

REVIEW CONTENT LICENCE

between

HISTORIC ENVIRONMENT SCOTLAND, a statutory incorporation established by the Historic Environment Scotland Act 2014, and a registered charity (Scottish Charity number SC045925) and having its principal office at Longmore House, Salisbury Place, Edinburgh, EH9 1SH (the "**Licensor**"); and

The Publisher as named in the associated email who is in receipt of Licensed Content for an article which Historic Environment Scotland has sanctioned (the "**User**")

Our Contact Details:

**HES Collections, Sales & Enquiries,
John Sinclair House, 16 Bernard Terrace, Edinburgh EH8 9NX**

Telephone: 0131 651 6872 Email: images@hes.scot

The Licensor has agreed to grant a licence to the User to use the Licensed Content (defined below) for the Permitted Purpose (defined hereafter) upon the terms of this confirmation form and the conditions attached or as available on the relevant website which are hereby incorporated by reference (together the "Licence")

In this Licence the words and expressions listed below have the following meanings:-

Commencement Date:	Date of Email containing this licence
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Term:	One Month from Commencement Date
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Licence Fee:	means there is no licence fee for the Review or Associated Article use but the user must pay a Licence Fee if they wish to continue to use the Licensed Content beyond this Permitted Purpose	Charge: £0 for use associated with the review.
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Licensed Content:	means there is no licence fee for the Review or Associated Article use but the user must pay a Licence Fee if they wish to continue to use the Licensed Content beyond this Permitted Purpose	Attributions to be shown: The User should state that any image is © Rob McDougall
	[...]	

Permitted Purpose:	Use in accordance with the terms of Licence for Review and Associated Article as part of that review or Associated Article. Newspaper or Magazine article may publish images at any size on paper. Online reviews must not publish images bigger than 450 pixels on widest side. For the purposes of clarity: sale of any images, directly or indirectly or by inclusion in any paid service or saleable product after the initial publication, is forbidden. Following ONE publication, the User has no rights to use Licensed Content in any form unless a relevant
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licence fee has been paid.

Territory: means use by the person named in the email at their place of work and in their publication.

[...]

Please note that this Licence sets out the rights granted to the User and the limitations imposed upon the User in relation to use of the Licensed Content. In particular:-

- The User may only use the Licensed Content for the Permitted Purpose in the Territory and for no other purpose and in no other jurisdictions whatsoever and such use is only for the Term. Permission to use the Licensed Content for any further purposes, in additional jurisdictions or for a further period may be granted upon payment of a further fee, which must be paid in full before such further use.
- The User must not make the Licensed Content available to any third party unless the User has been granted explicit prior written consent to do so by the Licensor. Such consent will normally be stated in the Permitted Purpose.
- There is no right to use the Licensed Content at all unless the relevant Licence Fee has been paid.

AGREEMENT

The User has agreed to the terms and conditions of this Review and Associated Article Licence in full **by receiving associated images as part of the Review Pack provided by email and using the supplied images in a published review or Associated Article.** .

CONDITIONS:

1. Definitions

In this Licence the words and expressions listed below have the following meanings:-

"Commencement Date"	has the meaning given in the Confirmation Form;
"Conditions"	means these Conditions;
"Confirmation Form"	means the order confirmation form set out above and forming part of this Licence;
"Intellectual Property Rights"	means patents, registered designs, trade marks, trade names, design rights, copyright (including rights in computer software), database rights, rights in or to business names, know-how, domain names, trade secrets, confidential information and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having similar or analogous effect to any of the foregoing which may subsist anywhere in the world;
"Licence"	means this Content Licence, which comprises the Confirmation Form and the Conditions.

