

AGREEMENT FOR THE CONSERVATION OF FILM MATERIAL

dated **DATE**

between

NEDERLANDS INSTITUUT VOOR

BEELD EN GELUID

and

NAME SUPPLIER

PARTIES

1 The foundation STICHTING NEDERLANDS INSTITUUT VOOR BEELD EN GELUID, having its registered office and principal place of business at de Sumatralaan 45, (1217 GP) Hilversum represented in this matter by E.J.F.B. van Huis, hereinafter referred to as “**Beeld en Geluid**”

and

2 **FILL IN**, having its (registered) office / residing in (and having its principal place of business) in **(postcode) TOWN**, at **(address)** (legally represented by **FILL IN**), hereinafter referred to as “**Supplier**”;

Hereinafter jointly referred to as: “Parties”

PREAMBLES

- I. Beeld en Geluid manages a large number of unique carriers with unique film and sound material of great cultural and historical value.
- II. Beeld en Geluid wishes to preserve that material by copying it onto new material.
- III. The exact quantity of material to be conserved is not yet known.
- IV. The material needs to be conserved before **DATE**.
- V. It is impossible to determine which economic damage Beeld en Geluid will suffer in case the unique material is lost due to errors of a Supplier in the conservation process. In order to avoid any disputes on this matter and to ensure strong involvement of the Supplier, the Supplier is willing to submit to a penalty regime.
- VI. The Parties wish that the Supplier conserves the material as instructed by Beeld en Geluid and under the conditions and in the manner set out in this agreement.

AGREEMENT

1. Definitions and appendices

(1) In this agreement the terms below shall mean the following if capitalized:

Specifications: the specifications of the open tender including the questions asked in the tender procedure and the answers to those questions and the conformity list as completed by the Supplier, which is attached as **appendix 1**.

Conservation: the total work to be carried out by the Supplier in respect of the material to be conserved, including but not limited to, the transport, collection, copying, return, documenting, and other operations on the part of the Supplier as set out in the Specifications or to be expected from such.

Working Method: the manner in which the Supplier carries out the Conservation as set out in **appendix 3**.

(2) The appendices form an integral part of this agreement.

(3) This agreement has the following appendices:

appendix 1 Specifications
appendix 2 Prices
appendix 3 Working Method

2. Subject

(1) Beeld en Geluid hereby gives instructions for the Conservation of the material as detailed in the Specifications. These instructions are accepted by the Supplier.

(2) The manner in which the Parties cooperate during the execution of the order is described in the Specifications, in this agreement and in the Working Method. All work undertaken by the Supplier pursuant to the Specifications and this agreement are at the risk of the Supplier.

(3) The Conservation may not, inter alia, lead to any loss in the quality of the material, such as the quality of the material's sound and images.

(4) The Supplier ensures that none of the original material diminishes in quality or is lost during the Conservation process unless the damage was inevitable due to the condition of the original material, and provided that the original material was handled in a careful manner.

(5) This agreement does not in any way restrict Beeld en Geluid in having third parties conserve visual and/or sound material, without prejudice to the obligations of Beeld en Geluid under this agreement.

3. Start of work and testing phase

- (1) The Supplier sets out the Working Method within two months after the contract has been awarded to Supplier.
- (2) After the Working Method has been set up, the Supplier shall test the Working Method by Conserving a number of films with and without magnetic sound (commag) to be determined and supplied by Beeld en Geluid.
- (3) In case Beeld en Geluid considers the result of this test or any other test included in this clause unsatisfactory, Beeld en Geluid shall, unless otherwise stipulated, be entitled to terminate this agreement. In that event the Supplier shall be liable for all costs Beeld en Geluid will have to make to find and select a new supplier.
- (4) Before Beeld en Geluid terminates this agreement, the Supplier will be given ten (10) working days to remedy the reasons for abovementioned test failure and to perform his obligations under the terms of the present agreement. In case the Supplier has made the necessary adjustments within time, the Parties shall retest in accordance with this article.
- (5) In case the results of the test referred to in the **previous paragraph** are still unsatisfactory, Beeld en Geluid is entitled, but not obliged, to enable the Supplier to make the necessary adjustments to the Working Method once again.
- (6) In case that the result of the tests satisfies the requirements under this agreement but Beeld en Geluid nevertheless desires additional adjustments to the Working Method, Beeld en Geluid may apply the procedure set out in **clause 5**.

