

AGB Website Terms of Use and Notices

Last Updated: June 2005

1. THIS IS AN AGREEMENT BETWEEN YOU AND BLACK, GOULD & ASSOCIATES, INC.

This is an agreement ("Agreement") between you and Black, Gould & Associates, Inc. (or, if applicable based on where you live, one of its affiliates) ("BGA"). This Agreement governs your use of any Automated Group Benefits ("AGB") Web site or Web page operated by BGA. You represent that you are at least 18 years of age and have attained the age of majority in the province, state or country in which you reside, and any information that you submit is correct.

BGA OFFERS THE AGB WEB SITE TO YOU CONDITIONED ON YOUR ACCEPTANCE WITHOUT MODIFICATION OF THIS AGREEMENT. YOUR USE OF THE AGB WEB SITE CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT. THIS AGREEMENT CONTAINS DISCLAIMERS OF WARRANTIES AND LIABILITY (See Sections 9, 10, and 11); AND AN EXCLUSIVE REMEDY (See Section 10). THESE PROVISIONS FORM AN ESSENTIAL BASIS OF OUR BARGAIN.

2. HOW BGA MAY MODIFY THIS AGREEMENT

BGA reserves the right to change the terms, conditions, and notices under which it offers the AGB Web Site, including any charges associated with the use of the AGB Web Site. You are responsible for regularly reviewing these terms, conditions and notices, and any additional terms posted on any AGB Web Site. Your continued use of the AGB Web Site after the effective date of such changes constitutes your acceptance of and agreement to such changes.

3. ADDITIONAL TERMS

Any AGB Web Site may itself contain additional terms (for example, codes of conduct or guidelines) that further govern use of that AGB Web Site, including without limitation, particular features or offers (for example, special offers). If any terms contained in this Agreement conflict with any terms contained within an AGB Web Site, then the terms in this Agreement shall control.

4. NO COMMERCIAL, UNLAWFUL OR HARMFUL USE OF THE AGB WEB SITE

The AGB Web Site is only for your personal use. You will not use the AGB Web Site for commercial purposes. You will not use the AGB Web Site in any way that is unlawful, or harms BGA, its affiliates, resellers, distributors, service providers and/or suppliers as determined in BGA's sole discretion. BGA may tell you about certain specific harmful uses in a code of conduct or other notices available through an AGB Web Site, but has no obligation to do so. You may not use the AGB Web Site in any way that breaches any code of conduct, policy or other notice applicable to the AGB Web Site. Without limiting the generality of this section, you may not use the AGB Web Site in any manner that could damage, disable, overburden, or impair any AGB Web Site (or the network(s) connected to any AGB Web Site) or interfere with any other party's use of the AGB Web Site.

5. SPAM IS PROHIBITED AND CAUSES DAMAGE; SPAM FILTERING TECHNOLOGY

Without limiting the generality of Section 4, you will not use the AGB Web Site to transmit, either directly or indirectly, any unsolicited bulk e-mail or unsolicited commercial e-mail. You will not use the AGB Web Site in any way that violates the BGA Anti-Spam Policy. A breach of any part of the Anti-Spam Policy is a breach of this Agreement. BGA may use filtering technology or other measures in its efforts to stop unsolicited bulk e-mail and unsolicited commercial e-mail, and if your use of the AGB Web Site includes e-mail related services, then such filtering technology or other measures may block, either temporarily or

permanently, some e-mail sent to you through the AGB Web Site even if such e-mail does not violate the Anti-Spam Policy.

6. MATERIALS YOU POST OR PROVIDE; COMMUNICATIONS MONITORING

For materials you post or otherwise provide to BGA related to the AGB Web Site (a "Submission"), you grant BGA permission to (1) use, copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, modify, translate and reformat your Submission, each in connection with the AGB Web Site, and (2) sublicense these rights, to the maximum extent permitted by applicable law. BGA will not pay you for your Submission. BGA may remove your Submission at any time. For each Submission, you represent that you have all rights necessary for you to make the grants in this section. To the maximum extent permitted by applicable law, BGA may monitor your e-mail, or other electronic communications and may disclose such information in the event it has a good faith reason to believe it is necessary for purposes of ensuring your compliance with this Agreement, and protecting the rights, property, and interests of BGA or any customer of BGA.

