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Film Co-Production

agreement between the Government of the United Kingdom of Great
Britain and Northern Ireland and the Government of the Federative
Republic of Brazil

Brasilia, 28 September 2012

[The Agreement entered into force on 8 December 2016]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 2017*

Cm 9406



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**FILM CO-PRODUCTION AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND THE GOVERNMENT OF THE
FEDERATIVE REPUBLIC OF BRAZIL**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil ("the Parties"):

Considering that there is potential for the film industries of each country to work together on account of shared or complementary characteristics that include the structure of each film industry, the film culture of each country and the extent of the availability in each country of film-making facilities, a suitably skilled workforce and locations for filming;

Recognising that development of such potential will be to the mutual advantage of each Party, in particular in respect of the growth and competitiveness of their film industries and the enhancement of their film cultures;

Noting the benefits available in each country to films with national film status;

Desiring to encourage the making of films that reflect, enhance and convey the diversity of culture and heritage in both countries;

Acknowledging the benefits that would flow from the making of such films and from an increase in public availability of distinctive and successful co-produced films;

Noting that on the basis of mutual cooperation, the Agreement is intended to produce benefits for both parties; and

Noting that this Agreement would contribute to the development of film-making and to the enrichment of the cultural landscape of their countries, while preserving an overall balance with regard to the contribution of each of them in co-produced films and to the benefits obtained by the two countries from this cooperation and its cultural impact;

Have agreed as follows:

ARTICLE 1

Definitions

(1) In this Agreement:

"Agreement" means this Agreement, including the Annex which forms an integral part of this Agreement; and any reference to "an Article" means an Article in this Agreement unless otherwise stated;

"Approved Co-production" means a co-produced film which has Approved Co-Production status in accordance with Article 3;

"Co-producer" means any body corporate or unincorporated association who is a co-producer of a film;

"Competent Authority" means a government department or other body designated in accordance with Article 2;

"EEA State" means a State (other than the United Kingdom) which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time);

"Film" includes any record, however made, of a sequence of visual images, which is a record capable of being used as a means of showing that sequence as a moving picture, and for which there is an expectation for i) theatrical release and public exhibition, or ii) release on television;

"Party Co-producer" means a UK Co-producer or a Brazilian Co-producer;

"UK Co-producer" means a co-producer who is established in England, Wales, Scotland or Northern Ireland;

"Brazilian Co-producer" means a co-producer who is established in Brazil;

"Third Party Co-producer" means a co-producer who is established outside of the UK or Brazil and who would be eligible to participate as a co-producer of a film with Brazil or the UK under a separate co-production agreement with either Brazil or the UK;

"Non-Party Co-producer" means a co-producer who is not a Party Co-producer or a Third Party Co-producer;

"Production Cost", in relation to a co-production, means expenditure incurred for the purposes of making the film;

"United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

(2) References to film-making contribution benefiting the UK or Brazil include, in particular, the expenditure in that country on goods and services which directly results from the co-production and the use made of film-making facilities or filming locations in that country.

(3) For the purposes of this Agreement the production of a film is completed when the film is first in a form in which it can reasonably be regarded as ready to be distributed or broadcast for presentation to the general public.

ARTICLE 2

Competent Authorities

(1) Each Party shall nominate a Competent Authority to make decisions on applications for the grant of Approved Co-production status by any one or more co-producers of a film. ANCINE is hereby nominated as the Competent Authority of the Federative Republic of Brazil, and the Department for Culture, Media and Sport for the United Kingdom of Great Britain and Northern Ireland. Each Party shall, by notice in writing to the other Party, inform of any change to the nominated Competent Authority.

(2) In determining an application made to it, a Competent Authority shall assess the application against the requirements which are set out in this Agreement and which are applied in accordance with guidance published by the Competent Authority under this Article.

(3) Each Competent Authority may from time to time publish guidance consisting of such information and advice as it considers appropriate with respect to:

- (a) how applications are to be made to the Competent Authority, and
- (b) the operation and interpretation of this Agreement.

(4) Such guidance shall, in particular, set out:

- (a) how the Competent Authority proposes to make decisions on applications for the grant of Approved Co-production status, and
- (b) factors it will take into account when exercising any discretion conferred on it by this Agreement.

