

# LOAN AGREEMENT FOR GLADSTONE REGIONAL ART GALLERY & MUSEUM EQUIPMENT

This Agreement is made between Gladstone Regional Council ABN 27 330 979 106 of 101 Goondoon Street, Gladstone, QLD, 4680 (referred to herein as Gladstone Regional Art Gallery and Museum) and the Borrower. By signing this Agreement, the parties declare that the details submitted within their application are true and correct and if the Application is approved by Council, agree to be bound by the Terms and Conditions for Loan. This form must be completed and returned to Gladstone Regional Art Gallery and Museum within two (2) weeks of the intended loan date.

## 1. Borrower

Name of Borrower

Postal Address

Street Address

Telephone

Email

Contact Person

**2. Equipment Information** - I, the Borrower, wish to borrow the following equipment from the Gladstone Regional Art Gallery & Museum:

☐ RADF Pull up banner (1)

☐ RADF Flag x 1

☐ RADF Flag x 2

☐ Museum in a Box

☐ Other

## 3. Loan Information

Requested Pick up Date

Requested Return Date

Reason for request to borrow

## 3. Transportation Details

Mode of Transport

Company

Contact Person

Telephone

Email

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## 4. Storage Information

Where will the items be stored during the loan period?

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## 5. Insurance

Provide details of insurance protection for the items

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## EXECUTED AS A CONTRACT/AGREEMENT

*Signature of Borrower:*

Name

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Position (if applicable)

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Company (if applicable)

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Signature

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Date Signed

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Privacy Statement: Gladstone Regional Council is collecting your personal information to process your application form. This information will only be accessed by authorised Council employees and may be given to the Queensland Police Service. This information will not be given to any person or agency unless you have given us permission, or we are required by law.

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## GLADSTONE REGIONAL ART GALLERY & MUSUEM OFFICE USE ONLY

### Request approved by Manager Arts and Entertainment/Curator

Name		Signature		Date	
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### Nominated Loan Coordinator

Name		Position	
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#### LOAN:

Condition Report Completed:	Signature		Date	
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Item(s) dispatched by:	Signature		Date	
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Item(s) received by Borrower:	Signature		Date	
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#### RETURN:

Condition Report Received:	Signature		Date	
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Item(s) received by Council:	Signature		Date	
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Condition Report Completed:	Signature		Date	
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## TERMS AND CONDITIONS

### 1. Interpretation

#### 1.1 Defined Terms

In this Agreement the following definitions apply:

**“Agents”** means each of the contractors, agents, volunteers or guests of the Borrower;

**“Borrower”** means the Institution or Person identified at Item 1 of the Application;

**“Claim”** means any claim or legal action and all costs and expenses incurred in connection with it;

**“Condition Report”** means the Condition Report Form

**“Confidential Information”** means any information, given in any form, of a technical, business or financial nature regarding a party’s business or operations or the business operations of a party’s suppliers or customers; and information about the contents of this Agreement or negotiations relating to this Agreement;

**“Council”** means Gladstone Regional Council and, where the context permits, includes the officers, employees, contractors, consultants and subcontractors;

**Force Majeure Event”** means an act, omission, cause or circumstances beyond a party’s not reasonably foreseen by a party and outside the control of either party, including but not limited to act of God, severe weather event, flood, bushfire, Government direction, emergency declaration or pandemic;

**“Intellectual Property Rights”** means all copyright, patents, and all rights in relation to inventions, trademarks and designs;

#### 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (1) a word of a particular gender includes each other gender;
- (2) reference to the singular includes the plural and the plural includes the singular;
- (3) a derivative of an expression defined in this Agreement has a corresponding meaning;
- (4) any Act includes all amendments or substitutions for that Act and the Regulations made under that Act.
- (5) reference to a person includes:
  - (a) a corporation, incorporated association and government body; and
  - (b) the legal representatives and successors of that person;
- (6) ‘including’ and other similar expressions are not words of limitation;
- (7) reference to a right includes a remedy, authority or power;
- (8) a covenant by a person not to do a thing includes a covenant by that person not to allow, attempt, obtain, permit or suffer the doing of that thing;
- (9) any covenant, agreement or liability by two or more persons shall bind them jointly and each of them severally.

#### 1.3 Severability

If any provision of this Agreement is invalid or unenforceable it shall be severed from the balance of this Agreement, but all other provisions of this Agreement shall remain in full force and effect.

#### 1.4 Entire Understanding

This Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

#### 1.5 Obligations

Every obligation of the Borrower under this agreement is taken to include an obligation on the Borrower to ensure that the Borrower’s Agents comply with that obligation.

#### 1.6 Headings

Headings are for convenience only and do not affect the interpretation, or form part of the Contract.

### 2. Obligations

#### 2.1 The Borrower must:

- (1) arrange and meet the costs of the transportation of the Items, by a method approved by Council:
  - (a) from the Gallery and Museum to the Storage Facility; and
  - (b) from the Storage Facility to the Gallery and Museum no later than the day after end of the loan period;
- (2) ensure any covers, bags, holders, etc. are returned with the items;
- (3) ensure that all items are securely stored, and not subject to inclement weather;

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- (4) ensure that on the same day that the items are collected, a Condition Report is completed for each item;
  - (5) ensure that on the same day that the items are returned, a Condition Report is completed for each item;
  - (6) not physically alter any of the items, for example, unframing, removing from their mounts or bases, for any purpose;
  - (7) upon becoming aware of any damage to the items:
    - (a) immediately report such damage to Council by telephone and if caused during transit, also immediately notify the Courier;
    - (b) within 2 business days, complete a Detailed Damage Report and send a copy of the report, together with photographs of the damage to Council; and
    - (c) not move any of the items without the agreement of Council unless moving those items is required to prevent further damage;
  - (8) not sell or otherwise dispose of the items;
  - (9) comply with all laws and any directions of Council.
- 2.2 The Council must:
- (1) subject to the Borrower arranging a Courier in accordance with clause 2.2(1):
    - (a) give the items to the Courier; and
    - (b) loan the items to the Borrower; and
- 2.3 The Borrower acknowledges and agrees that:
- (1) the Borrower has relied on its own investigations as to the suitability of the items for the Borrower's purposes and has not relied on any representations made by Council;
  - (2) Council retains all Intellectual Property Rights in the items and the Borrower will not deal with the items in a way that would infringe Council's Intellectual Property Rights, except with Council's express written permission; and
  - (3) Council may at any time request a condition check and the Borrower must comply with the Council's request by no later than 5:00pm on the following business day.
- 2.4 The Council represents and warrants that:
- (1) the Council has the legal authority to enter into this Agreement and to lend the items, and will maintain that right until after the last date of the loan period;
  - (2) the display of the items will not infringe the Intellectual Property Rights of any person;
  - (3) the Council has the financial, technical and commercial capacity to loan the items for the Borrower's purpose.
3. Payment
- 3.1 In consideration of Council agreeing for the Borrower to loan the items pursuant to these Terms and Conditions, the Borrower will pay the Fee (if applicable) to Council within a period specified by Council in writing.
4. Cancellation or Postponement of Loan
- 4.1 If a Force Majeure Event occurs, or is forecast to occur, and either party (acting reasonably) has concerns for the loan items, the parties will meet and seek to agree to cancellation and postponement of the loan.
5. Insurance and Indemnity
- 5.1 The Borrower releases Council from and indemnifies Council against all Claims for damage or destruction of the items and damages, loss, injury or death arising directly or indirectly from:
- (1) this Agreement;
  - (2) any negligent or deliberate act of the Borrower or the Borrower's Agents and any breach of this Agreement by the Borrower or the Borrower's Agents, except to the extent of any contribution by the negligent or deliberate act of Council.
- 5.2 The Borrower must insure the items during the loan period.
6. Disputes
- 6.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) this within in respect of a dispute arising out of this Agreement ("a Dispute") unless that party has complied with this clause.
- 6.2 If a Dispute arises under this Agreement, the Complainant must tell the Respondent in writing:
- (1) the nature of the Dispute; and
  - (2) the outcome the Complainant wants; and
  - (3) what action the Complainant proposes will settle the Dispute.

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- 6.3 The parties must then try to reach an agreement which will resolve the Dispute.
- 6.4 If an agreement is not reached within 2 weeks of notice under clause 6.3 the parties shall attend mediation with a mediator appointed by agreement between the parties or, failing agreement, appointed by the President of the Queensland Law Society.
- 6.5 The parties shall each pay one half of the mediator's costs.
7. Confidentiality
- 7.1 Each party agrees not to disclose any Confidential Information of the other party without the prior written consent of the other party except:
- (1) to its officers, employees and advisers requiring that information for the conduct of duties of a party under this Agreement;
  - (2) in respect to Council to its auditors, elected councillors, Minister, or otherwise as required for local government purposes;
  - (3) as required under the *Right to Information Act 2009*; and
  - (4) as otherwise required or permitted by law.
- 7.2 Except as expressly permitted in writing by Council, the Borrower must not issue any statement or release any information relating to this Agreement.
8. Termination
- 8.1 Either party may immediately terminate this Agreement by notice in writing to the other party:
- (1) if the other party has failed to remedy a breach of this Agreement within 30 days after a notice to remedy has been given specifying the breach;
  - (2) if the other party becomes subject to any form of external administration;
  - (3) if the other party enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
  - (4) if the other party is wound up, voluntarily or involuntarily.
- 8.2 Termination of this Agreement will not affect any claim or action either party may have against the other by reason of any prior breach of this Agreement and will not relieve either party of any obligation under this Agreement which is expressed to continue after termination.
- 8.3 Clauses 5, 7 and 8.2 survive termination or expiration of this Agreement.
9. Notices
- 9.1 Notices under this Agreement must be in writing and may be signed by a party or its solicitor.
- 9.2 Notices are effectively given if emailed to the other party at the email addresses specified in this Agreement or at such other email address as may be notified from time to time and will be deemed to have been received on receipt of delivery confirmation by the sender.
10. Governing Law
- This Agreement is governed by the laws of Queensland and the parties submit to the jurisdiction of Queensland Courts.
11. Waiver
- No waiver by either party is effective unless it is in writing.
12. Assignment
- Neither party may assign its rights under this Agreement without the prior written approval of the other.
13. No Partnership or Authority
- This Agreement does not create any partnership, joint venture or agency relationship between the parties and neither party may incur any liability on behalf of the other party except with that other party's prior written consent.