

# **TOLIS Group Limited Hardware Warranty**

Covers all TOLIS Group/ArGest® Hardware items including bruAPP Backup Appliance™

December 2018 Edition

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# Limited Hardware Warranty

**NOTE:** This agreement is subject to change without notice. For the most up-to-date hardware warranty documentation, visit <http://www.tolisgroup.com>.

## Global Limited Warranty and Technical Support

THIS GLOBAL LIMITED WARRANTY AND TECHNICAL SUPPORT STATEMENT PROVIDES IMPORTANT INFORMATION ABOUT THE NATURE AND SCOPE OF THE EXPRESS LIMITED WARRANTY PROVIDED FOR THE TOLIS GROUP PRODUCT, AND ALSO CONTAINS CERTAIN DISCLAIMERS AND LIMITATIONS OF LIABILITY BY TOLIS GROUP, WHICH MATERIALLY IMPACT YOUR RIGHTS. ACCORDINGLY, YOU ARE STRONGLY ADVISED TO CAREFULLY READ THIS GLOBAL LIMITED WARRANTY AND TECHNICAL SUPPORT STATEMENT BEFORE USING YOUR TOLIS GROUP PRODUCT. YOUR USE OF THE TOLIS GROUP PRODUCT IS DEEMED TO BE ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH IN THIS GLOBAL LIMITED WARRANTY AND TECHNICAL SUPPORT STATEMENT.

*Any guidance or direction TOLIS Group provides to you will only be based on the information provided by you to us as our customer. Many factors in your environment are unknown to TOLIS Group and can affect advice, problems, outcomes, or recommended solutions. TOLIS Group cannot and will not accept any culpability or responsibility due to potential omissions. Also, be advised that technology changes. As a result of these changes in technology, products you are using might be affected both directly and indirectly. TOLIS Group cannot and will not be responsible or liable for any consequences that can occur due to any change in technology, or in conjunction with the use of information provided by TOLIS Group under these circumstances.*

## Hardware Limited Warranty

### General terms

This TOLIS Group Hardware Limited Warranty gives you, the customer, express limited warranty rights from TOLIS Group, the manufacturer. In addition, you may also have other legal rights under applicable local law or special written agreement with TOLIS Group.

TOLIS GROUP MAKES NO OTHER EXPRESS WARRANTY OR CONDITION WHETHER WRITTEN OR ORAL AND TOLIS GROUP EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS NOT STATED IN THIS LIMITED WARRANTY. TO THE EXTENT ALLOWED BY THE LOCAL LAW OF JURISDICTIONS OUTSIDE THE UNITED STATES, TOLIS GROUP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. FOR ALL TRANSACTIONS OCCURRING IN THE UNITED STATES, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE IS LIMITED TO THE DURATION OF THE EXPRESS WARRANTY SET FORTH ABOVE. SOME STATES OR COUNTRIES DO NOT ALLOW.

A LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR CONSUMER PRODUCTS. IN SUCH STATES OR COUNTRIES, SOME EXCLUSIONS OR LIMITATIONS OF THIS LIMITED WARRANTY MAY NOT APPLY TO YOU.

FOR CONSUMER TRANSACTIONS IN AUSTRALIA AND NEW ZEALAND, THE LIMITED WARRANTY TERMS CONTAINED IN THIS STATEMENT, EXCEPT TO THE EXTENT LAWFULLY PERMITTED, DO NOT EXCLUDE,

RESTRICT, OR MODIFY BUT ARE IN ADDITION TO THE MANDATORY STATUTORY RIGHTS APPLICABLE TO THE SALE OF THIS PRODUCT TO YOU.

THE LIMITED WARRANTY TERMS CONTAINED IN THIS STATEMENT, EXCEPT TO THE EXTENT LAWFULLY PERMITTED, DO NOT EXCLUDE, RESTRICT, OR MODIFY BUT ARE IN ADDITION TO THE MANDATORY STATUTORY RIGHTS APPLICABLE TO THE SALE OF THIS PRODUCT TO YOU.

This Limited Warranty is applicable in all countries and may be enforced in any country or region where TOLIS Group or its authorized service providers offer warranty service for the same product model number subject to the terms and conditions set forth in this Limited Warranty.

Under the TOLIS Group Global Limited Warranty program, products purchased in one country/region may be transferred to another country/region, where TOLIS Group or its authorized service providers offer warranty service for the same product model number, without voiding the warranty. Warranty terms, service availability, and service response times may vary from country/region to country/region. Standard warranty service response time is subject to change due to local parts availability. Your local TOLIS Group authorized service provider can provide you with details.

TOLIS Group is not responsible for any tariffs or duties that may be incurred in transferring the products. Transfer of the products may be covered by export controls issued by the United States or other governments.

This Limited Warranty applies only to TOLIS Group-branded hardware products (collectively referred to in this Limited Warranty as "TOLIS Group Hardware Products") sold by or leased from TOLIS Group, Inc., its worldwide subsidiaries, affiliates, authorized resellers, or country distributors (collectively referred to in this Limited Warranty as "TOLIS Group") with this Limited Warranty. The term "TOLIS Group Hardware Product" is limited to the hardware components and required firmware. The term "TOLIS Group Hardware Product" DOES NOT include any software applications or programs, non-TOLIS Group products, or non-TOLIS Group branded peripherals.

All non-TOLIS Group products or non-TOLIS Group branded peripherals external to the TOLIS Group Hardware Product—such as external storage subsystems, displays, printers and other peripherals—are provided "AS IS" without TOLIS Group warranty. However, non-TOLIS Group manufacturers and suppliers or publishers may provide their own warranties directly to you.

TOLIS Group warrants that the TOLIS Group Hardware Products that you have purchased or leased from TOLIS Group are free from defects in materials or workmanship under normal use during the Limited Warranty Period. The Limited Warranty Period starts on the date of purchase or lease from TOLIS Group, or from the date TOLIS Group completes installation. Your dated sales or delivery receipt, showing the date of purchase or lease of the product, is your proof of the purchase or lease date. You may be required to provide proof of purchase or lease as a condition of receiving warranty service. You are entitled to hardware warranty service according to the terms and conditions of this document if a repair to your TOLIS Group Hardware Product is required within the Limited Warranty Period.

Unless otherwise stated, and to the extent permitted by local law, new TOLIS Group Hardware Products may be manufactured using new materials or new and used materials equivalent to new in performance and reliability. TOLIS Group may repair or replace TOLIS Group Hardware Products (a) with new or previously used products or parts equivalent to new in performance and reliability, or (b) with equivalent products to an original product that has been discontinued. Replacement parts are warranted to be free from defects in material or workmanship for ninety (90) days or, for the remainder of the Limited Warranty Period of the TOLIS Group Hardware Product they are replacing or in which they are installed, whichever is longer.

During the Limited Warranty Period, TOLIS Group will, at its discretion, repair or replace any defective component. All component parts or hardware products removed under this Limited Warranty become the property of TOLIS Group. In

the unlikely event that your TOLIS Group Hardware Product has recurring failures, TOLIS Group, at its sole discretion, may elect to provide you with (a) a replacement unit of TOLIS Group's choosing that is the same or equivalent to your TOLIS Group Hardware Product in performance or (b) to give you a refund of your purchase price or lease payments (less interest) instead of a replacement. This is your exclusive remedy for defective products.

Any action related to this Agreement shall be governed by the substantive laws of the State of Arizona, without regard to conflicts of law principles. The State and Federal courts located in Maricopa County, Arizona, shall have sole jurisdiction over any dispute arising hereunder, and the parties hereby consent to the personal jurisdiction of such courts. Neither this Agreement, nor any rights hereunder, may be assigned by operation of law or otherwise, in whole in part, by Client without the prior, written permission of TOLIS. Any sale of more than fifty percent (50%) of the common voting stock of, or other right to control, Client shall be deemed an assignment. Any purported assignment without such permission shall be void.

Any waiver of any rights of TOLIS under this Agreement must be in writing, signed by TOLIS, and any such waiver shall not operate as a waiver of any future breach of this Agreement. In the event any portion of this Agreement is found to be illegal or unenforceable, such portion shall be severed from this Agreement, and the remaining terms shall be separately enforced. The parties agree that any breach or threatened breach of this Agreement by Client is likely to cause TOLIS damage that is not fully reparable by payment of damages, and further agree that in such case TOLIS shall be entitled to seek and obtain injunctive or other equitable relief to protect its rights hereunder. Client's performance hereunder and use of the Software shall at all times comply with all applicable laws, rules and regulations, including those governing export of technical information, and Client shall fully indemnify, defend and hold harmless TOLIS against any violation thereof. This Agreement is the entire agreement between the parties with respect to this subject matter, and supersedes any and all prior or contemporaneous, conflicting or additional communications, negotiations or agreements.

