

**SPECIMEN MEMORANDUM & ARTICLES OF A COMPANY LIMITED BY GUARANTEE
FOR USE IN SCOTLAND
FOR DRAFT PURPOSES ONLY**

THE COMPANIES ACTS 1985 & 1989
COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

of

[]

PRELIMINARY

In this Memorandum unless there be something in the subject or context inconsistent therewith:-

'The Memorandum' means this Memorandum of Association or such as is in force from time to time.

'The Articles' means the Articles of Association of the Company or such as are in force from time to time.

'The Collection' means that body of material evidence having collective or individual historical, artistic or scientific importance, the possession of which enables the Company to be constituted as a Museum.

'A Specimen' means any individual item comprised in the Collection.

'A Museum' means an institution which collects, documents, preserves, exhibits and interprets material evidence and associated information for the public benefit; and which is recognised or capable of being recognised by the Museums & Galleries Commission as being properly constituted and as performing the required functions in an acceptable manner.

'The Act' means the Companies Acts 1985 and 1989, and any amendment, extension or re-enactment thereof for the time being in force.

'Member' means a member for the time being of the Company in terms of the Articles.

Words importing the singular number only include the plural, and vice versa.

Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act as in force at the date at which this Memorandum of Association became binding on the Company.

1 The name of the Company (hereinafter referred to as 'the Company') is the [Company].

- 2 The Registered Office of the Company will be situated in Scotland.
- 3.1 Each and every Clause (including this Clause) both of the Memorandum and of the Articles of Association of the Company shall be read and interpreted as if there were embodied therein an over-riding qualification to the effect that no expenditure of income or capital by the Company shall be permitted for the purpose of carrying out any activities which are not wholly charitable within the meaning of Sections 505 and 506 of the Income and Corporation Taxes Act 1988, or of any amendment, extension or re-enactment thereof or of any subordinate legislation made thereunder (which meaning shall be ascribed to the word 'charitable' wherever used in this Memorandum and Articles), and that in all cases in which the powers conferred upon the Company, whether by this Memorandum and Articles or otherwise are in their nature alike capable of being exercised for purposes which are not charitable or only partially so, as well as for purposes which are wholly charitable, the Company shall be entitled to exercise those powers only in those ways which will not prejudice the charitable status of the Company (within the statutory meaning before mentioned).
- 3.2 Subject to the said over-riding qualification the objects for which the Company is established are: -
- 4.1 To advance and promote the education of the general public, and in particular the inhabitants of [the area or district in which the museum is located or to which its Collecting Policy applies], without distinction of sex or of political, religious or other opinions, by associating voluntary organisations, local authorities and other bodies of whatever status together with the inhabitants in a common effort to [establish] [preserve] a Museum, [to be] called the [] Museum, which the Company intends to achieve by means of :-
- a) bringing together, holding, adequately housing, conserving and documenting a Collection of specimens being of historical, artistic or scientific importance, and in respect of which there will be a strong presumption against the subsequent disposal of any item;
 - b) stimulating public interest in the Museum as a focal point of education and of historic, artistic or scientific interest, thereby improving the facilities available for general public amenity and education;
 - c) displaying and publicising the Collection for the public benefit; permitting access to research workers and school children, always providing that the safety and security of the Collection are not thereby endangered; permitting with similar safeguards the loan of any Specimen for exhibition or research;
 - d) promoting and assisting in the collating and recording of historical, ethnological, archaeological, biological, geological or other related information appropriate to the purpose of the Museum as set out in Clause 4.1.
- 4.2 To adopt a written Collecting Policy and review it at least every five years, which policy shall define the types of Specimens which the Company wishes to include in the Collection and the geographical area from which such Specimens may be drawn.
- 4.3 To maintain an accurate and current Register of all Specimens acquired for, or removed from, the Collection.
- 5.1 In furtherance of the objects of the Company, the Company shall have the following powers:-

