

# Master BoatTrack Subscription Agreement

This Master Subscription Agreement will be effective as of April 15, 2021.

**THIS AGREEMENT CONSTITUTES A BINDING CONTRACT ON YOU AND GOVERNS THE USE OF AND ACCESS TO THE SERVICES BY YOU, AGENTS AND END-USERS WHETHER IN CONNECTION WITH A PAID OR FREE TRIAL SUBSCRIPTION TO THE SERVICES.**

**By accepting this Agreement, either by accessing or using a Service, or authorizing or permitting any Agent or End-User to access or use a Service, You agree to be bound by this Agreement as of the date of such access or use of the Service (the “Effective Date”). If You are entering into this Agreement on behalf of a company, organization or another legal entity (an “Entity”), You are agreeing to this Agreement for that Entity and representing to BoatTrack that You have the authority to bind such Entity and its Affiliates to this Agreement, in which case the terms “Subscriber,” “You,” “Your” or a related capitalized term herein shall refer to such Entity and its Affiliates. If You do not have such authority, or if You do not agree with this Agreement, You must not use or authorize any use of the Services.**

The purpose of this Agreement is to establish the terms and conditions under which Subscriber may purchase BoatTracks’s Services and Consulting Services as described in a Sales Order or in a Statement of Work signed by You.

In the event of any inconsistency or conflict between the terms of the Agreement and the terms of any Sales Order or Statement of Work, the terms of the Sales Order or Statement of Work shall control.

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**1. Access to the Services**

**1.1 Service.** We will make the Services and Your Service Data available to You pursuant to this Agreement and the applicable Sales Order Form(s) and Documentation in accordance with Your Service Plan. We will use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except (a) during Planned Downtime (of which We will give advance notice via Our Site or to the Account owner); and (b) Force Majeure Events.

**1.2 Support.** We will, at no additional charge, provide applicable standard customer support for the Services to You as detailed on the applicable Site and Documentation, and upgraded support, if purchased during normal business hours of 8am-5pm EST (except holidays).

**1.3 Modifications.** You acknowledge that BoatTrack may modify the features and functionality of the Services during the Subscription Term. BoatTrack shall provide You with commercially reasonable advance notice of any deprecation of any material feature or functionality.

**1.4 Additional Features.** We will notify You of applicable Supplemental Terms or alternate terms and conditions prior to Your activation of any Additional Features. The activation of any Additional Features by You in Your Account will be considered acceptance of the applicable Supplemental Terms or alternate agreement where applicable.

**1.5 Extension of Rights to Affiliates.** You may extend Your rights, benefits and protections provided herein to Your Affiliates and to contractors or service providers acting on Your or Your Affiliates’ behalf, provided that You remain responsible for Your and their compliance hereunder.

## 2. Use of the Services

- 2.1 Login Management.** Access to and use of the Services is restricted to the specified number of individual Agents permitted under Your subscription to the applicable Service. You agree and acknowledge that an Agent Login cannot be shared or used by more than one (1) individual per Account. However, Agent Logins may be reassigned to new individuals replacing former individuals who no longer require ongoing use of the Services. You and Your Agents are responsible for maintaining the confidentiality of all Agent Login information for Your Account. Absent a written license from BoatTrack expressly stating otherwise, You agree and acknowledge that You may not use the Services, including but not limited to the API, to circumvent the requirement for an individual Agent Login for each individual who (a) leverages the Services to interact with End-Users; (b) Processes data related to interactions with End-Users; or (c) Processes data related to interactions originating from a Non-BoatTrack Service that provides functionality similar to functionality provided by the Services and which would, pursuant to this Agreement, require an individual Agent Login if utilizing the Services for such interaction. Further, Subscriber shall not use the API or any Software in such a way to circumvent applicable Service Plan restrictions or Agent licensing restrictions that are enforced in the Service user interface. Should BoatTrack discover that Your use of a Service violates this Agreement or the Service Plan features and limitations on Our Site or Documentation, BoatTrack reserves the right to charge You, and You hereby agree to pay for said overuse, in addition to other remedies available to Us.
- 2.2 Compliance.** As between You and BoatTrack, You are responsible for compliance with the provisions of this Agreement by Agents and End-Users and for any and all activities that occur under Your Account, which BoatTrack may verify from time to time. Without limiting the foregoing, You are solely responsible for ensuring that Your use of the Services is compliant with all applicable laws and regulations as well as any and all privacy policies, agreements or other obligations You may maintain or enter into with Agents or End-Users.
- 2.3 Content and Conduct.** In addition to complying with the other terms, conditions and restrictions set forth in this Agreement, You agree to the following:

### Illegal and Fraudulent Activities

The Services may not be used to engage in illegal or fraudulent activities with the software, including in infringement of the intellectual property rights of others, or deceptive behavior to deceive or impersonate other individuals or organizations. Further, in Your use of the Services You agree not to (a) modify, adapt, or hack the Services or otherwise attempt to gain unauthorized access to the Services or related systems or networks; (b) falsely imply any sponsorship or association with BoatTrack or the BoatTrack Group; (c) use the Services in any unlawful manner, including, but not limited to, violation of any person's privacy rights; (d) attempt to bypass or break any security or rate limiting mechanism on any of the Services or use the Services in any manner that interferes with or disrupts the integrity, security or performance of the Services and its components; (e)

attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any Software making up the Services; (f) use or launch any automated system that accesses a Service (i.e., bot) in a manner that sends more request messages to a Service server in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser; or (g) launch or facilitate, whether intentionally or unintentionally, a level of traffic on any of the Services, or engage in any other conduct that materially and adversely impacts the security, availability, or stability of the Services.

## **Malicious Products and Activities**

The Services may not be used to transmit viruses, malware, or other harmful code. This includes sending content or automated traffic, generated by bots or otherwise, that harms networks, services or other infrastructure of BoatTrack or any third party.

## **Hateful Activities**

The Services may not be used to transmit or host hate speech, advocate violence or terrorism, distribute graphically violent or obscene content, or to support hateful, racist, libelous, or discriminatory activities. Further, use of the Services by organizations that promote or normalize hate against individuals, hateful speech, violence, terrorism or whose primary purpose is inciting hatred or violence, is prohibited.

## **Sexually Explicit Content**

The Services may not be used to distribute content that contains nudity, graphic sex acts, or sexually explicit material.

- 2.4 System Requirements.** A high-speed Internet connection is required for proper transmission of the Services. You are responsible for procuring and maintaining the network connections that connect Your network to the Services including, but not limited to, browser software that supports protocols used by BoatTrack, including the Transport Layer Security (TLS) protocol or other protocols accepted by BoatTrack, and to follow procedures for accessing services that support such protocols. We are not responsible for notifying You, Agents or End-Users of any upgrades, fixes or enhancements to any such software or for any compromise of data, including Service Data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by BoatTrack. We assume no responsibility for the reliability or performance of any connections as described in this Section.
- 2.5 Internal Business Purposes Only.** Unless otherwise authorized by BoatTrack in this Agreement or expressly agreed to otherwise in writing by BoatTrack, You may not use the Services in any manner where You act as a service bureau or to provide any outsourced business process services on behalf of more than one (1) third party (other than Affiliates) through a single Account. Accordingly, You agree not to license, sublicense, sell, outsource, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or resell the Services to any third party, other than authorized Agents and End-Users in furtherance of Your internal business purposes as expressly permitted by this Agreement, unless expressly agreed to otherwise in writing by BoatTrack. Without limiting the foregoing, Your right to access and use the API is also subject to the restrictions and policies implemented by BoatTrack from time to time with respect to the API as set forth in the Documentation or otherwise communicated to You in accordance with this Agreement.
- 2.6 No Competitive Access.** You may not access the Services if You are a direct competitor of the BoatTrack Group, except with BoatTrack's express prior written consent. You may not access the Services for competitive purposes.

### **3. Term, Cancellation And Termination**

- 3.1 Term.** Unless Your Account and subscription to a Service is terminated in accordance with the terms of this Agreement or unless otherwise provided for in a Sales Order (a) Your subscription to a Service (including any and all Deployed Associated Services) will renew for a Subscription Term equivalent in length to the then expiring Subscription Term and (b) the Subscription Charges applicable to any subsequent Subscription Term shall be Our standard Subscription Charges for the applicable Service Plan and Deployed Associated Services at the time such subsequent Subscription Term commences
- 3.2 Cancellation.** Either Party may elect to terminate Your Account and subscription to a Service as the end of Your then current Subscription Term by providing notice, in accordance with this Agreement, no less than thirty (30) days prior to the end of such Subscription Term.

