

Note: Revised DCMS model loan agreement for Acceptance-in-Lieu in-situ offers - this revised model as at 30 December 2002 supersedes the last version that was promulgated by the Department on 28 July 1997. The model is to be used when drawing up loan agreements covering chattel/s accepted in whole or part satisfaction of capital taxes and any other liabilities under the provisions of section 230 of the Inheritance Tax Act 1984 (as amended from time to time) but which are to be displayed to the public in-situ at the Borrower's premises.

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Model loan Agreement - Draft 30/12/02

DATED

200X

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[A Borrower]

- and -

[A MUSEUM]

**AGREEMENT**

for the Loan of Chattels [*or paintings etc*] accepted in  
satisfaction of Inheritance Tax



|                            |                                                                                                                                                                                                                           |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “relative”                 | brother sister ancestor lineal descendant or spouse of any such person or a spouse of the Borrower.                                                                                                                       |
| “the Secretary of State”   | the Secretary of State for Culture, Media and Sport or such other person or body as shall for the time being exercise the functions of the Secretary of State in relation to section 9 of the National Heritage Act 1980. |
| “the Tax Settlement Price” | the special price agreed as the value of the Chattel[s] on [their][its] acceptance in lieu of Inheritance Tax as specified [for each Chattel] in Schedule 1 to this Agreement.                                            |

1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:-

- (a) headings and marginal notes are for convenience only and shall not affect the interpretation of this Agreement;
- (b) where the context so admits:
  - (i) words importing the singular include the plural and vice-versa;
  - (ii) words denoting the masculine gender include the feminine;
- (c) reference to a Clause is to a Clause of this Agreement unless otherwise specified; and
- (d) reference to any enactment shall be construed as a reference to the enactment as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

## **THE LOAN**

- 2.1 In pursuance of the Direction the Museum agrees to lend the Chattels to the Borrower and the Borrower agrees to accept the Chattels on loan subject to the terms of this Agreement.
- 2.2 Subject to the terms of this Agreement the Museum and the Borrower agree that the Chattels shall remain at the Premises for the duration of the Loan.
- 2.3 The Borrower agrees that the Museum is the owner of the Chattels and that the Borrower has no proprietary or other right or interest in the Chattels and will not by virtue of this Agreement acquire any such right or interest.

## **TEMPORARY REMOVAL**

- 3. The Museum may remove the Chattels from the Premises at its expense and upon reasonable notice in writing to the Borrower without the consent of the Borrower for the

purpose of conservation works.

4. Upon the Museum giving reasonable notice to the Borrower and the Borrower giving his consent (which consent shall not be unreasonably withheld) the Museum may at its own expense remove the Chattels from the Premises for the purpose of temporary exhibition.

PROVIDED ALWAYS that the period of removal under Clause 3 and 4 above shall be limited to the time reasonably necessary to effect the conservation works or stage the temporary exhibition (including such time as is needed for the transportation and installation of the Chattels).

## **BORROWER'S OBLIGATIONS**

5. the Borrower agrees that he will:
  - (a) keep the Chattels at the Premises in their positions on the date of this Agreement or such other positions as shall be agreed in writing and will not affix the Chattels in any way without the prior written agreement of the Director;
  - (b) permit the Chattels to be moved only by the Director or someone authorised by the Director except in an emergency.
  - (c) allow public access to the Chattels on at least [100] days in each year (or such other number of days as may be sufficient to comply with the Secretary of State's requirements from time to time concerning reasonable public access to the Premises) for a period of not less than three hours on each day and by prior appointment at other reasonable times;
  - (d) keep the Chattels in as good repair as the same are now (as recorded in the Note of Condition contained in Schedule 1 which is accepted as an accurate record of the condition of the Chattels), fair wear and tear and ageing excepted, and will take proper precautions to prevent damage to the Chattels and to control the environment within which the Chattels are housed within reasonable limits as to dust smoke temperature humidity lighting and vibration levels and allow the Museum to install at its own expense such thermo-hygrographs or other appropriate measuring devices as the Museum shall from time to time request in order to monitor the environmental precautions and to maintain proper precautions for the security of the Chattels within the Premises as specified by the Museum or the Museums Security Adviser of Resource: The Council for Museums, Archives and Libraries. For the avoidance of doubt IT IS HEREBY AGREED that the precautions in force at the date of this Agreement which have been agreed by the Borrower and the Museum and which are set out in Schedule 2 are "proper precautions" for the purpose of this covenant at the date of this Agreement provided always that the Museum shall be entitled to provide at its own expense such more effective security or damage prevention measures developed during the currency of this covenant as it may choose;
  - (e) allow the Museum to display adjacent to or in front of the Chattels such notices with such dimensions as may be agreed in writing from time to time by the Borrower and the Director to publicise the ownership of the Chattels;
  - (f) allow the Director or other officials of the Museum or the Museums Security Adviser or persons authorised by them free access to the Premises at all reasonable times by

