Collections management forms are required by museums to document ownership of objects whether permanent donations or shorter-term loans and to detail the related responsibilities. The following forms were designed to be legally binding and user friendly for museums.

The complete set of forms includes:

- Instructions to Museums for the Completion of: Agreement and Certificate of Gift Unconditional and Conditional
- Agreement and Certificate of Gift – Unconditional
- Agreement and Certificate of Gift – Conditional

- Instructions for Completion of: Temporary Custody Agreement
- Temporary Custody Agreement

- Instructions for Completion of: Outgoing Loan Agreement
- Outgoing Loan Agreement*

- Instructions for Completion of: Agreement and Certificate of Incoming Loan
- Agreement and Certificate of Incoming Loan*

- Condition Report Form

*NOTE: Both Loan Forms require the attachment of a Condition Report

The Alberta Museums Association would like to recognize the contribution of William Page, a lawyer with Ogilvie and Company in Edmonton, in the creation of these forms. Mr. Page has been working on the Collections Management Forms Project since 1997. Through Mr. Page’s extensive contribution of time, expertise and infinite patience, Alberta’s museum community now has an impressive series of forms, with detailed instructions, to assist in the care of the province’s many collections.
INSTRUCTIONS TO MUSEUMS FOR THE COMPLETION OF:
AGREEMENT AND CERTIFICATE OF GIFT
UNCONDITIONAL and CONDITIONAL

1 When to Use

UNCONDITIONAL: The Donor wants to give Property to the Museum without attaching any conditions.

Donors should be encouraged to give without attaching conditions, and should not be encouraged to put forward conditions as these greatly increase administrative and operating costs and complexity.

CONDITIONAL: The Donor wants to give Property to the Museum but wants to attach conditions.

2 Other Possible Forms to Consider

2.1 Temporary Loan to Museum
If the Donor only wants to let the Museum borrow the Property for a fixed period of time, then the “Agreement and Certificate of Incoming Loan Form” can be used.

2.2 Return of Property within Set Time Period
Use a "Temporary Custody Agreement" form to receive for evaluation or review items being offered as a gift. Only after the Museum has decided to accept the gift should the appropriate gift form be used. Once the gift form has been executed by the Museum and the Donor, the Museum will be the owner of the Property and it cannot be returned to the Donor.

3 Legal Caution
The standard forms of Agreement have been prepared to account for normal circumstances that a Museum may encounter. Where items of large value are being considered, where unusual circumstances exist, or where the Museum has a desire to make substantial use of the items, for example by way of copying or merchandising the items, it is recommended that legal advice be given prior to the finalization of the Agreement with the Donor. Specific issues of insurance, moral rights, and copyright ownership are but three areas that can give difficulty. This instruction paper is not a substitute for legal advice.

4 Definitions
The following definitions are used in the forms and these instructions:
"copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform, or in the case of a lecture, to deliver, the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole rights as set out in the Copyright Act.

"Donor" means the party making the donation.

"moral rights" means that definition provided in the Copyright Act, which is generally summarized as being the right to the integrity of the work and, in connection with an act mentioned in section 3 of the Act, the right where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous. Moral rights are held by the author, and may only be waived and not assigned.

"Museum" means the museum receiving the Property.

"Property" means the specific items being donated.

5 Procedure to Complete the Form

5.1 Donor’s Identity
The Donor must be a legal entity: a competent person of legal age or a statutorily created body (e.g., a corporation, institution, society, association). Even though you may know the Donor personally, it is sound practice to ask for and record the person’s identification.

5.2 Donor is an Institution, Corporation or Other Legal Entity
Where the Donor is not a person, its authorized representative must represent the legal entity that is making the gift.

It is advisable to have a check performed to ensure the identity of the representative, and that the authority to give the gift has been granted (e.g., through a Directors’ Resolution). This should be provided to the Museum. The potential impact of improper authorization increases with the value or sensitivity of the gift.

5.3 Authorized Representatives: Donor; Museum
See above re Donor’s authorized representative.

The Museum must also have an authorized representative to accept the gift. In the event that an unauthorized person accepted the gift, the Donor could claim that the gift was never accepted and request the Property back. Unlikely, but this increases in importance when considering the cost of handling gifts and
accepting gifts with conditions (see Agreement and Certificate of Gift – Conditional)

5.4 Donor’s Role
The Donor must complete the History of Property (description of the Property’s past, importance, events and so on), although the Museum can provide assistance in putting down what the Donor tells them to put down.

The Property is the description of the gift, identifying all objects or parts of objects comprising the gift.

The Donor must read and understand all elements of the Agreement.

The Donor must specifically agree with the Description of Property. If the Museum has completed this for the Donor, the Donor should initial the description as set down.

5.5 Numbering Property for Convenience
The forms do not automatically number the Property elements – this should be done, however, to index and keep clear in the event of partial return or future inquiries.

5.6 Where Property Lists or History of Property are Too Long
Page 3 of each of the forms allows for further descriptions of Property and History. Ensure the Donor and Museum signs off on this page. If further room is needed, attach as Pages 4 and on, having both parties initial each page, and write on Page 3 “continued on pages 4 to __, attached to and forming a part of this Agreement”.

Note: when there are a large number of items being donated, it may be unreasonable to try to make a complete inventory immediately. Therefore, rather than using these gift forms at this time, use the "Temporary Custody Agreement" form. Once a full inventory is taken, and the items to be accepted are identified, then the appropriate gift form may be completed.

5.7 Do Not Leave Blank Spaces...
If there is a large blank (e.g., no history description), draw a horizontal line on top, a diagonal line from one end of it down to the bottom of the blank space, and then another horizontal line (making a “z”). Both the Museum and the Donor must initial it. Alternately but not preferred, you can write "VOID" in large block letters through the white space. Again, both the Museum and the Donor must initial it.

