

**3 September 2009**

**PANEL OF EXPERTS:**

**Ms Janine Bofill** Registrar, National Gallery of Victoria

**Ms Charlotte Davy** Senior Exhibitions Registrar, Art Gallery of New South Wales

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**PART D. EXHIBITIONS**

**CHAPTER 17. TOURING OF EXHIBITIONS**

Most collecting institutions are involved in the touring of exhibitions: some merely as recipients; others, as organisers and promoters of the shows. The touring of an exhibition is a complex legal transaction as the monetary value of the subject matter is often high and the rights and responsibilities of the participants are as complex as they are weighty. All participants are undertaking considerable risk and the primary risk management tools are the formal written agreements between:

- the lender of the works and the organising institution;
- the organising institution and the touring venues; and
- The organising institution and the courier company.

**17.1 Agreement between the lender of the works and the organising institution**

This agreement contains many of the matters already dealt with in earlier chapters, relevant to the loan-in of exhibition material. That discussion will not be repeated here. The main additional factors relate to the fact that the loaned material will be part of an exhibition that will tour to venues other than that of the organising institution. Every time that material is moved, it faces an enhanced degree of danger. The touring loan agreement has to recognise those risks, make clear what degree of responsibility the borrower is undertaking to minimise those risks and set out a procedure that will be followed in the event that the loan material is endangered or damaged. In

this way, the lender is fully informed and is assured that its property will be properly cared for. For its part, the lending institution knows the limits of its obligations, responsibility and legal liability.

The organising institution will make sure that the promises that it makes to its lenders will be mirrored in the agreements that it negotiated with the touring venues but, at the end of the day, it is the borrower – not the touring venue – that will be primarily liable to the owner of the loaned material. It can pass on the obligations but not the liability.

## **17.2 Agreement between the organising institution and the touring venues**

The agreement between the exhibition organiser and the venues to which the exhibition will be travelling is both a primary tool for managing the risk inherent in the transaction and a document that facilitates the cultural purpose. The latter is important because, unless this is recognised, the agreement is seen as negative, formalistic and inhibiting. It shouldn't be. Without it, neither party would be prudent to undertake the cultural purpose, such shows would be impracticable, and the public would be the loser.

All good touring exhibition agreements are essentially loan-out agreements with two distinguishing features: first, the loan is for a whole show, not merely individual items and second, at the end of the exhibition period at the venue, the show will move to another venue (or return to the exhibition organiser for dispersal).

What are the risks that arise as a consequence of the touring nature of the show? Essentially, they all come down to the fact that whenever an object is moved, it is at greater risk than when it is static. Accordingly, the primary issues that arise in touring agreements focus on:

- the obligations of the venue to minimise risk to the loaned material;
- the degree of liability that the venue has in the event of loss or damage to an exhibition material;
- definition of the exact moment that the venue assumes that risk; and
- definition of the exact moment when it is absolved of that risk.

Accordingly, the contract should clearly articulate the parties' obligations of care; the procedures that must be complied with, the degree of care, the period of risk and what is to happen in the event that something goes wrong. So that responsibility for the condition of the material can be properly ascertained, it is a standard requirement that a condition report be undertaken every time that the loan leaves one venue and every time it arrives at another venue.

### 17.3 Checklist for loan-out for a touring of exhibition

The following checklist is one that Simpsons drafted for a public art gallery (hence its references to works rather than any other material). The principles are the same, irrespective of the material on loan, even if the detail differs. It is provided as an aide de memoire so that you can check that your loan agreement covers the important issues. As with all such checklists, it can never be exhaustive: You should build on this list and make it your own.

#### CHECKLIST FOR LOAN-OUT AND TOURING OF EXHIBITIONS

1. Who is the correct lender?
2. Who is the correct borrower?
3. Title of the exhibition?
4. Are the works fully described?
5. Is the exhibiting timetable established?
6. Transport arrangements:
  - (i) Who will be responsible for organising delivery of the show to the venue? Who is to organise the return or on-transport at the conclusion of the exhibition?
  - (ii) Who will be responsible for the paying for the delivery?
  - (iii) How will it be transported? Are there any particular transport requirements (such as being in no less than two separate shipments)?
  - (iv) Will a courier accompany the works during any transport? Who will supply and who will pay for the courier? Will courier salary replacement be required by lending institution?
  - (v) Is it clear that the lender must approve all transport arrangements (and where necessary the Australian Protective Service)?
  - (vi) Does the contract emphasise that transport of works must in every respect follow the method and timetable approved by the lender and that failure to do so may invalidate the indemnity or amount to a breach of the loan agreement?

## 7. Packing and Unpacking:

- (i) When delivered, who will unpack the works? Who will supervise?
- (ii) Who repacks the works at the end of the show? Who will supervise?
- (iii) Are there packing and unpacking instructions? Is the venue required to retain all original packing material so that works are repacked in the same materials and in the same manner as they were unpacked?

## 8. Condition Reports

- (i) Who prepares the initial condition report? Will a dated and signed copy of each report be made available to the recipient of the show?
- (ii) Who will provide the conservation personnel to prepare a condition report on the works upon unpacking at the receiving venue and prior to repacking, noting any changes in the condition of any work?
- (ii) Will a dated and signed copy of each report be countersigned by the venue making the report?

## 9. Damage – Emergency procedures

- (i) What is the procedure if a work is damaged in transit, during unpacking, or during the exhibition?

