

SPECIMEN DEED OF DECLARATION OF TRUST
FOR USE IN SCOTLAND
FOR DRAFT PURPOSES ONLY

DEED OF DECLARATION OF TRUST

by

[A number of named individuals, including those nominees set out in Clause 16 hereof] (hereinafter collectively called "the Trustees", which expression shall, where the context admits, mean and include the Trustees hereunder for the time being, whether original, additional or substituted).

WHEREAS it has been resolved to constitute a trust for the charitable purposes hereinafter contained in order to [establish] [preserve] the museum [to be] known as [] (hereinafter referred to as 'the Museum'), the Trustees have raised the sum of £[] ([] Pounds) to establish a Trust Fund and further intend, pursuant to this Deed, to establish a collection to consist initially of the objects, specimens, books, photographs and documents set out in the Schedule annexed and executed as relative hereto ('the Existing Collection').

THEREFORE IT IS HEREBY AGREED AND DECLARED as follows:-

1. In this Deed the expression 'the Trust Fund' shall mean and include all moneys, investments and property (excluding items of an historical, scientific or artistic nature held for preservation) now held or hereafter paid or transferred to the Trustees from whatever sources to be held as additions to the Trust Fund and the assets from time to time representing such moneys, investments and property or any part or parts thereof.
2. The Trustees shall hold the Trust Fund and the Existing Collection IN TRUST
 - a) for the advancement of the education of the general public, without distinction of sex or of political, religious or other opinions, by provision of the Museum comprising the Existing Collection together with such other objects, specimens or collections as may from time to time be acquired in accordance with the provisions of this Deed ('the Collection'), in respect of which there will be a strong presumption against the subsequent disposal of any specimen;
 - b) to provide for the protection of the specimens comprised in the Collection from deterioration, damage, loss, accidental destruction or unauthorised disposal;
 - c) to form, establish and support and to aid in the formation, establishment and support of any other charitable companies, institutions, associations, trusts or societies formed for objects similar to the objects set out above.
3. In furtherance of the above objects, but not otherwise, the Trustees shall have the following powers and obligations:-
 - a) to purchase, lease, hire or otherwise acquire for exhibition or other use items of an educational nature or specimens of historical, artistic or

scientific importance which the Trustees consider will enhance the Collection;

b) to conserve, restore, repair, reconstruct and preserve any specimen in the Collection;

c) to appoint a named person as being responsible to the Trustees for the care and development of the Collection in accordance with the provisions hereof, Provided only that, if such person is not an appropriately qualified and/or experienced professional Museum Curator and at the time in question no Trustee under this Deed is so experienced and/or qualified, the Trustees shall use their best endeavours to appoint an appropriately qualified and/or experienced person to be their Adviser in Curatorial matters;

d) to adopt a written Collecting Policy defining the principal types of material to be acquired for the Collection together with the geographical area from which such material may be drawn, and to review such Policy at least every five years;

e) to maintain an accurate and current Register of all specimens acquired for or removed from the Collection;

f) 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 incorporated), and to construct, maintain, add to, restore, replace, renew, rebuild, furnish, equip and alter any building, works, erections, land or property (heritable and moveable, real and personal) and to pay and discharge any rent, rates, taxes, costs of insurance, improvements, repairs or other outgoings payable from time to time in respect of the property held subject to the trust hereby created and to pay and discharge all expenses incurred in the exercise of any powers conferred upon the Trustees by or conform to the provisions of this Deed or by any disposition or other deed of transfer to the Trustees of any such property and any legal or other administrative expenses payable from time to time in connection with the trust hereby created or with any property held subject thereto;

g) to raise funds and to invite and receive contributions from any person or persons whomsoever by way of subscription, donation or otherwise, and to take and accept any gifts or property of any description whether subject to any specific conditions or not.

