

**Lighting Analysts, Inc.**  
**Software**  
**License Agreement**

This Software License Agreement (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_, \_\_\_\_ (the "Effective Date") by and between Lighting Analysts, Inc. a Colorado corporation with its principal address at 10268 W. Centennial Rd. Ste. 202, Littleton, Colorado 80127 (hereinafter "Lighting Analysts", as further defined below) and \_\_\_\_\_, a \_\_\_\_\_ (circle one: limited liability company, corporation, sole proprietorship, partnership, LLP, a wholly owned subsidiary of \_\_\_\_\_, or other \_\_\_\_\_) with offices located at \_\_\_\_\_ (hereinafter "Customer", as further defined below).

**RECITALS**

WHEREAS, Lighting Analysts has developed and owns certain proprietary software for use in the lighting industry;

WHEREAS, Customer desires to obtain a License, as defined herein, to use such software; and

WHEREAS, Lighting Analysts desires to License such software to Customer to the extent detailed herein.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are hereby incorporated herein and made a substantive part hereof, the mutual promises, representations, warranties and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant, promise, agree, represent and warrant as follows:

1. DEFINITIONS.

1.1 "Calculations" means electronic calculations using the photometric data of Permitted Products and made available by Customer on Customer's Domain Name(s).

1.2 "Credentials" means the unique information supplied by Lighting Analysts to Customer required to access Luxiflux-Zonal software.

1.3 "Customer" means the licensee, the company accepting the Software License, all subsidiaries and affiliated companies, and their respective agents, owners, officers, directors, shareholders, members, employees, subcontractors, independent contractors, and all other persons or entities acting in any capacity on their behalf, or other persons similarly under the control of Customer.

1.4 "Customer's Internet Users" means third-party person(s) who visit Customer's Domain Name(s).

1.5 "Customer's Server(s)" means one or more computer(s) which manages access to a centralized resource or service in a network under the sole control of Customer.

1.6 “Domain Name(s)” means Customer’s domain names, as provided by Customer and detailed on Exhibit A, attached hereto and incorporated herein by this reference, that will host and/or access the Licensed Software, depending on the Software selected by Customer.

1.7 “License” means any personal, nonexclusive, nontransferable, non-assignable, and limited license, for Customer’s internal use only, granted by Lighting Analysts to Customer to use the Software under this Agreement. At the end of every License, Customer’s access to the Licensed Software shall automatically cease.

1.8 “Licensed Software” means any Software authored by Lighting Analysts that Customer accepts under the terms of this Agreement.

1.9 “Lighting Analysts” means the licensor, Lighting Analysts, Inc., all subsidiaries and affiliated companies, and their respective agents, owners, officers, directors, shareholders, employees, subcontractors, independent contractors, and all other persons or entities acting in any capacity on their behalf.

1.10 “Luminaire Photometric Data” means luminaire photometric test data in Illuminating Engineering Society (“IES”) standard format per IES document LM-63-1984, or later.

1.11 “Materials” means all Lighting Analysts’ documentation, in either printed or electronic format, associated with, or pursuant to, Software.

1.12 “Permitted Products” means various lighting products either manufactured by Customer or products Customer has legally procured the rights to offer for general access on Domain Name(s).

1.13 “Software” means the aggregate of the Lighting Analysts’ Licensed Software, “Luxiflux-Zonal” and/or “Flash Outdoor”, available under this Agreement as indicated by Customer through the License fee(s) Customer pays and the Customer Domain Name(s) provided by Customer relating to this Agreement.

1.14 “Term” means the length of time of Customer’s License, a predetermined number of days, as mutually agreed upon between the parties hereto at the time of License issuance, unless earlier terminated in accordance with this Agreement.

