

Standard Terms and Conditions for Registers of Scotland Application Checking Service.

1 DEFINITIONS

Act	means the Land Registration etc (Scotland) Act 2012
Application	means the Application Form and Enclosures submitted by You for checking by Us.
Application Checklist	means the form detailing the scope of the Service annexed as a Schedule to these Conditions.
Application Form	means Our prescribed forms for an application for first registration in the Land Register.
Acceptable	means approved by Us as conforming to the Application Checklist with each question (with the exception of Question 7) answered in the affirmative.
Completion	means the receipt by You of the completed Application Checklist.
Confidential Information	means any information (including, without limitation, in written, oral, visual or electronic form) which is not publicly available including, but not limited to, any information specifically designated by the disclosing party as confidential; any information supplied to the disclosing party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence. This includes know-how and information about design, development, specifications, business plans and technical or other expertise
Conditions	means these standard terms and conditions for Registers of Scotland's Application Checking Service.
Conditions of Registration	means the conditions of registration for the transfer of an unregistered plot as set out in section 23 of the Act.
Contract	means this contract between You and Us for the provision of the Services comprising the Request, the Application Checklist and these Conditions.

Customer	means the person (whether an individual or a business) who (or on whose behalf) a Request is submitted.
Default	means any material breach of the obligations of the relevant Party or any other default, act, omission or negligence of the relevant Party, its employees, servants, or agents in connection with or in relation to this Contract and in respect of which such Party is liable to the other.
“EIRs”	means the Environmental Information (Scotland) Regulations 2004 (and any superseding or amending regulations) together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations.
Enclosures	means all deeds and other documents submitted by the Customer with the Application Form.
Event Outside Our Control	has the meaning set out in Clause 9
Fee	means the fixed fee of £50 (plus VAT)
FOISA”	means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation
General Application Conditions	means the general application conditions as set out in section 22 of the Act.
Good Industry Practice	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
Law	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or delegated or subordinate legislation;

Party	means the Keeper of the Registers of Scotland and the Customer, and “Parties” shall be interpreted accordingly;
Rejection Fee	means the statutory fee charged for the rejection of an application for registration in the Land Register
Request	means the form for requesting the provision by Us of the Service, as published on the Registers of Scotland website (as the same may be amended from time to time).
Schedule	means the schedule annexed to these Conditions.
Service	means the application checking service to be supplied by Us to You, as is more particularly described in clause 3.
We/Our/Us	means the Keeper of the Registers of Scotland
Working Day	means any day other than a Saturday, Sunday or public holiday in Scotland
‘Writing’	includes email and comparable means of communication
“You/Your”	means the Customer

2 KEEPER’S STATUTORY POWERS

- 2.1 For the avoidance of doubt, nothing in this Contract shall fetter or restrict the Keeper’s discretion to exercise any right or obligation which the Keeper is entitled to exercise under any statutory enactment for the time being in force.

3 THE SERVICE

Service Scope

- 3.1 The Service shall only be provided in respect of applications for a first registration (deed over an unregistered plot) in the Land Register.
- 3.2 The Service shall consist of a check of the Application to ensure that it complies with the General Application Conditions and the Conditions of Registration, with the aim of reducing the risk that the Application will be rejected by the Keeper.
- 3.3 The scope of the checks which We will carry out is set out in the Application Checklist. For the avoidance of doubt, the Service does not include checking that any plan or bounding description is suitable or sufficient for registration purposes, or that any Land and Building Transaction Tax properly due has been paid.

