

1 DEFINITIONS

Words defined in this Section will have the same meaning wherever they appear in these Terms:

- 1.1 "Claimant" means the first purchaser of the Property Site or lender of the first purchaser of the Property Site.
- 1.2 "Client" means You or Your customer for whom You have procured the Services.
- 1.3 "Contaminated Land" means land that has been designated contaminated land within the meaning of the Environmental Protection Act 1990.
- 1.4 "Content" means any computing and/or information services and software or data and any other content, documentation, support materials and updates included in and/or supplied through the Site in Product or as Services or in any other way by FCI whether developed by FCI and/or Third Party Content.
- 1.5 "FCI" means Future Climate Info Limited, a company registered in England and Wales under a registration number 08318444 with trading address at: 17 Kings Hill Avenue, Kings Hill, West Malling, Kent ME19 4UA
- 1.6 "FCI's Fees" means any charges levied by FCI for the Services as set out on the Site or as notified to You from time to time.
- 1.7 "Insurance Product" means any insurance product provided by FCI whether on its own or as part of a Product.
- 1.8 "Intellectual Property Rights" means all forms of protective rights relating to intellectual property as recognised by law.
- 1.9 "Order" means an electronic, written or other request from You to FCI made directly to FCI or through the Reseller for the Services.
- 1.10 "Product" means any information or other material FCI supplies to You through the Services, including but not limited to all reports, insurance documents, certificates, data-sets, software or information these may contain.
- 1.11 "Protected Product" means the Services comprising the FCI Premium, Standard, and Essential Product(s) solely for residential Property Site(s) comprising a single residential dwelling and FCI Retail Product(s) solely for commercial Property Site(s) comprising a single commercial Property Site where the Use Class is within categories A1, A2, A3, A4, A5 or C4. For the avoidance of doubt the Protected Product does not apply to business or commercial premises outside the specified categories or retail stores associated with petrol filling stations.
- 1.12 "Property Site" means the area of land, including anything built on or in it, in respect of which FCI provides the Services.
- 1.13 "Remediation Notice" means a statutory notice served by the relevant authority in respect of the remediation of Contaminated Land under Part 2A of the Environmental Protection Act 1990.
- 1.14 "Remediation Warranty" means the warranty given by FCI in respect of the Protected Products detailed in section 6 of these Terms.
- 1.15 "Reseller" means any organisation authorised by FCI or contracted with FCI to provide the Services through which You may place an Order.
- 1.16 "Reseller's Account" means the account set up with the Reseller by You for the purpose of purchasing the Services.
- 1.17 "Services" means the provision of any service in respect of the Property Site, including, but not limited to, any Content and/or Product provided to You by FCI within these Terms. The Services may, at FCI's sole discretion, be offered for a limited time or for purposes of evaluation only; offer reduced functionality from time to time; offer limited access to Content; or be free of charge.
- 1.18 "Site" means FCI's website at www.futureclimateinfo.com.
- 1.19 "Supplier" means any third party providing Third Party Content to FCI.
- 1.20 "Terms" means these terms and conditions as amended from time to time.
- 1.21 "Territory" means England and Wales.
- 1.22 "Third Party Content" means any data, services, software, information and other content or functionality provided by the Supplier and linked to or otherwise employed in providing the Services.
- 1.23 "Use Class" is as defined under the Town and Country Planning (Use Classes) Order 1987 (as amended), and the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended by the 2016 Amendment Order, the 2017 Amendment Order, and the 2017 (No2) Amendment Order and the 2018 Amendment Order).
- 1.24 "You" and "Your" means the contracting party that places an Order for the Services directly from FCI or through the Reseller.

2 BASIS OF CONTRACT

- 2.1 These Terms, govern the relationship between You and FCI. You are purchasing the Services in the Territory directly from FCI or via the Reseller. For the avoidance of doubt, the Services are not available outside the Territory.

