

LANDMARK STANDARD TERMS AND CONDITIONS

DEFINITIONS

In these Terms, the following terms have the following meanings:

"**Agreement**" has the meaning set out in clause 1.d.

"**Authorised Reseller**" means an agent or reseller who We have duly appointed to resell Our Reports and Services.

"**Consumer**" means a natural person acting for purposes other than his trade, business or profession.

"**Content**" means any data, computing and information services and software, and other content and documentation or support materials and updates included in and/or supplied by or through the Websites, in Reports or Services or in any other way by Us and shall include both material developed by or on behalf of Us and Third Party Content.

"**End User**" means either: (i) a Consumer or a Consumer's friend or family member who uses the Services provided to the Consumer; or (ii) where You are not a Consumer, an employee of Yours who uses the Services provided to You; or (iii) a person identified in clause 2.b or their respective employees.

"**Fees**" means any charges levied by Us or an Authorised Reseller for Services provided to You.

"**First Purchaser**" means the first person, or legal entity to purchase the Property Site following provision of a Report.

"**First Purchaser's Lender**" means the funding provider for the First Purchaser.

"**Information Pack**" means a pack compiled by or on behalf of the owner or prospective buyer of the Property Site, designed to aid the marketing or purchase of the Property Site and containing information provided by or on behalf of the owner or prospective buyer of the Property Site.

"**Intellectual Property Rights**" means copyright, patent, design right (registered or unregistered), service or trade mark (registered or unregistered), database right or other data right, moral right or know how or any other intellectual property right.

References to "**We**", "**Us**" and "**Our**" are references to Landmark Information Group Limited, whose registered office is 7 Abbey Court, Eagle Way, Exeter, EX2 7HY.

"**Order**" means the request for Services from Us by You.

"**Property Site**" means a land site in relation to which We provide a Service.

"**Report**" includes any information that We supply to You including all reports, services, datasets, software or information contained in them.

"**Services**" means the provision of any service by Us pursuant to these Terms, including without limitation, any Report.

"**Supplier**" means any third party organisation that provides services, software, data, information and other content or functionality of any form to Us.

"**Terms**" means these terms and conditions.

"**Third Party Content**" means the services, software, data, information and other content or functionality provided by Suppliers and linked to or contained in the Services.

"**Website**" means any website hosted by Us and includes the Content and any report, service, document, data-set, software or information contained in such websites or derived from them.

References to "**You**", "**Your**" and "**Yourself**" refer to the contracting party who accesses the Website or places an Order with Us.

1. Basis of Contract

- a. These Terms govern the relationship between Us and You where You purchase Services from Us. Where these Terms are not expressly accepted by You, they will be deemed to have been accepted by You, and You agree to be bound by these Terms, when You place any Order, or pay for any Services provided to You by Us.
- b. You shall take all reasonable steps to check that the details that You provide in relation to Your Order are complete, accurate and correct and that the Report has been prepared for the correct location and property type. Neither We nor any Suppliers shall have any liability for errors or omissions in information provided by or on behalf of You or from Your failure to check that the Report relates to the correct location or property.
- c. We may modify these Terms, and may discontinue or revise any or all other aspects of the Services at Our sole discretion, with immediate effect and without prior notice, including without limitation changing the Services available at any given time. Any amendment or variation to these Terms shall be posted on Our Websites. You acknowledge that it shall remain Your responsibility to check Our Website from time to time for any such amendments or variation to these Terms. Continued Orders of the Services by You shall be deemed an acceptance by You to be bound by any such amendments to the Terms.
- d. These Terms together with Your Order, the Fees and delivery details in relation to Your Order and Our privacy policy, which is available on the Website, constitute the entire agreement between the parties relating to the supply of Services to You by Us ("**Agreement**"). You acknowledge that You have not relied on any statement, promise or representation made or given by or on behalf of Us which is not set out in the Agreement or delivery details. Nothing in this clause 1.d shall limit or exclude any liability for fraud.