If there is a blank (e.g., did not complete the agreement to public acknowledgement) – do not sign the form. Go back and fill in the blank.
5.8 **Initial all Handwritten Additions, Changes**
Both the Museum and the Donor must initial every handwritten insertion or change.

5.9 **Page Numbering**
The three pages of each form are to be kept together. If page 3 is not used, mark it as blank as explained above.

5.10 **A Copy to the Donor**
The Donor should have an original copy of the signed Agreement as should the Museum. Each must be a signed copy. No photocopying of the signed forms should be done for the purpose of providing a permanent record to either the Museum or the Donor.

5.11 **Witnesses: Donor; Museum**
A competent person of legal age should witness signatures of the Donor and Museum representatives. The same witness does not need to be used by both parties.

The Witness must be present to witness the signatures being placed on the Agreement.

6 **Things to Be Considered**

6.1 **Legal Opinion … If In Doubt About…**
If you are not sure of the Donor’s identity or authority, or if questions occur regarding conditions suggested or title to the Property, or any other question – call your legal advisor first before you sign.

6.2 **Moral Rights and Copyright**
Many of the items being donated will be subject to copyright and moral rights, dependent upon their subject matter and age. This instruction form is not intended to define all aspects of these important areas of law. However it is important to note that the gift Agreements require the copyright owner to assign the copyrights in the donation to the Museum, and to waive moral rights in favour of the museum. The Donor should be questioned by the Museum to ensure that the Donor owns the copyright and is in a position to assign it to the Museum.

Similarly, the Donor should be questioned to determine if the Donor has the moral rights in the Property, and if not who does have that right (i.e., the original author assuming no waiver has occurred along the way). This latter point would be important were the Museum to ever infringe the integrity right or paternity rights of the author.

All of the foregoing is not relevant if the copyright or moral right has expired through the passage of time (as a general rule, 50 years after the death of the author, although important exceptions exist as well).
Where the Museum is doubtful that the Donor has full copyright ownership, or that there may be a moral right at issue given the use intended by the Museum for the donation, legal advice should be sought before accepting the donation.

The foregoing are illustrative only and are included as cautions to the Museum: only accept what you can reasonably verify can be granted by the Donor. If in doubt, get specific advice.

6.3 Tax Receipts
The form does not provide for tax receipts to be requested. If they are requested, then the Tax Receipt Request form should be used.
AGREEMENT AND CERTIFICATE OF GIFT -- UNCONDITIONAL

I, _____________________________________________________________,
{Donor’s Name} [Please print]
of _____________________________________________________________
{Donor’s Address} [Please print]
(the “Donor”) am the legal and rightful owner of the property described below (the “Property”). I have full power and authority to enter into this Agreement.

DESCRIPTION OF PROPERTY

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
(continued, if required, on Page 3 attached to and forming a part of this Gift.)

Whereas the Donor desires to further the purposes and objectives of the ___________________________ (the “Museum”),

NOW THEREFORE WITNESSETH THAT for these premises and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree to the following terms and conditions:

The Donor does hereby give, donate, bestow, transfer, and assign, absolutely and forever its entire rights, clear deed and universal copyright, ownership, estate and interests in and to the Property to the Museum as an unrestricted and unconditional gift, and, the Donor hereby waives all moral rights in the Property in favour of the Museum.

The Donor represents that the Donor is the owner of all copyright interests, including moral rights, in the Property; or, the Donor represents that to the best of their knowledge and belief that the owner of the copyright interest and moral rights in the Property is:

__________________________________________.

The Donor agrees to public acknowledgement of this Gift. ___ Yes ___ No.

The Donor has completed the History of Property section of this Agreement. The Donor represents that the history provided is true and accurate to the best of Donor’s knowledge and belief.

The Donor warrants that the Donor has complied with all laws of the Province of Alberta and Canada and applicable international conventions and treaties. The Donor warrants that the Property is free of all liens and encumbrances, including without limitation any claims of any taxing authority.

The Donor agrees that the Donor shall indemnify and save harmless the Museum, its agents and employees against any charge, cost, claim, demand or expense related to or arising from the Donor’s failure to observe the requirements of any provincial or federal laws or regulations, from any misrepresentation by the Donor pertaining to the Donor’s ownership of the Property and the history of the Property, and from any claims of third parties claiming an interest in the Property.
HISTORY OF PROPERTY

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

(continued, if required, on Page 3 attached to and forming a part of this Gift.)

The Museum hereby gratefully accepts the above gift of the Property.

The Museum reserves the right at its sole discretion to dispose of, copy, record or store the gifted Property or portions thereof in any manner it shall deem, including but not limited to making electronic or other copies and recordings thereof.

IN WITNESS WHEREOF, the Donor and the Museum execute this Agreement in duplicate under seal in ______________________, Province of Alberta effective the _____ day of ________, 2___.

Signed in the presence of:

Signature of Donor
[where Donor is an institution, corporation or other legal entity, signature must be by its authorized representative.]

Signature of Donor’s Witness

Name [Please print]

Name of Witness [Please print]

Title [if representing an institution, corporation or other legal entity]

Address of Witness

THE MUSEUM

Per: ______________________
[authorized representative]

Date: ______________________

Signature of Museum Witness

Name [Please print]

Name of Museum Witness [Please print]

Title: ______________________

Witness for Museum:
DESCRIPTION OF PROPERTY (CONTINUED)

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HISTORY OF PROPERTY (Continued)

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Donor or Donor’s Representative Signature __________________________ Museum’s Representative Signature __________________________
AGREEMENT AND CERTIFICATE OF GIFT -- CONDITIONAL

I, _____________________________________________________________,
{Donor’s Name} [Please print]
of _____________________________________________________________
{Donor’s Address} [Please print]
(the “Donor”) am the Legal and Rightful Owner of the property described below (the “Property”). I have full power and authority, including moral rights, to enter into this Agreement.

DESCRIPTION OF PROPERTY
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
(continued, if required, on Page 3 attached to and forming a part of this Gift.)

