” means any patch, bug fix, release, version, modification or successor to the any portion(s) of the Software.

2. LICENSE AND USE

- 2.1. License. During the Term, and subject to the terms and conditions of this Agreement, BLG hereby grants to Licensee (if an individual) or to Licensee for the benefit of its Authorized Users (if Licensee is an entity) a limited, non-exclusive, and non-transferable license to use the Software to monitor and manage the Equipment for its own internal business purposes. For the avoidance of doubt, the Software is licensed and not sold, and nothing herein is intended to grant Licensee and its Authorized Users any Intellectual Property Rights in, nor access to, any Source Materials, databases, or other underlying components of the Software. Licensee will continue to meet Licensee’s obligations hereunder, including without limitation, Licensee’s obligation to pay for the Software if any and Licensee agrees to use Software solely for Licensee’s internal business purposes. To the extent that a Transaction Record identifies one or more limiting metrics (e.g. number of end users, number of devices, etc.), Licensee agrees not to exceed those metrics. The Software Application may contain Third-Party Materials and such materials are governed solely by the applicable third-party terms of use and not by these Standard Terms. In addition to the obligations and prohibitions stated herein, Licensee will comply with any obligations and prohibitions related to the Third-Party Materials. Licensee shall ensure that all use of the Software by its Authorized Users is in accordance with this Agreement. Licensee acknowledges and agrees that any act, omission, or breach by its Authorized Users shall be deemed an act, omission, or breach by Licensee, and thus Licensee shall be vicariously liable for such acts, omissions, and breaches.
- 2.2. Third-Party Use. If a Transaction Record authorizes Licensee to utilize the Software for the benefit of visitors to and occupants of a specific location, Licensee may authorize those visitors and occupants to utilize the Software for that purpose. Otherwise, Licensee may authorize third parties (other than those engaged in competitive activities with BLG) to utilize the Software solely when those third parties are performing activities in the furtherance of Licensee’s internal business purposes and only where Licensee would have been authorized to perform such activities. Should Licensee choose to so authorize such third parties, Licensee will ensure that they understand that their performance is subject to compliance with this Agreement at all times and Licensee will remain primarily responsible for the behavior of those third parties. BLG retains the right to terminate third-party use, including where authorized by Licensee, at any time and for any reason.
- 2.3. Updates. Software updates are released to enhance performance, ensure compliance with evolving standards, and correct any known issues. The latest Updates can be found at www.barronltg.com. Licensee acknowledges that failure to implement Updates promptly after they are made available shall release BLG from any and all claims and obligations with respect to any negative outcomes resulting from such failure including, without limitation, system failures, injury to persons and property, data/privacy breaches, and intellectual property infringement claims.

- 2.4. **General Restrictions.** Licensee may only use the Software in accordance with the applicable Documentation and this Agreement. The Software is protected under copyright, trade secret, and other intellectual property laws. Licensee may not (a) sublicense, reproduce, distribute, market, sell, transfer, or disclose the Software or its Documentation except as set forth in Section 2.1 and Section 2.2, (b) translate, modify, disassemble, or reverse engineer the Software or its Documentation (except to the extent permitted by law), (c) create derivative works based on any portion of the Software or Documentation, (d) obtain possession of any source code or other technical material relating to the Software or Documentation, (e) use the Software other than in accordance with the applicable Documentation and this agreement, (f) use the Software after expiration or termination of the License Term, (g) use the Software for the benefit of a third party (including through the operation of a software bureau) or otherwise use the Software to directly generate revenue or otherwise directly commercially exploit the Software other than as permitted in Section 2.1 and Section 2.2, (h) remove, alter, or obscure any copyright notice(s) or proprietary legend(s) contained on or included in the Software or its Documentation, in each case as provided by BLG.
- 2.5. **High-Risk Restriction.** Licensee acknowledges and accepts that BLG and its suppliers and licensors did not design, and does not warrant the Software for use in developing, or for incorporation into, products or services relative to or within applications or environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, life support machines, surgically implanted devices, weapons systems, or other applications, devices or systems in which the failure of the Software could directly result in death, personal injury, or severe physical or environmental damage ("High-Risk Activities"). Notwithstanding any other provision of this Agreement, Licensee may not use or authorize any third party to use the Software in connection with any High-Risk Activity.
- 2.6. **Verification.** On the reasonable request of BLG, Licensee will furnish BLG with a signed statement that the Software and the Program Concepts are being used pursuant to the terms and conditions of this Agreement. If BLG has reason to believe that the Software or the Program Concepts are not being used in accordance with the terms and conditions of this Agreement, Licensee will permit BLG to review Licensee's relevant records and inspect Licensee's facilities to ensure compliance with this Agreement. BLG will conduct such inspection in a manner that does not unreasonably interfere with Licensee's business operations. If such audit shows that Licensee has exceeded the license set forth in Section 2.1, in addition to other rights it may have, BLG will be entitled to invoice, and Licensee will promptly pay, an amount equal to one-hundred-and-fifty percent (150%) of the fees beyond those paid which would have been payable to BLG from the beginning of the Term for a suitable license.
- 2.7. **Changes to Functionality or Ongoing Access.** BLG retains the right, in BLG's sole discretion and at any time, to update and modify the Software, replace the Software with another product or Software, and discontinue making the Software available.