"Licence Fee", "Licensed Content", "Permitted Purpose", "Term" and "Territory" have the meaning given in the Confirmation Form;

- 1.1 In this Licence:-
- 1.1.1 the singular includes the plural and vice versa;
 - 1.1.2 references to gender include references to all genders;
 - 1.1.3 unless otherwise stated, references to sub-Clauses and Clauses are to sub-Clauses and Clauses of this Licence;
 - 1.1.4 the Clause headings are for reference only and shall not affect the construction or interpretation of this Licence; and
 - 1.1.5 references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- 1.2 In this Licence, except where the context otherwise requires, any reference to:-
- 1.2.1 a "day" means a period of 24 hours (or such other number of hours as may be relevant in the case of changes for daylight saving) ending at 12.00 midnight;
 - 1.2.2 the words "include" or "including" are to be construed as meaning without limitation;
 - 1.2.3 a "month" means a calendar month; and
 - 1.2.4 a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having a separate legal personality.

2. **Commencement and Term**

This Licence shall come into force on the Commencement Date and, unless terminated in accordance with Clause 10 (Termination), shall continue indefinitely in full force and effect (the "Term").

3. **Licence**

- 3.1 Subject to the terms of this Licence, the Licensor grants to the User for the Term a non-exclusive, non-transferable licence to allow the User to use the Licensed Content in the Territory for the Permitted Purpose only.
- 3.2 The User shall not use or exploit the Licensed Content or any part thereof save in accordance with this Licence. All rights in relation to the Licensed Content not expressly granted to the User under this Licence are reserved to the Licensor.
- 3.3 The User shall not:
- 3.3.1 sell, resell, license, distribute, transmit or commercially exploit or make the Licensed Content (or any part thereof) available in any manner or on any media to any third party;
 - 3.3.2 reproduce or amend the Licensed Content (or any part thereof) in any manner;
 - 3.3.3 use the Licensed Content (or any part thereof) for any purpose other than for the Permitted Purpose;
 - 3.3.4 use the Licensed Content (or any part thereof) outwith the Territory; or
 - 3.3.5 use the Licensed Content (or any part thereof) outwith the Term
- unless the User has been granted explicit prior written consent to do so by the Licensor. Such consent arising from the User's order will normally be stated in the Permitted Purpose. If

the User applies to the Licensor for such consent subsequently, the parties shall discuss the terms on which the Licensor may make available all or any part of the Licensed Content and/or allow such use, including the scope of the licence and the level of fee payable to the Licensor. The Licensor shall not be obliged to agree (whether in whole or in part) to any such consent and the Licensor's decision in this regard shall be final.

4. **Licence Fee**

- 4.1 In consideration of the rights granted by the Licensor, the User must pay the Licence Fee. The Licence Fee is payable when the Licence Content is being ordered.
- 4.2 If (for whatever reason) the Licensed Content has been provided to the User but the Licence Fee has not been paid, the Licensor shall be entitled to terminate this Licence forthwith.
- 4.3 All sums payable under this Licence are exclusive of Valued Added Tax or any other equivalent sales taxes or duties.

5. **Delivery of Licensed Content**

- 5.1 Subject to the terms of this Licence and upon payment of the Licence Fee, any Licensed Content shall normally be delivered by online download. Any licensed images listed as hard copies on the Confirmation Form shall be issued by the Licensor in hard copy form by post to the address provided by the User on the Confirmation Form. If such hard copies of Licensed Content are not available the Licensor shall notify the User and shall refund the amount of the License Fee paid relating directly to such Licensed Content.

6. **Licensed Content**

- 6.1 To the extent permitted by law the Licensor hereby excludes any representations, warranties, undertakings, or conditions (whether express or implied by law, contract or otherwise) in connection with the Licensed Content including (without limitation):
 - 6.1.1 any warranties of satisfactory quality, fitness for purpose, title and non-infringement; and
 - 6.1.2 any warranties that the Licensed Content will be free from errors including any viruses, bugs, trojan horses or any similar errors (together the "Errors") or that any Errors will be corrected and the User is solely responsible for all costs and expenses associated with any rectification, repair or damage caused by any Errors.

