

IMPORTANT END-USER LICENSE AGREEMENT CONTROLLING YOUR RIGHTS TO USE THE BARON SOFTWARE AND ACCOMPANYING MATERIALS. DOWNLOADING THE SOFTWARE IMPLIES THAT YOU ARE WILLING TO COMPLY WITH THE TERMS OF THIS LICENSE AGREEMENT

OPTIMIZATION FIRM, LLC. END-USER LICENSE AGREEMENT

This End-User License Agreement (“Agreement”) is made and entered into between The Optimization Firm, LLC. (“TOF”) and the individual or entity end-user (“You” or “Your”) who intends to purchase the software subject to this License Agreement. “Software” means collectively: (i) the machine-readable object code version of the BARON software, (ii) any published user manuals and documentation that TOF provides, (iii) any fixes, updates, upgrades or new versions of the BARON software and documentation, and (iv) any copies of the BARON software and documentation made by You or provided to You by TOF. YOUR WILLINGNESS TO BE BOUND BY THIS LICENSE AGREEMENT WILL BE SIGNIFIED BY PURCHASING THE SOFTWARE, SO read the terms of this Agreement carefully before purchasing the Software.

The Software is licensed, *not sold*, to You for use only under the following terms. TOF reserves all rights not expressly granted to You and retains all ownership of all copies of the Software. You assume sole responsibility for the installation, use and results obtained from Your use of the Software.

1. **LICENSE**. TOF grants to You a non-exclusive, non-transferable, non-sublicensable License to use the copy of the Software downloaded from TOF’s web site for as long as you are in compliance with the terms of this License. TOF may renew your License from year to year thereafter under terms and conditions to be offered by TOF at that time. Termination of this License for any reason shall not terminate the other terms of this Agreement. This License authorizes you to do the following:

- (a) Install the Software on as many computers as desired for use on those computers;
- (b) Make and retain as many copies as desired in machine-readable form solely for backup or archival purposes for the computers for which the Software is installed; and
- (c) Use the Software according to the terms of the License. If You are an individual, Your single-user license is restricted to be used by You alone. If You are an entity, such as University or Business, You may change the designated user as often as three times per year. Academic licenses are valid for as long as users maintain their academic affiliation, and are restricted to use for research and teaching purposes. All licenses permit concurrent use on an unlimited number of computers, processors and operating systems.

2. **TITLE**. Title, ownership rights, and intellectual property rights in and to the Software shall remain in TOF. You agree to abide by the copyright law and all other applicable laws of the United States including, but not limited to, export control laws. You shall have and retain title to any data You input or collate through the use of this Software.

3. **WARRANTY.** EXCEPT AS EXPRESSLY SET FORTH IN THE PRODUCT SPECIFICATIONS, TOF MAKES NO REPRESENTATIONS ABOUT THE SUITABILITY OF THIS SOFTWARE OR ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE SOFTWARE FOR ANY PURPOSE. THE SOFTWARE IS PROVIDED “AS IS” WITHOUT EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. TOF SHALL NOT BE LIABLE UNDER ANY THEORY FOR ANY DAMAGES SUFFERED BY YOU OR ANY USER OF THE SOFTWARE.

4. **LIABILITY.** TOF’s entire liability to You (including anyone making a claim through Your use of the product) and Your exclusive remedy shall be that, within one year of Your acquisition of the Software, TOF will, at its option, repair or replace the Software where there is a reproducible variance from the product specification, so long as the Software has not been modified, misused or abused. TOF SHALL NOT BE LIABLE FOR (A) INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY SORT, WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE, EVEN IF TOF HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) FOR ANY CLAIM BY ANY OTHER PARTY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

5. **HIGH RISK ACTIVITIES.** The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct lift support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage (“High Risk Activities”). TOF specifically disclaim any express or implied warranty of fitness for High Risk Activities.

6. **TERMINATION.** You may terminate this License (but not this License Agreement) at any time by destroying or erasing Your copies of the Software and so advising TOF. TOF may terminate this License upon written notice to You in response to any breach to this Agreement by You. Upon termination of this License for any reason, You agree to destroy or erase the Software. In the event of termination, this Agreement will survive. This License is to You and You agree not to attempt to assign Your License or this Agreement without TOF’s prior written consent. This License shall be governed by and construed in accordance with the laws of the United States and, as appropriate, by the laws of the State of Illinois. Any claims brought under this Agreement shall be brought only in the courts of or serving Adams County, Illinois.

7. **EXPORT LAWS.** You may not download or otherwise export or reexport the Software of any underlying information or technology except in full compliance with all United States and other applicable laws and regulations. In particular, but without limitation, none of the Software or underlying information or technology may be downloaded or otherwise exported or reexported to anyone on the United States sanctioned destinations maintained by the U.S. Bureau of Industry and Security. By installing the Software, You are agreeing to the foregoing and You

are representing and warranting that You are not located in, under control of, or a national resident of any such country or on any such list.

8. CONFIDENTIALITY. You acknowledge that the Software in source code form remains a confidential trade secret of TOF. You agree not to modify the Software or attempt to decipher, decompile, disassemble or reverse engineer the Software, except to the extent applicable laws specifically prohibit such restriction. You agree not to deliver or otherwise make the Software available to anyone other than You or the authorized employees of Your company (if You are a business entity) and only for the normal end-uses of the Software. You agree to use Your best efforts to safeguard the Software and to ensure that no unauthorized person gains access to the Software and that no unauthorized copy, publication or decompilation is made of the Software.

9. MAINTENANCE. During the first year following purchase of the License, TOF will provide You, at no additional charge, “Maintenance” which includes the following benefits: (i) free updating to new versions of the Software, (ii) advice on installation and operation of the Software, (iii) advice in dealing with bugs or other technical issues of the Software, and (iv) volume discounts on future License purchases. After the first year, You may renew Maintenance for a fee equal to 20% of the then-current cost of the Software. In the event You allow Maintenance to lapse, You may restart Maintenance for a fee equal to 50% of the then-current cost of the Software.

This License sets forth the entire agreement between You and TOF.

Copyright © 2014 The Optimization Firm, LLC. All rights reserved.