

AUDIOVISUAL CO-PRODUCTION AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH
AFRICA

AND

THE GOVERNMENT OF CANADA

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF CANADA (the “Parties”),

RECOGNIZING that quality co-productions governed by an agreement contribute to the vitality of their audiovisual industries and to the development of their economic and cultural exchanges;

APPRECIATING that cultural diversity is nurtured by constant exchanges and interaction between cultures and that it is strengthened by the free flow of ideas;

CONSIDERING that, in pursuit of international cooperation, the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, done at Paris on 20 October 2005, encourages the conclusion of co-production treaties as a means of promoting international cooperation;

AGREEING that these exchanges may enhance their mutual relations;

RECOGNIZING that these objectives may be achieved by granting domestic benefits to qualified audiovisual co-productions governed by an agreement;

HAVE AGREED as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

“administrative authority” means for each Party, the authority to be designated in writing to the other Party, which administers this Agreement;

“audiovisual” means a film, television, and/or video work on any production support known or not yet known for any distribution platform intended for viewing;

“benefits” means financial or other incentives that a Party grants to its audiovisual industry, subject to its domestic law;

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

“competent authority” means for each Party, the authority which has the overall responsibility for the implementation of this Agreement;

“co-producing States” means the Parties and third States, when applicable;

“national” means a natural or legal person as defined by the laws of that person’s State;

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

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

“Canadian elements” means expenditures made in Canada by the Canadian producer and expenditures on Canadian creative and technical personnel made in other States by the Canadian producer, in the course of the production of a work;

“third State” means a State that has a co-production agreement or memorandum of understanding with at least one of the Parties and that has a producer involved in the work; and

“work” means an audiovisual work, including every version of that work, to be subsequently recognized as a co-production governed by an agreement by each Party.

ARTICLE 2

Competent Authorities

The competent authority responsible for the implementation of this Agreement is:

- (a) for South Africa: the Department of Sport, Arts and Culture and its successor; and

(b) for Canada: the Department of Canadian Heritage and its successor.

ARTICLE 3

General Conditions

1. Each Party shall consider every 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 audiovisual 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 strive to achieve overall balance of the financing of works that are co-produced over a period of five years.
4. Each Party shall ensure that its producer fulfils the requirements set out in this Agreement for a work to be considered eligible for benefits under this Agreement.
5. The provisions relevant to the administration of this Agreement are set out in the Annex.

ARTICLE 4

Participating Producers

1. To be eligible as a work under this Agreement, a work is co-produced by producers of both Parties.
2. Third-State producers may also participate in a work.

ARTICLE 5

Proportionality

1. The share of work expenditures spent on South African and Canadian elements is in

reasonable proportion to the South African and Canadian financial participation respectively.

2. The Parties, through the mutual written consent of their respective administrative authorities, may grant exemptions from paragraph 1, notably for storyline and creative purposes.

ARTICLE 6

Nationality of Participants

1. Every participant in a work is a national from a co-producing State, unless otherwise provided for in the Annex to this Agreement.
2. In addition to a producer, all co-producing States must have at least one national involved in a work.
3. The Parties, through the mutual written consent of their respective administrative authorities, may grant exemptions from paragraph 1, notably to allow non-party nationals to participate in the work for storyline, creative or production purposes. Such an exception may apply only to positions other than the key positions listed in the Annex to this Agreement.

ARTICLE 7

Temporary Entry and Residence

Subject to its applicable domestic laws and regulations, each Party shall facilitate the following:

- (a) temporary entry and temporary residence for the creative and technical personnel engaged by the producer of the other Party for the purpose of the work; and

- (b) temporary import and export of any equipment necessary for the purpose of the work, provided that the equipment is not available in the territory of the Party where the work is being produced.

ARTICLE 8

Copyright and Revenues

The Parties, through their respective administrative 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 the Annex to this Agreement.

ARTICLE 9

Distribution

1. Each Party, through its administrative authority, shall 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, through the mutual written consent of their respective administrative authorities, may accept an alternative distribution commitment in lieu of the commitment described in paragraph 1.

ARTICLE 10

Material Changes

Each Party shall ensure that its producer promptly advises its administrative authority of any material change to a work that may affect its qualification for benefits under this Agreement.

ARTICLE 11

Communication

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

ARTICLE 12

Status of Annex

1. The Annex to this Agreement is for administrative purposes and is not legally binding.
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 Agreement.

ARTICLE 13

Meetings

Meetings are held as needed between representatives of the competent authorities of the Parties to discuss and review the terms of this Agreement.

ARTICLE 14

Transitional Provisions

1. The Parties shall not discontinue benefits already recognized and granted for a work for a period of two years following termination of this Agreement, solely due to that termination.
2. This Agreement replaces and terminates the *Audiovisual Co-production Agreement between the Government of South Africa and the Government of Canada*, done at Cape Town on 5 November 1997, upon entry into force of this Agreement. The Parties may continue to confer benefits to the producers whose work qualifies for benefits under that Agreement, provided that:
 - (a) the producers whose work is submitted under that Agreement notify their respective administrative authorities, in writing, that they elect to continue receiving such benefits under that Agreement; and
 - (b) the election is made within six months from the date of the entry into force of this Agreement.

ARTICLE 15

Settlement of Disputes

The Parties endeavour to resolve, through consultations and by mutual consent, any dispute regarding the interpretation or implementation of this Agreement.

ARTICLE 16

Amendments

1. This Agreement may be amended at any time by mutual agreement, by way of an exchange of notes, between the Parties.
2. The Parties shall notify each other through the diplomatic channels of the completion

of their respective internal procedures required for the entry into force of the amendment. The amendment enters into force on the first day of the first month following the date of receipt of the last notification.

3. The amendment shall form an integral part of this Agreement.

ARTICLE 17

Entry into Force, Duration and Termination

1. The Parties shall notify each other through the diplomatic channels of the completion of their respective internal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the first month following the date of receipt of the last notification.
2. This Agreement shall remain in force for a period of five (5) years from the date of entry into force.
3. This Agreement shall renew automatically at the end of five (5) years from the date of entry into force and at the end of every subsequent five (5) year period.
4. A Party wishing to terminate this Agreement shall give written notice of termination to the other Party at least six (6) months before the end of the fifth (5) year following its entry into force or, if this Agreement is renewed, at least six (6) months before the end of any subsequent five- (5) year period.

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

DONE at _____ on the _____ day of _____ 202__,

in duplicate, in the English and French languages, both versions being equally authentic.

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

**FOR THE GOVERNMENT
OF CANADA**

ANNEX

This Annex is for administrative purposes and does not have any legal effect under the *Audiovisual Co-production Agreement between the Government of the Republic of South Africa and the Government of Canada* (the “Agreement”).

The Parties to the Agreement understand that:

1. DEFINITIONS

The definitions of the Agreement will apply to this Annex.

In this Annex:

- (a) “key position” means the following eight (8) positions, set out below by type of work:
 - (i) 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,
 - (ii) 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,
 - (iii) fiction: director, screenwriter, music composer, lead actor, second lead actor, director of photography, art director or production designer, and picture editor,
 - (iv) 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. MINIMUM FINANCIAL CONTRIBUTION BY PRODUCERS

- (a) The minimum financial contribution to a work of either the South African producer or the Canadian producer will not be lower than fifteen (15) percent of the total production budget.
- (b) In the case of a multipartite work, the minimum contribution of any of the producers will not be lower than ten (10) percent of the total production budget.

3. 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 co-producing 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.

4. LOCATION AND TECHNICAL SERVICES

- (a) A work will be co-produced in the co-producing States.
- (b) The administrative authorities may, by mutual written consent, allow a work to be co-produced in a non-party for storyline and/or creative reasons.
- (c) The administrative 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. DUBBING

- (a) All dubbing services of a work, in English, French and any South African official and Indigenous languages, will be performed in the co-producing States.
- (b) Where a producer can reasonably demonstrate that the dubbing capacity does not exist in any of the co-producing States, the administrative authorities may, by mutual written consent, allow the dubbing to be performed elsewhere.