- e. These Terms shall prevail at all times to the exclusion of all other terms and conditions including any terms and conditions which You may purport to apply even if such other provisions are submitted in a later document or purport to exclude or override these Terms and neither the course of conduct between parties nor trade practice shall act to modify these Terms.

2. Services and Licensed Use

- a. Subject to clauses 6.d, 6.k and 6.l, We shall use all reasonable skill, care and diligence in the performance of the Services.
- b. Subject always to these Terms You may, without further charge, make the Services available to:
 - i. the owner of the whole or part of the Property Site at the date of the Report;
 - ii. any person who purchases the whole or part of the Property Site;
 - iii. any person who provides funding secured on the whole or part of the Property Site;
 - iv. any person for whom You act in a professional or commercial capacity in relation to the Property Site;
 - v. any person who acts for You in a professional or commercial capacity in relation to the Property Site; and/or
 - vi. prospective buyers of the whole or part of the Property Site as part of an Information Pack but for the avoidance of doubt, We shall have no liability to such prospective buyer unless the prospective buyer subsequently purchases the Property Site, and the prospective (or actual) buyer shall not be entitled to make the Service available to any other third party.
- c. You shall not hold yourself out or describe yourself as Our agent or an agent of any of the Suppliers.
- d. You shall ensure that acknowledgements of copyright and database right ownership are included in a conspicuous position in all copies of the Content. You may not delete any of Our or the Suppliers' intellectual property protection notices (including without limitation copyright notices or trade marks) from the Content.
- e. You shall use Your best endeavours to use adequate technological and security measures, including measures We or Suppliers may reasonably recommend from time to time, to ensure that all Content which You hold or are responsible for is secure from unauthorised use or access.
- f. The Content shall only be used strictly in accordance with these Terms and not for any other purpose; nor shall any use of the Content be made that would or might be deemed to be disparaging to Us, the Suppliers or any of them. You shall not be entitled to resell or rent any Content or otherwise any supply products incorporating such Content for commercial sale or rental.
- g. You shall not reverse engineer, separate or otherwise tamper with the Content so that Content can be extracted and used for any purpose outside the scope of the Agreement.
- h. If You are a Company or public body, You agree that the licensed use of Content pursuant to the Agreement always excludes its use by any of Your subsidiaries, holding companies or subsidiaries of such holding companies (as such terms are defined in section 1159 of the Companies Act 2006) or by any government entity associated with You (in each case as applicable). You agree, and shall procure, that any such company or entity shall enter into a separate agreement with Us.
- i. All other uses of the Content are prohibited. If You wish to use the Content in a manner which is not authorised by the Terms, then You must contact Us to seek the necessary consents or licences (which may include further licences from the Suppliers), for which there may be additional Fees.
- j. You agree to notify Us as soon as You suspect any infringement of Our or any of Our Supplier's intellectual property rights and You agree to give Us all reasonably required assistance in pursuing any potential infringement.

3. Intellectual Property and Confidentiality

- a. You acknowledge and agree that all Intellectual Property Rights in Content are and shall continue to be owned by Us or Our Suppliers and nothing in the Agreement shall transfer, assign or grant any rights to You (save for the licence as set out above).
- b. Subject to any use of the Content in accordance with these Terms, You acknowledge and agree that You shall, and shall procure that any person to whom You provide access to the Content shall, treat as strictly private and confidential the Services, the Content and all information which they obtain from the Services and Content. You agree to indemnify Us against all liabilities, damages, penalties, costs, expenses (including legal expenses on an indemnity basis) or other loss suffered or incurred by Us in relation to any breach or alleged breach of this clause 3.b.