## **Exclusions**

**TOLIS GROUP DOES NOT WARRANT THAT THE OPERATION OF THIS PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE. TOLIS GROUP IS NOT RESPONSIBLE FOR DAMAGE THAT OCCURS AS A RESULT OF YOUR FAILURE TO FOLLOW THE INSTRUCTIONS INTENDED FOR THE TOLIS GROUP HARDWARE PRODUCT.**

This Limited Warranty does not apply to expendable or consumable parts and does not extend to any product from which the serial number has been removed or that has been damaged or rendered defective (a) as a result of accident, misuse, abuse, contamination, improper or inadequate maintenance or calibration or other external causes; (b) by operation outside the usage parameters stated in the user documentation that shipped with the product; (c) by software, interfacing, parts or supplies not supplied by TOLIS Group; (d) improper site preparation or maintenance; (e) virus infection; (f) loss or damage in transit; or (g) by modification or service by anyone other than (i) TOLIS Group, (ii) an TOLIS Group authorized service provider, or (iii) your own installation of TOLIS Group-approved parts if available for your product in the servicing country or region.

**TOLIS GROUP IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS OF ANY PROGRAMS, DATA, OR REMOVABLE STORAGE MEDIA. TOLIS GROUP IS NOT RESPONSIBLE FOR THE RESTORATION OR REINSTALLATION OF ANY PROGRAMS OR DATA OTHER THAN SOFTWARE INSTALLED BY TOLIS GROUP WHEN THE PRODUCT IS MANUFACTURED.**

TOLIS Group is not responsible for any interoperability or compatibility issues that may arise when (1) products, software, or options not supported by TOLIS Group are used; (2) configurations not supported by TOLIS Group are used; (3) parts intended for one system are installed in another system of different make or model.

## Exclusive Remedy

TO THE EXTENT ALLOWED BY APPLICABLE LOCAL LAW, THESE TERMS AND CONDITIONS CONSTITUTE THE COMPLETE AND EXCLUSIVE WARRANTY AGREEMENT BETWEEN YOU AND TOLIS GROUP REGARDING THE TOLIS GROUP HARDWARE PRODUCT YOU HAVE PURCHASED OR LEASED. THESE TERMS AND CONDITIONS SUPERSEDE ANY PRIOR AGREEMENTS OR REPRESENTATIONS—INCLUDING REPRESENTATIONS MADE IN TOLIS GROUP SALES LITERATURE OR ADVICE GIVEN TO YOU BY TOLIS GROUP OR AN AGENT OR EMPLOYEE OF TOLIS GROUP— THAT MAY HAVE BEEN MADE IN CONNECTION WITH YOUR PURCHASE OR LEASE OF THE TOLIS GROUP HARDWARE PRODUCT. No change to the conditions of this Limited Warranty is valid unless it is made in writing and signed by an authorized representative of TOLIS Group.

## Limitation of liability

IF YOUR TOLIS GROUP HARDWARE PRODUCT FAILS TO WORK AS WARRANTED ABOVE, TOLIS GROUP'S MAXIMUM LIABILITY UNDER THIS LIMITED WARRANTY IS EXPRESSLY LIMITED TO THE LESSER OF THE PRICE YOU HAVE PAID FOR THE PRODUCT OR THE COST OF REPAIR OR REPLACEMENT OF ANY HARDWARE COMPONENTS THAT MALFUNCTION IN CONDITIONS OF NORMAL USE.

EXCEPT AS INDICATED ABOVE, IN NO EVENT WILL TOLIS GROUP BE LIABLE FOR ANY DAMAGES CAUSED BY THE PRODUCT OR THE FAILURE OF THE PRODUCT TO PERFORM, INCLUDING ANY LOST PROFITS OR SAVINGS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST REVENUE, LOSS OF USE, OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, OR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. TOLIS GROUP IS NOT LIABLE FOR ANY CLAIM MADE BY A THIRD PARTY OR MADE BY YOU FOR A THIRD PARTY.

THIS LIMITATION OF LIABILITY APPLIES WHETHER DAMAGES ARE SOUGHT, OR A CLAIM MADE, UNDER THIS LIMITED WARRANTY OR AS A TORT CLAIM (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY), A CONTRACT CLAIM, OR ANY OTHER CLAIM. THIS LIMITATION OF LIABILITY CANNOT BE WAIVED OR AMENDED BY ANY PERSON. THIS LIMITATION OF LIABILITY WILL BE EFFECTIVE EVEN IF YOU HAVE ADVISED TOLIS GROUP OR AN AUTHORIZED REPRESENTATIVE OF TOLIS GROUP OF THE POSSIBILITY OF ANY SUCH DAMAGES OR EVEN IF SUCH POSSIBILITY WERE REASONABLY FORESEEABLE. THIS LIMITATION OF LIABILITY, HOWEVER, WILL NOT APPLY TO CLAIMS FOR PERSONAL INJURY. SHOULD ANY LEGAL ACTION BE TAKEN AGAINST TOLIS GROUP, INC. THE RESPONSIBILITY OF REIMBURSEMENT FOR ANY LEGAL FEES INCURRED BY TOLIS GROUP, INC. INCLUDING TIME LOST TO TOLIS GROUP, INC. TO DEFEND ITSELF AGAINST SUCH ACTION ARE THE RESPONSIBILITY OF THE ENTITY TAKING SAID ACTION. IN ADDITION TOLIS GROUP, INC. RESERVES THE RIGHT TO SEEK ADDITIONAL REMEDY FOR DAMAGE TO ITS REPUTATION, AND OTHER DAMAGES AS DEEMED NECESSARY.

THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS THAT MAY VARY FROM STATE TO STATE OR FROM COUNTRY TO COUNTRY. YOU ARE ADVISED TO CONSULT APPLICABLE STATE OR COUNTRY LAWS FOR A FULL DETERMINATION OF YOUR RIGHTS.

## Customer Responsibilities

To enable TOLIS Group to provide the best possible support and service during the Limited Warranty Period, you will be required to:

- Maintain a proper and adequate environment, and use the TOLIS Group Hardware Product in accordance with the instructions furnished.

- Verify configurations, load most recent firmware, install software patches, run TOLIS Group diagnostics and utilities, and implement temporary procedures or workarounds provided by TOLIS Group while TOLIS Group works on permanent solutions.
- Allow TOLIS Group to keep resident on your systems or sites certain system and network diagnosis and maintenance tools to facilitate the performance of warranty support (collectively referred to as “Proprietary Service Tools”); Proprietary Service Tools are and remain the sole and exclusive property of TOLIS Group. Additionally, you will:
  - Use the Proprietary Service Tools only during the applicable warranty period and only as allowed by TOLIS Group
    - Install, maintain, and support Proprietary Service Tools, including any required updates and patches – Provide remote connectivity through an TOLIS Group-approved communications line, if required – Assist TOLIS Group in running the Proprietary Service Tools
  - Use the electronic data transfer capability to inform TOLIS Group of events identified by the software
  - Return the Proprietary Service Tools or allow TOLIS Group to remove these Proprietary Service Tools upon termination of warranty support
  - Not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools
- In some cases, TOLIS Group may require additional software such as drivers and agents to be loaded on your system in order to take advantage of these support solutions and capabilities.
- Use TOLIS Group remote support solutions where applicable. TOLIS Group strongly encourages you to use available support technologies provided by TOLIS Group. If you choose not to deploy available remote support capabilities, you may incur additional costs due to increased support resource requirements.
- Cooperate with TOLIS Group in attempting to resolve the problem over the telephone. This may involve performing routine diagnostic procedures, installing additional software updates or patches, removing third-party options, and/or substituting options.
- Make periodic backup copies of your files, data, or programs stored on your hard drive or other storage devices as a precaution against possible failures, alteration, or loss. Before returning any TOLIS Group Hardware Product for warranty support, back up your files, data, and programs, and remove any confidential, proprietary, or personal information.
- Maintain a procedure to reconstruct your lost or altered files, data, or programs that is not dependent on the TOLIS Group Hardware Product under warranty support.
- Perform additional tasks as defined within each type of warranty service listed below and any other actions that TOLIS Group may reasonably request in order to best perform the warranty support.

## **Types of Hardware Warranty Service**

Listed below are the types of warranty services that may be applicable to the TOLIS Group Hardware Product you have purchased. For more details, refer to the Limited warranty period section.

### **Parts-only warranty service**

Your TOLIS Group Limited Warranty may include a parts-only warranty service. Under the terms of parts-only service, TOLIS Group will provide replacement parts free of charge. If TOLIS Group carries out the repair, labor and logistics costs are at your expense.

### **Advanced unit replacement warranty service**

Your TOLIS Group Limited Warranty may include an advanced unit replacement warranty service. Under the terms of the advanced unit replacement warranty service, TOLIS Group will ship a replacement unit directly to you if the TOLIS Group Hardware Product you purchased is diagnosed as defective. On receiving the replacement unit, you will be required to return the defective unit back to TOLIS Group, in the packaging that arrives with the replacement unit, within

a defined period of time, normally seven (7) calendar days. TOLIS Group will incur all shipping and insurance costs for ground delivery to you, however, shipping, insurance and logistic charges for return of the defective unit to TOLIS Group are your responsibility. Second-day, next-day and same-day delivery options are also available for for an additional charge.

For advanced unit replacement warranty, a valid credit card is required. TOLIS Group reserves the right to place a hold on the provided credit card for the full replacement cost of the replacement unit. If the defective unit has not been received by TOLIS Group after fourteen (14) calendar days, the credit card provided will be charged the full replacement cost of the replacement unit.