



Contract Number

22-1088

SAP Number

## District Attorney

Department Contract Representative	Claudia Walker
Telephone Number	(909) 382-3679
Contractor	Berla Corporation
Contractor Representative	Julie Casalino
Telephone Number	(443) 333-9301
Contract Term	12/1/2022 – 11/30/2026
Original Contract Amount	\$38,000
Amendment Amount	
Total Contract Amount	\$38,000
Cost Center	4500001000

### Briefly describe the general nature of the contract:

The District Attorney will purchase the iVe Toolkit from Berla Corporation (Berla) with a software subscription to retrieve forensic information from vehicles involved with crimes. Forensic information includes GPS data, navigation history, call logs, contact lists, SMS messages, and emails. This evidence aids in the investigation and prosecution of crimes by linking defendants with crimes. Berla's End User License Agreement consists of terms and conditions that are not standard to County Contracts and require approval from the Board of Supervisors.

#### FOR COUNTY USE ONLY

Approved as to Legal Form

Katherine Hardy, Deputy County Counsel

Date 10-14-22

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Jason Anderson, District Attorney

Date

**iVe™ End User License Agreement (EULA)**  
**Including Terms of Warranty, Training and Support Services**

**PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT CAREFULLY BEFORE CONTINUING WITH THIS PROGRAM INSTALL**

**IMPORTANT - READ CAREFULLY.** THIS END-USER LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU, THE LICENSED USER (EITHER AN INDIVIDUAL OR ORGANIZATION) ("LICENSEE") AND BERLA CORP. ("BERLA"), A CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA HAVING AN ADDRESS AT 445 DEFENSE HIGHWAY SUITE M, ANNAPOLIS, MD 21401 ("LICENSOR") FOR IVE™, WHICH INCLUDES THIS COMPUTER SOFTWARE AND ITS ASSOCIATED PRINTED AND ONLINE DOCUMENTATION (HEREINAFTER "SOFTWARE").

ONLY THE LICENSEE OF THE SOFTWARE MAY ACCEPT THESE TERMS AND USE THE SOFTWARE. THE LICENSEE IS THE INDIVIDUAL OR ENTITY DESIGNATED AS SUCH ON THE BERLA ORDER FORM UNDER WHICH THE SOFTWARE WAS LICENSED FROM BERLA. DO NOT INSTALL OR USE THE SOFTWARE AND EXIT NOW IF YOU ARE NOT THE LICENSEE, OR A PERSON WITH AUTHORITY TO BIND THE LICENSEE TO THESE TERMS AND AGREEMENT.

BY ACCEPTING THESE TERMS AND USING THE SOFTWARE YOU, AS AN INDIVIDUAL AND IN YOUR PERSONAL CAPACITY, REPRESENT AND WARRANT TO BERLA THAT YOU ARE EITHER (I) THE INDIVIDUAL, OR (II) A PERSON DULY AUTHORIZED TO ACT ON BEHALF OF THE ORGANIZATION, THAT IS THE LICENSEE OF THIS SOFTWARE. IF THIS IS NOT THE CASE, YOUR USE OF THE SOFTWARE IS NOT AUTHORIZED AND YOU ARE PERSONALLY LIABLE AND RESPONSIBLE FOR ANY DAMAGE INCURRED BY BERLA.

**IF YOU ARE THE LICENSEE BUT DO NOT AGREE TO ACCEPT THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE, AND EXIT NOW.**

Licensee agrees that this Agreement is the complete and exclusive statement of agreement between Berla and Licensee and that this Agreement supersedes any oral or written proposal, agreement or other communication relating to the subject matter of this Agreement. Licensee assumes full responsibility for the use of the Software and agrees to use the Software legally and responsibly.

**1) GRANT OF LICENSE**

Following Licensee's acceptance of this Agreement, and subject to the terms of this Agreement, Berla grants the Licensee a personal, revocable, limited, non-exclusive, non-transferable, non-sub-licensable right and license to (i) install one copy of the Software on a single computer or workstation running a validly licensed copy of the Microsoft® Windows® operating system for which iVe™ was designed, and (ii) use the one copy of the Software so installed solely and exclusively for Licensee's internal business purposes and for no other purpose.