4. Termination

- a. At any time, We may terminate the Agreement with immediate effect by giving You written notice:

- i. if You are in breach of the Terms and, if such breach is capable of remedy, You fail to remedy the breach within 30 days of written notice from Us specifying the breach and requiring it to be remedied; and
 - ii. if You have a receiver or administrative receiver or administrator appointed over You or any part of Your undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or if a court of competent jurisdiction shall make an order to that effect or if You become subject to an administration order or enter into a voluntary arrangement with Your creditors or shall cease or threaten to cease to carry on business or if You are presented with a bankruptcy petition.
- b. In the event of the termination or expiry of the Agreement:
- i. You shall, subject to clause 4.b.iii, immediately cease to use the Report and any Content;
 - ii. You shall, subject to clause 4.b.iii, within 30 days of such termination or expiry, destroy all Content in any media which You hold or for which You are responsible and provide, at Our request, a sworn statement by a duly authorised person that You no longer hold such Content;
 - iii. except in the event of termination by Us under clause 4.a, You may retain Content in an archive following expiry of the Agreement for the sole purpose of addressing a complaint or challenge from a regulator or other third party regarding Your use of such Content during the term of the Agreement. Your rights are on condition that: (a) the archive rights do not apply to Content that include third party Intellectual Property Rights (other than Content provided by Ordnance Survey to the extent that the Intellectual Property Rights in such Content are owned by Ordnance Survey); (b) You shall not disclose Content retained under this clause 4.b.iii to any regulator or other third party except strictly to the extent necessary for the relevant purpose of addressing a complaint or challenge from a regulator or other third party and in paper or read-only electronic format only; (c) You must store such Content separately from any other data which You hold; and (d) subject to clause 6.a, We shall have no liability for Your use of it following termination or expiry of the Agreement; and
 - iv. the parties shall have no further obligations or rights under the Agreement, without prejudice to those which have accrued to either party prior to termination or expiry save that the "Definitions", clauses 2.c to 2.j (inclusive), this clause 4.b, clauses 5.d, 6, 7, 9, 10 and 11 together with those other clauses the survival of which is necessary for the interpretation or enforcement of the Agreement or which by their nature can be reasonably interpreted as surviving the expiry or termination of the Agreement, shall continue to have effect after such expiry or termination.

5. Payments

- a. An individual or a monthly invoice showing all Orders created by You will be generated subject to these Terms. You will pay the Fees at the rates set out in Our or Our Authorised Reseller's invoice within 30 days of the date of each invoice without deduction, counterclaim or set off. Where Your order comprises a number of Services or severable elements within any one or more Services, any failure by Us or its Authorised Reseller to provide an element or elements of the Services shall not prejudice Our or Our Authorised Reseller's ability to require payment in respect of the Services delivered to You. You acknowledge that time is of the essence with respect to the payment of such invoices.
- b. VAT shall be due in addition to any Fees. You shall pay any other applicable indirect taxes related to Your use of the Services.
- c. Neither We nor any Authorised Reseller shall be required to notify You in advance of any amendment to the Fees and the placing of any further Order for Services shall be deemed acceptance of any revisions to the Fees.
- d. If You fail to pay by the due date any amount due and payable by You under the Agreement, We shall be entitled, but not obliged to, charge You interest on the overdue amount, payable by You immediately on demand, accruing from the due date up to the date of actual payment, after as well as before judgment, at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 from time to time and fixed sum compensation under the Late Payment of Commercial Debts Regulations 2002. Such interest shall accrue on a daily basis.