## 2. SOFTWARE LICENSE.

### 2.1 License Grant.

Subject to the provisions of this Agreement, as well as payment in full when due of all applicable License fees, Lighting Analysts grants and the Customer accepts a personal, non-assignable, nontransferable, non-exclusive, and limited License to use the Licensed Software and the Materials, in whatever form, including, without limitation, object code, and microcode, including any computer programs and any Materials relating to the Software, including instructions for use of the Software, only as furnished to Customer and only for Customer’s internal use for Customer’s internal business purposes, to be accessed on Customer’s Domain Name(s) and only by Customer’s Internet Users to perform Calculations, within the scope of this Agreement and limited to the purpose for which the Software was designed as set forth in the Materials and other documentation, if any, and only to the extent permitted by Customer’s payment of the applicable License fees. Under no circumstances may Customer rent, lease, lend or provide hosting services with the Software for third parties.

No License rights are granted under this Agreement if Customer did not lawfully acquire the Licensed Software from Lighting Analysts. All rights not expressly granted above are hereby reserved to Lighting Analysts.

## 2.2 License Term.

The License Term is one (1) year and shall begin upon the full execution of this Agreement, and payment of the Licensing fees. Any attempt to defeat the time period defined by the License Term is unauthorized and will be deemed a material breach of this Agreement. Customer agrees to not provide or otherwise make available the Licensed Software in any form to any other person or entity without prior written consent from Lighting Analysts.

## 2.3 Updates, Repairs, Patches, Fixes.

Lighting Analysts reserves the right to alter, update, repair, patch, or otherwise fix the Licensed Software at any time, with or without notice to Customer, as determined in Lighting Analysts' sole discretion, and any such additional software shall be included in the definition of "Software" detailed herein. In the event any alteration, update, repair, patch, or fix is created by Lighting Analysts, Lighting Analysts shall either implement transparently (Luxiflux-Zonal) or post new Software for Customer to access via Customer's Server(s) (Flash Outdoor).

## 2.4 Limited Use.

2.4.1 Domain Name(s) Only. Customer understands and agrees that the Licensed Software is customized, only to the extent necessary, to function properly only via Customer's Domain Name(s) and Customer agrees and acknowledges that Customer's attempt to access or utilize the Licensed Software on any other domain name(s) will cause the Licensed Software to cease functioning. Attempted access from any domain name(s) not detailed on Exhibit A will constitute a material breach of this Agreement, pursuant to Section 10.2, below. Should Customer desire to utilize the Licensed Software on alternate or additional domain names, Customer agrees to either execute a signed, revised Exhibit A to this Agreement in accordance with Section 10.10, below, or to enter into a new Software Licensing Agreement, as determined by Lighting Analysts in their sole discretion. Lighting Analysts reserves the right to limit the number of Domain Name(s) applicable to any single Licensed Software product, as determined by Lighting Analysts in their sole discretion.

2.4.2 Luminaire Photometric Data. Customer understands and agrees that the Licensed Software is to be used solely for Calculations using photometric data of Permitted Products and Customer agrees to prohibit the use of the Licensed Software for any and all other photometric data. Failure to adhere to this restriction shall constitute a material breach of this Agreement.

2.4.3 Customer Credentials Only. Customer understands and agrees that the Licensed Software is to be used solely with Customer's unique Credentials as supplied by Lighting Analysts. Any attempt to access the Software with alternate Credentials, or to modify supplied Credentials will constitute a material breach of this Agreement, pursuant to Section 10.2, below.

## 2.5 Software Backup.

Backup systems may be used to create one (1) copy of the Licensed Software for emergency backup purposes only on Customer's Server(s), no right to use is granted in regard to the emergency backup copy. The original and all copies of the Software, in whole or in part, which are made by Customer hereunder shall be the property of Lighting Analysts. Lighting Analysts warns that restored backup

copies may fail to function, in which case Customer agrees to contact Lighting Analysts for assistance.

#### 2.6 License Suspension.

Lighting Analysts reserves the right to suspend the use of Customer's License in the event of (a) non-payment of Lighting Analysts invoices for Licensed Software when due and payable; (b) for any breach of this Agreement not cured within ten (10) working days of Customer's written notification by mail at Customer's last known mailing address; or (c) or immediately in the event of Customer's material breach, as defined herein, of this Agreement. It is Customer's sole and exclusive responsibility to timely inform Lighting Analysts of any/all changes in Customer's contact information.

