

**PLEASE READ CAREFULLY BEFORE AGREEING TO THESE TERMS:**

This end-user licence agreement (**Agreement**) is a legal agreement between you, the company you represent (**Customer** or **you**) and ImageCat Limited of The Bell House, 57 West Street, Dorking, Surrey, RH4 1BS (**ImageCat, us** or **we**) for:

- Inhance Transaction Version (Basic and Pro), the data supplied with the software, and the associated media (**Software**); and
- any printed materials and online or electronic documents (**Documents**).

We licence use of the Software and Documents to you on the basis of this Licence. We do not sell the Software or Documents to you. We remain the owners of the Software and Documents at all times.

**OPERATING SYSTEM REQUIREMENTS:** THIS SOFTWARE REQUIRES AN INTERNET-ENABLED COMPUTER WITH A MINIMUM BROWSER REQUIREMENT OF:

- MICROSOFT INTERNET EXPLORER 9 AND ABOVE; OR
- MOZILLA FIREFOX CURRENT VERSION;
- GOOGLE CHROME CURRENT VERSION.

**IMPORTANT NOTICE TO ALL USERS:**

- BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYER. THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 20 OF THIS AGREEMENT.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE WILL NOT LICENSE THE SOFTWARE AND DOCUMENTS TO YOU AND YOU MUST DISCONTINUE THE ORDERING PROCESS NOW BY CLICKING ON THE "CANCEL" BUTTON BELOW. IN THIS CASE THE ORDERING PROCESS WILL TERMINATE AND YOU MAY NOT DOWNLOAD OR ORDER ANY SOFTWARE OR DOCUMENTS FROM THIS WEBSITE.

**IMPORTANT NOTICE REGARDING CONSUMERS:**

- THIS IS A BUSINESS TO BUSINESS TRANSACTION, AND AS SUCH YOU ARE NOT PERMITTED TO CANCEL THE AGREEMENT ONCE YOU HAVE PROGRESSED THE ORDER.
- THIS DOES NOT AFFECT YOUR CONSUMER RIGHTS FOR DEFECTIVE DOWNLOADED SOFTWARE OR DOCUMENTS.

**BACKGROUND**

- (A) ImageCat is an international risk management innovation company supporting the worldwide risk and catastrophe management needs of the global insurance industry, government agencies, NGOs and research organisations.
- (B) ImageCat is the legal and beneficial owner and licensor of the Inhance software platform (the **Software**) and is willing to licence You to use these products (the **Services**).
- (C) You wish to enter into a licence agreement with ImageCat to use the Services, including access to certain datasets for use in Your business.
- (D) As part of the Services, ImageCat has agreed to license to You the use of Datasets (as defined below) for a specific business purpose, and to transfer to You the Datasets, on the terms set out in this Agreement.

## 1. Definitions and Interpretation

- 1.1 The definitions in this clause apply in this agreement.

**Account:** Your online account with ImageCat holding Credits for the purchase of Datasets within the Inhance Data Store.

**Additional Services Fees:** fees for additional Services or data provided by ImageCat to You as agreed between the parties from time to time in accordance with this agreement.

**Affiliate:** means, in relation to either party, any entity which controls, is controlled by or is under common control with that party.

**Authorised User:** all members, partners, consultants and employees of the Customer are Authorised Users. In the case of other organisations, Authorised Users includes any person in the business unit or units that we have agreed with you is or are to benefit from the subscription.

**Authorised User Account:** an Inhance account used by an Authorised User to access the Software.

**Basic Version:** The Basic version of Inhance as defined at <http://www.inhancedata.com/plans>

**Commencement Date:** the date you accept these terms and conditions.

**Confidential Information:** any information (including, without limitation, in written, oral, visual or electronic form, or on tape or disk) which is not publicly available including, but not limited to, any information specifically designated by the disclosing party as confidential; any information supplied to the disclosing party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence. This includes know-how and information about design, development, specifications, manuals, instructions, customer lists, sales, marketing, promotion, distribution, business plans, forecasts, and technical or other expertise.

**Content:** all content including text, information, data, software, executable code, images, audio, or video material in any medium or form provided by ImageCat to You.

**Control Panel:** the interface control panel used by You.

**Credit:** Your credit used for the purchase of Datasets within the Inhance Data Store.

**Customer System:** any information technology system or systems owned or operated by You to which Datasets are delivered or within which Datasets are distributed or from which Datasets are redistributed in accordance with this Agreement, including Your data processing facilities, data files and documents needed for processing and systems for the permissioning and control of the Datasets and the Services

**Dataset:** a unit of data accessible through the Software..

**Dataset Order:** an order for a Dataset purchased through the Inhance Data Store.

**Dataset Provider:** a provider of ImageCat and Third Party Datasets available for purchase through the Inhance Data Store, as detailed at Schedule 1 from time to time.

**Derivative Work:** work generated or developed following the date of this agreement which is based on the Content or an underlying work in relation to this (including translations, dramatisations, fictionalisations, motion picture versions, sound recordings, art reproductions, abridgements, condensations, or any other form in which a work may be recast, transformed or adapted).

**Derived Data:** any Datasets (wholly or in part) Manipulated to such a degree that it:

- (a) cannot be identified as originating or deriving directly from the Dataset or the Services and cannot be reverse-engineered such that it can be so identified;
- (b) is not capable of use substantially as a substitute for the Datasets or the Services; and
- (c) contains data derived directly from the Dataset that has been manipulated or combined with other data.

**Free Initial Period:** (Pro version only) a period of 30 days from the Commencement Date for which no Monthly Service Fee shall be payable for accessing the Services.

**ImageCat Affiliate:** a third-party with whom ImageCat or its assigns from time to time subcontract, transfer, charge or deal with in relation to the provision of the Software.

**ImageCat Group:** Imagecat Ltd or its subsidiaries or holding companies from time to time and any subsidiary of any holding company or any subsidiary from time to time.

**Information:** information owned by ImageCat and obtained by You relating to the Software.

**Inhance Data Store:** the interface control panel used by You to access the Datasets.

**Initial Period:** a period of 30 days commencing on the Commencement Date.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Manipulate:** to combine or aggregate the Datasets (wholly or in part) with other data, information or Datasets to adapt the Datasets (wholly or in part).

**Manipulated Data:** any Datasets that have been Manipulated. Manipulated Data includes any Derived Data.

**Minimum Credit Level:** means a sufficient credit level to access the Comparison Datasets in the Inhance Data Market as detailed at set out at Appendix 1.

