AGREEMENT ON THE VOLUNTARY DEPOSIT OF FILM IN PRESERVATION ARCHIVES

Between

1. X, (producer or legally authorized representative, such as distributor [precise status shall be defined at the elaboration stage of the agreement] having its registered office at

Represented by:

hereinafter “the Depositor”,

And:

2. The film archives having its registered office at

Represented by:

hereinafter “the Archives”

Preamble

On .... FIAPF and ACE signed a framework agreement on the arrangements for the voluntary deposit of film in archives.

Pursuant to that framework agreement, the present contract governs special conditions of the film material listed in Annex 1 at the Archive and the relations between the contracting parties with regard to this material.

Article I

Definitions

The following definitions are those agreed between FIAPF and ACE under the aforementioned framework agreement.

*The Depositor:* denotes the film producer, or the film producer’s legally authorized representative, who voluntarily makes and assumes the financial and technical responsibility of making a deposit in accordance with the provisions of this contract.

*Preservation Archives:* (also referred to as the Archives) denotes a public law or private non-profit-making body that is a member of the ACE and whose activities as stated by its Articles pursue general museum objectives from Conservation to access, and which is able properly to carry out the tasks of Preservation and Restoration while offering the necessary assurances of
respect for copyright.

*Deposited Film Material:* denotes all types of material on celluloid or digital media that have been deposited with the Preservation Archives under the terms of this contract.

*Non-Film Material:* denotes written or iconographic materials (photographs, posters, models, advertising materials, etc.) related to the production or distribution of a film.

*Deposited Material:* denotes the Deposited Film Material in addition to the Non-Film Material, if any.

*Cinematographic Works:* denotes the original work contained on the medium forming the Deposited Film Material.

*Archive Material:* denotes the only or, in the case of a multiple batch, the best quality material of a Cinematographic Work deposited by the Depositor.

*Preservation Material:* denotes new materials on celluloid or digital media produced by the Preservation Archives from the originally deposited material, in accordance with the rules herein defined for the purposes of long-term Preservation and access.

*Conservation:* denotes storage of celluloid or digital materials in technically appropriate conditions in accordance with the Preservation rules laid down by the International Federation of Film Archives, as regularly updated on its website.

*Preservation:* denotes the active preservation of Cinematographic Works, including its duplication for the purposes of long-time survival and access.

*Restoration:* denotes the reconstitution of a film existing only on damaged and/or incomplete media in order to produce a new version as close as possible to the original.

**Article II**

**Deposit and the parties’ obligations**

**1. Deposited Film Material**

The Depositor voluntarily deposits the material for storage and the Archives hereby accept the material or the films listed in Annex 1 to this contract.

Deposit is essentially considered as a reciprocal arrangement based on mutual interest, cooperation and responsibility.

**2. Non-Film Material**

The Depositor [has/has not] also submitted for storage Non-Film Material in connection with the Cinematographic Works concerned. Information on any material so deposited is provided in Annex 2.
3. Property

Deposited Material remains the full property of the Depositor, unless the annexes expressly stipulate that the property of Deposited Material be transferred to the Archives.

4. The Archives' obligations


The Archives undertake to conserve the Deposited Material in optimal conditions for the lifetime of the support media, so that it cannot be reproduced, loaned out, borrowed or communicated unlawfully, and to comply with the relevant storage conditions and general conservation standards set by FIAF and ACE.

(N.B.: it must be pointed out that since all celluloid film material consists of unstable chemical substances, and their lifespan depends not only on the storage conditions but also their original composition, laboratory processing and pre-storage handling, the Archives may undertake to delay the decomposition process but cannot be held responsible for inevitable chemical decomposition which may result in the total loss of the material.

Likewise, because digital material is too recent, it is impossible at this time to lay down with certainty rules that will ensure its stability and long-term survival. The Archives cannot be responsible for its deterioration if they have taken the steps compliant with prevailing professional technical standards to preserve it.)

4.2. Duty to collaborate with the Depositor

The Archives shall, at the request of the Depositor, provide access to the Deposited Material and to information thereon. The Archives shall not object to inspections by the Depositor to check on compliance with storage standards or handling and Preservation procedures requested by the Depositor in ownership of the material.

4.3. Cataloguing

The Archives shall list and catalogue Deposited Material such as to be able to locate them and provide instant information to the Depositor on their condition at any time.

Article III

Preservation / Restoration

1. Concept and definition of material

The Archives are authorized to carry out in particular additional Preservation and Restoration work in pursuit of their duties under Article II.4.1., in addition to properly conserving the Deposited Material.
This implies duplicating Deposited Material by making new prints or transfers in order to ensure the necessary survival and view-ability of the film concerned.

2. Initiative to carry out Restoration work

The initiative and choice of Preservation and/or Restoration work shall be taken jointly by the Archives and the Depositor.

However, the Archives may decide, if it deems necessary, to begin work at its own cost if its efforts to reach a consensus come to no conclusion or are impossible (for example if the right holder cannot be located despite efforts made by the Archives).

3. Possession of Preservation Material

The Preservation Material produced from Deposited Film Material for the purpose of safeguarding works will remain on deposit in the Archives.

Article IV
Access and use
1. Access reserved to the Depositor

1.1. Originally Deposited Material

The Depositor shall have permanent, unlimited access to all Deposited Material, in accordance with the arrangements and timeframes laid down in connection with this contract (Annex 3). The temporary withdrawal of the originally Deposited Material may be effected without payment of fee to enable the Depositor to carry out works or to screen the Deposited Film Material in particular for requirements of exploitation.

However where the Archive Material is concerned, the Producer shall have access to such material only for the purpose of long-term Preservation, and if need be, Restoration work. The works shall be carried out under the supervision of the Archive and must not in any way jeopardize the quality, state and integrity of said material.

1.2 New prints produced by the Archives

Where the Archives produce new material from Deposited Film Material in order to preserve works, access to it shall be provided for the Depositor to make new copies or transfers, subject to the works being carried out under the supervision of the Archives and does not in any way jeopardize the quality, state and integrity of the Preservation Material.

In addition, the Depositor shall pay the Archives reasonable financial compensation to cover the justified costs incurred to conserve and restore the work (which may, subject to the decision of the Depositor and the Archives, consists of a fixed refund or one pro-rata to the operating profits in particular).
The technical and financial arrangements for such use shall be defined jointly by the Depositor and the Archives, either in a decision forming Annex 4 to this contract or at a later stage.

2. Use by the Archives

Except for the restrictions laid down in point 1 or by the Depositor, the following uses may be granted in respect of the positive copies deposited with the Archives or to the Preservation Materials as referred in Article III.1.2. under the following conditions [parties should consider agreement on the following modalities]:

a) individual consultation for educational or research purposes in the premises of the Archives, on a table or screen or over an intranet on the Archives' premises;

b) remote access via the internet;

Such access shall be permitted only through the use of an appropriate personalized security procedure/mechanism. The Archive has a duty to identify each person authorized to consult who shall not be able to make copies of the works consulted.

c) public screenings;

The Archives may organize public screenings of Deposited Film Material in the Archive's film theatres (or those placed under their direct control) as identified in Annex 5 to this contract.

Where such screenings are without financial gain to the Archive and do not compete with or conflict with the normal exploitation of the film, they may be given without payment of royalties. If applicable, the Archives undertake to clear any other rights which cannot be cleared with the Depositor.

The Depositor may also set specific conditions for these screenings (such as limiting the number of screens), to be set out in Annex 5.

d) circulation amongst ACE members

(i) For the purpose of public screenings

Unless the Archives only hold a single copy of the Deposited Film Material, the material deposited with the Archives in accordance with the terms of this contract may be lent to other ACE members for public screening provided that they undertake to comply with the bilateral contract between the Archives and the Depositor concerning the Deposited Material.

The Archives must send the Depositor prior notification of all details of this lending arrangement. The Depositor may verify the conditions for the circulation of films lent to the other Archives.

(ii) For the purpose of Restoration
If the Archive has only one copy, it may not loan out the Deposited Film Material for Restoration purposes other than with the Depositor's consent.

In all other cases the Archives shall inform the Depositor of the loan for the purposes of Restoration and the conditions related thereto.

3. Permanent withdrawal of Deposited Material

a) The Depositor may permanently withdraw the Deposited Material subject to giving a reasonable period of advance notice of his intention to the Archives.

The Depositor shall reimburse the substantiated costs incurred for Conservation of the material, when requested by the Archives, in accordance with the following rate [to be defined by both parties]

b) If Deposited Material on which no Restoration or Preservation work has been carried out is permanently withdrawn, the Depositor shall authorize the Archives to create archive master material for the purposes of preserving the film heritage. No use shall be made of such master material unless approved by specific contractual agreement between the parties.

c) In order to permanently withdraw Archive Material, the Depositor must prove that the Archives failed to fulfill its obligations under this contract.

Article V

Miscellaneous

1. This contract shall enter into force on the date of its signature. However, the Depositor and the Archives who so wish may apply the arrangements herein to material deposited prior to this date, to be set out in Annex 6.

2. In the case of a dispute between a Depositor and an Archive, the parties shall submit their case to the courts of law in the country where the Archive has its registered office or to the Courts and tribunals of Brussels or Paris – as the complainant chooses. The parties may also refer a dispute to arbitration.

The parties may refer the case for arbitration to experts designated by the FIAPF and ACE respectively.

Done at .... on ...
In two originals, each of the parties acknowledging receipt of their copy.

The Preservation Archive               The Depositor
Annexes

1. List of Deposited Film Material.

2. (Where applicable) List of deposited Non-Film Material.

3. Arrangements and timeframes for access to material deposited with the Archives.

4. (Where applicable) Technical and financial arrangements for access for the Depositor to the Preservation Material produced by the Archives.

5. (Where applicable) Special conditions stipulated by the Depositor for screening held by the Archives.

6. (Where applicable) List of material deposited with the Archives prior to the date of this contract by the Depositor to which this contract shall also apply.