Service Process

- 3.4 The Service shall be requested by You completing the Request and sending it to Us at the address set out in clause 10.3, together with the completed Application Form(s) (in electronic and physical format) and all Enclosures.
- 3.5 These Conditions will become binding on You and Us when We accept your Request, at which point the Contract will come into existence between You and Us.
- 3.6 We shall carry out the all the checks listed on the Application Checklist. We shall use our best endeavours to achieve Completion within 24 hours of receipt by Us of Your Request.
- 3.7 If the Application is Acceptable, We shall either send the completed Application Checklist to You, together with the Application Form and Enclosures or, if you have so indicated in the Request, We shall send the completed Application Checklist to You and submit the Application for registration on Your behalf as soon as practicable and in any event within one Working Day. For the avoidance of doubt, if You do not express a preference in the Request the Application will be returned to You.
- 3.8 If the Application is not Acceptable (that is, any question on the Application Checklist, other than Question 7, has been answered in the negative) We shall send the Application Checklist to You with appropriate explanatory comments, together with the Application Form and Enclosures.
- 3.9 If You wish to resubmit the Application for checking then this will be treated as a new Request for the Service and an additional Fee shall be payable.

Service Levels

- 3.4 We shall provide the Service in accordance with;
- these Conditions
 - Good Industry Practice
 - the Law

4 DISCLAIMER

- 4.1 We shall endeavour to ensure that an Application deemed Acceptable by Us shall meet the Application Conditions and the Conditions of Registration. However We do not provide any warranty or guarantee that the Keeper will accept the Application as suitable for registration, nor any warranty or guarantee that the Keeper will not reject an Application at any time following submission of the Application for registration. If the Keeper rejects an Application for registration which We deemed to be Acceptable and this is due to Our Default then the provisions of clause 6 will apply.

5 FEE AND PAYMENT

- 5.1 In return for the provision of the Services by Us, You shall pay Us the Fee.
- 5.2 We will invoice You on or after Completion. You shall pay all sums due to us within 30 days of receipt of a valid invoice.
- 5.3 Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998

6 LIABILITY AND INDEMNITY

- 6.1 Subject to the remaining provisions of this Clause 6, We shall indemnify You from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise directly out of Our Default. This indemnity shall not apply to the extent that the loss, damage or injury is caused by Your negligence or wilful misconduct. Nothing in this clause shall restrict or limit Your general obligation at law to mitigate any loss You may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
- 6.2 Neither Party limits or excludes liability for fraud, or death or personal injury caused by negligence.
- 6.3 We are only responsible for loss or damage you suffer that is a foreseeable result of our Default or failure to use reasonable care and skill. We are not responsible for any loss or damage that is not foreseeable. If You use the Services for any commercial, business or re-sale purpose We will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 6.4 Subject to clauses 6.2 and 6.3, Our aggregate liability for all Defaults under this Contract shall be limited to the aggregate sum of the Fee, any Rejection Fee, and any reasonable professional fees actually and properly incurred in respect of the rejection of, and re-submission of, an Application but only if and to the extent that such professional fees are incurred directly as a consequence of our Default.

7 TERM AND TERMINATION

- 7.1 This Contract shall commence on receipt by Us of Your Request (if accepted) and shall terminate on the later of Completion or receipt by Us of the Fee.
- 7.2 Clauses 6, 9 and 12 shall survive the termination of this Contract.

8 EVENTS OUTSIDE OUR CONTROL

- 8.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under this Contract that is caused by an Event Outside Our Control.
- 8.2 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil

commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.

8.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under the Contract We will contact you as soon as reasonably possible to notify you and Our obligations under the Contract will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. We will restart the Service as soon as reasonably possible after the Event Outside Our Control is over.

8.4 You may cancel the Contract if an Event Outside Our Control takes place and you no longer wish Us to provide the Services without incurring any liability to Us.

9 CONFIDENTIALITY

9.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

9.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect such Confidential Information against disclosure;

9.1.2 use the Confidential Information for the purposes of this Contract and for no other purpose whatsoever; and

9.1.3 not disclose the other Party's Confidential Information to any other person without that Party's prior written consent.

9.2 Clause 9.1 shall not apply to the extent that:

9.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure including (without limitation) Our obligations under FOISA and EIRs; or

9.2.2 such information is already in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the other Party; or

9.2.3 such information was obtained from a third party without obligation of confidentiality; or

9.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract.

