

PART D: EXHIBITIONS

Chapter 16: Loans Agreements

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Panel of Experts:

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16. LOANS AGREEMENTS

16.1 Introduction

Before using this Chapter it would be wise to have already considered the issues set out in Chapter 15 and, in particular, to have given thought to the checklist for loan agreements. Checklists such as these are an invaluable risk-management tool when drafting agreements because they help you to ensure that the agreement contains everything you need. Given that we usually work from an earlier document (a precedent) it is an understandable temptation simply to review what is already there: it is much harder to recognise what should be there but is not. For this reason, the prudent drafter will always use a checklist of issues as an aid to memory. Checklists are invaluable drafting tools and you should personalise them so that they cover everything relevant to your needs.

16.2 Form of documentation

There are two basic styles of loan-in agreement: one can be described as 'body heavy and annexure light' and the other, 'body light and annexure heavy'. There is no right or wrong approach; it is a matter of preferred style.

Annexure heavy

Some borrowers put as much of the detail as possible into the annexures. For example, the loan-in agreement for the National Museum has a first section that is little more than a cover sheet with a place to sign. All of the details are in the annexures:

- *The unique details of the loan are set out in one annexure:* Name of lender; description of objects being lent; purpose of the loan; value of the objects and so on. This allows all of the matters that will vary from loan to loan to be provided without the need to vary that part of the document that sets out the rights and obligations that govern the loan. Keeping the variables in a separate annexure facilitates the administration of the loan and makes it easier for the subsequent computerisation of the loan details, thus improving administration during the period of the loan.
- *Descriptions of the substantial (and largely immovable) legal rights and responsibilities are contained in another annexure.* When the legal matters are set out in a form that appears 'standard' they can appear less overwhelming (and less negotiable) than when they are contained in the body of the

agreement. Their legal effect is the same; it is a matter of psychology, style, and administrative convenience.

Annexure light

It is the experience of some borrowers that the use of annexures is daunting for lenders – particularly where the lender is not another institution. Where material is borrowed from members of the public, a bulky contract full of legalese creates an unnecessary psychological hurdle in the loan process. The simpler the form and the language, the easier it is for the lenders to understand the terms of the loan and the easier it is for them to agree to those terms.

16.3 Examples of loan-in agreements

Major institution: non-art museum

The following is the Loan Agreement/Incoming that Simpsons developed for a federal collecting organisation. Like those of most major institutions, it is of the 'annexure heavy' variety:

INWARD LOAN AGREEMENT

LOAN No: 2000/62

FILE No: 00/195

LENDER(S): Mr Joe Citizen

23 Every Street

ANYTOWN NSW 2564

LOAN START DATE: 10 May 2010

LOAN FINISH DATE: 10 May 2012

DESCRIPTION OF OBJECTS: See attached schedule

CONSERVATION¹ (Mark 'NO' if not permitted) May the Museum carry out a minimal amount of conservation treatment if necessary [The lender would be advised beforehand of the work to be carried out]. Yes No

COPYRIGHT OWNER

Copyright owner's name:

Address:

The Lender has agreed to loan to the Museum the object(s) described on the basis detailed in the Agreement and on the terms and conditions attached.

The Museum has agreed to accept the object(s) on loan to it on the basis detailed in the Agreement and on the terms and conditions attached.

Lender's Signature(s):..... Date:.....

X Museum, Manager, Registration:..... Date:.....

¹ The question relating to conservation should not be in this part of the agreement. It would be more appropriate in the Description of Objects annexure where all the variable details are set out.

Inward Loan no. 2010/62

For xyz Exhibition

Loan Schedule

Description	Value
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1.	\$
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TOTAL	\$
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CONDITIONS OF INWARD LOAN

The Lender nominated above agrees to lend the Object listed above ('the Object') for the purposes identified above to the Museum a body corporate established by the ## Museum Act ('the Museum') in accordance with the conditions ('the conditions') of loan printed on the back of this Agreement. Where more than one Object is listed above, this Agreement applies to each of those Objects.

Costs

1. Unless the Lender states otherwise in writing, the Museum shall meet all reasonable costs associated with the shipping of the Object.

Shipment of Object to Museum

2. (a) Unless the Museum states otherwise in writing, the Lender shall pack the Object and undertake shipping or courier arrangements for delivery of the Object to the Museum. Prior to dispatch of the Object, the Museum and the Lender shall agree on the method of shipment which is to be confirmed on dispatch.

- (b) If the Lender ships the Object the Lender shall warrant to the Museum that the Object is adequately and securely packed by professional packing staff for the method of shipment agreed upon, including any special instructions for unpacking and repacking.
- (c) The Lender shall arrange for all necessary international customs clearances in relation to the Object imported/exported, except for Australian customs clearances and shall provide the Museum with copies of all necessary customs clearance documentation.
- (d) The Museum shall arrange all necessary Australian customs clearances in relation to the Object imported/exported.

Damage to Object

- 3. (a) The Museum shall report any damage or loss immediately to the Lender. Photographic documentation of damage will be undertaken by the Museum.
- (b) Where in the opinion of the Museum, the Object may be damaged by infestation, the Object may be fumigated at the discretion of the Museum.

Purpose of Loan

- 4. (a) The Museum may, at its discretion, display the Object at such places as the Museum considers will be suitable having regard to the necessity to properly preserve the Object.
- (b) Should the Museum wish to include the Object as part of a touring exhibition or to loan the Object to other museums this shall be indicated on the front of this Agreement, or the Museum shall obtain the written agreement of the Lender.
- (c) The Museum is not obligated to display the Object for the whole of the term of this Agreement.

Period of Loan

5. (a) Subject to these conditions, the Object shall continue on loan to the Museum until the date specified under the heading 'Period of Loan' on the front of this Agreement.

(b) The period of loan may be extended or reduced by further agreement in writing between the Museum and the Lender.

Insurance

6. The Museum will insure the interests of both the Lender and the Museum in the Object from the time the Museum or its agent takes possession of the Object against loss or damage, until the Object is either returned to the Lender (or dealt with in accordance with Clause 16(a) of this Agreement) under an all risks, wall-to-wall insurance policy of the Museum, with terms as similar as possible to the terms of policies taken out by the Museum in respect of Objects deposited with it and subject to the exclusions usually applying to such policies.

7. (a) The Object shall initially be insured for the value specified under the heading 'Value' on the Schedule to this Agreement. The valuation specified by the Lender shall reflect the fair market value of the Object. If the Lender fails to specify an amount under the Valuation heading, the Museum shall set an estimated value for the purposes of insurance for the period of the loan.

(b) When the Museum nominates a value in accordance with paragraph 7(a), the value is not to be construed as an appraisal by the Museum.

(c) Where the loan period exceeds twelve months, the Lender shall notify the Museum if the nominated insurance value is to be changed. Any such change to the nominated insurance value shall reflect the fair market value of the Object.

8. If insurance is waived by the Lender, this waiver shall constitute the agreement of the Lender to release and hold harmless the Museum

from any liability for damages to or loss of the Object whether due to the negligence of the Museum, or any other cause whatsoever.

9. In the event of loss or damage to the Object the liability of the Museum to the Lender shall not exceed the amount recoverable to the Museum by its insurers under the insurance policy effected by the Museum in accordance with clause 6.

Conservation

10.(a) Unless otherwise indicated by the Lender under the heading 'Conservation' on the front of this Agreement, the Museum will request the Lender to provide written authorisation for any alteration, restoration or repair of the Object. The Museum for its own purposes, may examine the Object by modern scientific methods.

- (b) During the period of the loan the Museum will, subject to paragraph 10(a), maintain the Object in good order and repair having regard to their condition at the commencement of the loan.

11.(a) Condition records will be made by the Museum on arrival and departure. The Museum will provide the Lender with a report on the condition of the Object if requested to do so in writing by the Lender.

Credit

12. Unless otherwise indicated on the front of this Agreement, the Museum will acknowledge the Lender in any publicity or in relation to any reproduction or photographs of the Object.

Copyright and Reproduction

13. Subject to the Museum obtaining the necessary copyright consent (if any), the Museum may reproduce and photograph the Object for publicity, loan, sale or educational purposes.

14. If the Lender is the owner of the copyright in the Object, the Lender agrees that the Object on exhibition to the public may be subject to photography by the public, using existing ambient lighting.

Return of Object to Lender

15. (a) At the end of the period of loan, the Museum shall return the Object to the Lender at the address specified in this Agreement.
- (b) The Object(s) will be returned to the Lender in their original container, unless other arrangements are made with the Museum in writing.
16. (a) If the Museum, having made all reasonable efforts to return the Object, is unable to return the Object within six months of the termination of the loan, the Museum may place the Object in storage with any warehouse company for the account and risk of the Lender or may retain possession and charge storage fees at the rates quoted by any such warehouse company and carry insurance on the Object also at the cost of the Lender.
- (b) The Museum shall have a lien against the Object and any other objects loaned under separate arrangements by the Lender to the Museum for any storage fees and insurance costs incurred in accordance with sub-clause 16(a).

Applicable Law

17. The law applicable to this Agreement shall be the law of Australia and the courts of Australia shall have exclusive jurisdiction.

Major institution: art museum

Most loan-in agreements share common principles, irrespective of the subject matter of the loan. That said, art museums have some special needs.

Loan Agreement

By this loan agreement made the <insert date>

between:

Council of Trustees of the National Gallery of Victoria of
180 St Kilda Rd, Melbourne, Victoria, 3004
("the Council") and

<DIRECTOR'S NAME>
<TITLE>
<INSTITUTION>
<STREET ADDRESS>
<SUBURB, STATE>
<COUNTRY>
("the Borrower")

It is agreed as follows:

