

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF AUSTRALIA

CONCERNING THE CO-PRODUCTION OF FILMS

PREAMBLE

The Government of Australia and the Government of the Republic of South Africa (hereinafter referred to jointly as "the Parties" and separately as a "Party")

SEEKING to enhance cooperation between their two countries in the area of film;

DESIROUS of expanding and facilitating the co-production of films which may be beneficial to the film industries of both countries;

RECOGNISING the need for their countries to share the risks and cost of productions, whilst increasing the output of high quality productions;

SEEKING to facilitate the cultural, creative and economic exchanges between their two countries; and

CONVINCED that these exchanges will contribute to the enhancement of relations between the two countries;

HEREBY AGREE as follows:

ARTICLE 1

Definitions

In this Agreement, unless the context otherwise indicates:

- 1.1 "Competent Authority" means the authority designated as such by each Party in accordance with Article 2;
- 1.2 "co-producer" means one or more Australian nationals or one or more nationals of the Republic of South Africa involved in the making of a co-production film;
- 1.3 "third country co-producer" means any individual from another country with which Australia or the Republic of South Africa maintains a film and

audiovisual agreement as referred to under Article 5 (Third Country Co-productions);

- 1.4 "co-production film" means a film which is approved by the Competent Authorities and has been made by one or more Australian co-producers in conjunction with one or more South African co-producers (or in the case of a third country co-production, with a third country co-producer);
- 1.5 "film" means any aggregate of images, or of images and sounds, embodied in any material and includes, but is not limited to, television and video recordings, animations and digital format productions, but does not include an item which is outside the scope of the laws of either Party which govern the provision of benefits under the international agreements relating to the co-production of films;
- 1.6 "legal entities" means any entities duly constituted or otherwise organised under the applicable domestic law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporations, trusts, partnerships, joint ventures, sole proprietorships or associations;
- 1.7 "nationals" means:
 - (a) in relation to Australia, Australian citizens and permanent residents;
 - (b) in relation to the Republic of South Africa, South African citizens and permanent residents;
- 1.8 "benefits" means all those financial and other incentives which may be offered to co-production films by each Party from time to time under Article 6.1 (Entitlement to Benefits);
- 1.9 "protection and reproduction material" means those materials derived from the original film materials for the purpose of protecting the final version of the film; and those materials used for making copies of the film for the purpose of distribution and exhibition of the film.

ARTICLE 2

Competent Authorities

- 2.1 Each Party shall designate a Competent Authority for the purposes of implementing this Agreement. Either Party may change their designated Competent Authority by giving notice to the other Party through the diplomatic channel. The change in a Competent Authority will take effect 28 days after the notice has been received.
- 2.2 The Competent Authorities may examine the implementation of this Agreement and consult with each other to resolve any difficulties arising out of its application.

ARTICLE 3

Approval of Co-production Films

- 3.1 Prior to the commencement of the making of a co-production film, co-producers shall have applied to the designated Competent Authorities of each Party for provisional approval of the film.
- 3.2 In approving films under this Agreement, the Competent Authorities, acting jointly, shall apply the provisions of this Agreement and the Annex to this Agreement consistently with Article 18.
- 3.3 When approving a film as a co-production film, each Competent Authority may stipulate additional conditions of approval, framed in order to ensure that:
 - (a) minimum financial and creative contributions are met;
 - (b) the creative contribution is in reasonable proportion to the financial contribution of each co-producer; and
 - (c) an overall balance is achieved in accordance with Article 17.1.

- 3.4 In the event that approval by both the Competent Authorities is not granted, the film concerned shall not be approved as an official co-production film or as having official co-production status.
- 3.5 The approval of a film as a co-production by the Competent Authorities shall not bind the relevant authorities in either country to permit the public exhibition of the resulting film.

ARTICLE 4

Co-producer Status

The Competent Authorities shall ensure that:

- (a) the Australian co-producer shall fulfil all the conditions relating to status which would be required to be fulfilled in order for the production to be eligible as an Australian film under Australian legislation;
- (b) the South African co-producer shall fulfil all conditions relating to status which would be required to be fulfilled in order for the production to be eligible as a South African film under relevant South African legislation; and
- (c) none of the co-producers shall be linked by common management, ownership or control, save to the extent that it is inherent in the making of the co-production film itself.

ARTICLE 5

Third Party Co-productions

- 5.1 Where either Party maintains with a third country a film or audio-visual co-production agreement the Competent Authorities may jointly approve a film as a co-production film under this Agreement that is to be made in conjunction with a co-producer from that third country.

- 5.2 Any third country co-producer shall fulfil all conditions relating to status which would be required to be fulfilled to produce a film under the terms of the co-production agreement in force between that co-producer's country and either Australia or the Republic of South Africa.

