

# ARGYLL ENVIRONMENTAL LIMITED CONDITIONS OF CONTRACT FOR SITESOLUTIONS AND FLOODSOLUTIONS REPORTS. July 2013 version 3.3

## Definitions

“**Argyll**” means Argyll Environmental Limited of Lees House, 21-33 Dyke Road, Brighton, BN13FE registered in England under number 4603621;

“**Beneficiaries**” means those persons, as relevant, referred to in Condition 5.1;

“**Client**” means the client of the Customer for whom the Customer has procured the Report;

“**Conditions**” means these conditions;

“**Customer**” means the party that places the Order, not being a Search Provider;

“**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 the Report;

“**Report**” means a FloodSolutions or a SiteSolutions report prepared by Argyll in respect of the Site;

“**Search Code**” means the Code of Practice for Search Compilers and Retailers published by the Council of Property Search Organisations;

“**Search Provider**” means a third party provider of conveyancing searches;

“**Site**” means the site specified in the Order;

## 1. Conditions

1.1 The Customer agrees that by placing an Order it accepts these Conditions.

1.2 Following receipt of the Order, Argyll agrees to supply the Report to the Customer.

## 2. Reports

2.1 The Customer shall rely on its own skill and judgement in determining the suitability of the Report for its own purpose and use.

2.2 Argyll acknowledges that in providing the Report it owes a duty of care to the Customer and to the Beneficiaries.

2.3 Argyll shall use all reasonable care, skill and diligence in the preparation of the Report.

2.4 In providing search reports and services Argyll shall comply with the Search Code.

2.5 The Customer acknowledges and agrees that the Report is provided on the following basis:

2.5.1 Argyll does not warrant the accuracy or completeness of information and data supplied in the Report, as such information and data are derived from third party sources;

2.5.2 Argyll does not claim that these sources represent an exhaustive or comprehensive list of all sources that might be consulted;

2.5.3 Argyll does not guarantee that all risks, features and (where relevant) past and current uses which may affect the Site will be identified in the Report;

2.5.4 in preparing the Report, Argyll shall not verify the data or information by a physical inspection of the Site, unless previously agreed in writing; and

2.5.5 the Report is only intended for business purposes and for use or interpretation by professional persons skilled in the use of property, environmental or flood information (as appropriate).

2.6 The Customer shall on receipt of the Report carry out a reasonable inspection to satisfy itself that there are no apparent defects or failures with respect to the description and location of the Site and shall promptly inform Argyll if they are or should reasonably be aware of any such defect or failure.

## 3. Liability

3.1 Argyll shall be liable, subject to Condition 3.2, to the Customer and the Beneficiaries only, for loss caused by the negligence of Argyll in its mapping of the Customer's plan of the Site onto the Argyll system or in its interpretation of information or mapping supplied by third parties.

3.2 Subject to Condition 3.6, Argyll shall not be liable in any other circumstances, including, without limitation:

3.2.1 for any error in the Report resulting from inaccuracy, corruption or omission of information and data provided by a third party, the Customer

or any Beneficiary, or from computer malfunction or corruption of data whilst in the course of processing, except to the extent that Argyll should reasonably have been alerted to such error;

3.2.2 for loss of profits, loss of contracts or other indirect or consequential loss or damage resulting from any error or omission by Argyll in the provision of the Report;

3.2.3 if the Report is designed for property used for residential purposes, but is relied upon for property used for commercial purposes, or if the Report is relied upon for property more extensive than the Site;

3.2.4 for any third party service obtained or purchased in connection with the Report, including, but not limited to, consultancy reports, risk models, risk assessments and professional opinions; or

3.2.5 for any insurance policy purchased in connection with any risk identified in the Report. Independent advice should be sought as to which insurance policy is suitable.

3.3 Any party, other than the Customer or the Beneficiaries, who relies on the Report does so entirely at its own risk, including, without limitation, any insurers. Argyll accepts no responsibility and shall not be liable to any such party for any loss caused as a result of reliance upon the Report.

3.4 Time shall not be of the essence in respect of the provision of the Report, except where it has agreed in writing a deadline with the Customer, provided always that Argyll shall not be liable for any delay, interruption or failure in performance of its obligations arising from circumstances outside its control, including, without limitation: war, flood, riot, Act of God, strike or other labour dispute, suspension or delay of service at public registries, lack of power, telecommunications failure or overload or computer malfunction.

3.5 Argyll's aggregate liability arising out of the provision of the Report in contract, negligence or otherwise, for damages or loss sustained or incurred by the Customer and the Beneficiaries shall be limited (except in relation to fraud, death or personal injury) to an aggregate amount in respect of each Report not exceeding £10million. For the avoidance of doubt, if multiple parties make use of the Report, the limit referred to above

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applies to all users of that Report in aggregate.

3.6 Argyll's liability under the Conditions for the Report shall cease upon the expiry of six years from the date when the Customer or any of the Beneficiaries became aware that it may have a claim in respect of the 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.

3.7 Argyll undertakes for the duration of the 12 year period of liability provided for by Condition 3.6 to maintain Public Liability and Professional Indemnity Insurance in respect of the preparation of the Report with a liability limit of not less than £10,000,000 in respect of each Report, 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.

3.8 Nothing in these Conditions shall exclude Argyll's liability for fraud or for death or personal injury caused by Argyll's negligence or breach of its statutory duty.

## 4. Copyright

4.1 The Customer and the Beneficiaries acknowledge that all intellectual proprietary rights in respect of the data and information contained in the Report, including copyright and design rights, are and shall remain the property of Argyll or any third party that has supplied information or data used to create the Report, as appropriate, and these Conditions do not grant or purport to grant, assign, or transfer any such rights.

4.2 The Customer and the Beneficiaries are each entitled to make up to six printed copies only of the 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.

4.3 The Customer shall (and shall procure that the Beneficiaries shall):

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

4.3.2 not create any product which is derived directly or indirectly from the information and data contained in the Report or combine the Report with or incorporate the Report into any other information, data or service; and

4.3.3 not re-format, add to or otherwise change any data or material contained in the Report.

4.4 Conditions 4.3.2 and 4.3.3 shall not prevent the Customer and those Beneficiaries who are acting in a professional capacity from providing written advice based upon the Report to other Beneficiaries.

4.5 The Customer and the Beneficiaries 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 the Report is protected by Crown Copyright and must not be used for any purpose outside the context of the Report.

## 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 Client;

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 Client or the entity which holds or acquires an interest in the Site, except that nothing shall entitle any such person to recover twice (whether directly or indirectly) in respect of the same loss or 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 in writing by the parties);

5.1.4 any person who provides funding to the Client or to a person referred to in Condition 5.1.3; and

5.1.5 any person acting in a professional or commercial capacity in relation to the Site for the Client or for any person referred to in Conditions 5.1.3 or 5.1.4.

5.2 The Beneficiaries shall be entitled to rely on the 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 in the Order, provided always that the person to whom the Report is made available accepts these Conditions.

5.3 The Report is to be used solely for the benefit of the Customer and the Beneficiaries.

5.4 The Report and any information provided by the Customer to Argyll in contemplation of the preparation of the Report shall be treated as confidential information.

5.5 Argyll agrees not to disclose or publish any statement relating to such confidential information to any third party without the prior written consent of the Customer.

## 6. Argyll's Charges

6.1 The Customer shall pay Argyll's charges for the Report at the rate set out on Argyll's website, including any Value Added Tax which may be payable.

6.2 The Customer shall pay Argyll's charges for the Report without any set off, deduction or counterclaim and within 30 days of the date of Argyll's invoice.

6.3 If the Customer fails to make any payment on the due date, Argyll shall be entitled to charge interest on overdue amounts at 2% per annum above 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 shall be deemed incorporated unless executed in writing by a Director of Argyll and countersigned by the Customer.

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7.2 Each of the Conditions and sub-conditions of these Conditions is distinct and severable. If any of them shall be determined to be invalid, illegal or unenforceable, the remainder of these Conditions shall continue to be enforceable.

7.3 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 them.

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

7.5 These Conditions shall at all times be governed by and construed in accordance with English Law and the parties 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 to which these Conditions apply shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of such contract.

**Version: T&C 3.3 (Site/Flood)**

**Date: July 2013**