1. The Council agrees to lend to the Borrower and the Borrower agrees to borrow from the Council for the purposes of exhibition or display the work particularised in the First Schedule hereto ("the Work") for one year from the date hereof or if a lesser period is specified in the Second Schedule hereto for that period.
2. The Council has the exclusive right by its servants and appointees to arrange for:
 - (a) the transportation of the Work to and from the National Gallery of Victoria ("the Gallery") in connection with the loan.
 - (b) the insurance of the Work for its full insurable value in the names of the Council and the Borrower for their respective rights and interests whilst the Work is absent from the Gallery in connection with the loan unless such insurance has been effected by the Borrower to the satisfaction of the Registrar, or deputy, prior to the Work leaving the Gallery, and
 - (c) each packing of the Work for the purpose of that transportation.
3. The Borrower shall pay to the Council on demand all costs charges and expenses incurred by the Council in connection with the performance of this Loan Agreement including the cost of transporting insuring and packing the Work.
4. Notwithstanding any other provision of this Loan Agreement the Borrower is responsible for the return of the Work and its frame (if any) to the Gallery in no worse condition than that in which it left the Gallery.
5.
 - (a) Whilst the Work is in the custody or control of the Borrower, the Borrower shall take such measures for its safety and preservation as are normally undertaken by the Borrower for the safety and preservation of art of a comparable nature and value or failing such experience the Borrower shall take such measures as the Council normally does in respect of the Work.
 - (b) If at any time or times during the loan the Council considers that certain additional measures are necessary for the safety and preservation of the Work and so informs the Borrower the Borrower shall at the Borrower's cost forthwith implement those additional measures or arrange with the Council for the return of the Work to the Gallery.
 - (c) The Borrower shall not do any act or make any omission or permit any act to be done or omission to be made which may endanger the safety of the Work or the preservation of its quality or which may cause any damage or deterioration to the Work whilst it is in the custody or control of the Borrower or a servant agent or contractor of the Borrower.
6. The Borrower shall not without the prior written consent of the Council:
 - (a) re-frame or re-mount the Work.
 - (b) substitute perspex for any glass covering the Work or clean or restore the Work in any manner.
 - (c) photograph, televise, copy or reproduce the Work by any means (whether for publicity or for the sale of copies or reproductions of the Work) or
 - (d) display the Work without attributing its ownership to the Council.or permit any other person or corporation to do any of those things.
7. The Council does not warrant and hereby negatives any implied warranty as to the correctness of the particulars contained in the First Schedule hereto and the Borrower hereby indemnifies the Council against all actions, suits, proceedings, claims, demands, costs and expenses of any nature whatsoever which may be taken or made or charged against the Council as a result directly or indirectly of any misdescription or inaccuracy contained in the First Schedule hereto.
8. The Borrower undertakes not to exhibit or display or otherwise keep the Work at any place other than the place or places named in the Second Schedule hereto.
9. If the Council becomes aware of a breach by the Borrower of any provision of this Loan Agreement or that the Borrower has become insolvent or being a company has gone into liquidation or has had any kind of receiver or manager appointed or has made any compromise with creditors the Council may terminate this Loan Agreement forthwith by giving notice in writing to the Borrower and may recover possession of the Work or arrange for its return to the Gallery.
10. This Agreement is governed by and shall be construed in accordance with the laws for the time being in force in the State of Victoria, Australia.

FIRST SCHEDULE

Name of artist:

Title and date:

Medium:

Dimensions:

Credit Line:

Accession No:

Value of the work for insurance purposes: \$

Copyright and reproduction:

For reproduction and copyright queries please contact the Permissions and Copyright Coordinator of the National Gallery of Victoria directly. Phone 61.3.8620 2209 Fax 61.3.8620 2535

SECOND SCHEDULE

Period of loan:

<start date> - <end date>

Exhibition:

<exhibition title>

Place/places and dates of exhibition:

<exhibition venues and opening and closing dates>

Signed for and on behalf of the Council of Trustees of the National Gallery of Victoria

By

Registrar

in the presence of:

<insert title of witness>

Dated: <insert date>

Signed for and on behalf of <borrower>

By

in the presence of:

Dated:

16.4 Commentary on the inward-loan agreements

The above agreements each have their strengths and weakness. They reflect the particular needs of each kind of organisation given the scale of exhibitions and the values of items being loaned. The following are some of the issues that deserve to be highlighted: not all necessarily should be included – but they should be considered.

The lender notifications

One common matter that would be a beneficial inclusion in most agreements is a clause that obliges the lender to advise the borrower if there is any change in address of the lender or change of ownership of the borrowed material. Many borrowers have faced difficulties when, at the end of the loan period, they discover that the material has been sold, the lender has died, gone bankrupt, gone into liquidation or simply moved. The borrower needs to know that the person giving it instructions has the authority to do so (and the basis of that authority) and needs to be assured it is returning the loan to the appropriate person, entity and place. It is exposing itself to a potential claim for negligence if it does not do so and including such notice requirements alleviates some of that risk. If the lender fails to provide such notice to the borrower in breach of its obligations under the agreement, it is more difficult for it to allege negligence on the part of the borrower.

Copyright

Where the loan is of material in which copyright subsists, most agreements should contain a provision that articulates the borrower's rights to exercise any of the rights that are the exclusive property of the copyright owner. Can it be reproduced in the catalogue, on the web site, in advertising for the show, for teaching purposes, for archival purposes? If so, what are the limits of that permission? Too often, the copyright clauses in loan agreements are too bland and without sufficient detail to act as tools that facilitate or maximise the opportunities of the loan.

It is also important that some enquiry be made as to the basis upon which the lender has made the claim of ownership of copyright. All too often, the owner mistakenly assumes that it is the owner of copyright and grants the borrower rights that it does not have. When dealing with non-sophisticated lenders it is well worth including a question in the pre-loan negotiations along the following lines: '(i) Are you the owner of copyright in the work? If so, what is the basis of your ownership of

copyright?’ This assists the borrower to ascertain the validity of the claim. If the answer to the second question is ‘Because it owns the work’, the borrower knows that it cannot rely on the claim of copyright and the permissions that flow from it.

Where the lender does claim to be the owner of copyright it is also worth including a simple clause that states: ‘If the Lender is not the owner of copyright in respect of any of the Works that are subject to this agreement, the Lender warrants that he/she has obtained all necessary permissions.’ This is simple risk management: sometimes, no matter how careful the borrower is and how honestly and fervently the lender believes in its ownership of copyright, the lender may be sued by a third party who believes that they are the real owner of the rights. The inclusion of a warranty such as this means that the borrower can then look to the lender for the costs and damages incurred as a result of its breach.

Period of the loan

Although most lenders and borrowers think that this is clear in all loan agreements, often it is not. Absolute clarity as to the commencement of the loan is essential because this is the moment that risk transfers to the borrower. All standard loan agreements should be reviewed to ensure that this apparently simple feature is clearly established.

More commonly, loan agreements do not sufficiently specify the end of the loan period. This is particularly important in situations in which the loaned material is not collected or is unable to be returned.

First, at the end of this period, the borrower’s legal duty of care owed to the lender should reduce to those of an involuntary bailee.

Second, it is the date of the end of the loan from which all notice periods will need to be calculated. For example, if the agreement contains a provision that allows the borrower to warehouse, sell or acquire the abandoned material, the borrower must be able to comply meticulously with its time-based obligations and be able to show exactly upon what dates it acquired which rights.

Return of the loan material

As is discussed in Chapter 15.7, many institutions are plagued with the problem of uncollected loans – material that can never become part of the collection but which the organisation is obliged to store, insure and administer. Given that all public institutions need to maximise the effectiveness of their limited resources, it is a waste.

It is essential that lenders include full and favourable clauses that articulate their rights over uncollected or undeliverable loan material. The National Museum

example above is deficient in that it does not provide for a right to actually dispose of the material. It promises that the museum will warehouse the material and although the storage costs may at some time be recoverable from the owner, it is foreseeable that there will be a time when the storage charges far exceed the value of the material and until the owner is found, the museum has to keep paying the costs.

In the Regional Galleries agreement there is a provision to dispose of uncollected loans but, it is suggested, the time lines are too long. Having to hold the work for six months before putting it in a warehouse is an undue burden on the storage facilities of many regional galleries and having to pay for the warehousing of the work for two years before being able to dispose of it, is similarly too burdensome.

Also in the Regional Galleries example, the disposal power only applies to situations in which the lender is obliged to collect the work. It does not deal with the situation in which the borrower has agreed to return the work but is unable to do so because the lender has failed to advise it of a change of address, has gone into liquidation or done something else that causes to frustrate the borrower's fulfilment of its obligations. As is discussed earlier, it is essential that careful consideration be given to this provision so that the borrower can rely on the contract's mechanisms rather than the more arduous statutory ones.

Catastrophe

As hard as one might try to avoid them, accidents do happen. People are thoughtless or ignorant. The elements wreak their havoc. Whatever the reason, all borrowers are familiar with the dreaded situation in which loaned material suffers damage.

It is good practice to include a provision that provides an agreed mechanism that will be carried out in such situations. The Regional Galleries agreement includes a simple version of this in the body of the agreement, but where the procedure is more complex, it is best handled as a schedule to the agreement. The relevant clause in the National Museum example needs expansion. It neither gives guidance to staff in the event of disaster nor gives the lender assurance as to what procedures will snap into effect in such circumstances. If we think of the loan agreement as a risk management tool, it is clear that this provision could be made much more useful. It is also interesting to note that the same institution's loan-out agreement contains a much more useful provision – a useful example of how so many institutions use more vanilla contracts when borrowing than when they lend

their own material. In a commercial context this approach is understandable but in the case of collecting institutions, where lenders are borrowers and borrowers are lenders, it makes sense to have a uniform approach to such obligations so that the administrative procedures are uniform allowing the staff to be more certain of what is expected of them.

16.5 Loan-out of collection material

Introduction

The museum's collection is its core business. Moreover, the items that make up the collection are often of considerable monetary, social, spiritual or intellectual importance. They are often unique and easily damaged or destroyed. Accordingly, when collection items are allowed out of a museum, it can only be in circumstances in which all aspects of the transaction are highly controlled. The loan-out agreement is the very heart of the risk management regime and every prudent owner will need to ensure that its asset is treated in a way that reflects its value and importance.

Outward loan agreements take into account the nature and particular characteristics of the material being loaned. The concerns of a loans officer in an art museum will have some resonances for the loans officer in a natural history museum: the generic issues will be consistent. However, the natural history loan agreement will have greater emphasis on quarantine obligations, the prohibition or regulation of destructive testing, the mechanisms required by CITES legislation and the risk management procedures required by the sometimes hazardous nature of the collection materials (or storage media such as ethanol). Each collection type imposes its own requirements on the loan-out agreement.²

The issues relevant to the loan-out agreement are no different from those discussed in relation to loan-in agreements: the positions are merely reversed. Each party will consider such issues from its own point of view. Yet the loan-out agreement seems to attract more time and care from collection managers and

² It may also allow the collection to gain an individual kind of benefit from the loan. For example, where a natural science museum lends a quantity of material to a researcher it may require that the researcher gives the museum a copy of the article and, further, that the researcher uses the museum's numbering when referring to the museum's objects. Similarly where the loan material is largely unidentified or classified, the museum may require that all data be made available to the museum. In this way the researcher benefits from having access to the public asset and the public interest is promoted by the enhancement of publicly available knowledge. (If the researcher is not prepared to agree to the release of information because of its potential for commercialisation, the museum should consider entering a commercialisation agreement in respect of the project.)

<p>1. LOAN OF COLLECTION ITEM</p> <p>1.1 The Museum agrees to lend the Borrower the object(s) described in Item 2 of the Schedule (jointly and severally referred to as the 'Collection Item'). This loan is subject to all of the conditions set out in the Schedule.</p>	<p>What is the subject of the loan? The object should be fully described in the loan agreement. Careful registration procedures usually see to this.</p>
<p>2. PURPOSE OF THE LOAN</p> <p>2.1 The Borrower shall use the Collection Item only for the reasons specified in Item 3 of the Schedule ('Purpose of Loan') and must exhibit it only at the place(s) specified in Item 4 of the Schedule ('Venue for Display').</p> <p>2.2 If the Purpose of the Loan ceases to apply, the Borrower must notify the Museum immediately and must return the Collection Item to the Museum.</p>	<p>What is the purpose of the loan? The loan may be for a very limited purpose such as for research or display in a particular exhibition or is it simply a general loan. Is it to be static or will it be able to tour?</p> <p>In the Item 4 of the Schedule the key dates will be specified. These will include delivery hanging/installation; opening; closing; demounting; repacking; pick up, etc. (at each venue).</p> <p>If circumstances change, the lender must be able to reconsider whether it wants to continue the loan.</p>
<p>3. PERIOD OF THE LOAN</p> <p>3.1 The period of the loan shall be that specified in Item 5 of the Schedule ('Loan Period').</p> <p>3.2 Any extension of the Loan Period must be in writing signed by both parties.</p> <p>3.3 The Borrower has the right to reduce the Loan Period subject to giving the Museum at least two months notice in writing.</p> <p>3.4 The Museum reserves the right to recall the Collection Item subject to seven days notice in writing. The Museum shall</p>	<p>How long will the museum have control of the object? It is surprising how many lenders neglect to even include this question on their standard loan form. This basic piece of information is of core importance to both parties.</p> <p>Borrowers sometimes decide to shorten the intended period of an exhibition. Rather than storing and caring for all of the exhibits for the full period of the loan, they need to be able to return the loans. This requires planning and the lender museum needs reasonable notice. Of course this period may be shortened by agreement (and usually is.)</p> <p>At the end of the day, if the owner</p>

<p>not be liable for any loss resulting from such termination of the loan.</p>	<p>believes that it needs the item back, it will insist on being able to control its asset.</p> <p>Where the loan item is core to the exhibition, more than seven days may be required. That said, most items can be returned without a major consequence on the exhibition as a whole.</p>
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<p>4. TRANSPORT, PACKING AND UNPACKING OF THE COLLECTION ITEM</p> <p>4.1 The Museum shall arrange packing and shall make all arrangements specified in Item 6 of the Schedule.</p> <p>4.2 The Borrower shall comply with all arrangements specified in item 7 for the transport of the Collection Item during the Loan Period and, at the end of the Loan Period, their return.</p> <p>4.3 Where required, the Borrower must arrange all necessary international customs clearances in relation to the object exported/imported (except for Australian copies of all necessary customs clearance documentation).</p> <p>4.4 The Museum shall arrange all necessary Australian customs clearances in relation to the export/import of the object.</p> <p>4.5 The Borrower must comply with all requirements set out in Item 8 as to the packing and unpacking of the Collection Item.</p>	<p>What are the packing, collection or delivery arrangements? When? Where? How? Who pays? The lender museum will always undertake the initial packing of the loan item. What happens from there will depend on the values of the item and the skills and resources of the lender.</p> <p>How the item is to be transported; whether a courier is needed (and if so, the mechanism for selecting, approving, paying for that courier), will all be the subject of contract negotiation.</p> <p>The customs provisions are only relevant to international loans. In some cases these provisions will be very detailed.</p> <p>Where the lender is a museum with adequate conservation resources, the lender may agree that the lender can unpack the item. In other circumstances, it may insist on providing the personnel itself. This would usually be at the cost of the lender. Where the loan is for a touring exhibition, this provision is of particular importance given that the dangers of packing and unpacking will be multiplied. These are matters that need to be spelled out carefully in the Schedule (see Item 8, for example).</p>
<p>5. CONDITION REPORTS</p> <p>5.1 The parties must prepare condition reports as specified in item 9 of the</p>	<p>As a matter of practice, the lender museum will undertake a condition report prior to packing the collection</p>

Schedule.	<p>item in preparation for delivery to the borrower. Usually a copy of this is provided to the borrower.</p> <p>When the item is unpacked, another condition report will be completed so that both parties can be sure that the item has arrived in the same condition as it was sent.</p> <p>This process must be repeated each time the item is packed and unpacked.</p>
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<p>6. POSSESSION OF THE COLLECTION ITEM</p> <p>6.1 The Borrower is wholly responsible for the Collection Item from the moment it leaves the Museum's possession until it is returned to the Museum.</p> <p>6.2 Except as specified in this Agreement, the Collection Item must remain in the possession of the Borrower throughout the period of the Loan.</p> <p>6.3 The Borrower shall not lend the object to any other person whatsoever or let the Collection Item out of its custody without the prior written approval of the Museum.</p>	<p>Responsibility for the safety of the loan object is a fundamental responsibility of any borrower.</p> <p>There must be no implication that the borrower can let anyone else have possession of the object. Of course this is different with travelling exhibitions: possession and responsibility is passed like a baton between exhibiting museums. Even then, often, there is one organising lender that carries responsibility for the loan throughout the duration of the tour.)</p>
<p>7. RETURN OF THE COLLECTION ITEM</p> <p>7.1 On expiration or termination of the loan the Borrower must return the Collection Item to the Museum, or to such other place as the Museum may advise in writing.</p> <p>7.2 If the Museum requires the Collection Item to be despatched to a place other than the Museum, the Museum will be responsible for any additional transportation charges approved in writing by the Museum prior to despatch.</p> <p>7.3 Should the Museum require the Collection Item to be returned to a different destination, agreement must be reached in writing between the Museum and</p>	<p>What are the arrangements for the return of the collection item? When, where, how, who pays?</p>

the Borrower regarding extent of responsibility for the return trip before this trip is made.	
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<p>8. COURIERS</p> <p>8.1 If a Museum courier is specified in Item 6 or Item 7 of the Schedule, the Museum will arrange a courier for the shipment of the Collection Item to and from the Borrower.</p> <p>8.2 The Borrower will reimburse the Museum for all costs incurred in relation to the courier including reasonable fares, expenses, accommodation and travel.</p> <p>8.3 Where the Borrower is specified in the Schedule as having responsibility for the supply of a courier, the Borrower must meet all related costs including fares, expenses, accommodation and travel. Further, the Borrower must obtain the written approval of the courier responsible for the shipment of the Collection Item.</p>	<p>Whenever the loan object is valuable, the use of a courier is a standard matter for negotiation and contract.</p> <p>Which party supplies the courier is a question determined by the policy of the lender museums and the availability of appropriately trained staff. In any event, the costs of the courier are always met by the borrower. Just note that some institutions are now requiring courier salary replacement as well.</p>
<p>9. PROTECTION OF THE LOAN ITEM</p> <p>9.1 The Borrower must at all times ensure that the Collection Item is treated with all due care and protection against the effects of sunlight, dirt, dust, mechanical vibration, mishandling, atmospheric contaminants, moisture, extremes of temperature and humidity, insects and vermin, fire, theft, foodstuffs, drink, smoking or handling by inexperienced persons or</p>	<p>It is clearly of concern to any owner that the subject of the loan will be treated with care.</p> <ul style="list-style-type: none"> • Are there any special requirements? • Permitted tolerances of temperature, sunlight and other elements that can damage particular items should be specified. (See Item 10.2 of the Schedule for an example.) • How will the object be stored? • Where? • Are there any unusual features

<p>members of the public.</p> <p>9.2 The Borrower must comply with any conservation and security requirements set out in Item 10 of the Schedule.</p>	<p>in the medium/materials that demand a particular method of storage or exhibition?</p> <p>(It is totally inadequate to promise a lender that the museum will 'exercise the same care in respect of loans as it does in the safekeeping of comparable property of its own'.)</p> <p>If the work is constructed of non-durable materials, or if change or decay is in any way the essence of the work, the museum should not be obliged (and perhaps not permitted) to attempt to prevent any deterioration or make good any damage that is attributable to that characteristic.</p> <p>Security issues are usually spelled out in the Schedule (See Item 10.2 of the Schedule for an example.) Where the item is particularly valuable, the security provisions will be a major contract item. They will be the subject of considerable negotiation and will be fully articulated in the agreement.</p>
<p>9.3 The Borrower must ensure that any instructions given by the Museum for the unpacking, handling, installation, display, maintenance and repacking of the Collection Item are followed.</p>	<p>This provision refers to all instructions that the museum may give the borrower during the period of the loan. Some of these instructions will be given verbally, others in letters and memos.</p>
<p>9.4 The Borrower must retain and safely store the original packing material at the Borrower's expense and must repack the Collection Item with the same material and in the same manner as it was packed by the Museum</p> <p>9.5 The Borrower must not transport the Collection Item in a damaged</p>	<p>Conservationally appropriate packing is a work of art in itself. The museum lending the object must ensure that its packing is appropriate. It sets the standard.</p> <p>The packing material must be retained, not only for reuse but also because, if there is any damage to the object in transit, the packing will need careful examination to determine the cause of the damage.</p>

<p>condition except where there is an immediate threat to the safety of the Collection Item or to arrest or reduce ongoing damage to the Collection Item.</p> <p>9.6 The Collection Item must not be displayed in an outdoor exhibition unless it has been lent specifically for display or operational use outdoors (and unless this is specified in the Schedule).</p>	
<p>9.7 If the Borrower</p> <ul style="list-style-type: none"> (a) breaches any of the conditions relating to the safety or care for the Collection Item; or (b) does or allows to be done, anything that the Museum, in its absolute discretion, considers will or may endanger the Collection Item or any of them, <p>the Museum may order the immediate withdrawal of the Collection Item from exhibition and may take immediate repossession of such Collection Item.</p> <p>9.8 Any cost or loss incurred by the Museum in relation to any matter referred to in clause 9.7 (a) or (b) shall be the responsibility of the Borrower.</p>	<p>This is a key provision. If the lender either breaches the agreement or does anything that might endanger the item, the lender must be able to move fast to protect its asset. It cannot wait a genteel amount of time for the matter to be resolved in the courts.</p> <p>If there are any costs incurred, these are met by the borrower. They include the costs of return of the item but would also include any other costs: they may include conservation costs, insurance excesses or penalties, etc.</p>

<p>10. DAMAGE, DETERIORATION OR LOSS OF COLLECTION ITEM</p> <p>10.1 The condition of the Collection Item on receipt by the Borrower should be exactly the same as that detailed on the condition report prepared pursuant to clause 5. If there are any points of variance the Borrower must immediately notify the Museum.</p> <p>10.2 In the event of damage, deterioration or loss occurring during the Loan Period, the Borrower:</p> <ul style="list-style-type: none"> (a) Must comply with the procedures set out in Item 11. (b) Must not undertake any conservational or restorative procedures without the written authority of the Museum. <p>10.3 Both parties will collaborate in giving written notice or other information to the transport company and any insurer or indemnity provider.</p>	<p>This is at the heart of the condition report process. When goods are moved, it is essential to note the condition at each stage of the process so that care and responsibility can be monitored and determined.</p> <p>Every lender museum should have a checklist with which borrowers must comply in the event of damage to the loan object. This is basic risk management.</p> <p>The lender/owner must control the mitigation, assessment, stabilisation and repair processes. Accordingly, none of these procedures should be undertaken by the borrower without first getting the consent of the lender. When these situations arise, the temptation is to hide, make excuses and obfuscate. Rather, what should happen is full and immediate disclosure, candid discussion and immediate and meticulous compliance with instructions.</p>
<p>11. INSURANCE</p> <p>11.1 Unless agreed otherwise, the Borrower must insure the interest of the Museum in the Collection Item with an insurance company approved by the Museum from the time the Collection Item leaves the possession of the Museum until the time the Collection Item is returned to the possession of the</p>	<p>Will the museum insure the object for the period of the loan? What are the details of that cover? What is the insurance value of the object? Is it 'wall-to-wall' insurance or does it exclude transport? Does it cover loss, theft, damage and destruction? Are there any important exceptions of which the lender should be aware?</p> <p>The reference to 'the interest of the Museum' means that the museum</p>

<p>Museum. The insurance must be against all risks, with exclusions limited to ordinary wear and tear, gradual deterioration, insects, vermin or inherent vice, repairing, restoration or retouching processes, hostile or warlike action, insurrection, rebellion, nuclear radiation, nuclear reaction or radioactive contamination.</p> <p>11.2 The Collection Item must be insured for the value specified in Item 12 of the Schedule.</p> <p>11.3 Where the Period of the Loan exceeds one year the Museum may reassess the value of the Collection Item and may notify the Borrower of the reassessed value. If so notified, the Borrower must insure the Collection Item for the reassessed value within twenty-one days of such notification.</p> <p>11.4 Prior to the despatch of the Collection Item the Borrower must provide the Museum with a Certificate of Insurance showing that insurance has been effected in accordance with this Clause. Certificates of Currency must be supplied by the Borrower from time to time at the request of the Museum;</p> <p>11.5 The Borrower must notify the Museum in writing of any changes to, or cancellation of, the policy at least twenty-one days prior to such event.</p>	<p>must be noted in the policy as an insured party. If it is not specified, it is not insured – only the borrower taking out the policy would be covered. (Similarly, if the item were on long-term loan to the lender museum, the owner and the lender museum would both need to be included.)</p> <p>Museums must remember that insurance policies are only contracts and, as such, are negotiable. The terms of the policy must be read with pedantic care before entering the agreement. Those that do not satisfy the museum's needs must be renegotiated.</p> <p>It is essential to actually receive a Certificate of Insurance from the insurance company. This is the proof that insurance has been effected. It is not sufficient to get a letter or advice from a broker. That is not the same. There have been many cases in which the broker has fraudulently kept the insurance premium and not actually obtained the insurance paid for.</p>
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<p>12. COSTS</p> <p>12.1 All costs directly associated with the loan must be borne by the Borrower. Any payments to be made to the Museum by the Borrower must be made in Australian Dollars.</p>	<p>For the most part, the costs will all be set out in detail in the Schedule to the agreement. This merely states a principle that underlies the loan.</p>
<p>13. LIABILITY & INDEMNITY</p> <p>13.1 The Museum, its officers, servants and agents shall not be liable for injury or death to any person or any loss or damage to property arising in any way whatsoever out of the loan of the Collection Item to the Borrower. The Borrower must indemnify, and keep indemnified, and must reimburse the Museum, its officers, servants and agents, with respect to any and all loss, claim, demand, action, suit, proceeding, liability, cost and expense incurred by the Museum, its officers, servants and agents in relation to any such injury, death, loss or damage.</p>	<p>It is always difficult to exclude all liability. However, lenders always try to exclude as much liability as they can. They then pass on all risk to the lender so that if someone does sue them, the lender has to meet any liabilities that they might incur.</p> <p>For example, if the loan item were to fall over and hurt a member of the public, nothing can prevent the injured person from suing the lender museum (as well as the borrower/exhibitor). However, if the lender loses, the borrower will have to pay the lender's damages and costs.</p>
<p>14. ACCESS</p> <p>14.1 During the Period of Loan, the Borrower must agree to any reasonable request made in writing by the Museum, to provide the Museum's officers, servants or agents with access to the Collection Item.</p>	<p>The museum must be able to inspect its asset and assure itself that it is being appropriately cared for.</p>
<p>15. ACKNOWLEDGMENT, INFORMATION & CATALOGUES</p> <p>15.1 The Borrower must prominently acknowledge</p>	<p>Museum lenders always require acknowledgment. What wording is</p>

<p>the Museum as specified in Item 13 of the Schedule. Such acknowledgment must be accorded on exhibition labels, in exhibition catalogues and in any publicity or permitted reproduction of the Collection Item.</p> <p>15.2 The Borrower must ensure that information concerning the Collection Item used in catalogues, labels or for any other purpose conforms factually to information furnished by the Museum or otherwise approved by the Museum.</p>	<p>appropriate?</p>
<p>15.3 Within four weeks of the return of the Collection Item at the end of the Loan Period, the Borrower must supply the Museum with the report and associated materials required in Item 14 of the Schedule.</p>	<p>This provision is principally to assist the lending museum comply with its own governance evaluation procedures. It also has the additional benefit of providing a record of materials relating to the loaned object.</p> <p>Careful attention must be given to completing Item 14. Such materials often include: catalogues; brochures; information sheets; copies of all print advertising of the exhibition; a summary of all advertising programs and media exposure; attendance figures and all demographic analyses etc</p>

<p>16. COPYRIGHT AND REPRODUCTION</p> <p>16.1 The copyright status of the Collection Object is stated in Item 15 of the Schedule.</p> <p>16.2 Except as stated in Item 5 of the Schedule, the Borrower must not permit the Collection Item to be photographed or otherwise reproduced without the prior written approval of the Museum.</p> <p>16.3 Notwithstanding clause 16.2 above, where the Borrower is a public museum, it shall be entitled to reproduce the Collection Item to the extent and for the non-commercial purposes permitted by <i>Part III, Div 5, Copyright Act 1968</i> (such purposes may include reproduction for conservation purposes and institutional documentation.)</p>	<p>Prohibition of photography may be because of copyright issues or it may be for conservation reasons. Where Indigenous materials are involved, this clause can be of enormous importance.</p> <p>Even where the museum lender is not the owner of copyright, the <i>Copyright Act</i> has many provisions granting very specific copyright exceptions in favour of public archives, museums and galleries.</p>
<p>17. WITHDRAWAL</p> <p>17.1 If the Borrower withdraws from the agreement less than two months before the commencement of the Loan Period, the Borrower shall be liable for all costs associated with the loan sustained by the Museum up to that date.</p>	<p>The lending institution will incur costs preparing for the loan. The greater the notice, the lesser the inconvenience and wasted expense.</p>
<p>18. DISPUTES</p> <p>18.1 The Museum and the Borrower will use their best efforts to give effect to the spirit and intent of this agreement.</p> <p>18.2 The Museum and the Borrower will use their best efforts to resolve</p>	<p>If there is a dispute, each party has the right to go to court. However, this is expensive and time consuming so having an alternative method of conflict resolution is desirable.</p>

informally any dispute arising out of this agreement.

18.3 Any dispute that is not resolved informally will be submitted to the rules of the Arts Law Mediation Service, a program of the Arts Law Centre of Australia before recourse is had to arbitration or litigation.

19. GOODS AND SERVICES TAX (GST)

19.1 The parties acknowledge and agree that:

- (a) The consideration due or payable for any supply of any goods, services or any other things under this agreement has been calculated without regard to, and is exclusive of, any GST.
- (b) If any GST is imposed on any supply made under this agreement, the supplying party may recover from the recipient party, in addition to any consideration payable for the supply, an amount equal to the GST imposed on the supply calculated at the GST tax rate prevailing at the time the supply is made (the '**GST amount**'), provided that the supplying party has provided to the recipient party a valid tax invoice complying with applicable laws and regulations (the '**Tax Invoice**').

19.2 If the recipient party is required to pay any GST amount in accordance with this clause, the recipient will pay the GST amount within 14 days of

receiving the tax invoice.	
20. APPLICABLE LAW 20.1 The law applicable to the Agreement is the law of xxxx.	