7. **Liability**

- 7.1 Neither party excludes or restricts their liability in respect of death or personal injury caused by their negligence.
- 7.2 Subject always to Clause 7.1, the liability of the Licensor for any breach of the terms of this Licence, or otherwise in relation to the subject matter of this Licence (including that arising from breach of duty, delict, tort or otherwise) shall not exceed the amount of the Licence Fee paid by the User.
- 7.3 Subject always to Clause 7.1 neither party shall be liable in contract, delict, breach of duty or otherwise arising out of or in connection with this Licence including by way of indemnity for:
 - 7.3.1 any damage to software or damage or loss of data; or
 - 7.3.2 any economic loss (including loss of revenues, profits, contracts, business or anticipated savings); or
 - 7.3.3 any loss of goodwill or reputation; or
 - 7.3.4 any special, indirect or consequential losses or damage,

in any case, whether or not such losses were within the contemplation of the parties at the date of this Licence, suffered or incurred by that party arising out of or in connection with the provisions of any matter under this Licence.

- 7.4 The parties expressly agree that should any limitation or provision contained in this Clause 7 be held to be invalid under applicable law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

8. User's Obligations

- 8.1 The User acknowledges and agrees with the Licensor that:-
- 8.1.1 all rights and title in and to the Licensed Content and all Intellectual Property Rights in, derived from and relating to the Licensed Content are expressly reserved to the Licensor and its licensors;
 - 8.1.2 the User shall adhere to all of the User's obligations under Clause 3 (Licence) and those listed under Confirmation Form;
 - 8.1.3 the User must ensure that no third party retains a copy of the Licensed Content on any medium (including any form of electronic copy) unless the User has been granted explicit prior written consent to do so by the Licensor;
 - 8.1.4 the User shall immediately provide full particulars to the Licensor in the event that the User becomes aware of any actual or threatened claims by any third party in connection with the Licensed Content;
 - 8.1.5 the Licensor shall have the sole right as against the User to take action against third parties in respect of the Licensed Content. If required to do so by the Licensor, the User shall co-operate fully with the Licensor in any such correspondence, action or proceedings;
 - 8.1.6 the User shall not acquire any rights to commence proceedings in its own name nor shall it negotiate or settle any disputes involving such rights the prior written consent of the Licensor;
 - 8.1.7 all damages recovered under judgement or following settlement of a dispute from third parties shall be the exclusive property of the Licensor; and
 - 8.1.8 the User shall at the request of the Licensor give full co-operation to the Licensor in any action, claim or proceedings brought or threatened by a third party in respect of the Licensed Content as the Licensor may deem fit at the User's costs.
- 8.2 The User shall indemnify the Licensor on demand and keep the Licensor fully indemnified from and against all actions, proceedings, claims, demands, costs and damages arising directly or indirectly as a result of breach or non-performance by the User of the obligations under this Licence or a breach of any warranty given by the User in Clause 9 (User Warranties) of this Licence.

9. User Warranties

- 9.1 The User warrants and undertakes to the Licensor that:
- 9.1.1 the User has the right, power, authority and capacity to enter into this Licence and to perform its obligations under this Licence;
 - 9.1.2 the User has not and shall not acquiesce to the unauthorised use by any third party of any of the Licensed Content;
 - 9.1.3 the User shall not use the Licensed Content for any other purpose other than the Permitted Purpose; and
 - 9.1.4 the User shall not do or omit to do anything to diminish the rights of the Licensor in the Licensed Content or act in any manner which in the Licensor's reasonable opinion is likely to bring the Licensor into disrepute.

- 9.1.5 the User is not acting as an agent or representative for any other person, company or corporate body, institution or any other third party.