**Monthly Service Fee:** (Pro version only) the monthly fee payable by You to ImageCat to access the Software.

**New Version:** any new version of the Software which from time to time is publicly marketed and offered for purchase by ImageCat in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

**Open-Source Software:** open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

**Personal Data:** shall have the meaning in the Data Protection Act 1998 or other equivalent legislation.

**Permitted Use:** the uses permitted under clause 16.1 or clause 16.2 and Schedule 2.

**Pro Version:** The Pro version of Inhance as defined at <http://www.inhancedata.com/plans>

**Purpose:** the reason for which, and the manner in which, the Licensee may use the Content.

**Release:** generally available upgrades and enhancements to the Dataset or Software.

**Renewal Period:** a period of 1 month commencing on the expiry of the previous Initial Period or Renewal Period.

**Reserved Rights:** all rights in, or in relation to, the Content that are not expressly granted to Licensee under this agreement, including all Derivative Works, and any other rights (whether known now, or created later, and whether or not in the contemplation of the parties at the time of this agreement).

**Security Feature:** any Security Feature including any key, PIN, password or token.

**Services Fees:** the Monthly Service Fee (for Pro version only) and the fee for the provision of the Services as set out when you order Datasets using the Software, as these fees are varied from time to time in accordance with this Agreement.

**Software:** "Inhance" is an exposure data analysis and enhancement solution for the (re)insurance industry. Full details of the Software package that you will be entitled to are set out by the corresponding package you have subscribed to at <http://inhancedata.com/plans>.

**System:** Your computer system.

**Third Party User:** (as applicable) Your customer permitted to use the Content.

**Third Party User Agreement:** any agreement (which may, for the avoidance of doubt, be in electronic form, including a click-wrap agreement) entered into by You or any Customer Group Company and a third party relating to the use of the Services, Derived Data or Derived Works (wholly or in part) by that third party, which must be reflective of at least the minimum requirements of the terms, duties and obligations set out in this Agreement.

**Usage Data:** data relating to Your use of the Software collected by ImageCat, which may include Personal Data.

**Working day:** a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in the United Kingdom.

**You or Your:** The party entering into this Agreement with us by accepting these terms. Where the context so requires, You or Your includes your Authorised Users.

1.2 Clause, Appendix and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Appendices form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Appendices.

## 2. Scope

2.1 In consideration of payment by you of the agreed fees and you agreeing to abide by the terms of this Licence, we hereby grant to you a non-exclusive, non-

transferable licence to use the Software, the Datasets and the Documents on the terms of this Licence.

2.2 You may:

- (a) use the Software for your internal business purposes only and may not share or permit other users to use the Software without the express written permission of ImageCat;
- (b) use any Documents in support of the use permitted under condition 2.2 and make copies of the Documents as are reasonably necessary for its lawful use;
- (c) (Pro version only) have up to 100 separate Authorised Users with unique Authorised User Accounts.

2.3 This Agreement (including the licences hereunder) starts on the Commencement Date and ends on the first of the following events:

- (a) (Pro version only) the end of the monthly subscription period (unless we have agreed with you to renew this Agreement); or
- (b) termination of this Agreement under clause 21.

**3. Restrictions**

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

- (a) not to copy the Software, Datasets or Documents 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, Datasets or Documents;
- (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;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
  - (i) is used only for the purpose of achieving inter-operability of the Software with another software program; and
  - (ii) is not unnecessarily disclosed or communicated without our prior written consent to any third party; and

(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 include our copyright notice on all entire and partial copies you make of the Software on any medium; and

(g) not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person without prior written consent from us.

3.2 You will take all necessary steps to ensure that Authorised Users comply with the provisions of clause 3.1 and other applicable terms in this Agreement.

#### **4. Connection**

4.1 ImageCat shall use reasonable efforts to make connection to the Services available on the Commencement Date.

4.2 You shall ensure that it promptly complies with any minimum hardware configuration requirements specified by ImageCat for the purpose of establishing connectivity between Your System and the Services.

4.3 Each party shall bear its own costs of establishing that connectivity.

4.4 You may purchase Datasets by submitting to ImageCat a Dataset Order in the agreed form. ImageCat may reject any such Dataset Order.

4.5 ImageCat shall, within a reasonable period after any such Dataset Order has been submitted and accepted, provide the relevant Dataset to You by the agreed method of delivery.

4.6 Once the relevant Dataset has been provided by the agreed method of delivery, You may not cancel or amend the relevant Dataset Order without the prior written consent of ImageCat.

#### **5. Services**

5.1 During the Term ImageCat shall supply the Services to You.

5.2 ImageCat may change at any time, with as much prior notice to You as is reasonably practicable:

(a) the content, format or nature of the Services or the Datasets; and

(b) the means of access to the Datasets or the Services.

## 6. Charges

- 6.1 For the performance of the Services, You shall pay to ImageCat the Services Fees.
- 6.2 If you have signed up for a Basic version you shall not be charged to access the Inhance platform. If you have signed up for a Pro version you shall be charged the Monthly Service Fee to access the Inhance platform which shall be payable after the Free Initial Period.
- 6.3 You shall at all times maintain a Minimum Credit Level.
- 6.4 For the performance of any Additional Services, You shall pay to ImageCat the Additional Services Fees.
- 6.5 Any Service Fees or any Inhance Credit payable will be payable by credit card via the Inhance credit card payment process (or as otherwise directed by ImageCat in writing), and any Additional Services Fees shall be payable in advance of the commencement of service as required by ImageCat.
- 6.6 Credit must be purchased by You in advance before use via the Inhance credit card payment process in the 'My Account' page of the Control Panel.
- 6.7 Dataset orders will not be processed until the credit card payment has been authorised by your credit card issuing company.
- 6.8 ImageCat may charge interest at an annual rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, calculated on a daily basis in respect of any sum that is due and unpaid, that interest to run from the date on which that sum is due and payable until receipt by ImageCat of the full amount, whether before or after judgment.
- 6.9 ImageCat reserves the right to restrict or suspend Services to Customer for late payment of any Service Fees.
- 6.10 All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by You at the rate and in the manner for the time being prescribed by law.
- 6.11 ImageCat may, at any time after the first anniversary of the Commencement Date, by giving 90 days' prior written notice vary the Charges, the basis on which they are calculated, the Services and any other provisions of this Agreement.
- 6.12 Where an amendment to the provisions of this Agreement (other than the Charges) is required as a result of an addition to the Services or relevant Service (including, for example, an amendment to acknowledge third-party rights),



ImageCat may give You reasonable notice in writing of the necessary amendments that will take effect on the date specified in that notice.