3. TERM

Each party's obligations under this Agreement shall continue for as long as there is any active License Term, as defined herein. The "License Term" shall begin on the date the Transaction Records are executed or otherwise deemed accepted (or, if no Transaction Record exists, upon Licensee's use of the Software) and continue for the period identified as the License Term. The License Term may be perpetual or may be tied to ownership of a particular piece of Equipment. Otherwise, a License Term will automatically renew for an additional period equal to the prior License Term unless either party provides notice of its intent not to renew no less than sixty (60) days before expiration of the prior License Term. Any renewal, regardless of whether automatic or agreed to in a Transaction Record, will be considered a License Term. This Agreement will continue in full force throughout the stated License Term unless the License Term is terminated earlier as set forth in Section 8.

4. FEES

Any fee for the Software will be set forth on the Transaction Records. There may be no separate fee for the Software, such as where the Software is provided as part of Equipment. When there is an automatic renewal under Section 3 the renewal fee will be equal to the fees for the prior License Term plus the net change in the Consumer Price Index for All Urban Consumers (CPI-U) as reported by the U.S. Bureau of Labor and Statistics over the previous License Term. Unless stated otherwise on a Transaction Record signed by BLG, all fees shall be due within thirty (30) days of invoice. All fees not paid when due shall be subject to interest at a rate equal to the lesser of one percent (1%) per month or the highest rate allowable by law. In addition to any other rights BLG may have under this Agreement, BLG may suspend any or all Software for any account with fees that are more than thirty (30) days past due.

5. PROPRIETARY RIGHTS

- 5.1. **Software.** The Software and its Documentation are not in the public domain. BLG's licensors are the owners of any intellectual property rights, including without limitation patent, trademark, copyright, and trade secret rights, in the Software, the corresponding Documentation, and the techniques and ideas embodied and expressed in the foregoing, including the structure, sequence, and organization of the Software (collectively the "Underlying IP"). Licensee acknowledges that, except for the limited purpose granted as part of the Software hereunder, Licensee has no rights in or to the Software, any Documentation, the Underlying IP, or any copies thereof.
- 5.2. **Equipment Data.** BLG and/or its licensors are the sole and exclusive owners of all right, title, and interest in and to any Equipment Data, as well as any and all intellectual property created using Equipment Data. Licensee acknowledges and agrees that BLG and/or its licensors may have access to Equipment Data and may use and otherwise exploit Equipment Data for any legal purpose including, without limitation, to further develop the Underlying IP, the Software, and other products and offerings. Notwithstanding, during the Term, BLG hereby grants to Licensee a non-exclusive, non-transferable right and license to maintain and use Equipment Data in connection with the Software to monitor and manage the Equipment for its own internal business purposes. Licensee agrees and acknowledges that Licensee is solely responsible for ensuring that Licensee maintains proper backup or documentation necessary to enable Licensee to recover Licensee Data in the event of corruption or data loss. BLG is not acting as a disaster recovery BLG for Licensee and will not be liable for the loss or replacement of Licensee Data.
- 5.3. **Licensee Data.** Licensee agrees and acknowledges that Licensee is solely responsible for the content of all Licensee Data. Licensee represents and warrants to BLG that Licensee it has obtained all licenses and permissions needed to provide and/or license Licensee Data to BLG to enable BLG to perform its obligations hereunder. Licensee represents and warrants to BLG that providing and/or licensing Licensee Data to BLG under this Agreement will not violate any applicable law or right of any third party. Licensee hereby grants to BLG a non-exclusive right and license to utilize Licensee Data for the purpose of performance of BLG's obligations to Licensee under this Agreement, and to contact Licensee regarding other products and Software that BLG may offer on its own behalf or on behalf of others.

