

GroundSure Limited – Standard Terms and Conditions

1 Definitions

In these conditions unless the context otherwise requires:

"Beneficiary" means the Customer or the client of the Customer for whom the Customer has procured the Services.

"Consultancy Services" mean consultancy services provided by GroundSure including, without limitation, carrying out interpretation of third party and in-house environmental data, provision of environmental consultancy advice, undertaking environmental audits and assessments, site investigation, site monitoring and related items.

"Content" means any data, database or other information contained in a Report or Mapping which is provided to GroundSure by a Data Provider.

"Contract" means the contract between GroundSure and the Customer for the performance of the Services which shall incorporate these conditions, the relevant GroundSure user guide, proposal by GroundSure and the content of any subsequent report, and any agreed amendments in accordance with condition 12.

"Customer" means the party that submits an Order or commissions GroundSure further to a written proposal for environmental consultancy services.

"Data Provider" means any third party providing Content to GroundSure.

"Data Report" means reports comprising factual data with no professional interpretation in respect of the level of likely risk and/or liability available from GroundSure.

"GroundSure" means GroundSure Limited, a company registered in England and Wales under number 03421028 and whose registered office is at Greater London House, Hampstead Road, London NW1 7EJ.

"Intellectual Property" means any patent, copyright, registered design rights, service marks, moral rights, data protection rights, know-how, trade mark or other intellectual property rights.

"Mapping" an historical map or a combination of historical maps of various ages, time periods and scales available from GroundSure;

"Order" means an order form submitted by or for the Beneficiary requiring Services from GroundSure in respect of a specified site.

"Report" means a Risk Screening or Data Report for commercial or residential property available from GroundSure relating to a site identified in the Order prepared in accordance with the specifications set out in the relevant user guide.

"Risk Screening" means one of GroundSure's risk screening reports such as GroundSure Homebuyers; GroundSure Home Environmental GroundSure SiteGuard, GroundSure Screening, GroundSure Review, GroundSure Developer Review, or any other risk screening report available from GroundSure.

"Services" means the provision of any Report, Mapping and Consultancy Services which GroundSure has agreed to carry out for the Customer/Beneficiary on these terms and conditions in respect of a site detailed in the Order.

2 Scope of Services

2.1 GroundSure agrees to carry out the Services in accordance with the Contract and to the extent set out therein.

2.2 GroundSure shall exercise all reasonable skill, care and diligence in the performance of the Services.

2.3 The Customer acknowledges that it has not relied on any statement or representation made by or on behalf of GroundSure which is not set out and expressly agreed in the Contract.

2.4 Terms and conditions appearing on a Customer's order form, printed stationery or other communication, including invoices, to GroundSure, its employees, servants, agents or other representatives shall be of no effect and these terms and conditions shall prevail over all others.

2.5 In the event that a Customer/Beneficiary opts to take out insurance in conjunction with or as a result of the Services, such insurance shall be subject solely to the terms of any policy issued to it in that respect and GroundSure will have no liability therefore.

3 The Customer's obligations

3.1 The Customer shall be solely responsible for ensuring that the Report/Mapping ordered is appropriate and suitable for the Beneficiary's needs.

3.2 The Customer shall (or shall procure that the Beneficiary shall) supply to GroundSure as soon as practicable and without charge all information necessary and accurate relevant data including any specific and/or unusual environmental information relating to the site known to

the Customer/Beneficiary which may pertain to the Services and shall give such assistance as GroundSure shall reasonably require in the performance of the Services (including, without limitation, access to a site, facilities and equipment as agreed in the Contract).

3.3 Where Customer/Beneficiary approval or decision is required, such approval or decision shall be given or procured in reasonable time as not to delay or disrupt the performance of any other part of the Services.

3.4 The Customer shall not and shall procure that the Beneficiary shall not, save as expressly permitted by these terms and conditions, re-sell, alter, add to, amend or use out of context the content of any Report, Mapping, or in respect of any service or information given by GroundSure. For the avoidance of doubt, the Customer and Beneficiary may make the Report, Mapping or GroundSure's findings available to a third party, but such third party cannot rely on the same unless expressly permitted under condition 4.