prior arrangement to inspect the Chattels or the environmental conditions or the security arrangements and to carry out such photography conservation and other works at all reasonable times as may be necessary after reasonable notice;

- (g) allow the Director or any person authorised by him access to the Premises to inspect the Chattels at any time without notice when the Director has reason to believe the Chattels to be at risk;
- (h) maintain the existing decor and furnishings of the room or rooms at the Premises in which the Chattels are situate in a style which provides a suitable historic physical and aesthetic setting for the Chattels and not make any changes thereto otherwise than as may be agreed in writing by the Director or in default of agreement decided by the Arbitrator;
- (i) not allow reproduction of or publicity relating to the Chattels except upon terms and conditions approved in writing by the Director;
- (j) use the rooms in which the Chattels are situate solely for their display, and not for any other purpose;
- (k) acknowledge the Museum's ownership of the Chattels in any published guide to the Premises in a manner approved in writing by the Director; and
- (l) comply with the terms of Clause 7 below.

## **CONSERVATION AND INSURANCE**

6. The Museum agrees that it will:

- (a) conserve the Chattels at its own expense and take such suitable advice and carry out such necessary work as seems fit to the Director after giving reasonable notice to the Borrower that such works will be carried out; and
- (b) where appropriate insure the Chattels by obtaining an undertaking from the Secretary of State under section 16 of the National Heritage Act 1980 to indemnify the Museum in respect of any repairable damage to the Chattels up to 99% of the Tax Settlement Price.

7. The Borrower agrees that it will indemnify the Museum against costs and expenses incurred by the Museum in making good repairable damage to the Chattels up to 1% of the compensation Value of the Chattels.

## **DEATH OF THE BORROWER/ TERMINATION OF LOAN AGREEMENT<sup>1</sup>**

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<sup>1</sup>*Where the initial loan is to an individual, the first option should be used. Where it is to a company, a trust or any other vehicle other than an individual (whether or not a charity) the second option (allowing the Museum to seek a determination from an arbitrator at 21 year intervals) should be used*

*If the Borrower is an individual*

8.1 In the event of the death of the Borrower, subject always to the provisions of Clauses 8.2 and 8.3 hereof, this Agreement shall terminate and the Museum may remove the Chattels from the Premises.

8.2 If, on the death of the Borrower -

- (a) the body or person in whom the Premises shall become vested following the death of the Borrower shall be a relative of his or a family company or other vehicle controlled by a relative of the Borrower, or a trust established for the primary benefit of any such person;
- (b) such body or person shall notify the Museum in writing (i) of the death of the Borrower within two months thereof, and (ii) of an intention to enter into a new Agreement within six months of the death of the Borrower; and
- (c) the condition of eligibility for renewal is established in accordance with Clause 10 below

the Museum, subject to clause 10.6 below, shall execute an Agreement in favour of such body or person in substantially the same terms as this Agreement, such new Agreement to include (inter alia) a provision containing a similar right to a new Agreement to take effect on the death of the successor to the Borrower as owner or occupier of the Premises.

8.3 In the event that notice is given of the death of the Borrower under clause 8(2)(b) above, the Museum may leave the Chattels at the Premises pending execution of a new agreement PROVIDED THAT the person or body giving notice under clause 8(2)(b) confirms in that notice that the terms of this Agreement shall bind that person or body as if that person or body was the Borrower pending execution of any new agreement.