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6. CONFIDENTIAL INFORMATION

Licensee acknowledges and agrees that the Software, and all Documentation and other information related thereto or disclosed or delivered to Licensee in relation to this Agreement represent BLG's and/or its licensors' confidential and proprietary information. Each party agrees to keep the other's (and Licensee agrees to keep BLG's licensors') confidential and proprietary information secret by exercising the necessary care required to prevent its disclosure and to only use that information in furtherance of the rights and obligations expressly authorized by this Agreement. Such obligations with respect to information deemed "trade secrets" under applicable law will remain in effect for as long as the information remains a trade secret. Obligations with respect to information that is not deemed to be a trade secret will remain in effect throughout the License Term and for a period of three (3) years thereafter. Should either party become subject to subpoena or public disclosure laws that require that party to disclose Confidential Information, if allowable by law that party will notify the other party of any orders or requests for disclosure of Confidential Information within a reasonable period so as to allow the other party to challenge such disclosure if the other party should choose to do so. The party challenging disclosure shall be responsible for any costs associated with such challenge.

7. TERMINATION

Either party may terminate a License Term for cause upon written notice to the other party, provided that the terminating party provided the other party with written notice detailing that party's failure to comply with its obligations hereunder and provided that party with thirty (30) days to cure if the breach is of the type that is capable of cure. BLG further reserves the right to suspend or terminate a License Term, without penalty to BLG, if any of its licensors suspends or terminates BLG's access to or use of the Software or components thereof. All License Terms will automatically terminate should Licensee voluntarily or involuntarily become subject to the jurisdiction of any bankruptcy court. Any unpaid fees for a License Term shall become immediately due and payable upon termination and Licensee shall only be relieved of its obligation to pay through the end of the License Term where the License Term is terminated for BLG's uncured breach. Upon termination of a License Term for any reason, Licensee will immediately cease using the Software and return any and all related Documentation to BLG, or, at BLG's discretion, Licensee will permanently destroy all copies of the related Documentation in Licensee's possession or control. The expiration or termination of this Agreement will not release either Party from any liabilities or obligations which (i) the Parties have expressly agreed will survive any such expiration or termination or (ii) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination, including without limitation this Section 7 (Termination), Section 2.4 (General Restrictions), Section 4 (Fees), Section 5 (Proprietary Rights), Section 6 (Confidential Information), Section 7 (Termination), Section 8 (Representations & Warranties), Section 9 (Limitation of Liability), Section 10 (Indemnification), Section 11 (Compliance) and Section 12 (General). Each Party acknowledges that a breach or threatened breach by the other party of this Agreement may cause the non-breaching Party irreparable harm, for which an award of damages would not be adequate compensation, and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court of competent jurisdiction, in addition to any other remedy to which such Party may be entitled at law or in equity.

8. REPRESENTATIONS & WARRANTIES

8.1. BLG warrants that (a) BLG will perform its obligations under this agreement in a professional and workmanlike manner in keeping with the standards of those of the industry, (b) the Software will operate in material conformity with the then-current Documentation, and (c) BLG's performance of its obligations hereunder shall be in accordance with all applicable laws. Licensee warrants that (a) Licensee shall comply with all laws applicable to it and its use of the Software; (b) that Licensee has provided notifications to, obtained consents from, and otherwise has and will have all rights necessary (and will continue to ensure the foregoing) to: (i) transmit, upload, permit access to, or otherwise provide any and all Licensee Data and other data it provides to BLG (including any Personal Information contained therein), whether directly, indirectly, or through the Software; and (ii) for BLG to use such Licensee Data and other data it provides to BLG (including any Personal Information contained therein) in accordance with this Agreement; and (c) Licensee shall ensure that the Software will not be exported to, or used by, nor will the data gained therefrom be exported to, transshipped or re-exported to any nation, organization, or individual outside of the U.S. in violation of any applicable export laws.