Licensee may use the documentation solely to support Licensee's licensed use of the Software. Licensee shall not remove, edit or abbreviate any copyright notices of Berla or its licensors appearing in the documentation or on the Software.

After installation of one copy of the Software pursuant to this Agreement, Licensee may keep the original media on which Berla provided the Software solely for backup or archival purposes. Licensee may make one copy of the Software solely for backup or archival purposes.

Except as expressly provided in this Agreement, Licensee may not otherwise make copies of the Software, the documentation or the printed materials accompanying the Software. Berla reserves all rights not expressly granted above.

This Agreement does not grant Licensee any right to use any trademarks or service marks of Berla.

## **2) PRICING; PAYMENT AND DELIVERY TERMS.**

Licensee agrees to pay Berla the fees and payments for the Software, all related hardware, and services as set forth in the applicable sales order. All quoted prices are confidential and remain valid for 30 days. Berla reserves the right to modify or amend its pricing at any time after such 30-day period. All prices are quoted exclusive of any and all taxes, duties, shipping, insurance and other fees, each of which shall be paid by Licensee.

All prices and fees are payable in US dollars, and must be paid without set-off or deduction on or before the payment due date specified in the applicable sales order or, if no date is specified (i) the case of hardware or software, prior to installation or delivery, or (ii) in the case of training, prior to attendance, or (iii) in all other cases, within 30 days of the relevant invoice date. In the event Berla is required to collect or withhold any taxes or amounts, Licensee shall pay such amounts unless Licensee has provided Berla with a valid exemption certificate authorized by the appropriate taxing authority. All late payments are subject to a late fee equal to 1.5% per month on the outstanding balance, or such lesser amount that may equal the maximum amount allowed by law. In the event Berla initiates any demand, suit or action to collect any past due amount(s), Licensee agrees to pay any and all costs of enforcement and collection (including, without limitation, attorney's fees) incurred by Berla in pursuing payment or collecting past due amounts.

Licensee shall maintain complete records relating to its use of the Software and the number of computers or workstations on which it may be installed. Berla shall have the right upon reasonable notice at least twice during any calendar year to itself or have an independent third party copy and audit such records to ensure that Licensee is in compliance herewith. If an audit establishes that any amounts are owing to Licensor, Licensee shall immediately pay such amounts together with any interest due. If the amount which should have been paid for any the period audited is more than five percent (5%) greater than the amount actually paid in respect of such period, then Licensee shall pay or reimburse Berla for the cost of such audit.

Software and any Hardware are delivered FCA Berla's shipping location unless otherwise stated in the applicable sales order.

## **3) SPECIFIC LIMITATIONS AND EXCLUSIONS**

Licensee shall not: (i) use the Software for any purpose other than Licensee's own internal business purposes and other than as expressly provided herein; (ii) except as expressly authorized herein, make any copies of the Software; (iii) to the maximum extent permitted by applicable law, reverse engineer, decompile or disassemble the Software and where applicable law does not allow for the foregoing restriction, Licensee is only permitted to reverse engineer, de-compile or dissemble the Software for

purposes expressly permitted by such law, including the development of interoperable software and/or hardware, (iv) decode any passwords or encrypted license or installation keys that have been provided to Licensee by Berla in order to enable the execution of the Software on unauthorized equipment; (v) assign (by operation of law or otherwise) or transfer Licensee's interest in or rights hereunder, or attempt to do so or enter into any agreement to do so with any other party, other than in accordance with this Agreement, and any such assignment or attempted assignment shall be null and void and shall result in the automatic termination of this Agreement with immediate effect upon the occurrence of any such action or event; (vi) except as expressly authorized by Berla in writing, assign, convey, sublicense, distribute, transfer, loan, use, lease, pledge as security, encumber or otherwise make available the Software or any part thereof to any third party; (vii) remove or amend any copyright notices, trademarks, or any other proprietary legends and/or logos of Berla appearing on the Software, (viii) create any derivative works from or using the Software, (ix) market, co-brand, private label, or otherwise permit third parties to link to the Software or any part thereof, or (x) use the Software, or any part thereof, for the benefit of any other person or entity or otherwise use on a service bureau basis.