(5) The Competent Authorities shall jointly determine the procedure that they will follow in arriving at any joint decisions required by this Agreement.

ARTICLE 3

Grant of Approved Co-production status

(1) A co-produced film which meets the requirements set out in this Agreement may be granted Approved Co-production status.

- (2) Approved Co-production status shall be granted only if:
 - (a) an application in respect of a film is made to each of the Competent Authorities in accordance with procedures established under Article 2, and
 - (b) both Competent Authorities agree to approve the application in accordance with this Article.
- (3) Approval of an application in respect of a film shall be given in two stages:
 - (a) provisional approval, and
 - (b) final approval.
- (4) Provisional or final approval shall be given:
 - (a) Only if the requirements set out in Article 4 are met, and
 - (b) Subject to such conditions as the Competent Authorities (acting jointly) consider appropriate.
- (5) For the purposes of eligibility for the benefits referred to in Article 9, a film shall be treated as having Approved Co-production status only if:
 - (a) the Competent Authorities have agreed to give the film final approval under this Article, and
 - (b) that approval has not been withdrawn.
- (6) For all other purposes:
 - (a) references to the grant of Approved Co-production status are to the giving of either final approval or provisional approval under this Article, and
 - (b) a film shall be treated as having Approved Co-production status if either stage of approval has been given and that approval has not been withdrawn.
- (7) If at any stage the Competent Authorities do not agree to approve an application in respect of a film, Approved Co-production status shall be refused.
- (8) Nothing in this Agreement binds the relevant authorities in the UK or Brazil to permit the public exhibition of a film which has been granted Approved Co-production status.

ARTICLE 4

Requirements for Approved Co-production status

- (1) A film may be granted Approved Co-production status only if each Competent Authority is satisfied that:
 - (a) subject to paragraph (3) of this Article, the general requirements set out in the Annex to this Agreement are (or are expected to be) met in relation to the co-production, and
 - (b) the film delivers (or is expected to deliver) appropriate cultural benefits to the country for which it is the Competent Authority, and
 - (c) any temporary additional requirements that are imposed under Article 6 by that Competent Authority are (or are expected to be) met.
- (2) The cultural benefits referred to in paragraph (1)(b) of this Article shall be assessed by each Competent Authority as described in the guidance published under Article 2(3).
- (3) In the event of an inconsistency between:
 - (a) on the one hand, any of the provisions of the Annex to this Agreement, and
 - (b) on the other, any temporary additional requirements imposed under Article 6,

the Competent Authorities shall apply the temporary additional requirement.

ARTICLE 5

Balance in Film-Making and Cultural Contributions Benefiting each Party

- (1) In connection with the making of films which have Approved Co-production status under this Agreement, the Parties shall seek to ensure an overall balance in:
 - (a) the film-making contribution benefiting Brazil and the film-making contribution benefiting the UK and;
 - (b) the cultural benefits to Brazil and the cultural benefits to the UK.
- (2) Each Party shall assess the state of balance between them and inform the other Party accordingly.

(3) The Parties shall consult each other on the approach to be taken and methodology to be used in measuring whether or not a state of balance exists.

(4) In making an assessment of the state of balance, the Parties shall take account of the total number of Approved Co-productions during the three year period immediately before the date on which any assessment of the state of balance is made (subject to the period this Agreement has been in force).

ARTICLE 6

Balance and Temporary Additional Requirements

(1) In connection with the making of films which have Approved Co-production status under this Agreement, the Parties shall seek to ensure a general balance of the film-making contributions benefiting Brazil and the UK.

(2) If a Party considers that there is (or is a risk of) imbalance in film-making contributions or cultural benefits, it may consult the other Party.

(3) The Parties may jointly agree to take such measures (including temporary additional requirements) as they consider necessary to restore balance.

(4) Subject to paragraph (5) of this Article, a Party may decide upon temporary additional requirements that must be met before the grant of Approved Co-production status can be given.

(5) Temporary additional requirements shall only apply with respect to applications for provisional approval of Approved Co-production status under Article 3, and any such requirements shall not take effect without –

- (a) formal written notification to the other Party to this Agreement, (including a statement of the reasons for imposing such temporary additional requirements),
- (b) prior consultation with the other Party to this Agreement held subsequent to the notification referred to in subparagraph (a) above, and
- (c) appropriate revisions being made to the guidance published in accordance with Article 2(3).