8.2. **EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 9, BLG DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, AND COVENANTS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, LICENSEE ACKNOWLEDGES AND AGREES THAT THE SOFTWARE AND DOCUMENTATION, ALL BLG TECHNOLOGY AND RELATED SERVICES ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS AND THAT BLG MAKES NO REPRESENTATION, WARRANTY OR COVENANT THAT THE SOFTWARE, DOCUMENTATION AND RELATED SERVICES WILL MEET LICENSEE'S REQUIREMENTS OR EXPECTATIONS, NOR THAT THE SOFTWARE, RELATED SERVICES, AND ANY SECURITY MEASURES WILL BE ACCURATE, COMPLETE, TIMELY, UNINTERRUPTED OR ERROR-FREE. BLG IS NOT RESPONSIBLE FOR ANY COMMUNICATION ISSUES, INCLUDING BUT NOT LIMITED TO NETWORK OUTAGES, INTERFERENCE, LATENCY, OR DISRUPTIONS CAUSED BY THIRD-PARTY EQUIPMENT OR INFRASTRUCTURE. IT IS THE SOLE RESPONSIBILITY OF LICENSEE TO ENSURE STABLE AND RELIABLE NETWORK CONNECTIVITY FOR PROPER OPERATION OF THE SOFTWARE. ANY FAILURE OF THE SYSTEM RESULTING FROM COMMUNICATION-RELATED ISSUES IS NOT COVERED UNDER WARRANTY. THE DISCLAIMERS IN THIS SECTION WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT. LICENSEE MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, ANY STATUTORILY REQUIRED WARRANTIES UNDER APPLICABLE LAW, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD AND MAXIMUM EXTENT PERMITTED BY LAW. WITHOUT LIMITING THE FOREGOING, LICENSEE AGREES THAT BLG AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES, WILL HAVE NO LIABILITY FOR ERRORS OR OMISSIONS IN (A) THE OUTPUT OF THE SOFTWARE, SUCH OUTPUTS INCLUDING, WITHOUT LIMITATION, THE QUALITY OR ACCURACY OF ANY SCREEN DISPLAYS OR REPORTS, (B) THE OPERATION OF THIRD PARTY EQUIPMENT CONTROLLED BY THE SOFTWARE, AND (C) THE TRANSMISSION AND RECEPTION OF DATA. BLG IS NOT RESPONSIBLE FOR THE OPERATION OF ANY TECHNOLOGY NOT CONTROLLED BY OR ON BEHALF OF BLG, INCLUDING THE INTERNET. LICENSEE EXPRESSLY ACCEPTS THAT THE INSTALLATION, ESTABLISHMENT, AND MAINTENANCE OF PROPER SAFETY CONTROLS AND PROCEDURES AND PROPER MONITORING AND OPERATION OF ALL EQUIPMENT WITHIN LICENSEE'S CONTROL IS LICENSEE'S RESPONSIBILITY AND NOT THAT OF BLG, AND HEREBY WAIVES ANY CLAIMS OF LIABILITY OF BLG TO ANY DAMAGES THAT MAY RESULT FROM SUCH OPERATION. RELIANCE UPON THE SOFTWARE WILL NOT BE CONSIDERED A BASIS FOR TRANSFERRING ANY PORTION OF SUCH RESPONSIBILITY TO BLG NOR A BASIS FOR CONTRIBUTORY OR COMPARATIVE LIABILITY.**

8.3. WITHOUT MODIFICATION TO SECTION 9.2, LICENSEE AGREES AND ACKNOWLEDGES THAT BLG IS PROVIDING LICENSEE WITH THE SOFTWARE AS A TOOL WHICH IS TO ONLY BE USED BY AN INDIVIDUAL OF APPROPRIATE TRAINING AND EXPERTISE AS AN ADJUNCT TO HIS OR HER PROFESSIONAL JUDGMENT. SUCH INDIVIDUAL WILL BE SOLELY RESPONSIBLE FOR REVIEWING ALL DATA PUT INTO AND ALL DATA EXTRACTED FROM THE SOFTWARE TO ENSURE THAT IT MEETS ALL APPLICABLE PROFESSIONAL STANDARDS AND LEGAL REQUIREMENTS AS WELL AS LICENSEE'S NEEDS AND INTENT. BLG DOES NOT REPRESENT OR WARRANT AND EXPRESSLY DISCLAIMS THAT (A) THE SOFTWARE WILL PROPERLY SCALE OR TRANSLATE DATA BETWEEN DIFFERENT SOFTWARE PROGRAMS OR DATA FORMATS, AND (B) THE SOFTWARE WILL CONFORM ANY OUTPUT TO MEET ANY PROFESSIONAL STANDARDS OR LEGAL REQUIREMENTS.

9. LIMITATION ON LIABILITY

IN NO EVENT WILL BLG OR ITS AFFILIATES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES, BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OR COSTS (INCLUDING LEGAL FEES AND EXPENSES) OR LOSS OF GOODWILL OR PROFIT IN CONNECTION WITH THE SUPPLY, PERFORMANCE, USE OF OR INABILITY TO USE THE SOFTWARE OR IN CONNECTION WITH ANY CLAIM ARISING FROM THIS AGREEMENT, EVEN IF BLG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS. THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF BLG FOR ANY AND ALL CLAIMS UNDER THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE THE GREATER OF THE SUM OF THE FEES RECEIVED BY BLG FOR PROVIDING THE SOFTWARE TO LICENSEE OVER THE TWELVE (12) MONTH PERIOD LEADING UP TO THE DATE THE CAUSE OF ACTION ACCRUED OR ONE HUNDRED DOLLARS (\$100). NO ACTION ARISING OUT OF THIS AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE DATE THE CAUSE OF ACTION HAS ACCRUED. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNDER CERTAIN CIRCUMSTANCES, SO THIS PARAGRAPH MAY NOT APPLY TO LICENSEE.

10. INDEMNIFICATION

Each party (the "**Indemnifying Party**") shall indemnify, defend, and hold harmless the other party and its officers, directors, employees and agents (each, an "**Indemnified Party**") against any and all liabilities (including, but not limited to, losses, damages, expenses and reasonable attorneys' fees) arising from any claim brought by an unrelated third party alleging injury, in whole or in part, resulting from (a) the negligence or willful misconduct of the Indemnifying Party, its officers, directors, employees, and agents, (b) the Indemnifying Party's materials (e.g., the Software and Documentation for BLG; the Licensee Data for the Licensee) violates a trademark, copyright, patent, or privacy right of any unrelated third party, except to the extent that such claim is alleged to arise from a modification of the materials by anyone other than the Indemnifying Party, the use of the materials in combination with intellectual property not approved by the Indemnifying Party, materials which were delivered pursuant to the Indemnified Party's specific requirements, or use of the materials in a way not in accordance with any Documentation or restrictions supplied by the Indemnifying Party to the Indemnified Party. The event of a claim under part (b) of this Section, the Indemnifying Party shall, at its sole option and expense, have the right to procure for Indemnified Party the right to continue the use of the materials without interruption, replace or modify the materials to make their use non-infringing while being substantially capable of performing the same function, or accept return of the materials and refund a pro-rata portion of the fees for those materials. In all cases the Indemnified Party shall promptly provide the Indemnifying Party written notification of the assertion of any claim (although failure to do so shall only excuse liability to the extent that material prejudice results from the delay) and provide reasonable support in aiding the Indemnifying Party in any defense to a claim, at the Indemnifying Party's reasonable cost. The Indemnifying Party shall have sole control over the defense or settlement of any claim, provided that neither Party shall agree to any settlement that places any financial or public burden upon the other Party. This Section states the entire liability of the Parties and each Party's sole remedy with respect to any claim for infringement.

11. COMPLIANCE

11.1. Compliance with Laws and Export Rules. Licensee will be solely responsible for ensuring that Licensee's use of the Software, Documentation, and Equipment Data is in full compliance with all applicable laws and without violation of the rights of third parties. Without limiting the foregoing, Licensee represents and warrants that the Software and Documentation will not be exported to, or used by, nor will the data gained therefrom be exported to, transshipped or re-exported to (a) any individual located in any nation to which export, transshipment, or re-export is prohibited by U.S. law or regulation at that time (collectively, the "Restricted Nations"); (b) any business or organization owned, controlled by or acting on behalf of an individual, business or organization in a Restricted Nation; (c) the governments of a Restricted Nation or any business or organization owned, controlled by or acting on behalf of a government of a Restricted Nation; or (d) any individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons, as each may be amended from time to time.