### 3. CONSIDERATION.

In consideration of the Software and any associated Materials being provided to Customer under this Agreement, Customer agrees to pay Lighting Analysts the then-current subscription fee of the License(s) selected by Customer when payment is due. Lighting Analysts reserves the right to alter pricing at any time. Customer may solicit approval from Lighting Analysts to transfer its License, which may require Customer to pay an additional, or alternate, fee(s) in effect at the time of transfer, such approval by Lighting Analysts shall not be unreasonably withheld. Customer shall be solely and exclusively responsible for the payment of any and all tax(es), whether federal, state, or local, however designated, including any and all penalties and/or interest thereon, existing at time of acceptance of this Agreement or as may be implemented during the term of this Agreement, applicable to this Agreement and/or the Licensed Software, or any related item(s) furnished hereunder, if any, with the exception of taxes based on or measured by Lighting Analysts' net income.

Lighting Analysts may charge Customer a one and one-half percent (1½%) monthly finance charge to be calculated monthly with respect to all outstanding amounts not paid within thirty (30) days following the date of Lighting Analysts' invoice(s), but in no event shall any finance charge exceed the maximum allowed by law.

### 4. OWNERSHIP.

#### 4.1 Reservation of Lighting Analysts' Proprietary Rights.

Customer hereby agrees not to disassemble, translate, peel components, decompile, recompile, enhance, update, modify, merge into other software, or otherwise reverse engineer, attempt to reverse engineer, derive source code from, or reproduce by any means whatsoever, all or any portion of, the Software or permit or encourage any third party to do so, or use or acquire any materials from any third party who does so. Customer shall not use, rent, loan, modify, reproduce, sublicense or otherwise distribute, export, resell, create derivative works from, or otherwise provide to third parties, the Software, in whole or in part, other than may be expressly permitted herein.

#### 4.2 Reservation of Lighting Analysts' Intellectual Property Rights.

At all times, Lighting Analysts shall retain all sole and exclusive rights, title and interest in and to the Software and the Materials, and all improvements thereto, and all derivative works created therefrom, including without limitation any patents, copyrights, trademarks, trade secrets, or sublicenses and all other proprietary rights therein, Lighting Analysts may own or have acquired whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Software and/or Materials is used or Licensed. Customer will obtain, at Lighting Analysts' request, the execution of any instrument that may be appropriate to assign these rights to Lighting Analysts or perfect these rights in Lighting Analysts' name. Nothing in this Agreement shall be construed to

restrict such rights of Lighting Analysts in any manner whatsoever. This Agreement does not grant any right or License, under any rights of Lighting Analysts or otherwise, except as expressly provided herein, and no other right or License is implied or inferred from any provision of this Agreement or the conduct of the parties hereunder. No License under any patents, copyrights, trademarks, trade secrets, or any other intellectual property rights, express or implied, are granted by Lighting Analysts to Customer under this Agreement. Nothing in this Agreement shall be construed to mean the relationship between the parties hereto is anything other than licensor/licensee and Customer shall not represent that it has any authority to assume or create any obligation, express or implied, on behalf of Lighting Analysts in any capacity.

#### 4.3 Circumvention.

Customer may not utilize any equipment, device, software, or other means designed to circumvent or remove any form of copy protection used by Lighting Analysts in connection with the Software, or use the Software together with any authorization code, serial number, or other copy-protection device not supplied by Lighting Analysts directly.

#### 5. CONFIDENTIALITY.

All information disclosed by Lighting Analysts under this Agreement shall be deemed as proprietary and/or confidential unless otherwise identified and shall be protected by Customer in the same manner and to the same degree that Customer protects its own proprietary or confidential information. Customer agrees that it will use Lighting Analysts' confidential information, as defined below, only as required in the performance of this Agreement, and will not before, during, or after completion of this Agreement otherwise use said information, nor copy, distribute, or reproduce the same in any form. At all times Customer will recognize Lighting Analysts' sole and exclusive ownership of its confidential information, and the sole and exclusive right and jurisdiction of Lighting Analysts to control and use its confidential information. Customer further agrees that it will make no use of the described confidential information, for either internal or external purposes, and shall not directly or indirectly disclose or allow any third party to have access to, other than as is directly related to the performance of this Agreement.