## 10. Exhibition security

- (i) Is it a requirement that the works must be stored and installed only in a facility that is equipped with adequate fire detection/prevention systems?
- (ii) Is it required that all external doors and accessible windows be locked and fitted with alarms, and that the exhibition and storage areas be covered by electronic or closed circuit television surveillance devices that are activated whenever security personnel are not present?
- (iii) Must the alarm systems be monitored continuously at the venue's security control centre, police station, or by an accredited or recognised security company?
- (iv) While the exhibition is closed to the public will the perimeters of exhibition venues be patrolled periodically?

- (v) Is there a requirement that while the exhibition is open to the public the number of security staff in the exhibition must be sufficient to keep all works and all exits from the exhibition constantly under visual surveillance?

11. Standard of care at the venue:

- (i) Temperature range, relative humidity range and light levels?
- (ii) Framing and reframing: is it permissible? If so, what are the agreed procedures?
- (iii) Is removal, repositioning or replacement of hanging devices permitted? If so, what are the agreed procedures?
- (iv) Does the agreement clearly establish a duty to protect the works from the hazards of fire, theft, insects, dirt, foodstuffs, drink, smoking or handling by unauthorised or inexperienced persons or members of the public.
- (v) Must cleaning and maintenance of the exhibition display area be done under supervision of the Museum's staff?
- (vi) Is it clear that the lender retains the right to withdraw works if there is any breach of standard of care?<sup>1</sup>

12. Is conservation or restoration work permissible? If so, what are the agreed procedures?

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<sup>1</sup> Because this is both professionally and legally contentious, it is prudent to include clear protocols in this regard. For example: 'If the Exhibiting Gallery breaches any of its obligations of duty of care to any work, or the condition of a work so requires, the representative of the Lender Gallery may withdraw it from display. This will not be done without prior consultation with the Executive Director of the Lender Gallery and the conservation staff of the Exhibiting Gallery. In the event of any disagreement, the decision of the Executive Director of the Lender Gallery shall be final. A contemporaneous written record of those instructions shall be made by the Executive Director of the Lender Gallery. A copy of those instructions shall be sent to the Exhibiting Gallery and the Lender Gallery's solicitor. A copy shall also be maintained for Lender Gallery records.'

13. What are the insurance arrangements?

14. Photography/Copyright/Reproduction

- (i) Who controls copyright of works?
- (ii) What photographs can be taken; by whom; for what uses? Are these compliant with the terms of the permissions granted in the loan agreements and copyright permissions obtained by the gallery organising the tour?
- (iii) Is it clear that the requirements of this exhibition override whatever the usual practice of the exhibiting gallery may be?

15. Credits

- (i) What credits must be given to lenders?
- (ii) What credits must be given to owners (if different to lender)?
- (iii) What credits must be given to others, such as, agents, artists or other creatives?

16. Catalogue

- (i) Who prepares the catalogue? Who pays?
- (ii) What are the financial arrangements between the organiser and the borrower venues?
- (iii) Free copies?

17. Promotion

- (i) What promotion is to be undertaken?
- (ii) What promotional materials will be made available to borrower venues?

18. Education Services

- (i) Will there be educational products that accompany the show?
- (ii) What educational materials will be made available to borrower venues? On what basis?

## 19. Exhibition Merchandise?

- (i) Will there be merchandising of the show?
- (ii) What are the arrangements between the lending gallery and the exhibiting gallery as to the choice, design, commissioning, and purchase of merchandise, and profit splits?
- (iii) Must all merchandise sold at the exhibiting venue be approved (for quality and appropriateness) by the Lender gallery?

## 20. Individual Exhibition Support

- (i) Is the borrowing institution able to negotiate directly as to the on-site availability of artists, technicians, artists' representatives, Gallery staff etc for installations, opening attendance of public programs? The needs of each institution are very individual and these particularised costs need to be borne by the borrower rather than treated as a draw-down on hire fees as they will vary at each venue.

## 21. Fees and Expenses:

- (i) Are fees due to be paid to artists or other creatives participating in the show?
- (ii) What fees are payable to lenders/organisers?

## 22. Exclusion of Liability by Lender.

- (i) Is the exclusion clause sufficient/acceptable?

## 23. Reporting

- (i) Will a report be furnished on the exhibition? By whom? When?
- (ii) If so, what must it contain? For example:
  - attendance figures (which shall be broken down into school groups, other special tours and general public);
  - press clippings relating to the exhibition;
  - details of any radio or television promotion, publicity or other coverage of the exhibition;

- copies of the catalogue (if not supplied by the lender) and all printed promotional and publicity material;
- details of the education program and any other services that the Museum associated with the exhibition;
- sales figures of exhibition merchandise;
- within three months of the end of the exhibiting gallery's year, an annual report including audited financial statements.

24. Miscellaneous:

- (i) Does the contract contain a mechanism for the resolution of disputes?
- (ii) Other?

## 17.4 Agreements for loan-out and touring of exhibitions

### (a) *The NAME Contract*

The Network of Australasian Museum Exhibitors (NAME) has drafted a model agreement for touring exhibitions.<sup>2</sup>

CHARLOTTE PLEASE INSERT 'NAME' AGREEMENT – DOCUMENT ATTACHED AS 16A (When I try to cut and paste it loses its format.)

