



Historic England

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**TO ADAPT AND/OR TRANSLATE
ADVISORY NOTES, GUIDANCE AND
INSTRUCTIONAL MATERIAL**

DATED _____ [DATE OF AGREEMENT]

BETWEEN

- (1) **HISTORIC ENGLAND**
- (2) **PARTY 2** [NAME AND CONTACT DETAILS OF THE
LICENSEE TO BE ADDED]

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FOR REFERENCE ONLY

THIS AGREEMENT is dated _____ [DATE TO BE ADDED]

BETWEEN

- (1) **Historic Buildings and Monuments Commission for England** (known as Historic England) of The Engine House, Firefly Avenue, Swindon, Wiltshire SN2 2EH (the 'Licensor')
- (2) The Licensee named in the Particulars of Licence (Schedule 1)

BACKGROUND:-

- (A) The Licensor owns the Historic England Marks and the Copyright in the Work or is otherwise licensed to grant the rights granted in this agreement.
- (B) The Licensee wishes to receive and the Licensor is willing to grant to the Licensee a non-exclusive licence to do the acts to the extent stated in the Particulars of Licence and strictly on the terms and conditions set out in this agreement.

TERMS AND CONDITIONS:-

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1. Definitions:

Adapted Work	any adaptation of the Work created pursuant to the grant of rights in clause 2.1.1.1 of this agreement.
Copyright	all the copyright in the text and the images subsisting in the Work in any part of the world to which the Licensor is, or may become, entitled.
Commercial Use	to earn money from the exercise of the rights in clause 2 of this agreement.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Effective Date	[the date of this agreement OR [SPECIFY DATE]].
Historic England Marks	the trade marks identified in the Particulars of Licence owned by Historic England whether registered or not.
Licence Fee	the sums payable for the licence set out in this agreement as stated in the Particulars of Licence.
Particulars of Licence	the individual terms that apply to this licence as set out in Schedule 1.
Term	the duration of this licence specified in the Particulars of Licence subject always to clause 10.
Territory	the geographic territory and/or distribution channels in which the Adapted Work may be published as specified in the Particulars of Licence.

VAT value added tax or any equivalent tax chargeable in the UK or elsewhere.

Work the original guidance or advisory notes or other materials from which an Adapted Work may be made as specified and or referred to in Schedule 1.

- 1.2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.4. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5. A reference to **writing** or **written** includes fax and email
- 1.6. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Grant

- 2.1. The Licensor hereby grants to the Licensee a non-exclusive licence (as detailed in the Particulars of Licence) to do the following acts in the Territory for the Term subject to and strictly in accordance with the terms of this agreement:
 - 2.1.1. under the Copyright in the Work:
 - 2.1.1.1. to make an adaptation of the Work including the right to translate it
 - 2.1.1.2. to publish the Adapted Work

3. Payment

- 3.1. The Licensee shall pay to the Licensor the Licence Fee in the amounts and on the dates stated in the Particulars of Licence.
- 3.2. The payment made by the Licensee under clause 3.1 is exclusive of VAT. If the payment constitutes the whole or any part of the consideration for a taxable or deemed taxable supply by the Licensor, the Licensee shall increase the payment by an amount equal to the VAT which is chargeable in respect of the taxable or deemed taxable supply in question, provided that the Licensor shall have delivered a valid VAT invoice in respect of such VAT to the Licensee. If any VAT invoice is delivered to the Licensee after the payment has been made, the Licensee shall pay the VAT due within five Business Days of the Licensor delivering a valid VAT invoice.
- 3.3. The sum payable under clause 3.1 shall be paid free and clear of all deductions unless the deduction is required by law. If any deduction is required by law the Licensee shall pay to the Licensor such sum as will, after the deduction has been made, leave the Licensor with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction.

- 3.4. Licence Fees and any other sums payable under this agreement shall be paid in sterling to the credit of a bank account to be designated in writing by the Licensor.
- 3.5. For the purpose of converting the local currency of the Licensee (in which and Licence Fee or other sums payable under this agreement arise) into sterling, the rate of exchange to be applied shall be the rate of exchange applied by the bank in the UK that provides the bank account referred to in clause 3.4 for the purchase of sterling with such foreign currency as at the close of business on the date when the relevant payment first becomes due.
- 3.6. In the event of any delay in paying the sum due under clause 3.1 and clause 3.2 by the due date, the Licensee shall pay to the Licensor:
 - 3.6.1. interest on the overdue amount at the rate of 4% per annum above Barclay's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Licensee shall pay the interest together with the overdue amount; and
 - 3.6.2. an amount equal to any penalties incurred by the Licensor as a direct result of the delay.
- 3.7. The provisions of this clause 3 shall remain in effect notwithstanding termination or expiry of this agreement until the settlement of all subsisting claims by the Licensor.

4. Protection of the Copyright

- 4.1. The Licensee shall immediately notify the Licensor in writing giving full particulars if any of the following matters come to its attention:
 - 4.1.1. any actual, suspected or threatened infringement of the Copyright or of any independent copyright in the Adapted Work;
 - 4.1.2. any claim made or threatened that the Work or the Adapted Work infringes the rights of any third party; or
 - 4.1.3. any other form of attack, charge or claim to which the Copyright may be subject or which otherwise may affect the reputation of the Historic England Marks.
- 4.2. In respect of any of the matters listed in clause 4.1:
 - 4.2.1. the Licensor shall, at his absolute discretion, decide what action to take, if any;
 - 4.2.2. the Licensor shall have exclusive control over, and conduct of, all claims and proceedings;
 - 4.2.3. the Licensee shall not make any admissions other than to the Licensor and shall provide the Licensor with all assistance that the Licensor may reasonably require in the conduct of any claims or proceedings; and
 - 4.2.4. the Licensor shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for his own account.
- 4.3. The provisions of sections 101 and 101A of the Copyright, Designs and Patents Act 1988 (or equivalent legislation in any jurisdiction) are expressly excluded.
- 4.4. Nothing in this agreement shall constitute any representation or warranty that the exercise by the Licensee of rights granted under this agreement will not infringe the rights of any person.

5. Protection of Historic England Marks

- 5.1. The Licensee will not do anything which in Historic England's unfettered opinion has or could have a damaging effect on the goodwill and reputation of the Licensor and or that associated with the Historic England Marks and will take all reasonable steps requested in writing by the Licensor to give effect to this clause and to assist it in protecting the same. All goodwill and reputation in the Historic England Marks arising through the Licensee's use of the Historic England Marks shall belong to and automatically vest in the Licensor as it arises.
- 5.2. Use of the Historic England Marks shall be strictly in accordance with any style or other usage guidelines issued by the Licensor from time to time. If changes to the use guidelines arise during the Term the Licensee will be given a reasonable time by the Licensor to make such changes but shall not be required to take out of circulation any previously printed copies of the Adapted Work based on early style guidelines (unless the Adapted Work otherwise contravenes this licence agreement).

6. Attribution of origin disclaimers and identifying authorship

- 6.1. The Particulars of Licence identify any authors of the Work who the Licensor knows have asserted their moral rights under Chapter 4 of the Copyright, Designs and Patents Act 1988 to be identified as the author of the Work and who must be identified as such by the Licensee in any Adapted Work.
- 6.2. The Particulars of Licence identify any written statements that the Licensee must make when exercising the rights in clause 2.1.1.2 which are required by the Licensor:
 - 6.2.1. attributing the original source Work to the Licensor and from which the Adapted Work was derived;
 - 6.2.2. disclaiming any liability for reliance on the information contained in the Work or Adapted Work.

7. Translations

If the Adapted Work consists of a translation of the Work the Licensee warrants that the translation will be undertaken professionally to the highest standards and the Adapted Work shall not contain errors of translation or be published in a way which is a derogatory treatment of or adversely alters the quality or meaning of the guidance contained in the original Work.

8. Indemnity

- 8.1. The Licensor does not accept liability for loss or damage arising from the use of the information contained in the Work and the Adapted Work and is only willing to enter into this agreement if it is indemnified as set out below.
- 8.2. The Licensee shall indemnify the Licensor against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with:
 - 8.2.1. the Licensee's exercise of its rights granted under this agreement;
 - 8.2.2. the Licensee's breach or negligent performance or non-performance of this agreement;

- 8.2.3. any liability or claim for loss or damage arising from the use of and reliance on any information contained in the Adapted Work including without limitation any failure to obtain any consent required to do anything to the built environment any deterioration in any land or building object or structure any failure of physical items manufactured or constructed, supplied maintained or put into use by the Licensee or by persons allegedly relying on the Adapted Work any loss of or damage to any artefact or in its broadest sense to the historic or cultural heritage in the whole or part of the World ;
- 8.2.4. the enforcement of this agreement.
- 8.3. If a payment due from the Licensee under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Licensor shall be entitled to receive from the Licensee such amounts as shall ensure that the net receipt, after tax, to the Licensor in respect of the payment is the same as it would have been were the payment not subject to tax.

9. Assignment and other dealings

The Licensee shall not assign, transfer, mortgage, charge, sub-license, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Licensor.

10. Duration and termination

- 10.1. This agreement shall commence on the Effective Date and continue for the period stated in the Particulars of Licence or on not less than 12 months prior written notice given by the Licensor to the Licensee (if sooner) unless terminated earlier in accordance with the following provisions.
- 10.2. The Licensor may terminate this licence by notice with immediate effect if the Licensee:
- 10.2.1. commits any breach of this licence which is material and not capable of remedy, or which is capable of remedy but which is not remedied within 14 days of notice from the Licensor to do so;
 - 10.2.2. the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 10.2.3. the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;
 - 10.2.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensee other than for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;
 - 10.2.5. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Licensee;

- 10.2.6. the holder of a qualifying floating charge over the assets of the Licensee has become entitled to appoint or has appointed an administrative receiver;
 - 10.2.7. a person becomes entitled to appoint a receiver over all or any of the assets of the Licensee or a receiver is appointed over all or any of the assets of the Licensee;
 - 10.2.8. a creditor or encumbrancer of the Licensee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Licensee's assets and such attachment or process is not discharged within 14 days;
 - 10.2.9. any event occurs, or proceeding is taken, with respect to the Licensee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.2 to clause 10.2.8 (inclusive);
- 10.3. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

11. Notices

- 11.1. Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- 11.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 11.1.2. sent by fax to its main fax number or sent by email to the address specified in the Particulars of Licence.
- 11.2. Any notice shall be deemed to have been received:
- 11.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - 11.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - 11.2.3. if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 11.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11.4. A notice given under this agreement is valid if sent by email.

12. Governing law

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

13. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

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14. SCHEDULE 1 Particulars of Licence DETAILS SUPPLIED BY LICENSEE

Licensee details and address for service of notices

Your organisations official name: [THIS SHOULD BE THE COMPANY, PUBLIC AUTHORITY OR OTHER INCORPORATED NAME]

incorporated and registered in [COUNTRY OF INCORPORATION]

with company number [NUMBER]

whose registered office is at [REGISTERED OFFICE ADDRESS] (the 'Licensee').

Email and postal addresses for notices (see clause 11)

To the Licensor at Historic England, The Engine House, Fire Fly Avenue, Swindon, SN2 2EH, U.K. guidance@HistoricEngland.org.uk

To the Licensee at [CONTACT ADDRESS AND EMAIL]

Details of the original Historic England Work to be adapted

[EXACT NAME OF THE PUBLISHED WORK TO BE ADAPTED OR TRANSLATED HERE]

Adapted Work

[THE EXTENT AND NATURE OF THE PROPOSED ADAPTATION OF THE WORK]

Territory

The Adapted Work may only be published in the following geographic territory and distribution channels:

- (a) Geographic limits: [NAME OF COUNTRY OR COUNTRIES, OR 'NONE – LICENSE IS WORLDWIDE']
- (b) Distribution channels permitted: [STATES PRINTED, AND/OR DIGITAL (OFFLINE), AND/OR DIGITAL (ONLINE)]

Commercial Use

Commercial Use is [not] permitted [IF PERMISSION TO SELL OR COMMERCIALY EXPLOIT THE ADAPTED WORK IS NEEDED]

15. SCHEDULE 2 - TO BE COMPLETED BY HISTORIC ENGLAND

Licence Fees payable

Amount GB £	When Payable

Attribution statements (see clause 6)

The Adapted Work shall carry in its credits section in reasonable prominence and position acceptable to Historic England for which advance approval is required the following statements.

“The original material is published as [insert title] ©Historic England [insert year]. Any reproduction of the original Work requires Historic England's prior written permission and any reproduction of this adaptation of that Work requires the express written permission of both Historic England and [insert licensees name]. All rights reserved.

Historic England does not accept liability for loss or damage arising from the use of the information contained in this work. “

A hypertext link to www.HistoricEngland.org.uk must be included on electronic copies of the Adapted Work.

The following persons have identified their rights to be identified as Authors under Chapter 4 of the Copyrights Designs and Patents Act 1988 (UK) namely:

[Name] in respect of [identify relevant text and or images]

Term

This licence will expire on [Expiry Date].

The Licensee must apply for any renewal of this licence not less than six months prior to the expiry date to check whether the original Work has been updated. It will be a condition of any renewal that the Adapted Work is updated to the most recent version of the guidance which is the subject matter of the original Work. Renewals are entirely at the discretion of Historic England.

SIGNATURES

Signed by a duly
authorised officer for and
on behalf of Historic
England

.....

Signed by [NAME OF
DIRECTOR] for and on
behalf of [NAME OF
LICENSEE]

.....

Director

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