For the purposes of this Agreement, "confidential information" may include, but not be limited to, items such as (a) any and all proprietary materials and information regarding the Software, the Materials, and all other documentation; and (b) any and all other information of whatever type or form and in whatever medium (including data, developments, schematics, trade secrets, and improvements), that is disclosed in any form by Lighting Analysts to Customer. Customer acknowledges and agrees that the Software contains trade secrets and confidential and proprietary data of Lighting Analysts and agrees to take all reasonable steps to ensure that such trade secrets and confidential and proprietary data are not disclosed, duplicated, misappropriated or used in any manner not expressly permitted by the terms of this Agreement, including those taken by Customer to protect its own confidential information, and including those which Lighting Analysts may request from time to time. Customer shall not allow the removal, alteration, obstruction, or defacement of any copyright, confidentiality, proprietary or intellectual property protection notices on any part of the Software, the Materials, and all other documentation, which notices will not constitute publication or otherwise impair the Software's confidential nature. Lighting Analysts agrees that the access to, and use of, the Software by authorized users shall not constitute a breach of this Section.

Customer agrees to promptly and fully notify Lighting Analysts of any unauthorized use or disclosure of confidential information of all facts known to Customer concerning such unauthorized use or disclosure. In addition, should Customer be requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil

investigative demand, or other similar process) to disclose any of the confidential information of Lighting Analysts, Customer shall not disclose the confidential information without providing Lighting Analysts at least twenty-four (24) hours prior written notice of any such request or requirement so that Lighting Analysts may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Customer shall exercise its best efforts to preserve the confidentiality of the confidential information including, without limitation, by cooperating with Lighting Analysts to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the confidential information by such tribunal.

## **6. LIMITED WARRANTY AND WARRANTY DISCLAIMER and PAYMENT SERVICES DISCLAIMER.**

### **6.1 Limited Warranty.**

Lighting Analysts warrants against defects in the features described in the Licensed Software Materials for a limited time period of thirty (30) days after the Licensed Software is made available to Customer by Lighting Analysts and payment in full has been received by Lighting Analysts. Customer's exclusive remedy and Lighting Analysts entire liability during the warranty period will be at Lighting Analysts option; (i) to use Lighting Analysts' best commercial effort to correct or find a work-around for implied error within 120 days of Customer's written notice; or (ii) a prorated refund Customers' License fees and terminate this Agreement.

### **6.2 Warranty Disclaimer.**

BY INSTALLING, COPYING OR OTHERWISE USING LIGHTING ANALYSTS' PRODUCTS, CUSTOMER AGREES TO TAKE AND USE LIGHTING ANALYSTS' PRODUCTS "AS IS". EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 6.1 (LIMITED WARRANTY) HEREOF, LIGHTING ANALYSTS MAKES AND THE CUSTOMER RECEIVES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE SOFTWARE, THE MATERIALS, THE PAYMENT SERVICES, IF ANY, THE MAINTENANCE, THE SUPPORT, AND/OR ANY SERVICES PROVIDED BY LIGHTING ANALYSTS. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE PAYMENT SERVICES, THE LICENSED SOFTWARE, THE SOFTWARE, AND THEIR FUNCTIONALITY IN THE MATERIALS OR ANY COMMUNICATION WITH THE CUSTOMER CONSTITUTES DESCRIPTIVE INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. IN ADDITION, LIGHTING ANALYSTS SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED **WARRANTIES OF MERCHANTABILITY**, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, LIGHTING ANALYSTS DOES NOT WARRANT THAT THE OPERATION OR OUTPUT OF THE SOFTWARE WILL BE ACCURATE, ERROR-FREE, RELIABLE, COMPLETE OR UNINTERRUPTED. LIGHTING ANALYSTS DOES NOT WARRANT THAT THE SOFTWARE, MATERIALS, PAYMENT SERVICES, OR SERVICES PROVIDED HEREUNDER WILL BE FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER LIMITATIONS. Some states do not allow the exclusion of implied warranties, therefore the above exclusions may not apply to Customer, in which case any implied warranties are limited in duration to thirty (30) days from date of purchase.

### **6.3 Payment Services Disclaimer.**

Lighting Analysts utilizes the services of various, independent third party online payment services provider(s), to process Customer payments, as selected by Lighting Analysts, in its sole discretion, from time to time, pursuant to Lighting Analysts' then-current needs, commercially reasonable business practices, and general marketplace availability of such services, (collectively "Payment

Services”), at no additional charge to Customer. Customer is solely responsible for reviewing, and determining Customer’s acceptance or rejection of, any and all Payment Services representations, warranties, policies and procedures, if any, regarding the independent third party Payment Services provider’s data retention, data security, and any/all other policy(ies) and/or procedure(s) related to Customer’s use of such Payment Services provider. Customer agrees to indemnify and hold harmless Lighting Analysts from any and all claims, actual losses, costs (including reasonable attorneys fees), and direct damages or liabilities arising from Customer’s use of Payment Services. Should Customer not accept the then-current Payment Services provider’s terms and conditions, Customer’s sole option is to terminate the transaction.

**7. WARNING – LIMITS OF FUNCTIONALITY.**

THE SOFTWARE IS INTENDED TO BE USED BY PROFESSIONALS TRAINED IN THE ART AND SCIENCE OF ILLUMINATION ENGINEERING AS A TOOL TO ASSIST WITH DESIGN AND/OR ANALYSIS. THE SOFTWARE IS NOT A SUBSTITUTE FOR THE CUSTOMER’S PROFESSIONAL JUDGMENT OR INDEPENDENT VALIDATION AND TESTING. THE CUSTOMER IS RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY, ACCURACY AND COMPLETENESS OF ANY SOFTWARE OUTPUT. DUE TO THE LARGE VARIETY OF POTENTIAL APPLICATIONS FOR THE SOFTWARE, THE SOFTWARE HAS NOT BEEN TESTED IN ALL SITUATIONS UNDER WHICH IT MAY BE USED. LIGHTING ANALYSTS SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR THE RESULTS OBTAINED THROUGH THE USE OF THE SOFTWARE. THE CUSTOMER IS SOLELY RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT, AND CONTROL OF THE SOFTWARE. THIS RESPONSIBILITY INCLUDES, BUT IS NOT LIMITED TO, THE DETERMINATION OF APPROPRIATE USES FOR THE SOFTWARE AND THE SELECTION OF THE SOFTWARE TO ACHIEVE INTENDED RESULTS.

**8. DISCLAIMER OF LIABILITY.**

BY ACCEPTING THIS AGREEMENT, CUSTOMER AGREES THAT ANY LIABILITY ON THE PART OF LIGHTING ANALYSTS SHALL BE LIMITED EXCLUSIVELY TO A MONETARY REFUND OF THE PURCHASE PRICE OF THE ACTIVE SUBSCRIPTION TERM FOR THE SPECIFIC SOFTWARE WHICH IS THE SUBJECT MATTER AT ISSUE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LIGHTING ANALYSTS SHALL NOT BE LIABLE FOR ANY (A) SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, SPECULATIVE, THIRD PARTY, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING LOSS OF PROFITS, OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER, ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT OR ANY ORDER OR THE OPERATION OR USE OF OR INABILITY TO USE THE SOFTWARE, MATERIALS, PAYMENT SERVICES AND/OR SERVICES OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF LIGHTING ANALYSTS, INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST CUSTOMER BY ANY THIRD PERSON, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT

(INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF THE WARRANTY OF LIGHTING ANALYSTS EVEN IF LIGHTING ANALYSTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSS, OR CLAIM; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY LIGHTING ANALYSTS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND LIGHTING ANALYSTS' REASONABLE CONTROL; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST LIGHTING ANALYSTS MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

#### **9. LIMITATION OF LIABILITY.**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT LIGHTING ANALYSTS' TOTAL CUMULATIVE LIABILITIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE SHALL BE LIMITED **EXCLUSIVELY** TO ACTUAL DIRECT DAMAGES UP TO, AND WILL IN NO EVENT EXCEED, THE AMOUNT(S) ACTUALLY RECEIVED BY LIGHTING ANALYSTS UNDER THIS AGREEMENT FOR THE SPECIFIC SOFTWARE THAT IS THE SUBJECT MATTER OF, OR IS DIRECTLY RELATED TO THE CAUSE OF ACTION. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT LIGHTING ANALYSTS WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUED. TO THE EXTENT ANY APPLICABLE LAW LIMITS THE SCOPE OF THIS SECTION, THIS AGREEMENT SHALL BE INTERPRETED TO CONFORM TO SUCH LAW IN A MANNER THAT LIMITS LIGHTING ANALYSTS' LIABILITY TO THE FULLEST EXTENT ALLOWED BY LAW.

#### **10. GENERAL**

##### 10.1 Non-Assignment.

This Agreement and all Software to which it applies may not be assigned, sub-licensed or otherwise transferred by the Customer without prior written consent from Lighting Analysts. Any attempt to assign this Agreement by Customer shall be null and void. No right to print, copy, reproduce in any media, in whole or in part, or distribute in any way, the Software and/or the Materials is granted hereby, except as expressly provided herein. For the purposes of this Agreement a change in the equity interest in Customer of greater than twenty-five (25) percent by any third party shall be considered an "assignment."

##### 10.2 Termination.

10.2.1 Customer may terminate this Agreement without cause at any time, upon thirty (30) days written notice to Lighting Analysts. Customer will be responsible for, and agrees to pay, all accrued Licensing fee(s) through date of termination. Customer's election to terminate this Agreement shall not entitle Customer to a refund of fees paid or any other type of set-off, pro-rata, or discount to any accrued fee(s).

10.2.2 Lighting Analysts may terminate this Agreement upon ten (10) days notice in the event of one of the following:



- a. Customer fails to timely pay any undisputed amount owed to Lighting Analysts; NOTE: Lighting Analysts reserves the right to suspend Customer's access until any such dispute is resolved; or
- b. Any breach not cured by Customer within ten (10) day notice period.

10.2.3 Lighting Analysts may terminate this Agreement immediately upon Customer's material breach of this Agreement, defined as a violation of Sections 2, 4, 5, 7, 10.1, 10.6, 10.9, 10.10, 10.15, 10.16, or 10.17.

10.2.4 Lighting Analysts reserves all rights available to them, including permanent or temporary injunctions as well as the use of self-help, and the right to pursue Customer for any and all damages, including attorney fees and costs, for any Customer breach of this Agreement and/or any Copyright infringement. In the event of any termination of this Agreement, Customer expressly waives any and all claims for specific performance under this Agreement.

10.2.5 Upon any termination of this Agreement, the Customer's right to use the Software and all confidential information ceases immediately. Upon any termination of this Agreement, the Customer agrees to certify to Lighting Analysts in writing that the original and all copies, in whole or in part, in any form or media, of the Software and Materials received from Lighting Analysts or made in connection with this Agreement have been returned or certified destroyed by having a Customer officer sign and return to Lighting Analysts the Certificate of Destruction of Proprietary and Confidential Information, as provided by Lighting Analysts at the time of termination. Lighting Analysts reserves the right to terminate the licensed application electronically, as determined by Lighting Analysts in its sole discretion.

#### 10.2.6 Effect of Termination.

In the event Lighting Analysts terminates this Agreement as a result of any breach or default by Customer, any right or License granted to Customer shall immediately revert to Lighting Analysts, Customer immediately shall cease and desist from any further use of the Software, the Materials, and confidential information.

10.2.7 UNDER NO CIRCUMSTANCES WILL CUSTOMER HAVE THE RIGHT TO OBTAIN, NOR SHALL LIGHTING ANALYSTS PROVIDE, SOFTWARE SOURCE CODE AND CUSTOMER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS THERETO.

#### 10.3 Prevailing Party.

If either party hereto brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to its reasonable attorney's fees and costs to be paid by the losing party as fixed by the court.

#### 10.4 Choice of Law.

This Agreement shall be governed by the laws of the State of Colorado, United States of America. The United Nations Convention on Contracts for the International Sale of Goods shall not govern or be used to construe this Agreement. The parties agree that, in the event that the Uniform Computer Information Transaction Act, any version thereof or a substantially similar law (collectively UCITA) is enacted as to be applicable to a party's performance under this Agreement, said statute shall not govern any aspect of this Agreement, any License granted hereunder, nor any of the parties' rights and obligations arising pursuant to the Agreement. The applicable law shall be the law as it existed prior to the enactment of UCITA.

#### 10.5 Severability.

If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction for any reason, such invalidity shall not affect the remaining provisions. Such remaining provisions shall be fully severable and this Agreement shall be construed and enforced as if such invalid provision had never been in this Agreement.

#### 10.6 Prevalence.

The provisions of this Agreement shall prevail in the event of a conflict between any of its provisions and any inconsistent or additional terms or conditions of either party's purchase orders or invoices, whether prior to, or subsequent to, Customer's acceptance of this Agreement.

#### 10.7 Language.

This Agreement has been prepared in the English language and only the English language version shall be legally binding when interpreting this Agreement.

#### 10.8 Survivability.

The parties recognize and agree that Sections 4, 5, 6.2, 7, 8, 9, 10.2.4, 10.2.6, 10.2.7, 10.3, 10.4, 10.5, 10.6, 10.7, and 10.11 - 10.20 of this Agreement shall survive the cancellation, termination, or expiration of this Agreement or the License granted under Section 2.1.

#### 10.9 Authority.

Customer represents and warrants to Lighting Analysts that Customer has all requisite power and authority to execute and deliver this Agreement and to perform the Customer's obligations hereunder. This Agreement constitutes a valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms.

#### 10.10 Amendments, Modifications, or Supplements.

Neither this Agreement, nor any of its Sections, may be modified by Customer's past or future issuance of purchase orders or any other document. Any attempt to modify this Agreement by Customer inconsistent with this Section shall be null and void. No amendments, modifications, or supplements to this Agreement shall be permitted, unless all such changes shall be in writing signed by the authorized representatives of both parties and identify the specific articles or Sections of this Agreement that is amended, modified, or supplemented.

#### 10.11 No Rule of Construction.

The parties agree that the Rule of Construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Agreement.

#### 10.12 Headings.

The headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement.

#### 10.13 Arbitration.

In the event of a dispute between the parties to this Agreement, such disagreement shall be referred to binding arbitration. The parties shall agree on and appoint one neutral arbitrator within thirty (30) days after a written request for arbitration has been given by one party to the other. If the parties do not agree and fail to appoint such mutual arbitrator within the thirty (30) day period, the arbitrator shall be appointed by a court of competent jurisdiction of the State of Colorado, upon the application of either party. Subject to the provisions set forth within this Section, the arbitration shall be governed by the Colorado Uniform Arbitration Act, C.R.S. §13-22-201, *et seq.*, as it exists

on the effective date of this Agreement and as it may be thereafter amended.

#### 10.14 No Third Party Beneficiaries.

This Agreement is entered into solely for the benefit of Lighting Analysts and Customer. No third party shall have the right to make any claim or assert any right under it, and no third party shall be deemed a beneficiary of this Agreement.

#### 10.15 Export Restrictions.

Lighting Analysts and Customer each shall comply with the provision of all applicable federal, state, county, and local laws, ordinances, regulations, and codes including, but not limited to, Lighting Analysts' and Customer's obligations as employers with regard to the health, safety, and payment of its employees, and identification and procurement of required permits, certificates, approvals, and inspections in Lighting Analysts' and Customer's performance of this Agreement.

Customer and Lighting Analysts acknowledge that the Software and all related technical information, documents, and materials are subject to export controls under the U.S. Export Administration Regulation. Customer and Lighting Analysts will (i) comply strictly with all legal requirements established under these controls; (ii) cooperate fully with the other party in any official or unofficial audit or inspection that relates to these controls; and (iii) not export, re-export, divert, transfer, or disclose, directly or indirectly, any Software or related technical information, document, or material or direct products thereof to any country so restricted by the U.S. Export Administration Regulations, as modified from time to time, or to any national or resident thereof, unless Customer has obtained the prior written authorization of Lighting Analysts and the U.S. Commerce Department and any relevant local governmental authority. Customer agrees Lighting Analysts shall have no liability for the failure to obtain a U.S. export license to export the Software.