### (b) *Questacon Travelling Exhibitions Agreement*

The following agreement is that provided by the Commonwealth for loans of travelling exhibitions from the National Science and Technology Centre (NSTC). It is clearly very different in scope from those that would be used for the touring of art exhibitions.

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<sup>2</sup> This contract may be downloaded from: <http://discover.collectionsaustralia.net/name/>.



King Edward Terrace

Canberra ACT 2600  
Australia

PO Box E28 Kingston  
ACT 2604

Telephone 02 6270 2800

Facsimile 02 6270 2808

<<http://sunsite.anu.edu.au/Questacon>>

**File Ref:** \_\_\_\_\_

**EXHIBITION CONTRACT**

**Contract No:** \_\_\_\_\_

(Short Term Hire – Self-Installation)

**Date:** \_\_\_\_\_

**Exhibition Title** \_\_\_\_\_

The borrowing institution (the ‘Exhibitor’) requests to borrow from the **COMMONWEALTH OF AUSTRALIA** (the ‘Commonwealth’) represented by and acting through the National Science and Technology Centre (the ‘NSTC’) of the Department of Communications, Information Technology and the Arts and agrees to show the Exhibition at the following Venue:

for the **Fee** of \$ \_\_\_\_\_

plus freight charges as described below, for the Exhibition Period:

Arrival Date: \_\_\_\_\_

Exhibition Period: \_\_\_\_\_

Departure Date: \_\_\_\_\_

No Additional Freight Charge

Additional Freight Charge of \_\_\_\_\_

No Additional Insurance Charge

Additional Insurance Charge of \_\_\_\_\_

The Exhibitor agrees to accept this loan subject to the attached 'GENERAL CONDITIONS FOR USE OF NSTC EXHIBITIONS' which form part of the Contract.

**RESERVATION & BOOKING DEADLINE:** NSTC will hold a booking reservation for fourteen (14) days. If the signed Contract is not returned within that period, NSTC may cancel the reservation.

Prepayment (due on return of signed Contract): \$ \_\_\_\_\_

<i>Freight to:</i>		<i>Invoice to:</i>	
Name of Venue		Name of Exhibitor	
Contact officer		Contact officer	
Street address		Street address	
City, State/Territory, Postcode		City, State/Territory, Postcode	
Telephone	Facsimile	Telephone	Facsimile

**IMPORTANT:**

The Contract, when signed by both parties, constitutes a binding contract between the Exhibitor and the NSTC. No changes in the terms of the Contract may be made without express written agreement of both parties.

I affirm that I have full authority to sign on behalf of the Exhibitor, that the terms of the Contract are understood, and that all terms and conditions will be met.

*For and on behalf of the Exhibitor:* \_\_\_\_\_

\_\_\_\_\_

Signature of Authorised Representative		Witness Signature		Date

Name & Title		Name		
<i>For and on behalf of the Commonwealth of Australia:</i>				

Signature of Authorised Representative		Witness Signature		Date
Name & Title		Name		

## **GENERAL CONDITIONS FOR USE OF NSTC EXHIBITIONS**

### **1. Definitions**

In the Contract, unless the contrary intention appears:

- 1.1 'Exhibition' means the items referred to in the Schedule to the Contract and any other items provided by the NSTC.
- 1.2 'Exhibition Period' means the period described on the cover sheet of the Contract.
- 1.3 'Exhibitor' means the party described as the Exhibitor on the cover sheet of the Contract.
- 1.4 'Venue' means the venue(s) described in the cover sheet of the Contract.

### **NSTC's obligations**

- 2.1 The NSTC agrees to provide the Exhibition to the Exhibitor.
- 2.2 The NSTC will:
  - (a) transport the Exhibition to and from the Venue and be responsible for the Exhibition while it is in transit;
  - (b) use reasonable endeavours to ensure that each component of the Exhibition is in full operational order and at a standard suitable for public exhibition at the time the Exhibition is despatched from the NSTC;
  - (c) unless otherwise agreed with the Exhibitor, insure the Exhibition while in transit and at the Venue, and pass this pro rata cost onto the venue;
  - (d) provide a list of all items comprising the Exhibition; and
  - (e) provide copies of any logos, press, publicity or educational material available in connection with the Exhibition.

### **Exhibitor's obligations**

- 3.1 The Exhibitor agrees to hold and display the Exhibition at the Venues for the Exhibition Period, subject to the terms of the Contract.
- 3.2 The Exhibitor agrees that, except where required by an applicable law, no condition or warranty is given and no representation whatsoever is made by the NSTC including about the quality, fitness, and suitability for purpose or otherwise of the Exhibition.
- 3.3 The Exhibitor must hold the Exhibition at the Venue only and manage the Exhibition with skill, care and diligence to a professional standard and in accordance with the Contract.
- 3.4 The Exhibitor is responsible for the Exhibition while it is at the Venue and must:
  - (a) unload, unpack, install, dismantle, repackage and reload the Exhibition at the Venue;