#### **4) COPYRIGHTS; INTELLECTUAL PROPERTY**

Licensee is granted no title, ownership or intellectual property rights in or to the Software (including in or to the underlying source code), in whole or part. All such rights shall remain in Berla. All copies of the Software (but not the media on which the copies are encoded) are owned by and remain the property of Berla.

The Software is licensed to Licensee, and all title and copyrights in and to the Software (including, without limitation, any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software), the accompanying media and printed materials, and any copies of the Software are wholly owned by Berla or its suppliers.

Copyright laws and international copyright treaties, as well as other intellectual property laws and treaties, protect the Software. Copying of the Software or any accompanying materials is expressly prohibited without the express prior written approval of Berla.

Licensee agrees that any and all improvements, enhancements, ideas, concepts, methods, processes, inventions, software, trade secrets, know-how or product modifications related to or involving the Software including, without limitation, those resulting from (i) any product demonstrations, collaborative discussions or exchanges between Licensee and Berla, or (ii) any suggestions or requirements for improving the Software regardless of the source, shall be the sole and exclusive property of Berla. Licensee agrees to cooperate with Berla in ensuring Berla has full right, title and interest in and to all of the foregoing including, without limitation, executing any documents, instruments of transfer, acknowledgements or similar documents that may be necessary or desirable, in Berla's reasonable judgment, to evidence its rights under this Section 4.

#### **5) CONFIDENTIALITY**

The Software and the related documentation, including without limitation, the specific functionality, design, structure and logic of individual programs, their interactions both internal and external, and the programming techniques employed therein are considered confidential and trade secrets of Berla and/or its licensors (the "Confidential Information"), the unauthorized disclosure of which would cause irreparable harm to Berla. Licensee shall use the same degree of care and means that it uses to protect

its own information of a similar nature, which shall be no less than the degree of care and means used to protect highly sensitive information and trade secrets in the law enforcement community, and in any event, shall use best efforts to prevent the unauthorized use of Confidential Information by third parties and also prevent the unauthorized disclosure of Confidential Information to third parties. Licensee shall not use, reproduce, distribute or disclose the Confidential Information other than for the purposes specifically authorized herein. Any unauthorized use or disclosure of Confidential Information (including, without limitation, any unauthorized use or disclosure of any of the Software, related documentation, or any documents or materials that display or describe the functionality of the Software), whether in tangible form or by display (visual, by inspection or otherwise) is expressly prohibited.

Licensee shall not, without Berla's express prior written consent, use or disclose any of the Confidential Information, the Software, nor use or disclose Berla's name, tradenames, trade marks, service marks, presentations, or product materials in any advertising, marketing, promotional, or other materials that may be published or disseminated by any means.

Licensee agrees that any breach or violation of this Section 5 will cause irreparable injury to Berla, that monetary damages would not be a sufficient remedy for such breach or violation, and that in addition to all other remedies Berla may have at law or in equity (i) Berla shall be entitled to seek and obtain equitable relief, including injunctive relief and specific performance, as a remedy for such breach or violation without the necessity of posting any bond or security, and (ii) Licensee shall pay Berla, in partial compensation for such breach or violation and not as a penalty, an amount equal to \$10,000 for each breach or violation of this Section 5.

This confidentiality obligation shall continue to apply to the Confidential Information following the termination hereof, provided that the confidentiality provisions contained herein shall not apply to Confidential Information which (i) was known by Licensee prior to disclosure, as evidenced by its business records; (ii) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of the confidentiality provisions contained herein; or (iii) is disclosed when such disclosure is compelled pursuant to legal, judicial, or administrative proceeding, or otherwise required by law, provided that Licensee shall give all reasonable prior notice to Berla to allow it to seek protective or other court orders.

## **6) COPYRIGHTS OF OTHERS**

This Agreement grants Licensee no rights to use materials owned by other copyright holders. Using materials owned by other copyright holders without their permission may be a violation of copyright laws and may subject Licensee to payment of damages and/or other remedies. In Licensee are uncertain about Licensee's rights Licensee should contact Licensee's legal advisor.

