



## LOAN AGREEMENT

between

**Rijks Museum**  
Museumstraat 1  
Postbus 74888  
1070 DN Amsterdam

Represented by: **WMJ Pijbes : General Director**

(Hereafter known as the "Borrower")

and

**National Library of South Africa**  
5 Queen Victoria Street, Cape Town, 8001

Represented by: **Prof MD Rocky Ralebipi-Simela : National Librarian and CEO**

(Hereafter known as the "Lender")

### Of the following objects:

#### Description:

1. VOC contract– Purchase of the Cape, 1673, with signatures of the Khoi leaders.
2. Drawing– Khoi women & Dutch colonist, circa 1700
3. Drawing– Khoikhoi with cattle, circa 1700
4. Drawing– Khoi dancers and musical instruments, circa 1700
5. Drawing– Khoikhoi in a storm, circa 1700
6. Drawing– (Khoi) Harvesting scene, circa 1700
7. Drawing– Khoi groups, circa 1700
8. Drawing– (Khoi) Settlement in the East Indies, circa 1700
9. Drawing– Khoi women dancing, circa 1700
10. Drawing– (Khoi) White horsemen; lion hunt, circa 1700
11. Painting– Shipwreck of *De Vis* by Jurgen Leeuwenberg, 1740
12. Photographic Album – *WC Palgrave Album*, 1876
13. Photograph– Jan van Riebeeck festival, Cape Town 1952
14. Photograph – Reenactment landing Jan van Riebeeck

#### Reference:

G.13.b.45(4.2)  
ARB 6253  
ARB 6256v  
ARB 6261  
ARB 6255  
ARB 6259  
ARB 6260  
ARB 6262v  
ARB 8263  
ARB 6264v  
INIL 6598  
ALBX 5  
PHA 1968  
PHA 2088

**And is subject to the following conditions:**

## **TERMS AND CONDITIONS**

### **GENERAL**

1. National Library of South Africa (the Lender) has agreed, on the terms and conditions set out in this agreement, to make a short-term loan of the objects listed in *Appendix 1* ("the loan objects") to the Rijks Museum (the Borrower), for display at the exhibition called **Good Hope** at the Rijks Museum located at Museumstraat, Amsterdam, 1070 DN ("the premises").
2. The Borrower and its agents may not enter into any third party arrangements or agreements concerning the loan objects whatsoever without the prior written consent of the Lender.
3. The Lender will not charge any fees for the loan but shall receive at least six complementary copies of any catalogue and other printed material produced for the exhibition.

### **TERM AND TERMINATION**

4. The loan is for the fixed period from 28 January 2017 to 11 June 2017.
5. The fixed period includes time for transport, unpacking, acclimatization, installation, de-installation, repacking and return of the loan objects.
6. The loan will not be extended beyond the fixed term without prior written approval from the Lender.
7. If the Lender believes that the Borrower is not meeting the terms and conditions in this agreement, the Lender will immediately notify the Borrower in writing of its concerns and the Borrower will have 60 days to meet the concerns of the Lender. If the concerns of the Lender have not been reasonably resolved, the Lender reserves the right to withdraw the loan (and to cancel this agreement forthwith) at any time and for any reason.
8. Either Party may cancel this agreement in their option by notice in writing to the other party. The agreement will then be cancelled 15 days after the date of the notice of cancellation ("the notice"). Upon termination of the agreement, the Borrower will return the loan objects to the Lender forthwith and (notwithstanding the cancellation) comply with the relevant terms of this agreement. Outstanding debts (if any) will be settled within 30 days (of the date of the notice).

9. This agreement will automatically terminate if one of the parties is dissolved, wound up or re-organised.

## **COSTS**

10. All costs and expenses incurred by the Loan must be borne by the Borrower. This shall also include any fees applied by SAHRA, packaging, transportation, import or export permit fees, taxes and customs duties, or any costs related to recommendations made in the Condition Report.

## **SECURITY**

11. Security arrangements for transit, storage, preparation and exhibition shall wherever possible be discussed and agreed by the parties in advance but shall remain at all times the responsibility of the Borrower.

The Borrower will be responsible for the security of the loan objects at all time while on the Borrower's premises, including during storage, unloading/loading, unpacking/repacking, installation/deinstallation and exhibition, and must take all appropriate and prudent measure to protect the loan objects and keep them secure while in their possession, at a minimum as they care for and secure objects of the same or similar nature of their own, or on loan from others, including without limitation precautionary measures against risks of fire, theft, accidents, disasters, ultraviolet and visible light, incorrect relative humidity and temperature, environmental overcrowding in the galleries, and the dangers resulting therefrom.

## **CARE AND PRESERVATION CONDITIONS**

12. The Borrower will extend to the loan objects at least the same standard of care as it does to comparable property of its own under its own collection policies and rules, including but not limited to satisfactory precautions to protect the loan objects from fire, theft, mishandling, dirt and insects, and extremes of light, temperature and humidity.
13. The Lender will provide Condition Reports, which will include stipulations with regards to G.13.b.45 and to INIL 6598. The Lender will communicate restoration steps taken.
14. Evidence of damage at the time of receipt or while in the Borrower's custody will be reported immediately to the Lender. It is understood that the loan objects, which in the Borrower's opinion show evidence of infestation, may be fumigated at the discretion of the Lender with prior written authorisation by the Lender. However, if the Lender takes longer than 24 hours

to respond to the request for approval for fumigation, the fumigation may proceed without permission of the Lender.