**3.3 Mutual Termination for Cause.** A Party may terminate this Agreement for cause (a) upon written notice to the other Party of a material breach if such breach remains uncured at the expiration of thirty (30) days from the date of the breaching Party's receipt of such written notice; or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

If this Agreement is terminated by You in accordance with this Section, We will refund You any prepaid fees covering the remainder of the Subscription Term as of the effective date of termination.

If this Agreement is terminated by Us in accordance with this Section, You will pay any unpaid fees covering the remainder of the Subscription Term pursuant to all applicable Sales Orders. In no event will Our termination for cause relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**3.4 Payment Upon Termination.** Except for Your termination under Section 3.3, if You terminate Your subscription to a Service or cancel Your Account prior to the end of Your then effective Subscription Term, or if We terminate or cancel Your Account pursuant to Section 3.3, in addition to any other amounts You may owe BoatTrack, You must immediately pay any then unpaid Subscription Charges associated with the remainder of such Subscription Term.

**3.5 No Refunds.** Except for Your termination rights under Section 3.3, if You elect to terminate Your subscription to a Service or cancel Your Account prior to the end of Your then current Subscription Term, no refunds or credits for Subscription Charges or other fees or payments will be provided to You.

**3.6 Export of Service Data.** For thirty (30) days after the effective date of termination or expiration of this Agreement, upon Your request, We will export your service data and provide you with copies of the exported data. Thereafter, We will have no obligation to maintain or provide any Service Data, and, as provided in the Documentation, We will, unless prohibited by law or legal order, delete Your Service Data in Our Services in accordance with Our Data Deletion Policy available on BoatTracks's Policies and Procedures Website.

## 4. Billing, Plan Modifications and Payments

- 4.1 Payment and Billing.** All Subscription Charges are due in full upon commencement of Your Subscription Term, or with respect to a Deployed Associated Service, at the time such Deployed Associated Service is purchased, subscribed to or otherwise deployed, unless otherwise expressly set forth in this Agreement, an Order Form, a Statement of Work, or in Supplemental Terms, or as otherwise agreed for Usage Charges. If You fail to pay Your Subscription Charges or any other charges indicated on any Order Form or Statement of Work, or in any Supplemental Terms, within ten (10) business days of invoice or within five (5) days of Our notice to You that payment is delinquent, in addition to Our other remedies, We may suspend or terminate access to and use of such Service by You, Agents and End-Users.
- 4.2 Upgrades.** If You choose to upgrade Your Service Plan or increase the number of Agents authorized to access and use a Service during Your Subscription Term, any incremental Subscription Charges associated with such upgrade will be charged in accordance with the remaining Subscription Term. In any future Subscription Term, Your Subscription Charges will reflect any such upgrades.
- 4.3 Downgrades.** You may not downgrade Your Service Plan or reduce the number of Agents during any Subscription Term. If You desire to downgrade Your Service Plan or reduce the number of Agents under any Service Plan for a subsequent Subscription Term, You must provide BoatTrack with thirty (30) days advance written notice prior to the end of Your then current Subscription Term. You must demote any downgraded Agents prior to the beginning of the subsequent Subscription Term. Downgrading Your Service Plan may cause loss of content, features, or capacity of the Service as available to You under Your Account, and BoatTrack does not accept any liability for such loss.
- 4.4 Taxes.** Unless otherwise stated, Our charges do not include any Taxes. You are responsible for paying Taxes except those assessable against the BoatTrack Group measured by its net income. We will invoice You for such Taxes if We believe We have a legal obligation to do so and You agree to pay such Taxes if so invoiced.

**4.5 Payment Agent.** If You pay by credit card or certain other payment instruments, the Services provide an interface for the Account owner to change credit card information (e.g. upon card renewal). Payments made by credit card, debit card or certain other payment instruments for the BoatTrack Service are billed and processed by BoatTrack's Payment Agent. You hereby authorize the Payment Agent to bill Your credit card or other payment instrument in advance on a periodic basis in accordance with the terms of the Service Plan for the Services, and for periodic Subscription Charges applicable to Deployed Associated Services to which You subscribe until Your subscription to the Services terminates, and You further agree to pay any Subscription Charges so incurred. If applicable, You hereby authorize BoatTrack and the Payment Agent to charge Your credit card or other payment instrument to establish prepaid credit. The Account owner will receive a receipt upon each acceptance of payment by the Payment Agent, or they may obtain a receipt from within the Services to track subscription status. To the extent the Payment Agent is not BoatTrack, the Payment Agent is acting solely as a billing and processing agent for and on behalf of BoatTrack and shall not be construed to be providing the applicable Service. The Payment Agent uses a third-party intermediary to manage credit card processing and this intermediary is not permitted to store, retain or use Your billing information except to process Your credit card information for the Payment Agent. Additional credit card processing fees may apply.