## **7) GOVERNMENT END USERS**

The Software and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted

to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

## **8) EXPORT**

Licensee acknowledges that the laws and regulations of the United States restrict the export and re-export of the Software including, without limitation, to restricted countries. Licensee agrees not to export or re-export the Software except in full compliance with all applicable laws, rules, regulations, orders and restrictions. Licensee shall indemnify, defend, and save Berla harmless from and against any and all claims, loss, damages, liabilities, costs and expense (including attorney's fees) to the extent arising out of Licensee's breach of this provision.

## **9) TERM AND TERMINATION**

This Agreement and the license granted hereunder shall be effective as of the date hereof and, provided and then only to the extent Licensee has paid and is current on all fees due and payable with respect to the Software, shall remain in effect for the term licensed in the applicable Berla order form unless sooner terminated pursuant to this Section 9. Berla may terminate this Agreement and all licenses granted hereunder if it has provided written notice to Licensee of a breach hereof and Licensee fails to correct such breach to the reasonable satisfaction of Berla within (i) ten (10) days of the date of such notice thereof, or (ii) in the case of any breach or violation of Section 5 hereof, one (1) day of the date of such notice thereof. This Agreement may also be terminated in the manner set forth in GSA Schedule No. GS-35F-0488Y or any applicable order placed thereunder.

Upon the termination or expiration hereof, Licensee shall forthwith (i) discontinue the use of the Software covered by the License, (ii) return to Berla all applicable copies of the Software, (iii) remove from all computers all copies of the applicable Software, and (iv) certify to Berla that it has complied with the requirements of this paragraph 9.

BERLA IS UNDER NO DUTY OR OBLIGATION TO PROVIDE ANY SOFTWARE, PRODUCTS, SERVICES OR ANY WARRANTY OR SUPPORT TO ANY LICENSEE THAT IS IN BREACH OR DEFAULT UNDER OR THAT HAS BREACHED OR DEFAULTED UNDER THE TERMS OF THIS AGREEMENT.

## **10) LIMITED WARRANTY**

Software licensed from Berla carries a limited warranty, for Licensee's benefit only, that the Software will perform substantially in accordance with the accompanying product documentation for a period of 12 months from the date of initial purchase or delivery of the Software. Berla will make commercially reasonable efforts within such 12-month period to resolve any reported defects in the Software.

Warranty support includes use of any new versions, enhancements, modifications or error corrections released by Berla during the applicable warranty period. Subject to Section 11 below, Licensee's exclusive remedy under this warranty shall be, at Berla's option, for Berla to either (a) return of the price paid for the Software not including shipping and handling, or (b) modify, repair or replace the Software.

The return of any hardware or components to Berla during the applicable warranty period shall be subject to Berla's then-current warranty and return policy including, without limitation, that all returns must (i) be pre-approved by Berla, and (ii) be accompanied by a return authorization number supplied

by Berla. All shipping, handling, transportation and insurance charges with respect to any returns shall be paid by Licensee.

This warranty may be extended, for such additional periods as Berla may agree, only upon Licensee's purchase of one or more additional and successive licenses and support for the Software covered. Berla has no obligation to extend or provide any warranty coverage beyond the initial 12-month period including, without limitation, in the event of Licensee fails to maintain continuous and uninterrupted warranty coverage for the Software or hardware components purchased or licensed from Berla.

EXCEPT AS PROVIDED ABOVE, BERLA PROVIDES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, OR ANY OTHER MATERIAL FURNISHED TO LICENSEE, OR ANY COMPONENT THEREOF, INCLUDING THE CONDITION, THE CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY ERROR OR OTHER LATENT OR PATENT DEFECT. BERLA HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR USE OR PURPOSE AND THOSE ARISING BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE WITH RESPECT TO THE SOFTWARE.

BERLA MAKES NO WARRANTIES WITH RESPECT TO THIRD PARTY PRODUCTS AND HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE AND THOSE ARISING BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE WITH RESPECT TO SUCH THIRD PARTY PRODUCTS. LICENSEE SHALL PURSUE ALL CLAIMS RELATED TO THIRD PARTY PRODUCTS WITH THE APPLICABLE MANUFACTURER OR SUPPLIER AND DOES HEREBY IRREVOCABLY RELEASE BERLA FROM ANY SUCH CLAIMS.

Berla shall have no liability for any infringement action or claim that is based upon or arises out of the use of the Software or any component thereof, whether alone or in combination with any other system, equipment or software.