*Termination of loan if the Borrower is not an individual*

8.1 The Museum may at any time after the expiration of 21 years from the date of this Agreement seek a determination from the Arbitrator as to whether it is appropriate for the Chattels to continue to be kept at the Premises PROVIDED THAT the Museum may not at any date seek any such determination if a determination hereunder has been made within 21 years prior to such date.

8.2 The provisions of clause 10 below shall apply to any such determination.

**TRANSFER OF THE PREMISES**

9.1 In the event of the transfer, lease or other disposition of the whole or any part of the Premises by the Borrower, subject always to the provisions of Clause 9.2 and Clause 9.3

hereof, the Loan shall terminate and the Museum may remove the Chattels from the Premises.

9.2 If -

- (a) the body or person in whom the Premises will become vested following a transfer lease or other disposition by the Borrower shall be a relative of his or a family company or other vehicle controlled by a relative of the Borrower or a trust established for the primary benefit of any such person;<sup>2</sup>
- (b) such person or body notifies the Museum in writing of an intention to enter into a new Agreement before the transfer, lease or other disposition; and
- (c) the condition of eligibility for renewal is established in accordance with Clause 10.1 below

the Museum subject to Clause 10.4 below, shall execute an Agreement in favour of such person or body in substantially the same terms as this Agreement, such new Agreement to include (inter alia) a provision containing a similar right to a new Agreement to take effect at the end of the Loan if the Premises transfers to a relative, to another company or trust undertaking the same function, or to the primary beneficiary of such a trust.

9.3 The Borrower shall give three months' written notice to the Museum of any intention to transfer, lease or otherwise dispose of the whole or any part of the Premises or of his beneficial interest therein.

9.4 The Borrower shall notify the Museum in writing of any such disposition within 14 days of its completion.

## **RENEWING THE LOAN**

10.1 The condition of eligibility for renewal specified in [Clause 8.2(c) and]<sup>3</sup> Clause 9.2(c) above is that it has been agreed in writing between the Museum and the person in whom the Premises have or will become vested (or in default of agreement in writing determined by an Arbitrator appointed in accordance with Clause 16) that it is appropriate for the Chattels to continue to be kept at the Premises.

10.2 Matters which shall be taken into account by the Arbitrator in making a determination under Clause [s 8.1 and]<sup>4</sup> 10.1 above include (inter alia) -

- (a) the Chattels' historic and aesthetic association with the Premises and the use of the Premises;
- (b) the record of the Museum and the deceased or transferring Borrower's compliance with the terms and conditions of the loan Agreement;

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<sup>2</sup>*This would need to be changed if the Borrower is not an individual*

<sup>3</sup>*If the Borrower is an individual*

<sup>4</sup>*If the Borrower is not an individual*

- (c) the arrangements for the future display and conservation of the Chattels; and
  - (d) the continuing benefit to the public of the Chattels being kept at the Premises;
- and the Arbitrator may rely (inter alia) on -

- (i) such expert advice as appears to him to be appropriate; and
- (ii) policy or guidelines (if any) from time to time adopted or issued by the Secretary of State in determining whether it is appropriate for Chattels accepted in satisfaction of tax to be kept at the Premises with which they are associated.

10.3 A determination made by the Arbitrator under clause[s 8.1 and]<sup>5</sup> 10.1 above may be made on such conditions as the arbitrator may consider appropriate (including conditions as to the durations and terms of the new Agreement) and the conditions of eligibility for the new Agreement under clause 8 and 9 above shall extend to compliance with any conditions so imposed.

10.4 It shall be a term of any new agreement made in pursuance of a condition of eligibility for renewal with a relative of the Borrower, a trust or any vehicle other than a company (whether or not a charity) that after 21 years have elapsed from the date of that new agreement the Museum or the Borrower may at any time seek a determination from an Arbitrator appointed in accordance with clause 16 as to whether it is appropriate for the Chattels to continue to be kept at the Premises PROVIDED THAT no determination may be sought within 21 years of a previous one.

10.5 Should the Arbitrator, taking into account the circumstances of the case, including the matters specified in Clause 10.2 above, determine that it is no longer appropriate for the Chattels to continue to be kept at the Premises the Museum may remove the Chattels from the Premises and terminate the Loan.

10.6 Should the Arbitrator determine that it is appropriate for the Chattels to continue to be kept at the Premises but on different terms and conditions the Agreement (or the new Agreement as the case may be) shall take effect as varied by the Arbitrator, provided that either party may then by not less than two months' notice in writing (or such shorter period as the Arbitrator may allow) terminate the Loan and the Museum may remove the Chattels from the Premises.

## **TERMINATION OF THE LOAN - MISCELLANEOUS**

11.1 If -

- (a) there is any material breach by the Borrower of any of the terms and conditions contained in this Agreement or circumstances shall have arisen which are materially prejudicial to the condition, repair, well-being or security of the Chattels or public access to them and substantial steps to remedy the breach or to alleviate the risk to

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<sup>5</sup>*If the Borrower is not an individual*

the condition, repair, well-being or security of the Chattels have not been taken within a reasonable period after service of written notice on the Borrower by the Museum requiring him to remedy that breach; or

- (b) the Borrower shall have given the Museum no less than six months' written notice that it is desirous of terminating the Loan

the Loan shall terminate and the Museum shall recover the Chattels.

11.2 In default of agreement between the Borrower and the Museum as to whether ;

- (a) any situation act or omission constitutes a breach of the terms and conditions herein contained; or
- (b) circumstances have arisen which materially prejudice the condition, repair, well being or security of the Chattels or public access thereto; or
- (c) a particular period of time is reasonable in the circumstances in which to remedy a breach of a term or condition; or
- (d) it would be reasonable for the Borrower to withhold any consents required under this Agreement.

the provisions of Clause 16 will apply.

## **REMOVAL OF CHATTELS**

- 12. In the event of the Loan terminating and the Museum becoming entitled to recover the Chattels from the Premises the Museum shall give the Borrower or his successor reasonable notice in writing of its intention to remove the Chattels and shall not remove the Chattels pending the determination in accordance with Clause 10 above of the entitlement of such successors to a new Agreement but this shall be without prejudice to the provisions of Clause 13 below.
- 13. If the Director is of the opinion that the Chattels are at any time at immediate risk of damage, loss or destruction for whatever reason, the Museum may remove the Chattels from the Premises without giving notice to be held by the Museum in a place of safety. Except where the Chattels were at risk by reason of the Borrower's breach of the terms and conditions herein contained and the Museum has, in consequence of this breach, terminated the Loan the Chattels shall be returned to the Premises when in the opinion of the Director they are no longer at risk.
- 14. Wherever the Loan is terminated under the terms of this Agreement or the Chattels are removed from the Premises, the Borrower shall be responsible for the reasonable removal expenses of the Chattels and shall also be responsible for all physical damage reasonably caused to the Premises by or in the course of such removal.

## **MISCELLANEOUS**

- 15. Termination of this Agreement by either party under the terms of this Agreement shall be without prejudice to and shall not affect the liability of either party in respect of events

occurring prior to the termination.

16. Any dispute or difference between the parties (other than a decision by the Museum to remove the Chattels to safe keeping in accordance with Clause 13 when the Director's decision shall be final and conclusive) shall be referred to and determined by a sole Arbitrator to be appointed by agreement between the parties or in default of agreement by the President for the time being of the Law Society. Such arbitration shall take place in London and the costs of the arbitration shall be within the Arbitrator's discretion.

IN WITNESS whereof the Borrower and the duly authorised officers of the Museum have executed this instrument as Deed on the date first before written.

Schedule 1 - the Chattels

|                |                  |                             |
|----------------|------------------|-----------------------------|
| <u>Chattel</u> | <u>Condition</u> | <u>Tax Settlement Price</u> |
|----------------|------------------|-----------------------------|

Schedule 2 - Security and Damage Prevention Devices

Security: [The Chattels must be supervised during the whole of the time the public are admitted. A Security Officer is resident and on duty 24 hours per day (other items should be added depending on the specific circumstances)]

Fire: [Detection system - either smoke or heat detectors are installed throughout the building]

SIGNED as a DEED by            )  
in the presence of:            )

Witness Signature:

Witness Name:

Address:

Occupation:

SIGNED as a DEED on behalf of )  
[A MUSEUM] by                    )  
in the presence of:                )

Witness signature:

Witness Name:

Address:

Occupation: