

**AUDIOVISUAL COPRODUCTION TREATY**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF THE REPUBLIC OF KENYA**

**DRAFT 3 (26 March 2018)**

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNEMENT OF THE REPUBLIC OF KENYA (the "Parties"),**

**SEEKING** to enhance co-operation between the Parties in the audio-visual sector;

**DESIROUS** of expanding and facilitating the co-production of audio-visual works which may be conducive to the audio-visual industries of both countries and to the development of their cultural and economic exchanges;

**AGREEING** that these exchanges may enhance the relations between the Parties;

**HAVE AGREED** as follows:

DRAFT 3

# ARTICLE 1

## Definitions

For the purpose of this Treaty:

**“Agreement”** means this Agreement entered into between the Government of the Republic of South Africa and the Government of the French Republic relating to cinematographic and audio–visual co-production;

**“Audio-visual work”** refers to any record of a sequence of related images, with or without sound, irrespective of length, which is intended to be made visible as a moving image through the use of devices, regardless of the medium of initial or subsequent fixation, and for which there is an expectation for public exhibition, and includes films and video recordings, animation and documentary productions for exploitation in theatres, on television, DVD or by any other form of distribution.

“ audio-visual co-production” means an audiovisual work which is approved by the Competent Authorities and has been made by one or more South African co-producers with one or more Kenyan co-producers or, in the case of a third party co-production, with a third country co-producer;

### **“Authorites”:**

- (a) “administrative implementing authority” means for each Party, the designated authority which administers this Treaty; in the case of South Africa it is the National Film and Video Foundation (NFVF) and in the case of Kenya it is .....
- (b) “competent authority” means for each Party, the government department which has the overall responsibility for this Treaty;

**“Coproducting States”** means the Republic of South Africa and the Republic of Kenya means the Parties, with third States when applicable;

### **“Elements”:**

- (a) **“South African elements”** means expenditures made in South Africa by the South African producer and expenditure on South

African creative, technical personnel, infrastructure and equipment in the course of the production of a work;

- (b) **“Kenyan elements”** means expenditures made in Kenya by the Kenyan producer and expenditures on Kenyan creative and technical personnel, infrastructure and equipment by the Kenyan producer, in the course of the production of a work;

**“National”** means a natural or legal person as defined by the laws of the respective States;

**“Non-party”** means a State other than the coproducing States;

**“Producer”** means a national that manages the production of a work;

**“Third State”** means a State that has a coproduction treaty with at least one of the Parties and that has a producer involved in the work;

**“Third party producer”** means any co-producer from another country with which the Democratic People’s Republic of Algeria or the Republic of South Africa maintains a film or audio-visual co-production agreement;

**“Work”** means an audio-visual work, including every version of that work, to be subsequently recognized as an audio-visual treaty coproduction by each Party.

## **ARTICLE 2**

### **General Conditions**

1. Each Party shall consider every approved work produced under this agreement as if it were its own production in establishing whether that work is entitled to the same benefits as that Party’s own audio-visual industry.
2. Each Party shall grant the benefits referred to in paragraph 1 to the producers of the work who are its own nationals.
3. Each Party shall ensure that its producer fulfills the requirements herein for a work to be considered eligible for benefits from the application of this Treaty.
4. The provisions relevant to the administration of this Treaty will be set out in the Annex.

## ARTICLE 3

### Participation

1. To be eligible under this Treaty, an audio-visual work shall be co-produced by the producers of both Parties.
2. Third-Party producers may also participate in the work.
3. Every participant in a work shall be a national from a co-producing country, exemption thereto is granted in accordance with sub-Article (8)
4. In addition to a producer, all co-producing countries must have at least one national involved in a work.
5. The Parties, through the mutual written consent of their respective administrative implementing authorities, may grant exemptions from paragraph 1, notably to allow non-party nationals to participate in the work for storyline, creative, or production purposes.
6. Subject to the approval of both Competent Authorities, an audio-visual co-production, produced in compliance with this Agreement, shall be deemed to be a national audio-visual work in the territories of the Parties and shall be fully entitled to all the benefits which are, or may be accorded to, national audio-visual works by each of the Parties under their respective domestic law.
7. The Parties may, through the written consent of their respective Administrative Implementing Authorities, grant exemptions to sub-Article (2) in order to allow non-nationals to participate in the work for storyline, creative or production purposes.
8. **Participants contemplated in sub-Article (3) must, at all relevant times throughout the co-production film, retain their national status, and may not acquire or lose such status at any point during the course of production activity**

## ARTICLE 4

### Contributions

1. The proportion of the respective contributions of the co-producers of the Parties may vary from ten percent (10%) to eighty percent (80%) of the budget for each co-production.
2. In the case of a multiparty work, the minimum contribution of any of the producers will not be lower than ten (10) percent of the total production budget.
3. Each co-producer shall be required to make an effective technical and creative contribution. In principle, this contribution shall be in proportion to their investment.
4. The Parties, through the mutual written consent of their respective administrative implementing authorities, may grant exemptions from paragraphs 1 and 2, notably for storyline and creative purposes.

