

# 21. End User License Agreement

THIS ONLINE END-USER LICENSE AGREEMENT ("AGREEMENT") IS A BINDING LEGAL CONTRACT BETWEEN YOU (THE USER) AND BODO INC. ("WE", "US", OR "BODO"). BY DOWNLOADING, INSTALLING, ACCESSING OR USING THE SOFTWARE, SERVICES, AND ANY OTHER MATERIALS MADE AVAILABLE BY BODO ON THIS SITE OR IN ANY OTHER FORMAT (COLLECTIVELY, THE "SERVICES"), YOU (A) AGREE TO BE BOUND BY THIS AGREEMENT; (B) ACKNOWLEDGE AND AGREE YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF USING THE SERVICES AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT; AND (C) REPRESENT YOU ARE LAWFULLY ABLE TO ENTER INTO CONTRACTS AND ARE OF THE LEGAL AGE OF MAJORITY IN THE JURISDICTION IN WHICH YOU RESIDE (AT LEAST EIGHTEEN YEARS OF AGE IN MANY COUNTRIES/JURISDICTIONS). IF THIS AGREEMENT IS BEING AGREED TO BY A COMPANY OR OTHER LEGAL ENTITY, THEN THE PERSON AGREEING TO THIS AGREEMENT ON BEHALF OF THAT COMPANY OR ENTITY REPRESENTS AND WARRANTS THAT HE OR SHE IS AUTHORIZED AND LAWFULLY ABLE TO BIND THAT COMPANY OR ENTITY TO THIS AGREEMENT.

IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT USE THE SERVICES.

1.Services. Subject to the terms and conditions of this Agreement and, if applicable, your payment of all relevant fees, we grant you a non-exclusive, non-transferable, limited license to access and use our software services, content, and other materials provided by Bodo or its third-party vendors through this Web site or in other format (the "Services") for your internal use only. Certain third-party services may have their own terms and conditions, which will be presented to you in your use of the Services. Your use of those third-party services will indicate your acceptance of the additional terms and conditions. In connection with the Services, we may afford you the ability to interface and interoperate with certain third-party software and to upload data from that software. This functionality is dependent on the operation of the third-party software and is provided on an entirely as-is basis. We may change, modify, or discontinue all or any portion of the Services at any time, without prior notice.

2.Restrictions. You may only use the Services as described in the documentation we make generally available from time to time to our customers for use of the Services (the "Documentation"). Any breach of this Agreement by your employees or agents will constitute a breach by you. Except as expressly authorized by this Agreement, you will not (and will not allow any third-party to): (i) permit any third-party to access and/or use the Services; (ii) decompile, disassemble, or reverse engineer the Services, or attempt to derive the source code, underlying ideas, algorithm or structure of software provided to you in object code form; (iii) use the Services or any of our Confidential Information (as defined below) to develop a competing product or service; (iv) sell, transfer, assign, distribute, rent,

loan, lease, sublicense or otherwise make available the software associated with the Services or its functionality to third parties; (v) modify, translate or otherwise create any derivative works of any software used and made available by Bodo in connection with the Services; (vi) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use the Services for the benefit of any third party; (vii) use the Services, or allow the transfer, transmission, export, or re-export of the Services, including by way of a “deemed export,” in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency; or (viii) remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the Services or Documentation. Nothing in this Agreement shall be construed to give you a right to use, or otherwise obtain access to, any source code from which the software used in connection with the Services or any portion thereof is compiled or interpreted. Under no circumstances, will we be liable or responsible for any use, or any results obtained by the use, of the Services in conjunction with any other software or third-party products. All such use will be at your sole risk.