## 5. Confidential Information

Each Party will protect the other's Confidential Information from unauthorized use, access or disclosure in the same manner as each Party protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted pursuant to this Agreement, each Party may use the other Party's Confidential Information solely to exercise its respective rights and perform its respective obligations under this Agreement and shall disclose such Confidential Information (a) solely to the employees and/or non-employee service providers and contractors who have a need to know such Confidential Information and who are bound by terms of confidentiality intended to prevent the misuse of such Confidential Information; (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or (c) as reasonably necessary to comply with any applicable law or regulation. Except for BoatTrack's Security Non-Disclosure Agreement, the provisions of this Section 5 shall control over any non-disclosure agreement by and between the Parties and any such non-disclosure agreement shall have no further force or effect with respect to the exchange of Confidential Information after the execution of this Agreement. To be clear, any exchange of Confidential Information prior to the execution of this Agreement shall continue to be governed by any such non-disclosure agreement.

## 6. Ownership and Security of Service Data

- 6.1** Ownership of Service Data. Subscriber shall retain ownership rights to all Service Data Processed under the terms of this Agreement
- 6.2** No Sale of Service Data. BoatTrack will never sell, rent, or lease Your Service Data to any third party. We will not share Your Service Data with third parties, except as permitted by this Agreement and in order to provide, secure and support the Services.
- 6.3** Safeguards. The BoatTrack Group will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Service Data. BoatTrack prioritizes customer trust. We know that the security and integrity of customer data is important to our customer's values and operations. BoatTrack prioritizes the privacy and data security in a myriad of ways, which are updated to conform to industry security standards.

## 7. Temporary Suspension

We reserve the right to restrict functionalities or suspend the Services (or any part thereof), Your Account or Your and/or Agents' or End-Users' rights to access and use the Services and remove, disable or quarantine any Service Data or other content if (a) We reasonably believe that You, Agents or End-Users have violated this Agreement; or (b) We suspect or detect any Malicious Software connected to Your Account or use of a Service by You, Agents or End-Users. Unless legally prohibited from doing so, We will use commercially reasonable efforts to contact You directly via email to notify You when taking any of the foregoing actions. We shall not be liable to You, Agents, End-Users or any other third party for any such modification, suspension or discontinuation of Your rights to access and use the Services. Any suspected fraudulent, abusive, or illegal activity by You, Agents or End-Users may be referred to law enforcement authorities at Our sole discretion.

## 8. Free Trials

If You register for a free trial for any of the Boat Track Services, We will make such Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s); (b) the start date of any subscription to such Service purchased by You for such Service(s); or (c) termination of the trial by Us in Our sole discretion. Trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Please review the applicable Documentation during the trial period so that You become familiar with the features and functions of the Services under applicable Service Plans before You make Your purchase. **ANY SERVICE DATA YOU ENTER INTO A SERVICE, AND ANY CONFIGURATIONS OR CUSTOMIZATIONS MADE TO A SERVICE BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICE AS COVERED BY THE TRIAL, PURCHASE THE APPLICABLE SERVICE, OR EXPORT SUCH SERVICE DATA, BEFORE THE END OF THE TRIAL PERIOD.**

## 9. Beta Services

From time to time, We may make Beta Services available to You at no charge. You may choose to try such Beta Services in Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to Supplemental Terms that will be presented to You. Beta Services are not considered “Services” under this Agreement; however, all restrictions, Our reservation of rights and Your obligations concerning the Service, and use of any Non-BoatTrack Services shall apply equally to Your use of Beta Services. Unless otherwise stated or communicated to You, any Beta Services trial period will expire upon the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

## 10. Intellectual Property Rights

**10.1** Each Party shall retain all rights, title and interest in any Intellectual Property Rights. The rights granted to You, Agents and End-Users to use the Service(s) under this Agreement do not convey any additional rights in the Service(s) or in any Intellectual Property Rights of BoatTrack associated therewith. Subject only to limited rights to access and use the Service(s) as expressly stated herein, all rights, title and interest in and to the Services and all hardware, Software and other components of or used to provide the Services, including all related Intellectual Property Rights, will remain with BoatTrack and belong exclusively to BoatTrack.

**10.2** The BoatTrack Group shall have a fully paid-up, royalty-free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual license to implement, use, modify, commercially exploit, incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback We receive from You, Agents, End-Users, or other third parties acting on Your behalf. The BoatTrack Group also reserves the right to seek intellectual property protection for any features, functionality or components that may be based on or that were initiated by suggestions, enhancement requests, recommendations or other feedback We receive from You, Agents, End-Users, or other third parties acting on Your behalf.

**10.3** You may only use the BoatTrack Marks with written authorization from BoatTrack. You may not attempt, now or in the future, to claim any rights in the BoatTrack Marks, degrade the distinctiveness of the BoatTrack Marks, or use the BoatTrack Marks to disparage or misrepresent BoatTrack or Our Services. BoatTrack's ability to use Subscriber's trademarks, service marks, service or trade names or logos will be set forth in an Order Form or by mutual agreement of the Parties.

## **11. Representations, Warranties And Disclaimers**

**11.1** Each Party represents and warrants to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such Party's execution, delivery or performance of this Agreement; and (c) the execution, delivery and performance of the Agreement does not and will not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

**11.2** Warranties. We warrant that during an applicable Subscription Term (a) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Service Data; and (b) the Services will perform materially in accordance with the applicable Documentation. For any breach of a warranty in this section, Your exclusive remedies are those described in Section 3.3 herein.

**11.3** Disclaimers. EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 12.2, THE SITES AND THE SERVICES, INCLUDING ALL SERVER AND NETWORK COMPONENTS, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY YOU FROM US OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

## 12. Indemnification

- 12.1** Indemnification by Us. We will indemnify, defend and hold You harmless from and against any claim brought by a third party against You by reason of Your use of a Service as permitted hereunder, alleging that such Service infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret (an "IP Claim"). We shall, at Our expense, defend such IP Claim and pay damages finally awarded against You in connection therewith, including the reasonable fees and expenses of the attorneys engaged by BoatTrack for such defense, provided that (a) You promptly notify BoatTrack of the threat or notice of such IP Claim; (b) We will have the sole and exclusive control and authority to select defense attorneys, and defend and/or settle any such IP Claim (however, We shall not settle or compromise any claim that results in liability or admission of any liability by You without Your prior written consent); and (c) You fully cooperate with BoatTrack in connection therewith. If use of a Service by You, Agents or End-Users has become, or, in Our opinion, is likely to become, the subject of any such IP Claim, We may, at Our option and expense, (i) procure for You the right to continue using the Service(s) as set forth hereunder; (ii) replace or modify a Service to make it non-infringing; or (iii) if options (i) or (ii) are not commercially reasonable or practicable as determined by BoatTrack, terminate Your subscription to the Service(s) and repay You, on a pro-rata basis, any Subscription Charges previously paid to BoatTrack for the corresponding unused portion of Your Subscription Term for such Service(s). We will have no liability or obligation under this Section 14.1 with respect to any IP Claim if such claim is caused in whole or in part by (x) compliance with designs, data, instructions or specifications provided by You; (y) modification of the Service(s) by anyone other than BoatTrack or BoatTrack Personnel; or (z) the combination, operation or use of the Service(s) with other hardware or software where a Service would not by itself be infringing. The provisions of this Section 14.1 state the sole, exclusive and entire liability of BoatTrack to You and constitute Your sole remedy with respect to an IP Claim brought by reason of access to or use of a Service by You, Agents or End-Users.
- 12.2** Indemnification by You. You will indemnify, defend and hold BoatTrack harmless against any claim brought by a third party against BoatTrack (a) arising from or related to use of a Service by You, Agents or End-Users in breach of this Agreement; or (b) alleging that Your use of the Service or Your Service Data infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret; provided that (i) We promptly notify You of the threat or notice of such claim; (ii) You will have the sole and exclusive control and authority to select defense attorneys, and defend and/or settle any such claim (however, You shall not settle or compromise any claim that results in liability or admission of any liability by Us without Our prior written consent); and (iii) We fully cooperate with You in connection therewith.

