

**Lighting Analysts, Inc.**  
**Instabase**  
**Terms of Use Agreement**

IMPORTANT! PLEASE READ CAREFULLY. CLICKING ON THE “I ACCEPT” BUTTON BELOW THIS TERMS OF USE AGREEMENT (this “Agreement”) CREATES A BINDING LEGAL AGREEMENT BETWEEN YOU AND LIGHTING ANALYSTS, INC. (“Lighting Analysts”). IF YOU DO NOT AGREE TO ALL TERMS SET FORTH IN THIS Agreement, CLICK ON THE “I DO NOT ACCEPT” BUTTON TO EXIT INSTABASE. Lighting Analysts reserves the right to modify this Agreement at any time, with or without notice.

Lighting Analysts has developed and owns certain proprietary software for use in the lighting industry that performs data calculations and other value-added features pertaining to the Content (as defined below) of various, independent third party, lighting manufacturers, who place their proprietary product information, and associated details within, thereby collectively creating a database, which is provided to All Users (as defined below) as “Instabase”. Lighting Analysts also offers access to Instabase to lighting professionals to search those manufacturer products based on their individual needs criteria.

AGREEMENT

In consideration for the use of, and access to, Instabase, All Users agree as follows:

1. DEFINITIONS.

1.1 “All Users” means any and all Supplier(s) and any and all End User(s).

1.2 “Content” means any material, such as manufacturer specifications, drawings, text, graphics, electronic documents, photographs, trademarks, logos, icons, product data, or images, that any supplier uploads, inputs, or imports into Licensed Software.

1.3 “End User(s)” means any lighting manufacturer, lighting engineer, or lighting products user that elects to search Licensed Software for their lighting products needs as 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, lawyers, representatives, and all other persons or entities acting in any capacity on their behalf, or other persons similarly under the control of End User(s).

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

1.5 “License” means any personal, nonexclusive, nontransferable, non-assignable license, for All

Users' internal use only, granted by Lighting Analysts to All Users to use the Software under this Agreement for the Term specified below. At the end of every License, All Users' access to the Software shall automatically cease.

1.6 "Licensed Software" means the computer Software authored by Lighting Analysts that All Users accept under the terms of this Agreement, "Instabase".

1.7 "Materials" means all Lighting Analysts' documentation, in either printed or electronic format, associated with, or pursuant to, Software, excluding Content.

1.8 "Results" means any and all data calculations, search results, and/or Content, as produced by Licensed Software.

1.9 "Software" means the aggregate of the Lighting Analysts' standard software, including the Licensed Software and all other software programs created by Lighting Analysts, all physical components that are provided by Lighting Analysts, including but not limited to, data storage devices, downloadable software programs, job aids, templates, and other similar devices.

1.10 "Supplier(s)" means any manufacturer or supplier of lighting products who elects to place their own Content in Licensed Software as 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, lawyers, representatives, and all other persons or entities acting in any capacity on their behalf, or other persons similarly under the control of Supplier.

## 2. LICENSES.

### 2.1 Lighting Analysts Software License Grant.

Subject to accepting all of the provisions of this Agreement, Lighting Analysts grants and All Users accept 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 Licensed Software, only as furnished to All Users and only for All Users' internal use for All Users' internal business purposes, 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. Any and all ideas, suggestions, comments, observations, or other feedback provided to Lighting Analysts regarding Software shall immediately become the sole property of Lighting Analysts. All rights not expressly granted above are hereby reserved to Lighting Analysts. Under no circumstances may All Users rent, lease, loan, copy, stream, sublicense, resell, lend or provide hosting services to the Software for third parties.

### 2.2 Supplier License Grant.

Subject to accepting all of the provisions of this Agreement, by placing Supplier Content in Licensed Software Supplier automatically grants and Lighting Analysts and All User(s) accept a royalty-free, perpetual, personal, worldwide, non-assignable, nontransferable, nonexclusive, and limited license to use, publish, reproduce, translate, incorporate into other works, distribute, and

otherwise exploit such Supplier Content (in whole or in part) in any form, media or technology now known or hereafter developed, without payment to Supplier or to any third parties, per the terms and conditions detailed herein, the Supplier Content, as provided by Supplier, to be accessed on, and have Results derived from, in any form or media, Lighting Analysts' Software by All Users. Supplier expressly permits reformatting, downloading, and storage some or all Supplier Content, in files and memory; copy some or all of the Supplier Content in on-line and off-line form; modify, compile, add to, create extracts, create Results, printout, and manipulate some or all of the Supplier Content and/or Results; distribute, publish, transmit, and display some or all of the Supplier Content and/or Results electronically or through other means; copy, reformat, analyze, print, and display such information and materials; and authorize All Users to do some or all of the foregoing in connection with their internal business operations. Supplier expressly authorizes All Users to take such other action in respect of the Supplier Content as may be necessary or appropriate for the use and distribution of the Supplier Content and the provision of services pursuant to this Agreement, including instruction, demonstration, marketing, and testing activities. Supplier specifically grants the right to Lighting Analysts to utilize Supplier Content in any Software. All rights not expressly granted herein are hereby reserved to Supplier. Supplier may revoke this Supplier License Grant at any time by removing all Supplier Content information from Software.

### 2.3 Term.

For End User(s), the Term shall begin upon clicking on the "I ACCEPT" button and shall automatically end upon exiting the Licensed Software. For Supplier(s), the Term shall begin upon placement of Content in Software and shall automatically terminate upon removal of all Supplier Content from Software, unless earlier terminated in accordance with the provisions herein or any other Lighting Analysts agreement with Supplier.

### 2.4 New Software Versions.

Lighting Analysts reserves the right to release new versions, add or delete features, increase or decrease functionality, modify, update, completely discontinue, completely discontinue specific "versions" of any/all Software, create major feature additions, additional or enhanced functionality, or other significant new or changed features of the Software, and the right to update, repair, patch, or otherwise fix the Software at any time with or without notice to All Users, as determined in Lighting Analysts' sole discretion, and any such additional software shall be included in the definition of "Software" detailed herein. Should Lighting Analysts discontinue the Software, All Users will have a reasonable time to download their respective Content and/or Results, not to exceed a maximum of thirty (30) calendar days.

## 3. All Users Responsibilities.

Lighting Analysts is committed to professionals in the lighting industry and creating and maintaining a valuable resource for All Users. To help facilitate this environment, all All Users further agree, as follows:

3.1 Lighting Analysts expressly reserves the right to deactivate any End User(s) account or otherwise limit any End User(s) Licensed Software actions as determined by Lighting Analysts in its sole discretion.

3.2 Licensed Software contains a compilation of Content from various Supplier(s) that they have elected to share with All Users. All Users may utilize Content only to the degree such Content is

represented in Results.

3.3 All Licensed Software calculations are performed on Content, as provided and input by Supplier(s) and/or their designated representative(s). As such, if Supplier(s)' Content is incorrect, incomplete, out of date, or contains other errors, Results pertaining to the Content will be incorrect. Lighting Analysts specifically disclaims any and all liability for Supplier(s)' choices, accuracy, and/or other details concerning Content as such actions are wholly outside the control of Lighting Analysts.

#### 4. Supplier Additional Responsibilities.

4.1 Supplier agrees to upload, submit, and store Supplier Content into Licensed Software in compliance with the "Manufacturer's Guidelines" available at [www.lightinganalysts.com](http://www.lightinganalysts.com). Supplier is responsible for ensuring Supplier Content is free from all forms of malware, viruses, adware, bots, bugs, rootkits, spyware, Trojan horses, worms or any other type of malicious code.

4.2 Supplier represents and warrants that by submitting any Supplier Content or otherwise participating in Software, all such Supplier Content is owned by, or licensed to, Supplier and does not infringe on any third party patent, copyright, trademark, trade secret, moral right, right of publicity or other proprietary right and Supplier shall defend, indemnify and hold harmless Lighting Analysts and All Users, specifically excluding the Supplier with Content in dispute, (collectively the "Indemnified Parties") from and against any and all damages, claims, actions, proceedings, losses, liabilities, judgements, awards, costs, and expenses of any nature whatsoever, including reasonable attorney's fees, costs, and court costs, incurred by any Indemnified Party arising out of or relating to any third party claims alleging infringement of any patent, copyright, trademark, trade secret, moral right, right of publicity or other proprietary right or any other rights of any third party by any Supplier Content provided by Supplier and/or from any breach or alleged breach of Supplier warranty under this Agreement. Any liability limitations set forth in this Agreement shall not apply to these Supplier indemnification obligations.

Lighting Analysts shall promptly notify Supplier in writing of any third party claim or suit and Supplier shall have sole control of the defense of any such action and all negotiations for its settlement or compromise. Lighting Analysts and/or All User(s) may participate at their own expense in the defense of any such action at their sole discretion. Lighting Analysts reserves the right to immediately terminate any account in violation of this section.

4.3 Supplier expressly agrees that while Lighting Analysts has no duty or obligation to monitor, screen, edit or remove any Content, Lighting Analysts reserves the right, and holds singular absolute discretion, to screen, edit, remove without notice any Content at any time and for any or no reason and Supplier is solely responsible for creating backup copies of and replacing any Supplier Content at Supplier's sole cost and expense.

4.4 Supplier acknowledges that Lighting Analysts maintains no systems or controls over whether or not any/all Content is downloaded by any End User(s) and Lighting Analysts makes no warranty of any kind to Supplier regarding same. Supplier places Supplier Content in Software solely at Supplier's own risk.

## 5. OWNERSHIP.

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

All Users hereby agree not to disassemble, translate, alter, 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. All Users 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.

### 5.2 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. All Users 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 All Users 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 All Users 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.

### 5.3 Circumvention.

All Users 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.

## 6. 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 All Users in the same manner and to the same degree that All Users protects its own proprietary or confidential information. All Users 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 All Users 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. All Users 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 All Users. All Users 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 All Users to protect its own confidential information, and including those which Lighting Analysts may request from time to time. All Users 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.

All Users agrees to promptly and fully notify Lighting Analysts of any unauthorized use or disclosure of confidential information of all facts known to All Users concerning such unauthorized use or disclosure. In addition, should All Users 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, All Users 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. All Users 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.

## 7. LIMITED WARRANTY, WARRANTY DISCLAIMER, PAYMENT SERVICES DISCLAIMER and CONTENT AND RESULTS DISCLAIMER.

### 7.1 Limited Warranty.

Lighting Analysts warrants against defects in features described in the Licensed Software Materials for a limited time period of thirty (30) days after the initial use of the Software. All Users' 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 All Users' written notice; or (ii) refund All

Users' License fees, if any, and terminate this Agreement.

#### 7.2 Warranty Disclaimer.

BY INSTALLING, COPYING OR OTHERWISE USING LIGHTING ANALYSTS' PRODUCTS, ALL USERS AGREES TO TAKE AND USE LIGHTING ANALYSTS' PRODUCTS "AS IS". EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 7.1 (LIMITED WARRANTY) HEREOF, LIGHTING ANALYSTS MAKES AND ALL USERS 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 ALL USERS 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 All Users, in which case any implied warranties are limited in duration to thirty (30) days from date of purchase.

#### 7.3 Payment Services Disclaimer.

Lighting Analysts utilizes the services of various, independent third party online payment services provider(s), to process All Users 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 All Users. All Users is solely responsible for reviewing, and determining All Users' 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 All Users' use of such Payment Services provider. All Users 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 All Users' use of Payment Services. Should All Users not accept the then-current Payment Services provider's terms and conditions, All Users' sole option is to terminate the transaction.

#### 7.4 Content and Results Disclaimer.

By design, Licensed Software is compilation comprised completely of non-related third-party Content placed in Software in and at their owner's sole discretion and election. At all times, the owner of Content shall retain all sole and exclusive rights, title and interest in and to their Content,

including without limitation any patents, copyrights, trademarks, trade secrets, or sublicenses and all other proprietary rights therein, (the “Intellectual Property Rights”) that they may own or have acquired. Lighting Analysts makes no proprietary claim whatsoever in or to the Content, only to the underlying Software Content runs on, as detailed herein, and Lighting Analysts makes no claim regarding conveyance of Content under this, or any other, document.

Lighting Analysts’ Software performs data calculations and value-added features pertaining to the Content of others, the provision of which, including any Results and/or download of same, or anything in this Agreement shall not grant any right, title, interest, or license, under any rights of the Content owner or otherwise, specifically including any Intellectual Property Rights in the Content, 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 All Users hereunder.

All Users agree 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 Content and/or Results, including the sufficiency, completeness, timeliness, correctness, errors and/or omissions, availability of, infringement on any third-party rights, and/or accuracy of any and all Content and/or Results. Lighting Analysts does not load Content for any All Users or user and specifically disclaims any and all liability for actions of all persons not under the sole direction and control of Lighting Analysts.

#### **8. 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 ALL USERS’ PROFESSIONAL JUDGMENT OR INDEPENDENT VALIDATION AND TESTING. ALL USERS ARE 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. ALL USERS ARE 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.

#### **9. DISCLAIMER OF LIABILITY.**

BY ACCEPTING THIS AGREEMENT, ALL USERS AGREE THAT ANY LIABILITY ON THE PART OF LIGHTING ANALYSTS SHALL BE LIMITED EXCLUSIVELY TO A MONETARY REFUND OF THE PURCHASE PRICE OF THE TERM FOR THE LICENSED SOFTWARE DETAILED HEREIN. 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 ALL USERS 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.

#### **10. 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. ALL USERS 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 ALL USERS 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.

#### **11. GENERAL**

##### **11.1 Non-Assignment.**

This Agreement and all Software to which it applies may not be assigned, sub-licensed or otherwise transferred by All Users without prior consent from Lighting Analysts. Any attempt to assign this Agreement by All Users 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 All Users of greater than twenty-five (25) percent by any third party shall be considered an “assignment.”

## 11.2 Termination.

11.2.1 All Users may terminate this Agreement without cause at any time, upon thirty (30) days written notice to Lighting Analysts. All Users’ election to terminate this Agreement shall not entitle All Users to a refund of fees paid or any other type of set-off, pro-ration, or discount to any accrued fee(s).

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

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

11.2.3 Lighting Analysts may terminate this Agreement immediately upon All Users’ material breach of this Agreement, defined as a violation of Sections 2, 4.2, 4.3, 5, 6, 8, 11.1, 11.6, 11.9, 11.10, 11.13 - 11.16 or 11.21.

11.2.4 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 All Users for any and all damages, including attorney fees and costs, for any All Users breach of this Agreement. In the event of termination of this Agreement, All Users expressly waives any and all claims for specific performance under this Agreement.

11.2.5 Upon any termination of this Agreement, All Users' right to use the Software, the Materials, and all confidential information ceases immediately. Upon any termination of this Agreement, All Users 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 an All Users 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.

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

### 11.3 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.

### 11.4 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.

### 11.5 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.

### 11.6 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 All Users' documentation, whether prior to, or subsequent to, All Users' acceptance of this Agreement.

### 11.7 Language.

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

### 11.8 Survivability.

The parties recognize and agree that Sections 4.2, 4.3, 4.4, 5, 6, 7.2 – 7.4, 9, 10, 11.2.4, 11.2.5, 11.2.7, 11.3 - 11.5, 11.7, 11.9 - 11.23 of this Agreement shall survive the cancellation, termination, or expiration of this Agreement or the License granted under Section 2.1.

### 11.9 Authority.

All Users represents and warrants to Lighting Analysts that: (a) All Users has all requisite power and authority to execute and deliver this Agreement and to perform All Users' obligations hereunder; (b) the making of this Agreement by All Users does not violate any separate agreement, rights or obligations existing between All Users and any other person or entity, and throughout the term of this Agreement, All Users shall not enter into a separate agreement with any person or entity that is inconsistent with any of the provisions of this Agreement; and (c) All User's policies and practices with respect to utilizing Software shall in no manner reflect adversely upon the good name, reputation and/or goodwill of Lighting Analysts. This Agreement constitutes a valid and binding obligation of All Users, enforceable against All Users in accordance with its terms.

#### 11.10 Amendments, Modifications, or Supplements.

Neither this Agreement, nor any of its Sections, may be modified by All Users' past or future issuance of purchase orders or any other document. Any attempt to modify this Agreement by All Users 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.

#### 11.11 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.

#### 11.12 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.

#### 11.13 Arbitration.

In the event of a dispute between any of the parties to this Agreement, such disagreement shall be referred to binding arbitration. The affected 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.

#### 11.14 No Third Party Beneficiaries.

This Agreement is entered into solely for the benefit of Lighting Analysts and All Users. 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.

#### 11.15 Export Restrictions.

Lighting Analysts and All Users 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 All Users' 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 All Users' performance of this Agreement.

All Users 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. All Users 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 All Users has obtained the prior written authorization of Lighting Analysts and the U.S. Commerce Department and any relevant local governmental authority. All Users agrees Lighting Analysts shall have no liability for the failure to obtain a U.S. export license to export the Software.

#### 11.16 Compliance with Laws.

Lighting Analysts and All Users 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 All Users' performance of this Agreement. In addition, All Users agrees to comply at all times with all applicable regulations, licenses, and orders of its country and all conventions and treaties to which All Users' country is a party or relating to or in any way affecting this Agreement and the performance by All Users 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.

#### 11.17 Equitable Relief.

All Users 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.

#### 11.18 Waiver of Right to Jury Trial.

ALL USERS 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.

#### 11.19 No Class Actions. All Users may only resolve disputes with Lighting Analysts on an

individual basis, and All Users agrees not to bring a claim as a plaintiff or a class member in a class, consolidated, or representative action.

#### 11.20 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.

#### 11.21 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.

#### 11.22 Force majeure.

Neither party shall be liable or be deemed to be in default for any delay or failure in performance or interruption resulting directly or indirectly from any cause or circumstance beyond its reasonable control, equipment or telecommunications failure, labor dispute, or failure of any third party to perform any agreement that adversely affects such party's ability to perform its obligations hereunder.

#### 11.23 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. **All Users 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.** All Users represents that it has read this Agreement, understand it, agrees to be bound by all terms and conditions stated herein.