3.5 The Customer is responsible for maintaining the confidentiality of its user name and password if using GroundSure's internet ordering service and accepts responsibility for all activity that occurs under such account and password.

4 Reliance

4.1 Upon full payment of all relevant fees and subject to the provisions of these terms and conditions, the Customer and Beneficiary are granted an irrevocable royalty-free licence to use the information contained in the Report, Mapping or in a report prepared by GroundSure in respect of or arising out of the Consultancy Services. The Services may only be used for the benefit of the Customer and those persons listed in conditions 4.2 and 4.3.

4.2 In relation to Data Reports, Mapping and Risk Screening, reliance shall be limited to the Customer, Beneficiary and subsequent first purchaser or first tenant of the site including the professional advisers and lenders of each. For the avoidance of doubt, such persons shall include any entity necessary under the Housing Act 2004 or as legally required because of the Home Information Pack.

4.3 In relation to Consultancy Services, reliance shall be limited to the Customer, Beneficiary and named parties on the GroundSure proposal and subsequent report.

4.4 No party referred to in conditions 4.2 and 4.3 shall assign any rights or obligations under these terms and conditions without the prior written consent of GroundSure. GroundSure reserves the right to charge an assignment fee which will be no higher than 15% of the original fee or £250 whichever is the highest. GroundSure may assign its rights and obligations under these terms.

4.5 Save as set out in conditions 4.2 and 4.3, unless otherwise agreed in writing with GroundSure, any other party considering the information within a Report, Mapping or proposal and subsequent report in respect of Consultancy Services, including insurance underwriters, does so at their own risk and GroundSure has no legal obligations to such party unless otherwise agreed in writing.

4.6 The Customer shall not and shall procure that any person (including the Beneficiary) who is provided with a copy of any Report shall not: (a) remove, suppress or modify any trade mark, copyright or other proprietary marking from the Report or Mapping; (b) create any product which is derived directly or indirectly from the data contained in the Report or Mapping; (c) combine the Report or Mapping with, or incorporate the Report or Mapping into any other information data or service; or (d) re-format or otherwise change (whether by modification, addition or enhancement) data or images contained in the Report or Mapping save to the extent that the Customer is adding its assessment to the Report or Mapping solely for the purposes of providing its services to the Beneficiary.

4.7 Without prejudice to any other right or remedy available to GroundSure including without limitation any claim for infringement of copyright, breach of confidence or contract or otherwise howsoever arising if the Customer or a person to whom a Report or Mapping is provided, breaches any of the provisions of this condition 4, the Customer shall fully and effectually indemnify GroundSure and hold it harmless against any claim by any third party who may claim to have sustained injury loss or damage by reason of their reliance upon any report or document which GroundSure may have prepared for the Customer or upon the contents thereof.

5 Fees and Disbursements

5.1 GroundSure shall charge the Customer fees at the rate and frequency specified in the Contract together with all proper disbursements made in performing the Services. The Customer shall in addition pay all value added tax or other tax payable on such fees and disbursements in the country concerned in relation to the provision of the Services.