7. SOFTWARE

Your use of any software associated with the AGB Web Site will be governed by the terms and conditions of the end user license agreement ("EULA") accompanying such software. If you receive any software that is not accompanied by a EULA, then BGA grants to you a non-exclusive, revocable, personal, non-transferable license to use such software solely in connection with the AGB Web Site and in accordance with this Agreement. AGB reserves all rights to such software not expressly granted to you in this Agreement. Copyright and other intellectual property laws and treaties protect such software. BGA or its suppliers own the title, copyright, and other intellectual property rights in such software, and such software is licensed, not sold. You will not disassemble, decompile, or reverse engineer, such software, except and only to the extent that applicable law expressly permits such activity. BGA may automatically check your version of such software and may automatically download upgrades to such software to your computer to update, enhance and further develop the AGB Web Site.

8. INFORMATION AVAILABLE FROM THE AGB WEB SITE

BGA and its suppliers do not warrant or guarantee the accuracy or timeliness of any information available from the AGB Web Site, even if such information appears in any e-mail, pager, cell phone or other alerts available through the AGB Web Site. BGA and its suppliers do not authorize the use of information available from the AGB Web Site including financial information, for any purpose other than your personal use, and prohibit to the maximum extent allowable the resale, redistribution, and use of this information for commercial purposes. BGA is not a broker/dealer or registered investment advisor under United States federal securities law or securities laws of other jurisdictions, and does not advise individuals as to the advisability of investing in, purchasing or selling securities or other financial products or services. Nothing contained in the AGB Web Site constitute an offer or solicitation to buy or sell any security. BGA does not endorse or recommend any particular product or service, including financial products or services. Nothing contained in the AGB Web Site is intended to constitute professional advice, including but not limited to, investment or tax advice.

9. BGA MAKES NO WARRANTY

BGA PROVIDES THE AGB WEB SITE "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE," AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BGA MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED. BGA DISCLAIMS ANY AND ALL WARRANTIES OR CONDITIONS, EXPRESS, STATUTORY AND IMPLIED, INCLUDING WITHOUT LIMITATION (1) WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, ACCURACY, TITLE, QUIET

ENJOYMENT, NO ENCUMBRANCES, NO LIENS AND NON-INFRINGEMENT, (2) WARRANTIES OR CONDITIONS ARISING THROUGH COURSE OF DEALING OR USAGE OF TRADE, AND (3) WARRANTIES OR CONDITIONS THAT ACCESS TO OR USE OF THE AGB WEB SITE WILL BE UNINTERRUPTED OR ERROR-FREE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE OF THIS AGREEMENT.

10. LIABILITY LIMITATION; YOUR EXCLUSIVE REMEDY

IN NO EVENT WILL ANY BGA PARTY BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM THIS AGREEMENT OR YOUR USE OF THE AGB WEB SITE, EVEN IF SUCH BGA PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION OF DAMAGES UNDER SECTION 10 IS INDEPENDENT OF YOUR EXCLUSIVE REMEDY AND SURVIVES IN THE EVENT SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (1) BREACH OF CONTRACT, (2) BREACH OF WARRANTY, (3) NEGLIGENCE, OR (4) ANY OTHER CAUSE OF ACTION, TO THE EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW. IF YOU ARE DISSATISFIED WITH THE AGB WEB SITE, YOU DO NOT AGREE WITH ANY PART OF THIS AGREEMENT, OR YOU HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST ANY BGA PARTY WITH RESPECT TO THIS AGREEMENT OR THE AGB WEB SITE, THEN YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE AGB WEB SITE.

