

Standard Terms and Conditions for Registers of Scotland Plan Assistance Service.

1 DEFINITIONS

Additional Services Request means any follow up request in Writing by You for additional Services which are a continuation of, or a change to, the Services but which are outwith the scope of, or a variation to, the Services Proposal.

Additional Services Proposal means Our response in Writing to Your Additional Services Request which shall specify the scope of the Additional Services, any consequential extension to the timescale for delivery of the Services, and the Fee (if any) for the Additional Services.

Authority to Proceed means Your acceptance in Writing of the Service Proposal or any Additional Services Proposal.

Commencement Date means the date on which We receive Your Authority to Proceed in respect of the Service Proposal.

Complaints Procedure means the complaints procedure set out in Clause 15

Completion Date means the earlier of (1) the agreed completion date as set out in the Service Proposal, as the same may be extended by an Additional Services Proposal or in accordance with Clause 3.2, or otherwise by agreement between the Parties or (2) Your approval of the Final Plan.

Conditions means these standard terms and conditions for Registers of Scotland's Plan Assistance Service.

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.

Contract	means the contract between You and Us for the provision of the Services. The contract is made up of the Service Request and Service Proposal (as the same may be supplemented or amended by an Additional Service Request and corresponding Additional Service Proposal) and these Conditions.
Customer	means the person (whether an individual or a business) who (or on whose behalf) a Service Request is submitted.
Deliverables	means the Report, the Provisional Plan, the Final Plan and any other deliverables specified in the Service Proposal and/or any Additional Service Proposal.
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. Default shall not include non-delivery of any Deliverables to You by the Completion Date.
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.
Event Outside Our Control	has the meaning set out in Clause 12.2
Fee	means the fixed fee payable by You to Us for the provision of the Services as set out in Our published fee table from time to time, and any additional fee that may be agreed in respect of any Additional Service Request, as set out in an Additional Service Proposal.

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.
Final Plan	means the Plan in its final form as approved by You.
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.
Information	means all relevant information of whatever nature in whatever format required to be supplied by You to Us to enable Us to provide the Services, as agreed between the Parties and recorded in the Services Proposal. As a minimum the Information shall include foundation titles.
Intellectual Property Rights and IPRs	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations, whether registerable or not, in any country or jurisdiction.
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.
Permitted Purpose	means the use of the Plan for the purpose of registering land in the Land Register or any other non-commercial purpose.

Plan	means a plan in a digital format compatible with GIS systems and based on Ordnance Survey MasterMap which will depict Our interpretation of the extent of the subjects and, where applicable, title conditions references (if and to the extent that this has been requested by You as part of the original Service Request or as an Additional Service Request) and references to “Plan” may include the Provisional Plan and/or the Final Plan as the context requires.
Provisional Plan	means the draft Plan provide to You by Us which will include (to the extent applicable) mapping of overlaps (if any) with registered titles.
Report	means the written report which accompanies the Plan and sets out the legal extent of the subjects and any references (to the extent that such references were requested by You as part of the original Service Request or as an Additional Service Request). The report will highlight any potential extent problems such as overlaps.
Schedule	means the schedule annexed to these Conditions.
Services	means the plan assistance services to be supplied by Us to You. The precise scope of the Services shall be agreed between the Parties in accordance with the provisions of clause 4 and recorded in the Service Proposal.
Services Proposal	means Our response in Writing to Your Service Request, in the format as set out in the Schedule, which shall specify the scope of the Services, a timescale for delivery, the Deliverables and the Fee.
Services Request	means Your request in Writing for the provision by Us of the Services which shall include (without limitation and to the extent practicable) relevant Information required to be supplied by You to Us to enable Us to provide the Services.
Third Party IPR	means IPR contained in the Deliverables which is owned by a third party and licensed to Registers of Scotland on terms which permit You to use the Third Party IPR for the Permitted Purpose.
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.
Working Hour	means an hour between 0900 hours and 1700 hours on a Working Day.
Writing	includes facsimile transmission, 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 Commencement and Duration