- 5.2 Unless GroundSure requires prepayment, the Customer shall promptly pay all fees disbursements and other monies due to GroundSure in full without deduction, counterclaim or set off together with such Value Added Tax or equivalent local tax as may be required within 30 days from the date of GroundSure's invoice. GroundSure reserves the right to charge interest which shall accrue on a daily basis from the date of invoice until the date of payment (whether before or after judgment) at the rate of two per cent per month.
- 5.3 In the event that the Customer disputes the amount payable in respect of GroundSure's invoice it shall notify GroundSure no later than 28 days after the date thereof that it is in dispute. In default of such notification the Customer shall be deemed to have agreed the amount thereof which shall thereupon be due and payable. As soon as reasonably practicable following receipt of any disputed invoice, a member of the management team at GroundSure shall contact the Customer and the parties shall use all reasonable endeavours to resolve the dispute.
- 6 Intellectual Property**
- 6.1 Unless expressly agreed in writing to the contrary GroundSure and its Data Providers (where relevant) retain all Intellectual Property rights and proprietary rights in all information, Content and data reproduced in a Report or as part of the Consultancy Services.
- 6.2 Data Providers may enforce any breach of condition 6.1 against the Customer or Beneficiary.
- 7 Liability**
- 7.1 GroundSure shall not be liable to pay compensation to the Customer or any person to whom the Customer provides a copy of the Report, Mapping or results of the Consultancy Services in any circumstances whatsoever unless arising out of a breach on its part of the obligations set out in the Contract.
- 7.2 GroundSure shall not be liable if the Services are used otherwise than as provided or referred to in these conditions
- 7.3 Where any person is engaged whether by the Customer or by GroundSure on the Customer or Beneficiary's behalf in the performance of the Services or any part thereof GroundSure shall not be liable for acts of negligence, default or omission by such person.
- 7.4 GroundSure makes no representation, warranties, express or implied, as to the accuracy, reliability, completeness, validity or fitness for purpose of the Content shall not be liable for any omission, error or inaccuracy in relation thereto.
- 7.5 GroundSure shall not be liable for any inaccurate statement or risk rating in a Report which resulted from a reasonable interpretation of the Content.
- 7.6 GroundSure shall not be liable for any indirect losses, loss of profit nor consequential loss caused by the suspension or reduction of activity on the site.
- 7.7 Notwithstanding anything to the contrary contained elsewhere in the Contract, and irrespective of whether multiple parties make use of the same Services, the total liability of GroundSure under or in connection with the Contract, whether in contract in tort for breach of statutory duty or otherwise shall not exceed the amount of GroundSure's insurance as provided for below.
- 7.8 GroundSure shall maintain professional indemnity insurance in respect of its liabilities in respect of the Services (provided it is available at reasonable commercial rates) giving cover of not less than £5 million in the aggregate which amount shall first include the whole of any sum payable for death or personal injury. GroundSure shall produce evidence of such insurance if requested by the Customer. A greater level of cover may be available upon request and agreement with the Customer.
- 7.9 The Customer shall be liable to indemnify GroundSure where any loss arises as a result of any breach on the part of the Customer of its obligations under these terms and conditions.
- 7.10 GroundSure's liability under the Contract shall cease upon the expiry of six years from the date when the Customer/Beneficiary became aware that it may have a claim against GroundSure in respect of the Services provided always that there shall be no liability at the expiration of twelve years from the completion of the Contract.
- 7.11 Whilst GroundSure will use all reasonable endeavours to maintain operability of its internet ordering service it will not be liable for any loss or damages caused by a delay or loss of use of such service. The Customer shall use GroundSure's internet ordering service at its own risk. GroundSure shall not be responsible for any damage to a Customer or permitted assignee's computer, software, modem, telephone or other property resulting from the use of GroundSure's internet ordering service.
- 7.12 The Customer accepts, and shall procure that anyone who is provided with a copy of the Report accepts, that it has no claim or recourse to any Data Provider or to GroundSure in respect of the acts or omissions of such Data Providers including Content supplied by them.
- 7.13 Nothing in these terms and conditions shall limit GroundSure's liability for causing death or personal injury through negligence or wilful default.
- 7.14 GroundSure accepts no liability for use of any residential Reports or any data or information contained therein for development or other commercial property purposes in respect of which a commercial Report should have been obtained.
- 8 Remediation**
- 8.1 For the purpose of this condition 8, 'Claimant' shall mean one of: (a) the Beneficiary, (b) the purchaser of the site from the Beneficiary or (c) the funder of (a) or (b) as applicable.
- 8.2 This condition 8 shall apply solely to GroundSure Homebuyers and GroundSure Home Environmental with passed rather than failed status.
- 8.3 GroundSure may, at its sole discretion without any admission of liability, make a contribution to the Claimant towards the costs of any clean up works required to be carried out under a notice served on a Claimant in respect of a site under Part II (A) Environmental protection Act 1990 ("Remediation Notice") on the terms of this condition 8 ("Clean up Award").
- 8.4 The Clean up Award:
- (a) is only available once in respect of a site and to one Claimant only;
- (b) shall only apply where the site is a single residential dwelling house or a single residential flat within a block of flats. For the avoidance of doubt, a Clean up Award will not be considered in respect of commercial property or to any site being developed or redeveloped whether for residential purposes or otherwise; and
- (c) shall only apply to contamination or a pollution occurring as at or prior to the date of GroundSure Homebuyers.
- 8.5 The Clean up Award will not be paid in respect of any of the following, including without limitation:
- (a) asbestos;
- (b) radioactive contamination arising directly or indirectly from or in connection with ionising radiations or contamination by radioactivity from any nuclear waste or fuel; from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) naturally occurring materials or their removal except where such materials are present in excess of their natural concentration;
- (d) any condition caused by acts of war or an act of terrorism;
- (e) any condition which is known or ought reasonably to have been known to the Claimant prior to the purchase of GroundSure Homebuyers;
- (f) non-compliance by the Claimant or any other person with respect to the site with any statute, regulation, byelaws complaint, or notice from any regulatory authority;
- (g) any property belonging to or in the custody or control of the Claimant which does not form a fixed part of the site or the structure;
- (h) any losses incurred following a material change in use of, alteration or development of the site; or
- (i) financial loss in respect of loss of rental, profit, revenue, savings, business or any consequential, indirect or economic loss, damages or expenses, including the cost of temporary accommodation or business interruption.
- 8.6 In the event the Claimant wishes to apply for a Clean up Award, it shall notify GroundSure in writing within 3 months of the date of the Remediation Notice. The Claimant shall comply with all reasonable requirements of GroundSure with regard to the commission and conduct of the clean up works to be carried out under the Remediation Notice. In the event that the Claimant breaches this provision including, without limitation, failing to obtain GroundSure's prior written consent in respect of estimates for such works GroundSure shall not be required to pay a Clean up Award.

- 8.7 GroundSure shall only pay a Clean up Award where a Remediation Notice is served within 36 months of the date of GroundSure Homebuyers.
- 8.8 The maximum sum of any Clean up Award shall be £60,000 and shall be paid subject to the Claimant having paid to GroundSure an excess in respect of its claim of £5,000.
- 8.9 GroundSure reserves the right at any time to withdraw the offer of payment of a Clean up Award.
- 8.10 The Claimant shall take all reasonable steps to appeal such Remediation Notice and mitigate any costs incurred in connection with the remediation works required under the terms of any Remediation Notice. GroundSure reserves the right to withhold or reduce the amount of its Clean up Award in the event of a breach of this condition or an appeal is still active.
- 9 GroundSure right to suspend or terminate**
- 9.1 In the event that GroundSure reasonably believes that the Customer or Beneficiary as applicable has not provided the information or assistance required to enable the proper performance of the Services, GroundSure shall be entitled on fourteen days written notice to suspend all further performance of the Services until such time as any such deficiency has been made good.
- 9.2 GroundSure may additionally terminate the Contract immediately on written notice in the event that:
- (i) the Customer shall fail to pay any sum due to GroundSure within 28 days of the due date for payment; or
 - (ii) the Customer (being an individual) has a bankruptcy order made against him or (being a company) shall enter into liquidation whether compulsory or voluntary or have an Administration Order made against it or if a Receiver shall be appointed over the whole or any part of its property assets or undertaking or if the Customer is struck off the Register of Companies or dissolved; or
 - (iii) the Customer being a company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or being an individual appears unable to pay his debts within the meaning of Section 268 of the Insolvency Act 1986 or if the Customer shall enter into a composition or arrangement with the Customer's creditors or shall suffer distress or execution to be levied on his goods; or
 - (iv) the Customer breaches any material term of the Contract (including, but not limited to, the obligations in condition 4) incapable of remedy then and in any such case GroundSure shall be entitled to a fair and reasonable amount on account of the fees due commensurate with the services performed to the date of such termination and any outstanding expenses or other disbursements that it may have incurred in respect of the Contract including without limitation equipment hire costs for the remainder of any lease, storage costs, transportation costs, labour costs or sub-contractor fees.
- 10 Customer's Right to Terminate and Suspend**
- 10.1 Subject to condition 11.2, the Customer may at any time after commencement of the Services by notice in writing to GroundSure require GroundSure to terminate or suspend immediately performance of all or any of the Services.
- 10.2 The Customer waives all and any right of cancellation it may have under the Consumer Protection (Distance Selling) Regulations 2000 (as amended) in respect of the Order of a Report/Mapping.
- 11 Consequences of Withdrawal, Termination or Suspension**
- 11.1 Upon termination or any suspension of the Services, GroundSure shall take steps to bring to an end the Services in an orderly manner, vacate any site with all reasonable speed and shall deliver to the Customer/Beneficiary any property of the Customer/Beneficiary in GroundSure's possession or control.
- 11.2 The Customer shall pay to GroundSure all and any fees as are due in respect of the Services performed up to or in respect of such termination or suspension.
- 12 General**
- 12.1 GroundSure and the Customer agree not to rescind or vary these terms and conditions to Ordnance Survey's or its successor's detriment without obtaining Ordnance Survey's or its successor's prior written consent.
- 12.2 Subject to condition 12.1, GroundSure reserves the right to amend these terms and conditions. No variation to these terms shall be valid unless signed by GroundSure or made in accordance with condition 12.1.
- 12.3 No failure on the part of GroundSure to exercise and no delay in exercising, any right, power or provision under these terms and conditions shall operate as a waiver thereof.
- 12.4 Save as expressly provided in conditions 6.2 and 12.5, no person other than the Customer, Beneficiary and GroundSure shall have any right under the Contract (Rights of Third Parties) Act 1999 to enforce any terms of these terms and conditions.
- 12.5 The Secretary of State for Communities and Local Government acting through Ordnance Survey, may enforce breach of conditions 6.1 or 12.1 of these terms and conditions against the Customer in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 12.6 GroundSure shall not be liable to the Customer if the provision of the Services is delayed or prevented by any circumstance which is beyond GroundSure's reasonable control including without limitation one or more of the following circumstances:
- (i) the Customer or Beneficiary's failure to provide facilities, access or information;
 - (ii) fire, storm, flood, tempest or epidemic;
 - (iii) process shutdown;
 - (iv) Acts of God or the public enemy;
 - (v) riot, civil commotion or war;
 - (vi) strikes, labour disputes or industrial action;
 - (vii) acts or regulations of any governmental or other agency;
 - (viii) suspension or delay of services at public registries by Data Providers; or
 - (ix) changes in law.
- 12.7 Any notice provided for shall be in writing and shall be deemed to be properly given if delivered by hand or sent by first class post, facsimile or by email to the address, facsimile number or email address of the relevant party as may have been notified by each party to the other for such purpose or in the absence of such notification the last known address.
- 12.8 Such notice shall be deemed to have been received on the day of delivery if delivered by hand, facsimile or email and on the second working day after the day of posting if sent by first class post.
- 12.9 The Contract constitutes the entire contract between the parties and shall supersede all previous arrangements between the parties.
- 12.10 Each of the provisions of the Contract is severable and distinct from the others and if one or more provisions is or should become invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be tainted or impaired.
- 12.11 These terms and conditions shall be governed by and construed in accordance with English law and any proceedings arising out of or connected with these terms and conditions shall be subject to the exclusive jurisdiction of the English courts.
- 12.12 These terms and conditions were produced on 28 May 2008.