h) to act as trustees and to undertake and administer any charitable trust which may lawfully be undertaken by the Trustees and may further the objects of the trust hereby created, and to perform any services in connection with the above objects, gratuitously or otherwise;

i) to present, promote, organise, provide, manage or produce exhibitions, conferences, lectures, tours, seminars and literary, musical, dramatic and artistic entertainments and performances which are conducive to the advancement of education and to formulate, prepare and establish schemes thereof;

j) to promote, encourage or undertake research and to disseminate the useful results of such research;

k) to procure to be written and to print, publish, issue, circulate or otherwise disseminate and communicate, gratuitously or otherwise,

literary, visual and aural educational material, including reports, periodicals, newspapers, books, pamphlets and other literature;

l) to maintain and manage and assist in or contract for the maintenance and management of land and premises (including museums and exhibition halls) for the purpose of the preservation and public exhibition (whether free of, or subject to, charges to be made to the public) of the Collection;

m) to co-operate with governmental and local authorities and with other charitable organisations having similar objects, and with any persons whom the Trustees shall in their absolute discretion deem to be appropriate, and to establish, promote or assist such charitable organisations, to assist any such persons and to purchase, acquire or undertake all or any of the property, liabilities and obligations of such authorities, charitable organisations and persons;

n) to purchase, acquire and obtain interests in the copyright of or the right to display, perform or publish any material which can be used or adapted for the objects of the Museum;

o) to employ and remunerate reasonably any person (not being a Trustee under this Deed) as an officer, servant or employee, whether on a full-time, part-time, permanent, temporary, freelance or voluntary basis, and to remunerate any person, corporation, firm, society, association or other body for services rendered and to make reasonable provision for the payment of superannuation and pensions to any person or persons who shall have been in the employment or service of the Trustees or to the dependants of such persons, if any;

p) to lend or hire any specimen comprised in the Collection to any museum, charitable or educational institution or other reputable body or person, Provided only that the Trustees shall satisfy themselves that the borrower or hirer has effected adequate insurance against the loss of or damage to the specimen lent or hired, and that satisfactory arrangements exist for the preservation, safeguarding and return of such specimen;

q) to make such rules and regulations for the management of the trust hereby created and for the administration of the Trust Fund and the care and management of the Collection and for matters relating thereto as the Trustees shall in their absolute discretion think fit, and from time to time to amend, vary or revoke such rules or regulations, Provided only that nothing in this sub-clause shall be deemed to authorise any application of any part of the Trust Fund otherwise than in furtherance of the trust hereby created or for any purpose which is not exclusively charitable;

r) to insure against loss or damage by fire or from any other risk, any property for the time being comprised in the Collection or the Trust Fund, to any amount and to pay the premium of such insurance out of the income or capital of the Trust Fund or the property itself and any money received by the Trustees under such a policy shall be treated as if it were the proceeds of sale of the property insured;

s) to purchase and maintain insurance for, and for the benefit of, any persons who are or were at any time Trustees or in the employment or service of the Trustees 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 the exercise or purported exercise of their powers and/or otherwise in relation to their duties, powers, service or

services in relation to the trust hereby created but always excluding, in the case of any Trustee, liability arising from any act or omission which such Trustee knew to be a breach of trust or which was committed by the Trustee in reckless disregard of whether it was a breach of trust or not or arising where Trustees continue to operate knowing the Trust Fund is insolvent or in reckless disregard of whether it is solvent or not.

t) to accept (or, in the absolute discretion of the Trustees, to disclaim) any property heritable or moveable, real or personal, which may from time to time be bequeathed, devised or given to the Trustees to be held subject to the trust hereby created, or as an addition or accretion to the Trust Fund or the Collection;

u) to dispose of any specimen from the Collection on such terms as the Trustees shall think fit, Provided always that any decision to sell or dispose otherwise of any specimen from the Collection shall always be made by the Trustees acting in person and 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 and in furtherance of the objects hereby declared;

v) to offer by loan, exchange, gift or sale to any museum administered by a charitable trust or public authority any specimen from the Collection which may be identified for disposal, before such specimen is otherwise gifted or offered for sale at auction or in any other manner;

w) to apply any moneys received from the disposal of any specimen from the Collection for the benefit of the Collection only and in particular, but not necessarily exclusively, for the purchase of further specimens for the Collection;

x) to do all such other things as shall further the attainment of the objects contained in Clause 2 above, or any of them.