15. The loan objects may not be treated or modified in any way without the written permission of the Lender.
16. The Borrower may examine the loan objects by all modern scientific and non-destructive methods. Information gathered on the loan objects will also be shared with the Lender.

## **CALAMITIES**

17. In the event of any calamity, damage to the loan objects, or any breach of security at the storage or exhibition areas, the Borrower shall inform the CEO/National Librarian immediately, and send a detailed written report to the Lender within 48 hours.
18. The Borrower agrees to comply with all reasonable directions of the Lender in respect of the loan objects after a calamity event has occurred.

## **INSURANCE**

19. Insurance arrangements during transit and exhibition are the responsibility of the Borrower. Copies of insurance documentation must be received by the Lender before the loan objects leave the Lender's premises.
20. Valuations for insurance purposes will be provided by the Lender.
21. The loan objects will be insured for the amount specified herein under the Borrower's "all risk" wall-to-wall policy.
22. Insurance will be placed in the amount specified by the Lender herein which must reflect the fair market value. If the Lender fails to indicate an amount, the Borrower is hereby authorised by the Lender to set a value only for purposes of insurance for the period of the loan. The said value is not to be considered an appraisal. If the Borrower disagrees with the amount specified by the Lender, the Borrower may request that the Lender obtain an independent appraisal at the cost of the Borrower, or the Borrower may suggest an amount that it deems the fair market value.
23. If the Lender fails to indicate an amount or refuses to obtain an independent appraisal, the Borrower is hereby authorised by the Lender to set a value, any costs related to the valuation for Insurance purposes shall be borne by the Borrower.

24. The loan objects shall be insured by the Borrower in accordance with clauses 21 and 22 above. The Borrower shall not be responsible for any error or deficiency in information furnished by the Lender to the insurer.
25. It is the responsibility of the Lender to notify the Borrower of updated insurance valuations.
26. Provided all loan objects have been properly insured in accordance with this agreement, and there has been no material breach of the terms and conditions of this agreement, the Borrower's liability to the Lender for loss or damage shall at minimum be the amount payable by the insurers. Any recovery for depreciation or loss of value shall be calculated as a percentage of the insured value specified by the Lender.

## **INSPECTION**

27. Prior to packing, conservators approved by the Lender will prepare condition reports on all the loan objects.
28. On receipt of the loan objects, and at the end of the exhibition, a conservator appointed by the Borrower shall complete a condition report on each loan object and submit a copy to the National Library of South Africa.

## **ENVIRONMENT**

29. The Borrower must ensure that environmental/preservation conditions are strictly overserved.
- Relative humidity of  $53\% \pm 5\%$ .
  - Room temperature maintained at a constant  $20^{\circ}\text{C} \pm 2^{\circ}\text{C}$ .
  - Light levels in the exhibition should be less than 200 lux.
  - No direct sunlight, and particularly sensitive items should be displayed in artificially lit rooms with a limited light level of 50 lux.

## **PACKING, TRANSPORT, SHIPPING**

30. Suitable packing materials and methods for transit the responsibility of the Borrower.
31. The costs of packing, transport, shipping are the responsibility of the Borrower.

## **COURIERS**

32. Couriers appointed by the Borrower must accompany the objects during transit and installation/de-installation. Courier costs will be borne by the Borrower.

## **CUSTOMS**

33. Applicable laws and regulations will be adhered to in international shipments. Although the parties will liaise with each other, the Lender is responsible for ensuring compliance with South African import/export requirements, excluding any fees or taxes which are the sole responsibility of the Borrower, and the Borrower is responsible for ensuring compliance with the Netherlands import/export requirements.

### **34. In particular:**

(1) The Borrower shall:

- (i) arrange for customs inspection to take place on arrival at the exhibition venue if required. No loan object should be unpacked for examination at any point during the journey.
- (ii) prepare all necessary Dutch customs and import/export documentation.
- (iii) pay for any applicable Dutch import fees, taxes or duties, including VAT.

(2) The Lender shall manage all customs formalities and procedures, including if necessary liaison with SAHRA or any relevant heritage resource authority/officer, when the loan objects are exported out or imported to South Africa. However, the Borrower will be responsible for any applicable RSA import/export permit costs and customs taxes or duties, including VAT.

## **INTELLECTUAL PROPERTY RIGHTS, PHOTOGRAPHY AND REPRODUCTION**

35. The terms of this agreement are without prejudice to any Intellectual Property Rights ("IPR") subsisting in the loan objects, or any incidental photographs, sketches, drawings or any other similar works or materials.

36. Unless otherwise notified in writing by the Lender, and whilst this agreement is in force, the Borrower may photograph or reproduce the objects lent for educational, catalogue, publicity purposes, and other standard non-commercial museum purposes for use in print and electronic media.

37. It is understood that objects for display may be photographed by the general public during the exhibition.
38. Unless otherwise instructed in writing, the Borrower will give attribution credits to the Lender as specified on the face of this agreement, or as specified in image use agreements, in any publications. The Borrower may decide whether or not to use individual labels for the loan objects on display.
39. The Lender must always be acknowledged as the owner of the loan objects.  
As follows: National Library of South Africa.
40. No commercial merchandising is envisaged and will not be undertaken, unless agreed otherwise in writing.

### **CULTURAL PROPERTY LAW**

41. The Lender will apply for permission from the South African Heritage Resources Agency ("SAHRA") in terms of the National Heritage Resources Act (and from the South African Reserve Bank ("SARB") in terms of currency control regulations) for the temporary export of the objects. The decision to give the necessary permission, however, rests with these institutions and is not the responsibility of the Lender.
42. If permission to export is granted, the Lender will promptly notify the Borrower and provide the Borrower with a true copy of the documents. The Borrower will then comply with its responsibilities in terms of this agreement and undertakes to comply with (a) South African law for the protection of heritage objects, including any permit's terms and conditions, (b) any conditions imposed by the SARB and (c) the Netherland's laws for the protection of movable and/or cultural property, on loan or otherwise.

### **DISPUTE RESOLUTION**

43. Any dispute arising under this Agreement shall be governed by the law of South Africa and resolved in accordance with the procedures set out in the Dispute Resolution Clause ("DRC"). (Appendix 2).
44. Notwithstanding the terms of the DRC, the Party making a claim may instead elect to have the dispute resolved finally by way of litigation in the Small Claims Court ("the Court"), provided the amount claimed is within the Court's jurisdiction.

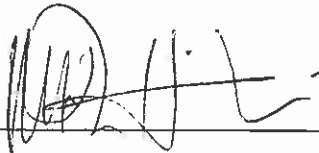
**MISCELLANEOUS**

45. This Agreement shall be binding on the above-mentioned Parties, their representatives, heirs and successors. This Agreement constitutes the entire understanding between the Parties.

46. Any modifications can only take place in writing and must be signed by both Parties. The waiver of one right is not a waiver of any other right.

Thus agreed to and signed at Cape Town on this 26<sup>th</sup> day of October 2016.

By Prof MD Rocky Ralebipi-Simela [Lender] for and on behalf of National Library of South Africa in her capacity as National Librarian and CEO.



Prof Rocky Ralebipi-Simela

Thus done and signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2016.

By Mr Wim Pijbes for and on behalf of the Rijks Museum in his capacity as General Director.

\_\_\_\_\_  
Mr Wim Pijbes



## APPENDIX 1

### List of loan material with insurance valuations

Object	Acc number	Valuation
VOC contract– Purchase of the Cape, 1673, with signatures of the Khoi leaders.	G.13.b.45(4.2)	ZAR 1.5 million
Drawing- Khoi women & Dutch colonist, circa 1700	ARB 6253	ZAR 200 0000
Drawing– Khoikhoi with cattle, circa 1700	ARB 6256	ZAR 200 0000
Drawing– Khoi dancers and musical instruments, circa 1700	ARB 6261	ZAR 200 0000
Drawing– Khoikhoi in a storm, circa 1700	ARB 6255	ZAR 200 0000
Drawing– (Khoi) Harvesting scene, circa 1700	ARB 6259	ZAR 200 0000
Drawing– Khoi groups, circa 1700	ARB 6260	ZAR 200 0000
Drawing– (Khoi) Settlement in the East Indies, circa 1700	ARB 6262	ZAR 200 0000
Drawing– Khoi women dancing, circa 1700	ARB 8263	ZAR 200 0000
Drawing– (Khoi) White horsemen; lion hunt, circa 1700	ARB 6264	ZAR 200 0000
Painting– Shipwreck of De Vis by Jurgen Leeuwenberg, 1740	INIL 6598	ZAR 1.2 million
Photographic Album – WC Palgrave Album, 1876	ALBX 5	ZAR 40 0000
Photograph– Jan van Riebeeck festival, Cape Town 1952	PHA 1968	ZAR 6 000
Photograph – Reenactment landing Jan van Riebeeck	PHA 2088	ZAR 6 000
<b>Total</b>		<b>ZAR 4.552 000 million</b>

## APPENDIX 2

### DISPUTE RESOLUTION CLAUSE (DRC)

In the event a dispute arises between National Library of South Africa and the Rijks Museum (the Parties), the Parties agree that their relevant professional staff will meet, either in person or through any available electronic means, to attempt to resolve the issue as promptly as possible. However, in the unlikely event that the Parties are unable to resolve the dispute through good faith discussion and negotiation, any disputes arising in connection with this agreement shall be governed by South African Law and shall be referred to arbitration in the English language in Cape Town for final (and unappealable) resolution, in accordance with the rules of the Arbitration Foundation of South Africa by an arbitrator or arbitrators appointed by the Foundation.