

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF ALGERIA

ON

AUDIO-VISUAL CO-PRODUCTION

PREAMBLE

The Government of the Republic of South Africa and the Government of the Democratic People's Republic of Algeria (hereinafter jointly referred to as the "Parties" and separately as a "Party"),

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;

CONVINCED that these exchanges will contribute to the enhancement of relations between the Parties,

HEREBY AGREE as follows:

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context otherwise indicates—

"Administrative Implementing Authority" means the authority referred to in Article 1(1);

"audio-visual co-production" means an audio-visual work which is approved by the competent authorities and has been made by one or more South African co-producers with one or more Algerian co-producers or, in the case of a third party co-production, with a third country co-producer;

"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;

“Competent Authority” means the authority referred to in Article 1(2);

“national” means—

- (a) in the case of a natural person, a citizen of or permanent resident in the territory of a Party; and
- (b) in the case of a juristic person, an entity that was lawfully established or incorporated in the territory of a Party;

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

“third party co-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;

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

“work” means an audio-visual work, including every version of that work, to be subsequently recognized as an audio-visual co-production, pursuant to this Agreement, by each Party.

“elements”

“South African elements” means expenditures made in South Africa by the South African producer and expenditure on South African creative, technical personnel, infrastructure, equipment and expenditure made in other States by a South African producer, in the course of the production of a work;

ARTICLE 2 AUTHORITIES

- (1) The Administrative Implementing Authority responsible for the overall administration of this Agreement shall be—
 - (a) in the case of the Government of the Republic of South Africa, the Department of Sport Arts and Culture; and
 - (a) in the case of the Government of the Democratic People’s Republic of Algeria, the Ministry of Culture.
- (2) The Competent Authority responsible for the implementation of this Agreement shall be—
 - (a) in the case of the Government of the Republic of South Africa, the National Film and Video Foundation; and
 - (b) in the case of the Government of the Democratic People’s Republic of Algeria, the Ministry of Culture.

**ARTICLE 3
GENERAL CONDITIONS**

- (1) A Party shall consider every audio-visual work produced under this Agreement as if it were its own production in establishing whether that work is entitled to the same benefits as work produced by that Party’s own audio-visual industry.
- (2) The Competent Authorities shall ensure that producers of audio-visual work fulfil the requirements contained in this Agreement in order for such audio-visual work to be considered eligible for benefits under this Agreement.
- (3) The application for approval for an audio-visual work shall be made in accordance with the arrangements and procedures set out in the Annexure hereto.
- (4) If the provisions concerning the benefits are changed in any way by a Party, the Competent Authority of that Party shall inform the Competent Authority of the other Party of the details of such change.

**ARTICLE 4
PARTICIPATING NATIONALS**

- (1) 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.
- (2) Every participant in an audio-visual work shall be a national from a co-producing country, unless exemption thereto is granted in accordance with sub-Article (3).
- (3) 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.
- (4) Participants contemplated in sub-Article (2) 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 5 APPROVAL AND STATUS OF CO-PRODUCTIONS

- (1) All audio-visual co-productions, contemplated in this Agreement, shall require the joint approval of the Competent Authorities prior to the commencement of the shooting thereof.
- (2) The South African co-producer fulfils all the conditions relating to status which would be required to be fulfilled, if that producer were the only producer in order for the production to be eligible as a South African audio-visual work;
- (3) The Algerian co-producer fulfils all the conditions relating to status which would be required to be fulfilled, if that producer were the only producer in order for the production to be eligible as an Algerian audio-visual work.

ARTICLE 6 THIRD PARTY CO-PRODUCTIONS

- (1) Where a Party has an existing film or audio-visual co-production agreement with a third party, the Competent Authorities may jointly approve an audio-visual work as an audio-visual co-production under this Agreement that is to be made in conjunction with a co-producer from that third party.

- (2) A third party co-producer contemplated in sub-Article (1) shall fulfil all the conditions required to be fulfilled under the terms of the third party co-production agreement referred to in sub-Article (1).
- (3) The conditions of approval of the audio-visual work as a co-production shall be determined in each individual case by the Competent Authorities.

ARTICLE 7 PROPORTIONALITY OF CONTRIBUTIONS

- (1) The proportion of the respective contributions of the co-producers of the Parties may vary from the minimum of ten per cent (10%) to ninety per cent (90%) of the budget for each co-production towards the costs of the production of the audio-visual co-production.
- (2) Each co-producer shall be required to make an effective technical and creative contribution which, in principle, shall be in proportion to their investment.
- (3) The Parties, through the written consent of their respective Administrative Implementing Authorities, may grant exemptions from sub-Articles (1) and (2), notably for storyline and creative purposes.

ARTICLE 8 TEMPORARY ENTRY AND IMPORT

- (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.

ARTICLE 9 COPYRIGHT AND REVENUES

The Parties shall, through their respective Administrative Implementing Authorities, ensure that the sharing of copyright and revenue is proportional to their producer's financial

contribution and no less than the minimum financial contribution stated in Article 7 and in the contract as contemplated in item 3(f) of the Annexure.

ARTICLE 10 LOCATION AND STUDIO FILMING

- (1) An audio-visual co-production made under this Agreement shall be shot in at least one of the countries of the participating co-producers.
- (2) The Competent Authorities may approve location filming in a country other than those of the participating co-producers where the script or action of the audio-visual work so requires.
- (3) Where location filming is approved in another country, citizens of that country may be employed as crowd artists, in small roles or as additional employees whose services are necessary for the location work to be undertaken.

ARTICLE 11 SOUNDTRACK

- (1) The original soundtrack of an audio-visual co-production shall be made in one of the official languages of either of the Parties or in any combination of those languages.
- (2) Narration, dubbing or subtitling in any commonly used language or dialect of the two countries of the Parties shall be permitted.
- (3) Post release print dubbing into any other language may be carried out in third countries.

ARTICLE 12 MAKING UP TO FIRST RELEASE PRINT

- (1) Audio-visual co-productions shall be made and processed up to the manufacture of the first release print in the territory of either Party, or, where a third party co-producer is involved, in that third co-producer's country.
- (2) Unless the Competent Authorities agree otherwise, at least ninety per cent (90%) of footage must have been specifically shot for the audio-visual co-production.

- (3) Audio-visual co-productions shall be produced in any form of the distribution platforms in both countries, as agreed upon by the co-producers of the audio-visual work.

ARTICLE 13 EXHIBITION AND DISTRIBUTION

- (1) A Party shall, through its Administrative Implementing Authority, ensure that its producer demonstrates the existence of a distribution or broadcasting commitment for the work in each of the co-producing States.
- (2) The Parties may, through the written consent of their respective Administrative Implementing Authorities, accept an alternative distribution commitment in lieu of the commitment contemplated in sub-Article (1).
- (3) Audio-visual co-productions shall be exhibited in any form of the distribution platforms in both countries, as agreed upon by the co-producers of the audio-visual work.

ARTICLE 14 ACKNOWLEDGEMENTS AND CREDITS

- (1) An audio-visual co-production and the promotional material associated with it shall—
 - (a) carry a credit title indicating that the audio-visual work is—
 - (i) an “Official Republic of South Africa – Democratic People’s Republic of Algeria Co- production”; or
 - (ii) an “Official Democratic People’s Republic of Algeria – Republic of South Africa Co-Production”; or
 - (b) carry a credit reflecting the participation of the Republic of South Africa, the Democratic People’s Republic of Algeria and a third party co-producing Country, if relevant.
- (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 15 COMMUNICATION

- (1) A Party shall, through the diplomatic channel, notify the other Party of any amendment to or judicial interpretation of its domestic law that may affect benefits from the application or implementation of this Agreement.
- (2) A Party shall, through its Administrative Implementing Authority, collect and share its statistical information on the performance, distribution or exhibition of a work receiving benefits from the application of this Agreement.
- (3) A 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 Agreement.

ARTICLE 16 MEETINGS AND AMENDMENTS

- (1) Meetings shall be held, as needed, between representatives of the Competent Authorities to discuss and review the terms of this Agreement.
- (2) This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes through the diplomatic channel.

ARTICLE 17 STATUS OF ANNEXURE

The Annexure to this Agreement provides for the implementation arrangements and procedures relevant for the approval of work contemplated in this Agreement and shall form an integral part of this Agreement.

ARTICLE 18 APPLICABLE LAW

The Parties shall perform all functions and obligations pursuant to this Agreement subject to the domestic law in force in their respective territories.

ARTICLE 19 SETTLEMENT OF DISPUTE

Any dispute between the Parties arising out of the interpretation, application or implementation of this Agreement shall be settled amicably through consultation or negotiations between the Parties.

ARTICLE 20
ENTRY INTO FORCE DURATION AND TERMINATION

- (1) This Agreement shall enter into force on the date of last signature thereof.
- (2) This Agreement shall remain in force for a period of five (5) years, whereafter it shall be automatically renewed for a further period of five (5) years, unless terminated in accordance with sub-Article (3).
- (3) This Agreement may be terminated by either Party giving at least six (6) months written notice in advance to the other Party through the diplomatic channel of its intention to terminate this Agreement.
- (4) The termination of this Agreement shall not affect the completion of any project undertaken by the Parties prior to the termination thereof, or the full execution of any activity that has not been fully executed at the time of termination, unless otherwise agreed upon in writing by the Parties.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in two originals in the English and Arabic languages, all texts being equally authentic. In the case of a divergence of interpretation, the English text shall prevail.

DONE at _____ on this _____ day of _____ 2019.

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

**FOR THE GOVERNMENT OF THE
DEMOCRATIC PEOPLE'S REPUBLIC
OF ALGERIA**

ANNEXURE

IMPLEMENTING ARRANGEMENTS AND PROCEDURES

1. An application for approval for an audio-visual work shall be made in writing to the Competent Authorities.
2. The application contemplated in Item 1 shall be accompanied by the following documents:
 - (a) A copy of the documentation concerning the purchase of the copyright for the production and commercial exploitation of the work;
 - (b) a synopsis including detailed information on the theme and contents of the audio-visual work;
 - (c) a list of the technical and artistic contributions from each of the countries involved;
 - (d) a work plan stating the periods and locations of principal photography on a weekly basis for studio and outdoor shooting;
 - (e) the budget;
 - (f) a detailed financing plan;
 - (g) a production schedule;
 - (h) the co-production contract, as contemplated in Item (3) below, made between the producers; and
 - (i) any other documentation and all other additional information deemed necessary by the Competent Authorities and the Administrative Implementing Authorities.
3. The co-producers shall enter into a contract governing the making of an audio-visual co-production which contract shall—
 - (a) include the title of the audio-visual co-production, even if provisional;
 - (b) include the name of the director;
 - (c) specify the total cost of the production, identifying the total financial contributions to be made by each co-producer;

- (d) assign, as between co-producers, ownership of all intellectual property rights arising in the making of the audio-visual co-production;
 - (e) set out the arrangements between the co-producers regarding the exercise of rights and access to and use of copyright works created in the making of the audio-visual co-production;
 - (f) set out the financial liability of each co-producer for costs incurred in the following:
 - (i) ~~Preparing a co-production project which is refused approval as an audio-visual co-production by the Competent Authorities;~~
 - (ii) making an audio-visual work which has been given such approval and fails to comply with the conditions of such approval; and
 - (iii) making an audio-visual co-production, permission for whose public exhibition is withheld in any of the countries of the co-producers.
 - (g) set out the arrangement regarding the division between the co-producers of the receipts from the exploitation of the audio-visual co-production including those derived from export markets;
 - (h) specify dates by which the respective contributions of the co-producers to the production of the audio-visual work shall have been completed;
 - (i) specify whether the audio-visual co-production shall be shown in film festivals as a national work of the majority co-producer or as a national work of all the co-producers; and
 - (j) specify any other conditions of approval that the Competent Authorities jointly agree to.
4. (a) Amendments, including the replacement of a co-producer, may be made to the original contract, but they must be submitted for approval by the Competent Authorities before the audio-visual co-production is completed.
- (b) The replacement of a co-producer may be allowed only in exceptional cases and for reasons satisfactory to the Competent Authorities.
5. The approval of an audio-visual work shall be given in the following 2 stages:
- (a) Provisional approval upon application; and

- (b) final approval upon the completion of the audio-visual work.
6. Provisional or final approval shall be given—
 - (a) only if the application is made in accordance with the guidelines contemplated in Article 2(2) of this Agreement;
 - (b) in writing;
 - (c) specifying the conditions upon which they are granted; and
 - (d) subject to the minimum requirements set out in this Annexure .
 7. The Administrative Implementing Authorities shall exchange all information concerning the approval, rejection, change or withdrawal of any application for approval of the co-production.
 8. Before an application for approval is rejected, the Administrative Implementing Authorities shall consult with each other.
 9. Once the Competent Authorities have approved the co-production of an audio-visual work, such approval may not be later revoked by a Competent Authority without the written consent of the other Competent Authority.
 10. To benefit from the provisions of this Agreement as relates to the completed audio-visual work, producers shall submit the project for final approval before its first commercial screening in each country.
 11. Nothing in this Agreement binds the Competent Authorities to permit the public exhibition of an audio-visual work which has been granted co-production approval.