Whereas the Donor desires to further the purposes and objectives of the ____________________________ (the “Museum”),

NOW THEREFORE WITNESSETH THAT for these premises and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree to the following terms and conditions:

The Donor does hereby give, donate, bestow, transfer, and assign, absolutely and forever its entire rights, clear deed and universal copyright, ownership, estate and interests in and to the Property to the Museum as a gift, subject to only such conditions as are described and agreed to below, and the Donor hereby waives all moral rights in the Property in favour of the Museum:

DESCRIPTION OF CONDITIONS
________________________________________________________________
________________________________________________________________
________________________________________________________________
The Donor represents that the Donor is the owner of all copyright interests, including moral rights, in the Property; or, the Donor represents that to the best of their knowledge and belief that the owner of the copyright interest and moral rights in the Property is: ________________________________.

The Donor agrees to public acknowledgement of this Gift. ___ Yes ___ No.

The Donor has completed the History of Property section of this Agreement set out in this Agreement. The Donor represents that the history provided is true and accurate to the best of Donor’s knowledge and belief.

The Donor warrants that the Donor has complied with all laws of the Province of Alberta and Canada and applicable international conventions and treaties. The Donor warrants
that the Property is free of all liens and encumbrances, including without limitation any claims of any taxing authority.

The Donor agrees that the Donor shall indemnify and save harmless the Museum, its agents and employees against any charge, cost, claim, demand or expense related to or arising from the Donor’s failure to observe the requirements of any provincial or federal laws or regulations, from any misrepresentation by the Donor pertaining to the Donor’s ownership of the Property and history of the Property, and from any claims of third parties claiming an interest in the Property.

HISTORY OF PROPERTY

________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

(continued, if required, on Page 3 attached to and forming a part of this Gift.)

The Museum hereby gratefully accepts the above gift of the Property.

The Museum reserves the right at its sole discretion to dispose of, copy, record or store the gifted Property or portions thereof in any manner it shall deem, including but not limited to making electronic or other copies and recordings thereof.

IN WITNESS WHEREOF, the Donor and the Museum execute this Agreement in duplicate under seal in ______________________, Province of Alberta effective the _____ day of ________, 2_____.

Signed in the presence of:

Signature of Donor
[where Donor is an institution, corporation or other legal entity, signature must be by its authorized representative.]

Signature of Donor’s Witness

Name [Please print]

Name of Witness [Please print]

Title [if representing an institution, corporation or other legal entity]

Address of Witness

THE MUSEUM

Per: __________________________
[authorized representative]

Date: __________________________

Witness for Museum:

Signature of Museum Witness

Name of Museum Witness [Please print]
DESCRIPTION OF PROPERTY (CONTINUED)

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HISTORY OF PROPERTY (Continued)

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Donor or Donor’s Representative Signature

Museum’s Representative Signature
INSTRUCTIONS FOR COMPLETION OF:
TEMPORARY CUSTODY AGREEMENT

1 When To Use

The Museum needs to take possession of Property from a party (Source) for a short period of time for the purpose of either identification, consideration for acquisition (permanent or for a loan period) or for some other purpose - which must be specified.

2 Legal Caution

The standard forms of Agreement have been prepared to account for normal circumstances that a Museum may encounter. Where items of large value are being considered, where unusual circumstances exist, or where the Museum has a desire to make substantial use of the items, for example by way of copying or merchandising the items, where preservation steps may need to be taken, it is recommended that legal advice be given prior to the finalization of the Agreement with the Source. Specific issues of insurance, moral rights, and copyright ownership are but three areas that can give difficulty. This instruction paper is not a substitute for legal advice.

3 Definitions

The following definitions are used in the forms and these instructions:

"copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform, or in the case of a lecture, to deliver, the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole rights as set out in the Copyright Act. Illustrative but not inclusive of these rights are the rights to convert a novel or other artistic work into a dramatic work by way of performance, to communicate to the public and so on.

"Source" means the party providing the Property to the Museum.

"moral rights" means that definition provided in the Copyright Act, which is generally summarized as being the right to the integrity of the work and, in connection with an act mentioned in section 3 of the Act, the right where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous. Moral rights are held by the author, and may only be waived and not assigned.

"Museum" means the museum receiving the Property.

"Property" means the specific items being taken into temporary custody.
4 Procedure To Complete the Form

4.1 Source’s Identity
The Source must be a legal entity: a competent person of legal age or a statutorily created body (e.g., a corporation, institution, society, association). Even though you may know the Source personally it is sound practice to ask for and record the person's identification.

4.2 Source is an Institution, Corporation or Other Legal Entity
Where the Source is not a person, its authorized representative must represent the legal entity that is providing the Property into temporary custody.

It is advisable to have a check performed to ensure the identity of the representative, and that the authority to give the Property into temporary custody has been granted (e.g., through a Directors’ Resolution). This should be provided to the Museum. The potential impact of improper authorization increases with the value or sensitivity of the loan. Note that while this seems an additional step that adds to the timeline before the Museum can take possession of the Property, it is important as unauthorized acts could be taken simply by examining property.

4.3 Authorized Representatives: Source; Museum
See above re Source’s authorized representative.

The Museum must also have an authorized representative to accept the Property.

4.4 Source’s Role
The Source must provide as much information as possible (prior owners, collectors, history of the Property). The Source must read and understand all elements of the Agreement.

The Source must agree with the Description of Property. If the Museum has completed this for the Source, the Source should initial the description as set down.

4.5 Numbering Property For Convenience
The form does not number the Property elements – this should be done to index and keep clear in the event of partial return or future inquiries.