- 5.2 Subject to the provisions hereinafter contained, to purchase, take on lease, exchange, hire or otherwise acquire any property, rights or privileges of whatever kind (heritable or moveable, real or personal, corporeal or incorporeal) which may from time to time be deemed necessary for the promotion of the Company's objects, and to construct, maintain, add to, improve, furnish, equip and alter any building or structure necessary for the work of the Company.
- 5.3 To establish, subsidise, promote, support and amalgamate with Companies, Trusts, Societies or Associations having objects altogether or in part similar to those of the Company, provided that by their constitution they prohibit the distribution of any profits or assets among their members, and that any such organisation must have been accepted as charitable in law.
- 5.4 To procure and print, publish, issue and distribute gratuitously or otherwise, newspapers, periodicals, books, pamphlets, leaflets, advertisements, appeals or other literature.
- 5.5 To promote, encourage and undertake experimental work or conduct research consistent with the objects of the Company, publishing the useful results of such research.
- 5.6 To sell, let, grant security over, turn to account, manage and improve all or any of the property or assets of the Company subject to such terms and conditions as may be thought expedient, to exercise any rights or privileges or advantages, servitudes or other benefits for the time being attached to such property or assets, and to undertake, maintain, execute and do all such lawful acts, matters and things as the Company may be obliged or required or ought to do as owners of such property or assets, provided always that:-
- a) the Company shall create no security, charge, pledge or any encumbrance (other than those arising by operation of law) over any Specimen comprised in the Collection;
 - b) any decision to sell or otherwise dispose of any Specimen shall be made only by the Directors of the Company acting with the advice of an appropriately qualified and/or experienced professional museum curator and only for the purpose of improving the quality of the Collection;
 - c) any Specimen identified for disposal from the Collection shall be offered first for transfer by loan, gift or exchange to any museum administered by a charitable trust or public authority, before such Specimen is otherwise gifted or offered for sale to the public at auction or in any other manner;
 - d) any moneys received from the disposal of any Specimen shall be applied for the benefit of the Collection and in particular, but not necessarily exclusively, to purchase items for the Collection.
- 5.7 Subject to Clause 5.6, to feu, sell, manage, lease, mortgage, exchange, dispose of or otherwise deal with all or any part of the property of the Company as may be expedient with a view to the promotion of its objects.
- 5.8 To take such steps by personal or written appeals, advertising matter, public meetings, film shows, sales of booklets and other items, or otherwise as may from time to time be deemed expedient for procuring contributions or donations or income to enable the Company to carry out any of its objects which may require assistance.
- 5.9 Subject to such consents as may be required by law and to the limitations instituted by the Company, to borrow or raise money for the furtherance of the objects of the Company on such terms and in such manner as the Directors may think fit.

- 5.10 To invest the moneys of the Company not immediately required for the furtherance of its objects in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law and subject also as hereinafter provided.
- 5.11 To insure the Company and its property, including without prejudice to the foregoing generality the Collection and any other items held on loan by the Company, against such risks as it shall be considered prudent and necessary to insure.
- 5.12 The Directors shall have power to purchase and maintain insurance for, and for the benefit of, any persons who are or were at any time Directors, officers, employees or Auditors of the company including (without prejudice to the foregoing generality) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or exercise or purported exercise of their powers and/or otherwise in relation to the Company but always excluding, in the case of any Director, liability arising from any act or omission which such Director knew to be breach of trust or which was committed by the Director in reckless disregard of whether it was breach of trust or not or arising where Directors continue to operate knowing the Company is insolvent or in reckless disregard of whether it is solvent or not.
- 5.13 To purchase or otherwise acquire all or any part of the property or assets, and to undertake all or any of the liabilities and engagements, of any one or more Companies, Trusts, Societies or Associations with which the Company is authorised to amalgamate, subject to the conditions relating to charitable status outlined in Clause 5.3
- 5.14 To receive and accept from time to time grants and legacies, donations, gifts, subscriptions, conveyances and endowments either of money or property, heritable or moveable, real or personal, of any description whatsoever, either absolutely or conditionally or in trust.
- 5.15 To employ and (subject to the provisions of Clause 6) to remunerate staff of the Company, whether on a full-time, part-time, permanent, temporary, freelance or voluntary basis, and to provide pension or superannuation benefits for any such staff or otherwise to assist any such staff and their widows, children or other dependants.
- 5.16 To subscribe and make contributions to or otherwise support charitable institutions, societies, schools and persons and to grant donations for any public charitable purpose in any way connected with the activities of the Company or calculated to further its objects.
- 5.17 To pay all expenses preliminary or incidental to the formation of the Company and its registration.
- 5.18 To do all such other lawful things as may be conducive or incidental to the attainment of any of the above objects, Provided that: -
- a) in case the Company shall take or hold any property which may be subject to any trusts, the Company shall only deal with or invest the same in such manner as is allowed by law having regard to such trusts;
 - b) the Company shall not support with its funds any object, or endeavour to impose on or procure to be observed by its members or others, any regulation, restriction or condition which if an object of the Company would make it a Trade Union; and
 - c) in relation to any property which may come into the hands of the Company as trustee under any other trust (whether established by any trust deed or any

scheme approved by the Court of Session or made in pursuance of any enactment relating to educational endowments or war charities or otherwise) nothing herein shall authorise the Company to deal therewith otherwise than in accordance with the terms of the trust and with any law relevant thereto, nor shall the incorporation of the Company affect the liability as an individual of any Director of the Company who may be a party to such dealings.

