

**Terms & Conditions of Service**  
**User Agreement for the *Archwilio* Android Mobile Application**

**Terms & Conditions of Service**

**THE AGREEMENT**

The following agreement (“this Agreement”) describes the terms and conditions on which Clwyd Powys Archaeological Trust, Dyfed Archaeological Trust, Glamorgan Gwent Archaeological Trust and Gwynedd Archaeological Trust (known here collectively as the “Welsh Archaeological Trusts”) permits the user “You/Your” access and use of graphics, sound effects, music, video, audio, computer programmes, animations, text and other creative output (“Content”) found in the *Archwilio* mobile application (“the Application”). This offer is conditional on Your agreement to all the terms and conditions contained in this Agreement, including Your compliance with policies, guidelines and terms linked by way of URLs in this Agreement (“Terms & Conditions of Service”).

By **installing** or **using** the Application or by exercising any rights provided to parts of it, You accept and agree to be bound by the “Terms and Conditions of Service”. The Welsh Archaeological Trusts only grant You the rights contained in this Agreement in consideration of Your acceptance of the Terms and Conditions of Service.

If You do not agree to the Terms and Conditions of Service You should **not install** or **use** the Application and therefore decline this Agreement, in which case You are prohibited from accessing and/or using the Application. The Welsh Archaeological Trusts may amend this Agreement at any time at its sole discretion, effective upon posting the amended agreement on the *Archwilio* website [www.archwilio.org.uk](http://www.archwilio.org.uk). No variation or counter offer of this Agreement will be accepted by The Welsh Archaeological Trusts.

**1. The Services and System Requirements**

1.1 The Application allows You to view Content contained within the Historic Environment Records of the four Welsh Archaeological Trusts. You can upload Your own Content for possible inclusion in the relevant Historic Environment Record (“the Services”).

1.2 You acknowledge that: (1) by using the Services You may have access to Content; and (2) Content may be provided by the Welsh Archaeological Trusts or by others such as the users of the Service (“Content Providers”).

1.4 You acknowledge that the Welsh Archaeological Trusts and other Content Providers have rights in their respective Content under copyright and other applicable laws, and that except as described in this Agreement that such rights are not transferred by mere use of the Application. You accept full responsibility and liability for Your use of any Content in violation of any such rights. You agree that your creation of Content is not in any way based upon any expectation of compensation from the Welsh Archaeological Trusts. You acknowledge that this Agreement does not assign or transfer ownership, title or interest of the Intellectual Property rights in the Application, Services or Content to you.

1.5 The Welsh Archaeological Trusts do not accept any responsibility whatsoever for the unavailability of the Application of the Services within it, or any difficulty to download or access content or any other communication system failure which may result in the application being unavailable.

1.6 The Welsh Archaeological Trusts will not be responsible for any support or maintenance of the Application.

1.7 The Welsh Archaeological Trusts give no warranty or representation that any information obtained from use of the Service will be complete or accurate.

1.8 You acknowledge that the Application is not suitable for obtaining information from the Historic Environment Record for enquiries of a commercial nature and that direct representation should be made to the relevant Welsh Archaeological Trust for information provision.

1.9 In order to use the Application You are required to have a compatible handheld device, internet access and the necessary minimum specifications (“Software Requirements”).

1.10 The Software Requirements are as follows: Android 2.3.

1.11 You acknowledge that these requirements may change from time to time without notice and that the Application software may be upgraded to support new functions and services.

1.12 You may be required to obtain software and/or hardware updates/upgrades from time to time as necessary for continued use of the Application.

1.13 You acknowledge and agree that such System Requirements as specified under 1.10 remain Your responsibility.

## **2. Charging**

2.1 The Welsh Archaeological Trusts will not charge You for the use or download of the Application. The Application will be free of charge to download.

2.2 You acknowledge that Your terms of agreement with Your respective mobile network provider (“Mobile Provider”) will continue to apply when using this application. As a result, You may be charged by the Mobile Provider for access to network connection services and downloading of packet data for the duration of the connection while accessing the Services, or any such third party charges as may arise.

2.3 You accept responsibility for any such charges that arise under clause 2.2.

2.4 If You are not the bill payer for the mobile phone or handheld device being used to access the Services, You will be assumed to have received permission from the bill payer for using the Application.