11. CHANGES TO THE AGB WEB SITE; ADDITIONAL LIABILITY LIMITATION

BGA MAY CHANGE THE AGB WEB SITE OR DELETE FEATURES IN ANY WAY, AT ANY TIME AND FOR ANY REASON. As you use the AGB Web Site, you should expect to receive, access or use information, materials, graphics, software, data and content (collectively, "Content") originated by BGA and persons other than BGA (any such person is referred to as a "Third Party"). **WITHOUT LIMITING THE GENERALITY OF SECTIONS 9 AND 10, YOU ACKNOWLEDGE AND AGREE THAT THE BGA PARTIES ARE NOT RESPONSIBLE OR LIABLE FOR (1) ANY CONTENT, INCLUDING WITHOUT LIMITATION, ANY INFRINGING, INACCURATE, OBSCENE, INDECENT, THREATENING, OFFENSIVE, DEFAMATORY, TORTIOUS, OR ILLEGAL CONTENT, OR (2) ANY THIRD PARTY CONDUCT, TRANSMISSIONS OR DATA. IN ADDITION, WITHOUT LIMITING THE GENERALITY OF SECTIONS 9 AND 10, YOU ACKNOWLEDGE AND AGREE THAT BGA IS NOT RESPONSIBLE OR LIABLE FOR (1) ANY VIRUSES OR OTHER DISABLING FEATURES THAT AFFECT YOUR ACCESS TO OR USE OF THE AGB WEB SITE, (2) ANY INCOMPATIBILITY BETWEEN THE AGB WEB SITE AND OTHER WEB SITES, SERVICES, SOFTWARE AND HARDWARE, (3) ANY DELAYS OR FAILURES YOU MAY EXPERIENCE IN INITIATING, CONDUCTING OR COMPLETING ANY TRANSMISSIONS OR TRANSACTIONS IN CONNECTION WITH THE AGB WEB SITE IN AN ACCURATE OR TIMELY MANNER, OR (4) ANY DAMAGES OR COSTS OF ANY TYPE ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF ANY SERVICES AVAILABLE FROM THIRD PARTIES THROUGH LINKS CONTAINED ON THE AGB WEB SITE. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN SECTIONS 9, 10 AND 11 OF THIS AGREEMENT APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND ARE NOT INTENDED TO DEPRIVE YOU OF ANY MANDATORY PROTECTIONS PROVIDED TO YOU UNDER APPLICABLE LAW.**

12. TERMINATION; ACCESS RESTRICTION

BGA may terminate this Agreement, or terminate or suspend your access to the AGB Web Site at any time, with or without cause, with or without notice. Upon such termination or suspension, your right to use the AGB Web Site will immediately cease. UPON SUCH TERMINATION OR SUSPENSION, ANY INFORMATION YOU HAVE STORED ON THE AGB WEB SITE MAY NOT BE RETRIEVED LATER.

13. CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES

If this Agreement is with BGA, claims for enforcement, breach or violation of duties or rights under this Agreement will be adjudicated under the laws of the State of Arizona, without reference to conflict of laws principles. If this Agreement is with a BGA affiliate, claims for enforcement, breach or violation of duties or rights under this Agreement will be adjudicated under the laws of the place of incorporation for such BGA affiliate, without reference to conflict of laws principles. All other claims, including, without limitation, claims under or for violation of consumer protection laws, unfair competition laws, and in tort, will be adjudicated under the laws of your state of residence in the United States, or, if you reside outside the United States, under the laws of the country to which the subject AGB Web Site are directed. If this Agreement is with BGA, you hereby irrevocably consent to the exclusive jurisdiction and venue of state or federal courts in Maricopa County, Arizona, USA in all disputes arising out of or relating to the use of the AGB Web Site. If this Agreement is with a BGA affiliate, you hereby consent to the exclusive jurisdiction and venue of the courts located in the place of incorporation for such BGA affiliate in all disputes arising out of or relating to the use of the AGB Web Site.

14. INTERPRETING THE AGREEMENT; ASSIGNMENT

If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect. BGA may assign this Agreement, in whole or in part, at any time with or without notice to you. You may not assign this Agreement, or assign, transfer or sublicense your rights, if any, in the AGB Web Site. Except as expressly stated herein, this Agreement constitutes the entire agreement between you and BGA with respect to the AGB Web Site and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and BGA with respect to the AGB Web Site. The section titles in the Agreement are solely used for the convenience of the parties and have no legal or contractual significance.

15. YOU HAVE LIMITED TIME TO BRING YOUR CLAIM

YOU AND BGA AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE AGB WEB SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

16. COPYRIGHT AND TRADEMARK NOTICES; OTHER ACKNOWLEDGEMENTS

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17. NOTICES AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to Service Provider's Designated Agent. **ALL INQUIRIES NOT RELEVANT TO THE FOLLOWING PROCEDURE WILL RECEIVE NO RESPONSE.**