ARTICLE 6

Entitlement to Benefits

- 6.1 A co-production film shall be entitled to the full enjoyment of all the benefits which are or may be accorded to national films in Australia and the Republic of South Africa respectively subject to the domestic laws in force in each country.
- 6.2 Any subsidies, tax incentives, or other financial incentives which may be granted by either Party in relation to a co-production film shall accrue to the co-producer who is permitted to claim those benefits in accordance with the existing measures of that Party.
- 6.3 Such subsidies, tax incentives or other financial benefits may not be assigned or disposed of except to or for the benefit of a legal entity or national of that co-producer's country, or in the case of a third country co-production in terms of Article 5 (Third Country Co-productions), any individual or legal entity that falls within the relevant scope of the film or audiovisual agreement referred to in Article 5.
- 6.4 A film made in accordance with an approval by the Competent Authorities under this Agreement but completed after the termination of this Agreement shall be treated as a co-production film and its co-producers shall accordingly be entitled to all the benefits of this Agreement.

ARTICLE 7

Import of Equipment

Each of the Parties shall provide, in accordance with their respective laws, temporary admission of cinematographic and technical equipment for the making of co-production films, upon the giving of a security or undertaking for payment of duties and taxes until the goods are exported.

ARTICLE 8

Immigration Facilitation

Each of the Parties shall permit the nationals of the other Party, and in the case of a third country co-production in terms of Article 5 (Third Country Co-productions), any individual that falls within the relevant scope of the film or audiovisual agreement referred to in Article 5, to travel to, enter and remain in its territory for the purpose of making or exploiting a co-production film, subject to the requirement that such individuals comply with the domestic laws and procedures relating to entry into or temporary stay in its territory.

ARTICLE 9

Contributions

- 9.1 Each co-producer including, in the case of a third country co-production under Article 5, the third country co-producer, shall have both a financial and a creative contribution each of not less than twenty per cent (20%) of the total financial and creative contribution for the co-production film.
- 9.2 The performing, technical and craft contribution (being the “creative” contribution) of each co-producer to a co-production film shall be in reasonable proportion to the co-producer's financial contribution.

ARTICLE 10

Location Filming

The Competent Authorities shall have the power to approve location filming in a country other than the countries of the participating co-producers.

ARTICLE 11

Participation

- 11.1 Individuals participating in the making of co-production films shall be nationals of Australia, the Republic of South Africa, or in the case of a third country co-production in terms of Article 5 (Third Country Co-productions), individuals that fall within the relevant scope of the film or audiovisual agreement referred to in Article 5.
- 11.2 As a general rule, only performers from the participating co-production countries shall be engaged in productions. However, in exceptional circumstances, where script or financing dictates, performers from other countries may be engaged.
- 11.3 Where the Competent Authorities have approved location filming in a country other than that of the participating co-producers, 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.
- 11.4 In exceptional circumstances, the Competent Authorities may jointly approve the participation of restricted numbers of technical personnel from other countries where the technical expertise does not exist or is not available in the co-producers' countries at the time a relevant co-production film is to be made.

ARTICLE 12

Soundtrack

- 12.1 Unless otherwise mutually decided by the Competent Authorities, the original soundtrack of each co-production film shall be made in one of the official languages, including any commonly used dialect, of either Party, or where there is a third co-producer, in one of the official languages, including any commonly used dialect, of that third country, or in any combination of those languages.
- 12.2 The original soundtrack of each co-production film shall be made in Australia and/or the Republic of South Africa and/or, where there is a third country co-producer, in that third country.
- 12.3 Narration, dubbing or subtitling shall be permitted in any other agreed commonly used language, official language or dialect of either Party, or where there is a third country co-producer, in a commonly used language or dialect of that third country.
- 12.4 Narration, dubbing and subtitling of each co-production film shall take place in Australia and/or the Republic of South Africa and/or where there is a third country co-producer, in that third country.
- 12.5 Post release print dubbing into any other language may be carried out in a country other than the co-producers' countries.
- 12.6 The soundtrack may contain sections of dialogue in any language in so far as this is required by the script.
- 12.7 Unless otherwise approved by the Competent Authorities, any music specially composed for a co-production film shall be composed by nationals of Australia, the Republic of South Africa, or in the case of a third country co-production in terms of Article 5 (Third Country Co-productions), any

individual that falls within the relevant scope of the film or audiovisual agreement referred to in Article 5.

ARTICLE 13

Making up to First-Release Print

- 13.1 Co-production films shall be made and processed up to the creation of the first release print in Australia and/or the Republic of South Africa and/or, where there is a third country co-producer, that co-producer's country. The majority of this work shall normally be carried out in the country of the co-producer which has the major financial contribution.
- 13.2 At least ninety per cent (90%) of the footage included in a co-production film shall, subject to any departure from this rule which is approved by the Competent Authorities, be specially shot for that film.

ARTICLE 14

Working Conditions

The Competent Authorities shall satisfy themselves that conditions of work in the making of co-production films under this Agreement in each of the countries of the participating co-producers are in broad terms comparable and that in the event that location shooting of the film takes place in a country other than that of a co-producer, conditions shall be, in broad terms, no less favourable.