4.6 Where Property Lists Too Long
If further room is needed to describe the Property, attach a new page and number as a part of the Agreement, and indicate under the "Description of the Property" at page one, the phrase "continued on pages ___ to ___, attached to and forming a part of this Agreement".
**4.7 Do Not Leave Blank Spaces…**
If there is a large blank, draw a horizontal line on top, a diagonal line from one end of it down to the bottom of the blank space, and then another horizontal line (making a “z”). Both the Museum and the Source must initial it. Alternately but not preferred, you can write "VOID" in large block letters through the white space. Again, both the Museum and the Source must initial it.

If there is a small blank – do not sign the form. Go back and fill in the blank.

**4.8 Changes**
If changes are made by hand written notes, both parties must initial each change.

**4.9 Page Numbering**
The pages of the form are to be kept together. If the last page is not used, mark it as blank as explained elsewhere.

**4.10 A Copy To the Source**
The Source should have an original copy of the signed Agreement, as should the Museum. Each must be should be an original signed copy. No photocopying of the signed forms should be done for the purpose providing a permanent record to either the Museum or the Source.

**5 Things To Be Considered**

**5.1 Legal Opinion … If In Doubt About…**
If you are not sure of the Source’s identity or authority, or if questions occur regarding conditions suggested or title to the Property, or any other question – call your legal advisor first before you sign.
TEMPORARY CUSTODY AGREEMENT

I, ___________{ Source's Name}_________________, of ________________
____{Source's Address}_____________, telephone number _____________
(the “Source”) am the legal and rightful owner of the property described below
(the “Property”). I have full power and authority to enter into this Agreement.

Description of the Property

________________________________________________________________
________________________________________________________________
________________________________________________________________

The Source acquired the Property on or about _____{date of acquisition}_____ by way of _________{How property acquired} _________.

The Source wishes to leave the Property with the _____{name of Museum}________ (the “Museum”) for the purpose of (place an "x" in the appropriate box, marking one box only) (the "Purpose"): 

☐ consideration for acquisition by the Museum (offers are subject to Museum review prior to acceptance).

☐ Identification.

☐ other (specify) ____________________________

The Source understands and agrees that the Museum is not responsible for loss, damage or theft of the Property unless due to the negligence of the Museum, its agents or employees. Property left will be considered abandoned if the Property has not been picked up by the Source within 90 days of the Date of Deposit written below. The Museum may after that date keep or dispose of the Property at its sole discretion and without any liability to the Source.

The Source warrants that it is the legal and rightful owner of the Property and has the full power and authority to enter into this Agreement.

The Source represents that the Source is the owner of all copyright interests, including moral rights, in the Property; or, the Source represents that to the best of their knowledge and belief that the owner of the copyright interest and moral rights in the Property is: ____________________________.
The Source warrants that the Source has complied with all laws of the Province of Alberta and Canada. The Source agrees that the Source shall indemnify and save harmless the Museum, its agents and employees against any charge, cost, claim, demand or expense related to or arising from the Source’s failure to observe the requirements of any provincial or federal laws or regulations.

________________________   _______________________
Signature of Source             Date of Deposit

Name of Source [Please print]

The Museum hereby accepts receipt of the Property for the Purpose and upon the terms and conditions described herein.

{name of the Museum}

Per: ______________________
{authorized representative}

Name [please print]

Title

RETURN INFORMATION:

I, ____________________, hereby acknowledge receipt of the Property and hereby release the Museum from any and all claims related to the Property.

_____________________
Date Returned to Source

Signature of Source

Other Information
Please provide other information (name, address, telephone numbers, history) that may be useful to the Museum:

Prior owners: _______________________________________________________
Collectors: _________________________________________________________
History of Property: _________________________________________________
_________________________________________________________________
INSTRUCTIONS FOR COMPLETION OF:
OUTGOING LOAN AGREEMENT

1 When to Use
The Borrower wants to borrow the Property from the Museum (called the Lender in the form) for a specific purpose and for a set period of time.

If the Lender is planning to loan the Property for a long period of time, the Lender should only agree after careful consideration and a full discussion by the directors and collections staff of the advantages and disadvantages of having the Property on long term loan (greater than one year). In these cases, an additional clause must be built into the agreement "The provisions of this Loan Agreement shall be reviewed by the Lender on an annual basis and is subject to termination by the Lender at its discretion upon such review."

2 Legal Caution
The standard forms of Agreement have been prepared to account for normal circumstances that a Lender may encounter. Where items of large value are being considered or where unusual circumstances exist, it is recommended that legal advice be given prior to the finalization of the Agreement with the Borrower. Specific issues of insurance, moral rights, and copyright ownership are but three areas that can give difficulty. This instruction paper is not a substitute for legal advice.

3 Definitions
The following definitions are used in the forms and these instructions:

"copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform, or in the case of a lecture, to deliver, the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole rights as set out in the Copyright Act. Illustrative but not inclusive of these rights are the rights to convert a novel or other artistic work into a dramatic work by way of performance, to communicate to the public and so on.

"Borrower" means the party receiving the Property.

"moral rights" means that definition provided in the Copyright Act, which is generally summarized as being the right to the integrity of the work and, in connection with an act mentioned in section 3 of the Act, the right where reasonable in the circumstances, to be associated with the work as its author by
name or under a pseudonym and the right to remain anonymous. Moral rights are held by the author, and may only be waived and not assigned.

"Lender" means the museum loaning the Property.

"Property" means the specific items being loaned.

4 Procedure to Complete the Form

4.1 Borrower's Identity
The Borrower must be a legal entity: a competent person of legal age or a statutorily created body e.g. a corporation, institution, society, association. Even though you may know the Borrower personally it is sound practice to ask for and record the person's identification.

4.2 Borrower is an Institution, Corporation or Other Legal Entity
Where the Borrower is not a person, its authorized representative must represent the legal entity that is receiving the loan.

It is advisable to have a check performed to ensure the identity of the representative, and that the authority to receive the loan has been granted (e.g., through a Directors’ Resolution). This should be provided to the Lender. The potential impact of improper authorization increases with the value or sensitivity of the loan.

4.3 Authorized Representatives: Borrower; Lender
See above re Borrower's authorized representative.

The Lender must also have an authorized representative to grant the loan. This increases in importance when considering the cost of handling loans, and accepting loans with conditions.

4.4 Borrower's Role
The Borrower must read and understand all elements of the Agreement.

The Borrower must specifically agree with the Description of the Property and the Purpose for which the Property is to be used. Further, the Borrower must agree and sign the Condition Report attached to the Agreement (see below).

4.5 Condition Report - Attachment "A"
The Condition Report must be completed before giving up custody to the Borrower.
4.6 **Numbering Property For Convenience**  
The form does not number the Property elements – this should be done to index and keep clear in the event of partial return or future inquiries.

4.7 **Do not Leave Blank Spaces…**  
If there is a large blank, draw a horizontal line on top, a diagonal line from one end of it down to the bottom of the blank space, and then another horizontal line (making a “z”). Both the Lender and the Lender must initial it. Alternately but not preferred, you can write “VOID” in large block letters through the white space. Again, both the Lender and the Borrower must initial it.

If there is a small blank – do not sign the form. Go back and fill in the blank.

4.8 **Changes**  
If changes are made by hand written notes, both parties must initial each change.

4.9 **Page Numbering**  
The pages of the form are to be kept together. If the last page is not used, mark it as blank as explained elsewhere.

4.10 **A Copy To the Borrower**  
The Borrower should have an original copy of the signed Agreement, as should the Lender. Each must be should be an original signed copy. No photocopying of the signed forms should be done for the purpose providing a permanent record to either the Lender or the Borrower.

4.11 **Witnesses: Borrower; Lender**  
A competent person of legal age should witness signatures of the Borrower and Lender representatives. The same witness does not need to be used by both parties. The Witness must be present to witness the signatures being placed on the Agreement.

5 **Things to be Considered**

5.1 **Legal Opinion … If In Doubt About…**  
If you are not sure of the Borrower’s identity or authority, or if questions occur regarding conditions suggested or title to the Property, or any other question – call your legal advisor first before you sign.

5.2 **Where Both Parties Have forms**  
When both the Lender and the other party have standard loan agreements, they can each sign each other’s forms. In the event of a controversy over which form to use, the Lender’s form normally controls, however, it should be clearly stated
which form overrides the other in the case of conflicting loan terms. All special requirements or charges must be approved by the Borrower before the Lender begins to prepare the loan. The Borrower must decide if the Lender's special requirements can be met, both physically and financially. Further negotiations between museums may be necessary.
OUTGOING LOAN AGREEMENT

I, _____________________________________________________________,

{Borrower’s Name}

of _____________________________________________________________

{Borrower’s Address}

(the “Borrower”) request permission to borrow from the _________________ (the

“Lender”), the Property for the Purpose as set out below.

NOW THEREFORE WITNESSETH THAT for these premises and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree to the following terms and conditions:

1. The Property is that which is described in the Condition Report attached to and forming a part of this Agreement as Attachment "A" and which is further described below:

DESCRIPTION OF PROPERTY

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

________________________________________________________________

2. The Borrower agrees that the Property shall be used solely for the purpose of

________________________________________________________________

(the "Purpose").

3. The Borrower agrees that the Property shall be returned to the Lender in the same condition as existed when it was borrowed, and agrees that this condition is that which is described in the Condition Report attached hereto as Attachment "A". The Borrower agrees that the Lender shall at its sole discretion determine the condition of the Property upon return of the Property by the Borrower.

4. The Lender shall in its sole discretion establish the insurable value of the Property. The Borrower agrees that the total insurable value of the Property is __________ Canadian dollars ($_______00). The Property shall be insured at the [initial either (a) or (b)] (a) ___ Borrower’s expense or (b) ___ the Lender’s expense for no less than the total insurable value for the entire period of the loan and until such time as the Property is returned to the care and control of the Lender under an all-risk wall-to-wall policy subject to the following standard exclusions: wear and tear, insects, vermin, gradual deterioration or inherent vice; repairing, restoration or retouching processes; hostile or warlike action, insurrection or rebellion; nuclear reaction, nuclear radiation or radioactive contamination. The Lender shall determine whether the Borrower insures the Property or whether the Lender insures them and bills the Borrower for the premium. If the Borrower is insuring the Property, the Lender must be furnished with a certificate of insurance or a copy of the policy made out in favor of

This form should be used in conjunction with appropriate legal advice. Please refer to Instructions on Use.
the Lender prior to shipment of the loan. The Lender must be notified in writing at least 30 days prior to any cancellation or meaningful change in the Borrower's policy. Any lapses in coverage, any failure to secure insurance and/or inaction by the Lender will not release the Borrower from liability for loss or damage.

5. The Borrower shall keep and protect the Property fully from theft, damage, destruction, or alteration howsoever caused for the entire period of the loan and until such time as the Property is returned to the care and control of the Lender.

6. The Borrower shall not glue, pin, punch, drill, tape, nail, tack or otherwise violate the integrity of the Property. The Borrower shall not clean, repair or otherwise alter the Property, but shall immediately report the need for such action to the Lender. The Lender may, at its sole discretion, provide written authorization for the Borrower to perform such cleaning or treatments as may be specified by the Lender.

7. The Borrower agrees that all packing and shipping shall be the sole responsibility of the Borrower. The Borrower further agrees that all shipping, handling, storage and display of the Property shall be in strict accordance with the Lender’s standards as shall be specified by the Lender from time to time.

8. The Borrower shall at all times ensure that attribution is provided to the Lender as the source of the Property when it is placed on display, further providing acknowledgement of authors and photographers as applicable, using the following credit line____________________________________

___________________________________________________________

9. The Borrower acknowledges and agrees that all rights and title to the Property, including but not limited to copyright, remain with the Lender, and that the Borrower shall not copy or cause to have copied the Property in whole or in part without the prior written consent by the Lender.

