

The Particulars together with the following terms and conditions (Conditions) as well as the BIM standard terms and conditions shown at <https://www.boatinternational.com/boat-pro/terms&conditions>, and the BIM Website Terms of Use and BIM Privacy Policy (shown at <https://www.boatinternational.com/>) and any other documents referred to in such documents shall constitute the entire agreement and understanding between the Parties.

## TERMS OF BUSINESS

### 1. Introduction

1.1 Customer wishes its Authorised User/s to Access BIM Data and/or obtain Services, and BIM agrees to provide Access to the same for the Term and Services on the terms and conditions of this Agreement, including the Particulars.

1.2 The terms and conditions in this document are to be read in conjunction with the Particulars and BIM WTUPP, which together form the agreement between you and us. To the extent of any inconsistency between these Conditions, the Particulars, and/or BIM WTUPP, first the Particulars, and then the Conditions take precedence (in that order).

1.3 The definitions in the Particulars along with the following definitions and rules of interpretation apply to the Agreement:

**Agreement** means the Particulars, these Conditions, BIM WTUPP, and any other document included by reference as may be amended from time to time.

**Access** means access given by BIM to Authorised User/s to BIM Data (however, provided), including Bespoke Access.

**Authorised User** means the person/s prior identified and registered by Customer with BIM in accordance with clause 3 below to obtain Access and/or use Services and excludes any other person or entity.

**AU Download** means BIM Data, BIM Materials, Permitted Data Selection, Deliverables, Materials Derived from BIM Database or any BIM website, BPAPI, or Access or online platform, and any Derivation or part thereof.

**Bespoke Access** means access to BIM Data provided on a bespoke basis by BIM in accordance with the description in the Particulars, which BIM has prior agreed to provide to Customer.

**Bespoke Services** means the services provided on a bespoke basis by BIM, including Bespoke Access in accordance with the description in the Particulars, which BIM has prior agreed to provide to Customer.

**BIM** means Boat International Media Limited of 1<sup>st</sup> Floor, 41-47 Hartfield Road, Wimbledon, SW19 3RQ, UK, along with all associated and related companies.

**BIM Data** means the data, datasets, statistics, information, images, maps, drawings, audio, video and Materials made available in BIMs Database or as a Deliverable or Service.

**BIM Database** means the database/s containing data, datasets, statistics, images, maps, drawings, audio, video and information and Materials relating to Pleasure Craft, made available via the BIM Website, BPAPI, or otherwise by BIM.

**BIM Materials** means Materials provided or made available by BIM.

**BIM Website** means the Boat Pro website and any related App or digital access, and storage means, made available by BIM, including at <https://www.boatinternational.com/boat-pro>, which enables Authorised Users to obtain Access or Deliverables during the Term.

**BIM WTUPP** means the Terms of Use and Privacy Policy shown on BIMs website at <https://www.boatinternational.com/> and other documents referred to in same.

**“BPAPI”** means the BOAT Pro API provided by BIM.

**Business Hours** means 9am to 5.30pm on a Working Day in the UK.

**Conditions** means the terms and conditions in this document.

**Contact** means the primary contact of the relevant party as stated in the Particulars, as amended from time to time.

**Customer** means a person, firm, entity, organisation, or company engaging BIM in connection with Access and/or Services.

**Customer Registration Data** means the information and data provided by Customer to complete the Particulars (including Business Activity and Purpose) and/or when contacting BIM regarding Access and/or Services (including any further information and data or variation or update), as well as information and data entered in connection with each Authorised User (including when entering their details in the Particulars and on registration) and provided in communications with BIM.

**Confidential Information** means all data, information, materials and images, including third party information, in whatever form (including, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located), including BIM Data, which is disclosed by BIM to Customer or is obtained by Customer through observation or examination pursuant to or in connection with or relating directly or indirectly to this Agreement or its subject matter, (including all parts and Derivations thereof), as well as any information data and images which by its very nature is confidential including but not limited to all Know How, business knowledge and IP, relating to the business, business models, technology, technical data images and information, customers, Customers, suppliers, agents, distributors, management or business contacts, employees, directors, officers, shareholders, products, affairs, specifications, techniques, models, source code, object code, documentation, diagrams, flow charts, research, development, processes, procedures, ideas, trade secrets, new product or new technology information, product prototypes, product copies, creation supply development of products databases and related systems, development timetables, strategies and development plans, commercial information, marketing and promotional information materials strategies and techniques, contact details, customer and licensee details, pricing, proprietary information, technical information relating to the BPAPI BIM Database BIM Website and AU Download, financial information relating to BIM its business products suppliers customers and target customers for the time being confidential to BIM and customers and information relating to services, including (but not limited to) the terms of this Agreement, and information and Material that BIM and anyone engaged or contracted by BIM creates, develops, receives or obtains in connection with this Agreement, the Services and Deliverables, and data and information relating to the Purpose and whether or not such is expressly stated or marked as confidential.

**Deliverable** means any data, Access, Materials and/or Services contracted for and identified in the Particulars, Customer Registration Data, online, digitally or otherwise to be delivered or made available by BIM to Customer, including any variations and renewals agreed from time to time in writing by BIM and the Customer. “Deliver” and “Delivery” will be construed accordingly.

**Derivation** means any derivation, copy, scan, scrape, print, download, extract, part, adaption, adaptation, analysis, report, compilation, forecast, note, plan, study, reference, letter, email, text, memoranda, presentation, quotation, table, software, database, or data information or materials prepared based in whole or in part on information images data, BIM Data, Confidential Information, IP or Materials (in whatever form, including physical or digital).

**Effective Date** means the start date of the Agreement, namely the Date set out in the Particulars.

**Fee** means the amount/s payable by Customer to BIM for Access (including disbursements), provision of Services, Deliverables, and/or any other data or services or Materials to be provided by BIM to Customer.

**Force Majeure** means conditions beyond the reasonable control of Customer or BIM which prevent or hinder the carrying out of its obligations hereunder and without being limited thereto shall include acts of God, strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), civil disturbances, disorders, riots, civil commotion, war, hostilities (whether declared war or not), blockades, embargoes, boycotts, sabotage, plagues, epidemics, pandemic, government

recommended restrictions, infectious outbreak, earthquakes, landslides, floods fires storms tempests and torrents (suspected or threatened), failure of a utility service or transport network, malicious damage, compliance with any law or governmental order rule regulation or direction, accident, breakdown of plant or machinery, act of terrorism, Malware, third party attack or unauthorised adverse alteration or effect on or interference with any software, firmware, hardware transmission distribution or communications, or default of suppliers or subcontractors.

**IP** means all copyright and related rights, patents, rights to inventions, utility models, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications for (or rights to apply) and renewals or extensions of, and rights to claim priority from, such rights, and all similar or equivalent rights or forms of protection, which may now or in the future subsist in any part of the world.

**Know-How** means methods, processes, programs, information, data, formulae, designs, drawings, images, methodologies, tools, techniques, designs, management graphs, presentations, skill and experience, and related documentation, information and materials (whether electronic or in analogue).

**Law(s)** means all laws (including statutes, regulations, and any guidance issued under statutory authority and all applicable regulations), rules, directives, judgments, decrees, injunctions, executive orders, notifications and interpretations and any other public documents having force in law in the United Kingdom.

**Malware** means (i) any virus, code, software, file, program or material designed to maliciously infiltrate, interfere with, intercept, interrupt, expropriate, scrape, keystroke log, or damage a computer, digital system or device, software, firmware, data, image or information, as well as any logic bomb, Trojan horse, worm, harmful components, corrupted data or malicious software or harmful data, and (ii) third party virus, code, software, file, program, material or device used to attack or adversely alter effect or interfere with on any software, firmware, hardware access, transmission distribution or any communications.

**Materials** means document, report, note, plan, study, guide, analysis, reference, letter, email, text, memoranda, visual presentation, quotation, table, software, firmware, database, storage device, goods, information, image, audio, maps, drawings, datasets, video, photos, digital and electronic materials and recordings, and data, Derivation and parts thereof stored or existing by any means.

**Particulars** means the Customer Request to the extent prior approved by BIM and signed and returned to BIM by Customer in accordance with clause 3 below in the document.

**Permitted Data Selection** means the amount of data BIM permits Customer during each month of the Term to print to paper or download digitally from the BIM Database, or such other amount as may be prior permitted in writing by BIM from time to time.

**Pleasure Craft** means marine vessels whose primary purpose is not engaging in commercial activities such as carrying cargo or passengers for hire.

**Purpose** means the described "Purpose" and related "Business Activity" described in the Particulars and any Customer request to BIM, regarding the Customers intended reasons for wanting Access and/or Services, and Customer's intended use of AU Download and Services.

**Services** means any services to be provided including Bespoke Services, together with Deliverables.

**Standard Access** means standard access (specified in the Particulars) to BIM Data during the Term beginning on the Effective Date; Standard Access provides a maximum Permitted Data Selection of no more than 1000 rows with up to 12 columns of data per month for each Authorised User.

**Supply** means download, use, sell, publish, distribute, disseminate, disclose, supply, offer for sale, rent, lease, license, archive, reproduce, display, provide, exploit, modify, perform, disclose, transfer, transmit, or re-circulate.

**Term** means the term of the Agreement between BIM and Customer, including any extensions paid for by Customer and prior agreed by BIM.

**Working Day** means any day other than a Saturday or Sunday on which banks are open for trading in London, UK.

1.4 References in these terms to **BIM** or **we, us**, or **our** refer to Boat International Media Limited. References to **Customer**, or **you** refer to the Customer, Authorised User (and in relation to all restrictions and obligations, and all employees) identified in the Particulars.

1.5 A “person” includes a natural person, corporate or unincorporated body.

1.6 Unless the context otherwise requires, words in the singular include the plural and, in the plural, include the singular.

1.7 The words “include” and “including” (or similar) will be deemed to have the words “without limitation” after them.

1.8 A reference to “writing” or “written” includes faxes and e-mail.

1.9 References to clauses, subclauses and Schedules are unless otherwise stated references to clauses, subclauses, and schedules to this agreement.

1.10 The terms “data controller”, “data processor”, “data subject”, “personal data”, “process” and “processing” will have the meanings ascribed to them under the Data Protection Act 1998 as amended or superseded.

1.11 Headings are for convenience only and shall not affect the interpretation of this Agreement.

## **2.Disclaimer**

2.1 We regularly make changes to services, websites, APIs, databases, and Materials (including BIM Website, BPAPI, BIM Database, BIM Materials), and test various aspects of them to improve and to update them and products. This may mean that some services, website access and databases may be unavailable from time to time. We will try to keep downtime to a minimum. Accordingly, whilst BIM endeavours to ensure that the BIM Website, BPAPI, and BIM Database are normally available 24 hours a day, it will not be liable if for any reason they are unavailable at any time or for any period. Access to the BIM Website, BPAPI, BIM Database, Services and Deliverables may be suspended temporarily and without notice in the case of system failure, maintenance, or repair or for any other reasonable cause. In the event that Customer tries to Access the BIM Website, BPAPI, and/or BIM Database and is unable to because the BIM Website, BPAPI, and/or BIM Database experienced downtime for a continuous period exceeding 24 hours, which downtime was not prior notified by BIM to Customer, the Term is automatically extended by the length of the downtime.

2.2 The quality of the display of the content may vary from device to device, and may be affected by a variety of factors, such as your location, the bandwidth available through and/or speed of your Internet connection. We make no representations to you as to the quality of the data, information or Services. You are responsible for all internet, WIFI and network charges. Please check with your Internet provider for information on possible internet data usage charges when accessing our site.

2.3 You acknowledge that whilst BIM uses reasonable endeavours to ensure that information on the BIM Website, BPAPI, BIM Data, and any AU Download and Services provided to you by BIM is accurate and complete, it is provided only for general information, is not intended to address any specific commercial objective or function of yours, and does not constitute any form of advice or recommendation by BIM. You acknowledge that any BIM Data, AU Download and Services should not be relied upon by you in making (or refraining from making) any specific investment or other

business or personal decisions and acknowledge that professional advice should be obtained before making any such decision. You also acknowledge that some of the content may be supplied by third parties and the accuracy and completeness of it may not have been checked by BIM.

2.4 BIM will use reasonable endeavours to ensure that the BIM Website, BPAPI, BIM Data, BIM Database and AU Download do not contain or promulgate any Malware. However, it is recommended that you should virus check all such materials and regularly check for the presence of viruses and other Malware.

### **3. Subscription**

3.1 To obtain any Access, Services and/or AU Download, the Customer will first contact and provide to BIM Contact full, complete and accurate information about Customer and each and every Authorised User and all other information requested by BIM, including all information about Customer's order, which information is to be inserted in the Particulars, including Purpose and Business Activity, and all details relating to the Access, Services and AU Download required ("Customer Request").

3.2 On receipt of the Customer Request BIM will consider it and, if appropriate, complete draft Particulars for your signature and send these to you, including an indication of the Fees. You will insert that days date and sign the Particulars and return them by email to BIM Contact thereby confirming that the Particulars are accurate, complete, truthful and a up to date in all respects, and acknowledging that you agree to the terms and conditions of this Agreement; a legally binding contract is formed on that date with Customer and all Authorised Users.

3.3 On receipt of the signed Particulars BIM will contact Customer with relevant username/s and password/s and allow Access, and/or begin work on requested Services ("BIM Confirmation"). If you do not receive a BIM Confirmation within 10 days, you should email the BIM Contact and request a copy. If BIM have sent but you have not received the BIM Confirmation, this does not affect the applicability of any part of the Agreement or Term and does not create any liability on BIM other than to deliver the contracted Services.

3.4 Customer and Authorized User/s jointly and severally acknowledge and agree that the Agreement and provision of Access and supply of Services and AU Download is at all times subject to and they:

- (i) will comply strictly with the terms and conditions of this Agreement, and to the BIM WTUPP;
- (ii) have provided in the Customer Request up to date true, accurate, current and complete information, including for completion and updating of the Particulars and Customer Registration Data, including Purpose, Business Activity, Bespoke Services, Deliverables, and use of BIM Data; and
- (iii) will continue to provide up to date true, accurate, current and complete information relating to the Particulars and Services; and
- (iv) will provide up to date true, accurate, current and complete information when responding to requests from BIM, and in all communications with BIM; and
- (v) will forthwith contact the BIM Contact in the event that any Customer Registration Data or any of the aforesaid or any other information is no longer true, accurate, current and complete and fully bring it up to date.

3.5 On receipt of the BIM Confirmation, to gain access to the BIM Database, each Authorised User of the BIM Database will sign in to the BIM Website or BPAPI (as provided in the Particulars or otherwise prior agreed by BIM from time to time) individually using the computer that they will then use to Access the BIM Database in future and providing complete accurate and up to date information. When signing in they will provide the Customer name, the Authorised User's full name, telephone number, postal address, email (which will be their username) and a password.

3.6 Customer hereby undertakes that it will prior to advising each Authorised User of the BIM Confirmation, and before enabling them Access, specifically refer each Authorised User to the terms and conditions of this Agreement, including the Particulars, and advise them that they are personally bound by them.

3.7 Each Authorised User account is for a single user only. By registering for Access, each and every Authorised User thereby acknowledges and agrees that they have seen and are each deemed to have confirmed that he/she has seen and confirmed the Particulars and Agreement, their accuracy, and that he/she agrees to be bound as a party to the terms and conditions of the Agreement.