ARTICLE 7

Withdrawal of Approved Co-production Status

- (1) Approval for a film which has Approved Co-production status may be withdrawn if, at any time, it appears to either Competent Authority that:
- (a) false or misleading information has been provided in connection with an application for the approval,
 - (b) any of the conditions imposed under Article 3(4)(b) by the Competent Authorities have not been complied with,
 - (c) any of the requirements set out in Article 4(1)(a) or (b) are not met, or
 - (d) any of the requirements specified in paragraph (2) of this Article are not met.
- (2) The requirements specified in this paragraph are any temporary additional requirements imposed under Article 6:
- (a) which applied to the film when provisional approval for Approved Co-production status under Article 3 was given, and
 - (b) which continue to have effect when the status is withdrawn under this Article.

ARTICLE 8

Benefits for Co-productions with either Final Approval or Provisional Approval

- (1) This Article applies in relation to any film which has Approved Co-production status.
- (2) Each Party shall permit, where possible and in accordance with their respective legislation, including for the UK relevant European Union legislation, temporary import and export, free of import or export duties and taxes, of any equipment necessary for the production of an Approved Co-production.
- (3) Each Party shall permit any person employed in the making or promotion of an Approved Co-production to enter and remain in the UK and Brazil, as the case may be, during the making or promotion of the film, subject to the requirement that they comply with the legislation relating to entry, residence and employment.

ARTICLE 9

Additional Benefits available only to Co-productions with Final Approval

- (1) This Article applies only in relation to a film in respect of which the Competent Authorities have agreed to give final approval for Approved Co-production status under Article 3.
- (2) Each Party shall treat, in its country, a film falling within paragraph (1) of this Article as a national film for the purposes of any benefits afforded in that country to national films.
- (3) The benefits referred to in paragraph (2) of this Article include, in particular:
 - (a) eligibility for any benefits in fiscal treatment (subject to the film satisfying the criteria that national films must meet for such benefits),
 - (b) the lifting of any quota restrictions that would otherwise apply to the import, distribution or exhibition of the film, and
 - (c) access to any special import arrangements, agreed between a Party and another country which operates import quota restrictions, for the import of national films of that Party.
- (4) Unless otherwise agreed by the Parties, where an award or prize requires the film to be considered as a national film of only one country, this shall be determined:
 - (a) by reference to whichever is the greater of either:
 - (i) the total financial contributions made by the UK Co-producer or Co-producers (taken together), or
 - (ii) the total financial contributions made by the Brazilian Co-producer or Co-producers (taken together); or
 - (b) if the respective total financial contributions are equal, by reference to the director.

ARTICLE 10

Entry into Force

- (1) This Agreement shall enter into force as soon as the Parties have notified each other, in writing through the diplomatic channel, of the completion of their respective constitutional procedures.
- (2) Either Party may terminate this Agreement, at any time, by giving at least six months' written notice to the other Party, through the diplomatic channel.
- (3) This Agreement shall cease to have effect on the day that the period of notice given under paragraph (2) of this Article expires.

ARTICLE 11

Films in Production before and after Entry into Force

- (1) A film shall be eligible for the grant of Approved Co-production status even if production commenced before this Agreement entered into force, but only if:
 - (a) the first day of principal photography of the film is on or after the date of signature of this Agreement; and
 - (b) production of the film is completed after the date on which the Agreement enters into force.
- (2) An Approved Co-production shall continue to be eligible to receive any benefits available under this Agreement on or after the date on which the Agreement ceases to have effect, but only if:
 - (a) before that date, the Competent Authorities have given the film provisional approval for Approved Co-production status under Article 3,
 - (b) its principal photography commenced before that date, and
 - (c) production of the film is completed before the end of the period of twelve months commencing with that date.

ARTICLE 12

Amendment and Review

- (1) The Parties shall keep the Agreement under review and, where they consider it appropriate to do so, may agree that amendments be made.

(2) The Parties may, at any time through an exchange of notes, make amendments to the Agreement.

(3) Any such amendments shall enter into force as soon as the Parties have notified each other, in writing, through the diplomatic channel, of the completion of their respective constitutional procedures.