4. The Trustees shall hold the Trust Fund and the income thereof IN TRUST (in priority to all other payments therefrom and applications thereof) to retain the same and pay therefrom all costs, charges and expenses properly incurred by the Trustees in or about the administration of the trust hereby created (and so that such costs, charges and expenses may, at the discretion of the Trustees, be paid from time to time wholly out of capital or wholly out of income or partly out of capital and partly out of income) and, subject as aforesaid, the Trustees shall apply the Trust Fund and the income thereof in furtherance of the objects set out above in such manner as the Trustees shall, in their absolute discretion, from time to time think fit.
5. The Trustees may at any time or times and from time to time, (subject to any statutory requirements for the time being in force) borrow from any persons any moneys required for the purposes hereof upon such reasonable terms as to repayment of principal and payment of interest as they shall, in their absolute discretion, think fit, provided always that they shall in no event create any security charge, pledge or other encumbrance of any description (except such as arise by operation of law) over any item comprised in the Collection from time to time.
6. The Trustees shall have power to employ, on an occasional basis, any one or more of their own number or any firm of which a Trustee is a partner in his or their professional or business capacity as solicitor, accountant, stockbroker or other professional adviser, to perform the services for which he or they might ordinarily be employed if not a Trustee or Trustees and to pay him or them or such firm full remuneration for such services, without prejudice to the Trustees having all the powers of gratuitous trustees.

7. Save as herein provided, the Trustees shall not be bound in any case to act personally but shall be at full liberty to employ any agent or servant to transact all or any business of whatever nature required to be done in pursuance of the trust hereby created including the day-to-day management of the affairs of the trust and the receipt and payment of money and shall be entitled to pay all charges and expenses so incurred out of the Trust Fund or the income thereof, and shall not be responsible for the defaults of any such agent or servant or any loss occasioned by his employment.
8. The Trustees shall have power to permit any moneys, bonds, certificates or other securities for money (whether in the case of such securities they are to bearer or transferable by delivery only) or documents of title to property heritable or moveable, real or personal, corporeal or incorporeal, for the time being subject to the trust hereby created, to be and to remain deposited with any bank, trust company or other like institution in the United Kingdom and to permit any investments, securities or other property heritable or moveable, real or personal corporeal or incorporeal, which, or any share or interest wherein, shall be for the time being subject to the trust hereby created, to be and to remain vested in the name of nominees in the United Kingdom instead of in the name of the Trustees themselves, upon such terms as to remuneration and in all other respects as the Trustees shall, in their absolute discretion, think fit.
9. The receipt of any person purporting to be the Treasurer or other proper officer of any charity shall be a good discharge to the Trustees for any payment or transfer of assets intended to be made to that charity.
10. No discretion or power by this Deed conferred on the Trustees shall be exercised and no provision of this Deed shall operate so as to cause or permit any part of the capital or income of the Trust Fund to be payable or applicable to any person who shall contribute to the Trust Fund or the spouse of any such person, other than in fair payment for services rendered to, or goods received by, the Trustees.
11. The Trustees shall not be liable for depreciation in the value of any investments made by them or received and retained by them nor for omissions or errors in judgement nor for neglect in management nor for the insolvency of debtors nor for the acts, omissions, neglects or defaults of any agent acting for them, other than for loss arising through wilful and individual fraud, wrongdoing or wrongful omission on the part of the Trustee who is sought to be made liable.
12. If at any time it shall appear to the Trustees that either by reason of changes in the law affecting the administration of charitable or other trusts or of changes in social, scientific, educational or political conditions or by reason of any defect or omission in the preceding provisions of this Deed it would be desirable for the better administration of the trust hereby created that the Trustees should possess or be invested with any further or other administrative powers which the Trustees do not or may not now possess it shall be lawful for the Trustees to supplement or alter or amend the provisions of this Deed to such extent (but to such an extent only) as may in the opinion of the Trustees be requisite for the purpose of conferring on the Trustees such further or other administrative powers, Provided always that nothing in this clause shall authorise or be deemed to authorise any departure from or modification of the primary trust hereby created, or the application of any part of the Trust Fund or the income thereof otherwise than in conformity with the trust hereby created.
13. In addition to all the powers of investment competent to trustees by statute or common law, the Trustees shall have power to retain, for such time as they shall, in their absolute discretion, think fit, the heritable or real property and the securities and investments and other moveable or personal property in which the Trust Fund may be invested at the beginning of the trust hereby created or at the date when the same are paid, conveyed or made over to the Trustees, and power to invest the Trust Fund,

when requiring investment, as they shall, in their absolute discretion, think fit, in heritable or real property, corporeal moveables, investments, stocks, shares (including partly-paid shares), deposits and securities, real or personal (including bonds or securities payable to bearer) whether in the United Kingdom or elsewhere, and to vary such investments as the Trustees shall, at their absolute discretion, think fit, including power to delegate the investment of the Trust Fund on a wholly discretionary portfolio management basis.

