

PART D: EXHIBITIONS

Chapter 14: Exhibition Development

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Panel of Experts:

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14. EXHIBITION DEVELOPMENT

14.1 EXHIBITIONS DEVELOPED BY ONE INSTITUTION

Where a single institution is organising an exhibition the development process is essentially internal. The process raises no legal issues until third parties are involved.¹ Where the exhibition planning is going to involve the loan of third party material, the organising institution will make enquiries from the owners as to the availability of the material sought and their preparedness to lend. Such enquiries do not have the status of an enforceable contract. In legal terms, they are merely 'offers to treat'. The contract does not come into force until a proper loan agreement is negotiated and signed. Until that occurs, the borrowing institution must realise that communications are merely indications of preparedness to enter a contract and should not rely on the promise until the formal agreement is signed.

Institutions who answer such enquiries should make it clear that this preliminary discussion cannot form an enforceable contract by stating expressly that the discussions are 'subject to the parties signing a formal loan agreement'.

14.2 DEVELOPMENT OF JOINT EXHIBITIONS

Introduction

With the ever-increasing cost of mounting exhibitions, it is now common for exhibiting bodies to collaborate in the development and presentation of shows. Sometimes, being able to share the cost (and risk) of exploring the viability of an idea for a show means that the cost is worth bearing.

One of the difficulties in such relationships is devising an agreement that protects both parties: each party needs to be able to pull out if the results of the

¹ External contractors are more and more frequently engaged to provide a particular expertise that is not available at the developing institution. Contractors may include expert curators, authors, designers, prop makers, filmmakers, lighting designers etc, for more discussion of such contracts see Chapter 19.

exploration are not encouraging but each party also needs the certainty that, after a certain stage of development, their collegiate institution will not withdraw, leaving the former partner responsible for everything.

Feasibility Agreement for Joint Development of Exhibition

To avoid this situation, the parties need to enter a preliminary agreement – one that is restricted to the feasibility study. This is a straightforward document that spells out what each party promises to do and to pay. It also provides both parties with certain succour in the event that the other wants to cease the collaboration.² If the parties then decide that they wish to move to the next stage of the collaboration and present the exhibition, they will enter a separate agreement.

[Date]

[Name]
[Title]
[Agency]
[Address]

Dear [Name]

Feasibility Agreement for Joint Development of Exhibition

This letter sets out the terms on which [names of the parties] agree to work together to explore the feasibility of developing a joint exhibition ("**Feasibility Studies**").

1. The Parties

The parties to this Agreement are:

[FULL CORPORATE NAME OF PARTY 1]

[FULL CORPORATE NAME OF PARTY 2]

² I use the term collaboration because some governments have formidable rules relating to their statutory authorities entering 'joint ventures'. In fact, when one examines the definition of 'joint venture' in the relevant regulations, the definitions are very wide and cover most situations in which one government institution wishes to work together with another.

[FULL CORPORATE NAME OF PARTY 3]

2. The Purpose

- 2.1 The purpose of this Agreement is to explore the feasibility of developing an exhibition on the subject of *[insert subject or as described in the attachment to this Agreement]* (the "**Exhibition**").
- 2.2 This Agreement does not commit any of the parties to presenting the Exhibition. At the end of the feasibility process outlined in this document (the "**Feasibility Study**"), each party will have the right, but not the obligation, to enter a separate agreement between those institutions that commit to presenting the Exhibition.

3. Obligations of each party

- 3.1 By signing this document, each party agrees that it will participate fully, and in good faith, in the Feasibility Study including (without limitation);
- (a) providing financial contributions as and when required;
 - (b) providing suitably qualified officers or staff to participate in the activities contemplated by this Agreement;
 - (c) attending meetings;
 - (d) complying with any decisions validly made; and
 - (e) informing all other parties as soon as it becomes aware of any potential or actual circumstances that may or will prevent it from performing its obligations;
 - (f) ensuring that any information that it supplies to the other parties is accurate and promptly correcting any errors or mistakes in such information; and
 - (g) acting in the best interests of all the other parties and the Feasibility Study.

4. Establishment of a Steering Committee

- 4.1 As soon as practicable, but in any case no later than [7] week after the signing of this Agreement, the Parties will develop a steering committee comprised of a [director/nominee of the director] from each party (the "**Steering Committee**").
- 4.2 The Steering Committee will meet either in person or remotely on an as-needs basis, but in any case, at least (monthly/quarterly) The Steering Committee will be responsible for making decisions in relation to:
- (a) spending of the Feasibility Budget referred to in clause 7;
 - (b) the scope of the project;

- (c) the budget for the Exhibition;
- (d) logistics for sharing responsibilities in relation to the Exhibition;
- (e) the dispute resolution process for the direction and content of the Exhibition; and
- (f) [##].

4.3 Unless otherwise stated in this Agreement, decisions of the Steering Committee will be made by [*unanimous*] agreement and each party agrees that once made, those the decisions are binding on it.

5. Establishment of a Project Team

5.1 As soon as practicable after the date of this Agreement, the parties will establish a project team comprised of one senior staff member from each party (the "**Curatorial Team**").

5.2 The project Team will be responsible for developing ideas and concepts for an Exhibition and providing recommendations to the Steering Committee based on those ideas or concepts. The Steering Committee is not obliged to accept the recommendations of the Project Committee.

6. Contribution to the Feasibility Budget

6.1 Each party agrees that it will contribute AUD \$[*insert*] (inclusive of GST) towards the budget for undertaking the activities contemplated by this Agreement (the "**Feasibility Budget**"). If the Steering Committee agrees, additional financial contributions will be made by the parties to the Feasibility Budget in the amounts and on the terms agreed by the Steering Committee.

6.2 The contributions in clause 6.1 will be paid to [name of party or account]. [Name] will operate the account and:

- (a) make payments from such funds in accordance with the decisions of the Steering Committee;
- (b) keep true and accurate books and records of account and provide those records to the Steering Committee or on the request of any party.

7. Publicity

7.1 No party may make any public announcement or statement or publish or release any information in relation to the activities undertaken under this document without the prior written approval of all the other parties.

8. Confidentiality

8.1 When you receive information from another party marked or notified as confidential information (the "**Confidential Information**"), you must:

- (a) keep the Confidential Information confidential;

- (b) not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of this Agreement; and
- (c) not, without the disclosing party's consent, disclose the Confidential Information to any person other than its officers, employees or agents who needs to know the Confidential Information for the purposes of this Agreement and who have agreed to keep the Confidential Information confidential on terms similar to this clause.

8.2 You are not bound by clause 8.1 in relation to Confidential Information which:

- (a) becomes generally available to the public without a breach by the receiving party of clause 9.1;
- (b) the receiving party can prove by contemporaneous written documentation was already known to the receiving party at the time of disclosure pursuant to this Agreement (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality);
- (c) has been independently acquired from a source other than the disclosing party; or
- (d) the receiving party is required to disclose by law.

A receiving party seeking to rely upon any exclusion set out above has the onus of proving that such exclusion applies to the Confidential Information.

9. Warranties

9.1 By signing this Agreement, you are warranting that:

- (a) You have the authority to bind your organisation to this Agreement;
- (b) Your organisation will be able to perform its obligations under this Agreement; and
- (c) Any person that represents your organisation on the Steering Committee will have the authority to make decisions on behalf of your organisation.

10. Disputes, Withdrawal & Abandonment

10.1 In the event of a dispute between the parties, the parties will negotiate their differences in good faith and if there is an odd number of parties, the dispute will be resolved by a majority decision of the Steering Committee. If there is an even number of parties the dispute will be settled by *(lot/ the Director of the party responsible for initiating the Feasibility Study)*

10.2 If a party decides to withdraw from the Feasibility Study, it has no right to recover any of its contributions to the Feasibility Budget whether those contributions have been spent or not.

10.3 If the Feasibility Study is abandoned by all of the parties, any money remaining unspent after the payment of all expenses, shall be returned to the parties in the same proportions as it was contributed.

11.Relationship between the parties

11.1 The parties are independent contractors and nothing in this Agreement constitutes a relationship of employment, agency, joint venture or partnership between them.

12.No assignment or transfer allowed

12.1 A party may not assign, transfer or novate any rights or obligations under this Agreement without the prior written consent of all the other parties. Such consent shall not be unreasonably withheld.

13.Amendment

13.1 This Agreement may only be amended or varied in writing signed by all parties.

14. Counterparts

14.1 This Agreement may be executed in counterparts and all of those counterparts taken together constitute one instrument.

If you agree with the terms set out above, please sign where provided on the next page. After this Agreement has been signed, any of the parties can ask for a more comprehensive long form agreement. This will contain the essential terms set out above and additional terms usually included in contracts of this kind. In the meantime, once you sign below, this letter will serve as a binding agreement between you and all signatories.

Yours sincerely,

Name

Title

CORPORATE NAME OF PARTY 1

READ UNDERSTOOD AND AGREED:

Date:

Date:

SIGNED for and on behalf of [**FULL CORPORATE NAME OF PARTY 2**] by:

.....

Signature of Director

.....

Name of Director (print)

SIGNED for and on behalf of [**FULL CORPORATE NAME OF PARTY 3**] by:

.....

Signature of Director

.....

Name of Director (print)

14.3 EXHIBITION DEVELOPMENT CHECKLIST

During the feasibility study, the joint project team will have to devise a template that will help guide them through the evaluation process and ensure that all participants are agreed on the scope and purposes of the feasibility investigation. The starting point for this may be the use of an agreed checklist. The following checklist was drafted for a State museum and a Federal museum that were considering a collaborative international exhibition.

PRACTICAL AND LEGAL CONSIDERATIONS FOR COLEGIATE DEVELOPMENT AND ORGANISATION OF INTERNATIONAL EXHIBITIONS

PURPOSE AND GOALS	<i>To jointly develop, and deliver an exhibition on the subject of "##" from [institutional lender]</i>	
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CO-OPERATING INSTITUTIONS AND COMMUNICATIONS	CONTACTS AND
Names of institutions	1. 2.
Nominated contact and representative for each museum	1. 2.
Strategic matters to be developed	<ul style="list-style-type: none"> o <i>Establishment of joint project team</i> o <i>Business plan for exhibition</i> o <i>Methodology for managing the project</i> o <i>Loan contract</i>
Legal structure of the venture	<i>Letter of agreement between the existing legal entities?</i> <i>Jointly controlled company (and associated shareholders' agreement)?</i>

	<i>Formal joint venture agreement?</i>
Quality of communications	<i>All negotiations commercial in confidence</i> <i>Each party to share information fully and promptly</i>
Facilities	<i>## to host an extranet site so that the both parties can share information effectively</i>

PUBLICITY & CONFIDENTIALITY

General principle	<i>All deliberations and terms of the collaboration and the loan, are confidential</i>
Mechanism for approving all publicity or disclosures	<i>Mutual written sign-off</i>

WHO IS RESPONSIBLE FOR WHAT DEVELOPMENT COSTS

General principles	<i>Each party pays their own development costs unless otherwise agreed in writing prior to expenditure</i>
	<i>Where parties contribute – expected basis is 50/50</i>
Specific exceptions:	1. 2.

SELECTION

What is the mechanism for selecting the exhibition material?	
How will the lender/partners break selection deadlock?	

DECISION MAKING

How are decisions made on behalf of the venture?	
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Will the institutions appoint representatives to a joint committee? If so, who?	
Do the representatives have the power to bind the institution? (If so, are there limits to that power?)	

LOGISTICS FOR SHARING RESPONSIBILITIES

Anticipated milestone dates for the exhibition	<i>Contract with exhibition owner:</i> <i>Arrival of exhibition at first venue</i> <i>Opening date of first exhibition of tour:</i> <i>Closing date of first exhibition of tour:</i> <i>Departure of exhibition from first venue:</i> <i>Arrival of exhibition at 2nd venue:</i> <i>etc</i>
What are the space constraints of each party?	1. 2.
What are the conservational constraints of each party?	1. 2.
Who will select the exhibition material?	
Who will negotiate the loan fee for the exhibition?	
Who will negotiate and sign loan agreements?	
Who will make transport arrangements?	
Who will research the insurance options?	

Who will negotiate and place the insurance?	
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COSTS OF VENTURE DEVELOPMENT

What are the likely development costs?	
Who is responsible for drafting the development budget?	
Who will pay for what development costs?	

WITHDRAWAL FROM VENTURE

Minimum period of notice of withdrawal from venture	<i># months prior to date of intended first opening date of exhibition</i>
Consequences of withdrawal in time	<i>Withdrawing museum meets its costs and expenses incurred up to the time of withdrawal</i>
Consequences of withdrawal out of time	<i>Withdrawing museum's share of all exhibition fees and costs is payable (and is reducible only to the extent that a replacement partner meets those expenses.)</i>
Consequence of force majeure	<i>Losses fall where they lie</i>

BUDGET

Who is responsible for developing the budget?		
Any budget constraints?		
Who will pay for what costs?		
How will each party contribute to the development costs of the exhibition?		
Means of authorising changes to approved budget?		
Administrative overhead and		

organizational time		
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REPRESENTATION OF MUSEUMS AND EXHIBITION TO THE OUTSIDE WORLD

Organisational credit lines		
Sponsor credit line		
Use of logos		
Approvals that must be sought from partnering museums for press releases, promotional materials and other published mentions.		

MERCHANDISE

CATALOGUE

Format/characteristics	
Who is responsible for designing the catalogue	
What is the mechanism for choosing contributors?	
Who is responsible for contracting writers	
Who is responsible for overseeing writers	

WALL AND LABEL TEXT	

GENERAL		
Dispute Resolution		
Governing law		
Territory		
Alternate dispute resolution mechanism		