- (b) advise the NSTC immediately of any change in the condition of any components of the Exhibition, including any loss or damage suffered to the Exhibition;
- (c) subject to clauses 3.4(j) and 3.5, not undertake any work on or modify any component of the Exhibition without the prior written consent of the NSTC;
- (d) not permit the use of any part of the Exhibition or Exhibition material for commercial purposes without the prior written consent of the NSTC;
- (e) not permit photography of the Exhibition or any related material without the prior written consent of the NSTC;
- (f) allow access for the NSTC and its agents to the Venue and the Exhibition at all reasonable times;
- (g) provide secure and adequate space to store packing cases used to transport the Exhibition, either at the Venue/s or at an off-site store agreed by the NSTC;
- (h) maintain the Exhibition while it is at the Venue and keep accurate records of all maintenance;
- (i) provide 24-hour physical and/or electronic security of the Exhibition while it is at the Venue;
- (j) maintain adequate insurance to cover its workers' compensation liabilities, third party liabilities, and occupier's liability;
- (k) ensure that any educational, promotional or advertising material published by the Exhibitor in relation to the Exhibition includes a statement acknowledging the contribution of the NSTC (see Item 2 of the Schedule), and expressly excluding any liability of the NSTC in respect of the Exhibition or the publications;
- (l) ensure that it does not do, and does not permit any visitors to the Exhibition to do, anything which may breach or in any way detrimentally affect the NSTC's intellectual property rights in the Exhibition; and
- (m) within 30 days of the close of the Exhibition, provide to the NSTC an evaluation report including the total number of adult and child visitors to the Exhibition.

3.5 In the event of emergency situations, the Exhibitor may take any action that it considers is necessary to ensure the safety of the Exhibition or any component of the Exhibition, and is hereby given the authority to act on behalf of the NSTC and may remove components of the Exhibition to a place of safekeeping. The NSTC must be informed at the earliest opportunity by telephone of any emergency situation.

3.6 If the Exhibitor fails to comply with its obligations under clause 3.4(a), the NSTC will arrange for these services to be provided by a third party and the Exhibitor is liable to meet the third party's costs of performing those obligations.

3.7 The Exhibitor may not subcontract any of its obligations under the Contract without the prior written consent of the NSTC.

## **Fees and payment**

- 4.1 Subject to any requirement for the Exhibitor to make a prepayment, the Exhibitor must pay the Fee within 14 days of receipt of an invoice from the NSTC. Failure to pay within such time entitles the NSTC to terminate the Contract with immediate effect.
- 4.2 Other than as expressly provided for in the Contract, each party must pay its own costs of performing its obligations under the Contract.

## **5. Ownership and possession**

- 5.1 The Exhibition is the property of the NSTC and all rights to the Exhibition, including intellectual property rights, are owned by the NSTC.
- 5.2 The Exhibitor must not convey, duplicate, transfer, assign, mortgage, pledge, lend or part with possession of the Exhibition or any component of the Exhibition.

## **6. Warranty and indemnity**

- 6.1 The Exhibitor warrants that it has the capacity to enter into the Contract.
- 6.2 The Exhibitor must at all times indemnify the NSTC, its officers, employees and agents ('those indemnified') from and against all loss, costs, expenses and liability (including legal costs and expenses on a solicitor and own client basis) or liability whatsoever incurred or suffered by any of those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss, cost, expense or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Exhibitor or its officers, employees, agents or subcontractors in carrying out the Exhibition or in connection with the Contract.
- 6.3 Clause 6.2 survives expiry or termination of the Contract.

## **7. Cancellation**

- 7.1 **Cancellation by the Exhibitor:** The Exhibitor must notify NSTC in writing of any need to cancel the Contract. The Fee for each Exhibition represents all direct and indirect expenses of production and maintenance of the Exhibition. Therefore the NSTC reserves the right to charge the Exhibitor the full Fee and any expenses arising out of and relating to a cancellation.
- 7.2 **Cancellation by NSTC:** NSTC reserves the right to cancel the Contract at any time if the Exhibitor fails to meet the terms of the Contract. If the NSTC needs to cancel the Contract for any other reason, then subject to the Contract, NSTC will refund the Fee to the Exhibitor but will not be responsible for any damages or other costs arising from a cancellation.

7.3 In the event of a cancellation of the Contract under this clause 7, the Exhibitor's obligations under the Contract continue to apply until they are properly completed.

**8. Assignment**

8.1 The Contract cannot be assigned without the consent of the other party.

**9. Jurisdiction**

9.1 The Contract will be construed in accordance with the laws in the Australian Capital Territory.

**10. Compliance with law**

10.1 The Exhibitor must comply with applicable laws and regulatory requirements.

**11. Waiver**

11.1 A waiver by a party of a breach of a provision of the Contract by the other party is not a waiver of any other breach.

**SCHEDULE**

1. DESCRIPTION OF EXHIBITION

2. FORM OF NSTC ACKNOWLEDGMENT

'Another Exciting Exhibition from Questacon – The National Science and Technology Centre'

**(c) *Regional galleries touring exhibition agreement***

Museums & Galleries NSW has developed an agreement for the loan of art works for the purpose of organising art exhibitions that tour regional galleries. In this document the body of the agreement contains both administrative and legal content, and only the detailed description of the loaned material is contained in an annexure.

Because it relates to the loan-in of artistic works it contains clauses that relate to copyright and moral rights that may not be relevant to loans dealing with non-copyright material. Nevertheless, most of the agreement is also relevant to non-art loans.

As with all templates, it should be treated as the starting point; it should always be amended to suit the particular needs of each show.

## Touring Exhibition

*Exhibition Title*

This is an agreement between:

### The Touring Agency:

Museums & Galleries NSW Ltd, 43 - 51 Cowper Wharf Road, Woolloomooloo NSW 2011  
(ABN 71 085 677 041) Ph: 02 93581760 Fax: 02 9358 1852

and

### The Gallery:

*Gallery Name*

*Address*

*Suburb State Pcode*

*Ph: xx xxxx xxxx Fax: xx xxxx xxxx*

by which the Gallery and the Touring Agency agree to develop and carry out the Tour *Exhibition title* ('the Exhibition') to Venues to be negotiated by the Touring Agency, and agreed upon by both the Touring Agency and the Gallery:

## 1. THE EXHIBITION

1.1 The Gallery will:

- a) develop and prepare for touring the Exhibition in accordance with the Touring Policy (attached at Schedule B);
- b) ensure the collation and authorised reproduction of artworks (as noted in Schedule F), installation, deinstallation, and oversight of the Exhibition;
- c) execute an Artist Loan Agreement (as appropriate) for each of the Works. The loans must be for a period spanning the date the exhibition departs the Gallery through to two weeks following the ending date of the Tour (*Month Year - Month Year*).

1.2 The Touring Agency will:

- a) be responsible for the exhibition from **Month Year** until the date it is returned to **Gallery** or the nominated agent;
- b) in collaboration with **Gallery**, prepare an itinerary for the Touring Exhibition and execute Venue Loan Agreements with each tour Venue as outlined in Schedule E;
- c) provide **Gallery** with a full list of Works per **2008** tour Venue by **day month year**, and a full list of Works per **2009** tour Venue by **day month year**.

## **2. FINANCIAL MANAGEMENT AND EXPENSES**

### **2.1 Goods and Services Tax (GST)**

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');
- c) 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.

### **2.2 The Gallery will:**

- a) in consultation with the Touring Agency, be responsible for producing promotional and educational material for the Exhibition, including an Education Kit by **day month year**
- b) be responsible for producing colour-proofed reproduction quality digital images of each Work in the exhibition for media and publicity purposes by **day month year**

- c) provide information for supply of approved wall paint for the projection of the work(s) in each venue.

### 2.3 The Touring Agency will:

- a) administer the Venue Hire Fees from each venue based on number of works displayed and outlined in Schedule G, which will include payment of freighting for the Touring Exhibition and an insurance cover of \$500 and artist fees;
- b) build into the Venue Loan Agreements the requirement for venues to report the material condition of the work/s in playback, including image and audio quality and contact the Touring Agency if any technical issue arises;
- c) work with the Gallery and the Artist, subject to availability, that one member of the project team (artist, Gallery or Touring Agency representative) is available for installation/opening event when possible from an allocation of funds from the exhibition hire fee (to a maximum amount of \$x00 per venue);
- d) build into the Venue Loan Agreements a clause forbidding the duplication of any work/s;
- e) receive electronically and in hard copy the completed Education Kit and distribute with all promotional material to each venue (four weeks prior to the opening at each venue);
- c) administer the budget and organise the carriage of the Exhibition to and from each Venue and then return of each work to the Artist/Lender within Australia within four weeks of the completion of the Touring Exhibition;
- d) administer all grant and sponsorship funds secured by the Touring Agency in consultation with the Gallery;
- e) provide a statement of income and expenditure of the Tour to the Gallery within **two months** of the Tour finishing, if requested.

### 2.4 The Gallery will:

- a) consult on an ongoing basis with the Touring Agency to discuss/advise display and technical requirements for the duration of the Tour;
- b) be responsible for payment of all promotional and educational material for the Exhibition including catalogue, graphics and tour manual;

- c) work with the Touring Agency and the Artist to ensure that one member of the project team (artist, Gallery or Touring Agency representative) travels for installation and/or the Opening event when possible;
- d) administer payment and organisation for this travel and accommodation for staff for installation and/or the Opening event when possible from an allocation of funds from the exhibition hire fee (to a maximum amount of \$x00 per venue) and supplement, where necessary, from The Gallery funds;
- e) be responsible for payment of artists' fees of \$1000 per venue;
- f) be responsible for payment of any licensing fees or reproduction costs associated with copyright and/or reproduction and/or use in any form of any of the Works included in the Exhibition for promotional purposes;
- g) manage the sale and distribution of the book *name of book by author's name* (the 'Book') and process through to the Venues on a presale basis of \$10 wholesale and \$20 retail;
- h) provide one complimentary copy of the Book per Venue;
- i) ensure that both The Gallery and Touring Agency have sighted and signed off on all materials related to the Touring Exhibition;
- j) provide copies of the Artworks as requested by each venue in consultation with the Touring Agency;
- k) provide one reserve copy of each Artwork for backup purposes.

## 2.5 The Touring Agency will:

- a) collaborate, at its absolute discretion, with the Gallery to assess budgetary needs for touring and, with the Gallery, seek funding for touring;
- b) administer, at its absolute discretion, all Exhibition Fees, grants and sponsorship funds if secured by the Touring Agency;
- c) in consultation with the Gallery, determine an appropriate Exhibition Fee per tour (for this Exhibition, the fee has been set as outlined in schedule G);
- d) administer the freighting budget and organise the carriage of all the works to and from each Venue;
- e) link its website to the Gallery's (and vice versa) and forward all information to participating Venues so that they can also link to the Gallery's website;
- f) direct any artwork sales enquiries to the Gallery;
- g) ensure that both parties have sighted and signed off on all printed and promotional materials related to the Touring Exhibition.

### **3. INSURANCE**

3.1 The Touring Agency will:

- a) administer \$1000 per calendar year to assess the Exhibition for travel and include the Exhibition under its insurance policy, held with Lloyds of London, for transit and storage throughout the Tour;
- b) ensure a clause is included in the Venue Loan Agreement concerning the adequate insurance and public liability cover for the Exhibition while on display and in storage at each Venue;

3.2 The Gallery will:

- a) advise the current insurance value for each work in the exhibition and collective value of all works in exhibition

### **4. PROMOTIONAL AND EDUCATIONAL MATERIAL**

4.1 The Gallery will at its own expense prepare and submit to the Touring Agency:

- a) a written description and final list of Works with insurance value, size, materials and any other relevant details of the Works by no later than [insert date] prior to the commencement of the Tour;
- b) information for a generic press release by no later than [insert date] prior to the commencement of the Tour, to be used by the Touring Agency at the absolute discretion of the Touring Agency for distribution to the media, Venues and for any other promotional or educational purposes which it considers appropriate;
- c) two copies of the Book complete with a Curatorial Essay and list of Works by **insert date** prior to the commencement of the Tour;
- d) copies of the education kit for distribution to the venues by the Touring Agency **insert time** prior to the commencement of the Tour.

4.2 The Touring Agency will:

- a) liaise with each Venue and forward all promotional material as set out in clause 4.1, with appropriate material for the acknowledgment of sponsors/supporters of the Exhibition as set out in Schedule D by at least **four weeks** prior to the Exhibition being displayed at each Venue.

### **5. COPYRIGHT**

5.1 The Gallery warrants that it will obtain from the owners or controllers of copyright of the Works, a limited non-exclusive licence to reproduce the Works in print and digital format and to communicate the Works to the public (including any Internet uses) for the following purposes only:

- i) publicity and critical review pertaining to the Touring Exhibition;
- ii) education material pertaining to the Exhibition and Tour;
- iii) the creation and distribution of a book or brochure;
- iv) creating a non-commercial archive and non-lending reference or database pertaining to the Exhibition.

5.2 The Touring Agency will keep a written account of all reproductions and/or uses of the Works, text and Photography related to the Exhibition throughout the Tour and shall provide a copy thereof to the Gallery.

## **6. MORAL RIGHTS**

Both the Touring Agency and the Gallery will use their best endeavours to ensure that the moral rights of the artists of works in the Exhibition are respected, including rights of attribution and will not do or omit to do anything amounting to derogatory treatment of works.

## **7. THE ITINERARY**

7.1 The Touring Agency will:

- a) negotiate and confirm the Itinerary in consultation with the Gallery;
- b) negotiate and prepare the Venue Loan Agreements in consultation with the Gallery;
- c) negotiate and confirm the type and number of works per venue for the Gallery to arrange authorised duplication.

## **8. CONDITION REPORTS & CONSERVATION**

8.1 The Gallery will at its own expense:

- a) for each Work, on arrival at the Gallery and prior to packing for transit to the Touring Agency, ensure it is in working order and note this on a Condition Report Sheet for tour;

- b) in conjunction with the Touring Agency, provide advice regarding equipment and suppliers for projecting Artworks for the Tour.

8.2 The Touring Agency will at its own expense:

- a) ensure a clause is included in the Venue Loan Agreements concerning specified environmental and security conditions necessary for the Exhibition, in terms set out in Schedule C;
- b) ensure a clause is included in the Venue Loan Agreements requiring specific permission from the Touring Agency regarding Events, including the consumption of food and drinks within the Exhibition space;
- c) ensure a clause is included in the Venue Loan Agreements requiring Venues to maintain sound levels of the Artworks at all times of display;
- d) ensure a clause is included in the Venue Loan Agreements outlining the specific display requirements including equipment and method of display in accordance with the video installation manual.

## **9. INSTALLATION AND TOURING MANUAL**

9.1 The Gallery will:

- a) be responsible for the provision of assistance to the Venues subject to the availability of staff from The Gallery and/or associated staff and funds available;
- b) prepare a comprehensive Touring Manual(s) by providing:
  - i) installation, packing and handling instructions;
  - ii) a list of Works;
  - iii) an invitation list;
  - iv) multiple copies of all wall labels in soft copy format;
  - v) high-resolution still images of the Artworks for non-commercial publicity and promotion;
  - vi) Touring Manual/technical Artwork installation guide;
  - vii) Media Release.

9.2 The Touring Agency will prepare at its own expense:

- i) a tour contact list;
- ii) an invitation list for appropriate supporters and sponsors;
- iii) a copy of the Exhibition Report Form;
- v) a list of works per Venue.

## 10. FREIGHT/TRANSPORT OF WORKS

10.1 The Gallery will at its own expense:

- a) be responsible for the adequate and safe packing of the Exhibition to the Touring Agency with each work individually labelled and identified;
- b) ensure all Wall Labels and Signage for the Exhibition are supplied to the Touring Agency in PDF and accessible format;
- c) ensure the Touring Manual is packed.

10.2 The Touring Agency will:

- a) administer and arrange all carriage, with a registered carrier service, of the Works to each Venue including providing the carrier with the following:
  - the title of the exhibition;
  - the names, addresses and telephone numbers of contact persons at all host galleries;
  - preferred dates and times for pick-up and delivery to and from the Venue/s;
  - the number of boxes of labels, signage, posters, flyers, catalogues, education materials, merchandise, number of DVDs and condition report check sheets which will be travelling with the exhibition.