- 2.2 You will be deemed to have accepted these Terms and to have agreed to be bound by them if You pay FCI's Fees for any Services provided to You directly by FCI or through the Reseller.
- 2.3 FCI reserves the right to refuse to supply the Services to You without notice or reason.
- 2.4 These Terms will prevail at all times to the exclusion of all other terms and conditions between FCI and You which You may purport to apply.
- 2.5 These Terms, together with prices and delivery details as set out in writing by FCI or by the Reseller, will comprise the whole of the agreement by FCI to supply the Services to You.
- 2.6 FCI may modify these Terms and can revise, amend or discontinue any or all aspects of the Services at its sole discretion, with immediate effect and without prior notice. Any modification of these Terms and any revision, amendment or discontinuation of the Services will be posted on the Site. Continued use by You of the Services will be deemed to be Your acceptance of such modification, revision, amendment or discontinuation and Your agreement to be bound by such amended Terms. For avoidance of doubt, each modification of these Terms shall apply to the Orders placed after such modification.

3 INTELLECTUAL PROPERTY RIGHTS

- 3.1 You acknowledge, and shall procure acknowledgment by the Client, that all Intellectual Property Rights in the Services are and will continue to be owned by FCI or the Supplier(s) and that nothing in these Terms purports to transfer, assign or grant any right to You or the Client in respect of such Intellectual Property Rights.
- 3.2 FCI confirms that it has used reasonable endeavours to ensure that use by You of the Services in accordance with these Terms will not infringe third party rights of any kind.
- 3.3 Upon payment of FCI's Fees and subject to these Terms, You shall be entitled to make the Services available to:
 - 3.3.1 the Client and the Client's professional advisers;
 - 3.3.2 any person providing funding to the Client in relation to the Property Site;
 - 3.3.3 the first purchaser or first tenant of the Property Site;
 - 3.3.4 the professional advisers and lenders of the first purchaser or first tenant of the Property Site.
- 3.4 For the avoidance of doubt, the limitations on FCI's liability as set out in Clause 5 as they relate to the Intellectual Property Rights will apply.
- 3.5 You agree that You will not, and will take all reasonable steps to ensure that any recipients who have access to the Services through You will not except as permitted by these Terms or with the separate written consent of FCI:
 - 3.5.1 effect or attempt to effect any modification, merger, change, reduction to any electronic medium or machine-readable form, reverse engineering, decompiling, disassembly of the Services or Site (except as permitted by law);
 - 3.5.2 translate or publish any aspect of the Services;
 - 3.5.3 market, re-sell or carry on or add to any redistribution of the Services;
 - 3.5.4 remove or change in any way any trademark or proprietary marking in any element of the Services.
- 3.6 You will acknowledge ownership of the Intellectual Property Rights in the Services in respect of any aspect of any of these which may be incorporated, referred to or used in Your own documents, reports, systems or services, whether or not these are supplied to any third party.
- 3.7 You acknowledge and agree that You shall, and shall procure that any other person or organisation having access to the Services through You shall, treat as strictly private and confidential the Services and all information obtained from the Services and shall maintain adequate security measures to safeguard the Services from unauthorised access or use.
- 3.8 You agree that You will comply with any reasonable instructions FCI may give You from time to time with regard to application of the Intellectual Property Rights including, but not limited to, a requirement that You acknowledge that the Services are confidential to You.
- 3.9 You agree to notify FCI should You suspect any infringement of FCI or the Supplier's Intellectual Property Rights.

4 FEES

- 4.1 In addition to FCI's Fees notified to You directly from FCI or by the Reseller, insurance premium tax or value added tax at the rate then in force may be payable.
- 4.2 FCI will be entitled, at its sole discretion, to increase FCI's Fees without advance notice of any amendment to FCI Fees and the placing of any further Order for the Services directly from FCI or via the Reseller shall be deemed acceptance of any revisions to FCI's Fees.
- 4.3 You shall pay FCI's Fees for the Services within 30 days of the date set out on the invoice issued to You by FCI or the Reseller on all occasions where payment is not required in advance.
- 4.4 By placing an Order You acknowledge and agree that the Services will commence immediately. If You wish to cancel an Order we may charge You on the basis of time and materials spent on delivering the Services up to the point of cancellation, including all third party fees incurred by FCI.

5 WARRANTIES AND LIMITATION OF FCI'S LIABILITY

- 5.1 FCI provides warranties and accepts liability only to the extent set out in this Clause.
- 5.2 Except as provided by law, FCI will be liable for direct losses only to the Client to the extent stated in Clause 5.6 and will not be liable for any indirect or consequential loss, damage or expenses of any kind (including loss of profits and loss of contracts, business or goodwill) or for any physical damage to or loss of the Client's tangible property arising in any way out of any problem, event, action or default by FCI whether such loss or damage arises under contract, tort (including negligence), an indemnity or contribution or otherwise.
- 5.3 Nothing in these Terms excludes or limits either party's responsibility for death or personal injury caused by that person's negligence or wilful default.
- 5.4 FCI will only be liable to the Client for accidental loss or damage caused by its own negligence or wilful default.
- 5.5 FCI will not be liable to the Client if the Services are used other than as provided or referred to in these Terms and the 'Notes and Guidance' section of all Products or Services. For the avoidance of doubt the FCI Retail Product(s) is provided for use solely for continued-use commercial Property Site(s) comprising a single commercial Property Site with an area of less than 0.25 hectares where the Use Class is within categories A1, A2, A3, A4, A5 or C4 but excluding retail stores associated with petrol filling stations and the FCI Residential Product(s) is provided solely for continued-use residential Property Site(s) comprising a single residential dwelling.
- 5.6 FCI shall maintain professional indemnity insurance in respect of its liability under these Terms. FCI holds an aggregate amount of ten million pounds (£10,000,000.00) per claim or per series of connected claims. In any event, and notwithstanding anything contained in these Terms, FCI's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising in any way in relation to the Services (except in relation to death or personal injury) will not exceed an aggregate amount of ten million pounds (£10,000,000.00) per claim or per series of connected claims in all cases except where the liability relates to the FCI Retail Product where the aggregate limit will not exceed five million pounds (£5,000,000).
- 5.7 You acknowledge and agree that:
- 5.7.1 You will not in any way hold FCI responsible for its selection or retention of the Suppliers, or any delay, failure, acts or omissions of supply of the Third Party Content or services from other Suppliers (including those with whom FCI may have contracted from time to time to provide parts of the Services);
- 5.7.2 FCI does not promise that the supply of the Services will be uninterrupted or free from error or provide any particular facilities or functions, or that the Content will always be complete, accurate, precise or free from defects of any kind or from computer viruses, computer locks or other similar computer-related problems but FCI undertakes to use reasonable efforts to correct any such errors, inaccuracies or defects within a reasonable period of being made aware of them;
- 5.7.3 FCI will not be liable for any interruption, delay or failure in the provision of the Services caused or contributed to by any circumstance outside the reasonable control of FCI (including, but not limited to, failure of power supply, computer malfunction, inaccurate processing of data by third parties, delays in coding, loading, processing, checking or dispatching of data, corruption of data while in course of conversion, failure or overloading of printing or telecommunications or electronic communications);
- 5.7.4 in providing search reports FCI will comply with the "Search Code" as developed by the Council for Property Search Organisations (CoPSO) and enforced by the Property Codes Compliance Board (PCCB). FCI's only obligation is to exercise the reasonable skill and care of a business-to-business company supplying information to persons acting in a professional or commercial capacity and You acknowledge that You are such a person;
- 5.7.5 only the Client, any person providing funding to the Client in relation to the Property Site (whether directly or as part of a lending syndicate), the Client's purchaser or tenant of the Property Site and any professional advisors of the Client are entitled to rely on the Services;
- 5.7.6 before placing an Order You will carefully check that the details that You provide in relation to Your Order are complete, accurate and correct and that the Services are being procured for the correct location and property type, and take any other advice prudently required before making any decision in relation to the Property Site to which the Services may relate and You will not rely exclusively on the Services in Your dealing with the Property Site or in relation to valuation of it;
- 5.7.7 the Services have not been prepared so as to meet Your or anyone else's particular requirements and You assume the entire risk as to their suitability and waive any claim of detrimental reliance upon them and You are solely responsible for selection or omission of any part of the relevant Content;
- 5.7.8 the information forming the Content has been extracted from a wide range of third party sources compiled for many different purposes and to different standards and is not controlled or maintained by FCI and that, accordingly, while FCI may identify and will endeavour to correct errors brought to FCI's attention, such Third Party Content cannot be warranted to be free of error and some errors and omissions may remain. Other than errors introduced as a result of FCI's own processing FCI and its suppliers do not accept any

- responsibility and expressly disclaim all liability for any errors, omissions or misstatements in such Third Party Content and for any loss or damage suffered by You or any other person acting or refraining from acting as a result of, or in reliance on, any Third Party Content;
- 5.7.9 given the wide range of data which could potentially be included in the Content, FCI does not claim or warrant that either the Content or Services is comprehensive with respect to or sufficient for any specific purpose;
 - 5.7.10 FCI offers no warranty for the performance of any linked internet service not operated by FCI;
 - 5.7.11 without prejudice to any other restriction set out in these Terms, if in the course of Your business or otherwise You use for the benefit of or convey to any third party any element of the Services, You will make such third party aware of the limitations, obligations and acknowledgments set out in these Terms;
 - 5.7.12 You will observe and comply with all applicable laws and regulations;
 - 5.7.13 You shall not hold Yourself out or describe Yourself as FCI's agent or an agent of the Reseller or of any of the Suppliers.
 - 5.7.14 You will carry out an inspection of the Product or Service to satisfy Yourself that the Property Site boundary, address and description are free from errors, and where any such errors are identified You will promptly inform FCI. FCI will not be liable to the Client where the Product(s) or Service(s) is relied upon for land which is of a greater extent than the Property Site.
- 5.8 All liability for any Insurance Product purchased by You rests solely with the relevant insurer whether or not FCI has selected that insurer or Insurance Product for incorporation in a Product for You or otherwise.
 - 5.9 Other than the "Report Review", "Desk Top Review" and "On Site Assessment" provided by Jeremy Benn Consulting (JBA), if FCI instructs any additional service for You obtained from a third party or derived from information provided by a third party (including, but not limited to, any professional opinion or search carried out in relation to the Property Site) FCI will not be liable to You in any way for any issue arising out of such additional service. FCI will be deemed to act solely as Your agent in these circumstances and will be entitled to disclose Your identity, and supply of such additional services will then be governed by the terms and conditions of any such third party.
 - 5.10 For the avoidance of doubt FCI's liability in respect of a "JBA Report Review", a "JBA Desk Top Review", or a "JBA On Site Assessment" procured for You by FCI from JBA is limited to a maximum of £1 million in respect any claim or series of connected claims.
 - 5.11 Neither You, nor a Client nor any other person may rely on the Services more than 12 months after they were originally provided.
 - 5.12 No physical inspection of the Property Site is carried out as part of any Services offered by FCI (unless previously agreed in writing) and FCI does 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.
 - 5.13 FCI will not be liable to the Client or those beneficiaries who are entitled to rely on the Services as set out in clause 5.7.5, in respect of any loss occurring in the period after the Client or those beneficiaries cease to either retain an interest in the Property Site or remain liable for the Property Site.

6 REMEDIATION WARRANTY

- 6.1 Subject to the terms detailed each Protected Product issued benefits from our Remediation Warranty for a period of up to 6 years from the date of purchase of the Protected Product providing up to a maximum of £100,000 in respect of the cost of the works necessary to be carried out at the Property Site under a Remediation Notice. The Remediation Warranty applies only
 - 6.1.1 in respect of the Protected Product purchased by or on behalf of the Claimant;
 - 6.1.2 where the availability of a Remediation Warranty is confirmed in the individual Protected Product, save as set out in Clause 6.3;
 - 6.1.3 where the professional opinion given in the Protected Product was such that the property is not likely to be designated Contaminated Land within the meaning of Part 2A of the Environmental Protection Act 1990 and where the professional opinion given was incorrect;
 - 6.1.4 where a Remediation Notice is served on the Claimant;
 - 6.1.5 where the pollution or contamination resulting in the Remediation Notice occurred prior to the date of the issue of the Protected Product.
- 6.2 For the avoidance of doubt the Remediation Warranty is not available where:
 - 6.2.1 the Protected Product discloses a risk of the land beneath the property being designated Contaminated Land; or
 - 6.2.2 the land on which the Property Site is situated has already been designated Contaminated Land.

- 6.2.3 the Property Site is in use other than as referred to in the Protected Product definition. For the avoidance of doubt the FCI Retail Product(s) is provided for use solely for continued-use commercial Property Site(s) comprising a single commercial Property Site with an area of less than 0.25 hectares where the Use Class is within categories A1, A2, A3, A4, A5 or C4 but excluding retail stores associated with petrol filling stations. FCI Residential Products are provided solely for continued residential use comprising a single residential dwelling.
- 6.3 The Remediation Warranty is not applicable in respect of:
- 6.3.1 radioactive contamination of any nature;
 - 6.3.2 contamination arising from asbestos containing materials;
 - 6.3.3 contamination arising from any above ground oil tank at the Property where the Claimant has not, since purchase, ensured that the oil storage tank is provided with adequate security (to prevent accidental and/or malicious leakage) and secondary containment (such secondary containment having a capacity of at least 10% greater than that of the tank, or in compliance with applicable oil storage regulations, whichever is greater).
 - 6.3.4 contamination arising from naturally occurring materials or arising from the removal of naturally occurring materials;
 - 6.3.5 intentional disregard or wilful or deliberate non-compliance by any owner or occupier of the Property Site in respect of any statute, regulation, administrative complaint, notice of violation, or notice from any regulatory authority;
 - 6.3.6 any condition which is known or ought reasonably to have been known to the Claimant;
 - 6.3.7 any condition which is caused by acts of war or an act of terrorism;
 - 6.3.8 any property which does not form a fixed part of the Property Site or the structure;
 - 6.3.9 any fines or liquidated damages or punitive or exemplary damages;
 - 6.3.10 any financial loss in respect of any loss of any rent, profit, revenue, savings or business costs or any consequential indirect or economic loss, damage or expense including the cost of rent of temporary premises or business interruption;
 - 6.3.11 any losses incurred following a material change in use of alteration or development of the Property Site;
 - 6.3.12 any subsequent Protected Product or other Products purchased by or on behalf of the first purchaser or the first purchaser's lender or any person connected to them in respect of the same Property Site.
- 6.4 The Remediation Warranty is not assignable in the event of a sale of the Property Site by the first purchaser or the first purchaser's lender and ceases on the date of completion of such sale.
- 6.5 Under the terms of the Remediation Warranty claims must be notified to FCI in writing within 3 months of the date of the Remediation Notice. The Claimant shall comply with all FCI's reasonable requirements with regard to the works to be carried out under the Remediation Notice, and in the event that any Claimant does not do so, including obtaining FCI's prior written consent to any estimates for such works and complying with any other reasonable request by FCI, the Remediation Warranty will be invalidated.
- 6.6 The Claimant shall take all reasonable steps to mitigate any costs incurred in connection with the conduct of the works required in respect of the Remediation Notice.
- 6.7 In the event that any Claimant receives any communication from the relevant authority to constituting the intent to serve a Remediation Notice the Claimant must advise FCI within a maximum period of 2 months from receipt of such communication.

7 TERMINATION

- 7.1 In the event that FCI reasonably believes that You have not provided the information required to enable the proper provision of the Services, FCI reserves the right to suspend all further performance of the Services until such time FCI is satisfied such deficiency has been made good.
- 7.2 FCI may instruct the Reseller to terminate the Reseller's Account and Your access to the Services permanently or for an indefinite period without any liability to You with immediate effect if:
- 7.2.1 You are in breach of these Terms or fail to remedy the breach within 7 days of a written notice to do so from FCI; or
 - 7.2.2 You repeatedly commit or cause to be committed a material breach of these Terms; or
 - 7.2.3 You enter into proceedings for bankruptcy or insolvency; are demonstrably unable to pay Your debts as they fall due; make any composition or arrangement with Your creditors; go into liquidation, whether voluntary or compulsory; an order is made or a resolution is passed for Your winding up; a receiver, administrative receiver, administrator or similar officer is appointed over the whole or any part of Your assets; or if You cease or prepare to cease trading.
- 7.3 FCI may instruct the Reseller to terminate the Reseller's Account and Your access to the Services by giving You 30 days' notice in writing if in FCI's sole opinion it is no longer appropriate for You to have access to the Services.

8 NOTICES AND GENERAL

- 8.1 Unless otherwise provided in these Terms, all notices by You to FCI must be in writing and sent to FCI at: 17 Kings Hill Avenue, Kings Hill, West Malling, Kent ME19 4UA.
- 8.2 All notices from FCI to You will be displayed on the Site from time to time.
- 8.3 FCI may at any time assign or transfer any or all of its obligations as set out in these Terms to any third party and, following intimation to You of such assignment or transfer, FCI will be relieved of any further obligation to You.
- 8.4 FCI may authorise or allow contractors and other third parties to provide to FCI and/or You services necessary or related to the Services and to perform FCI's obligations and exercise FCI's rights under these Terms (including collecting payment on behalf of FCI).
- 8.5 These terms are personal to You and neither Your obligations under these Terms nor the benefits to You provided under them nor Your right to use the Services, can be assigned or transferred to another party in any way by You without the written consent of FCI.
- 8.6 Nothing in these Terms will constitute or be deemed to constitute any partnership or joint venture between FCI and You or create or be deemed to create a relationship of principal and agent between FCI and You except as provided in Clause 5.9.
- 8.7 References in these Terms to any legislation will be construed as references to such legislation as amended or re-enacted from time to time and to include subordinate legislation or regulations.
- 8.8 Save as expressly produced in these Terms, no other person other than the persons set out therein shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms and FCI will not be liable to any such third party in respect of any Services supplied.
- 8.9 Headings in these Terms are for convenience only and will not affect the meaning or interpretation of any part of these Terms.
- 8.10 These Terms will be construed in accordance with and governed by the laws of England and Wales. You agree to the non-exclusive jurisdiction of the courts of England and Wales and waive any right to object to that forum on the grounds of inconvenience or otherwise. If any dispute arises out of or in connection with these Terms FCI and You agree that, prior to instigation of any court proceedings, both parties will seek to have the dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both parties with the assistance of the Centre for Dispute Resolution, by written notice initiating that procedure. If the dispute has not been resolved to the satisfaction of either party within 30 days of the initiating of the procedure, or if either party fails or refuses to participate in or withdraw from participation, then either party may refer the dispute to the High Court.

9 COOKIES

- 9.1 Cookies are small text files that are stored on Your computer to enhance functionality on a website by remembering specific credentials. FCI uses cookies as a fundamental part of the operation of the Site, and in order to ensure efficiency of its service to You.
- 9.2 For more information about cookies and how they are used, please go to www.whatarecookies.com To find out how to manage or remove cookies from Your web browser, please go to www.whatarecookies.com/delete.asp

10 COMPLAINTS PROCEDURE

- 10.1 If You have a complaint regarding FCI's Services, please send the details to:
- 10.2 Future Climate Info Ltd, 17 Kings Hill Avenue, Kings Hill, West Malling, Kent ME19 4UA. Tel:
- 10.3 01732 755180. E-mail: info@futureclimateinfo.com
- 10.4 Your complaint will be acknowledged within 5 working days of receipt and You should receive a written response within 20 working days. Where this is not possible, FCI will inform You of the reasons for this and give You an indication of when You should receive a response. If You have not received a response within 40 working days of the original receipt of the complaint, or FCI is not able to resolve it to Your satisfaction, You may refer Your complaint to: The Property Ombudsman (TPO's) scheme, (website www.tpos.co.uk, email: admin@tpos.co.uk). FCI will co-operate fully with the Ombudsman during an investigation and comply with his final decision.
To view the full complaints procedure [click here](#)