6. Liability

- a. Nothing in these Terms excludes or limits either party's liability for death or personal injury caused by that party's negligence or wilful default or for fraud, and the remainder of this clause 6 is subject to this provision. If You are a Consumer, Your statutory rights (which include, for example, that We will provide the Services to a reasonable standard and within a reasonable time) are not affected by anything in these Terms.
- b. Save as set out in clause 6.a, We shall not be liable to You or to any End User in contract, tort (including negligence) or for breach of statutory duty or in any other way for:
 - i. any indirect or consequential losses (which includes any loss that could not have been reasonably expected by You and Us at the time of entering into these Terms);
 - ii. loss arising from or in connection with loss of revenues, profits, contracts or business or failure to realise anticipated savings; or
 - iii. loss of goodwill or reputation.
- c. Save as set out in clause 6.a, Our total liability to You and/or any End User in contract or tort (including negligence) or for breach of statutory duty shall not exceed an amount of ten million pounds (£10,000,000) per claim or series of connected claims.
- d. The Content that Services are based on is derived from third party sources. Therefore, save as set out in clause 6.1 in respect of risk assessments and professional opinions, We do not warrant the accuracy or completeness of any information or Content provided, unless We should reasonably have been alerted to any omission, error or inaccuracy in the Content. Such Content is provided specifically from the sources as described by Us and We do not claim that these represent an exhaustive or comprehensive list of all sources that might be consulted.
- e. You acknowledge and agree that neither You nor any End User shall have any claim or recourse against any Supplier of Third Party Content.
- f. You acknowledge and agree that We do not warrant that the online supply of Content or Services or any internet ordering service will be: uninterrupted or error free or provide any particular facilities or functions; free from defects; free from software viruses; free of error from computer malfunction, inaccurate processing; free from corruption of data whilst geo-coding, processing by computer or electronic means or in the course of transmission; or similar, although We will use reasonable endeavours to correct any such issues within a reasonable period of them becoming known (which may be limited to notifying the relevant Supplier). Time shall not be of the essence in providing the Content or Services.
- g. You acknowledge and agree that no physical inspection of the Property Site reported on is carried out as part of any Services offered by Us and We do not warrant that all land uses or features whether past or current will be identified in the Services. The Services do not include any information relating to the actual state or condition of any Property Site nor should they be used or taken to indicate or exclude actual fitness or unfitness of a Property Site for any particular purpose nor should it be relied upon for determining saleability or value or used as a substitute for any physical investigation or inspection.
- h. You acknowledge and agree that We will not be held liable in any way if a Report is used otherwise than as provided for in these Terms and/or in the Report.
- i. You acknowledge and agree that the Services have not been prepared to meet Your or anyone else's individual requirements and it is Your responsibility to ensure that the Services ordered are suitable for Your (or the End User's) intended purpose.
- j. You acknowledge and agree that You shall, on receipt of a Report carry out a reasonable inspection to satisfy Yourself that there are no apparent defects or failures with respect to the description and location of the Property Site and shall promptly inform Us if there are any such defects or failures.
- k. All liability for any insurance products purchased by You rests solely with the insurer. We do not endorse any particular product or insurer and no information contained within the Services should be deemed to imply otherwise. You acknowledge that if You Order any such insurance We will deem such as Your consent to forward a copy of the Report to the insurers. Where such policy is purchased, You acknowledge and agree that all liability shall remain with the insurers and that You are entirely responsible for ensuring that the insurance policy offered is suitable for Your needs and should seek independent advice. We do not guarantee that an insurance policy will be available on a Property Site. You acknowledge and agree that all decisions with regard to the offer of insurance policies for any premises will be made solely at the discretion of the insurers and We accept no liability in this regard. The provision of a Report does not constitute any indication by Us that insurance will be available on the Property Site.
- l. We may provide You with professional opinions or a risk assessment in a Report. You acknowledge and agree that We shall carry out (or procure that third parties carry out) such assessment with reasonable skill and care and that We shall be liable where any such risk assessment is carried out negligently. Notwithstanding the foregoing We shall not be liable for any inaccurate statement, opinion or risk rating in a Report which resulted from a reasonable interpretation of the Content.
- m. Neither You, nor any End User or any other person may rely on a Service more than 12 months after it was originally provided.
- n. You shall use all reasonable endeavours to ensure that End Users acknowledge and agree to the limitations and exclusions of liability set out in this clause 6.