## 11. ACKNOWLEDGMENTS AND FEEDBACK

11.1 The Gallery will at its own expense:

- a) acknowledge Museums & Galleries NSW as the Touring Agency at the opening and in all printed and promotional material and Signage accompanying the Touring Exhibition as set out in Schedule D;
- b) acknowledge all sponsors/supporters of the Exhibition in terms set out in Schedule D.

11.2 The Touring Agency will at its own expense:

- a) request Feedback in the form of an Exhibition Report one month after the Exhibition has finished in each Venue;
- b) forward visitor numbers to the Gallery upon receipt of the Exhibition Report;
- c) provided the Feedback is forthcoming, correlate the Feedback into a document "the Report" and forward a copy to the Gallery, the Artists and any sponsors/supporters obtained by or through the Touring Agency as set out in Schedule D by **12 weeks** after the completion of the Tour;

- d) ensure that Venues obtain sign-off from the Gallery as the organising institution on all promotional material relating to the Exhibition and Tour

## **12. MISCELLANEOUS**

### **12.1 Scope and Jurisdiction:**

- a) This Agreement constitutes the understanding of the parties with respect to the management of the Exhibition Tour by the Touring Agency.
- b) Variations to this Agreement may be made at any time provided that those variations are acceptable to both parties and are in writing and signed by both parties.
- c) This Agreement shall be construed in accordance with the laws of New South Wales.
- d) Neither party may legally bind the other to any agreement or arrangement with a third party unless with the prior written approval of the other party.

### **12.2 Termination:**

- a) If the Gallery is in breach of any of its obligations, as set out in this Agreement, the Touring Agency may give written notice of the breach and give 14 days in which the Gallery has to remedy the breach. If the breach remains un-remedied the Agreement may be terminated by the Touring Agency.
- b) If the Agreement has been terminated by the Touring Agency as provided for in clause 12.2 (a), the Gallery is responsible for all costs incurred by the Touring Agency as a result of the Gallery breach including costs associated with the return of the works to the Artist or Lender.

### **12.3 Cancellation:**

The Touring Agency reserves the right to alter or cancel the Tour at any time without financial or legal recourse to the Gallery.

### **12.4 Disputes:**

- a) The Gallery and the Touring Agency will use their best efforts to give effect to the spirit and intent of the Agreement.
- b) The Gallery and the Touring Agency will use their best efforts to resolve informally, any dispute arising out of this agreement.
- c) Any dispute that is not resolved informally as per clause 12.4 b) 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.

**12.5 Severability**

In the event that any provision of this Agreement is void, voidable, unenforceable or illegal, that provision will in the first instance be read down and if it cannot be read down it will be severed and the remainder of the Agreement will retain its full effect.

**SIGNATURES**

**Signed For And On Behalf Of The Touring Agency By:**

\_\_\_\_\_ Date \_\_\_\_\_

CEO, Museums & Galleries NSW

**Signed For And On Behalf Of The Gallery By:**

\_\_\_\_\_ Date \_\_\_\_\_

Executive Director, **gallery**

## Schedule A

### Definitions

This Agreement will use the following terms as interpreted below:

1. **'Artist'** refers to the artist whose Work has been selected to be included in the Exhibition.
2. **'Artist Loan Agreement'** refers to the agreement negotiated between the Gallery and the Artist regarding the terms and conditions under which the Artist will lend the Work/s the Gallery for the purpose of the Exhibition and the Tour (see Museums & Galleries NSW Standard Artist Loan or Lender Loan Contract).
3. **'Artist's Loan Fees'** refers to fees payable by the Gallery to each artist calculated according to the number of artists involved in the Exhibition and the duration of the Tour.
5. **'Condition Report Sheet'** documents the title and details of each work with space provided for each Venue to comment on the condition of the Work when it arrives at the Venue and on departure.
6. **'Curatorial Essay'** refers to a piece of critical writing prepared by the curator of the Exhibition for the Exhibition catalogue discussing the concept, the Work/s and the Artist/s in the Exhibition.
7. **'Exhibition Fee'** is a set and predetermined fee payable by the Venue to the Touring Agency for the loan of the Exhibition.
8. **'Feedback'** is all comments written or verbal from members of the public regarding the Exhibition. Feedback may take the form of letters to the Venue or comments in the Venue visitors' book.
9. **'Photography'** is any photographs/reproductions of the Works in the Exhibition or the Exhibition in situ.
10. **'Text'** is all written promotional and/or educational material prepared for the Exhibition and Tour.
11. **'The Exhibition'** refers to the curated collection of Works under the title of "[insert name of exhibition]" distributed separately per venue.
12. **'The Gallery'** refers to **name of gallery**.
13. **'The Itinerary'** is the schedule of Venue/s by which the Exhibition is toured.
14. **'Touring Manual'** is a folder/document for the use by Venues clearly setting out the following:

- a packing/crate list
- installation instructions with images
- packing and handling instructions
- a Venue contact list
- a copy of the Venue Loan Agreement
- a copy of the exhibition report form
- the Tour Itinerary with pick-up and delivery dates
- a basic outline of the exhibition for any interviews etc. (if provided by the Gallery)
- a copy of the Book (if provided by the Gallery)
- a list of works and artists
- an invitation list
- a copy of the press release
- address labels for the crates/packages for each venue

15. **'The Report'** is the compilation of all feedback, press clippings, invitations, press releases, education programs, and Exhibition reports (numbers, types and frequency of visitors, reports on radio and television press coverage).
16. **'The Tour'** refers to all facets related to the organisation of the Exhibition while it is in transit to, on display in, or in storage at each Venue.
17. **'The Touring Agency'** refers to Museums & Galleries NSW.
18. **'Venue/s'** refers to the series of galleries/exhibition spaces hosting the Exhibition during the Tour.
19. **'Venue Loan Agreement'** refers to the agreement negotiated between the Touring Agency and each Venue regarding the terms and conditions under which the Exhibitions will be lent to each Venue for the purpose of the Tours.
20. **'Work/s'** refers to the works of art selected to be part of the Exhibitions.

## **Schedule B**

**Touring Policy:** Museums & Galleries NSW (M&G NSW) facilitates and manages state and national tours of contemporary art, craft and design exhibitions, with an emphasis on regional access. M&G NSW maintains an innovative and diverse touring program of high quality contemporary visual art and craft from artists of culturally diverse backgrounds.

**The Visual Arts Reference Committee in selecting exhibitions to be included in the M&G NSW Program will give priority to projects that:**

- promote an understanding and appreciation of contemporary visual arts, craft and design;
- are curatorially sound and display thorough research and development;
- support and encourage the growth of contemporary art practice throughout NSW and the ACT;
- provide a means of interpretation and access to the exhibition by way of public programs and audience development;
- are physically and logistically suitable for touring;
- show evidence of sound planning, organisation, management and financial administration;
- accommodate fees at no less than the recommended rates for professional arts workers (available from NAVA);
- involve qualified/skilled staff;
- contribute to the balance and diversity of the M&G NSW touring program.

**Consideration will also be given to projects that:**

- maximise the provision of quality art experiences to a broad audience throughout NSW, the ACT and nationally;
- promote contemporary artists to new audiences;
- provide opportunities to raise professional standards for staff and venues in regional areas;
- are relevant to regional audiences;
- promote the role of the regional gallery or the visual arts organisation within the community;
- promote partnerships with other organisations.

**NOTE:** M&G NSW will support the tour of art work and/or historical exhibitions where the curator or host gallery can demonstrate the content and context will play a significant role in developing current practice and critical debate.

## **Schedule C**

### **Environmental and Security Conditions**

The following terms relating to standard of care of the works form part of Museums & Galleries NSW standard Venue Loan Agreements:

1. The Borrower shall ensure the safe protection of the Works at all times, including but not limited to protection from hazards of fire, theft, insects, dirt, foodstuffs, drink, smoking, or handling by unauthorised or inexperienced personnel and members of the public.
2. The Borrower shall ensure that any cleaning and maintenance in the Exhibiting Gallery is done under supervision of the Borrower's staff.
3. No Works shall be conserved or restored without the express written permission of the Lender.
4. The Borrower shall not alter, modify or destroy any Work, or do any other thing which may compromise the integrity of the Work - including altering sound levels and presentation of the Work/s.
5. The Works shall be stored and installed only in a facility that is equipped with adequate fire detection/prevention and security monitoring systems.
6. The Borrower shall ensure the Works are under personal supervision or electronic surveillance at all times during opening hours. While the Receiving Gallery is closed, the Borrower will ensure the Works have adequate electronic security and the Receiving/Exhibiting Gallery is only accessed by authorised persons.

## Schedule D

### Sponsor/Supporter's Acknowledgments

As Supporters of the Exhibition: **the gallery**, Museums & Galleries NSW, the Australia Council for the Arts, Arts NSW and the **X Foundation** will be acknowledged in the following ways:

- with logo in black and white, on all printed material related to the tour such as on:
  - a. Signage accompanying the Exhibition
  - b. generic Press release
  - c. Exhibition invitations
  - d. local press releases written by the Gallery;
  - e. education kit/sheets
  - f. invitations
- in any electronic promotion of the Exhibition
- in any paid advertising by the Gallery or Venues;
- in any promotional or educational material relating to the Exhibition or the Tour.

NOTE: The Venues will be supplied with relevant logos either on disc or via e-mail. All printed material provided by the Gallery will display the full range of sponsors/supporters.

TAGLINES: A **name of gallery** exhibition toured by Museums & Galleries NSW.

## Schedule E

### Exhibition Tour Itinerary

1. X Gallery dates
2. Y Cultural Centre dates
3. Z Library/Museum dates
4. Z Regional Gallery, dates
5. etc

## Schedule F

### List of works with insurance values.

All works should be projected onto a wall that is painted with Rosco reflective paint. Some works can be displayed on Plasma LCD screens.

#### 1. [name of work]

Digital video, [duration] [format]

Videography: [name]

Sound: [name]

Courtesy of [name]

Installation requirements:

1 x projector (4:3 standard PAL)

1 x dvd player (4:3 standard PAL)

1 x stereo sound system (including amplifier, stereo speakers and sub-woofer)

2. etc.

3. etc.

## Schedule G

## List of Hiring Fees

\$amount AUD per venue choosing 3–4 works

\$ amount AUD per venue choosing 5–6 works

\$ amount AUD per venue choosing 7–8 works

(exclusive of GST)