- 3.1 The Contract shall commence on the Commencement Date and shall expire on the Completion Date unless extended in accordance with Clause 3.2 or Clause 3.3 or terminated early in accordance with the provisions of this Contract.
- 3.2 You acknowledge and agree that due to the nature and scope of the Services, the Completion Date is a target date only. We shall use all reasonable endeavours to provide the Services by the Completion Date. We shall provide You with regular updates on progress and shall inform You as soon as We become aware that We may not be able to provide the Services by the Completion Date. In the event that We are unable to meet the Completion Date and this is not due to one of the grounds set out in Clause 3.3, then You may, at Your option, agree with Us an extension to the Completion Date or cancel the Contract in accordance with the provisions of Clause 11.2.
- 3.3 The Completion Date may also be extended as a consequence of, and in accordance with the terms of, any Additional Services Proposal. The Completion Date may be extended on more than one occasion. In the event that We are unable to provide the Deliverables by the agreed Completion Date due to the provision by You of incomplete, erroneous and/or insufficient Information then the Completion Date shall be extended by such period as We consider to be reasonable in all the circumstances and We shall notify You accordingly.
- 3.4 Any disputes or complaints about the Completion Date shall be resolved through the Complaints Procedure.

4 The Services

- 4.1 A Services Request shall be submitted by You to Us in Writing. The Service Request should be specific with regard to Your requirements for the minimum Information to be shown on the Plan. We shall contact You to clarify Your requirements and following such clarification process We shall either issue a Services Proposal or advise You that we are unable to supply you with the Service and that We will not be proceeding with the Services Request. We shall endeavour to respond to Service Requests promptly.
- 4.2 If you wish to accept the Services Proposal You shall issue to Us an Authority to Proceed. These Conditions will become binding on You and Us when We are in receipt of your Authority to Proceed, at which point the Contract will come into existence between You and Us.
- 4.3 You may submit an Additional Services Request at any time after We receive Your Authority to Proceed up until the Completion Date and for a period of six months thereafter. We shall issue an Additional Services Proposal which may include an additional Fee. If you wish to accept the Additional Services Proposal You shall issue to Us an Authority to Proceed, on receipt of which the Additional Services Proposal shall be incorporated into and form part of the Contract. If Your Additional Services Request is for validating and updating of the Deliverables in accordance with the scope of the Service Proposal after the Completion Date and prior to the submission of an application for registration in the Land Register then, provided Your Additional Services Request is received by Us within six months after the Completion Date We will not charge an additional Fee for this Service.
- 4.3 If any of these Conditions conflict with any part of the Service Proposal or any Additional Services Proposal then the Service Proposal and any Additional Services Proposal will take priority.
- 4.4 We will make every effort to complete the Services and deliver the Deliverables to You by the Completion Date. However, there may be delays due to Events Outside Our Control. Clause 12 sets out Our responsibilities when an Event Outside Our Control happens.
- 4.5 We will require Information from You that is necessary to enable Us to provide the Services. If you do not provide Us with this Information, either as part of Your Service Request and/or after being asked by Us to provide it, or if the Information is insufficient or inaccurate, then We may, at our option, do any or all of the following:
- 4.5.1 extend the Completion Date in accordance with Clause 3.2; or
 - 4.5.2 suspend the Services by giving You notice in Writing; or
 - 4.5.3 cancel the Contract in accordance with Clause 11.3; or
 - 4.5.4 (if instructed by You) proceed with the Services in which case We will not be responsible for any inaccuracies or omissions in the Deliverables which arise directly

as a result of the provision by You (whether knowingly or otherwise) of insufficient or inaccurate Information.

We will not be liable for any delay or non-performance where You have not provided Us with sufficient accurate Information after We have asked.

- 4.6 The Deliverables shall comprise the Report together with a Plan suitable for registration in the Land Register. The Plan shall be prepared by Us in accordance with the Information and Services Proposal and provided in accordance with the Keeper's published deed plan criteria. We may provide You with a Provisional Plan. You may raise with Us any issues (including corrections and amendments) in connection with the Provisional Plan over an agreed period of up to six months from the date You receive the Provisional Plan and We shall correct and amend the Plan at no additional cost, provided that such issues are within the scope of the Services Proposal. Any issues outwith the Services Request and Services Proposal should be submitted as an Additional Services Request and may incur an additional Fee.
- 4.7 As soon as any issues raised by the Provisional Plan are resolved (if capable of resolution) to Your reasonable satisfaction, We shall deliver the Final Plan to You for your approval. If there is no Provisional Plan then the Plan shall be the Final Plan.
- 4.8 The Plan shall be in a digital format. If You require paper copies of the Plan then this will incur an additional Fee.

5 Service Levels

- 5.1 We shall provide the Service in accordance with;
- the Services Proposal
 - any Additional Services Proposal
 - the Information
 - Good Industry Practice
 - the Law

6 Disclaimer

- 6.1 We shall endeavour to ensure that the Final Plan complies with the Service Proposal and the Information, and that the Final Plan shall be suitable for registration purposes. The Plan will meet the Keeper's published Deed Plan Criteria. However We do not provide any warranty or guarantee that the Keeper will accept the Plan as suitable for registration, nor any warranty or guarantee that the Plan will represent what will be shown on the Cadastral Map following an application for registration. If the Keeper rejects an application for registration because of any discrepancies, inaccuracies or omissions relating to the Plan and this is due to Our Default then the provisions of Clauses 7 and 10 will apply.

7 Remedies in the event of inadequate performance of the Services

- 7.1 In the event that We fail to supply the Services and the Deliverables in accordance with the provisions of the Contract and such failure is capable of remedy, You shall inform Us as soon as reasonably practicable and provided (and to the extent that) any such failure is not due in whole or in part to Your Default (including, without limitation, the provision of inadequate or inaccurate Information) then We shall remedy such failure at our own expense within such reasonable time as may be specified by You. If We do not remedy the failure within the specified timescale, or it is not capable of remedy, then at Your option, and without prejudice to Your other rights and remedies, You may cancel the Contract in accordance with the provisions of clause 11.2

8 Fee and Payment

- 8.1 In return for the provision of the Services by Us, You shall pay Us the Fee.
- 8.2 Unless otherwise agreed, We will invoice You on or after the Completion Date. You shall pay all sums due to us within 30 days of receipt of a valid invoice
- 8.3 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

9 Intellectual Property

- 9.1 Our Intellectual Property Rights in the Deliverables are Crown Copyright. The Keeper of the Registers of Scotland has received delegated authority from the Queen's Printer for Scotland, to authorise the reproduction of Crown copyright material created by the Registers of Scotland. We grant to You a perpetual, royalty-free, non-exclusive licence to reproduce the Deliverables on condition that you reproduce the Plan accurately and ensure that any reproduction includes the attribution statement set out at Clause 9.2
- 9.2 We grant to You a perpetual, royalty-free, irrevocable non-exclusive licence to use the Third Party IPR for the Permitted Purpose on condition that, in relation to the Third Party IPR in the Plan which is owned and licenced to us by Ordnance Survey Limited, You acknowledge the copyright and the source of the Third Party IPR by including the following attribution statement:
- "© Crown copyright and database rights 2015. All rights reserved. Ordnance Survey Licence number 100041182"*
- 9.3 If You wish to use the Plan for any purpose other than the Permitted Purpose then you must contact Ordnance Survey Limited directly to arrange this.
- 9.4 We confirm that the use of the Deliverables by You for the Permitted Purpose shall not infringe any Third Party IPR and we undertake to indemnify you against all costs, claims, damages or proceedings arising out of any claim by a third party that such use of the Deliverables infringes its Third Party IPR . You shall promptly notify Us of any such claim and

We will manage any claim brought at Our own expense. You will provide Us with all reasonable assistance and will not make any admissions which could be prejudicial to the defence or settlement of the claim without Our prior written permission.

10 Liability

- 10.1 Subject to the remaining provisions of this Clause 10, We shall indemnify You from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise directly out of, or in consequence of, Our Default. This indemnity shall not apply to the 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.
- 10.2 Neither Party limits or excludes liability for fraud, or death or personal injury caused by negligence.
- 10.3 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.
- 10.4 Subject to clauses 10.2 and 10.3, Our aggregate liability for all Defaults under this Contract shall be limited to £100,000.

11 Cancellation

- 11.1 You shall be entitled to cancel the Contract in respect of all or part of the Services by notice to Us in Writing at any time prior to the Completion Date, without incurring any liability to Us other than to pay such proportion of the Fee as We shall consider to be reasonable for Services already performed at the time of such notice.
- 11.2 You may cancel this Contact with immediate effect in the event that We:
- 11.2.1 fail to remedy any inadequate performance of the Services in accordance with Clause 7;
 - 11.2.2 commit a Default (other than as set out in Clause 7) and do not remedy such Default (if capable of remedy) within 20 days (or such longer period as the Parties may agree) of receipt by Us of a notice from You specifying the Default and requesting that it is remedied
 - 11.2.3 inform You that We will not be able to deliver the Deliverables to You by the Completion Date and this is not due to any of the grounds set out in Clause 3.3.

11.3 If You cancel the Contract in accordance with Clause 11.2 then, without prejudice to Your other rights and remedies, You shall not be liable to pay the Fee and We shall refund to You any Fee which has been paid in respect of the Services. For the avoidance of doubt this shall be Your sole remedy for any cancellation on the ground set out in clause 11.2.3

11.3 We may cancel the Contract with immediate effect if You:

11.3.1 fail to pay Us any undisputed sums of money when due and do not remedy such failure to pay within 30 Working Days of the date of receipt of a notice from Us notifying You of your failure to pay.

11.3.2 If You commit a Default (including, without limitation, any failure to provide Us with adequate Information to enable Us to provide the Services) and do not remedy such default within 20 days (or such longer period as the Parties may agree) of receipt by You of a notice from Us specifying the Default and requesting that it is remedied.

12 Events Outside Our Control

12.1 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.

12.2 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.

12.3 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. Where the Event Outside Our Control affects Our ability to deliver the Deliverables by the Completion Date, We will arrange a new Completion Date with you after the Event Outside Our Control is over. We will restart the Services as soon as reasonably possible after the Event Outside Our Control is over.

12.4 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 other than to pay such proportion of the Fee as We shall consider to be reasonable for Services already performed at the time of such cancellation. We will only cancel the contract if the Event Outside Our Control continues for longer than six months.

13 Confidentiality

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

13.1.1 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;

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

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

13.2 Clause 13.1 shall not apply to the extent that:

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

13.2.2 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

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

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

14 Notices

14.1 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 14.3; and
- sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), or e-mail.

14.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:

- 5 Working Days after the day on which the letter was posted; or
- 12 Working Hours after the communication was sent, in the case of email.

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

For the Registers of Scotland: Plan Assistance Service, Registers of Scotland, Meadowbank House, 153 London Road, Edinburgh, EH8 7AU

For the attention of: Plan Assistance Service

Tel: 0131 528 3718

E-mail: pas@ros.gov.uk

For the Customer: as set out in the Service Proposal

14.4. Either Party may change its address details by serving a notice in accordance with this Clause 14.

15 Complaints

15.1 If You have any issues, concerns or complaints in connection with Our performance of the Services 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 agree 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 15.2

15.2 If the Parties fail to resolve any complaint under clause 15.1 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:

15.2.1 the arbitration shall be governed by the Arbitration (Scotland) Act 2010

15.2.2 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.

15.2.3 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.

- 15.3 Nothing in this clause 15 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 15.2 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 15.3.

16 Freedom of Information

- 16.1 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.

- 16.2 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.

- 16.3 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.

17 Waiver

- 17.1 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

18 Severance

- 18.1 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.

19 Variation

19.1 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.

20 Governing law

20.1 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

SERVICE PROPOSAL

This Service Proposal, together with the Service Request (as the same may be supplemented or amended by an Additional Service Request and corresponding Additional Service Proposal) and the Conditions shall constitute the Contract for the provision of the Plan Assistance Service.

1 Customer

[insert customer name]

[insert customer address]

[insert contact name(s) and contact information, including email address, telephone number, FAS number and (DX or LP number if applicable)]

2 Scope of Service

The following Services will be provided:

3 Deliverables

The following will be delivered to you:

3 Target Date

[insert target completion date]

4 Fee

[insert Fee]