

Standard Terms and Conditions for Registers of Scotland Data Services

These Standard Terms and Conditions will apply to each Contract for Data Reports unless otherwise specified or varied by the Contract.

1. Definitions

The following terms shall have the meanings set out below unless the contrary intention appears:

Schedule	The Schedule for the Service which incorporates these Terms and Conditions (as may be varied by the Schedule) and which forms the Contract.
Data	Data provided in the supply of the Service, whether in electronic format or hard copy.
Data Protection Legislation	Data Protection Legislation is (i) unless and until it is no longer directly applicable in the UK, the GDPR and any applicable national implementing laws, regulations and statutes as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) any applicable laws, regulations and statutes relating to processing of personal data and privacy
Intellectual Property Rights	Copyright, patent, trade mark, design right, database rights, know how, broadcast rights, and all other similar rights anywhere in the world, whether or not registered, including applications for registration of any of them.
Parties	Registers of Scotland and the customer as specified in the Schedule.
Price	The amount payable by you for the provision of the Data supplied under the Service set out in the Schedule for the Service.
Permitted use	As specified (if applicable) in the Schedule.
Service	The service or services that we supply to you as set out in the Schedule or any additional services required by you from time to time.
Term	The period during which we agree to provide each Service. Unless otherwise

specified to the contrary in the Schedule the term of each Service shall be ongoing unless terminated sooner by either party in accordance with these Terms and conditions. Where more than one Service is provided then for the avoidance of doubt the Schedule for the remaining ongoing Services will continue in full force and effect unless terminated as set out here.

Terms and conditions The terms and conditions set out here as amended from time to time) are deemed to be incorporated and form part of the Schedule.

Registers of Scotland, our, us and we The Keeper of the Registers of Scotland, Meadowbank House, 153 London Road, EDINBURGH, EH8 7AU.

Start date Date specified in the Schedule.

You, your The customer specified in the Schedule.

1.1 We reserve the right to change any or all of or vary these Terms and conditions on reasonable written notice.

1.2 The headings are for ease of reference only, and do not affect the interpretation or construction of this Contract.

1.3 Any reference to a statutory provision shall be interpreted as including a reference to any statutory modification or re-enactment thereof (whether before or after the date hereof) for the time being in force.

1.4 Unless the context otherwise requires, words importing the singular shall include the plural and *vice versa*, words importing the masculine gender shall import the feminine and neuter genders and *vice versa*.

2. The Service

2.1 Subject to the rights to terminate set out here, we reserve the right at any time to:

2.1.1 suspend the Service for the purposes of repair, maintenance or support in our systems, or if there is or we believe there to be, any fault in the Service;

2.1.2 review and revise the Service.

2.2 You accept that it may be necessary for us to upgrade or change the format of delivery of the Service during the Term. We will endeavour to provide at least one (1) month's notice of any proposed format change.

3. Variation/Addition of Services

3.1. In the event that You want us to supply additional services to those agreed to be provided as at the date of the Contract, You may request a change by giving notice in writing to us of your request defining the additional service. We will use reasonable

endeavours to address your request and agree supplemental terms for the supply of the additional services.

- 3.2 If agreement is reached the Parties will enter into a further Contract for the additional service which shall be signed by both Parties.
- 3.3 For the avoidance of doubt, these Terms and Conditions (subject to any variation provided by the Schedule) will apply to any subsisting Service from time to time supplied by us.

4. Service Levels

- 4.1 We will use reasonable skill and care in the provision of the Service.
- 4.2 You acknowledge that our primary function is to perform our statutory functions and that there may be very rare occasions when the Service has to be suspended or delayed or modified in order for us to meet our statutory obligations. No compensation or damages shall be due to You under such circumstances. Should such circumstances occur we will make reasonable endeavours to keep service disruption to a minimum. No payment shall be due from You to us for any Service suspended during such a period.
- 4.3 You accept that the Data supplied by us may be encrypted depending on the nature of the Data and Service. The Schedule sets out the details if applicable.

5. Warranties

- 5.1 We do not represent or warrant that:
 - 5.1.1 the Data will be fit for your particular purpose nor do we warrant the completeness or accuracy or error free nature of any Data.
 - 5.1.2 all relevant Data in which You are interested in will be reported or supplied.
 - 5.1.3 You will have uninterrupted access to the Service nor that errors in the Data will or can be rectified.
- 5.2 We exclude all other warranties whether express or implied by statute or otherwise, so far as the law allows.
- 5.3 It is agreed that for the duration of the Contract each party will comply with all applicable laws, rules, policies and procedures when performing their respective obligations under the Contract.

6. Proprietary rights

- 6.1 For the avoidance of doubt, no Intellectual Property Right in the Data is conferred or granted to You or any third party users of the Data other than in accordance with clause 7.
- 6.2 You will give us all reasonable assistance, including access to all relevant records and files to enable us to obtain, defend and enforce the proprietary and Intellectual Property Rights in the Data and the Services.

- 6.3 You will use reasonable endeavours to ensure that you have in place adequate security measures to safeguard the Data and Service from unauthorised access to the Service or use of the Data by any person. You must notify us as soon as reasonably practicable if you learn of any unauthorised use of the Data and or Service by anyone or of any actual or potential infringement of our Intellectual Property Rights in the Data and or Service.
- 6.4 We confirm that the use of the Data by You for the Permitted Use shall not infringe the Intellectual Property Rights of any third party and we undertake to indemnify you against all costs, claims, damages or proceedings arising out of any claim by a third party that the use of the Data infringes its Intellectual Property Rights. 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.

7. Crown Copyright

- 7.1 Material produced by officers or servants of the Crown in the course of their duties is protected by Crown copyright. The Keeper of the Registers of Scotland has received delegated authority from the Queen's Printer for Scotland, enabling her to authorise the reproduction of Crown copyright material produced by her or by the Registers of Scotland.
- 7.2 We grant you a non-exclusive, non-transferable, irrevocable licence to reproduce material which is protected by Crown Copyright supplied under the Contract on condition that You:
- 7.2.1 reproduce it accurately;
 - 7.2.2 do not use it in a misleading context;
 - 7.2.3 ensure that that the following acknowledgement appears in a prominent position on the reproduced material:

"© Crown copyright. Material is reproduced with the permission of the Keeper of the Registers of Scotland".

- 7.3 Where the Data provided under this Contract is used by you to create products or services, the following source acknowledgement should appear on or within the product or service:

"Source acknowledgement: Contains data compiled by Registers of Scotland. For further information, please contact data@ros.gov.uk."

8. Restrictions on use

- 8.1 In addition to any specific provisions in the Contract You will ensure that you do not use the Data in a way which is inconsistent with Scottish or European Union Law including, without restriction, the provisions of the Data Protection Legislation, the Human Rights Act 1998 or the Freedom of Information (Scotland) Act 2002. You must notify us as soon as reasonably practicable if you become aware that the Data has been used in a way that breaches this Contract. You acknowledge and accept that we may require to disclose information in relation to the Contract to comply with our statutory obligations without your consent.

- 8.2 You acknowledge that any processing of Data which you carry out is your own, and is not carried out on our behalf.
- 8.3 You will not present out-of-date Data as being current nor will You present Data in any manner which might mislead the reader.
- 8.4 Except as expressly set out in the Schedule, you will not use the Data for the purpose of direct marketing, advertising or promoting a particular product or service, or in a way which could imply endorsement by us or any government department, or to represent to the public that You have an arrangement or official partnership with us in relation to the Service or the Data or supply of it, or in any possible way which could affect the integrity of the Registers kept by us or our reputation or any of our existing services and any existing contractual commitment or generally in a manner which is likely to mislead others.
- 8.5 You will permit us to check on reasonable notice that the access and use of the Data or Service is in accordance with this Contract. You will, if requested, provide us with examples of, or specifications for your products or services which utilise the Data.
- 8.6 If applicable, You will advise us of the domain names for all websites created by You using the Data. If applicable, You will provide us with a user name and password to allow us access to your website at no charge. This access will only be used for the purpose of checking compliance with this Contract.

9. Prices and Payment Arrangements

- 9.1 You will pay the Price for the Service as set out in the Schedule. All prices will be regularly reviewed each year. We will give 30 days' notice in writing of the revised prices to You. You have the right to terminate in accordance with these Terms and conditions should the revised prices not be acceptable.
- 9.2 Payment will be made by credit card, or cheque. We reserve the right to introduce alternative methods of payment including payment by variable direct debit. All prices are subject to Value Added Tax and payment is strictly 30 days net of the date of the invoice unless otherwise specified in the Schedule.
- 9.3 You shall be liable to pay interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on any payment or amount overdue.

10. Suspension and Termination

- 10.1 Either party may terminate the Contract by giving 30 days' notice in writing to the other party.
- 10.2 Notwithstanding anything else contained in the Contract, we may, at our option, either suspend or terminate the Service immediately if:
- 10.2.1 You fail to pay any amount which is due for payment under this Contract.
- 10.2.2 You commit any other material breach of the Contract and, in the case of a breach which is ongoing and capable of being remedied, have failed within 7 days after a written request by us, to remedy the breach.
- 10.2.3 You have a receiver or administrative receiver or liquidator or trustee in

bankruptcy appointed over You or any part of your undertaking or assets, or a resolution for your winding up is passed, if a court of competent jurisdiction makes an order to that effect, or if You become insolvent or subject to an administration order, or if you enter into any voluntary arrangement with your creditors, or if you cease or intend to cease to carry on business.

- 10.2.4 Your use of the Data or potential use is outside Permitted Use specified.
- 10.3 Any suspension of the Service on our part will not prejudice our right to terminate the Service for the same or different reasons.
- 10.4 In the event of termination of the Contract for whatever reason You will remain liable to pay any portion of the Price that remains unpaid relating to the Data or Service delivered, together with any expenses we have reasonably incurred or have agreed to incur in connection with any work done or to be done for You.
- 10.5 Termination or expiry of the Service for any reason will not entitle You to any refund of Price nor will it affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any of these conditions which is expressly, or by implication, intended to come into or to continue in force on or after termination or expiry.
- 10.6 We reserve the right to terminate the Contract at any time by giving you 14 days' notice in writing if the Information Commissioner or other competent authority notifies us that the Data should not be provided in its current form. In that event, we will use our reasonable endeavours to provide the Data in an alternative form acceptable to either the Information Commissioner or other competent authority, and to You.
- 10.7 In the event that the Contract is terminated by You in accordance with clause 10.1 or terminated by us in accordance with clause 10.2 then You must immediately destroy all Data supplied to You by us and supply us with a certificate verifying the destruction.