(4) The Competent Authorities shall endeavour to resolve any disputes about the operation and interpretation of this Agreement by negotiation and consultation.

ARTICLE 13

International Obligations

The provisions of this Agreement are without prejudice to the international obligations of the Parties, including, in relation to the United Kingdom, obligations arising from European Union law.

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

DONE in duplicate at Brasilia this twenty eighth day of September, 2012 in the English and Portuguese languages, both texts being equally authoritative.

**For the Government of the
United Kingdom of Great
Britain and Northern Ireland:**

**LORD GREEN
OF HURSTPIERPOINT**

**For the Government of the
Federative Republic of Brazil:**

MARTA SUPLICY

ANNEX

APPROVED CO-PRODUCTION STATUS: GENERAL REQUIREMENTS

Co-producers

1. The co-producers shall include at least one UK Co-producer and at least one Brazilian Co-producer.
2. A co-producer of a film from one country shall not be linked by common management, ownership or control with any co-producer of that film from another country, save to the extent that such a link is inherent in the making of the co-production film itself.
3. Unless the Competent Authorities agree otherwise, each co-producer shall have offices and staff in the country in which the co-producer is established.
4. Unless the Competent Authorities agree otherwise, each co-producer shall:
 - (a) continue to play an active role throughout the time the co-production is being made (including production planning and decision-making), and
 - (b) assume responsibility for carrying through practical and financial arrangements for the making of the film.
5. Each co-producer shall also meet the following requirements:
 - (a) each co-producer must directly negotiate, contract and pay for rights, goods and services, and
 - (b) the co-producers must have entered into a binding contract, the terms of which reflect their respective responsibilities for the co-production.
6. Unless the Competent Authorities agree otherwise:
 - (a) the co-producers named in the original application shall not be replaced, and
 - (b) no co-producers may be added to those named in the original application (or previously agreed to under this paragraph).
7. Unless the Competent Authorities agree otherwise, a Third Party Co-producer shall meet all the requirements of this Annex.

Financial contributions

8. Subject to paragraph 10, in the case of a co-production where the co-producers are all Party Co-producers, each of the following:

- (a) the total financial contributions of the UK Co-producer or Co-producers (taken together);
- (b) the total financial contributions of the Brazilian Co-producer or Co-producers (taken together);

shall not be less than 20% and not more than 80% of the total production cost.

9. In considering an application for the grant of Approved Co-production status, the Competent Authorities may agree to different limits for the purposes of paragraph 8, but subject to new minimum and maximum limits of 10% and 90%, respectively.

10. Subject to paragraph 12, in the case of a co-production where the co-producers are not all Party Co-producers:

- (a) the total financial contributions of the UK Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 70% of the total production cost;
- (b) the total financial contributions of the Brazilian Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 70% of the total production cost;
- (c) the total financial contributions of the Third Party Co-producer or Co-producers (taken together) shall not be less than 20% and not more than 70% of the total production cost;
- (d) the total financial contributions of each Non-Party Co-producer shall not be less than 10% and not more than 20% of the total production cost, unless otherwise agreed upon by the Parties.

11. In considering an application for the grant of Approved Co-production status, the Competent Authorities may agree to reduce the lower limit for the purposes of paragraph 10(a), (b) or (c), but subject to a new minimum limit of 10%.

Film-making contributions

12. The film-making contribution benefiting a country shall be broadly in proportion to the financial contribution of the Party Co-producer (or Co-producers) established in that country.

13. Unless the Competent Authorities agree otherwise, no more than 20% of the total production cost may be used to source goods and services from outside of:

- (a) the United Kingdom,
- (b) Brazil,
- (c) an EEA State, or
- (d) where there is a Third or Non Party Co-producer, the State or region in which that Co-producer is established.

Rights, revenues, receipts etc

14. The rights, revenues and prizes arising in connection with the co-production shall be shared between the Party Co-Producers in a manner that reflects their respective financial contributions.

Film content

15. Unless the Competent Authorities agree otherwise, at least 90% of footage must have been specially shot for that film.

16. The film shall not contain any material which will breach, or be likely to breach national legislation, in force in either the UK or Brazil, that is aimed at controlling the content of film.

Language of the film

17. Versions of the film shall be made as follows:

- (a) the original version must be made in an official language or a recognised regional or minority language of either Party;
- (b) if the original version is not in the English language, a subtitled or dubbed version must be produced in English; and
- (c) if the original version is not in the Portuguese language, a subtitled or dubbed version must be produced in Portuguese.

18. Nothing in paragraph 17 of this Annex prevents:

- (a) the film containing passages of dialogue in other languages if the story requires it, or
- (b) production of subsequent versions of the film in other languages.

Screen and publicity credits

19. The film shall be credited on screen and in publicity either:
- (a) as a UK/Brazil co-production, or
 - (b) where a co-production has one or more Third Party Co-producers or Non-Party Co-producers, as a UK/Brazil/Third Party/Non-Party co-production.

Where the film is made

20. Unless the Competent Authorities agree otherwise:
- (a) all work on the co-production prior to completion shall be carried out in the UK or Brazil, or where there is a Third Party Co-producer, in the State or region in which that Third Party Co-producer is established, and
 - (b) the majority of the work on the co-production shall be carried out in the State or region in which the Party Co-Producer or Third-Party Co-producer making the greatest financial contribution is established;

but nothing in this Agreement shall prevent co-production work in a third country or region if the script or the circumstances require it, and the Competent Authorities agree.

21. For the avoidance of doubt, the reference in paragraph 20 of this Annex to work on a co-production prior to completion includes studio and post-production work.

Personnel

22. Subject to paragraph 23 of this Annex, individuals participating in the making of the film shall be nationals of, or ordinarily resident in:
- (a) the United Kingdom,
 - (b) Brazil,
 - (c) an EEA State, or
 - (d) where there is a Third or Non Party Co-producer, the State or region in which that co-producer is established.

23. The Competent Authorities may jointly agree to allow individuals not listed in paragraph 22 above to participate in the making of a film without regard to nationality or residency, or other grounds.

Conditions of work

24. The conditions of working for those taking part in the making of a co-production in each of the countries of the participating co-producers shall be broadly comparable and, in relation to each country, consistent with the standards generally prevailing in that country.

25. Conditions of work (including location shooting) in a country or region other than that of a co-producer, shall not be significantly less favourable than the standards required by paragraph 24 of this Annex.

Co-production contract

26. The co-production contract between the co-producers shall be submitted to the Competent Authorities, and the contract must:

- (a) set out the steps to be taken where a co-producer fails to fulfil its commitments under the contract;
- (b) specify the dates by which the respective financial contributions of the co-producers to the production of that film must be completed;
- (c) make arrangements for any unpaid balance of the contributions of each co-producer to be paid within a period of sixty days from the date of completion of the film;
- (d) make provision for any overage or underage, which results from the total budgeted costs being exceeded or under-spent, to be divided in such a way as not to cause the project to fall outside the terms of this Agreement or the terms of the provisional approval given by the Competent Authorities;
- (e) set out clearly the financial liabilities of each co-producer for the costs that are incurred:
 - (i) in preparing a project which is refused final approval or provisional approval for Approved Co-production status under Article 3,
 - (ii) in the event that a relevant authority prohibits the exhibition in either country of a film which has Approved Co-production status, or
 - (iii) in the event that a relevant authority prohibits the export of the film to a third country or region;

- (f) make provision for the respective copyright entitlements of the co-producers;
- (g) make provision for the distribution of the rights and revenues arising in connection with the co-production;
- (h) set out the arrangements regarding the division between the co-producers of territories and/or the receipts from the exploitation of the film, including those from export markets;
- (i) provide that the original protection and reproduction material from the production ("the material") and the first completed version ("the master") are to be deposited in a place mutually agreed by the co-producers;
- (j) provide:
 - (i) that each co-producer is to have free access to the material and the master in accordance with the conditions agreed upon between the co-producers;
 - (ii) either that each of the co-producers is to have joint ownership of the material and the master or that each co-producer is to be the owner of a copy of the material and the master; and
 - (iii) that a sufficient number of copies of the material and the master are to be made for all the co-producers without restriction on the number of copies made by each co-producer;
- (k) state that amendments to the contract that affect Approved Co-production status must be submitted for approval to the Competent Authorities before the co-production is finished; and
- (l) be in compliance with any other requirements that the national legislations of each co-producing country might have in relation to the content of co-production contracts.

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