



HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA

Insert Name
Insert Address Line 1
Insert Address Line 2
Insert Address Line 3
Insert Town
Insert Postcode

Address Line 1
Address Line 2
Edinburgh
Postcode
Direct Line: Insert DDi
Direct Fax: Insert Fax
Switchboard: Insert Switchboard
Email: Insert email address
REF: IPR Licensed Insert Ref

Insert Date

Dear Insert Name

Thank you for offering your Collection (as defined in the Deposit Agreement) to Historic Environment Scotland ("**HES**"). To ensure that HES may curate and allow others to use the Collection, we ask that the Intellectual Property Rights (as defined in the Deposit Agreement) are licensed to HES.

Our Deposit Agreement is attached to this letter (in duplicate). It details the terms upon which the Collection is being transferred to HES and the terms of the licence to be granted by you and we ask that you read the Deposit Agreement carefully before signing it.

Please note that the Deposit Agreement is a legally binding document and as such if you are unsure about the effect of any of the provisions please seek legal advice before signing it.

How to Proceed

If you wish to proceed, please complete and sign **BOTH** copies on page **[INSERT PAGE NUMBER]**. You should retain one copy for your own records and return one copy to HES.

Yours sincerely

Name
Position

**For and on behalf of
Historic Environment Scotland**

HISTORIC ENVIRONMENT SCOTLAND

Deposit Agreement

This Deposit Agreement is between

1. **[insert name and description (ie individual, corporate entity, charity etc)]**(“the Donor”)
2. **Historic Environment Scotland**, established by the Historic Environment Scotland Act 2014 and having its principal office at Longmore House, Salisbury Place, Edinburgh EH9 1SH (“HES”).

Background

- A. The Donor has ownership, custody and to the best of his/her knowledge full title to the Collection and the Intellectual Property Rights.
- B. The Donor wishes to transfer ownership and custody of the Collection to HES, but wishes to reserve the Intellectual Property Rights. The Donor will however grant the Licence to HES enabling it to use the Intellectual Property Rights for the purposes described herein;
- C. HES is prepared to accept the Collection and the Licence.

IT IS AGREED

1. In this Deposit Agreement, the following words shall have the following meanings:-

Collection	means one or more manuscripts, documents, drawings, photographs, paperwork, digital files, objects and/or other materials which are described in the Schedule to this Deposit Agreement;
Data Protection Legislation	means any law applicable relating to the processing, privacy and use of personal data, including without limitation: (i) the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC; and/or (ii) the General Data Protection Regulation (EU) 2016/679;
data controller, data processor, data subject personal data, processing and sensitive personal data	all have the meanings given to those terms in the Data Protection Legislation;
Intellectual Property Rights	means any and all intellectual property rights of whatsoever nature (including, without limitation, copyright) in and to the Collection (or any part of it);
Licence	means the licence set out in Clause 7 of this Deposit Agreement;
Transfer Location	means [] or such other location as the parties may otherwise agree in writing; and
Schedule	means the schedule referred to in, and attached to this Deposit Agreement, which shall be deemed incorporated in and to form a part of this Deposit

Transfer of title and licence

2. The Donor hereby:-
- (a) assigns the whole right, title and interest in and to the Collection to HES free from any third party right, interest or encumbrance, but subject to clause 7, reserves its right, title and interest in and to the Intellectual Property Rights; and
 - (b) grants the Licence to HES.

Delivery

3. The Donor agrees to deliver the Collection to HES at the Transfer Location, on such date (or, if the Collection is to be delivered in parts, dates) as may be agreed between the parties. Unless HES and the Donor have agreed otherwise in writing, the Donor shall be responsible for the safe delivery of the Collection to the Transfer Location at its cost. The Collection shall (to the extent any part of it has not been so delivered) remain at the Donor's risk until it has been delivered to HES. For the purpose of this clause 3 delivery of the Collection (or any part thereof) shall take place when an authorised representative of HES issues the Donor with a written receipt documenting those items forming part of the Collection that have been received by HES at the Transfer Location.
4. Whilst the Collection is as set out in the Schedule as at **[insert date of covering letter]**, the Donor may transfer further materials and/or works to HES which (if accepted by HES in writing) will form part of the Collection and will be subject to this Agreement. To the extent that the Donor transfers further materials and/or works to HES and such materials and/or works are accepted by HES in accordance with this clause 4, the Schedule will be deemed to have been amended accordingly and subsequently, upon a written request, HES will provide the Donor with the updated Schedule, no more than once annually.