- 6.13 ImageCat shall be free to set, and from time to time amend, its charges for the Redistribution of the Datasets and any products or services incorporating any Datasets.
- 6.14 You may terminate the relevant Service from the date on which that variation is intended to take effect, provided that You give ImageCat written notice of termination of that Service within 60 days of the date of ImageCat's notice, in the following circumstances:
- (a) where ImageCat's notice of variation concerns the Charges; or
  - (b) You can show that the variation in question will result in a material reduction in the rights granted under clause 16.1 in respect of the Services or the relevant Service,

in which case, You shall be entitled to a refund of any Charges already paid for the Services or that Service (as the case may be) in respect of any period following termination under this clause.

## **7. Account, Credits and purchase of Datasets**

- 7.1 During the term of this agreement ImageCat shall make the Account available to You through the Control Panel.
- 7.2 You may add Credits to its Account using the Control Panel, or through other means as directed by ImageCat from time to time.
- 7.3 You may purchase specific Datasets by submitting to ImageCat an order in the form specified by ImageCat from time to time.
- 7.4 ImageCat shall, within a reasonable period after any such Dataset Order has been submitted and accepted, provide the Dataset to You through the Software.
- 7.5 Once the relevant Dataset has been provided through the Software, You may not cancel or amend the Dataset Order without the prior written consent of ImageCat.
- 7.6 On expiry or early termination by You of this agreement any outstanding Credit shall be returned to You by ImageCat at its cash value less a nominal handling fee being the greater of 5% or £30.
- 7.7 In the event that this agreement is terminated for any reason other than as set out at clause 7.6 any Credit held on Your Account shall be forfeit and retained by ImageCat.

## 8. Audit

8.1 You shall keep, in paper and electronic form, at your normal place of business detailed, accurate and up-to-date records, Returns, Third Party User Agreements and books of account (**Records**), in each case during the previous three years:

- (a) showing all payments made by You in connection with this Agreement including the Charges;
- (b) containing evidence of its compliance with its warranties and obligations under this Agreement including, for clarity, those under the Standard Contractual Clauses (together, **Customer's Obligations**); and
- (c) showing the steps taken by You to comply with Your User Restrictions and the Third Party User Restrictions.

You shall ensure that the Records are sufficient to enable ImageCat to verify Your compliance with its obligations under this clause 8.

8.2 You shall permit ImageCat and its third-party representatives (which, in respect of the Datasets, will comprise any independent or impartial inspection agents or auditors, selected by ImageCat and not reasonably objected to by You), on reasonable notice during Normal Business Hours, but without notice in case of any reasonably suspected breach of this clause 8, to:

- (a) gain (physical and remote electronic) access to, and take copies of, the Records and any other information held at Your premises or on Your System;
- (b) to meet with Your personnel whom You will procure to provide all explanations reasonably necessary to perform the audit effectively; and
- (c) to inspect all Records and Customer Systems,

for the purpose of reviewing, auditing or certifying the accuracy of the Returns and Your compliance with Your Obligations. Such audit rights shall continue for three years after termination of this Agreement. You shall give all necessary assistance to the conduct of such audits during the term of this Agreement and for a period of three years after termination of this Agreement.

8.3 Any request by ImageCat to exercise its rights under clause 8.2 will, insofar as it relates to any Datasets (wholly or in part), be subject to any necessary consent or approval from a regulatory or supervisory authority within Your country, which consent or approval You will attempt to obtain in a timely fashion.

8.4 If any such audit or certificate reveals that there has been an underpayment or overpayment of any Charges in respect of the period covered by the audit or certificate, the balance of the Charges due to either party shall become immediately liable for payment.

- 8.5 The cost of any such audit shall be borne by ImageCat, except where an underpayment is found after the procedures in this clause 8 have been followed and the amount of that underpayment is 5% or more of the actual Charges due in respect of the relevant Accounting Period. In that case, the cost shall be borne by You and payable on demand.

## **9. Unauthorised use**

If any unauthorised use is made of the Datasets or Software and such use is attributable to Your act or default or a Third Party User or a third party that has acquired the Datasets or Materials from You or a Third Party User (including breach of any Customer User Restrictions or any Third Party User Restrictions) then, without prejudice to ImageCat's other rights and remedies:

- (a) You shall immediately be liable to pay ImageCat an amount equal to the Charges that ImageCat would have charged, together with interest at the rate provided for in clause 6.8, had ImageCat or You (as the case may be) authorised the unauthorised user at the beginning of the period of that unauthorised use from the date of such use to the date of payment; and
- (b) ImageCat may require You to discontinue the supply of Datasets to a third party reasonably suspected by ImageCat of that unauthorised use or breach.

## **10. Confidentiality**

10.1 The term Confidential Information does not include any information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 10);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) was known to the receiving party before the information was disclosed to it by the disclosing party; or
- (e) the parties agree in writing is not confidential or may be disclosed.

10.2 Each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use any Confidential Information except for the Permitted Use; or

- (b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 10.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Use, provided that:
  - (a) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 10.
- 10.4 You acknowledge that ImageCat's Confidential Information includes:
  - (a) any software or other materials created by ImageCat in connection with the Services;
  - (b) the Usage Data; and
  - (c) any datasets.
- 10.5 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 10.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in this Agreement, are granted to or imposed on the other party, or are to be implied from this Agreement.
- 10.7 The provisions of this clause 10 shall continue to apply after termination of this Agreement.

## **11. Announcements**

No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

## **12. Security and passwords**

- 12.1 You shall ensure that the Datasets and Software are kept secure and shall use the best available security practices and systems applicable to the use of the Datasets and Software to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or Distribution of the Datasets and the Software.

- 12.2 Where ImageCat uses Security Features in relation to the Services (wholly or in part), the Security Features must, unless ImageCat notifies You otherwise, be kept confidential and not lent, shared, transferred or otherwise misused.
- 12.3 If You become aware of any misuse of any Datasets or the Software in connection with this Agreement that could compromise the security or integrity of the Datasets or the Software or otherwise adversely affect ImageCat or any security breach or if You learn or suspect that any Security Feature has been revealed to or obtained by any unauthorised person, You shall, at Your expense, promptly notify ImageCat and fully co-operate with ImageCat to remedy the issue as soon as reasonably practicable.
- 12.4 You agree to co-operate with ImageCat's reasonable security investigations.
- 12.5 Immediately following any security breach, the parties shall co-ordinate with each other to investigate the security breach. You agree to reasonably co-operate with ImageCat in ImageCat's handling of the matter, including:
- (a) assisting with any investigation;
  - (b) providing ImageCat with physical access to any facilities and operations affected;
  - (c) facilitating interviews with Your employees, former employees and others involved in the matter; and
  - (d) making available all relevant records, logs, files, data reporting and other materials required by ImageCat.
- 12.6 ImageCat's obligations under clause 12.4 and clause 12.5 shall be performed at Your reasonable expense, except to the extent that the security breach arose out of any negligence or wilful default of ImageCat.
- 12.7 ImageCat may change Security Features on notice to You or Your Users for security reasons.
- 12.8 You shall take reasonable precautions to preserve the integrity of any Datasets processed by it and to prevent any corruption or loss of such Datasets.
- 12.9 The parties shall agree a back-up procedure that shall require them to back up Datasets. You shall promptly inform ImageCat if any Datasets is lost or destroyed or becomes damaged, corrupted, or unusable.