**3. Proprietary Rights.** You acknowledge that all Services are protected by intellectual property rights of Bodo and its vendors/licensors and that you have no rights to transfer or reproduce the Services or prepare any derivative works with respect to, or disclose Confidential Information pertaining to, the Services. Under no circumstances will you be deemed to receive title to any portion of any Services, title to which at all times will vest exclusively in us and our licensors. This is not a “work made for hire” agreement, as that term is defined in Section 101 of Title 17 of the United States Code (“the Copyright Act”). You will preserve all Services from any liens, encumbrances, and claims of any individual or entity. You will not use any of our information or data to contest the validity of any of our intellectual property or our licensors. Any such use of our information and data will constitute a material, non-curable breach of this Agreement. To the extent you provide us with any content (e.g., graphics, logos, artwork, text, data) for use in connection with the Services (collectively, the “Customer Content”), you grant us a non-exclusive, world-wide, royalty-free license to use the Customer Content for purposes of performing this Agreement. You are responsible for obtaining all rights, permissions, licenses, and consents required to furnish the Customer Content to us for use as described above. You are also responsible for preserving and making adequate backups of the Customer Content and will not rely on us to preserve or make adequate backups of data used in connection with the Services, or to maintain a record of your usage of any part or all of the Services. Your rights in and to the Services and related software are limited to those expressly granted under this Agreement and no other licenses are granted whether by implication, estoppel or otherwise. Bodo reserves all rights, title and interest in and to the Services and related software not expressly granted under this Agreement.

**4. Third Party Software.** The Services may come bundled with, or otherwise include or be distributed with, third party software licensed by a Bodo supplier and/or open source software provided under an open source license (Open Source Software) (collectively,

"Third Party Software"). Notwithstanding anything to the contrary herein, Third Party Software is licensed to you subject to the terms and conditions of the software license agreement accompanying such Third Party Software whether in the form of a discrete agreement, click-through license, or electronic license terms accepted at the time of installation and any additional terms or agreements provided by the third party licensor ("Third Party License Terms"). Use of the Third Party Software by you shall be governed by such Third Party License Terms, or if no Third Party License Terms apply, then the Third Party Software is provided to you as-is, as available, for use in or with the Services and not otherwise used separately. Copyright to Third Party Software is held by the copyright holders indicated in the Third Party License Terms.

5. Feedback. You may provide us with suggestions, comments or other feedback (collectively, "Feedback") with respect to our products and services, including the Services. Feedback is voluntary and we are not required to hold it in confidence. We may use Feedback for any purpose without obligation of any kind. To the extent a license is required under your intellectual property rights to make use of the Feedback, you grant us an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with our business, products, and services, including the enhancement of the Services.

6. Aggregated Data. You grant us a non-exclusive, perpetual, irrevocable, fully-paid-up, royalty free license to use data derived from your use of the Services (the "Aggregated Data") for our business purposes, including the provision of products and services to our customers; provided the Aggregated Data is combined with similar data from our other customers. "Aggregated Data" does not include (directly or by inference) any information identifying you or any identifiable individual. You further grant us the right to (i) use the Aggregated Data in any aggregate or statistical products or reports, (ii) transfer and/or disclose the Aggregated Data upon a sale of our company or its assets or other form of reorganization, (iii) disclose Aggregated Data in a summary report that does not show, display or indicate customer specific or customer identifying information, (iv) provide Aggregated Data to a third party service provider, for analytical purposes, and (v) use the Aggregated Data (without personally identifiable information) to compare with other organizations within the same industry or group. The Aggregated Data will not be considered your Confidential Information.

7. Fees. You will promptly pay Bodo all applicable fees and, as described below, taxes associated with the Services. Except as expressly provided otherwise in this Agreement, all fees (if any) are non-refundable. Payments not made within such time period will be subject to late charges equal to the lesser of (i) one and one-half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. You are responsible for paying all personal property, sales, use and other taxes (excluding taxes based upon our net income) and license and registration fees and other assessments or charges levied or imposed by any governmental body or agency as a result of the execution or performance of this Agreement, including your receipt of the Services. On notice of not

less than sixty (60) days, we may, in our discretion, adjust any or all fees for the Services. You may terminate this Agreement on written notice to us within thirty (30) days of its receipt of our notice to adjust the fees; provided, however, that if you do not object to the adjustment in writing within the foregoing thirty (30) day period then you will be deemed to have agreed to the adjustment.

8. Your Warranties. You represent and warrant that (i) you have full power, capacity, and authority to enter into this Agreement and to grant the license in Section 4 (Proprietary Rights); and (ii) your use of the Services will be in compliance with all applicable local, state, and federal laws and regulations.