4. Working Method

Collection and return

- (1) The Supplier shall arrange the transport regarding the collection and return of the material to be conserved at least once a month.
- (2) Beeld en Geluid shall determine whether the material to be conserved is suitable for Conservation.
- (3) If the Parties disagree as to whether or not the material that has been delivered or that is to be delivered is suitable for Conservation, the parties shall jointly appoint an independent expert third party who shall carry out a binding determination whether or not certain material is suitable to be conserved. If the Parties cannot agree on the identity of such third party, the sub-district court in Amsterdam shall be asked to appoint said third party. Supplier cannot dispute the suitability after the start of the conservation process.
- (4) The Supplier checks the supplied material upon collection thereof. The Supplier then signs for approval the document, drafted by Beeld en Geluid, that has been attached to this agreement as **appendix 4**. After signature of this document by the Supplier it shall be an established fact between Parties which material in which state has been delivered to the Supplier.
- (5) After Conservation, Beeld en Geluid checks the returned material. Beeld en Geluid informs the Supplier, in writing, which material has been received.

Checks

- (6) Notwithstanding the preceding clause, Beeld en Geluid shall check the work as carried out by the Supplier.
- (7) These checks are carried out inter alia on the basis of the material delivered by the Supplier to Beeld en Geluid.
- (8) Beeld en Geluid informs the Supplier, in writing, as soon as possible after it has received and assessed the conserved material, whether or not it provisionally accepts what has been supplied or whether it rejects it and, if so, the reason for said rejection. The Supplier acknowledges and accepts that the approval or rejection of the returned material, and the motivation for such, can take place (more than) several months after the return of the material. A provisional acceptance does not exclude that the Supplier can still be in default, e.g. in case it only becomes clear at a later date that the approved material does not comply with this agreement after all.
- (9) Beeld en Geluid shall always have access to the working spaces of the Supplier in order to determine whether the Supplier complies with this agreement.

Amount of work

- (10) In case that the minimum amount of 1,850 hours of conserved material, as guaranteed by Beeld en Geluid, is not achieved within three years, Beeld en Geluid shall compensate the Supplier for the loss actually suffered by the Supplier as a result of this. This loss will be determined as set out in **article 9(2)**.
- (11) If this agreement is extended in accordance with **article 8(3)**, the Parties shall come to an agreement on the number of hours to be conserved in that additional year. If the Parties are unable to reach an agreement, Beeld en Geluid is entitled to:
 1. either have the Supplier conserve the same quantity in that additional year as is determined in this agreement with regard to the previous year(s),
 2. or terminate this agreement.
- (12) Beeld en Geluid shall endeavour to supply the material to be conserved spread as evenly as possible over the year. Beeld en Geluid shall not be in default if, despite its endeavours, it does supply the material at irregular intervals. The Supplier will not be in default if, due to this, he does not perform in time.

Problems

- (13) The material supplied by Beeld en Geluid is, to Beeld en Geluid's best knowledge, likely to be comparable with the material Beeld en Geluid had conserved at an earlier date, as set out in the Specifications. However Beeld en Geluid cannot guarantee or warrant that the material to be conserved shall lead to a comparable percentage of faults. The material to be conserved might differ from the material previously conserved.
- (14) If this agreement refers to a percentage, Beeld en Geluid is entitled to determine by means of random check whether the relevant percentage is going to be achieved. Subject to proof to the contrary, the result of the random sample shall be considered full proof as to whether the relevant percentage is going to be achieved or not.

Traceability of the material during Conservation

- (16) The Supplier ensures that collected material to be conserved can be located within the hour on a name/unique number based search. The Supplier ensures that in case Beeld en Geluid requires the material it shall be available for transport to Beeld en Geluid within that same timeframe. This provision does not apply while the film is in the conservation process.