14. The Trustees shall meet together and regulate their business subject to the provisions of this Deed, in such manner as they shall in their absolute discretion, from time to time, determine, Provided always that a resolution in writing signed by a majority of the Trustees or, if in terms of this Deed a unanimous decision shall be required, by all of the Trustees, shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and held.
15. The Trustees may from time to time elect from amongst their number a [Convenor] who shall have authority to convene meetings of the Trustees and the Trustees may also from time to time elect or appoint such other officers as they shall think fit.
16. The Trustees shall be not less than five and not more than fifteen in number.
- 17a) The [Museum Society] shall have the right to nominate [] Trustee(s), to determine the period of nomination of [each] such Trustee, to remove [each] such Trustee from office and to nominate another person as Trustee in his place;
- 17b) [] Council shall have the right to nominate [] Trustee[s], to determine the period of nomination of [each] such Trustee, to remove [each] such Trustee from office and to nominate another person as Trustee in his place;
- 17c) [Repeat the above form of words for any other organisations to which it is desired to give a right of nomination];
18. The Trustees shall have the power to assume any person (including a person previously nominated as a Trustee, whose period of nomination has ended) to fill a vacancy howsoever caused (save where any other organisation has a right of nomination to such vacancy), or, subject to Clause 16, as an additional Trustee.
19. A Trustee (including a nominated Trustee) may resign from office by minute in writing.
20. A Trustee (including a nominated Trustee) shall retire from office on attaining the age of [75] years.
21. A Trustee (including a nominated Trustee) may be removed from office by a resolution passed by three quarters of the Trustees for the time being.
22. A Trustee resigning, retiring or removed from office shall be bound to do all such acts and execute all such deeds as may be required to give full legal effect to his resignation, retiral or removal from office.
23. If at any time and for any reason the Trustees are of the unanimous opinion that it is inexpedient to continue to maintain the Museum, Collection and Trust Fund, their debts and liabilities shall be satisfied exclusively out of the Trust Fund, unless the Trust Fund 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, such sale or sales (save under compulsion of law) to take place as set out in clause 3 hereof. The Collection and the Trust Fund, after satisfaction of the debts and liabilities, shall not be paid to or distributed among the Trustees or returned to donors but shall be given or transferred to the [Museum], the Collection to be integrated with the existing collection of the said Museum or maintained as a separate collection, on terms

consistent with the provisions of clause 2 hereof, at the option of the said Museum, and the Trust Fund likewise to be added to the existing funds held for the maintenance and development of the existing collection of the said Museum or held as a separate fund for the maintenance and development of the Collection as a separate collection; Provided that:-

a) the said Museum shall in turn be empowered to give or transfer all or part of the Collection and the Trust Fund (to which shall be added 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 Museum, 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 2 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 Trustees by virtue of this Declaration of Trust, as may be determined by the said Museum; and

b) if the said Museum shall no longer exist at the time when the Trustees consider that it is inexpedient to continue to maintain the Museum, Collection and Trust Fund, or shall not accept the Collection and Trust Fund, the same shall be given or transferred to another charitable body whether or not established by a local authority such as is 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 the Trust Fund (to which shall be added any moneys subsequently realised from the Collection) as the said Museum would have had, as may be determined by the Trustees with (if requisite) the written approval of the Lord Advocate or the authority of any court having jurisdiction over the distribution of the Collection and Trust Fund, whether before, at or after the date at which the Trustees resolve that it is inexpedient to continue to maintain the Museum, Collection and Trust Fund;

Declaring that if at any time the institution holding the Collection and the Trust Fund (to which shall be accrued any moneys realised from the Collection) 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 the Trust Fund or any part thereof, undertake that the said Trust Fund, 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 the Trust Fund (if anything remains thereof) shall be applied for charitable purposes only.

[OR, ALTERNATIVELY:-]

23. If at any time and for any reason the Trustees are of the unanimous opinion that it is inexpedient to continue to maintain the Museum, Collection and Trust Fund, their debts and liabilities shall be satisfied exclusively out of the Trust Fund, unless the Trust Fund 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, such sale or sales (other than those arising by operation of law) to take place as set out in clause 3 hereof. The Collection and Trust Fund, after satisfaction of the debts and liabilities, shall not be paid to or distributed among the Trustees or returned to donors but shall

be given or transferred to the [Council] to be held in trust to maintain the Collection, on terms consistent with the provisions of clause 2 hereof, and the Trust Fund shall likewise be held for the maintenance and development of the Collection; Provided that the said Council shall in turn be obliged to give or transfer the Collection and the Trust Fund (to which shall be added 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 Council, 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 2 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 Trustees by virtue of this Declaration of Trust, as may be determined by the said Council; Declaring that if at any time the institution holding the Collection and the Trust Fund 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 the Trust Fund or any part thereof, undertake that the Trust Fund (to which shall be added 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 Trust shall be applied for charitable purposes only.

- 24a) 'Charitable Purposes' means purposes which are exclusively charitable within the meaning of Sections 505 and 506 of the Income and Corporation Taxes Act 1988 or of any amendment, extension or reenactment thereof or of any subordinate legislation made thereunder;
- 24b) 'Charity' means any trust, undertaking or other institution (corporate or not) for the time being established (whether in Scotland or elsewhere) exclusively for any charitable purpose or purposes.
- 25. This Deed and the charity hereby constituted shall be governed by the Law of Scotland.
- 26. The parties consent to registration hereof in the Books of Council and Session for preservation.

IN WITNESS WHEREOF

[Signed by the Trustees and witnesses, each Trustee to sign in the presence of one witness]

NOTES

- 1. [The Schedule of the Existing Collection is appended after the signatures, and is also signed by the trustees and witnesses]
- 2. [In some circumstances, a Museum is established when a building or collection which has previously been the property of one or more individuals or a non-charitable organisation, is handed over to a group of Trustees. Where this takes place, the preamble to the Deed needs to take a slightly different form:]

DEED OF DECLARATION OF TRUST

between [] (hereinafter called "the Grantor") of the one part and [Names of the Trustees, including nominated Trustees as set out in Clause 16 hereof] of the other part.

WHEREAS:-

The Grantor wishes to set up a trust for charitable purposes in order to establish a museum [within a specified building or [] consisting of a preexisting collection] (hereinafter referred to as "the Museum"), and intends to transfer to the Trustees the collection set out in the Schedule annexed and executed as relative hereto ("the Existing Collection"), to be held upon the trust and with and subject to the powers and provisions herein contained, and intends that by means of further gifts or provision by himself and others a Trust Fund shall be established, and the Trustees are willing to act as the Trustees of the trust, as evidenced by their execution hereof.

THEREFORE IT IS HEREBY AGREED [etc., etc.]

3. Whenever a change is necessary in the Trustees of a museum, a document should be drawn up along the following lines and Registered in the Books of Council and Session:

DEED OF ASSUMPTION AND RESIGNATION

WE, [Names and Addresses of Present Trustees], the Trustees presently acting under the Deed of Declaration of Trust by [Name of first named party to the Deed] and Others dated [] day of 19-- [] [and registered in the Books of Council and Session on the [] day of [19--], do hereby ASSUME [Names(s) and Address(es) of New Trustee(s)], as a Trustee/Trustees under the said Deed of Declaration of Trust, and we the said [Names of Present Trustees] hereby DISPONE and CONVEY to ourselves and the said [Name(s) of New Trustee(s)] as Trustees foresaid, and to the survivors and survivor, ALL and SUNDRY the whole Trust Estate and effects, heritable and moveable, real and personal, of every description and wherever situated, at present belonging to us or under our control, as Trustees foresaid, together with the whole vouchers, titles and instructions thereof; and [I/we], [Name(s) of New Trustee(s)], by my execution hereof, hereby ACCEPT office as Trustee(s) foresaid [; And {I/We}}, {Name(s) of Resigning Trustee(s)}, hereby RESIGN Office as Trustee(s) foresaid; And we the said [Names of Continuing Trustees], by our execution hereof, hereby ACCEPT intimation of the foregoing resignation(s): And we CERTIFY that this transaction falls within Category A of the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987 IN WITNESS WHEREOF (to be signed by the parties, each in the presence of one witness).