10 NOTICES

10.1 Any notice or other communication which is to be given by a Party to the other under the Contract must be:

- given in writing;

- addressed in accordance with clause 10.3; and
 - sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), or e-mail.
- 10.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
- 2 Working Days after the day on which the letter was posted; or
 - 4 Working Hours after the communication was sent, in the case of email.

10.3 For the purposes of this clause, the address of each Party is:

For the Registers of Scotland

Address: Meadowbank House, 153 London Road, Edinburgh, EH8 7AU

For the attention of: Scott Niven

Tel: 0131 528 3862

E-mail: scott.niven@ros.gov.uk

For the Customer: as set out in the Request.

Either Party may change its address details by serving a notice in accordance with this Clause 10.

11 COMPLAINTS

- 11.1 If You have any issues, concerns or complaints in connection with Our performance of the Service or any other matter arising from this Contract, You shall notify us in Writing and the Parties shall attempt in good faith to resolve any complaint within 20 days of You notifying Us of the complaint (or such other timescale as shall be agreed between the Parties) and such efforts shall involve the progression of Your complaint in accordance with our published complaints handling procedure (to the extent applicable, that is, up to but not including referral to the Scottish Public Services Ombudsman). If the complaint is not resolved within 20 days of notification (or such alternative timescale as has been agreed) then it shall be dealt with in accordance clause 11.2
- 11.2 If the Parties fail to resolve any complaint under clause 11.1 then either Party may request by notice in writing to the other Party that any complaint be referred and resolved by arbitration in accordance with the following provisions:-
- 11.2.1 the arbitration shall be governed by the Arbitration (Scotland) Act 2010
 - 11.2.2 the Scottish Arbitration Rules (Schedule One to the Arbitration (Scotland) Act 2010) in force at the date that the dispute was referred to arbitration shall be

applied and are deemed to be incorporated by reference into the Contract, and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules.

11.2.3 The tribunal shall consist of a sole arbitrator. If the Parties fail to agree the appointment of the arbitrator within 10 days of the written notification that the matter is being referred to arbitration, or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the President for the time being of the Law Society of Scotland.

11.3 Nothing in this clause 11 shall prevent You from raising court proceedings in any court of competent jurisdiction. If arbitration has been initiated by either Party in accordance with clause 11.2 at the time that You choose to raise court proceedings then it is agreed that such arbitration is to be discontinued, unless the court finds that the You have waived such right by substantially participating in the arbitration without having raised your right under this clause 11.3.

12 FREEDOM OF INFORMATION

12.1 We are under a duty to comply with FOISA and the EIRs. You will assist and reasonably cooperate with us to enable us to comply with these information disclosure requirements.

12.2 Where We receive a request for information concerning this Contract, We are responsible for determining at our absolute discretion whether information requested is to be disclosed to the requester or whether the information requested is exempt from disclosure in accordance with FOISA or the EIRs. However, We undertake to give due consideration as to whether information is exempt from disclosure on the ground that disclosure may prejudice substantially Your commercial interests.

12.3 You acknowledge that We may disclose information requested concerning this Contract without consulting You, or following consultation and having taken the Your views into account. Where We disclose information without consulting the You, We shall take reasonable steps where practicable to give You advance notice of the disclosure.

13 WAIVER

13.1 Any failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by this Agreement

14 SEVERANCE

14.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions

of this Contract continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

15 VARIATION

15.1 Other than as expressly set out in this Contract, this Contract shall not be varied or amended unless such variation or amendment is in Writing and signed by both Parties.

16 GOVERNING LAW

16.1 This Agreement shall be governed by and construed in accordance with the laws of Scotland and shall be subject to the exclusive jurisdiction of the Scottish courts.

SCHEDULE

Application Checklist

- the deed induces first registration
- the deed is signed
- the application form is signed
- the information in the deed matches information in the application form
- the extent deed has been submitted
- the deed for registration is ex facie valid and the execution is self-evidencing
- whether or not the subjects fall within a research area and, if not, the burdens writs not on the keeper's common deeds index have been submitted
- the burdens question has been answered in line with the information contained in the deed
- the servitudes question has been answered in line with information contained in the deed
- the fee is correct