3.8 All Authorised Users must be at least 18 years of age, or the age of majority in your province, territory or country, to obtain Access, Services and any AU Download, all of which are for private use only (save as may be prior agreed in writing by BIM in its sole discretion).

3.9 When each Authorised User registers on the BIM Website, or BPAPI his/her username and password will be allocated. You and Authorised User jointly and severally undertake that these account details will be used solely by the individual Authorized User identified and will not be shared or copied or made available to any other person or entity. You acknowledge that no-one other than the identified Authorised User/s are permitted to use or Access AU Download and/or Services or any part or Derivation thereof, and that directly or indirectly allowing or enabling such is strictly prohibited and a material breach of this Agreement. Accordingly, you and Authorized User jointly and severally agree to ensure at all times to:

- (i) maintain the security of his/her user name and password and be fully responsible for all use of the BIM Website, BPAPI, Access and Services made using that user name and password;
- (ii) immediately notify BIM if you or Authorised User becomes aware of any unauthorised Access or any unauthorised use of any user name and password, or BIM Database, BIM Data, AU Download, or any copy or Derivation thereof, or of any Access or Services, or any other breach of security, by sending an appropriately worded detailed email to the BIM Contact or to support@boatinternational.com; and
- (iii) ensure that all Authorised User/s promptly exit from the BIM Website, BPAPI, and cease all Access at the end of each session; and
- (iv) immediately on becoming aware of any breach or failure to comply by an Authorised User, you will remove all ability for that Authorised User to access or use any BIM Data, AU Download, BIM Materials and Derivations.

3.11 During the Term Customer may add new users who are employees of Customer for an additional fee, or remove existing users (including when they leave the Customer's employment) by contacting the BIM Contact. Once registered and the Fees have been paid new users will have Access for the remainder of the Term (and any extension).

3.12 You acknowledge and agree that BIM may (i) monitor all use by Authorised User/s and others, and (ii) at BIMs sole discretion immediately terminate or restrict use, Access and/or Services in the event that BIM has cause to (a) query whether any failure or breach is occurring or may occur or has occurred, or (b) suspect that you have or are planning to violate any of terms or conditions of the Agreement or are engaged in illegal or fraudulent use of the same. BIM are not liable for any losses, damages, costs or any other liability arising from your failure to comply with these requirements and the Agreement.

3.13 You agree that you are responsible for ensuring that you have a reliable and sufficient internet connection to Access and download any BIM Database and BIM Data and to obtain Services.

#### **4. Term & Services**

4.1 This Agreement for Standard Access will be effective from the Effective Date for an initial Term period of 12 months and will be automatically extended as provided in clause 6 below (subject to cancellation by BIM).

4.2 This Agreement for Services and Bespoke Access will after signature of this Agreement, be effective from the Effective Date for the period prior agreed by BIM and Customer. It may be extended by prior agreement of BIM and prior payment by Customer of the relevant Fees for a further period.

4.3 Subject to the terms and conditions of this Agreement being complied with in full at all times, BIM will provide Authorised Users (but no other persons) with the appropriate Access.

4.4 In the event that the Customer and BIM agree to extend the length and/or scope of this Agreement or to engage in additional work, this Agreement may operate as a framework agreement, but it does not at this time commit BIM to supply any additional data, services or anything else to Customer, save as specifically agreed in this Agreement. Any additional work outside of this Agreement will not be undertaken without prior written agreement from BIM and Customer.

4.5 BIMs obligations and liabilities will be limited to what Customer has disclosed to BIM in the Customer Request and Particulars (as amended from time to time) and what BIM has agreed to provide. BIM will use reasonable endeavours to:

- (i) advise Customer of the timeline and any limitations on Delivery; and will keep Customer advised if any lengthy delays are likely.
- (ii) provide any Services, and AU Download within the prior agreed time schedule, which will be set out in the Particulars. However, any times or dates specified in the Particulars or otherwise in writing are only estimates. We shall not be liable for any failure to provide Services, AU Download or anything else by any stated dates due to reasons outside of our reasonable control and efforts. We shall however use our reasonable endeavours to notify you promptly in the event that we become aware that there is a material risk of any delay.

4.6 In consideration of receipt of payment in full of the Fees, BIM grants to Authorised User/s a non-exclusive, non-transferable licence (without the right to grant sub-licences) to access and use AU Download solely for the Purpose during the Term provided that such use is in strict compliance with the terms and conditions of this Agreement and subject to the restrictions on such access and use. No other right of use, access or licence is granted.

4.7 BIM may in its sole discretion grant in writing to the Customer a licence to use certain parts of AU Download which is broader than the licence identified in this Agreement. Save where such an additional license is granted by BIM in writing prior to any use, Customer undertakes not to use any Materials or AU Download other than as allowed in this Agreement; and no license to do so is implied or exists save as prior agreed in writing by BIM.

4.8 You acknowledge that in the normal course of the provision of the Services, Access, BIM Website, BPAPI, BIM Data, or development of AU Download, changes, amendments or other modification may be required to be made due to technical or other reasons. If this results in any consequential additional Fees and/or expenses needing to be paid, or changes to delivery dates, for Bespoke Services, Bespoke Access or other bespoke services we will notify you in writing of the variations to be made. In the event that those additional Fees exceed 5% of the original Fees, then Customer may within 7 days of notification of the increase terminate the Bespoke Services and/or Bespoke Access, but shall pay all Fees, time and expenses incurred by BIM up to the date of termination.

## **5. Fee Payment and completing Orders**

5.1 Once you have provided an acceptable Customer Request and BIM has agreed what Access, Services, and/or AU Download will be provided BIM will send you an invoice setting out the Fee/s. In the event that we discover any error, or if the original Fee is determined to be insufficient, we will advise you and offer you the option to pay the balance or to cancel (but may charge for any Access and Deliverables that you have obtained up to that time).

5.2 Any Fee for Standard Access will be paid annually in advance.

5.3 The Fees estimated by BIM will take account of the agreed specification of the Services, Access, Deliverables, AU Download, requested delivery date and Purpose described in the Particulars and other information provided by you. You warrant the accuracy, currency and completeness of the information and will provide such further information as BIM may request from time to time, and acknowledge that this is fundamental to the Agreement. In the event that any information is not sufficient to enable BIM to accurately and properly estimate the work and costs required to provide the Services and AU Download by the delivery date, BIM will provide its estimate/s based on the information supplied and Customer agrees to pay all additional amounts that BIM may charge to complete the Customer Request. If for whatever reason you wish to make any change to the Particulars or Customer Request, and such amendment is prior agreed by us and signed by a BIM

Director (including any changes in the delivery dates), the Fees may be subject to revision to take in to account such changes.

5.4 All Fees must be paid in the currency shown on the invoice. Payment will be made by bank transfer to the account details shown on the invoice free and clear of all bank fees, money transfer, bank and credit costs, any foreign exchange costs and other deductions/costs, which will be prepaid by the Customer. All Fees are to be paid and received in full by BIM without any deductions. You should indicate your invoice number and any Reference and your name as a reference on all bank transfers and communications.

5.5 All invoices will become due for payment 14 days from the date on the invoice. BIM may await payment in full before allowing any Access or beginning any work on Services and Deliverables. If no payment has been made, we reserve the right to suspend all Access and Services until we are in receipt of cleared funds. You will remain liable for the full amount on the Fees and any interest and costs.

5.6 All Fees will be:

5.6.1 quoted exclusive of VAT and other taxes.

5.6.2 subject to any local charge imposed by any competent authority including any sales tax, VAT or other similar tax. VAT. If you are VAT registered business in the EU (outside the UK) and wish to be charged at a VAT-exclusive rate then please ensure your full company details are entered in the online payment process, and that you submit your EU VAT number (including country prefix).

