

**AGREEMENT**

**BETWEEN**

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

**AND**

**THE GOVERNMENT**  
**OF THE FRENCH REPUBLIC**

**CONCERNING**

**THE CO-PRODUCTION OF FILMS**

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05/05/2010  
PREAMBLE



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

CONSIDERING the adoption by United Nations Educational, Science and Cultural Organisation of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions and its ratification by the French Republic on the 18<sup>th</sup> of December 2006 and the Republic of South Africa on the 20<sup>th</sup> of October 2005;

SEEKING to enhance co-operation between the two countries in the area of film;

DESIROUS of expanding and facilitating the co-production of films which may be conducive to the film 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 two countries; and

TAKING into account the Cooperation Agreement on Cinema signed on the 18<sup>th</sup> of May 2004;

HEREBY AGREE as follows:

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**ARTICLE 1**  
**Definitions**

In this Agreement:

“film” means a film of any length and on any medium regardless of the type of film (fiction, animation, documentary) complying with the applicable statutory and regulatory provisions of each Party, the first showing of which is in cinemas;

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

“third party co-producer” means any individual from another country with which the French Republic or the Republic of South Africa maintains a film co-production agreement as referred to in Article 6.

**ARTICLE 2**  
**Competent Authorities**

For the purposes of the implementation of this Agreement the Competent Authorities shall be-

- (a) in the case of the Republic of South Africa, the National Film and Video Foundation; and
- (b) in the case of the French Republic, the Centre national du cinema et de l'image animée.

A handwritten signature in black ink, appearing to be 'TEJ' with a flourish underneath.

### ARTICLE 3

#### National Status of Participants

- (1) Individuals participating in the production of a film must be nationals or permanent residents of the Republic of South Africa and French Republic.
- (2) In the case of the Republic of South Africa, national means-
  - (a) a citizen of the Republic of South Africa; or
  - (b) a permanent resident of the Republic of South Africa.
- (3) In the case of French Republic, national means-
  - (i) a citizen of the French Republic;
  - (ii) a permanent resident of the French Republic; or
  - (iii) a citizen of a Member State of the European Union or a European Economic Area State.

### ARTICLE 4

#### Recognition of National Films and Entitlement to Benefits

- (1) Subject to the approval of both Competent Authorities, a film co-produced in compliance with this Agreement shall be deemed to be a national film in the territory of the Parties and shall be fully entitled to all the benefits which are or may be accorded to national films by each of the Parties under the domestic law in force in their respective countries.
- (2) The Competent Authority of each Party shall provide to the Competent Authority of the other Party a list of provisions concerning these benefits. If the provisions concerning these benefits are changed in any way by either Party, the Competent Authority of that Party shall inform the Competent Authority of the other Party of the details of such change.

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(3) Any benefit referred in sub-Article 4 (1) shall accrue to the co-producer who is permitted to claim those benefits in accordance with the domestic law of that Party.

## ARTICLE 5

### Approval of Co-production Films

- (1) Co-production films shall require joint approval of the Competent Authorities prior to the commencement of shooting. Approvals shall be in writing and shall specify the conditions upon which it is granted and shall satisfy the minimum requirements set forth in Annex 1 of this Agreement.
- (2) The Competent Authorities of both Parties shall exchange all information concerning the approval, rejection, change or withdrawal of any application for approval of the co-production. Before an application for approval is rejected, the Competent Authorities shall consult with each other. Once the Competent Authorities of both Parties have approved the co-production of a film, such approval may not be later revoked without the consent of both Competent Authorities. The approval of the co-production by the Competent Authorities shall not be related in any way to the film rating systems of either Party.
- (3) To benefit from the provisions of this Agreement, co-production films must be approved by the Competent Authorities of both Parties no later than four months after their cinema release in the French Republic or the Republic of South Africa.
- (4) Approval of a co-production project by the Competent Authorities of the Parties is in no way binding upon any of them as regards authorising the distribution of the film thus produced.
- (5) Where the Competent Authorities of the Parties have granted co-production status to a film, such status shall not subsequently be withdrawn unless the said Competent Authorities agree.