## **3. Licences and IPR**

3.1 Subject to the terms of this Agreement, the Welsh Archaeological Trusts hereby grant You a non-exclusive, royalty free and revocable licence to access and use the Application and use the Content in the Services in accordance with the Terms and Conditions of Service for as long as You are in compliance with such Terms & Conditions of Service.

3.2 Content owned or licensed to the Welsh Archaeological Trusts as part of the Services can be used by You of the Application for any such non-commercial purposes that are conducive to education, teaching, learning, private study and/or research.

3.3 You can create Content in the Services in various forms. The Welsh Archaeological Trusts acknowledge and agree that, subject to the Terms and Conditions of Service, You will retain any and all applicable copyright and any other intellectual property rights with respect to any Content You create using the Services, to the extent that you have such rights under applicable law.

3.4 Notwithstanding the foregoing, You understand and agree that by submitting Your Content to any area of the Services, You automatically grant (and You represent and warrant that you have the right to grant) to the Welsh Archaeological Trusts: (1) a non-exclusive, royalty free, perpetual licence to: (a) use, reproduce and communicate Your Content within the Application and a right to sub-licence such use to users of the services as long as the Content is used by such user within the Application; (b) to use and reproduce and to authorise third parties to use and reproduce any of your Content in any or all media for marketing and/or promotional purposes in connection with the Application and the *Archwilio* brand; (c) to incorporate Your Content into the Historic Environment Record where it will be made available to users of the Record; and (d) use, reproduce and communicate Your Content within the *Archwilio* website and a right to sub-licence such use to users of the website.

3.5 You agree that by submitting your Content to any area of the Services you automatically grant to users of the Application who want to use Your Content or parts of it outside the Application a non-exclusive, royalty free, perpetual licence of the Application for any such non-commercial purposes that are conducive to education, teaching, learning, private study and/or research.

3.6 You agree to use all best efforts to ensure that Your Content does not infringe any Intellectual Property rights of a third party.

3.7 You agree that even though You may retain certain copyright or other intellectual property rights with respect of the Content You create while using the Services, You do not own the account You use to access the Services, nor do You own any data The Welsh Archaeological Trusts store on Welsh Archaeological Trust servers submitted by others. Your intellectual property rights do not confer ownership of others' data stored by or on behalf of the Welsh Archaeological Trusts.

3.8 Mapping data accessed through use of the Application Services are provided by BING and are Copyright © 2013 Microsoft Corporation and/or its suppliers and subject to the following licence <http://windows.microsoft.com/en-gb/windows-live/microsoft-services-agreement>.

#### **4. Submission of Content**

4.1 You agree that You shall not: (a) take any action of upload or otherwise transmit Content that infringes or violates any third party rights; (b) impersonate any person or entity without their consent, including but not limited to a Welsh Archaeological Trust employee, or falsely state or otherwise misrepresent Your affiliation with a person or an entity; (c) upload or otherwise transmit Content that violates any United Kingdom law or regulation; (d) upload or otherwise transmit Content determined by the Welsh Archaeological Trusts to be in its reasonable opinion to be libellous, abusive or distasteful in nature as in line with the *Archwilio* moderation policy.

4.2 You acknowledge that submission of Content to the Services does not warrant automatic inclusion of such Content into the Historic Environment Record, availability of Your Content through the Application and associated Services nor the *Archwilio* website.

4.3 You acknowledge that inclusion and availability of any user generated Content into the Historic Environment Record and associated services remains at the discretion of the Welsh Archaeological Trusts.

4.4 Personal data submitted during the registration process to the Application and its Services will not be made available to third parties as detailed in the *Archwilio* Privacy and Cookie Policy. Such information will only be used in the following ways: a) to contact users if verification of new information is needed, b) to investigate any misuse of the *Archwilio* app or c) to credit copyright, for example, "© A. Jones".

#### **5. Releases, Disclaimers of Warranties, Limitation of Liability and Indemnification**

5.1 Any Content, or other data residing on the Welsh Archaeological Trusts' servers or the Application may be deleted, altered, moved or transferred at any time for any reason at the Welsh Archaeological Trusts sole discretion without notice and without liability to You or any third party.

5.2 The Welsh Archaeological Trusts provide the Services and Content strictly on an "as is" basis and use of the Application, Services and/or Content is at Your own risk. The Welsh Archaeological Trusts hereby expressly disclaim all warranties or conditions of any kind to the extent permitted by law, including without limitation any merchantability or fitness for a particular purpose. To the extent permitted by law, the Welsh Archaeological Trusts accept no liability for loss suffered or incurred by the user or any third party as a result of their reliance on the Application and/or Content.

5.3 To the extent permitted by law, in no circumstances will the Welsh Archaeological Trusts be liable to You or You liable to the Welsh Archaeological Trusts for any loss resulting from a cause over which the Welsh Archaeological Trusts or You do not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems.

5.4 In no event shall the Welsh Archaeological Trusts be liable to You or to any third party for any special, incidental, consequential, punitive or exemplary damages, including without limitation any

damages for loss of profits arising (whether in contract, tort or otherwise) out of or in connection with the Application and or Content.

5.5 You agree to defend, indemnify and hold harmless the Welsh Archaeological Trusts and users of the Application and Content from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any breach of this Agreement by You, or from Your use of the Application. You agree to defend, indemnify and hold harmless the Welsh Archaeological Trusts from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any claims by third parties that Your activity or Content in the Services infringes upon or violates any of their intellectual property or proprietary rights.

## **6. Privacy**

6.1 You acknowledge and agree that the Welsh Archaeological Trusts, in their discretion, may track, record, observe or follow any and all of Your interactions within the Application.

6.2 The Welsh Archaeological Trusts may share general, demographic or aggregated information with third parties about the Welsh Archaeological Trusts' user base and Application usage, but that information will not include or be linked to any personal information without consent. The Welsh Archaeological Trusts agree that when exercising these rights, it shall abide by the Data Protection Act, 1998 at all times.

## **7. Governing Law and Dispute Resolution**

7.1 This Agreement and the relationship between you and the Welsh Archaeological Trusts shall be governed by and construed in accordance with English and Welsh law. You and the Welsh Archaeological Trusts agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English and Welsh Courts.

7.2 You and the Welsh Archaeological Trusts agree to use best efforts to resolve disputes in an informal manner. Where You and the Welsh Archaeological Trusts agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, You and the Welsh Archaeological Trusts will agree upon the nature of the expert required and together appoint a suitable expert by agreement.

7.3 Any person to whom a reference is made under Clause 7.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

7.4 You and the Welsh Archaeological Trusts shall provide the expert with such information and documentation as she/he may reasonably require for the purposes of her/his decision.

7.5 The costs of the expert shall be borne by You and the Welsh Archaeological Trusts in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by You and the Welsh Archaeological Trusts in equal proportions.

## **8. General Provisions and Termination**

8.1 This Agreement constitutes the entire understanding and agreement between You and the Welsh Archaeological Trusts with respect of the subject matter hereof.

8.2 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

8.3 The rights granted to You or the Welsh Archaeological Trusts arising under this Agreement shall not be waived except in writing. Any waiver of any of Your or the Welsh Archaeological Trusts' rights under this Agreement or of any breach of this Agreement by You or the Welsh Archaeological Trusts shall not be construed as a waiver of any other rights or of any other or further breach. Failure by You or the Welsh Archaeological Trusts to exercise or enforce any rights conferred upon it by this

Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

8.4 The section headings contained in this Agreement are for convenient purposes only and shall not affect the interpretation of this Agreement.

8.5 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

8.6 All or any of the Welsh Archaeological Trusts' rights and obligations under this Agreement may be assigned to a subsequent owner or operator of the Application in a merger, acquisition or sale of all or substantially all of the Welsh Archaeological Trusts' assets.

8.7 The Welsh Archaeological Trusts may terminate use of the Application at any time.

8.8 Upon any termination, (a) the rights and licences granted herein shall terminate; and (b) You must cease all use of the application software.

### **Credits**

The copyright and Intellectual Property Rights of the Application software belong to the University of South Wales.

The copyright and Intellectual Property Rights of the data belong to the Welsh Archaeological Trusts and/or third party contributors.