10. Termination

- 10.1 The Licensor may terminate this Licence (in whole or in part) by giving one month's notice to such effect in writing to the User at any time.
- 10.2 The Licensor may terminate this Licence (in whole or in part) forthwith upon providing written notice to the User if:
- 10.2.1 the User is in breach of any obligation on it hereunder and, in the case of a breach capable of remedy, it has not been remedied by the User within 5 business days of written notice from the Licensor specifying the breach and requiring its remedy; or
 - 10.2.2 the User is subject to a petition for a bankruptcy order and such petition has presented to the court; or
 - 10.2.3 an administration order is applied for in respect of the User; or
 - 10.2.4 a voluntary arrangement is proposed in respect of the User; or
 - 10.2.5 a resolution is passed or an order being made for the winding up of the User; or
 - 10.2.6 an administrator, receiver or administrative receiver is appointed over the whole or any part of the User's undertakings or assets or the User or any other party gives notice of its intention to appoint an administrator to the User; or
 - 10.2.7 the User goes into liquidation (either solvent or insolvent); or
 - 10.2.8 the User is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986) or an event occurs within the jurisdiction of the country in which the User is situated (or registered) which has a similar effect to any of the above events in the United Kingdom; or
 - 10.2.9 the User ceases or threatens to cease to pay its debts as they fall due or ceasing or threatening to cease to trade; or
 - 10.2.10 the User makes or seeks to make any composition or arrangement with its creditors; or
 - 10.2.11 the User suffers any event analogous to the events provided in Clauses 10.2.2 to 10.2.10 above under any jurisdiction to which it is subject.
- 10.3 Termination of this Licence shall be without prejudice to the accrued rights and obligations of the parties.
- 10.4 Termination of this Licence for any reason shall not bring to an end to the User's obligations to pay any Licence Fee which is due and Clauses 6 (Licensed Content), 7 (Liability), 8 (User's Obligations), 10(Termination) and 16 (Governing Law) shall also survive such termination.
- 10.5 On termination of this Licence for any reason, the User shall immediately cease to use the Licensed Content and shall immediately deliver up to the Licensor on request all copies (including any and all electronic copies) of the Licensed Content and all information, manuals, reports, documents or software relating to the Licensed Content provided to the User by the Licensor in connection with this Licence or any part thereof in its possession or control. Upon any request by the Licensor the User shall certify within 30 days that it has fulfilled its obligations under this Clause 10.5.
- ## 11. Force Majeure
- 11.1 If either party to this Licence is prevented or delayed in the performance of any of its obligations under this Licence (other than any obligation to make payment to the other under this Licence) by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then

the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

- 11.2 For the purposes of this Licence "Force Majeure" shall be deemed to be any cause affecting the performance of this Licence arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party concerned.

12. **General**

- 12.1 No variation or amendment to this Licence shall bind either party unless made in writing and signed by or on behalf of both parties.
- 12.2 Failure by either party to exercise or enforce any rights conferred upon it by this Licence shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- 12.3 If any provision of this Licence is held to be unlawful or unenforceable, the rest of this Licence shall remain in full force and effect.
- 12.4 The User acknowledges that it is not the agent or representative of the Licensor and the User undertakes not to hold itself out as same.
- 12.5 The Licensor is a Scottish public authority pursuant to and for the purposes of Freedom of Information (Scotland) Act 2002 ("**FOI Act**") and is therefore subject to the provisions and obligations in the FOI Act. This means that any person who makes a valid request for recorded 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 this Licence shall prevent, restrict or prohibit HES from complying with its obligations under the FOI Act and HES may disclose any information whatsoever relating or otherwise pertaining to this Licence where it considers that it is required to so under the FOI Act.

13. **Notices**

Any notice required to be given hereunder by either party to the other shall be in writing and shall be served by sending the same by first class registered or recorded delivery post to the address of the other party as given by the Licensor herein and by the User on the Confirmation Form or to such other address as that party may have previously notified to the party giving notice as its address for such service. Such notice will be deemed to be received two (2) days after the date of posting.

14. **Assignment and Sublicensing**

- 14.1 The User is not entitled to assign, sublicense, or otherwise transfer the benefit or burden of this Licence, whether in whole or in part, without obtaining the prior written consent of the Licensor.
- 14.2 The Licensor shall be entitled at its sole discretion to assign, sub-contract or otherwise transfer all or any part of the benefit or burden of this Licence at its discretion.

15. **Entire Agreement**

This Licence constitutes the entire agreement between the parties and supersedes any previous agreement between them relating to the subject matter of this Licence. Provided that nothing in this Clause 15 shall have effect to exclude the liability of either party for fraud or fraudulent misrepresentation.

16. **Governing Law**

This Licence shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.