### **13. Customer's obligations and Standard Contractual Clauses**

- 13.1 You shall:
- (a) only use the Software and the Datasets in accordance with the Permitted Use;

- (b) not make copies of the Datasets unless expressly agreed by ImageCat;
  - (c) not extract, re-utilise, use, exploit, Redistribute, disseminate, copy or store the Datasets other than for the Permitted Use;
  - (d) not do anything that may materially damage the reputation of ImageCat; and
  - (e) not perform the Services in any way contrary to any law or regulation or any regulatory code, guidance or request.
- 13.2 The parties agree that on the date of this agreement they shall complete all relevant details in, and enter into, the Standard Contractual Clauses.
- 13.3 The parties agree that they will co-operate to register the Standard Contractual Clauses with any supervisory authority in any member state of the European Economic Area or to procure approval from any such supervisory authority (as the case may be) where the same is required and, without limitation, that they will provide additional information about the transfer referred to in the Standard Contractual Clauses where required or requested to do so by any such supervisory authority.
- 13.4 The parties acknowledge that they have agreed that You will respond to enquiries from data subjects and the Information Commissioner concerning processing of the Datasets by You.
- 13.5 If You receive any complaint, notice or communication that relates directly or indirectly to the processing of the Datasets or to either party's compliance with the Data Protection Act 1998, it shall immediately notify ImageCat and, if You are unwilling or unable to respond, it shall provide ImageCat with full co-operation and assistance in relation to any such complaint, notice or communication.
- 13.6 You shall notify ImageCat within 3 working days if it receives a request from a data subject for access to that person's Datasets and, if You is unwilling or unable to respond, it shall provide ImageCat with full co-operation and assistance in relation to any such request.
- 13.7 You shall take reasonable steps to ensure the reliability of all its employees who have access to the Datasets.
- 13.8 Without limiting the effect of clause 13.7, You shall ensure that all employees:
- (a) are informed of the confidential nature of the Datasets; and
  - (b) are aware both of Your duties and their personal duties and obligations under relevant laws and this Agreement.
- 13.9 You shall ensure that access to the Datasets is limited to:

- (a) those employees who need access to the Datasets for the Permitted Use; and
  - (b) in the case of any access by any employee, such part or parts of the Datasets as is or are strictly necessary for performance of that employee's duties.
- 13.10 You shall notify ImageCat immediately if it becomes aware of any advance in technology and methods of working that mean that You should revise the security measures set out in or referred to in this Agreement.

#### **14. Cookies**

- 14.1 You consent to ImageCat:
- (a) installing on Customer Systems and using software tools, including cookies, to collect Usage Data for the Permitted Use (Usage Data); and
  - (b) retaining and processing Usage Data for the Permitted Use (Usage Data) for a reasonable period after it is generated and, where required by law, for a longer period.
- 14.2 You agree, as a condition of using the Services, to assist ImageCat in giving relevant notice to, and procuring consent to the use of cookies on Customer Systems and Access Devices from, Your Users and the Third Party Users, respectively, for the Permitted Use (Usage Data).

#### **15. Export**

- 15.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 15.2 Each party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it which substantially replicates the one set out in clause 15.1; and
  - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 16. Licence and Obligations

16.1 ImageCat grants to You a non-exclusive, non-transferable, revocable, licence only during the Term, subject to Your User Restrictions and the Third Party User Restrictions, to:

- (a) use the Services internally testing or implementing the Services and integrating them in Your System to the extent reasonably necessary for the Purpose;
- (b) access, view and Manipulate Datasets and create Derived Data;
- (c) store the Datasets and Manipulated Data on Your System;
- (d) Distribute the Datasets and Manipulated Data to Third-Party Users;
- (e) Redistribute the Services, the Datasets and Manipulated Data to any Third Party User;
- (f) use (but not modify) any ImageCat materials in support of the activities referred to in this clause 16.1; and
- (g) make copies of the Datasets for the purpose of back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Datasets.

16.2 Unless agreed in writing between ImageCat and You, You may not in any Third Party User Agreement, permit the Third Party User to:

- (a) Redistribute limited excerpts of the Datasets on a non-systematic basis; and
- (b) create and Redistribute Derived Data to its clients on a non-systematic basis.

16.3 Unless agreed in writing between ImageCat and You, You may not, in any Third Party User Agreement, grant the Third Party User any licence to use the Services, Datasets, Derived Data or Derived Work other than a non-exclusive, revocable, personal, non-transferable, non-sub-licensable sub-licence to use the Services, Datasets, Derived Data or Derived Work (**Third Party User Licence**).

16.4 Except as expressly provided in this Agreement, You shall not:

- (a) use the Services (wholly or in part) in its products or services; or
- (b) Redistribute the Services (wholly or in part).

16.5 You agree to comply with the Permitted Use requirements as set out at Schedule 2.

16.6 Any failure on Your behalf to comply with the Permitted Use requirements for any Dataset shall be deemed an Unauthorised Use.



- 16.7 If any Unauthorised Use is also made of the Software or Datasets and such use is attributable to the act or default of, or through, You (including breach of any user requirements as set out by ImageCat from time to time) then, without prejudice to ImageCat's other rights and remedies:
- (a) You shall immediately be liable to pay ImageCat an amount equal to the Credits that ImageCat would have charged, had ImageCat or You (as the case may be) authorised the unauthorised user at the beginning of the period of that unauthorised use; and
  - (b) ImageCat may suspend Your access to the Software.
- 16.8 The parties acknowledge that, except as provided to the contrary in this Agreement, You may not use the Datasets or the Software (in each case, wholly or in part) for internal purposes. For clarity, internal purposes includes the use of the Datasets or the Software (in each case, wholly or in part) by, or for the benefit of, any person other than Your employee.
- 16.9 You shall:
- (a) ensure that all Third Party User Agreements shall include provisions that substantially replicate the Third Party User Restrictions;
  - (b) notify ImageCat if You become aware of any breach of any Third Party User Agreement or of any unauthorised use of any Datasets, Materials or Services and promptly take all reasonable steps to enforce compliance with that Third Party User Agreement, prevent further breach and secure an appropriate remedy including suspending the delivery of the Services on ImageCat's reasonable request;
  - (c) observe Your User Restrictions; and
  - (d) use all reasonable endeavours to ensure that the Third Party User Restrictions are adhered to.