BERLA'S WARRANTY AND ITS OBLIGATIONS HEREUNDER SHALL AUTOMATICALLY TERMINATE, AND BE OF NO FURTHER FORCE OR EFFECT, IN THE EVENT LICENSEE BREACHS OR DEFAULTS UNDER ANY TERM OR CONDITION STATED HEREIN INCLUDING, WITHOUT LIMITATION, ANY BREACH OF SECTION 3 OR SECTION 5 HEREOF.

#### **11) LIMITATION OF REMEDIES**

The sole and cumulative liability of Berla for all claims related to the Software or any other documentation or materials arising out of this Agreement, including any cause of action sounding in contract, tort, or strict liability, including Licensee's exclusive remedy of the warranty under Section 10, shall be, at Berla's option, to either (a) return of the price paid for the Software not including shipping and handling within 90 days, or (b) repair or replace the Software within 90 days from the date of delivery. This limited warranty is void if failure of the Software has resulted from accident, abuse, misapplication, or use other than as specified in the applicable documentation. Any replacement Software will be warranted for the remainder of the original warranty period. This limitation of liability is intended to apply to all claims without regard to which provisions of this Agreement have been breached or have proved ineffective.

## 12) LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, in no event shall Berla be liable for any claim, damages or other liability whether in an action of contract, tort, or otherwise, arising from, out of, or in connection with the Software, documentation or the use or other dealings in the Software or documentation. Berla shall not be liable for special, incidental, indirect, punitive, or consequential damages whatsoever (including, but not limited to, damages for loss of profits, loss of confidential or other information, business interruption, personal injury, loss of privacy, failure to meet any duty [including of good faith or of reasonable care], negligence, and any other pecuniary or other loss whatsoever) arising out of or in any way related to Licensee's use of or inability to use the Software. In no event shall Berla's aggregate liability arising out of or in connection with this Agreement, the Software or Licensee's use of the Software exceed the total amount of fees paid to Berla hereunder with respect to the Software.

The foregoing limitations and exclusions of liability shall apply even if Berla had been advised of the possibility of any such costs, losses or damages or knew or ought to have known of such costs, losses or damages and shall apply regardless of whether the action arose in contract, including, without limitation, from a fundamental breach, or breach of a condition, fundamental term or warranty, or in tort (including, without limitation negligence) or otherwise. The foregoing provisions limiting the liability of Berla shall also apply to its officers, directors, employees, and agents as trust provisions for the benefit of such officers, directors, employees, and agents and shall be enforceable by such persons as trust beneficiaries.

## 13) TRAINING

### Open Training Courses

Open training courses are defined as those training courses that any customer of Berla may reserve and attend. Advance student registration is required for all Berla open training courses and each training course is subject to a minimum number of students registered in order to proceed.

On the rare occasions Berla may not be able to secure the minimum student numbers, and will attempt to notify Licensee at least 30 days before, if that course is cancelled. Please do NOT commit to any travel or accommodation plans until 30 days before the course is due to commence.

Berla reserves the right to cancel an open course at any time without liability. In these circumstances, students will be offered an alternative date or refund.

Payment for training must be made a minimum of 30 days before attending the course.

Cancellation fees apply as follows to open courses:

- Within 8 weeks of the event = 25% of fee paid
- Within 4 weeks of the event = 50% of fee paid
- Within 3 weeks of the event = 75% of fee paid

Cancellations of course bookings must be made in writing at least 14 days before the start of the course.



If a cancellation is made less than 14 days before the start of the course, then no refund will be made. However, there is no charge if a substitute person from the same organization wishes to replace the original named student.

In the scenario when a student has to cancel due to unforeseen circumstances and requests their registration to be re-scheduled (at least 14 days before the start of the course). Then Berla will, where possible, allow the student to re-schedule to an alternative course within a 12 month period without penalty. If the re-scheduled class is not taken within 12 months, the booking is lost and no refund will be offered.

Berla reserves the right to cancel reservations or attendance from persons not entitled to participate or deemed to be unsuitable due to lack of technical qualifications. Such determination will be made at Berla's sole discretion.