5.7 To the extent that bespoke work is requested by Customer leading to expenses being incurred, in addition to Fees set out in the Particulars you shall, save as prior agreed, be responsible for all reasonable out-of-pocket expenses incurred by us in the proper, performance of our obligations under this Agreement, including but not limited to travelling, subsistence, accommodation and third-party expenses.

5.8 BIM reserves the right in its sole discretion for any reason not to accept or process any Customer Request or allow Access or provide Services. All orders are subject to checks and authorisation. Where we do not accept or proceed with your Request or allow any Access or provide any Services, we will notify you in writing and where we have already received payment of your Fees, we will refund your payment within 30 days.

5.9 BIM reserves the right in its sole discretion not to fulfil, and to cancel, any agreement to provide Access, Services, and/or AU Download, including in the event of incomplete or inaccurate information in the Particulars, or inaccuracies in Fees, breach or potential or threatened breach of the terms and conditions of the Agreement, or if sanctions are imposed on your country of residence or the country where you access or receive our content or if you or any related entity is a competitor of BIM or provides any data supply or analytics services.

5.10 Fees for Services may be increased to reflect any increase in costs to us, including those which are due to any factor beyond our control, the imposition or increase of any tax duty or other levy, any variation in exchange rates, or any delay caused by any instructions given by you or failure to give us adequate information or instructions. We shall use our reasonable endeavours as soon as practicable to notify you of any adjustment to the Fees.

5.11 You hereby acknowledge and agree that we are entitled to use the services of third parties if we deem it appropriate, including because we want to engage additional skills. We shall be entitled to charge a commission of 5% on all charges by a third party. If you engage a third party to do any work in relation to any aspect of the Service or Deliverable or any related or connected matter, then you shall notify us and obtain our consent before engaging them; you acknowledge that we have no liability for the work of such third party and any failure by the third party to deliver services to you or any impact on our Services or adverse effect of the third parties acts or omissions. You undertake to indemnify us against all losses, costs (including legal costs) and damages (direct and consequential) arising from all acts and omissions of said third party, except to the extent arising out of the grossly negligent or wilful misconduct of BIM. Further you undertake to pay us for all Services, Access and



AU Download and to pay all invoices provided by us in a timely manner notwithstanding any acts or omissions of said third party.

5.12 If any properly invoiced amounts become overdue, until such amounts have been paid, we reserve the right to (i) suspend the provision of Access, Services and/or AU Download to you and/or (ii) charge interest daily on such amounts at a monthly rate of 2% plus the base rate of Barclays Bank plc (currently 2.75% per month) of the outstanding amount including VAT, to run from the date of the invoice until receipt by us of the full amount whether before or after judgment, and (iii) charge all time and costs associated with attempting to recover any outstanding amounts. Any exercise by BIM of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

5.13 You must advise us including detailed explanation of any discrepancies and queries on invoices in writing within 14 days of receipt and use your best endeavours to resolve all disputes and queries within a further 7 days, failing which such invoice shall be deemed to be accepted and undisputed. Any disputed invoice shall not relieve you of any obligation to pay any other amounts that are undisputed, which undisputed amounts should be paid immediately.

5.14 All costs relating to the Customer's participation in the Purpose, the provision of Services (save as provided by this Agreement), and Customer's activities and obligations under this Agreement are at the cost of the Customer unless specifically stated to the contrary in this Agreement.

## **6. Renewal**

6.1 To assist you and Authorised User/s to maintain uninterrupted access to BIM Data, your Standard Access subscription contract will automatically renew for further rolling periods of 12 months on each anniversary of the Effective Date ("Renewal Date") unless we receive prior written notice of cancellation at least 30 days before the next Renewal Date. We will send to Customer an invoice for the renewal Fee.

6.2 We shall be entitled to increase the Fee due for any renewal with effect from each Renewal Date. We will notify you at least 20 days prior to the Renewal Date of any increase in Fee. If we notify You of an increase in Fee, you may elect not to renew the Services by providing at least 5 days' Notice prior to the Renewal Date. Your continued use of the BIM Database on or after the Renewal Date will constitute your acceptance of the increased Fee. References to the Fee shall thereafter be deemed to refer to the increased subscription fee.

## **7. Content Ownership**

7.1 Nothing in this Agreement shall operate to change the ownership of any IP rights in materials which were or are created by any Party (including any third party):

7.1.1 prior to the Date; or

7.1.2 for purposes outside the scope of the Services;

7.1.3 any proprietary IP created/owned or licensed to us;

7.1.4 any proprietary IP not granted specifically to you under these Conditions;

7.1.5 any development or day to day work product;

7.1.6 Know How.

7.2 You acknowledge and agree that all rights title and interest in all content, designs, text, data, images, graphics, information, formatting, formats, icons, software compilations, object and source codes, IP (including all BIM trademarks (whether registered or unregistered) graphics, logos and designs), Know How on or relating to the BIM Website, BPAPI, BIM Database, AU Download and connected Access and Services, and Confidential Information of BIM, vests in and is the property of BIM, and none of it nor any confusingly similar versions or Derivations may be used by you in any form or way without the prior written consent of BIM. For the avoidance of doubt, this includes and covers all IP and other rights in any presentation, tender or other Material presented by BIM in an attempt to promote BIM, its Services, products and AU download, or in our efforts to obtain your business.

7.3 All IP rights, property rights and Know How in all AU Download, BIM Database, BIM Website, BPAPI, and data and work product, Materials and Confidential Information created or coming into being in connection with the Access, Services, Deliverables and Purpose (including all drafts, early renditions, versions, copyrights, concepts and representations, work product, working materials) or otherwise (whether electronic, hardcopy, text, graphical reproductions, photographs or otherwise) are BIMs absolute property and will vest at all times in BIM and remain our property save as specifically otherwise prior granted to you herein or in writing. To the extent that any of the aforesaid shall not vest in BIM you agree to hold them on trust for BIM and will forthwith execute all documents and do all things as may be requested to transfer all rights title and interest in them to BIM with full title guarantee. You hereby assign by way of present assignment of future IP rights any such rights and property owned by you, throughout the world for the full term of the rights and any extensions, revisions or reversions thereof. For the avoidance of doubt, you acknowledge and agree that multiple drafts, concepts, artwork and works may be presented to you for consideration.

7.4 You agree that:

- (i) you will only use any BIM Data, AU Download or any works, Materials, IP, Confidential Information or Know How emanating from BIM or otherwise connected with the subject matter of this Agreement or relating to the Services, BIM Website, and BPAPI solely for the purpose and to the extent and for the time specifically prior approved in writing by BIM in the Agreement. For the avoidance of doubt, and without limiting the generality of the foregoing, at no time, whether during the term of this Agreement or after the termination hereof, shall you make use of any of the aforesaid or any code or software or application (or Derivation thereof) for (a) your own business, or (b) to compete with the business of BIM, (c) or to provide it directly or indirectly in whole or in part to any third party, or (d) to solicit, directly or indirectly, BIM's customers, suppliers, contractors, staff or any related business, entity or person; and
- (ii) if you do make such use, or if any affiliate, employee, agent of your company or connected person uses it, or if a third party gains access to it directly or indirectly as a result of any act or omission of you or them, an additional fee at the rate specified in clause 20.9 shall be payable to us in respect of such use and we may additionally seek an injunction and other remedies from a court of law.

7.5 Save as otherwise provided in this Agreement, each Party shall keep the Confidential Information and BIM Know How secret and confidential and shall not directly or indirectly, save for the purpose of providing the Services, at any time use, disclose, publish, disseminate, or provide any to any entity or person without the other Party's prior written approval any Confidential Information of the other Party, either in whole or in part, or use them for any purposes other than for the purposes of performing the obligations under this Agreement, and then only for said purpose and only in accordance with the terms of this Agreement. The provisions of this clause 7.5 shall not apply to information that you can document before any use or disclosure was already in the public domain or information which comes into the public domain other than as a result of a breach of this Agreement or any breach of confidence, or which is required to be disclosed pursuant to any statute, regulation or order of any court or regulatory authority.

7.6 You agree to save as prior approved in this Agreement (and then only to the extent approved):

- (i) keep the terms of this Agreement strictly confidential at all times except as required by law.
- (ii) to keep all technical information of BIM (including relating to the BIM Database, BIM Website and BPAPI), Confidential Information, BIM Know How and AU Download ("**BProperty**") secure so as to prevent unauthorised access by any third party.
- (iii) not make any Derivations of BProperty in whole or in part in any form.
- (iv) only disclose and provide the BProperty and any Derivations of BProperty to those to whom disclosure is specifically permitted in accordance with this Agreement.
- (v) not mix BIM Data with any other data, information or images in your power possession or control, or anything provided by any third party.
- (vi) not import, merge or incorporate any BProperty into any system, platform database, spreadsheet or the like which is used by you or any third party (a) to provide to third-parties any BProperty, or (b) which is used in COMPANYs day-to-day business.
- (vii) to keep a written record, to be supplied to BIM upon request, of (a) the location of such BProperty and (b) all persons that receive or could access any BProperty.
- (viii) inform BIM immediately if you become aware that any BProperty has been disclosed to an unauthorised third party.
- (ix) ensure and warrant that your directors, employees and all others to whom BProperty is to be or has been made available are fully aware of your obligations and prior agree to be bound by like obligations regarding BProperty and shall observe the obligations contained in this Agreement regarding BProperty.

7.7 You acknowledge and agree that if we sub-contract provision of some of the Services to third parties, we may provide your Confidential Information to any sub-contractor in connection with provision of the Services.

7.8 Any rights granted to you under this Agreement do not include any right to use our or any third-party IP, Confidential Information or Know-How nor any material created by any third party.

7.9 You undertake to take all necessary steps to strictly and bona fide protect, secure and prohibit misuse dissemination copying distribution transmission dissemination and disclosure of in accordance with the highest IT industry standards our IP, Confidential Information, Know-How, BIM Data, AU Download and all Derivations save as explicitly prior agreed by BIM. You shall not share any or part and not to pass it on to third parties or affiliates and shall not use it for any purpose outside of this Agreement.

## **8. Permitted Use of Data**

8.1 You and Authorised Users hereby agree and undertake (jointly and severally), save as otherwise prior agreed by BIM in writing or as provided in clause 8.2 below:

8.1.1 that all Access and use of AU Download by you and all persons connected to you or over whom you have any power or control (including agents), will be made strictly in accordance with the terms of this Agreement and not otherwise, and not for any external commercial or other purpose unless and then only to the extent prior permitted in writing by us.

8.1.2 that all Access and use of Services and AU Download will only be by Authorised User/s.

8.1.3 not to directly or indirectly Supply any AU Download (or any Derivative or analysis thereof), or create Derivative works from, or in any other way use any AU Download (including raw data), save and then only to the extent prior permitted in writing by us:

- (i) for any purpose other than permitted internal use solely for the Purpose and strictly in line with the normal commercial activities of a business of the nature described in the Business Activity and Particulars, and not for any other purpose or activity, and
- (ii) other than and limited strictly for (a) your own personal internal business marketing and development purposes relating only to the development of your own business provided always that this is for the Purpose and does not involve the use or analysis of AU Download for the benefit of any third party except as expressly provided by the terms of this Agreement, and (b) direct client sales prospectuses or sales pitches of your goods/services (not to be published other than in confidence to a specific end client or prospective end client of yours), and
- (iii) other than strictly in accordance with the permission granted by BIM, and not otherwise.
- (iv) output or Supply any analysis thereof (including, but not limited to, cross-tabs, target profiles, reach and frequency reports and correspondence maps) to any third party (including as part of any database, library, news, information, archive, tables, reports or presentations, or any materials, website or similar service).
- (iii) on an ad hoc basis in response to a client or any other third-party request.

8.1.3 be restricted to the following permitted uses:

- (i) viewing BIM Data and any AU Download on a computer or PDA screen.
- (ii) printing on paper not more than one copy of Permitted Data Selection and any Deliverable, but nothing else, and not further making any Derivation of it in whole or part.
- (iii) where and to the extent (only) that permission to download and store any AU Download is prior granted by BIM in writing (if at all), downloading and storing to not more than one isolated (not networked) storage device not more than one copy of Permitted Data Selection and any Deliverable onto the hard disk of your computer (but no other computer or storage media or other device), but nothing else, and not further distributing, transmitting, or publishing or making any Derivation of it; and to only use it strictly as prior approved by BIM. You and Authorised User/s undertake not to allow any other party to access or use such or any AU Download.

8.1.4 not to merge, use, manipulate, package or combine any data, image or information printed or downloaded as part of any Permitted Data Selection in any one month with any other print, download or Derivation whether as part of any Permitted Data Selection or otherwise, including: (i) in any other month/s, or (ii) obtained or under the control of any other Authorised User or person, or (iii) with any other data, image, information or AU Download.

8.1.5 not to merge, manipulate, package or manipulate any AU Download with anything else or any other data for any purpose other than permitted internal use solely for the Purpose.

8.1.6 not to create any database (electronic or otherwise) that includes any AU Download and any other data, image or information.

8.1.7 not to refer to or use AU Download for any commercial purpose other than the

Purpose.

8.1.8 not to licence or grant any rights or enable others to do any of the acts identified in this clause 8.1.

8.1.9 not to refer to or present AU Download in whole or in part or any analysis based thereon as your own.

8.1.10 not to provide, offer, supply or sell data or market consultancy services or any services that may directly or indirectly compete with BIM or use any AU Download or Derivative thereof.

8.1.11 not to circumvent, remove, alter, deactivate, degrade or thwart any of the content protections in or relating to any AU Download (including BIM Website, BPAPI and BIM Database).

8.1.12 not to use any robot, spider, scraper or other automated means to access AU Download; decompile, reverse engineer or disassemble any software, data, images, products or processes accessible through AU Download.

8.1.13 not to use, copy, reverse engineer, treat, process, assemble, arrange, make Derivations of or analyse or supply any AU Download for the benefit of yourself or any third party except as expressly provided by the terms of this Agreement.

8.1.14 not to insert any code or product or manipulate the content of AU Download in any way.

8.1.15 not to use any data mining, data gathering or extraction method.

8.1.16 not to upload, post, e-mail or otherwise send or transmit any Malware, or material to interrupt, destroy or limit the functionality of any computer, software firmware or hardware or telecommunications or other equipment or services associated with the Service or subject matter of this Agreement.

8.1.17 not to use any content, information, image or data derived from BIM Website, BPAPI or BIM Database, or any AU Download in preparing, maintaining and supplying market intelligence information and data to third parties for financial remuneration or benefit in kind.

8.1.18 that no AU Download or any copy, part, Derivation or result of any analysis thereof will leave the possession or control of the Authorised User who obtained the original version.

8.1.19 not to remove any copyright or trademark notice/s.

8.1.20 not to disseminate any unsolicited or unauthorised advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation using any BIM Data.

8.1.21 not to disseminate any material which is or may (i) infringe the rights (including IP rights) of any third party, or (ii) be unlawful, threatening, defamatory, obscene, indecent, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy, which may cause annoyance or inconvenience or may restrict or inhibit the use of the BIM Website or BPAPI by any person, or (iii) which constitutes or encourages conduct that may be considered a criminal offence or give rise to civil liability in any country in the world.

8.1.22 not to disseminate any material code or Malware that may interrupt, damage, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, including, without limitation.

8.1.23 not to directly or indirectly assist or make available any means (including via link/s or otherwise) that enables third parties to contravene any of the above restrictions.

8.1.24 not to do any act or omit to do anything which may, or disseminate any material or use any aspect of or the subject matter of this Agreement, or of your/Authorised Users performance or non-performance, or obligations under this Agreement in any way which does or may:

(a) expressly or by implication create an association or legal obligation between any third party and BIM and/or any content, information, image or data derived from BIM Website, BPAPI or BIM Database, or any AU Download, or IP;

(b) harm or bring into disrepute, disregard, or discredit (i) BIM or any of its brands, or any of BIMs officers, agents, employees or suppliers, or (ii) any of their reputations, or (iii) any content, information, image or data derived from BIM Website, BPAPI or BIM Database, or any AU Download, or IP, or end product; and/or

(c) associate you or any Authorised User with BIM and/or any content, information, image or data derived from BIM Website, BPAPI or BIM Database, or any AU Download, or IP;

save until and to the limited extent that such use and material has been prior approved in writing by BIM.

8.2 Unless otherwise prior agreed in writing by BIM, Customer and Authorised Users will not Supply or analyse any AU Download, or Derivation thereof, to or on behalf of any person who is not an Authorised User (including, without limitation, any client, customer, contractor, agent or third party) save that Customer with the relevant following Business Activity may quote or refer to the following selected BIM Data in its business dealings with its clients or prospective clients, and/or third party agencies or consultants with whom Customer is working jointly on behalf of a client or prospective client, in the course of its business, provided always that the BIM Data quoted is strictly limited to that

which is necessary and confined to the specific Purpose and connected products and/or services and/or media concerning which Customer and the relevant third party have actual or genuine demonstrable commercial dealings and also that the reference is only made during the Term and only where the business function of Customer is disclosed in the Particulars as follows:

- (i) a boat broker: Customer may quote only the relevant BIM Data for the purpose of establishing market price or demand for a particular size, design or style of boat.
- (ii) a boat designer: Customer may quote only the relevant BIM Data for the purpose of establishing market price or demand or trends for a particular boat size, design or style.
- (iii) an insurance company: Customer may quote only the relevant BIM Data for the purpose of establishing market price or appropriateness of a proposed repair. In all cases all permitted disclosure by Customer is limited to parties with whom they have actual commercial dealings on an arms-length basis and to no other third party. No disclosure or use is permitted to or by any party seeking financial or commercial gain from the Supply, reporting or analysis of data or market trends.

8.3 If any AU Download or part is included, incorporated, communicated in any form, Supplied or published in any Material then Customer undertakes to clearly and prominently display the following accreditation on all copies of such materials: "© Boat International Media Limited [insert year]. All rights in and to use of this information, data and Material is subject to Boat International's prior written agreement and terms and conditions."

8.4 If Customer quotes from BIM Data pursuant to Clause 8.2 it will notify the entity to whom it makes such disclosure ("Recipient") of the terms and conditions of this Agreement relating to use of AU Download and shall procure that the Recipient complies with such terms of this Agreement use and without limitation to the generality of the foregoing the terms of Confidentiality. In any event, Customer will remain primarily liable for all use of AU Download by a Recipient and Recipient's compliance with the terms and conditions of this Agreement.

8.5 Customer hereby fully indemnifies and will keep BIM fully indemnified against any and all loss and damages (including without limitation, direct and indirect loss, profits, revenue, costs (including legal costs)) arising as a result of (i) Customer's and any Authorised User's and Recipient's breach of this Agreement, and (ii) any claim made against BIM by or on behalf of a third party (including a claim for death, personal injury or damage to property) arising out of or in connection with the Customer's performance of or failure to perform its obligations under this Agreement.

8.6 Customer will notify BIM in writing immediately upon becoming aware of any breach of Clause 3, 5.3, 7 or 8 (or any other use of AU Download other than in accordance with this Agreement). Without prejudice to any other rights or remedies to which it may be entitled, BIM may, at its sole discretion, elect to charge the Customer additional Fees in respect of any such unauthorised use of AU Data.

8.7 Notwithstanding any other term of this Agreement, you agree that no data, Access, AU Download or Services may on any account be supplied to any entity providing or supplying data, data analytics, market reports or like services relating to Pleasure Craft. Should you directly or indirectly breach or be complicit in a breach of this Clause 8.8, in addition to other remedies, you agree to forthwith pay to BIM an additional amount of £1million for each such act (this is without prejudice to all other rights and remedies that BIM may have).

## **9. Exclusions and Limitations of Liability**

9.1 Nothing in these terms and conditions limits or excludes BIM or your liability:

- 9.2.1 for death or personal injury resulting from gross negligence; or
- 9.2.2 for any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation by BIM or you.

9.2 Nothing in these terms and conditions shall limit or exclude any liabilities that cannot be limited or excluded by law. To the fullest extent permitted by law: (i) all warranties, representations, conditions and other terms (including without limitation, the conditions implied by law of satisfactory quality, fitness for purpose and the use of reasonable care and skill) implied by statute or common law, and (ii) all warranties, representations, conditions and other terms in respect of all websites, Apps and digital forums of BIM and its related companies, the presentation and operation of the sites, all access and data made available, Access and Services, are excluded from the Agreement and in connection with the subject matter of this Agreement.

9.3 BIM will not be liable to you for any loss or damage caused by BIM or its employees, agents, related companies or sub-contractors in circumstances where:

- 9.3.1 there is no breach of a legal duty of care owed to you by BIM (or its employees, agents, related companies, or sub-contractors); or
- 9.3.2 such loss or damage is not a reasonably foreseeable result of any such breach; or
- 9.3.3 in respect of any increase in the loss or damage resulting from your actions.

9.4 Without prejudice to other provisions in this clause 9,( but subject to clauses 9.1 and 9.2), you and Authorised User/s jointly and severally acknowledge and agree that, to the fullest extent permitted by law (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise), that we, our employees, agents and related companies will not be liable to you or any other entity and you will not make any claim or action, whether in contract negligence or other tortious action or otherwise arising out of or in connection with the terms and conditions of this Agreement, your subscription, Access, Services, Deliverables, AU Download, BIM Materials, BIM Data or provision of any digital content or data:

- 9.4.1 for any loss, damage, costs or expenses (including legal costs) of any kind except to the extent arising out of the gross negligence or wilful misconduct of BIM;
- 9.4.2 for indirect, special, economic or consequential loss or damages (which terms include, without limitation, economic loss, loss of profits, loss of business, loss of bargain, depletion of goodwill and like loss) howsoever caused; or
- 9.4.3 for any use of the BIM Website or any Access, downloaded data, AU Download, or Services offered or provided or any use of your personal data or otherwise;
- 9.4.4 for any inconvenience or loss caused to any party as a result of cancellation or termination under these terms; or
- 9.4.5 for any other amounts in any way related to or connected with Access, AU Download, and/or Services or the subject matter of this Agreement, or anticipated Access, AU Download, or Services, including alterations variations and cancellations, other matters related to the subject matter of the Agreement, or any act, error or omission on the part of BIM, any related company or any agent, servant, sponsor or supplier;
- 9.4.6 for any breach, default, damage or loss which you may incur suffer or sustain as a result of any act or omission by any third party supplier in respect of any goods and / or services provided or due to be provided to you in connection with the BIM Data, BIM Website, Services, AU Download, or the subject matter of this Agreement; or
- 9.4.7 if we are prevented from, or delayed in performing, our obligations under the terms of this Agreement or from carrying on Access or Services including activities, omissions, accidents beyond our reasonable control, including Force Majeure.

9.5 Without prejudice to other provisions in this clause 9,( but subject to clauses 9.1 and 9.2) you and Authorised Contact/s jointly and severally acknowledge and agree that the maximum aggregate liability BIM may have in connection with the subject matter of this Agreement, the BIM Website, BPAPI, Access, downloaded data, Services, Deliverables, AU Download, and any act or omissions connected with the Agreement or the subject matter of the Agreement, or otherwise in relation thereto or your intended participation, and all damages, claims, losses, costs (direct, indirect and consequential) shall be limited in total to twice the total Fee paid by you in respect of the 12 months preceding the relevant claim (or if the Agreement is less than 12 months old, then the Fee payable up to a date 12 months from the date of the Agreement), unless otherwise agreed in writing between us.

9.6 You and Authorised Users agree jointly and severally to fully indemnify and keep BIM fully indemnified to the fullest extent against all liabilities, claims, actions, losses, costs (direct and indirect), damages, fees (including legal fees) and other matters except to the extent arising out of the gross negligence or wilful misconduct of BIM.

9.7 You agree that all Access and use of the BIM Website, BPAPI, BIM Database, Services, and AU Download, is at your own risk. We do not represent or warrant that: (i) any electronic site, data or Material published by us or any of its contents are accurate, current, complete, reliable or appropriate or that this site, its servers, or e-mails which may be sent from us are free of viruses or other harmful components; and (ii) access to any site or data of ours, or any part of it will be uninterrupted, reliable or fault free and provide the contents 'as is' and 'as available'.

9.8 We assume no liability or responsibility whatsoever for the contents of the site which are supplied by third parties.

## **10. Termination**

10.1 Save for those provisions intended to continue, this Agreement will commence on Effective Date and continue until the terminated in accordance with this clause.

10.2 You can cancel your Standard Access at any time, however, you will continue to have Access to the BIM Database until the end of the Term, and no refund will be offered for cancellation within a current Term.

10.3 To cancel any Access and/or Services, please contact [boatpro@boatinternational.com](mailto:boatpro@boatinternational.com). Except as set out in these Conditions, to the extent permitted by the law, payments are non-refundable and we do not provide refunds or credits for any partial periods or lack of use of the Service and/or Access. Further, any cancellation shall be without prejudice to your obligation to pay the Fees in full except as otherwise expressly provided herein. If you cancel, your account, Access and Services will (save as otherwise provided in this Agreement) automatically close.

10.4 We reserve the right to not accept any customer and may terminate any contract at any time in our sole discretion. If we terminate your contract in our discretion, we may refund on a pro-rated basis. However, if we cancel your Access and/or Services due to a breach or suspected breach of this Agreement, you will not be entitled to any refund. Any termination is without prejudice to any rights, rights of action and remedies that BIM may have.

10.5 Without prejudice to either party's other rights or remedies, this Agreement can be terminated by:

10.5.1 either party immediately on written notice if the other party:

(a) commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 15 days of that party being notified in writing of the breach: or

(b) passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect.

(c) if an interim order is applied for or approved, or if a petition for bankruptcy is presented or if it enters into any voluntary arrangement with its creditors or becomes subject to an administration order.

(d) has a receiver, manager, administrative receiver, administrator, liquidator, or similar officer appointed over or in respect of it or over or in respect of any part of its undertaking or assets; or

(e) fails to pay its debts as and when they fall due or ceases and/or threatens to cease to carry on business; or

(f) disposes of all or a substantial part of its business involving the Services or there is a substantial change in the shareholding.

10.5.2 by BIM immediately on written notice if the Customer fails to pay any undisputed invoice, or any undisputed part of an invoice, within 30 days of its due date and fails to remedy the non-payment (within a further 15 days following written reminder).

10.6 Notwithstanding any other clause in this agreement, Customer and Authorised Users acknowledge and agree that failure to comply in full and promptly with the provisions of or breach of clauses 3.4, 3.10, 5.3, 7, 8, 11 are a fundamental and material breach of this Agreement.

10.7 On termination of this Agreement for any reason:

10.7.1 you and all Authorised Users, agents, employees, contractors, and people and entities over whom you have power, possession or under your custody or control will forthwith permanently delete, destroy and not retain in any form, including hardcopy or digital form, all AU Download, BProperty and all parts and Derivations and all Materials containing any part thereof or reference thereto, including all work product derived therefrom; and

10.7.2 Customer will immediately destroy all passwords and cease all Access; and

10.7.3 on request by BIM, supply a certificate signed by you or a director of yours before a Notary confirming that the requirements of this paragraph have been fully complied with; and

10.7.4 the provisions of this Agreement along with accrued rights and remedies of the parties, and those clauses in this Agreement intended to survive termination (including clauses 3.4, 7, 8, 9, 10) will survive termination of this Agreement for any reason.

## 11. Law

11.1 You agree to: (a) comply with all applicable Laws, including data protection, anti-bribery and anti-corruption (including but not limited to the Bribery Act 2010); (b) comply with such of our anti-bribery and anti-corruption policies as are notified to you from time to time; and (c) promptly report to

us any request or demand for any undue financial or other advantage of any kind received by or on behalf of you in connection with the subject matter of these terms and conditions.

11.2 BIM agrees to: (a) comply with all applicable Laws, including data protection, anti-bribery and anti-corruption (including but not limited to the Bribery Act 2010); and (b) comply with such of our anti-bribery and anti-corruption policies as are notified to it from time to time.

11.3 If you register on behalf of a company, you may be required to provide a copy of your certificate of incorporation or similar document.

11.4 You may be required to provide copies of passports, and other relevant details to verify your identity and any entity for money laundering and legal compliance requirements.

11.5 You agree to use the BIM Website, BIM Database, BIM Materials, BIM Data, BPAPI, Deliverables and Service, including all features and functionalities associated therewith, in accordance with all applicable Laws, our contractual terms, or other restrictions on use of the service or content.

## **12. Privacy and Cookies Policy**

12.1 The provision of personal information by you and use of it and cookies by BIM is subject to the BIM WTUPP.

12.2 We may use and store any personal and transactional information, including name, address, e-mail address, telephone number, debit or credit card details, you supply to us in order to fulfil your request, provide services, and to contact you to keep you up to date with information, BIM activities, marketing, products and other subscription opportunities (including but not limited to communications with You, media, marketing and promotional communications and materials, information shared with sponsors and parties connected with the same (including those supplying services to or connected with same), as well as in accordance with BIMs Privacy Policy.

## **13. Third Party Websites, Advertising and Links**

13.1 Our site may contain links to other Internet websites or online and mobile services provided by third parties. Any links and pointers to other websites are provided for convenience only, and we assume no responsibility or liability for the contents of third-party sites or any products or services advertised or sold on those sites. When you access third party sites you leave our site and new sites terms and conditions will apply to you.

13.2 Our site may display advertising. Advertisers are responsible for ensuring that material submitted for inclusion on our site complies with all laws. We are not responsible for any error or inaccuracy in advertising. Any advertising on our site does not imply an endorsement or recommendation by us and we assume no liability for the content of such advertisements, or any third-party products or services advertised on our site. If you have any concerns in relation to our advertising, please contact the BIM Contact.

## **14. Data Protection**

14.1 Each party undertakes to comply with statutory data protection regulations.

14.2 If Customer processes any personal data on BIM's behalf under this Agreement, it is intended that BIM will be the data controller and Customer will be a data processor.

14.3 If BIM provides any personal data to Customer, BIM will ensure that it is entitled to do so and that Customer may lawfully process that personal data on the BIM's behalf, as envisaged under this Agreement.

14.4 Customer will:

14.4.1 not pass or allow unauthorised access to personal data to any third parties, other than those that need this information in the course of providing the services, or as otherwise agreed under this Agreement.

14.4.2 take appropriate technical and organisational measures against unauthorised or unlawful processing of any personal data provided by BIM, or any accidental loss, dissemination, destruction or damage of such data.

14.4.3 process any personal data provided by BIM only in accordance with the terms of this Agreement and any lawful instructions reasonably given by BIM from time to time;

14.4.4 not transfer any personal data provided by BIM outside the European Economic Area



without the prior written consent of BIM.

14.4.5 promptly inform BIM if any personal data provided by BIM is lost, or disseminated, or destroyed or becomes damaged, corrupted, or unusable.

14.4.6 notify BIM within 3 Working Days if it receives a request from a data subject for access to that data subject's personal data and provide BIM with all reasonable co-operation and assistance in relation to any such request.

14.4.7 notify BIM immediately if it becomes aware of any unauthorised or unlawful processing or accessing of any personal data provided by BIM.

14.5 BIM will not pass or allow unauthorised access to personal data to any third parties, other than those that need this information in the course of its business or providing services, or as otherwise agreed under this and other agreements.

## **15. Warranties**

15.1 Each of the parties warrants that:

15.1.1 it has the requisite power and authority to enter into this Agreement and to perform fully its obligations under this Agreement;

15.1.2 it has not entered into and will not enter into any arrangement which would restrict or inhibit the exercise by the other party of its rights under this Agreement; and

15.1.3 it will fulfil its obligations under this agreement in accordance with all applicable laws, regulations and codes of practice.

## **16. Notices**

16.1 Any notice to be given under this Agreement will be in writing and will be:

16.1.1 delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its notice address set out on the Particulars (or such other address as may be notified from time to time); or

16.1.2 sent by email or electronically to the other party's notice Contact email address set out on the Particulars.

16.2 A notice delivered by hand will be deemed to have been received when delivered (or if delivered outside Business Hours, at 9 am on the first Working Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received 2 Working Days after posting. A notice sent by email will be deemed to have been received on acknowledgement or demonstration of receipt by the receiving party.

16.3 The parties each accept that communication between them may be electronic. We may contact you by e-mail or provide you with information by posting notices on the BIM Website. You agree to this electronic means of communication and you acknowledge that all such communications that we provide to you electronically comply with any legal or contractual requirement that such communication be made in writing.

16.4 Either Party can change its address for service to another address by giving reasonable written notice to the other Party.

## **17. Non-Competition**

17.1 During the term of this Agreement and for 12 months after its expiry or termination, each party will not:

17.1.1 solicit, or seek to solicit, any Personnel of the other party; or

17.1.2 entice, or seek to entice, any staff of the other party to transfer their services away from that party.

17.2 For the purposes of clause 25.1, the terms "solicit" and "entice" do not include searches for employees through general recruitment efforts or that are not otherwise focused on persons employed by the other party.

## **18. Entire Agreement**

18.1 This Agreement constitutes the whole agreement between the parties and supersedes any previous agreement between them.

18.2 Each party acknowledges that, in entering into this Agreement, it has not (save as otherwise stated herein) relied and does not rely on any statement, representation (whether innocent or

negligent), assurance or warranty (a "Representation") of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

18.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation will be for breach of contract.

18.4 No variation of this Agreement or Particulars will be valid unless prior approved in writing by BIM. We reserve the right and without notice to amend the BIM Website, BIM Database and the terms and conditions of the Agreement from time to time by posting the amended version/s. It is your responsibility to check the current terms and conditions of the Agreement when accessing the BIM Website, BIM Database or otherwise using Services and AU Download, or obtaining Access. By using them you consent to the applicability of the updated Agreement.

## **19. Dispute Resolution**

19.1 Both parties are committed to a policy of fair, honest and ethical business practices and conduct, and to full compliance with all applicable Laws, and require every employee in every area of business activity to meet extremely high standards of conduct. Adherence to the foregoing policy is an essential term and condition of the Agreement.

19.2 If a complaint cannot be resolved to both Parties' satisfaction, or if a disagreement arises as to the relationship or Agreement:

(i) In the first instance, each Party shall each nominate a senior executive, vested with authority to settle the disagreement, to meet and attempt in good faith to resolve the dispute. The meeting will be held promptly at the request of either Party at a time reasonably proposed by the Party requesting the meeting and both parties will fully explain all reasons and facts relating to their position and use their best endeavours to resolve the dispute.

(ii) If the Parties are unable to resolve the complaint/dispute following such meeting, then the parties will submit to mediation before an independent mediator for all disputes save for unpaid debts unless the debt is disputed, in which case the dispute will be mediated.

## **20. General**

20.1 These terms and conditions (together with any documents referred to herein or required to be entered into pursuant to these terms and conditions) contain the entire agreement and understanding between us and supersede all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of these terms and conditions and any such document.

20.2 Communications will often be sent by us to you by email; they are for the addressee only and may not be copied, altered, distributed, disclosed, reviewed, stored or otherwise used by anyone without prior written authorisation. If you are not the addressee or this email is received in error, please inform the sender immediately and delete it. Attachments are usually sent in "Word" and/or "pdf" format and are checked for viruses, but the recipient is responsible for ensuring that any attachment is virus-free before opening it.

20.3 You acknowledge that in placing an order you have not relied on, and shall have no remedy in respect of, any statement, representation, warranty, understanding, promise or assurance (whether negligently or innocently made) of any person other than as expressly set out in these terms and conditions. Nothing in this clause shall operate to limit or exclude any liability for fraudulent misrepresentation.

20.4 Each party agrees to in all respects act in good faith towards the other party keeping the other party's best interests and good will and reputation paramount.

20.5 Customer will provide all reasonable co-operation and assistance to BIM to facilitate the performance of BIM's obligations under this Agreement and will comply at all times with any terms and conditions that relate to the use of any third-party property. Customer acknowledges and agrees that the performance by BIM of its obligations under this Agreement may be dependent, conditional or otherwise reliant upon the performance by Customer or a third party of certain obligations, or the supply by the Customer of certain materials, information, access or other requirements and BIM will not be liable for any delay or failure to perform its obligations under this Agreement if the Customer or such third party does not perform such obligations or supply such materials, information, access or requirements (or does not perform or supply them in good time).

20.6 All rights and opportunities not expressly granted to Customer under this Agreement are hereby reserved by BIM and Customer shall not use, purport to use and/or permit a third party to use

such rights and/or opportunities.

20.7 This Agreement will not constitute a partnership, joint venture or agency agreement and neither party shall act or hold itself out as acting on behalf of the other; or, in the case of the Customer/s, on behalf of any member of the BIM group.

20.8 You may not assign, sub-license, sub-contract or otherwise transfer to any third party (including any group company) any rights and/or obligations under this Agreement without the prior written consent of the BIM. We may assign, sub-license, sub-contract or transfer our rights to any third party at any time.

20.9 If you directly or indirectly engage in or are complicit in any breach of any of Clauses 3, 5, 7 or 8 above you agree: (i) to fully indemnify BIM, and (ii) to forthwith pay to BIM an additional fee for each and every breach of these clauses in the amount of at least £20,000 for the first failure, £200,00 for the second and for each further failure a fine increasing by a factor of 5 each subsequent time, and (iii) that this payment is in addition to and without prejudice to any rights, remedies, claim damages, and costs BIM may have in respect of such breaches, and (iv) that you may also be liable for prosecution for copyright and database right infringement and breach of contract by us or any third-party owners of that right.

20.10 The Parties will in engaging in their activities relating to this Agreement and performing their obligations under this Agreement comply with all applicable Laws, and all guidelines and/or instructions issued by or on behalf of BIM from time to time (including, without limitation, all health and safety rules and regulations and any other reasonable security requirements).

20.11 If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall:

- (i) to the extent required, be deemed not to form part of the terms, and the validity and enforceability of the other provisions of the terms shall not be affected; and
- (ii) apply with the minimum modification necessary to make it legal, valid and enforceable.

Such illegality or unenforceability shall not be deemed to affect the remaining provisions hereof and, in such event, this Agreement shall be construed to the full extent it may lawfully be construed so as to give effect to the intents and purposes expressed herein.

## **21. Governing law and jurisdiction**

This Agreement and all disputes or claims arising out of or in connection with it shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual claims) arising out of or in connection with its subject matter.