## 13. Limitation of Liability

- 13.1** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL EITHER PARTY TO THIS AGREEMENT, OR THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, SUPPLIERS OR LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY AFFILIATE FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (BEING DATA LOST IN THE COURSE OF TRANSMISSION VIA YOUR SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF BOATTRACK), BUSINESS INTERRUPTION, LOSS OF GOODWILL, COSTS OF COVER OR REPLACEMENT, OR FOR ANY OTHER TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR FOR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY THE OTHER PARTY OR ANY AFFILIATE IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR CONSULTING SERVICES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.
- 13.2** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE BOATTRACK GROUP'S AGGREGATE LIABILITY TO YOU, ANY AFFILIATE, OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, THE SERVICES OR CONSULTING SERVICES, SHALL IN NO EVENT EXCEED THE SUBSCRIPTION CHARGES AND/OR CONSULTING FEES PAID BY YOU DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. YOU ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION 15.2 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES AND CONSULTING FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. WE HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE YOU WITH THE RIGHTS TO ACCESS AND USE THE SERVICES AND/OR THE CONSULTING SERVICES PROVIDED FOR IN THIS AGREEMENT.

**13.3** THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN WILL APPLY IN AGGREGATE TO ANY AND ALL CLAIMS BY SUBSCRIBER AND ITS AFFILIATES AND SHALL NOT BE CUMULATIVE.

**13.4** Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or for personal injury or death, which means that some of the above limitations may not apply to You. IN THESE JURISDICTIONS, THE BOATTRACK GROUP'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

**13.5** Any claims or damages that You may have against BOATTRACK shall only be enforceable against BoatTrack and not any other entity, nor any officers, directors, representatives or agents of BoatTrack or any other entity.

## 14. Third-Party Service Providers

Third-Party Service Providers. You agree that the BoatTrack Group, and the third-party service providers that are utilized by the BoatTrack Group to assist in providing the Services to You, shall have the right to access Your Account and to use, modify, reproduce, distribute, display and disclose the Personal Data of Your Agents to the extent necessary to provide, secure or improve the Services. Any third-party service providers utilized by the BoatTrack Group will only be given access to Your Account as is reasonably necessary to provide the Services and will be subject to (a) confidentiality obligations which are commercially reasonable and substantially consistent with the standards described in Section 5; and (b) such third-party service provider's agreement to comply with the data transfer restrictions applicable to Personal Data within Service Data as set forth in Section 7.

## 15. Assignment, Entire Agreement, and Amendment

**15.1** Assignment. You may not, directly or indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Your rights under this Agreement, or delegate performance of Your duties under this Agreement, without Our prior written consent, which consent will not be unreasonably withheld. We may, without Your consent, assign this Agreement to any member of the BoatTrack Group or in connection with any merger or change of control of BoatTrack or the BoatTrack Group or the sale of all or substantially all of Our assets provided that any such successor agrees to fulfill its obligations pursuant to this Agreement. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

**15.2 Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes any and all prior agreements between You and BoatTrack with regard to the subject matter hereof. This Agreement shall apply in lieu of the terms or conditions in any purchase order or other order documentation You or any entity which You represent provides (all such terms or conditions being null and void), and, except as expressly stated herein, there are no other agreements, representations, warranties or commitments which may be relied upon by either Party with respect to the subject matter hereof. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind between the Parties, except as may otherwise be expressly provided herein. The headings used herein are for convenience only and shall not affect the interpretation of the terms of this Agreement.

**15.3 Amendment.** We may amend this Agreement from time to time, in which case the new Agreement will supersede prior versions. We will notify You not less than ten (10) days prior to the effective date of any such amendment and Your continued use of the Services following the effective date of any such amendment may be relied upon by BoatTrack as Your consent to any such amendment. Our failure to enforce at any time any provision of this Agreement does not constitute a waiver of that provision or of any other provision of this Agreement.

## 16. Severability

If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

## 17. Relationship of the Parties

The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

## 18. Notice

All notices provided by BoatTrack to You under this Agreement may be delivered in writing by (a) nationally recognized overnight delivery service ("Courier") or U.S. mail to the contact mailing address provided by You on any Order Form; or (b) electronic mail to the electronic mail address provided for Your Account owner. You must give notice to BoatTrack in writing by Courier or U.S. mail to 1435 Piedmont Dr E #102, Tallahassee, FL U.S.A. Attn: Legal Department. All notices shall be deemed to have been given immediately upon delivery by electronic mail; or, if otherwise delivered upon the earlier of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.