



HISTORIC  
ENVIRONMENT  
SCOTLAND

ÀRAINNEACHD  
EACHDRAIDHEIL  
ALBA

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

Insert Date

Address Line 1  
Address Line 2  
Edinburgh  
Postcode

Direct Line:  
Direct Fax:  
Switchboard:  
Email:  
REF: IPR Licensed

Insert DDi  
Insert Fax  
Insert Switchboard  
Insert email address  
Insert Ref

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.

A copy of 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 made on \_\_\_\_\_ 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 their 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:-

<b>Collection</b>	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;
<b>Data Protection Legislation</b>	means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 or any successor legislation; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
<b>Controller. Data Subject, Personal Data and Processing</b>	all have the meanings given to those terms in the Data Protection Legislation;
<b>Intellectual Property Rights</b>	means any and all intellectual property rights of whatsoever nature, including, without limitation, copyright and related rights, patents, rights in logos, design rights (whether registered or unregistered), registered and unregistered trade marks, all goodwill and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, in and to the Collection (or any part of it);
<b>Licence</b>	means the licence set out in clause 6 of this Deposit Agreement;
<b>Transfer Location</b>	means [ ] or such other location as the parties may otherwise agree in writing;

<b>Schedule</b>	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 Agreement; and
<b>UK GDPR</b>	means the General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018 (as amended or replaced from time to time).

*Transfer of title and licence*

2. The Donor hereby:-
- (a) assigns the Donor's 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 6, reserves the Donor's 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 the Donor's 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 HES takes physical possession of the Collection (or any part thereof) at the Transfer Location.
4. Whilst the Collection is as set out in the Schedule as at the date of this Agreement, 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. 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, worldwide, royalty free, transferable, sub-licensable and irrevocable licence to solely and to the extent necessary to enable HES to fulfil its statutory functions as set out in the Historic Environment Scotland Act 2014 and the associated Schemes of Delegation, which shall include, but not be limited 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.

7. Without prejudice to clause 6 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 public relations 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*

8. The Donor warrants and confirms to HES that:
- (a) the Donor 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) the Donor has all necessary rights, permissions, approvals and/or consents to enable the Donor 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 the Donor 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 in respect of the Processing (including transfer to HES) of such Personal Data and has obtained any and all necessary consents from the Data Subject(s); 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).
9. The Donor will indemnify HES against any loss, damages and costs incurred by HES arising from breach by the Donor of clause 8, 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.
10. To the extent that HES processes any Personal Data relating to the Donor, HES shall be the Controller in relation to such Personal Data, shall comply with the Data Protection Legislation and will Process such Personal Data in accordance with HES's privacy notice from time to time. In particular, third party researchers seeking further information on the history or context of the Collection will not be supplied with the private address of the Donor; except with the prior written consent of the Donor. In published information, the Donor will be named as ..... or by such naming convention as may otherwise be agreed between HES and the Donor.

#### *General*

11. 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.
12. 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.
13. 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 staff, 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.
14. 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.

15. 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.
16. This Agreement does not give rise to any rights under the Contract (Third Party Rights)(Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of this Agreement.
17. Each provision of this Agreement is severable and distinct from the others. If any provision or part provision of this Agreement is or becomes illegal, invalid or unenforceable, it shall be deemed deleted, but that shall not affect the legality, validity or enforceability of any other provision of this Agreement.
18. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.
19. 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.
20. This Agreement may be executed in any number of counterparts. Where executed in counterparts:
  - (a) this Agreement shall not take effect until each of the counterparts has been delivered;
  - (b) delivery shall take place when the date of delivery is agreed between the parties after execution of this Agreement as evidenced by the date inserted on page 1 of this Agreement.

In witness whereof these presents on this and the four preceding pages, together with the Schedule, are executed in counterpart as follows:

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

<b>Signed for and on behalf of: [insert full name of Donor] / [insert full name of Provider] [amend/delete as appropriate]</b>		<b>Witnessed by:</b>	
Signature.....		Signature.....	

		<b>Witness Address:</b>	
<b>Name (PRINT):</b>		<b>Name (PRINT):</b>	
<b>Position:</b>		<b>Position:</b>	
<b>At:</b>			
<b>Date:</b>		<b>Date:</b>	

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

SAMPLE