#### 10.16 Compliance with Laws.

Lighting Analysts and Customer each shall comply with the provision of all applicable federal, state, county and local laws, ordinances, regulations, codes, and identification and procurement of required permits, certificates, approvals, and inspections in Lighting Analysts' and Customer's performance of this Agreement. In addition, Customer agrees to comply at all times with all applicable regulations, licenses, and orders of its country and all conventions and treaties to which Customer's country is a party or relating to or in any way affecting this Agreement and the performance by Customer of this Agreement. Under no circumstances shall any Software, Materials, and/or confidential information be re-exported, resold, or transferred other than is authorized by the government of the United States. Any such re-export, resale, or transfer shall be deemed a material breach of this Agreement.

#### 10.17 Audit.

Customer agrees to allow Lighting Analysts or its appointed representative to audit Customer's facilities, computer systems, and Domain Name(s) only to the degree that they pertain to this Agreement and Customer's compliance hereunder, upon reasonable notice and during regular business hours to ensure compliance with this Agreement. Customer agrees that any violations of this Agreement found will be corrected by immediately paying Lighting Analysts License fees then due, plus any License fees due in arrears, at the penalty rate of 150% of the then-current pricing, the cost of the audit, plus all other expenses incurred by Lighting Analysts, including attorney fees and costs.

10.18 Equitable Relief.

Customer agrees that a breach of this Agreement adversely affecting Lighting Analysts' proprietary rights in the Software may cause irreparable injury to Lighting Analysts for which monetary damages would not be an adequate remedy and Lighting Analysts shall be entitled to seek equitable relief in addition to any remedies it may have hereunder or at law.

10.19 Waiver of Right to Jury Trial.

THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING DIRECTLY OR INDIRECTLY OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OR BREACH OF THIS AGREEMENT, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG THEM. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court or other tribunal (including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT, AND RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court. Each of the parties hereto (a) certifies that no representative, agent, or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver, and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement, as applicable, by, among other things, the mutual waivers and certifications in this Section.

10.20 No Waiver.

No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder.

10.21 Notices.

All notices, demands, or other communications herein provided to be given or that may be given by any party to the other shall be deemed to have been duly given when made in writing and delivered in person, or upon national overnight courier service, signature required, at the other party's principal business address.

10.22 Entire Agreement.

This Agreement incorporates all of the agreements and understandings between the parties hereto concerning the subject matter hereof and supersedes all previous agreements between the parties as all such agreements and understandings have been merged into this Agreement. **Customer hereby represents and acknowledges that in entering into this Agreement it did not rely on any representations or warranties other than those explicitly set forth in this Agreement.** Customer represents that it has read this Agreement, understand it, agrees to be bound by all terms and conditions stated herein.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date set forth in the first paragraph hereof.

Lighting Analysts, Inc.

Licensee:

\_\_\_\_\_  
Signed:  
\_\_\_\_\_  
Printed name:  
\_\_\_\_\_  
Title:  
\_\_\_\_\_  
Date:

\_\_\_\_\_  
Signed:  
\_\_\_\_\_  
Printed name:  
\_\_\_\_\_  
Title:  
\_\_\_\_\_  
Date:

**Lighting Analysts, Inc.  
Software  
License Agreement  
Exhibit A**

Pursuant to Section 2.4 of the Agreement, Customer desires to access the Licensed Software from the following Domain Name(s), for example: www.agi32.com:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

**IN WITNESS WHEREOF**, the parties hereto have executed this Exhibit as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Lighting Analysts, Inc.  
\_\_\_\_\_  
Signed:  
\_\_\_\_\_  
Printed name:  
\_\_\_\_\_  
Title:  
\_\_\_\_\_  
Date:

\_\_\_\_\_  
Licensee:  
\_\_\_\_\_  
Signed:  
\_\_\_\_\_  
Printed name:  
\_\_\_\_\_  
Title:  
\_\_\_\_\_  
Date: