

# ARGYLL ENVIRONMENTAL LIMITED. CONDITIONS OF CONTRACT FOR FLOODSOLUTIONS REPORTS

## 04 June 2009 Version 1.1

### Definitions

"**Argyll**" means Argyll Environmental Limited of Tower Point 44, North Road, Brighton East Sussex BN1 1YR, registered in England under number 4603621;

"**Beneficiary**" means the client of the Customer for whom the Customer has procured the Report;

"**Conditions**" means these terms and conditions of sale, the User Manual and the Order;

"**Customer**" means the party that places the Order

"**Information Access Regime**" means any of the Freedom of Information Act 2000, Environmental Information Regulations 2004 and other associated legislation and guidance;

"**Order**" means the order for Services sent by a Customer to Argyll;

"**Report**" means a report which is one of the family of FloodSolutions Reports prepared by Argyll in respect of a Site;

;"**Services**" means the preparation and provision of Report(s) by Argyll;

"**Site**" shall mean the site(s) or location(s) specified in the Order.

"**User Manual**" means the document entitled Argyll Products and Services User Manual, which may be requested with the Report or downloaded free of charge from the Argyll website at: [www.argyllenvironmental.com](http://www.argyllenvironmental.com)

### 1. Conditions

1.1 Subject to receipt of a valid Order, Argyll agrees to supply to the Customer the Services subject to these Conditions and the Customer agrees that by placing an Order for the Services it accepts these Conditions. The User Manual applicable to each Report should be read in conjunction with the Report and is incorporated into these Conditions as if it were repeated herein. A Report is sold subject to all information contained in such User Manual.

1.2 Argyll acknowledges that in the provision of the Report and Services it owes a duty of care to the Customer and to the Beneficiary.

### 2. Report

Argyll shall use all reasonable care, skill and diligence in carrying out the Services and providing the Report to the Customer. However the Report is provided to the Customer on the express basis that the Customer acknowledges and agrees to the following:

2.1 information and data supplied in Report(s) is derived from third party sources. Argyll does not warrant the accuracy or completeness of such publicly available records or other third party sources; and

2.2 the sources of information and data supplied in Report(s) are specifically cited in the User Manual and Report however Argyll does not claim that these sources represent an exhaustive or comprehensive list of all sources that might be consulted; and

2.3 Argyll does not guarantee that all flood risks which may affect the Site will be identified in the Report; and

2.4 The Reports are only intended for use or interpretation by professional persons skilled in the use of property information, or flood information, or both; and

2.5 Argyll shall not be responsible for any error or corruption in a Report resulting from inaccuracy or omission of third party information and data provided by the Customer, inaccurate processing of information and data by third parties, computer malfunction or corruption of data whilst in the course of

conversion, geo-coding, processing by computer or electronic means, or in the course of transmission by telephone or other communication link.

### 3. Liability

3.1 As the risk assessment and findings of the Reports is based on information and data supplied by third parties, Argyll cannot control the accuracy or completeness of such data and information, nor is it within the scope of the Services to verify the data or information by a physical inspection of the Site. Save as provided in Conditions 3.6 and 3.9 Argyll shall only be liable to the Customer in respect of the Services:

3.1.1 for loss or damage caused by the negligence of Argyll in its mapping of the Customer's plan of the Site onto the Argyll system or of Argyll's interpretation of information or mapping supplied by third parties ;

3.1.2 for errors or inaccuracies in any databases or maps supplied to it by third parties where Argyll should reasonably have been alerted to such error or inaccuracy;

3.1.3 for loss or damage caused by breach by Argyll of these Conditions, accordingly save as provided in Condition 3.6 Argyll shall not be liable in any other circumstances for any errors, inaccuracies, faults or omissions in the Services.

3.2 Argyll shall have no liability whatsoever for, under or in respect of any insurance policy purchased by the Customer where insurance is made available to a Customer following the provision of a Report by Argyll issued in accordance with these Conditions. Where such a policy has been purchased, all liability shall remain exclusively with the insurers.

All decisions with regard to the offer of insurance policies for any Site will be made solely at the discretion of the insurers and Argyll accepts no liability in this regard. Argyll is not endorsing any policy recommended by insurers and the Customer is entirely responsible for ensuring the insurance policy offered is suitable for its needs and should seek independent advice.

3.3 Argyll does not guarantee that an insurance policy will be available for the Site specified in the Report and the provision of a Report does not constitute any indication by Argyll that insurance will be available on the Site.

3.4 Argyll has undertaken the Services for use by the Customer and those persons referred to at condition 5.1 and for no other purpose whatsoever and the Services should not be relied upon by any other third party. Argyll accepts no responsibility and will not be liable to any other party for any loss caused as a result of reliance upon the Services. Any other party relying on the Services does so entirely at its own risk, including without limitation, any insurers. Recipients of the Services are to rely on their own skill and judgement in determining the suitability of the Services for their own purpose and use.