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**ARTICLE 6**  
**Co-producer Status**

The Competent Authorities shall ensure that-

- (a) 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 film;
- (b) the French co-producer shall fulfil all conditions relating to status which are required to be fulfilled in order for the production to be eligible as a French film; and
- (c) none of the co-producers shall be linked by common management, ownership or control, except to the extent inherent in the making of the co-production film.

**ARTICLE 7**  
**Third Party Co-Productions**

- (1) Where either Party has an existing film co-production agreement with a third country, 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.
- (2) Any third Party co-producer shall fulfil all conditions required to be fulfilled under the terms of a co-production agreement in force between that co-producer's country and either the Republic of South Africa or the French Republic.
- (3) The conditions of approval of such film as a co-production shall be determined in each individual case by Competent Authorities.

  
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## ARTICLE 8

### Participation

- (1) Persons participating in a co-production film shall be nationals of the Republic of South Africa and the French Republic, or nationals of a member State of the European Union or a European Economic Area State, and where there is a third party co-producer, nationals of the third co-producer's country.
- (2) Subject to the approval of the Competent Authorities, in exceptional circumstances and by mutual agreement, restricted numbers of performers and/or technical personnel from other countries may be engaged.

## ARTICLE 9

### Contributions

- (1) Each co-producer shall contribute to the budget of the co-production film, between twenty percent (20 %) and eighty percent (80%) towards the costs of the production of the co-production film.
- (2) In principle, the technical and artistic contribution of the producer of each Party shall be reasonably proportional to each co-producer's financial contribution, save in the event of an exemption granted by the Competent Authorities of both Parties in exceptional circumstances.

## ARTICLE 10

### Location filming

- (1) 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 film so requires.

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- (2) Notwithstanding Article 8 where location filming is approved in accordance with this Article, citizens of the country in which location filming takes 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 must take place in studios located within the territory of either one of the Parties.

#### **ARTICLE 11**

##### **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 French Republic or in any combination of the permitted languages.
- (2) Narration, dubbing or subtitling in any commonly used language or dialect of the two countries 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) Co-production films shall be made and processed up to manufacture of the first release print in the Republic of South Africa and /or the French Republic and/or, where there is a third party co-producer, in that third co-producer's country.
- (2) At least ninety percent (90%) of the footage included in a co-production film shall be specially shot for the film unless otherwise approved by the Competent Authorities.

#### **ARTICLE 13**

##### **Acknowledgements and Credits**

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A co-production film and the promotional material associated with it shall either carry a credit title indicating that the film is an "Official Republic of South Africa – French Republic Co- production" or an "Official French Republic – Republic of South Africa Co-Production" or where relevant, a credit reflects the participation of the Republic of South Africa, French Republic and a third party co-producing country.

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

#### **ARTICLE 14**

##### **Immigration and Facilitation**

Subject to meeting normal immigration requirements in force in the countries of the Parties, each of the Parties shall permit the nationals of the other country, and nationals of the country of any third co-producer approved under this Agreement, to enter and remain in the French Republic or the Republic of South Africa, as the case may be, for the purpose of making or promoting a co-production film.

#### **ARTICLE 15**

##### **Import of Equipment**

Each of the Parties shall provide, in accordance with the relevant domestic law in force in their countries, temporary admission of cinematographic and technical equipment for the making of co-production films, subject to provision of security, until the equipment is exported.

#### **ARTICLE 16**

##### **Ownership**

- (1) Each co-producer shall jointly hold the tangible and intangible rights in the film.
- (2) The material shall be kept in the joint names of the co-producers in a laboratory chosen by mutual agreement.

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## ARTICLE 17

### Training and Film Co-operation

- (1) The Competent Authorities of the two countries shall be particularly concerned with the training for jobs in the film industry. They shall consult each other with a view to considering jointly the steps to be taken to facilitate the initial training of film professionals and their continuous professional development. They shall encourage the conclusion of agreements or conventions between schools or bodies providing initial training or continuous professional development enabling, in particular, the movement of their students.
- (2) The Competent Authorities of the Parties shall examine specific ways of encouraging the reciprocal distribution and promotion of the films of each Party.
- (3) They acknowledge the need to promote cultural diversity by facilitating the recognition of the reciprocal filmmaking in particular through film education programmes or participating in film festivals.
- (4) The Competent Authorities of the Parties shall examine specific ways of encouraging exchange of skills between professionals (artists, technicians etc).
- (5) The Competent Authorities of the Parties shall endeavour to develop cooperation between film libraries and the bodies responsible for the conservation of film archives of the Parties.

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## ARTICLE 18

### Joint Commission

- (1) There shall be a Joint Commission consisting of representatives of the Competent Authorities of both Parties and experts in related fields for the purpose of facilitating the implementation of this Agreement or recommending amendments thereto. It shall also examine whether the balance of the respective contributions has been achieved in respect of the following:
  - (a) The contribution of each country to the production costs of all co-production films;
  - (b) the usage of studios and laboratories;
  - (c) employment of all performing, creative and technical roles measured numerically; and
  - (d) the participation of each major roles in creative, technical and performing roles and in particular those of writer, director and lead cast.
- (2) During the effective period of this Agreement, the Joint Commission shall be convened in principle every two (2) years, alternately in South Africa and France. Extraordinary sessions of the Joint Commission may also be convened at the request of either Party in the event of changes to the domestic law applicable to the film industry or major obstacles (in particular, imbalance in contribution) to the functioning of this Agreement. The Joint Commission shall be convened within six (6) months of such a request.
- (3) During its meeting sessions, the Joint Commission shall review whether an overall balance has been achieved in the contributions from the two Parties and shall implement the necessary measures in order to correct any imbalance.
- (4) If an imbalance in contributions has occurred and a session of the Joint Commission is not convened expeditiously in order to review the measures to restore balance, both Competent Authorities shall abide by the principle of reciprocity for each film in approving co-productions.



**ARTICLE 19**  
**Status of Annex**

All annexes are an important part of this Agreement.

**ARTICLE 20**  
**Amendment**

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

**ARTICLE 21**  
**Settlement of Dispute**

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

**ARTICLE 22**  
**Duration and Termination**

- (1) This Agreement shall remain in force for a period of two (2) years, after which it shall be automatically renewed for successive periods of one year, unless terminated by either Party by giving three months written notice in advance to the other Party, through the diplomatic channel, of its intention to terminate this Agreement.
- (2) Unless both Parties otherwise decide, the termination of this Agreement shall have no effect on completed co-productions approved prior to its termination including the rights and duties of the Parties in relation to film co-productions.

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**ARTICLE 23**  
**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 the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.

**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 French languages, all texts being equally authentic.

DONE at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
FOR THE GOVERNMENT OF  
THE REPUBLIC OF SOUTH  
AFRICA

\_\_\_\_\_  
FOR THE GOVERNMENT OF  
THE FRENCH REPUBLIC

## ANNEX 1

### IMPLEMENTING ARRANGEMENT TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE FRENCH REPUBLIC CONCERNING THE CO-PRODUCTION OF FILMS

- (1) The competent authorities for the purposes of this Agreement shall be as stated in Article 2 of the Agreement.
- (2) The approval process under Article 4 of this Agreement shall comprise two stages: provisional Approval upon application, and Final Approval upon the completion of the film.
- (3) The application must be accompanied by the following documents:
  - (a) A copy of the documentation concerning the purchase of the copyright for the commercial exploitation of the work;
  - (b) a synopsis including concrete information on the theme and contents of the film;
  - (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) a budget including a detailed financing plan;
  - (f) a production schedule;
  - (g) the co-production contract made between the producers; and
  - (h) all the documentation that the Competent Authorities require to conduct the technical and financial contribution.

4. The co-producers shall enter into a contract governing the making of a co-production film which shall:
  - (a) provide that a co-producer may not assign or dispose of benefits referred to in Article 4 except to or for the benefit of a national of that co-producer's country;
  - (b) assign, as between co-producers ownership of all intellectual property rights arising in the making of the co-production film;
  - (c) 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 co-production film;
  - (d) 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 a co-production film by the competent authorities;
    - (ii) making a film which has been given such approval and fails to comply with the conditions of such approval; and
    - (iii) making a co-production film, permission for whose public exhibition is withheld in any of the countries of the co-producers.
  - (e) set out the arrangement regarding the division between the co-producers of the receipts from the exploitation of the co-production film including those derived from export markets;
  - (f) specify dates by which the respective contributions of the co-producers to the production of the film shall have been completed;

- (g) specify whether the co-production film shall be shown in film festivals as a national film of the majority co-producer or as a national film of all the co-producers; and
- (h) specify any other conditions of approval that the Competent Authorities jointly agree.

## ANNEX 2

### Financial Schemes for Film support

#### 1. SOUTH AFRICA

The following financial schemes have been set up by the South African government to support the development, production, marketing of products

- South African Film and Television Production and Co-production Incentive is a production incentive in the form of a cash rebate accessible to South African Productions and official treaty co-productions.
- The Export Marketing and Investment Assistance (EMIA) Scheme is administered by the Department of Trade and Industry. The scheme is primarily aimed at developing an export market by assisting South African exporters to access foreign markets.
- The National Film and Video Foundation invests in the development, productions and marketing and distribution of features, shorts, documentaries and animations.
- The Industrial Development Corporation of South Africa takes up to 49% equity participation in films that are commercially viable.
- South African Revenue Service administers a tax allowance that benefits individuals who invest and have ownership in films.

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## 2. FRENCH REPUBLIC

This document summarises the various sources of financing and the aid mechanisms available in France for the French contribution to co-production feature-length films.

Aids:

Automatic financial backing invested:

- in the production;
- in the distribution.

Selective financial backing for production:

- advance against receipts;
- direct aid (aid for films in foreign languages);
- regional production aids;
- selective financial backing for distribution.

Financing:

Investment by television services:

- by co-production;
- by buying-up.
- investment by SOFICAs (Sociétés pour le financement de l'industrie cinématographique et audiovisuelle).
- Guaranteed minimum advance payment cinema, video or abroad.

### ANNEX 3

#### List of Treaties Signed by the Parties

##### 1. South Africa

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The Republic of South Africa has signed co-production treaties with the following countries:

- (a) Canada;
- (b) Italy;
- (c) Germany; and
- (d) United Kingdom.

## 2. French Republic

The French Republic has signed the co-production treaties with the following countries:

- (a) Algeria;
- (b) Argentina;
- (c) Australia;
- (d) Austria;
- (e) Belgium;
- (f) Brazil;
- (g) Bulgaria;
- (h) Burkina Faso;
- (i) Cameroon;
- (j) Canada;
- (k) Chile;
- (l) Colombia;
- (m) Czechoslovakia;
- (n) Denmark;
- (o) Egypt;
- (p) Finland;
- (q) Georgia;
- (r) Germany;
- (s) Greece;

- (t) Guinea;
- (u) Hungary;
- (v) Iceland;
- (w) India;
- (x) Israel;
- (y) Italy;
- (z) Ivory Coast;
- (aa) Korea;
- (bb) Lebanon;
- (cc) Mexico;
- (dd) Morocco
- (ee) Netherlands;
- (ff) New Zealand;
- (gg) Poland;
- (hh) Portugal;
- (ii) Romania;
- (jj) Senegal;
- (kk) Spain;
- (ll) Sweden;
- (mm) Switzerland;
- (nn) Tunisia;
- (oo) Turkey;
- (pp) United Kingdom;
- (qq) USSR;
- (rr) Venezuela; and
- (ss) Yugoslavia.

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