Key personnel

- (17) If the Supplier wants to, or has to, replace the employee who actually carries out the Conservation, the Supplier will inform Beeld en Geluid immediately.

5. Change management

- (1) The Supplier endeavours to improve the Working Method. The Supplier shall, in any case, do everything possible to implement the improvements already made to the Working Method.
- (2) Before the Supplier implements the improvements in the Working Method, he will notify Beeld en Geluid of the suggested improvements. In this notification the Supplier shall set out the consequences these improvements will have on the Working Method, the Specifications and this agreement (including the price). The Supplier shall only adjust the Working Method after prior written approval of Beeld en Geluid. Beeld en Geluid shall not unreasonably withhold or delay this approval.
- (3) If an improvement results in lower costs on the part of the Supplier, the Supplier shall lower his price by 80% of those saved costs.
- (4) If Beeld en Geluid wishes to change or supplement the Specifications, Beeld en Geluid shall inform the Supplier of such in writing. In such case, Beeld en Geluid shall set out its wishes in as much detail as possible.
- (5) Changes or supplements, which the Supplier should or could reasonably have foreseen, do not influence the price.
- (6) The Supplier can request further information should he need this in order to determine whether acceding to the wishes of Beeld en Geluid influences the price and, if so, to what extent. The Supplier responds to the notification of Beeld en Geluid within five working days after receipt thereof.
- (7) Within five working days after receipt of the further information, or if the Supplier does not require further information, within five working days after receipt of the first written notification by Beeld en Geluid, the Supplier will inform Beeld en Geluid whether there are any costs attached to the wishes of Beeld en Geluid and, if so, the Supplier shall specify these costs in as much detail as possible.
- (8) A higher price caused by the changes desired by Beeld en Geluid can only be based on actual and direct costs incurred by the Supplier, including the cost price for the hours of staff members and the long-term depreciation periods applied by the Supplier to the relevant goods, increased by a maximum of 15% for overhead and profit mark-up.

- (9) If Beeld en Geluid accepts the price in writing, this amends the Specifications and this new price will apply. If Beeld en Geluid does not accept the price, the Parties shall appoint a chartered accountant who shall determine the price within four weeks after his appointment in accordance with the preceding paragraph. Beeld en Geluid shall confirm, within a week of receipt of the price as determined by the chartered accountant, whether or not it accepts this price. Without such written acceptance of the price, there is no agreement under which Beeld en Geluid would be obliged to purchase the amended services.
- (10) The costs of the chartered accountant shall be on Beeld en Geluid's account, unless the accountant establishes that the original price as given by the Supplier had been more than 5% too high.
- (11) In the event that the Parties cannot reach an agreement on the identity of the chartered accountant, the sub-district court in Amsterdam shall, at the request of either Party, appoint a chartered accountant.
- (12) Beeld en Geluid is entitled, during the procedure set out in this clause, to suspend this agreement.
- (13) The preceding paragraphs of this clause do not relate to any of the changes and terminations as provided for elsewhere in this agreement.
- (14) After every agreed change (whether or not effected pursuant this clause) in the Working Method, Beeld en Geluid shall test the amended Working Method after it has been set out, before it is implemented. If the test result is negative and remains negative after repeated testing, the Supplier shall deliver in accordance with the original Working Method. In the event that it concerns an essential change, Beeld en Geluid is entitled to terminate this agreement without becoming liable for compensation. The Supplier will set out the new Working Method in such a way that, at the failing of the test, the immediate use of the original Working Method remains possible.

6. Penalty

- (1) If, due to an event on the side of the Supplier, all the information recorded on a film is lost or a qualitative or quantitative part of such, the Supplier forfeits to Beeld en Geluid an immediately payable penalty of €10,000 per lost film. A film is considered to be "lost" if the information recorded on it can no longer, or only with substantial loss of quality, be made visible and/or audible. The maximum penalty per occurrence is limited to €250,000.
This penalty does not affect the other rights of Beeld en Geluid, including
 - (a) the right of Beeld en Geluid to, in addition to this penalty, claim its full loss suffered or claim specific performance;
 - (b) the right of Beeld en Geluid to terminate this agreement.
- (2) No penalty is payable if the loss of the material or its content is caused by the inherent fragility of that material itself and if the Supplier acted with due care.

7. Guarantee

- (1) The Supplier guarantees that:
 - (a) his work is carried out to the highest standard applicable in the industry;

- (b) he has informed himself sufficiently in order to carry out the order of Beeld en Geluid;
- (c) he has and will keep, for the duration of the order sufficient personnel of an adequate standard which is able to carry out the Conservation on behalf of the Supplier;
- (d) the work shall be carried out with due care and with respect for the irreplaceable nature of the material to be copied;
- (e) there is no knowledge of circumstances which could result in the Supplier not being able to fulfil his obligations in particular:
 - (i) that the Supplier is financially sound;
 - (ii) that the Supplier is not in default of the performance of his obligations towards third parties (including the competent authorities);
 - (iii) that there is no danger of bankruptcy or a voluntary arrangement with creditors;
 - (iv) that there are no obligations towards third parties which necessitate the performance of his obligations.

8. Duration

- (1) This agreement has a term of four years.
- (2) This agreement terminates either by the expiry of the term referred to in **paragraph 1**, or, if such is earlier, by the completion of the order. Beeld en Geluid is entitled to wholly or partly terminate this agreement prematurely.
- (3) Beeld en Geluid is entitled to extend this agreement by a term of one year within three months before the expiry of the term referred to in **paragraph 1**, under the same conditions.
- (4) Those provisions of this agreement of which it is intended that they remain in force after the termination of this agreement will remain in force.

9. Early termination, downward contract variations

- (1) If Beeld en Geluid, without there being any default on the side of the Supplier or a situation as referred to in **paragraph 3 of this article**,
 - (a) terminates this agreement early, or;
 - (b) makes a change in the Specifications resulting in a part of the work being cancelled, or;
 - (c) does not perform its obligations (different from the obligations consisting of the payment of a sum of money);

it shall be liable for the Supplier's loss resulting from such.

- (2) The Supplier's loss in the cases referred to in the preceding paragraph are limited to actual and direct costs incurred by the Supplier to which the Supplier is contractually obliged, and to the depreciations of goods insofar as the Supplier is demonstrably unable, for the part of the cancelled capacity, to deploy those for other orders. The Supplier shall endeavour to limit his costs as much as possible. The Supplier shall, in particular, endeavour to terminate any possible contracts with third parties. Personnel costs and depreciations are, upon determination of the loss, taken into account at a maximum of two months and one year respectively following the date of termination of this agreement.

- (3) Beeld en Geluid is entitled to terminate this agreement without further notice of default and without becoming liable in any way whatsoever in the follow cases:
- (a) The Supplier files for bankruptcy;
 - (b) The Supplier is declared bankrupt;
 - (c) The Supplier applies for moratorium;
 - (d) The Supplier is granted a provisional moratorium or not;
 - (e) The Supplier's business is wound up;
 - (f) The Supplier sells or discontinues his current business;
 - (g) The Supplier can no longer fulfil his obligations.

10. Price

- (1) The calculation of the price for the work the Supplier will perform under this assignment is set out in **appendix 3**.
- (2) Apart from the price referred to in this appendix, Beeld en Geluid is not due any other (additional) payment.
- (3) The price will not be indexed.
- (4) The price is based on the conditions and starting points as set out in the Specifications and in this agreement. Beeld en Geluid guarantees the accuracy of the facts included in the Specifications in respect of the quality of the material to be conserved. The price does not change should more faults arise at the Supplier's.