HES's rights and obligations

5. HES will store, preserve and maintain the Collection at its own cost and using reasonable skill and care during the period in which the Donation is in the possession of HES.
6. The Donor agrees that if the Collection contains any personal data or sensitive personal data upon delivery of the same to HES in accordance with clause 3, HES shall be a data controller of such personal data or sensitive personal data. If either party is at any time to act as a data processor for the other it shall not commence such data processing activities until both parties have entered into a separate data processing agreement to be agreed between the parties at the relevant time.
7. Without prejudice to clause 2. (a) above and the transfer of title to HES pursuant to that clause, the Donor hereby grants HES a non-exclusive, perpetual, royalty free and irrevocable licence to store, use, copy, format (or re-format), publish, exploit, distribute, licence or otherwise deal with the Collection and/or the Intellectual Property Rights (in whole or in part) for any purpose (whether non-commercial or commercial) and in any manner and through any media or format whatsoever that it in its sole discretion considers appropriate. For the avoidance of any doubt, the foregoing licence shall entitle HES to create derivative works based on or relating to the

Collection (or any part of it) and the intellectual property rights in and to such derivative works shall be owned by HES.

8. Without prejudice to clause 7 above, the Donor acknowledges and agrees that HES shall be entitled to:-
- (a) catalogue the Collection (the intellectual property rights in such catalogue being owned by HES);
 - (b) make the catalogue and the Collection accessible to the public through whichever means HES considers appropriate (including through its online catalogue, its website and/or through any other HES associated/project based websites);
 - (c) copy any part of the Collection as digital images and make such images available to the public. Any such images which are made available online will generally be of sufficient quality to be used for research by the public but will not generally be of publication standard;
 - (d) provide copies of images to third parties (for commercial or non-commercial purposes) to publication standard upon request and charge such fees as it considers reasonable and appropriate in the circumstances;
 - (e) use the Collection (in whole or in part) for PR purposes, including publications, exhibitions and online activities; and
 - (f) dispose of or allocate to other suitable organisations or offer back to the Donor the whole or any parts of the collections not required by HES.

Confirmations

9. The Donor warrants and confirms to HES that:
- (a) it is the owner of the Collection and the Intellectual Property Rights and that the Collection and the Intellectual Property Rights are free from any third party right, interest or encumbrance;
 - (b) it has all necessary rights, permissions, approvals and/or consents to enable it to transfer the Collection and grant the Licence to HES;
 - (c) where any works of unknown authorship and/or ownership are comprised within the Collection, the Donor has made all reasonable enquiries to identify the author/owner of such works and has notified HES accordingly. The Donor will provide HES with such information and assistance as HES may require from time to time in respect of such works and the identification of the author/owner, and HES reserves the right to exclude such works from the Collection;
 - (d) the Donor has not granted or otherwise transferred any rights (including any charge or other security) in the Collection to any third party in any jurisdiction;
 - (e) the transfer of the Collection and grant of the Licence to HES shall not have the effect of transferring to HES any liability to pay any sums to any third party;