7. Contribution

- a. Save where expressly provided, this clause 7 shall apply solely to Envirosearch Residential Reports (regardless of the result of such Report). Nothing in this clause 7 shall operate to override or vary the provisions of clause 6.
- b. We are prepared to offer, without any admission or inference of liability, a contribution towards the costs of any remediation works required under a Notice (as defined below) on the terms of this clause 7 ("the Contribution").
- c. In the event that a Remediation Notice is served on the First Purchaser or First Purchaser's Lender of a Property Site under Part IIA of the Environmental Protection Act 1990 ("the Notice") We shall contribute to the cost of such works as either the First Purchaser or First Purchaser's Lender (but not both) are required to carry out under the Notice subject to the provisions of this clause 7 and on the following terms:
 - i. the Contribution shall only apply to contamination or a pollution incident present or having occurred prior to the date of the Report;
 - ii. the Contribution shall only apply where the Property Site is a single residential dwelling house or a single residential flat within a block of flats. For the avoidance of doubt, this obligation does not apply to any commercial property, nor to any Property Site being developed or redeveloped whether for residential purposes or otherwise;
 - iii. the Contribution is strictly limited to the cost of works at the Property Site and at no other site; and
 - iv. the Contribution will not be paid in respect of any of the following: (1) radioactive contamination of whatsoever nature, directly or indirectly caused by or contributed to or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; (2) asbestos arising out of or related in any way to asbestos or asbestos-containing materials on or in structures or services serving the structures; (3) naturally occurring materials arising from the presence or required removal of naturally occurring materials except in circumstances where such materials are present in concentrations which are in excess of their natural concentration; (4) intentional non-compliance arising from the intentional disregard of or knowing wilful or deliberate non-compliance by any owner or occupier of the Property Site with any statute, regulation, administrative complaint, notice of violation, or notice letter of any Regulatory Authority; (5) any condition which is known or ought reasonably to have been known to the First Purchaser or the First Purchaser's Lender prior to the purchase of the Report; (6) any condition which is caused by acts of war or an act of terrorism; (7) any property belonging to or in the custody or control of the First Purchaser which does not form a fixed part of the Property Site or the structure; (8) any fines liquidated damages punitive or exemplary damages; (9) any bodily injury including without limitation, death, illness or disease, mental injury, anguish or nervous shock; (10) any financial loss in respect of any loss of any rental, profit, revenue, savings or business or any consequential indirect or economic loss damage or expense including the cost of rent of temporary premises or business interruption; and/or (11) any losses incurred following a material change in use of, alteration or development of the Property Site.
- d. Without prejudice to Your other rights and remedies under the Agreement, the maximum sum that shall be contributed by Us in respect of any Contribution shall be limited to £60,000. In the event that more than one Report is purchased on the Property Site the Contribution will only be payable under the first Report purchased by or on behalf of any First Purchaser or First Purchaser's Lender and no Contribution will be made in respect of subsequent Reports purchased by or on behalf of such First Purchaser, First Purchaser's Lender or any person connected to them.
- e. We shall only pay a Contribution where the Notice is served within 36 months of the issue date of the Report.
- f. Any rights to a Contribution under this clause 7 are not assignable in the event of a sale of the Property Site and We shall not make any Contribution after the date of completion of such sale.
- g. In the event the First Purchaser or First Purchaser's Lender wishes to claim any Contribution, it shall notify Us in writing within 3 months of the date of the Notice. The First Purchaser or First Purchaser's Lender (as applicable) shall comply with all Our reasonable requirements with regard to the commission and conduct of the remediation works to be carried out under the Notice, and in the event the First Purchaser or First Purchaser's Lender (as applicable) does not do so, including without limitation, obtaining Our prior written consent to any estimates for such works or complying with any other reasonable request by Us, We shall not be required to pay any Contribution. Notwithstanding the payment of the Contribution by Us the First Purchaser or First Purchaser's Lender as applicable shall take all reasonable steps to mitigate any costs incurred in connection with the conduct of works required under the terms of any Notice.