11.2. U.S. Government Restricted Rights. The following applies to all acquisition of the software by or for the U.S. government or by any prime contractor or subcontractor under any contract, grant, or other activity with the U.S. government. The Software and Documentation provided to Licensee hereunder are "commercial items" as that term is defined at 48 C.F.R. 2.101 (October 1995) consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (Sept. 1995) and other applicable acquisition regulations and are provided to the U.S. Government only as a commercial item. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 (June 1995), all U.S. Government users and licensees acquire the Software and its associated Documentation with only those rights and subject to the restrictions set forth in this Agreement. Notwithstanding the foregoing, the Software may not be acquired by the U.S. government pursuant to a contract incorporating clauses prescribed by FAR Subpart 27.4 (June 1987) or DFARS Subpart 227.4 (Oct. 1988). If this Agreement is inadequate to meet the government's needs or is inconsistent in any respect with Federal law, the government should return the Software, unused, to BLG.

12. GENERAL

- 12.1. Entire Agreement. This Agreement, along with the Transaction Records, comprise the entire agreement between Licensee and BLG with respect to the Software and Documentation, and supersedes any other agreement or discussion, oral or written.
- 12.2. Governing Law/Jurisdiction for Government Contracts. If Licensee is (a) a state or local governmental agency, (b) legally required by a law or regulation issued by a state or local governmental agency only to accept that state's law for the purposes of this Agreement, or (c) is legally required by a binding contract with a state or local government agency only to accept that state's law for the purposes of this Agreement, then this Agreement will be construed and governed in accordance with the laws of the state where that governmental agency is located. Neither the Uniform Commercial Code, any part of the Uniform Computer Information Transactions Act (if adopted), nor the United Nations Convention on the International Sale of Goods will apply to the Software or this Agreement. Additionally, if such courts are willing to accept jurisdiction, Licensee and BLG agree to submit all disputes hereunder to the personal and exclusive jurisdiction of the state and federal courts located in the capital city of the state where that governmental agency is located.
- 12.3. Governing Law/Jurisdiction for Non-Government Contracts. Unless Section 12.2 applies to Licensee this Agreement will be construed and governed in accordance with the laws of the State of Arizona in the United States of America, without regard to its rules regarding conflicts of law. Neither the Uniform Commercial Code, any part of the Uniform Computer Information Transactions Act (if adopted), nor the United Nations Convention on the International Sale of Goods will apply to the Software or this Agreement. If such courts are willing to accept jurisdiction, Licensee and BLG agree to submit all disputes hereunder to the personal and exclusive jurisdiction of the state and federal courts located in and around Glendale, Arizona, in the United States of America and waive any right to object to such venue.
- 12.4. Legal Expenses. Unless governing law explicitly prohibits either party from recovering such costs or fees, in which case both parties agree that neither shall be entitled to such costs and fees, the prevailing party in any dispute proceeding or litigation hereunder shall be entitled, in addition to such other relief as may be granted, to recover reasonable related fees and the costs incurred. For purposes of the foregoing: (a) "prevailing party" means (i) in the case of the party initiating the enforcement of the rights or remedies, that it recovered substantially all of its claims; and (ii) in the case of the party defending against such enforcement, that it successfully defended substantially all of the claims made against it; and (b) if no party is a "prevailing party" within the meaning of the foregoing, then no party will be entitled to recover its fees and costs pursuant to this Section.
- 12.5. Waiver / Severability. The failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. Should any court or legal authority hold any provision of this Agreement unenforceable or invalid for any reason, then Licensee and BLG agree that such court or authority will attempt to craft an acceptable provision most closely resembling the intent of the offending provision, and if such court or authority is unable or unwilling to do so then this Agreement will be construed as if such provision were never contained in this Agreement.
- 12.6. Assignment. Licensee cannot assign, sublicense, or transfer this Agreement without the prior written consent of BLG. Any attempt by Licensee to sublicense, assign, or transfer any rights, duties, or obligations hereunder is null and void. BLG may assign, sublicense, or transfer this Agreement, in whole or in part, at will and without prior notice to Licensee.
- 12.7. Notice. All notices or approvals hereunder shall be in writing and sent by certified or registered mail, postage prepaid, return receipt requested (or similarly evidenced overnight delivery), and shall be deemed to have been given upon receipt. Notices shall be provided to Licensee at the address set forth on the Transaction Records. Notices for BLG such notice shall be addressed to the attention of RMA. Either Party may change its address for such communications by giving notice thereof. Rejection or other refusal to accept, or the inability to deliver because of un-notified changed address, shall be deemed to be receipt of the notice sent as provided above.