11. Payment and invoicing

- (1) Beeld en Geluid shall pay 90% of the amount due after receipt of the newly conserved material. Beeld en Geluid shall pay on a monthly basis.
- (2) Beeld en Geluid shall pay the remaining 10% of the amount due annually within three months after the expiry of the relevant contractual year.
- (3) Beeld en Geluid shall pay on the basis of invoices. The payment term is 30 days.
- (4) The invoice needs to contain, at least, the information included in the Specifications and must be set out and sent in the manner as set out in the Specifications.
- (5) If the information referred to in the preceding paragraph is not (fully) provided, Beeld en Geluid is entitled to suspend payment of the total invoice, including that part which might have been specified properly.
- (6) In the event that Beeld en Geluid fails imputably in the payment of an invoice, the Supplier is only entitled to claim the specific payment and the statutory interest pursuant to article 6:119 of the Dutch Civil Code. The Supplier is therefore not entitled to suspend his obligations or apply a set-off against the obligations of Beeld en Geluid, nor is he entitled to exercise a right to retention.

12. Intellectual property

- (1) If in the course of the work carried out by the Supplier, any intellectual property right is created in respect of the material already conserved or to be conserved, this right accrues fully to Beeld en Geluid without any obligation to Beeld en Geluid to compensate the Supplier for those rights in any way.
- (2) To this end, the Supplier hereby transfers all his copyrights and other intellectual property rights created during the performance or the preparation of this agreement or which shall be created during such to Beeld en Geluid insofar as these rights relate to the conserved material or the material that is to be conserved. Insofar as this transfer relates to future rights, the transfer of right shall each time takes place at the time the relevant rights are created.
- (3) The Supplier shall cooperate on every occasion, promptly and without further payment, in any further action considered desirable by Beeld en Geluid to effect the transfer referred to in both preceding paragraphs (also “insofar required”). The Supplier hereby irrevocably authorises Beeld en Geluid to exclusively undertake such further actions in its name, and, in particular, to sign all deeds relating to such.
- (4) The transfer as referred to in this clause includes all rights and powers related to copyright. After the transfer, Beeld en Geluid occupies the position of the creator in the meaning of the Copyright Act, except insofar as any mandatory provision opposes the completeness of this transfer.

13. Ownership of goods

- (1) Beeld en Geluid is the owner of all the goods delivered to it under this agreement. All goods are delivered free from encumbrances.
- (2) Beeld en Geluid remains the owner of all material provided to the Supplier for Conservation. The Supplier cannot sell or encumber this material.

14. Provision of information

- (1) The Supplier provides the information included in the Specifications on a monthly basis within five days after the end of each month.
- (2) At the request of Beeld en Geluid, the Supplier provides such information as Beeld en Geluid considers useful.
- (3) In the event of inaccuracy of the information provided by the Supplier to Beeld en Geluid, the Supplier shall be fully liable for compensation towards Beeld en Geluid for the resulting loss suffered by Beeld en Geluid.

15. Risks of the work and indemnity

- (1) Beeld en Geluid has no knowledge of negative effects on public health which is created by the material supplied by Beeld en Geluid. It cannot be expected nor demanded that Beeld en Geluid has knowledge of such effects. The Supplier is responsible for the negative consequences of working with these materials and the gathering of knowledge on that.
- (2) The Supplier acknowledges that he has knowledge of the contagious nature of the “vinegar syndrome” for visual and audio material. The risk of damage to other materials lies with the Supplier.
- (3) The Supplier indemnifies Beeld en Geluid against all claims from third parties (including, but not limited to, his members of staff) relating to the performance of this agreement.

16. Project consultation

- (1) Every three months the Parties will have a meeting at the offices of Beeld en Geluid, unless otherwise agreed, to discuss the progress regarding the execution of this agreement.
- (2) Beeld en Geluid takes minutes of these meetings. The agreements recorded in the minutes are considered supplements to this agreement provided that they have been signed by an authorised representative of both Parties.
- (3) The working language is Dutch or English, in the event Supplier is not based in the Netherlands.

17. Contact persons and addresses

- (1) Both Parties appoint a contact person who will represent them. The Parties also appoint a replacement who, in the absence of the contact person, will act as the contact person.
- (2) The contact persons need to have sufficient experience and qualities to be able to perform properly in respect of the subject matter provided for in this agreement.
- (3) The contact person is considered by the other Party to be authorised to take all decisions in respect of the work to be performed under this agreement and to perform all legal acts, unless the contact person in question makes a reservation in relation to a specific decision or legal act.
- (4) The Parties are entitled to appoint a different contact person.
- (5) The appointment of the Supplier's contact person requires prior consent from Beeld en Geluid.
- (6) Beeld en Geluid is entitled to require that the contact person of the Supplier is replaced for substantiated reasons given by Beeld en Geluid.

18. Addresses

- (1) All notifications under this agreement have to be made to the following addresses:

By postal mail to:

Nederlands Instituut voor Beeld en Geluid
f.a.o. Programmabureau Beelden voor de Toekomst
Postbus 1060
1200 BB Hilversum

By electronic mail to:

secretariaat@beeldengeluid.nl

[Details supplier]

- (2) The Parties need to inform each other in writing of any changes in these addresses. Failing that, the risk of ignorance of the other Party as regards the new address is for the Party which failed to advise on the change.
- (3) In this agreement “in writing” includes “by e-mail” provided this mail has been sent in the correct manner to all e-mail addresses of a Party referred to above and the receipt of the statement has been confirmed by the Recipient explicitly or otherwise.

19. Confidentiality

- (1) The Parties shall keep each others confidential information confidential. The Parties shall only make confidential information available to their members of staff if knowledge of such information is required with respect to their job.
- (2) Information is deemed *confidential* if it has been indicated as such by a Party or if its confidential nature is or should have been evident. *Not confidential* is any confidential information as indicated above which:
- (a) other than by way of an imputable failure of a party, has become public, or
 - (b) has already, in a legitimate manner, come into the possession of the other Party.
- (3) The Supplier ensures that the material to be conserved and/or already conserved is not made available or accessible to third parties. This explicitly includes any possible entitled persons. To this end, the Supplier protects his operation in such a way that, given the uniqueness of the material to be handled by the Supplier and the privacy aspects and copyrights associated with that material, his security meets the highest standards for such goods. The Supplier allows Beeld en Geluid full access to his security measures before the first delivery of the material is made. Beeld en Geluid is entitled to have a third party assess whether the Supplier's organisation meets the security requirements set out in this clause.
- (4) In order to avoid any misunderstandings, it is hereby stated that the Supplier shall not retain a copy of the material supplied by Beeld en Geluid, which includes any possible temporary (aid) copies.

20. Publicity

- (1) The use of the name and/or logo of Beeld en Geluid by the Supplier in publicity material is only permitted after prior written consent of Beeld en Geluid.

21. General terms and conditions

- (1) The general terms and conditions of the Parties do not apply to this agreement.

22. Position of third parties

- (1) The Supplier is not entitled to engage third parties in the performance of his obligations without Beeld en Geluid's prior written consent.
- (2) In the event that third parties are engaged, the Supplier will, in addition to this third party, remain fully liable to Beeld en Geluid for the proper performance of the obligations contained in this agreement.

23. General provisions

- (1) In the event that one or more provisions of this agreement are null and void, invalid or unenforceable, the remaining provisions shall not be affected. They remain in full force. The Parties are obliged to draft one or more new provisions which, in nature and purport, come as close to the original provision or provisions as possible, in order to bring about the performance of what the Parties had agreed to.
- (2) Additions to this agreement can only be made in writing.

24. Applicable law and choice of court

- (1) This agreement is exclusively governed by Dutch law.
- (2) The Parties shall submit any dispute resulting from this agreement exclusively to the competent court in Amsterdam.

SIGNATURE

Thus it has been agreed and signed in duplicate on DATE in TOWN

Nederlands Instituut voor Beeld en Geluid NAME SUPPLIER

Nederlands Instituut voor Beeld en Geluid NAME SUPPLIER
E.F.J.B. van Huis NAME
General Manager JOB TITLE

APPENDIX 1

- SPECIFICATIONS OPEN TENDER

APPENDIX 2

Prices

APPENDIX 3

Working Method