- (f) the use and publication of all or any part of the Collection and/or the Intellectual Property Rights by HES shall not infringe, and is not likely to infringe, the rights of any third parties, and the Donor shall promptly notify HES if it becomes aware of any such infringement; and
 - (g) insofar as the Collection contains any personal data, (i) the Donor has complied with the Data Protection Legislation and has obtained any and all necessary consents from the data subjects; and (ii) the processing of such personal data by HES shall not breach the Data Protection Legislation or otherwise infringe the rights of the data subject(s).
10. The Donor will indemnify HES against any loss, damages and costs incurred by HES arising from breach by the Donor of Clause 9, including any damages or other amounts paid in compromise or settlement of any such claim by HES. At the request of HES and at the Donor's expense, the Donor will provide assistance to enable HES to resist any action, claim or proceedings brought against HES as a consequence of any such breach.
11. The Donor acknowledges and accepts that personal data of or associated with the Donor (which may include the Donor's name, address and other contact details) is required to be stored by HES (as a data controller) for a reasonable period, in accordance with any retention policy adopted by HES from time to time, and included in its automated archive management and cataloguing system for the purpose of facilitating the conduct of any research involving all or any part of the Collection and the performance of HES' storage, management and maintenance obligations under this Agreement generally. Such personal data will generally only be made available to HES staff and researchers, third party researchers seeking further information on the history or context of the Collection will not be supplied directly with the private addresses of donors; any relevant communications will be forwarded by HES to the Donor where reasonably practicable. In published information, individuals will be named as or by such naming convention as may otherwise be agreed between HES and the Donor. The Donor shall be entitled to exercise its rights under the Data Protection Legislation at any time and lodge a complaint with the Information Commissioner's Office (as supervisory authority for data protection in the UK) in respect of HES's processing of the Donor's personal data.

General

12. The Donor shall promptly take such steps and execute and deliver such further documents as HES may require in order to give full effect to this Agreement and fully vest in HES all title and rights conferred (or intended to be conferred) by this Agreement.
13. HES is a Scottish public authority pursuant to and for the purposes of Freedom of Information (Scotland) Act 2002 ("**FOI Act**") and the Environmental Information (Scotland) Regulations 2004 ("**Regulations**") and is therefore subject to the provisions of the FOI Act and the Regulations. This means that any person who makes a valid request for recorded information and or environmental information held by or on behalf of HES will (subject to certain exceptions) be entitled to receive it. For the avoidance of any doubt, nothing in the Agreement shall prevent, restrict or prohibit HES from complying with its obligations under the FOI Act and or the Regulations and HES may at its sole discretion without recourse to the Donor disclose any information whatsoever relating or otherwise pertaining to the Agreement and or the Collection where it considers that it is required to so under the FOI Act and or the Regulations.

14. Except in respect of death or personal injury caused by HES's negligence or any other liability that cannot be excluded under any applicable law, HES shall not be liable to the Donor by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of HES, its servants, or agents or otherwise) which arise out of or in connection with the provision of terms of this Agreement (including any delay in providing or failure to provide any of these) and the entire liability of HES to the Donor under or in connection with this Agreement shall not exceed an amount equal to the costs incurred by HES for the purposes of cataloguing, conservation and/or processing of the Collection.
15. This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to in this Agreement, supersedes all prior representations, writings, negotiations or understandings relating to the subject matter of this Agreement.
16. Except in respect of any fraudulent misrepresentation made by a party, the parties acknowledge that they have not relied on any representations, writings, negotiations or understandings, whether express or implied, (other than as set out in this Agreement) in entering into this Agreement.
17. This Agreement shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

SAMPLE

In witness whereof these presents consisting of this and the preceding **[insert the number of pages in words and numerically in brackets e.g. five (5)]** pages together with the Schedule attached as relative hereto are executed as follows:

Signed for and on behalf of: Historic Environment Scotland		Witnessed by:	
Signature.....		Signature.....	
		Witness Address:	
Name (PRINT):		Name (PRINT):	
Position:		Position:	
At:			
Date:		Date:	

Signed for and on behalf of: [insert full name of Donor] / [insert full name of Provider] [amend/delete as appropriate]		Witnessed by:	
Signature.....		Signature.....	
		Witness Address:	
Name (PRINT):		Name (PRINT):	
Position:		Position:	
At:			
Date:		Date:	

This is the Schedule referred to in the foregoing Deposit Agreement between Historic Environment Scotland and **[insert full name of the Donor]**

Schedule

The Collection

[Details to be included]

SAMPLE