ARTICLE 15

Acknowledgements and Credits

The Competent Authorities shall ensure that each co-production film includes either a separate credit title indicating that the film is either an "Australian–South African co-production" or a "South African–Australian co-production", or where relevant, a credit which reflects the participation of Australia, the Republic of South Africa and the country of the third country co-producer.

ARTICLE 16

Taxation

Notwithstanding any other provision of this Agreement, for the purposes of taxation the domestic laws in force within the territory of each Party shall apply subject to the provisions of any tax treaty between the Parties.

ARTICLE 17

Balance

17.1 An overriding aim of this Agreement, as monitored by the Competent Authorities, shall be to ensure that an overall balance is achieved between the Parties with respect to:

- (a) the contribution of each country to the production costs of all co-production films;
- (b) the usage of studios and laboratories;
- (c) the employment of all performing, craft and technical personnel, measured on a straight head count basis; and
- (d) the participation in each of the major performing, craft and technical categories and in particular, that of the writer, director and lead cast;

over each period of three years commencing on the date that this Agreement enters into force. The Competent Authorities shall consult each other informally on an annual basis with regard to progress in monitoring balance.

17.2 Either Competent Authority may withhold approval of a film as a co-production film on the basis that the overriding aim of overall balance referred to in Article 17.1 would be prejudiced by such approval.

17.3 Any disputes on whether the overall balance referred to in Article 17.1 is achieved shall be settled amicably through consultation or negotiation between

the Competent Authorities. Either Party's Competent Authority may initiate such consultation or negotiation by written request.

ARTICLE 18

Status of Annex

- 18.1. The Annex to this Agreement shall constitute an implementing arrangement in respect of this Agreement and shall be read in conjunction with the provisions of this Agreement. The Annex reflects the understandings of the Parties and does not create legally binding obligations.
- 18.2. Any modifications to the Annex shall be jointly determined by the Competent Authorities. Modifications to the Annex shall be in conformity with the provisions of this Agreement.
- 18.3. Modifications to the Annex shall be confirmed by the Competent Authorities in writing and shall take effect on the date specified by the Competent Authorities.

ARTICLE 19

Amendment

This Agreement may be amended by mutual consent by Exchange of Notes between the Parties through the diplomatic channel.

ARTICLE 20

Entry into Force

This Agreement shall enter into force on the date on which each Party has notified the other in writing, through the diplomatic channel, of its compliance with its domestic requirements, including any constitutional requirements, necessary for the entry into force of this Agreement. The date of entry into force shall be the date of the last notification.

ANNEX

(1) **Status of Annex**

This Annex constitutes an implementing arrangement in respect of the Agreement between the Government of Australia and the Government of the Republic of South Africa Concerning the Co-Production of Films (“the Agreement”), and will be read in conjunction with the provisions of the Agreement. This Annex reflects the understandings of the Parties to the Agreement and does not create legally binding obligations.

(2) **Duration and Termination**

This Annex will come into effect when the Agreement enters into force and will be terminated when the Agreement is terminated.

(3) **Designation of Competent Authorities**

The Competent Authorities for the Agreement are the National Film and Video Foundation (NFVF) in the Republic of South Africa and Screen Australia (SA) in Australia.

(4) **Approval Process**

The approval process under Article 3 (Approval of Co-production Films) of the Agreement will comprise two stages:

- (a) Provisional Approval upon application; and
- (b) Final Approval upon completion of the co-production film.

(5) **Co-producer Contracts**

In approving films, the Competent Authorities will ensure that the contracts

between the co-producers:

- (a) contain a provision for co-producers to submit contracts for approval by the Competent Authorities prior to effecting or making any amendments and/or deletions to a contract prior to the completion of the co-production project;
- (b) provide that a co-producer may only assign or dispose of the benefits referred to in Article 6 (Entitlement to Benefits) of the Agreement in accordance with Articles 6.2 and 6.3 of the Agreement;
- (c) set out the arrangements regarding the ownership and use of any intellectual property rights arising from the making of the co-production film;
- (d) provide that a sufficient number of copies of the final protection and reproduction material used in the production be made for all the co-producers. Each co-producer will be the owner of a copy of the protection and reproduction material and will be entitled to use it to make the necessary reproductions. Moreover, each co-producer will have access to the original production material in accordance with the conditions mutually determined between the co-producers;
- (e) set out the financial liability of each co-producer for costs incurred in the following situations:
 - (i) where a film is refused provisional approval as a co-production film by the Competent Authorities;
 - (ii) where a film which has been given such provisional approval fails to comply with the conditions of such approval;
 - (iii) where permission for the public exhibition of an approved co-production film is withheld in any of the countries of the co-producers; or

- (iv) where permission for the export/distribution of an approved co-production film to a third country is withheld;
- (f) set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the film, including those from export markets;
- (g) specify the dates by which their respective contributions to the production of that film will have been completed; and
- (h) specify any other conditions imposed jointly by the Competent Authorities when granting provisional approval.