- 6 The income and property of the Company, whencesoever derived, shall be applied solely towards the promotion of the objects of the Company as set forth in this Memorandum of Association; no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the Members of the Company: Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company or to any Member of the Company, in return for any services actually rendered to the Company, nor prevent the payment of interest at a reasonable commercial rate on money lent by any Member to the Company, or reasonable and proper rent for premises let by any Member to the Company, but so that no Director shall be appointed to any salaried office of the Company or any office of the Company paid by fees, and that no remuneration or other benefit in money or money's worth shall be given by the Company to any Director except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent, or reasonable and proper rent for premises let to the Company: Provided that the provision last aforesaid shall not apply to any payment to any Company in which a Director holds not more than one one-hundredth part of the capital, and such member shall not be bound to account for any share of profits he may receive in respect of any such payment.
- 7 The liability of the Members is limited.
- 8 Every Member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a Member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a Member, and of the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding £1.00.
- 9 True accounts shall be kept of the sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place, of all sales and purchases of goods by the Company and of the property, assets and liabilities of the Company. Such accounts shall be open to any Director of the Company and to the Auditor for inspection at all reasonable times, and to any other Member of the Company to the extent permitted by the provisions of the Articles. Once at least in every year the Accounts of the Company shall be examined, and the correctness of the income and expenditure account and balance sheet ascertained, by one or more properly qualified Auditor or Auditors.
- 10 Upon the winding up or dissolution of the Company, its debts and liabilities shall be satisfied exclusively out of the assets of the Company other than the Collection, unless such assets shall prove insufficient for the purpose; in such event, only such minimum number of specimens out of the Collection shall be sold as shall be required to produce sufficient moneys to meet the remaining debts and liabilities of the Company, such sale or sales (save under compulsion of law) to take place as set out in Clause 5.6. The Collection and other assets of the Company, after satisfaction of its debts and liabilities, shall not be paid to or distributed among the Members of the Company or returned to donors but shall be given or transferred to the local authority at the time having statutory responsibility for museum provision in [the area in which the museum is located], to be held in trust on terms consistent with the provisions of clause 4 hereof and for charitable purposes only, and the other assets likewise held for the maintenance and development of the Collection; Provided that--

- a) the said authority shall in turn be obliged to give or transfer the Collection and other assets and any moneys subsequently realised from the Collection, on the same terms and with the same powers (including the power of subsequent gift or transfer) under which they were received by the said authority, to a charitable body whether or not established by a local authority having objects (whether its sole objects or part only of its objects) consistent with the provisions of clause 4 hereof and which, if a company or trust, shall prohibit the distribution of its income and assets among its members or beneficiaries to an extent at least as great as is imposed on the Company under or by virtue of Clause 6 as may be determined by the Directors; and
- b) if the said authority shall no longer exist at the time of winding up or dissolution of the Company, or shall not accept the Collection and other assets of the Company, the same shall be given or transferred to another charitable body as described in proviso (a) above, on the same terms and with the same powers (including the power of subsequent gift or transfer of all or any part of the Collection and other assets as the said authority would have had as may be determined by the Members of the Company with (if requisite) the written approval of the Lord Advocate or the authority of any court having jurisdiction over the distribution of the assets of the Company, whether before, at or after the date of winding up or dissolution of the Company;

Declaring that if at any time the institution holding the Collection and other assets and moneys or any part thereof desires to give or transfer all or any part of the same to another institution, the institution to which such gift or transfer is intended to be made shall, as a condition of its receipt of the Collection and other assets or moneys or any part thereof, undertake that the said other assets and moneys, and any moneys subsequently realised from the Collection, shall be applied only for the purpose of maintaining and developing the Collection, or another collection of such institution with which the Collection or parts thereof shall be integrated, or otherwise for charitable purposes only;

And if and insofar as effect cannot at any time be given to the aforesaid provisions, the Collection and other assets (if any) of the Company shall be applied for charitable purposes only.

The several persons whose names and addresses are subscribed are desirous of being formed into a Company in pursuance of this Memorandum of Association;

Names, Addresses and Descriptions of Subscribers