- h. In the event that the First Purchaser or First Purchaser's Lender receives any communication from a statutory authority to the effect that there is an intent to serve a notice received under Part IIA of the Environmental Protection Act 1990 You shall ensure that they advise Us within a maximum period of two months from receipt of such communication. This clause 7.h and the service of any notice under it shall not affect the provisions of clauses 7.e and 7.g, and any such communications, even if advised to Us will not operate as notice under clause 7.e.
- i. We reserve the right at any time prior to a claim for Contribution being made in accordance with clause 7.g above, to withdraw the offer of payment of Contributions without further notice.

8. Assignment and Sub-contracting

- a. We shall be entitled to assign or transfer the Agreement as We reasonably see fit.
- b. The Agreement is personal to You. You shall not assign, transfer, sub-licence or otherwise deal with any of Your rights and obligations under the Agreement without Our prior written consent.
- c. We may authorise or allow Our contractors and other third parties to provide to Us and/or to You services necessary or related to the Services and to perform Our obligations and exercise Our rights under these Terms, which may include collecting payment on Our behalf.

9. Events Beyond Our Control

- a. Neither party to the Agreement shall be liable for any delay or failure to perform their obligations caused by any circumstance beyond their control, and such party shall be entitled to a reasonable extension of time for the performance of such obligation.

10. Complaints and Dispute Resolution

- a. Any complaints in relation to the Services should, in the first instance, be in writing addressed to the Customer Service Support Manager at Our registered office. We will (or Our agents will) respond to any such complaints in writing as soon as practicably possible.
- b. If any dispute arises out of or in connection with the Terms of the Agreement or their validity ("**Dispute**") the parties undertake, subject to clause 10.c, that prior to commencement of court proceedings they will negotiate in good faith to settle such Dispute by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure as in force from time to time, which Procedure is deemed to be incorporated by reference into this clause. Unless otherwise agreed between the parties, the mediator will be nominated by the Centre for Effective Dispute Resolution. To initiate the mediation a party shall give notice in writing to the other party to the dispute requesting a mediation. The mediation will start not later than 21 days after the date of service of such notice. If the Dispute has not been resolved to the mutual satisfaction of the parties within 60 days (or such other period as they shall agree) after the date of service of such notice then either party may refer the Dispute to the courts in accordance with clause 11.f.
- c. Clause 10.b shall be without prejudice to the rights of termination stated in clause 4.a and in addition shall not prevent Us from:
 - i. applying for injunctive relief in the case of: (1) breach or threatened breach of confidentiality; or (2) infringement or threatened infringement of Our or Our Suppliers' intellectual property rights; or
 - ii. pursuing a debt claim for the payment of the Fees.

11. General

- a. If any provision of the Agreement is found by either a court or other competent authority to be void, invalid, illegal or unenforceable, that provision shall be deemed to be deleted from the Agreement and never to have formed part of the Agreement and the remaining provisions shall continue in full force and effect.
- b. No delay, failure or omission on Our, or any Supplier's, part in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under the Agreement or by law shall be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy, nor shall any single or partial exercise of any such right, power, privilege, claim or remedy preclude the exercise of that or any other right, power, privilege, claim or remedy.
- c. Our privacy policy as displayed on Our Website and updated from time to time governs the use that We shall make of any information provided by You or an End User.

- d. A person who is not a party to any contract made pursuant to these Terms shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any terms of the Agreement and We shall not be liable to any such third party in respect of the Products, save that any Supplier may enforce any of these terms and conditions against You in accordance with the Contracts (Rights of Third Parties) Act 1999. Notwithstanding any other provisions of the Agreement, We may rescind or vary the Agreement in accordance with its terms without the consent of the Suppliers and accordingly section 2(1) of the Contracts (Rights of Third Parties) Act 1999 shall not apply.
- e. You shall ensure that each End User complies with and is bound by the Terms and shall procure that We may in Our own right enforce such terms and conditions against the End User pursuant to the Contracts (Rights of Third Parties) Act 1999. You shall be responsible for End User's compliance with the Terms and You shall be liable for all breaches of the Terms by the End Users as if they were breaches by You.
- f. The Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and, subject to clause 10.b, each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.