All information and materials provided at any training are subject to the provisions of Section 5 hereof, and all training materials, presentations, manuals and information provided by Berla are "Confidential Information" of Berla. Each company sponsor and attendee will be required, as a condition of admission to any Berla training, to execute a Berla confidentiality agreement protecting such Confidential Information.

#### Onsite Training Courses

Onsite training courses are those courses which may be booked by customers for dedicated training of their own staff as well as those courses which are not open to all customers. As these courses are scheduled specifically for an organization, the terms and conditions vary from the Open Training Courses with regard to the following points:

An official purchase order for the training course must be placed with Berla a minimum of 30 days before the course is due to commence.

Details of the training location, course content and the number of students to be trained must be agreed in advance with Berla.

Berla reserves the right to request payment in full in advance before the course commences depending on the location, customer and circumstances of the booking in Berla's sole discretion.

Once a date for delivery of the onsite training course has been agreed it cannot be altered without the prior agreement of Berla and may incur additional fees.

Once a date for delivery of the onsite training course has been agreed and an order accepted such order shall be non-cancellable and non-refundable.

In the circumstances where a customer requests to postpone a training course to alternative dates with less than 30 days' notice, Berla reserves the right to refuse or alternatively request extra payment to cover the additional administration costs of rescheduling transportation, shipping and accommodation for the trainer.

It is the responsibility of the customer to assist Berla to enter the territory where the course is being held, by providing the correct visa permissions and also to aid with customs clearance for Berla technical equipment required for the course.

Berla cannot be held responsible for any delays to the course caused by customs and border issues beyond Berla's reasonable control which the customer had failed to advise Berla about. In such circumstances, no refunds will be given.

If, on commencement of the onsite course, the trainer finds that the classroom location is not suitable or the number of students is more than was expected to be trained, then Berla reserves the right to refuse to deliver the training, until the matter is resolved to the satisfaction of the trainer.

Berla shall not be liable for any loss or damage which may be suffered by the customer as a direct or indirect result of Berla being prevented or delayed in the delivery of training by reason of any circumstances whatsoever outside the control of Berla.

Again, all information and materials provided at any training are subject to the provisions of Section 5 hereof, and all training materials, presentations, manuals and information provided by Berla are "Confidential Information" of Berla. Each company sponsor and attendee will be required, as a condition of admission to any Berla training, to execute a Berla confidentiality agreement protecting such Confidential Information.

#### **14) GENERAL**

Any provision herein which is prohibited, invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, invalidity or unenforceability, without invalidating, affecting or impairing the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent practicable, the prohibited, invalid or unenforceable provision shall be replaced, for purposes of such jurisdiction, with a permitted, valid and enforceable provision that comes closest to the intention of the parties with respect to the provision so replaced.

No amendment, modification, waiver or consent issued hereunder shall be binding or effective unless set forth in writing specifically referencing this Agreement and executed by both parties. No waiver by either of the parties hereto of any rights arising from the breach hereof shall be construed as a continuing waiver, nor shall failure to assert a breach be deemed to waive that breach or any further breach. No waiver of any of the provisions or a breach hereof shall constitute a waiver of any other provision or other breach hereof.

In the event Berla pursues any claim or action to enforce the terms of this Agreement including, without limitation, the terms of Section 5 hereof, Berla shall be entitled to recover all costs incurred in connection with such claim or action including, without limitation, any and all court costs, witness fees, costs of investigation or enforcement, and attorney's fees.

The validity and interpretation of this Agreement will be governed by, and construed and enforced in accordance with the laws of the State of Maryland. The exclusive jurisdiction for the resolution of any dispute, claim or controversy arising under or in connection with this Agreement shall be in the federal or state courts in Maryland, and the parties hereby expressly submit to and waive any objection to jurisdiction and venue in such courts

The license granted hereunder, and the rights and obligations hereunder and under the license, are not transferable or assignable by Licensee without the prior written consent of Berla.

This Agreement contains the whole of the agreement between the parties concerning the matters provided for herein and there are no collateral or precedent representations, warranties, agreements or conditions not specifically set forth herein and none have been relied on by either party as an inducement to enter into this agreement. Any additional or inconsistent terms set forth in any purchase order, common terms and conditions, contract general terms or provisions, or similar document related hereto are hereby null and void in all respects.

***[End of Agreement]***