## **ARTICLE 5**

### **Copyright and Revenues**

5. The Parties, through their respective administrative implementing authorities, shall ensure that the sharing of copyright and revenues is, in principle, proportional to their producer's financial contribution, and no lesser than the minimum financial contribution identified in paragraph 1 of Article 4.

## **ARTICLE 6**

### **Acknowledgements and Credits**

1. An audio-visual co-production and the promotional material associated with it shall either carry a credit title indicating that the audio-visual work is—
  - (a) an “Official Republic of South Africa – Republic of Kenya Co-production”; or
  - (b) an “Official Republic of Kenya – Republic of South Africa Co-Production”; or
  - (c) where relevant, a credit reflecting the participation of the Republic of South Africa, the Republic of Kenya and a third party co-producing country.

2. The co-production between the Parties shall also be referred to in the event that such audio-visual works are shown at festivals.

## **ARTICLE 7**

### **Temporary Entry and Immigration**

1. A Party may, subject to the domestic law in force in its territory regarding immigration requirements, permit any person employed in the making or promotion of an approved audio-visual co-production by the other Party to enter and remain in the territory of the former Party during the making or promotion of the said audio-visual co-production.
2. A Party shall, in accordance with the domestic law in force in its territory, permit the temporary import and export of any equipment necessary for the production of an approved audio-visual co-production, provided that producers demonstrate the non-availability of those equipment in any of the co-producing States,
3. A Party shall temporary facilitate entry for the creative and technical personnel engaged by the producer of the other Party for the purpose of the work;
4. A Party shall facilitate entry of the nationals of the other country, and nationals of the country of any third co-producer approved under this Agreement, to enter in the Republic of South Africa, the Republic of Kenya or as the case may be, for the purpose of making or promoting an audio-visual co-production.

## **ARTICLE 8**

### **Distribution and Exhibition**

1. Each Party, through its administrative implementing authority, shall ensure that its producer demonstrates the existence of a distribution, broadcasting or any other exhibition platform commitment for the work in each of the coproducing States.
2. The Parties, through the mutual written consent of their respective administrative implementing authorities, may accept an alternative distribution or exhibition commitment in lieu of the commitment described in paragraph 1.

## **ARTICLE 9**

### **Material Changes**

Each Party shall ensure that its producer promptly advises its administrative implementing authority of any material change to a work that may affect its qualification for benefits from the application of this Treaty.

## **ARTICLE 10**

### **Communication**

1. Each Party, through its competent authority's diplomatic channel shall promptly notify the other of any amendment or judicial interpretation of domestic law that may affect benefits from the application of this Treaty.
2. Each Party, through its administrative implementing authority, shall collect and share its statistical information on the performance, distribution or exhibition of a work receiving benefits from the application of this Treaty.

## **ARTICLE 11**

### **Location and Studio Filming**

- 1 In principle, audio-visual co-productions made under this Agreement shall be shot in (one of) the countries of the participating co-producers.
- 2 Notwithstanding Article 3, where participation is approved in accordance with this Article, citizens of the country in which location filming takes place may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.
- 3 Shooting in studios shall take place in studios located within the territory of either one of the Parties.

## **ARTICLE 12**

### **Soundtrack**

1. The original soundtrack of each co-production shall be made in one of the official languages of either the Republic of South Africa or the Republic of Kenya in any combination of those languages.

### **ARTICLE 13**

#### **Status of Annex**

1. The Annex to this Treaty forms part of this Treaty
2. The Annex may be modified by the Parties, through the mutual written consent of their respective competent authorities, provided that these modifications do not conflict with this Treaty.

### **ARTICLE 14**

#### **Meetings and Amendments**

1. Meetings will be held as needed between representatives of the competent authority of each Party to discuss and review the terms of this Treaty.
2. The Parties may amend this Treaty by mutual written consent. Each Party shall notify the other Party in writing of the completion of the domestic procedures required for the entry into force of the amendments.

### **ARTICLE 13**

#### **Settlement of Disputes**

The Parties shall endeavor to resolve, through consultations and by mutual consent, any dispute regarding the interpretation or application of this Treaty.

### **ARTICLE 14**

#### **Entry into Force**

1. Each Party shall notify the other Party in writing of the completion of internal procedures required for the entry into force of this Treaty. This Treaty shall enter into force on the first day of the first month following the

date of the second notification of the completion of the procedures required for the entry into force.

2. This Treaty shall remain in force for a period of five years from the date of entry into force.

3. This Treaty shall renew automatically at the end of five years from the date of entry into force and at the end of every subsequent five-year period.

4. A Party wishing to terminate this Treaty shall give written notice of termination to the other Party at least six months before the end of the fifth year.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized by their respective Governments, have signed this Treaty

**DONE** at.....on the .... day of .....201X, in duplicate, in the English, language, each version being equally authentic.

---

**FOR THE GOVERNMENT  
OF THE REPUBLIC OF SOUTH  
AFRICA**

---

**FOR THE GOVERNMENT  
OF THE REPUBLIC OF KENYA**

## ANNEX

This Annex forms part of this *Audio-visual Coproduction Treaty between the Government of the Republic of South Africa and the Government of the Republic of Kenya* (the “Treaty”)

The Parties to the Treaty understand and agree that:

### 1. DEFINITIONS

The definitions of the Treaty apply to this Annex.

In this Annex:

- (a) “key position” means the following eight (8) positions, set out below by type of work:
  - (b) animation: director, screenwriter, music composer or sound designer, lead actor (voice) or second lead (voice), animation director, storyboard supervisor or picture editor, special effects director or stereoscopy director, and layout director;
    - (i) documentary: director, screenwriter or researcher, music composer, lead actor or narrator, second lead actor or narrator, director of photography, art director or production designer, and picture editor;
    - (ii) fiction: director, screenwriter, music composer, lead actor, second lead actor, director of photography, art director or production designer, and picture editor;
    - (iii) for types of work other than those described above, such as non-linear digital works, the positions to be included in key positions will be determined by mutual written consent of the administrative authorities;
- (c) “dubbing” means the production of any version of the work in a language other than its original language or languages.

### 2. KEY POSITIONS

- (a) The key positions identified under paragraph 1 of this Annex will be filled by one or more nationals of each of the coproducing States.

- (b) One of those key positions may be filled by a non-party national.
- (c) In the case of a high-budget work, the administrative authorities may, by mutual written consent, allow a second non-party national to fill one of those key positions. The threshold for what constitutes a high-budget work will be defined by the administrative authorities of each Party, and applied accordingly as mutually determined by those authorities.

### **3. APPROVAL OF AUDIO-VISUAL CO-PRODUCTIONS**

An application for approval for an audio-visual work shall be made to the Administrative Implementing Authorities:

The Administrative Implementing Authorities shall provide the information outlining the process of application and the documents required to accompany the application:-

- (1) Audio-visual co-productions shall require joint approval of the Competent Authorities:-
- (2) The approval of an audio-visual work shall be given, only if the application is made in accordance with the guidelines contemplated in Article 2 of this Agreement
- (3) The approval of an audio-visual work shall be given in 2 stages
  - (a) Provisional approval upon application, prior to the commencement of shooting;
  - (b) Final approval and certification shall be given upon completion of shooting.

### **4. LOCATION AND TECHNICAL SERVICES**

- (a) A work will be co-produced in the co-producing States.
- (b) The administrative implementing authorities may, by mutual written consent, allow technical services to be

provided in one or more non-parties provided that producers demonstrate the non-availability of those services in any of the co-producing States, and provided that the value of such services does not exceed twenty-five (25) percent of the total production budget of the work.

## **5. MAKING UP TO FIRST RELEASE PRINT**

In case of a cinematic work:

(1) Audio-visual co-productions shall be made and processed for the first release print in the Republic of South Africa and /or the Republic of Kenya and/or, where there is a third party co-producer, in that third co-producer's country.

(2) Unless the Competent Authorities agree otherwise, at least 90% of footage must have been specifically shot for the audio-visual co-production.

## **6. DUBBING**

- (a) All dubbing services of a work, will be performed in the coproducing States.
- (b) Narration, dubbing or subtitling in any official and commonly used language or dialect of the two countries of the Parties shall be permitted.
- (c) Where a producer can reasonably demonstrate that the dubbing capacity does not exist in any of the coproducing States, the administrative implementing authorities may, by mutual written consent, allow the dubbing to be performed elsewhere.