## **17. Intellectual Property Rights ownership**

- 17.1 You acknowledge that:
- (a) all Intellectual Property Rights in the Datasets and the Software are the property of ImageCat or its licensors, as the case may be;
  - (b) you shall have no rights in or to the Datasets or the Software other than the right to use them in accordance with the express terms of this Agreement;
  - (c) ImageCat or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the Datasets; and
  - (d) any goodwill generated through Your use of the Inhance trade marks shall belong only to ImageCat.

- 17.2 You assign to ImageCat, and shall assign to it, with full title guarantee all Intellectual Property Rights in any development of the Materials and in any Manipulated Data it may create, by way of future assignment.
- 17.3 You shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at ImageCat's cost, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
- 17.4 The Intellectual Property Rights assigned to ImageCat under clause 17.2 shall be deemed to be included in the Licence from the date when such rights arise.
- 17.5 You shall co-operate with ImageCat to protect the goodwill and reputation of the Services.
- 17.6 Any display of the Services by You shall:
- (a) credit, wherever technically and commercially feasible, ImageCat, any licensor of ImageCat or any other source of the Datasets specified by ImageCat as the source of the Datasets.
- 17.7 You acknowledge that reference in any element of the Materials to trade names or proprietary products where no specific acknowledgement of such names or products is made does not imply that such names or products may be regarded by You as free for general use, outside the scope of the use of the Materials authorised by this Agreement.

## **18. Intellectual Property Rights obligation**

- 18.1 ImageCat undertakes to defend You from and against any claim or action that the provision, receipt or use of the Datasets or Materials (wholly or in part) infringes any UK Intellectual Property Right of a third party (**IPR Claim**) and shall be responsible for any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against You as a result of, or in connection with, any such IPR Claim, provided that, if any third party makes a IPR Claim, or notifies an intention to make a IPR Claim against You, You shall:
- (a) give written notice of the IPR Claim to ImageCat as soon as reasonably practicable;
  - (b) not make any admission of liability in relation to the IPR Claim without the prior written consent of ImageCat;
  - (c) at ImageCat's request and expense, allow ImageCat to conduct the defence of the IPR Claim including settlement; and
  - (d) at ImageCat's expense, co-operate and assist to a reasonable extent with ImageCat's defence of the IPR Claim.
- 18.2 Clause 18.1 shall not apply where the IPR Claim in question is attributable to:

- (a) possession, use, development, modification or retention of the Datasets or Materials (wholly or in part) by You other than in accordance with this Agreement, provided that the obligations in clause 18.1 shall not apply to the extent that the relevant Claim was attributable to the use of any Manipulated Data;
  - (b) Your failure to provide a suitable environment for connecting Your System to the Services in breach of clause 4.2;
  - (c) use of the Datasets or the Software (wholly or in part) in combination with any hardware or software not supplied or specified by ImageCat to the extent that the infringement would have been avoided by the use of the Datasets or the Software (wholly or in part) not so combined;
  - (d) use of the Datasets (wholly or in part) in combination with any data not supplied or specified by ImageCat to the extent that the infringement would have been avoided by the use of the Datasets (wholly or in part) not so combined; or
  - (e) use of a non-current Release to the extent that the infringement would have been avoided by the use of the current Release.
- 18.3 If any IPR Claim is made, or in ImageCat's reasonable opinion is likely to be made, against You, ImageCat may at its sole option and expense:
- (a) procure for You the right to continue using, developing, modifying or retaining the Datasets or the Software (wholly or in part) in accordance with this Agreement;
  - (b) modify the Datasets or the Software (wholly or in part) so that they cease to be infringing;
  - (c) replace the Datasets or the Software (wholly or in part) with non-infringing items; or
  - (d) terminate this Agreement immediately by notice in writing to You in accordance with clause 21.
- 18.4 This clause 18 constitutes Your sole and exclusive remedy and ImageCat's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 20.6.
- 19. Warranties**
- 19.1 ImageCat warrants that it has the right to license the receipt and use of Datasets and Materials as specified in this Agreement.
- 19.2 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

- 19.3 Without limiting the effect of clause 19.2, ImageCat does not warrant that:
- (a) the supply of the Datasets or use of the Software will be free from interruption;
  - (b) the Services will run on Your System;
  - (c) the Datasets are accurate, complete, reliable, secure, useful, fit for purpose or timely; or
  - (d) the Datasets has been tested for use by You or any third party (including any Third Party User) or that the Datasets will be suitable for or be capable of being used by You or any third party.

## **20. Limitation of liability**

- 20.1 You acknowledge that:
- (a) the use and interpretation of the Datasets requires specialist skill and knowledge of insurance and reinsurance markets;
  - (b) You have that skill and knowledge and undertake that it will exercise that skill and knowledge and appropriate judgment when using the Datasets;
  - (c) You shall be solely responsible, as against ImageCat and any Data Provider, for any opinions, recommendations, forecasts or other conclusions made or actions taken by any Customer Group Company, any client of any Customer Group Company (including any Third Party User) or any other third party based (wholly or in part) on the Datasets unless otherwise set out in clause 20; and
  - (d) it is in the best position to ascertain any likely loss it may suffer in connection with this Agreement, that it is therefore responsible for making appropriate insurance arrangements to address the risk of any such loss and that the provisions of this clause 20 are reasonable in these circumstances.
- 20.2 Neither party excludes or limits liability to the other party for:
- (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by negligence;
  - (c) a breach of any terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (d) any matter in respect of which it would be unlawful for the parties to exclude liability.
- 20.3 Subject to clause 20.2, ImageCat shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
  - (b) any loss or liability (whether direct or indirect) under or in relation to any other contract;
  - (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
  - (d) any loss or corruption (whether direct or indirect) of data or information (except in respect of the Datasets, as set out in the Standard Contractual Clauses).
- 20.4 Neither party shall be liable to the other for punitive damages in respect of any breach of any obligation under this Agreement relating to the protection of the Datasets.
- 20.5 Clause 20.3 shall not prevent claims that fall within the scope of clause 20.6 for:
  - (a) direct financial loss that is not excluded under any of the categories set out in clause 20.3(a) to clause 20.3(b); or
  - (b) tangible property or physical damage.
- 20.6 Subject to clause 20.2, ImageCat's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall in all circumstances be limited to the amount paid by You to ImageCat during the 12 month period immediately before the date on which the cause of action first arose.
- 20.7 Any dates quoted for delivery of the Services are approximate only, and the time of delivery is not of the essence. ImageCat shall not be liable for any delay in delivery of the Services that is caused by an event within the scope of clause 22 or Your failure to provide ImageCat with adequate delivery instructions or any other instructions that are relevant to the supply of the Services or Your failure to comply with clause 4.2.
- 20.8 Without limiting the effect of the other provisions of this clause 20, if this Agreement is terminated for any reason other than termination by You on the ground of ImageCat's material breach under clause 21.7(b), ImageCat shall not be liable:
  - (a) to provide You with the Datasets or any product, service or solution relating to the Datasets; or
  - (b) for the consequences of Your inability to comply with the terms of any other arrangements that You may have entered into with any third party including any Third Party User.

20.9 You shall indemnify ImageCat against any claims, losses, damages, costs (including all legal fees) and expenses incurred by or awarded against ImageCat or any Data Provider arising out of or in connection with:

- (a) access to or use, Distribution or Redistribution of Datasets or Materials by any Customer Group Company or any Third Party User otherwise than in accordance with this Agreement (including any inaccurate or incomplete Return); or
- (b) any non-personal data or information provided by You to ImageCat,

**(Claims).**

20.10 If any third party makes a Claim, or notifies an intention to make a Claim against ImageCat, ImageCat shall:

- (a) give written notice of the Claim to You as soon as reasonably practicable;
- (b) not make any admission of liability in relation to the Claim without Your prior written consent;
- (c) at Your request and expense, allow You to conduct the defence of the Claim including settlement; and
- (d) at Your expense, co-operate and assist to a reasonable extent with Your defence of the Claim.

20.11 Subject to You Use Restrictions and the Third Party User Use Restrictions not having been breached, the indemnity set out in clause 20.9 shall not apply to any Claim if it has arisen out of or in connection with any negligence or wilful default of ImageCat.

20.12 You acknowledge that each Dataset Provider and any other provider of services to ImageCat has the benefit of and may enforce the exclusions and limitations set out in this clause 20 and the indemnity set out in clause 20.9, as if the provisions of this clause 20 were set out in full in this Agreement and each reference to ImageCat were replaced by that Dataset Provider or other provider (as the case may be).

## **21. Term and termination**

21.1 This Agreement shall commence on the Commencement Date and shall remain in force, unless terminated earlier in accordance with clause 21.3 and clause 21.7, for the Initial Period. The Term shall automatically be extended for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period, unless a party gives written notice to the other party in accordance with clause 21.2 or 21.3.

- 21.2 ImageCat may terminate this Agreement in respect of the Services (wholly or in part) on written notice to You at any time it reasonably determines that the provision of the Services in question has become unlawful and provided that ImageCat ceases to provide the Services in question to all Third Party Users of the Services in question.
- 21.3 If you have signed up to the Pro version you may give notice to terminate at any time during the Free Initial Period at which point the Agreement shall immediately terminate.
- 21.4 After the Free Initial Period You may terminate this Agreement for the Pro version in respect of the Services by giving 30 days notice in writing to ImageCat for termination the following month (for which you will be required to pay the Monthly Service Fee).
- 21.5 You may terminate this Agreement in accordance with clause 6.14 and ImageCat may terminate this Agreement in accordance with clause 18.3(d). If You are in breach of any of its obligations for the protection of the Datasets under this Agreement, then ImageCat may temporarily suspend the transfer of the Datasets to You until the breach is repaired or this Agreement is terminated.
- 21.6 If you have signed up to the Basic version this Agreement shall terminate automatically following 90 continuous days of account inactivity
- 21.7 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified to make that payment;
  - (b) the other party commits a material breach of any material term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so;
  - (c) the other party:
    - (i) suspends, or threatens to suspend, payment of its debts;
    - (ii) is unable to pay its debts as they fall due or admits inability to pay its debts;
    - (iii) (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
    - (iv) (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or

- (v) (being a partnership) has any partner to whom any of clause 21.7(c)(i) to clause 21.7(c)(iv) apply;
  - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
  - (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the other party's assets and that attachment or process is not discharged within 14 days;
  - (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 21.7(c) to clause 21.7(i) (inclusive);
  - (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - (l) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 21.8 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 21.9 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.



- 21.10 On any termination of this Agreement for any reason or expiry of the Term, You shall immediately pay any outstanding amounts owed to ImageCat under this Agreement and, within a reasonable period of termination or expiry, shall:
- (a) ensure that there is no further Redistribution of the Datasets to Third Party Users;
  - (b) ensure that there is no further use of the Software or Datasets in any of Your products, applications or services, provided that You shall not be obliged to remove from its products, applications and services any Datasets incorporated into them in accordance with this Agreement before termination or expiry; and
  - (c) inform ImageCat, the Third Party Users and their respective Third Party Users that the Datasets is no longer being provided by You.
- 21.11 On any termination of this Agreement for any reason or expiry of the Term and subject to the proviso in clause 21.10(b):
- (a) each party shall as soon as reasonably practicable return or destroy (as directed in writing by the other party) all data, information, software, and other materials provided to it by the other party in connection with this Agreement including all materials containing or based on the other party's Confidential Information (together, **Termination Data**), except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in clause 10; and
  - (b) without limiting the effect of clause 21.11(a) and subject to the exception set out in clause 21.11(a), You shall as soon as reasonably practicable ensure that all Datasets and Manipulated Data (including any Derived Data) is deleted from Your System and the respective information technology systems of all its Third Party Users.
- 21.12 For clarity, Termination Data does not include any Datasets.
- 21.13 In the event of termination of this Agreement, You must return all Datasets and all copies of the Datasets subject to these clauses to ImageCat immediately or, at ImageCat's choice, You will destroy all copies of the same and certify to ImageCat that it has done so, unless You are prevented by its national law or local regulator from destroying or returning all or part of such Datasets, in which event the Datasets will be kept confidential and will not be actively processed for any purpose. You agree that, if so requested by ImageCat, it will allow ImageCat, or an inspection agent selected by ImageCat and not reasonably objected to by You, access to its establishment to verify that this has been done, with reasonable notice and during business hours.
- 21.14 On any termination of this Agreement for any reason or expiry of the Term, ImageCat shall refund any unused Credit for the relevant Accounting Period paid by You as at the date of termination or expiry (less a reasonable sum in respect of Your use of the Datasets or the Software to the date of termination),

except where the ground for termination is material breach by You under clause 21.7(b), in which case You shall not be entitled to any refund.

21.15 Each party shall provide written confirmation (in the form of a letter signed by its director) of compliance with clause 21.11(a) and also, in Your case only, clause 21.11(b) and clause 21.13 no later than 14 days after termination of this Agreement.

21.16 If a party is required by any law, regulation, or government or regulatory body to retain any Termination Data that it would otherwise be required to return or destroy under clause 21.11, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. That party shall not be in breach of clause 21.11 with respect to the retained documents or materials, but clause 10 shall continue to apply to them.

## **22. Force majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if that delay or failure results from events, circumstances or causes beyond its reasonable control. In these circumstances the affected party shall be entitled to a reasonable extension of the time for performing its obligations, provided that, if the period of delay or non-performance continues for two months, the party not affected may terminate this Agreement by giving 14 days' written notice to the other party.

## **23. Assignment**

23.1 You may not enter into a Third Party User Agreement with any third party without ImageCat's consent.

23.2 Subject to clause 23.1 this Agreement is personal to You and it shall not assign, transfer, mortgage, charge, sub-contract, declare a trust of or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of ImageCat (which is not to be unreasonably withheld or delayed).

23.3 You confirm it is acting on its own behalf and not for the benefit of any other person.

23.4 ImageCat may at any time assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under this Agreement without Your consent.

**24. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**25. Remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**26. Notice**

26.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by prepaid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

26.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt, or if sent by fax, at 9.00am on the next Business Day after transmission, or otherwise at 9.00am on the second Business Day after posting or at the time recorded by the delivery service.

26.3 This clause 26 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

**27. Entire agreement**

27.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

27.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

27.3 No party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

**28. Variation**

Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**29. Severance**

29.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

29.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

**30. No partnership or agency**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

**31. Third-party rights**

31.1 Except as expressly provided elsewhere in this Agreement or in the Standard Contractual Clauses, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

31.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

**32. Governing law and jurisdiction**

32.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

32.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in

connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## Schedule 1 Dataset Providers

**NOTE:** This is a non-exhaustive list of Dataset Providers and will be modified from time to time.

CODE	DATASET PROVIDER
HS030ASCE	American Society of Civil Engineers
HS019CGS	California Geological Survey
HS025CGS	California Geological Survey
HS033CGS	California Geological Survey
HS037CGS	California Geological Survey
CS001CL	Corelogic
HS042CWSF	Council of Western State Foresters
HS028CSC	CUSEC
CS002DMP	Digital Map Products
HS021DGM	DOGAMI
HS027DGM	DOGAMI
HS038DGM	DOGAMI
HS023FEMA	FEMA
HS034IC	FEMA/ImageCat
HS031FSBC	Florida State Building Code
BS001GADM	GADM
HS040HDFW	Hawaii Division of Forestry and Wildlife
HS001IC	ImageCat
HS004IC	ImageCat
HS009IC	ImageCat
HS015IC	ImageCat
HS034IC	ImageCat
HS002JBA	JBA Risk Management Ltd.
HS006JBA	JBA Risk Management Ltd.
HS010JBA	JBA Risk Management Ltd.
HS011JBA	JBA Risk Management Ltd.
HS012JBA	JBA Risk Management Ltd.
HS044JBA	JBA Risk Management Ltd.
CS003MSB	MSB
HS017NOAA	NOAA/ImageCat
HS008PUK	Home Office/ImageCat
CS004SSM	SkyScraper Media
HS005UN	UN

HS044UN	UN
HS003UR	University of Reading, University of Exeter, MetOffice
HS041USFS	USFS
HS018USGS	USGS
HS022USGS	USGS
HS029USGS	USGS
HS032USGS	USGS
HS020WNR	Washington DNR
HS026WNR	Washington DNR
HS036WNR	Washington DNR

## Schedule 2 Permitted Use (Datasets)

### SOFTWARE AND ALL DATASETS

#### PERMITTED USE

1. You may not use the Software or any Dataset for the operation of any emergency services, nuclear facilities, air traffic control or life support systems, where the use or failure of the Services could lead to death, personal injury or environmental damage.
2. You are expressly forbidden from decompiling, disassembling or otherwise reverse engineering the Software or the composition of any of the Datasets.
3. You may not use screenshots of the Software or any of the Datasets without the prior written consent of ImageCat.
4. You shall limit access to the Services to Your Users or (as appropriate) to Third Party Users.
5. You shall only make copies of the Datasets and the Software to the extent reasonably necessary for the following purposes: back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing.
6. You shall not use the Services for any purpose contrary to any law or regulation or any regulatory code, guidance or request.
7. You shall not extract, reutilise, use, exploit, Redistribute, disseminate, copy or store the Datasets or the Materials for any purpose not expressly permitted by this Agreement.
8. You shall, except to the extent permitted by any applicable law, not copy, modify, decompile, reverse-engineer or create derivative works from the Software.
9. You shall not do anything that may damage the reputation of ImageCat, the Datasets or the Services, including by way of using the Datasets (wholly or in part) in any manner that is pornographic, racist or that incites religious hatred or violence.



CS001CL – CoreLogic

PERMITTED USE

1. Unless expressly authorised in writing by ImageCat, You shall not:
  - 1.1 Disclose, use disseminate, reproduce or publish any portion of the Services in any manner or permit the same;
  - 1.2 Comingle, process or combine any portion of the Services or permit any portion of the Services to be comingled, processed or combined with other data or software from any other source;
  - 1.3 Use the Services to create, enhance or structure any database for resale or distribution;
  - 1.4 Redistribute the Services or Suppliers products over the Internet; or
  - 1.5 Use the Services to create models, analytics, derivative products or other derivative works.
  
2. ImageCat may audit You for the purpose of ensuring Your compliance with the terms and conditions of this Agreement, upon ten days' prior notice. In the audit indicates there is a breach in Your compliance with this Agreement:
  - 2.1 ImageCat may immediate terminate this Agreement and pursue its legal remedies;
  - 2.2 If You do not cooperate with ImageCat's request to audit for compliance, You shall be deemed to have conclusively admitted to a material breach in Your compliance for which ImageCat may immediately terminate this agreement.
  
3. LIMITATION OF LIABILITY: Notwithstanding anything to the contrary in this agreement, ImageCat's total liability and Your exclusive remedy under or related to this agreement is limited to the amount paid to ImageCat for the Services. The existence of multiple claims (whether connected or not) does not increased this amount.

CS002DMP – DMP (Digital Map Products Inc.)

PERMITTED USE

1. Datasets shall only be delivered to You through the Software.
2. ImageCat reserves the right to terminate Your access to Datasets provided by DMP at any time and without cause.
3. In the event of a termination of this agreement in accordance with

clause 20 You shall delete any Datasets received from DMP within three (3) days of receipt of such notice to terminate.

4. You agree to retain at all times any copyright statement relating to any Dataset as supplied by ImageCat from time to time.
5. Datasets may only be integrated into or used with Derived Works that serve as a description of a specific property.

#### CS003MSB – MSB (Marshall & Swift/Boeckh)

##### PERMITTED USE

1. Datasets may only be used by You and Third Party Users for the express purpose of generating valuations for buildings in the USA in connection with quotes for new and renewal insurance policies underwritten by You.
2. Datasets may only be used by You for the generation of component-based reconstruction cost valuations for buildings in the United States of America (Valuations Estimates) in connection with policies underwritten by You or quotes for new and renewal insurance policies underwritten by You. The Datasets and Valuations Estimates may only be used for multiple building account underwriting purposes and may not be used for telephone estimating, claims processing, inspection purposes or per risk underwriting purposes.
3. Submissions for any Dataset will be subject to an average of three (3) business days turnaround.
4. Datasets shall be delivered to You either through the Software or other such mediums as directed by ImageCat from time to time, including, but not limited to, File Transfer Protocol (FTP).
5. ImageCat reserves the right to terminate Your access to Datasets provided by MSB at any time and without cause.
6. In the event of a termination of Your access to such Datasets You shall delete any Datasets received from MSB within three (3) days of receipt of such notice to terminate.

#### CS004SSM – Skyscraper Source Media Inc.

**PERMITTED USE**

1. Datasets may only be used by You and Third Party Users for Your express purpose or Third Party User's normal underwriting and risk and catastrophe management and claims management procedures.
2. Requested updates to Datasets will be made within a 35-day period from the date of acknowledgement of receipt of Your Dataset update request.
3. Dataset updates will be limited to a maximum of 3 per annum.

HS002JBA, HS006JBA, HS010JBA, HS011JBA, HS012JBA, HS044JBA – JBA Risk Management Limited

**PERMITTED USE**

1. The Licence to use the Datasets is personal to You and are non-transferable, revocable and non-exclusive.
  - 1.1 You are only permitted to use the Datasets only on the defined System and solely for the Purpose.
  - 1.2 You are permitted to may make one copy only of the Dataset on the System where necessary to the Purpose, (including any necessary back-up copy) but shall not load all or any part of the Dataset on any computer other than the System.
  - 1.3 You must not reverse engineer or decompile the Datasets, nor do any act which would interfere or derogate from JBA's intellectual property rights in the Datasets, nor shall it authorise any third party to do so. Other than is strictly necessary for the Objective, You shall not merge the Datasets with other data or software, nor translate or convert the Datasets.
  - 1.4 You must not sell, licence, rent, lease, encumber, distribute or otherwise provide the Datasets or Information to any third party.
  - 1.5 You shall treat the Datasets as Confidential Information and subject to equivalent provisions as those in the Agreement which relate to Confidential Information.
  - 1.6 You must agree that it has sole responsibility for protecting its software and

data, and that, save for death and personal injury caused by ImageCat's negligence, ImageCat shall have no liability of any kind to any Third Party Users in respect of the Datasets. In particular, ImageCat shall have no liability for any software or data loss or corruption.

- 1.7 No representations, conditions, warranties or other terms of any kind must be given in respect of the Datasets, and all statutory warranties and conditions are to be excluded to the fullest extent possible.
  - 1.8 You must agree that ImageCat's maximum liability on any account shall be limited to such sum as is the greater of the sum that is paid by You for the Datasets or £1000, and shall acknowledge and agree that such sum is reasonable in the context of this agreement.
  - 1.9 The Licence shall terminate automatically immediately if You are in material breach of any of its obligations in this Appendix. Upon termination (including by expiry) You must within two working days return to all copies of all or part of the Datasets on any tangible medium and must completely delete all electronic copies of all or any part of the Datasets resident in the System or elsewhere.
  - 1.10 You must acknowledge that Datasets is proprietary to the Dataset Provider, and that any provision or disclosure pursuant to Licence shall not confer on You any intellectual property or other rights in relation to the Datasets other than the limited right to use for the Purpose in accordance with the Licence.
  - 1.11 Upon termination, the rights and permissions granted to You shall cease.
- 2.1** Save as expressly authorised to vary in accordance with paragraph 2.17 below, ImageCat shall prohibit You from:
- 2.1.1** modifying, translating, format-changing, enhancing, reproducing, copying (except where strictly necessary for system back up), redistributing, disseminating, selling, dealing with, licensing, encumbering, reverse engineering, disassembling or decompiling the DATA, or any part of thereof, except to the extent permitted by law; and
  - 2.1.2** using the DATA in any manner for the creation of products or services for Distribution; and
  - 2.1.3** using DATA otherwise than for internal use; and

- 2.1.4** assigning or dealing with in any way its rights under You; and
  - 2.1.5** Distributing or granting licences of the DATA (in whatever form) or material derived from DATA (including interrogating DATA); and
  - 2.1.6** Commercial Use.
- 2.2** You must acknowledge and agree that all Intellectual Property Rights in and associated with the DATA are the absolute property of JBA (or where relevant its third party licensors) and that any and all Intellectual Property Rights created as a result of Your DATA Corrections or DATA Updates will vest in JBA, and that You shall use all endeavours to effect any transfers required to ensure or safeguard JBA ownership.
- 2.3** The licence must terminate automatically in the event that You materially breach any of the requirement/obligations set out in this Appendix.
- 2.4** Should You at any time receive a request for information ('Information Access Request') under the Information Access Regimes pursuant to which the DATA might be disclosed then You will within 5 days of receipt of the access request.
- 2.4.1** notify ImageCat and JBA;
  - 2.4.2** provide ImageCat and JBA with details of the access request and the DATA that may be disclosed; and
  - 2.4.3** consult with ImageCat and JBA as to whether the DATA constitutes information which is exempt from disclosure or publication pursuant to the Information Access Regimes and/or pursuant to the matters set out above.
- 2.5** You will notify ImageCat (or where relevant the Affiliate) and JBA within 24 hours of the final decision in relation to disclosure of the DATA and no less than 72 hours before any proposed disclosure as to what, if any, of the DATA is proposed to be disclosed.
- 2.6** The Contracts (Rights of Third Parties) Act 1999 shall apply for the benefit of JBA such that JBA may enforce any of the terms on You which relate to disclosure under the Information Access Regimes, limitation on JBA's liability or infringement of Intellectual Property Rights in the DATA.
- 2.7** If JBA provides any assistance, support or services ('Assistance'), including training and consultancy, to You in connection with or following Customer or Third Party User Contract, JBA's total liability (save in respect of liability which cannot by law be excluded or limited) in connection with such Assistance shall not exceed the value of the JBA Royalty paid by ImageCat to JBA in respect of You in question in the twelve months immediately preceding JBA providing such Assistance, except where

**2.7.1** JBA and Customer or Third Party User have entered into a written agreement in respect of such services or support; and

**2.7.2** that written agreement provides for an alternative limit on JBA's liability in respect of such services or support,  
in which case such alternative limit on JBA's liability shall apply.