11. Liability

- 11.1 Neither party's liability is excluded or limited:
- 11.1.1 for death or personal injury caused by its negligence or the negligence of its employees or agents; or
- 11.1.2 for fraud or fraudulent misrepresentation; or
- 11.1.3 for breach of confidentiality set out here.
- 11.2 You agree to indemnify us against all losses incurred as a result of any breach by you of the Data Protection Legislation, capped at the level of the maximum fine that can be imposed under that legislation from time to time.
- 11.3 We do not accept any liability for any losses incurred by You or any third party as a result of your or their reliance on the Data provided to You.
- 11.4 Neither party will be liable for any loss of actual or anticipated profits or savings, loss of business, loss of opportunity, loss or corruption of Data, loss of contracts, or for any indirect or consequential loss, whether arising from negligence or breach of

contract, or in any other way, even if we were notified of, or knew of the likelihood of, that loss or type of loss arising.

- 11.5 Without prejudice to our rights under the Contract or these Terms and conditions each party's liability for direct loss (other than loss of the nature described in clause 11.2) whether in contract, or delict, or arising in any other way, will not exceed 100% of the amount You have paid to us over the preceding twelve months or which is payable to us for that part of the Service or Data from which your claim for loss arises, whichever is the lesser.
- 11.6 You will keep us fully informed of any changes to the contact point, or to your name or address as specified in the set out in Schedule.
- 11.7 Any claim under this clause must be notified to us within one month of the incident to which the claim relates being first identified.

12. Force Majeure

- 12.1 No failure or omission by either You or us to comply with these Terms and conditions or Contract shall give rise to any claim as a breach of contract if such failure or omission arises from something reasonably beyond your or our control. Notwithstanding the foregoing, the Parties shall use reasonable endeavours to continue to perform their respective obligations under these Terms and conditions and the Contract for the duration of such force majeure event.

13. Assignment and sublicensing

- 13.1 You may not assign the Contract nor the licence granted by it nor sub-contract or sublicense any of the rights granted in it.

14. Freedom of Information Act

- 14.1 We are under a duty to comply with the Freedom of Information (Scotland) Act 2002 and the Environmental Information Regulations (Scotland) 2004. You acknowledge that we may disclose any information in order to comply with any legislation, including the above mentioned legislation, or order of court without your consent. You will assist and reasonably cooperate with us to enable us to comply with these information disclosure requirements.

15. Privacy Statement

- 15.1 We may collect and use the information about you
- 15.1.2 to allow us to check your financial standing
- 15.1.3 to enable us to ensure that you use the Data in an appropriate manner
- 15.1.4 for reporting and statistical purposes and
- 15.1.5 for any other appropriate purpose or use including sharing, checking and verifying the information with other government departments and agencies, law enforcement agencies or other relevant organisations and bodies. By providing the information you will be indicating your agreement to us processing your information in this way.

15.2 We shall not use your name or brand in any promotion or marketing without your prior consent.

16. Third Party Rights

16.1 Except as expressly stated in this Contract, nothing in these Terms and conditions or the Contract shall confer on any third party any:

16.1.1 benefit or right to enforce any of the terms;

16.1.2 third party rights nor Intellectual Property Right in the Information;

17. Notices

17.1 Except as otherwise expressly provided within the Contract all notices to be given under the Contract shall be in writing and shall either be delivered personally or sent by first class prepaid post or by facsimile transmission or electronic mail and shall be deemed duly served:

17.1.1 In the case of notice delivered personally at the time of delivery.

17.1.2 In the case of a notice sent by first class prepaid post 2 clear working days after the date of dispatch.

17.1.3 In the case of a facsimile transmission or electronic mail if sent during normal working hours then at the time of transmission and if sent outside normal working hours then on the next following working day.

17.2 Except where otherwise provided, notices to us should be sent for the attention of:

Data Team, Registers of Scotland, Meadowbank House, 153 London Road,
EDINBURGH, EH8 7AU

Or by email to: data@ros.gov.uk

18. Waiver

18.1 No failure or delay by either party to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy under this Contract.

18.2 Any waiver by either party of any breach of any of the obligations of the other party under this Contract or otherwise shall not be a waiver of any continuing breach or of any other breach of any of those obligations.

18.3 A waiver of any right arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

18.4 Time will not be of the essence in respect of the Data and the Service provided under the Contract.

18.5 If any term or provision in the Contract shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision to the extent required be severed from and deemed not to form part of this Contract and the enforceability of the remainder of this Contract shall not be affected.

19. Governing law

- 19.1 This Contract is made under the Laws of Scotland and comes under the exclusive jurisdiction of the courts of Scotland.