3.5 Argyll shall have no liability whatsoever if a Report on residential

property is used for commercial property or more than one residential property for which it was ordered.

3.6 Nothing in these Conditions shall exclude or restrict Argyll's liability for death or personal injury resulting from the negligence of Argyll or their employees while acting in the course of their employment or arising from a breach of its statutory duty or fraud. Argyll shall not be liable to any recipient of the Service for loss of profits, loss of contracts, (or other indirect or consequential loss or damage) resulting from any event or default by Argyll in the provision of the Services to the fullest extent permitted by law. Time shall not be of the essence with respect to the provision of the Services except where it has agreed a deadline with the Customer. Argyll shall not be liable for any delay, interruption or failure in performance of its obligations hereunder which is caused by war, flood, riot, Act of God, strike or other labour dispute (including those affecting Government officials), suspension or delay of service at public registries, lack of power, telecommunications failure or overload, or computer malfunction caused by any event beyond the reasonable control of Argyll.

3.7 The Customer shall on receipt of the Services make a reasonable inspection to satisfy itself that there are no apparent defects or failures with respect to the description and location of the Site.

3.8 Argyll's liability under the Conditions shall cease upon the expiry of six years from the date when the Customer or any person making use of the Report in accordance with Condition 5.1 became aware that it may have a claim in respect of a particular Report provided always that there shall be no liability at the expiration of twelve years from the date of the Report. For the avoidance of doubt, any claims in respect of which proceedings are notified to Argyll prior to the expiry of the time periods referred to in this Condition shall survive the expiry of those time periods.

3.9 Subject as otherwise provided in these Conditions, Argyll's aggregate liability arising out of the provision or use of the Services, in contract, negligence or in any other way, for damages or loss sustained or incurred by the Customer shall be limited to an aggregate amount not exceeding ten million pounds (£10,000,000). For the avoidance of doubt, if multiple parties make use of the Report, the limit referred to above applies to all users of that Report in aggregate.

3.10 Argyll undertakes for the duration of the 12 year period of liability provided for by Condition 3.8 to maintain and renew annually Public Liability and Professional Indemnity Insurance in respect of the Services with a liability limit of not less than ten million pounds (£10,000,000) provided that such insurance is available at commercially reasonable rates (and in such case then at the next highest limit which is available in the market at commercially reasonable rates). Details of Public Liability and Professional Indemnity Insurance shall be made available to the Customer on request.

3.11 Where Argyll procures for the Customer, otherwise than as part of a Report, any third party service, including but not limited to, flood consultancy reports, risk models, risk assessments, professional opinions, or any other service, Argyll accepts no liability whatsoever for the information contained therein.



# ARGYLL ENVIRONMENTAL LIMITED. CONDITIONS OF CONTRACT FOR FLOODSOLUTIONS REPORTS

## 04 June 2009 Version 1.1

### 4. Copyright

4.1 The Customer (and any recipient of the Report pursuant to the provisions of condition 5.1) acknowledges that the proprietary rights subsisting in copyright, design rights and any other intellectual property rights in respect of the data and information in the Report are and shall remain the property of Argyll or any third party that has supplied information or data used to create the Report and these Conditions do not purport to grant, assign, or transfer any such rights in respect thereof.

4.2 Reports may be stored on the Customer's server and used on up to fifty (50) units (where a "Unit" means a single client personal computer or workstation) on the Customer's network and any network of a recipient of the Report pursuant to the provisions of Condition 5.1. Data in Reports is deemed to be in use when it is loaded into the temporary memory (i.e. RAM) or installed onto the permanent memory (i.e. hard disc, CDROM) of that computer.

4.3 The Customer (and all recipients of the Report pursuant to the provisions of Condition 5.1) is each entitled to make up to six printed copies only of any Report. Copies of the Report may be provided for information purposes only to a person who is considering whether to acquire or hold an interest in the Site or to provide funding in relation to the Site. Further copies may not be made in whole or in part without the written permission of Argyll who shall be entitled to make a charge for each additional copy.

4.4 The Customer shall (and shall procure that all recipients of the Report pursuant to the provisions of Condition 5.1 shall):

4.4.1 not remove, suppress or modify any trademark, copyright or other proprietary marking belonging to Argyll or any third party from the Services;

4.4.2 not create any product which is derived directly or indirectly from the data contained in the Services; save that those acting in a professional capacity in accordance with 5.1.5 may provide advice based upon the Report;

4.4.3 not combine the Services with or incorporate such Services into any other information data or service;

4.4.4 not re-format or otherwise change (whether by modification, addition or enhancement) data contained in the Services save for those modifications made by those acting in a professional capacity in accordance with 5.1.5 in order to provide advice based upon the Report;

4.5 The Customer, the Beneficiary and any other person to whom the Report is made available shall notify Argyll of any requirement to disclose, publish or disseminate any information contained in the Report in accordance with the Information Access Regime;

4.6 The mapping contained in any Services is protected by Crown Copyright and must not be used for any purpose outside the context of the Services.

### 5. Confidentiality and Reliance

5.1 Subject to Condition 5.2, the Customer may without further charge make the Report available to:

5.1.1 the Beneficiary;

5.1.2 any other person for whom the Customer acts in a professional or commercial capacity in relation to the Report;

5.1.3 any person who acquires or holds an interest in the Site or an interest in the Beneficiary or the entity which holds or acquires an interest in the Site save that nothing shall hereby entitle any such person to recover twice (whether directly or indirectly) in respect of the same loss nor seek recovery in respect of any loss relating to any period after such entity ceases to hold its interest or to have potential liability for the Site (whichever is the later) (unless otherwise agreed by the parties);

5.1.4 any person who provides funding to the Beneficiary or to a person at condition 5.1.3;

5.1.5 any person acting in a professional or commercial capacity for the Beneficiary in relation to the Site.

5.2 Argyll shall have the same duties and obligations to those persons referred to in Conditions 5.1.1, 5.1.2, 5.1.3 5.1.4 and 5.1.5 in respect of the Services as it has to the Customer, and such persons shall be entitled to rely on the relevant Report as if it was addressed to them and any such person shall be entitled to enforce each of these Conditions as if they were named as joint Beneficiary in the Order, provided always that the person to whom the Report is made available accepts these Conditions and expressly including Conditions 4.4.2 to 4.4.4.

5.3 The Report is to be used solely for the benefit of the Customer and such persons as are set out in Condition 5.1, and Argyll excludes all liability to all other persons unless Argyll has expressly agreed in writing to a third party taking the benefit of the Report and has been paid reasonable fees for so doing.

5.4 Any information provided by the Customer to Argyll in contemplation of the Services to be provided together with the Report will be treated as confidential information.

5.5 Argyll agrees not to disclose or publish any statement relating to such confidential information (in whole or in part) to any third party without the prior written consent of the Customer save for its provision to Argyll's employees who require access to the confidential information in order to perform their duties to Argyll.

5.6 Argyll will procure that its employees will maintain the confidential information in strict confidence.

### 6. Argyll's Charges

6.1 The Customer shall pay Argyll's charges for the Services at the rate set out in the Order.

6.2. Unless otherwise stated all prices are exclusive of Value Added Tax which shall, where applicable, be payable in addition to any sum payable for the Services at the relevant rate in force from time to time, against delivery of an appropriate tax invoice.

6.3 The Customer shall pay the price referred to in Condition 6.1 above for the Services:

6.3.1 without any set off, deduction or counterclaim;

6.3.2 within 30 days of the date of Argyll's invoice.

6.4 Argyll shall not be obliged to invoice any party other than the Customer for the provision of Services, but where Argyll does so invoice any third party at the request of the Customer, and such invoice is not accepted or remains unpaid, Argyll shall have the option at any time to cancel such invoice and invoice the Customer direct for such Services. Where the Customer's order comprises a number of Services or separate elements within any one or more Services, any failure by Argyll to provide an element or elements of the Services shall not prejudice Argyll's ability to require payment in respect of the other Services delivered to the Customer.

6.5 If the Customer exceeds its credit limit or fails to make any payment on the due date Argyll shall be entitled to cancel or suspend any further orders or delivery. In addition, Argyll may charge interest on overdue amounts at 2% over the Lloyds TSB plc base rate (as varied from time to time) from the due date until payment in full is made (whether before or after judgement).

### 7. General

7.1 These Conditions constitute the entire agreement between the parties and no statement given orally or in writing should be deemed incorporated herein unless executed in writing by a Director of Argyll and countersigned by the Customer. Each of the Conditions and Sub-conditions of these Conditions is distinct and severable. If any provision of these Conditions shall be determined to be invalid, illegal or unenforceable, the remainder of these Conditions shall continue to be valid, legal and enforceable to the fullest extent of the law.

7.2 Any time or indulgence granted by Argyll or the Customer or delay in exercising any of its rights under these Conditions shall not prejudice or affect Argyll's or the Customer's rights or operate as a waiver of the same.

7.3 Neither Argyll nor the Customer shall be entitled to assign its rights or obligations pursuant to these Conditions.

7.4 Argyll may suspend or terminate the provision of the Services if the Customer is bankrupt or insolvent or makes any voluntary arrangements with its creditors or become subject to an administration order or has an administrative receiver appointed over any of its assets or Argyll has reason to believe that any of the foregoing Conditions may come into existence or where any amount owing to Argyll that is overdue or where the Customer has exceeded any credit limit.

7.5 These Conditions shall at all times be governed construed and enforced in accordance with English Law which shall be the proper law of these Conditions, and both parties thereby submit to the exclusive jurisdiction of the English courts.

7.6 Except as otherwise provided in these Conditions a person who is not a party to any contract made pursuant to these Conditions shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of such contract and Argyll shall not be liable to any such third party in respect of the Services.

Version: T&CFlood 1.1

Date: 04 June 2009