9. Indemnification. You will defend and indemnify Bodo and hold it and its affiliates, officers, directors, employees, and agents harmless from any and all claims, actions, proceedings, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees and all related costs and expenses) incurred by them as a result of any claim, judgment, or adjudication related to or arising from any or all of the following: (i) your use of the Services; (ii) breach of any of your obligations, representations, or warranties in this Agreement; or (iii) your failure to comply with applicable laws and regulations.

10. Beta Services. We may designate certain new functionality or services to be made available in connection with the Services as "Beta Services." The Beta Services will not be ready for use in a production environment. Because they will be at an early stage of development, operation and use of the Beta Services may be unpredictable and lead to erroneous results. You acknowledge and agree that: (i) the Beta Services will be experimental and will not have been fully tested; (ii) the Beta Services may not meet your requirements; (iii) the use or operation of the Beta Services may not be uninterrupted or error free; and (iv) your use of the Beta Services will be for purposes of evaluating and testing the new functionality and services and providing feedback to us. Your use of the Beta Services will be subject to all of the terms and conditions of this Agreement relating to the Services. You agree to promptly report any errors, defects, or other deficiencies in the Beta Services to us. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ALL BETA SERVICES ARE PROVIDED "AS-IS" AND "AS-AVAILABLE," WITHOUT WARRANTIES OF ANY KIND. You waive any and all claims, now known or later discovered, that you may have against us and our suppliers and licensors arising out of the Beta Services.

11. Suspension or Termination of Services and Removal of Customer Content. We may, in our sole discretion, suspend your access to the Services for any of the following reasons: (i) to prevent disruption of or damages to, or degradation of, the Services and our systems; (ii) to comply with any law, regulation, court order, or other governmental request; (iii) to otherwise protect us from potential legal liability; (iv) to remove Customer Content that is illegal, offensive, or otherwise inappropriate, in our sole discretion, or (iv) in the event an invoice remains unpaid for more than forty-five (45) or more days from the invoice date. We will restore access to the Services as soon as the event giving rise to suspension has

been resolved. This Section will not be construed as imposing any obligation or duty on us to monitor use of the Services.

## 12. Confidentiality.

12.1 "Confidential Information" means all information or material which (i) gives a party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; or (ii) which from all the relevant circumstances should reasonably be assumed to be confidential and proprietary. Each party's Confidential Information will remain the sole and exclusive property of that party. Confidential Information includes, but is not limited to, the Services. Neither party will have any obligation with respect to confidential information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv) subject to disclosure under court order or other lawful process.

12.2 Treatment of Confidential Information. Each party recognizes the importance of the other party's Confidential Information. In particular, each party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither party would enter into this Agreement without assurance that the information will be protected as provided in this Section 12 and elsewhere in this Agreement. Accordingly, each party agrees as follows: (a) Each party will hold any and all Confidential Information it obtains in strictest confidence and will use and permit use of Confidential Information solely as permitted under this Agreement; and (b) Each party may disclose or provide access to its responsible employees and agents or as otherwise permitted under this Agreement, and may make copies, of Confidential Information only to the extent permitted under this Agreement.

12.3 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that due to the unique nature of the Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable relief from a court of competent jurisdiction in addition to whatever remedies either of them might have at law or equity.

12.4 You agree not to use any Confidential Information of Bodo, and shall restrict your affiliates and sublicensees from using the Confidential Information of Bodo, for purposes of challenging the validity of such Confidential Information, or Bodo's ability to use and exploit such Confidential Information.

13. Limited Warranty; Exclusive Remedy. During the Term, Bodo warrants the Services will materially comply with the requirements of this Agreement and Documentation. In the event of a breach of the foregoing warranty, Bodo's sole and exclusive liability and your sole and exclusive remedy will be to use reasonable efforts to correct the non-conformity. In the event Bodo is unable through reasonable efforts to correct the defective Service,



you may elect to terminate this Agreement and, if applicable, receive a prorated refund of any pre-paid, unused recurring fees.

14.Disclaimer of Warranties.

EXCEPT AS PROVIDED IN SECTION 13 (LIMITED WARRANTY), THE SERVICES ARE PROVIDED "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. BODO AND ITS VENDORS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, OR TITLE/NON-INFRINGEMENT AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. YOU EXPRESSLY AGREE AND ACKNOWLEDGE THAT USE OF SERVICES, IS AT YOUR SOLE RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BODO OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF BODO'S OBLIGATIONS HEREUNDER.

THE SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT BODO AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE THE CUSTOMER CONTENT, WEB-SITES, COMPUTERS, OR NETWORKS. WE WILL NOT BE RESPONSIBLE FOR THOSE ACTIVITIES.

15.Limitation of Liability and Damages. NEITHER BODO NOR ITS VENDORS AND LICENSORS WILL HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING USE OF THE SERVICES EVEN IF BODO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF BODO AND ITS VENDORS AND LICENSORS TO YOU OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR USE OF THE SERVICES IN CONNECTION WITH ANY CLAIM OR TYPE OF DAMAGE (WHETHER IN CONTRACT OR TORT) WILL NOT EXCEED THE TOTAL FEES YOU PAID, IF ANY, DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY WILL APPLY EVEN IF THE EXPRESS WARRANTIES PROVIDED ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

16.Term and Termination. Unless otherwise agreed by the parties, the Agreement shall be on-going until terminated by either party on thirty (30) days prior notice to the other party. In the event we terminate this Agreement for reasons other than breach of contract, any prepaid but unused fees will be refunded.

17. Government Restrictions. Any software or other programming provided by us in connection with this Agreement is commercial computer software as described in DFARS 252.227-7014(a)(1) and FAR 2.101. If acquired by or on behalf of the United States Department of Defense or any component thereof, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

18. USA Patriot Act Notice. The U.S. federal USA Patriot Act ("USA Patriot Act") provides generally for the operator of a communication host and law enforcement to be able to monitor any content, upon request of the operator. We anticipate fully complying with our obligations and availing ourselves of all rights under the USA Patriot Act.

19. General. Except for the payment of fees, if applicable, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, Internet delays and failures, telecommunications failures, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments or government instructions. This Agreement provides the entire agreement between the parties with regard to its subject matter. Except as provided below, this Agreement may not be amended without a writing signed by both parties. We may, at any time and from time-to-time, change the terms of this Agreement. Any changes will be posted on our Web site. In addition, we may also send you a notice about the amended terms via email. If you do not accept the terms of any modification, your only recourse is to terminate this Agreement by sending a termination notice us before the effective date of the amendments. The termination will be effective on the date we receive the notice. The most current version of the Agreement will be available on our Web site and will supersede all previous versions of the Agreement. Your continued use of the Services will constitute your acceptance of the changes. This Agreement will be construed according to, and the rights of the parties will be governed by, the law of the State of California, without reference to its conflict of laws rules. Any action at law or in equity arising out of or directly or indirectly relating to this Agreement may be instituted only in the Federal or state courts located in San Francisco, California. You consent and submit to the personal jurisdiction of those courts for the purposes of any action related to this Agreement, and to extra-territorial service of process. No action, regardless of form, arising out of this Agreement, may be brought by either party more than one (1) year after the cause of action has arisen. You may not assign this Agreement without the prior written consent of Bodo. If any of the provisions of this Agreement are found or deemed by a court to be invalid or unenforceable, they will be severable from the remainder of this

Agreement and will not cause the invalidity or unenforceability of the remainder of this Agreement. Neither party will by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. The following provisions will survive termination or expiration of this Agreement: 4 (Proprietary Rights), 9 (Indemnification), 12 (Confidentiality), 13 (Limited Warranty; Exclusive Remedy); 14 (Disclaimer of Warranties), 15 (Limitation of Liability and Damages), 17 (Government Restrictions), 18 (USA Patriot Act Notice), and 19 (General Provisions). This Agreement may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent) and your acceptance will be deemed binding between us. Neither of us will contest the validity or enforceability of this Agreement and any related documents, including under any applicable statute of frauds, because they were accepted or signed in electronic form.