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1.1 In consideration of you agreeing to abide by the terms of this Licence, the Licensors hereby grant to you a non-exclusive, non-transferable licence to use the Software and the Documentation on the terms of this Licence.

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- (a) install and use the Software for your internal business purposes only;
- (b) make up to 1 copy of the Software for back-up purposes only, provided that this is necessary for the activities permitted by condition 2.1;
- (c) receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by the Licensors from time to time;
- (d) use any Documentation in support of the use permitted under condition 1.1 and make up to 1 copy of the Documentation as is reasonably necessary for its lawful use.

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2.1 Except as expressly set out in this Licence or as permitted by any local law, you undertake:

- (a) not to copy the Software or Documentation except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documentation;
- (c) not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
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  - (iii) is not used to create any software which is substantially similar to the Software;
- (e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- (f) to supervise and control use of the Software and ensure that the Software is used by your employees and representatives in accordance with the terms of this Licence;
- (g) to replace the current version of the Software with any updated or upgraded version or new release provided by the Licensors under the terms of this Licence within a reasonable period of time;
- (h) to include the copyright notice of the Licensors on all entire and partial copies of the Software in any form;
- (i) not to provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person without prior written consent from the Licensors.

- 2.2 You must permit the Licensors and their representatives, at all reasonable times and on reasonable advance notice, to inspect and have access to any premises, and to the computer equipment located there, at which the Software or the Documentation is being kept or used, and any records kept pursuant to this Licence, for the purpose of ensuring that you are complying with the terms of this Licence.

### **3. INTELLECTUAL PROPERTY RIGHTS**

- 3.1 You acknowledge that all intellectual property rights in the Software and the Documentation throughout the world belong to the Licensors, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of this Licence.
- 3.2 You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.

### **4. WARRANTY**

- 4.1 The Licensors warrant that:
- (a) the medium on which the Software is stored and distributed is (at the time it is supplied), and will be for the period of 90 days after that time (**Warranty Period**), free from defects in design, material and workmanship under normal use. If a defect in the medium occurs during the Warranty Period, the Licensors will replace it free of charge if you return it to the Licensor; and
  - (b) during the Warranty Period, the Software will, when properly used, perform substantially in accordance with the functions described in the Documentation, and the Documentation correctly describes the operation of the Software in all material respects.
- 4.2 You acknowledge that the Software has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements.
- 4.3 You acknowledge that the Software may not be free of bugs or errors and you agree that the existence of any minor errors shall not constitute a breach of this Licence.
- 4.4 If, within the Warranty Period, you notify the Licensors in writing of any defect or fault in the Software in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from you

having amended the Software or used it in contravention of the terms of this Licence, the Licensors will, at its sole option, repair or replace the Software, provided that you make available all information that may be necessary to assist the Licensors in resolving the defect or fault, including sufficient information to enable the Licensors to recreate the defect or fault.

- 4.5 The Licensors' obligation under condition 4.4 is subject to compliance by you with the terms of condition 2.1(g)

## **5. LICENSOR'S LIABILITY**

- 5.1 Nothing in this Licence shall exclude or in any way limit the Licensors' liability for fraud, or for death and personal injury caused by its negligence, or any other liability to the extent that it cannot be excluded or limited as a matter of law.

- 5.2 Subject to condition 5.1 the Licensors shall not be liable under or in connection with this Licence or any collateral contract for:

- (a) loss of income;
- (b) loss of business profits or contracts;
- (c) business interruption;
- (d) loss of the use of money or anticipated savings;
- (e) loss of information;
- (f) loss of opportunity, goodwill or reputation;
- (g) loss of, damage to or corruption of data; or
- (h) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract, regulatory action, breach of statutory duty or otherwise.

- 5.3 Subject to condition 5.1 and condition 5.2, the Licensors' maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall be limited to a sum equal to €150

- 5.4 Subject to condition 5.1, condition 5.2 and condition 5.3, the Licensors' liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in the UK.

- 5.5 This Licence sets out the full extent of the Licensors' obligations and liabilities in respect of the supply of the Software and Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensors except as specifically stated in this Licence. Any condition,

warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

## **6. TERMINATION**

6.1 The Licensors may terminate this Licence immediately by written notice to you if:

- (a) You commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service on you of written notice requiring you to do so; or
- (b) a petition for a bankruptcy order to be made against you has been presented to the court; or
- (c) the Licensee (where it is a company) becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986).

6.2 Upon termination for any reason:

- (a) all rights granted to you under this Licence shall cease;
- (b) you must cease all activities authorised by this Licence;
- (c) you must immediately pay to the Licensors any sums due to the Licensor under this Licence; and
- (d) you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to the Licensors (at the Licensors' option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to the Licensors that you have done so.

## **7. TRANSFER OF RIGHTS AND OBLIGATIONS**

7.1 This Licence is binding on you and us and on our respective successors and assigns.

7.2 You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without our prior written consent.

- 7.3 The Licensors may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of their rights or obligations arising under it, at any time during the term of the Licence.

## 8. NOTICES

All notices given by you to the Licensors must be given to International Paint Limited (on behalf of ICOMIA) at Global Yacht Marketing, Stoneygate Lane, Felling, Gateshead, Tyne & Wear, NE10 0JY, United Kingdom. The Licensors may give notice to you at either the e-mail or postal address you provided to it when purchasing the Software. Notice will be deemed received and properly served 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

## 9. EVENTS OUTSIDE THE LICENSORS' CONTROL

- 9.1 The Licensors will not be liable or responsible for any failure to perform, or delay in performance of, any of his obligations under this Licence that is caused by an event outside his reasonable control (**Force Majeure Event**).

- 9.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

- (a) strikes, lock-outs or other industrial action;
- (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
- (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
- (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (e) impossibility of the use of public or private telecommunications networks;
- (f) the acts, decrees, legislation, regulations or restrictions of any government.

- 9.3 The Licensors' performance under this Licence is deemed to be suspended for the period that the Force Majeure Event continues, and he will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under this Licence may be performed despite the Force Majeure Event.

**10. WAIVER**

- 10.1 If the Licensors fail, at any time during the term of this Licence, to insist on strict performance of any of your obligations under this Licence, or if the Licensors fail to exercise any of the rights or remedies to which he is entitled under this Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.
- 10.2 A waiver by the Licensors of any default shall not constitute a waiver of any subsequent default.
- 10.3 No waiver by the Licensors of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

**11. SEVERABILITY**

If any of the terms of this Licence are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

**12. ENTIRE AGREEMENT**

- 12.1 This Licence and any document expressly referred to in it represents the entire agreement between us in relation to the licensing of the Software and Documentation and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing.
- 12.2 We each acknowledge that, in entering into this Licence, neither of us has relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between us before entering into this Licence except as expressly stated in this Licence.
- 12.3 Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date we entered into this Licence (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in this Licence.

**13. LAW AND JURISDICTION**

This Licence is governed by English law. Any dispute arising from, or related to, any term of this Licence shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.