10. This Agreement shall be terminated immediately upon the breach of any condition of the Agreement by the Borrower. The Lender may otherwise terminate the Agreement without cause on providing one month’s written notice to the Borrower.

11. The Borrower agrees that the Property shall be displayed or retained at only the following location(s): ________________________________

12. The Borrower shall return the Property to the Lender on or before ________________.
13. The Borrower warrants that the Borrower will comply with all laws of the Province of Alberta and Canada. The Borrower agrees that the Borrower shall indemnify and save harmless the Lender, its agents and employees against any charge, cost, claim, demand or expense related to or arising from the Borrower's failure to observe the requirements of any provincial or federal laws or regulations or from any action in connection with the performance of this Agreement by the Borrower.

IN WITNESS WHEREOF, the Borrower executes this Agreement in the ________, Province of Alberta effective the _____ day of ________, 2____.

Signed in the presence of:

__________________________________________  __________________________
Signature of Borrower  Per:  [authorized representative]
[where Borrower is an institution, corporation or other legal entity, signature must be by its authorized representative.]

__________________________________________  __________________________
Signature of Borrower’s Witness  Name of Witness  [Please print]

__________________________________________  __________________________
Name  [Please print]  Address of Witness

Title [if representing an institution, corporation or other legal entity]  __________________________
Name of Witness  [Please print]

The Lender hereby agrees to the loan of the Property upon the conditions listed above.

THE LENDER

Per:  __________________________
[authorized representative]

Name  [Please print]  __________________________
Title:  __________________________

Date:  __________________________
Witness for Lender:

Signature of Lender Witness

__________________________________________  __________________________
Name of Lender Witness  Name of Lender Witness [Please print]

Property Returned:  __________________________

Received by:  __________________________

This form should be used in conjunction with appropriate legal advice. Please refer to Instructions on Use.
ATTACHMENT "A" -- Condition Report
INSTRUCTIONS FOR COMPLETION OF:
AGREEMENT AND CERTIFICATE OF INCOMING LOAN

1 When to Use
The Lender wants to loan the Property to the Museum for a specific purpose and for a set period of time.

Lenders should be encouraged to make the Loan without additional conditions, and should not be encouraged to put forward conditions as these greatly increase administrative and operating costs and complexity. The loan period should typically be no greater than one year - a longer period should perhaps give rise to having the Lender consider making an unconditional gift of the Property.

If additional conditions are demanded by the Lender, a separate attachment (“Attachment B”) listing each condition, signed and dated by both parties and marked with the Batch Number must be attached to the Loan Agreement. The statement “This Agreement is subject to the conditions attached hereto as Attachment B.” should be added in the Agreement, and initialed by both parties.

Note: before accepting Property on loan, the Property will likely need to be evaluated. In that event, a Temporary Custody Agreement form should be used to ensure the management of legal rights and liabilities.

If the Lender is planning to loan the Property for a long period of time, the Museum should only agree after careful consideration and a full discussion by the directors, collections staff of the advantages and disadvantages of having the Property on long term loan (greater than one year). Sometimes long-term loans are attempts to have free storage and preservation. In these cases, an additional clause must be built into the agreement "The provisions of this Loan Agreement shall be reviewed by the Museum on an annual basis and is subject to termination by the Museum at its discretion upon such review."

2 Legal Caution
The standard forms of Agreement have been prepared to account for normal circumstances that a Museum may encounter. Where items of large value are being considered, where unusual circumstances exist, or where the Museum has a desire to make substantial use of the items, for example by way of copying or merchandising the items, where preservation steps may need to be taken, it is recommended that legal advice be given prior to the finalization of the Agreement with the Lender. Specific issues of insurance, moral rights, and copyright ownership are but three areas that can give difficulty. This instruction paper is not a substitute for legal advice.
3 Other Possible Forms to Consider

3.1 Agreement and Certificate of Gift - Unconditional
If the Lender wants to give the Museum the Property eventually, it may be preferable for estate planning and taxation to make a gift while the Lender is still alive. The Lender should seek specific taxation advice, as this is not a matter for the Museum to determine.

4 Definitions
The following definitions are used in the forms and these instructions:

"copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform, or in the case of a lecture, to deliver, the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole rights as set out in the Copyright Act. Illustrative but not inclusive of these rights are the rights to convert a novel or other artistic work into a dramatic work by way of performance, to communicate to the public and so on.

"Lender" means the party making the loan.

"moral rights" means that definition provided in the Copyright Act which is generally summarized as being the right to the integrity of the work and, in connection with an act mentioned in section 3 of the Act, the right where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous. Moral rights are held by the author, and may only be waived and not assigned.

"Museum" means the museum receiving the Property.

"Property" means the specific items being loaned.

5 Procedure to Complete the Form

5.1 Lender’s Identity
The Lender must be a legal entity: a competent person of legal age or a statutorily created body (e.g., a corporation, institution, society, association). Even though you may know the Lender personally it is sound practice to ask for and record the person's identification.

5.2 Lender is an Institution, Corporation or Other Legal Entity
Where the Lender is not a person, its authorized representative must represent the legal entity that is making the loan.

It is advisable to have a check performed to ensure the identity of the representative, and that the authority to give the loan has been granted e.g. through a Directors’ Resolution. This should be provided to the Museum.
potential impact of improper authorization increases with the value or sensitivity of the loan.

5.3 Authorized Representatives: Lender; Museum
See above re Lender’s authorized representative.

The Museum must also have an authorized representative to accept the loan. In the event that an unauthorized person accepted the loan the Lender could claim that the loan was never accepted and request the Property back. Unlikely, but… This increases in importance when considering the cost of handling loans, and accepting loans with conditions.

5.4 Lender’s Role
The Lender must complete the History of Property (description of the Property’s past, importance, events and so on), although the Museum can provide assistance in putting down what the Lender tells them to put down.

The Lender must read and understand all elements of the Agreement.

The Lender must specifically agree with the Description of Property. If the Museum has completed this for the Lender, the Lender should initial the description as set down.

5.5 Condition Report - Attachment "A"
The Condition Report must be completed before accepting custody. If not able to do immediately, use the Temporary Custody Agreement to take possession of the Property, and then complete the Condition Report and the Incoming Loan Agreement. Never take and hold property without the appropriate legal agreement being in place.

5.6 Numbering Property for Convenience
The form does not number the Property elements – this should be done to index and keep clear in the event of partial return or future inquiries.

5.7 Where Property Lists or History of Property are Too Long
Page 5 of the form allows for further descriptions of Property and History. Ensure the Lender and Museum signs off on this page. If further room is needed, attach as Pages 6 and on, having both parties initial each page, and write on Page 5 “continued on pages 6 to __, attached to and forming a part of this Agreement”.

Note: when there are a large number of items being loaned, it may be unreasonable to try to make a complete inventory immediately. Therefore, rather than using these loan forms at this time, use the Temporary Custody Agreement form. Once a full inventory is taken, and the items to be accepted are identified, then the appropriate loan form may be completed. Never take and hold property without the appropriate legal agreement being in place.
5.8 Do Not Leave Blank Spaces…
If there is a large blank (e.g., no history description), draw a horizontal line on top, a diagonal line from one end of it down to the bottom of the blank space, and then another horizontal line (making a “z”). Both the Museum and the Lender must initial it. Alternately but not preferred, you can write "VOID" in large block letters through the white space. Again, both the Museum and the Lender must initial it.

If there is a small blank (e.g., did not complete the agreement to public acknowledgement) – don’t sign the form. Go back and fill in the blank.

5.9 Changes
If changes are made by hand written notes, both parties must initial each change.

5.10 Page Numbering
The pages of the form are to be kept together. If the last page is not used, mark it as blank as explained elsewhere.

5.11 A Copy to the Lender
The Lender should have an original copy of the signed Agreement, as should the Museum. Each must be should be an original signed copy. No photocopying of the signed forms should be done for the purpose providing a permanent record to either the Museum or the Lender.

5.12 Witnesses: Lender; Museum
A competent person of legal age should witness signatures of the Lender and Museum representatives. The same witness does not need to be used by both parties. The Witness must be present to witness the signatures being placed on the Agreement.

6 Things to Be Considered

6.1 Legal Opinion … If In Doubt About…
If you are not sure of the Lender’s identity or authority, or if questions occur regarding conditions suggested or title to the Property, or any other question – call your legal advisor first before you sign.

6.2 Tax Receipts
The form does not provide for tax receipts, as these are not available for loans.

6.3 Moral Rights and Copyright
Many of the items being loaned will be subject to copyright and moral rights, dependent upon their subject matter and age. This instruction form is not intended to define all aspects of these important areas of law. However it is important to note that the loan Agreements require the copyright owner to assign the copyrights in the loan to the Museum, and to waive moral rights in favour of the museum. The Lender should be questioned by the Museum to ensure that the Lender owns the copyright and is in a position to grant a temporary
assignment or right to use to the Museum. Similarly, the Lender should be questioned to determine if the Lender has the moral rights in the Property, and if not who does have that right i.e. the original author assuming no waiver has occurred along the way. This latter point would be important were the Museum to ever infringe the integrity right or paternity rights of the author.

All of the foregoin is not relevant if the copyright or moral right has expired through the passage of time (as a general rule, 50 years after the death of the author, although important exceptions exist as well).

Where the Museum is doubtful that the Lender has full copyright ownership, or that there may be a moral right at issue given the use intended by the Museum for the loan, legal advice should be sought before accepting the loan.

The foregoing are illustrative only and are included as cautions to the Museum: only accept what you can reasonably verify can be granted by the Lender. If in doubt, get specific advice.

6.4 Return of Property within Set Time Period
Use a "Temporary Custody Agreement" form to receive for evaluation or review items being offered as a loan. Only after the Museum has decided to accept the loan should the appropriate loan form be used.

6.5 Where Both Parties Have forms
When both the Museum and the other party have standard loan agreements, they can each sign each other’s forms. In the event of a controversy over which form to use, the lender's form normally controls, however, it should be clearly stated which form overrides the other in the case of conflicting loan terms. All special requirements or charges must be approved by the borrower before the lender begins to prepare the loan. The borrower must decide if the lender's special requirements can be met, both physically and financially. Further negotiations between museums may be necessary.
AGREEMENT AND CERTIFICATE OF INCOMING LOAN

I, _____________________________________________________________,
{Lender’s Name} [Please print]
of _____________________________________________________________
{Lender’s Address} [Please print]
(the “Lender”) am the legal and rightful owner of the property described below (the “Property”). I have full power and authority to enter into this Agreement.

DESCRIPTION OF PROPERTY

________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

(continued, if required, on Page 5 attached to and forming a part of this Loan.)

Whereas the Lender desires to further the purposes and objectives of the ___________________________________________ (the “Museum”),

NOW THEREFORE WITNESSETH THAT for these premises and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree that the Lender does hereby lend the Property to the Museum for the period from _____________ to _____________ (the “Loan Period”) upon the following terms and conditions:

1. The Property shall remain the property of the Lender.

2. The Museum agrees that the Property shall be used solely for the purpose of ___________________________________________________________

3. The Lender represents that the Lender is the owner of all copyright interests, including moral rights, in the Property; or, the Lender represents that to the best of their knowledge and belief that the owner of the copyright interest and moral rights in the Property is: ____________________________________________.

4. The Lender may withdraw any part of the Property for a specific length of time to be agreed to at the time of withdrawal by both parties.

5. The Lender and the Museum both agree and accept that the condition of the Property is as set out in the Condition Report attached to and forming a part of this Agreement as Attachment “A”.

6. This Agreement may be terminated by either party on providing one month’s written notice to the other party.

This form should be used in conjunction with appropriate legal advice. Please refer to Instructions on Use.
7. The Lender agrees that the total insurable value of the Property is __________ Canadian dollars ($_____.00). The Property shall be insured at the [initial either (a) or (b)] (a) ___ Museum's expense or (b) ___ the Lender's expense for no less than the total insurable value for the entire period of the loan and until such time as the Property is returned to the care and control of the Lender under an all-risk wall-to-wall policy subject to the following standard exclusions: wear and tear, insects, vermin, gradual deterioration or inherent vice; repairing, restoration or retouching processes; hostile or warlike action, insurrection or rebellion; nuclear reaction, nuclear radiation or radioactive contamination. The Museum shall determine whether the Museum insures the Property or whether the Lender insures them and bills the Museum for the premium. If the Lender is insuring the Property, the Museum must be furnished with a certificate of insurance or a copy of the policy made out in favour of the Museum prior to shipment of the loan. The Museum must be notified in writing at least 30 days prior to any cancellation or meaningful change in the Lender's policy. Any lapses in coverage, any failure to secure insurance and/or inaction by the Museum will not release the Museum from liability for loss or damage.

8. The Lender is responsible for transit costs and for damage or loss to the Property to and from the Museum unless otherwise agreed by the Museum.

9. The Museum shall have the right to make photographs or otherwise copy the Property for publication, educational or publicity purposes connected with the purpose of the Loan. The Museum shall credit the Lender as per the credit line determined by the Lender and as set out as follows: _______________________________. Any copy of the Property made under this Agreement is the property of the Museum.

10. The Museum accepts the Loan under the conditions specified herein. The Museum will observe the same standard of care for the Property lent under this Agreement as applied by the Museum to any other Property of a like kind in the Museum's care and control. The Museum shall not incur any liability or responsibility in the event of the loss or destruction or damage of any of the Property, no matter how caused.

11. The Lender acknowledges that under no circumstances shall the Museum be liable for damage, loss or theft arising from but not limited to the following:
   a) Lender's failure to adequately prepare the Property for safe installation;
   b) Lender's actions or actions at the direction of the Lender during installation or dismounting;
   c) Lender's instruction to display fragile objects without protection by glass or other means; or,
   d) transit to or from the Lender.

12. The Museum shall advise the Lender without undue delay of any damage, loss or theft. In the event of damage or loss during transit to the Museum, the Museum shall retain all packing and related materials for view by the Lender.

13. The Museum shall not clean, alter or repair the Property without the prior written consent of the Lender.
14. The Lender has completed the History of Property section of this Agreement set out below. The Lender represents that the history provided is true and accurate to the best of Lender's knowledge and belief.

**HISTORY OF PROPERTY**

(continued, if required, on Page 5 attached to and forming a part of this Loan.)

15. The Lender warrants that the Lender has complied with all laws of the Province of Alberta and Canada and applicable international conventions and treaties in relation to the Property.

16. The Lender agrees that the Lender shall indemnify and save harmless the Museum, its agents and employees against any charge, cost, claim, demand or expense related to or arising from the Lender's failure to observe the requirements of any provincial or federal laws or regulations, or from any misrepresentation by the Lender pertaining to the history of the Property.

17. The Museum shall return the Property to the Lender within 60 days after the end of the Loan Period to the address specified herein unless otherwise notified by the Lender in writing. If the Museum is unable to return any items due to an improper address or the unavailability of the Lender, the Museum shall have no further liability for the Property 90 days after the end of the Loan Period, and this Agreement shall be terminated. The Lender acknowledges that the Museum may dispose of the Property in any manner it determines should such termination occur.
IN WITNESS WHEREOF, the Lender and the Museum execute this Agreement in ________________, Province of Alberta effective the _____ day of ________, 2____.

Signature of Lender
[where Lender is an institution, corporation or other legal entity, signature must be by its authorized representative.]

Signature of Lender’s Witness

Name [Please print] ______________________________________

Name of Witness [Please print] __________________________

Title [if representing an institution, corporation or other legal entity]

Address of Witness

THE MUSEUM

Per: ______________________________________

Date: __________________________

Title: ______________________________________

Witness for Museum: ______________________________________

Signature of Museum Witness

Name of Museum Witness [Please print] ______________________________________

This form should be used in conjunction with appropriate legal advice. Please refer to Instructions on Use.
DESCRIPTION OF PROPERTY (CONTINUED)

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

HISTORY OF PROPERTY (Continued)

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Lender or Lender’s Representative Signature __________________________________
Museum’s Representative Signature ________________________________________
ATTACHMENT "A" - Condition Report

[to be provided by AMA]
Attachment “A” CONDITION REPORT FOR LOANS

Accession Number: 

Object Name: 

Artist/Manufacturer: 

Dimensions (cm): 

Materials: 

Handling Requirements: 

Photo/Diagram: 

Exhibit Requirements: 

Shipping Requirements: 

Condition at Lender

Date: 

Condition examined by: 

Description (provide details or diagrams where necessary)

- cracks
- discolouration (darkening or fading)
- holes
- loose parts
- missing parts
- mould
- previous repairs
- dirt/soil
- tears
- tarnish
- other:

REPORT DAMAGE WITHIN 48 HOURS TO LENDING MUSEUM

Contact Name: 

Phone:
Condition at Borrower

Date: 
Condition examined by:

Description (provide details or diagrams where necessary):
- accretions (materials adhering to object)
- cracks
- discolouration (darkening or fading)
- holes
- loose parts
- missing parts
- mould
- previous repairs
- dirt/soil
- tears
- other:

Comments:

Condition Upon Return to Lender

Date: 
Condition examined by:

Description (provide details or diagrams where necessary):
- accretions (materials adhering to object)
- cracks
- discolouration (darkening or fading)
- holes
- loose parts
- missing parts
- mould
- previous repairs
- dirt/soil
- tears
- other:

Comments: