

Loan-out agreement with commentary

The following is a loan-out agreement (with commentary) that Simpsons developed for a large, statutory, collecting institution:

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| <p>## MUSEUM</p> <p>AGREEMENT dated the day of 200x</p> <p>BETWEEN: The ##I Museum a statutory authority established pursuant to the ## Museum Act xxxx (the 'Museum')</p> <p>AND: the organisation named in Item 1 of the Schedule (the 'Borrower')</p> | <p>To whom is the loan being made? This is easy to identify when the borrower is another statutory authority, but particular care needs to be taken when dealing with regional museums (which may have various legal structures) or other entities.</p> |
| <p>CONDITIONS OF OUTWARD LOAN</p> | |

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| <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</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.</p> |

the right to recall the Collection Item subject to seven days notice in writing. The Museum shall not be liable for any loss resulting from such termination of the loan.

Of course this period may be shortened by agreement (and usually is.)

At the end of the day, if the owner believes that it needs the item back, it will insist on being able to control its asset.

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.

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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?</p> <p>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> |
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| <p>5. CONDITION REPORTS</p> <p>5.1 The parties must prepare condition reports as specified in item 9 of the Schedule.</p> | <p>As a matter of practice, the lender museum will undertake a condition report prior to packing the collection 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> |
| <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</p> | <p>What are the arrangements for the return of the collection item? When, where, how, who pays?</p> |

as the Museum may advise in writing.

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.

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 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</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 |

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| <p>humidity, insects and vermin, fire, theft, foodstuffs, drink, smoking or handling by inexperienced persons or 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>stored?</p> <ul style="list-style-type: none"> • Where? • Are there any unusual features in the medium/materials that demand a particular method of storage or exhibition? <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</p> | <p>Conservationally appropriate</p> |

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| <p>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 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>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>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 | <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.</p> |

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| <p>them, 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>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> |
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| <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</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</p> |

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 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.

11.2 The Collection Item must be insured for the value specified in Item 12 of the Schedule.

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.

11.4 Prior to the despatch of the Collection Item the Borrower must provide the Museum with a Certificate of Insurance showing

transport? Does it cover loss, theft, damage and destruction? Are there any important exceptions of which the lender should be aware?

The reference to 'the interest of the Museum' means that the museum 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.)

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.

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.

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;

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.

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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</p> | <p>The museum must be able to inspect its asset and assure itself that it is being appropriately cared for.</p> |

| Collection Item. | |
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| <p>15. ACKNOWLEDGMENT, INFORMATION & CATALOGUES</p> <p>15.1 The Borrower must prominently acknowledge 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>Museum lenders always require acknowledgment. What wording is 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> |

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| <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</p> | <p>If there is a dispute, each party has</p> |

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| <p>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 informally any dispute arising out of this agreement.</p> <p>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.</p> | <p>the right to go to court. However, this is expensive and time consuming so having an alternative method of conflict resolution is desirable.</p> |
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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

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| <p>applicable laws and regulations (the 'Tax Invoice').</p> <p>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.</p> | |
| <p>20. APPLICABLE LAW</p> <p>20.1 The law applicable to the Agreement is the law of xxxx.</p> | |