

**Audiovisual Co-production Agreement**  
**between**  
**the Government of Australia**  
**and the**  
**Government of the Republic of India**

# **Audiovisual Co-production Agreement between the Government of Australia and the Government of the Republic of India**

**The Government of Australia and the Government of the Republic of India  
(hereinafter referred to as the “Parties”);**

SEEKING to enhance cooperation between the two countries in the area of audiovisual work and to facilitate the cultural, creative and economic exchanges between the Parties;

SO as to enable expanding and facilitating the co-production of audiovisual works which may be beneficial to the audiovisual industries of both the countries;

DESIROUS that the audiovisual industries of the two countries share the risk and cost of productions, whilst increasing the output of high quality productions;

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

HAVE AGREED as follows:

## **Article 1 Definitions**

For the purposes of this Agreement:

- 1.1 ‘audiovisual co-production’ means an audiovisual work jointly produced by one or more Australian co-producers and one or more Indian co-producers (and, in the case of a third country co-production, with a third country co-producer); which has been approved by the competent authorities;
- 1.2 ‘audiovisual work’ means any aggregate of images or of images and sounds, embodied in any material in accordance with each Party’s laws and regulations;
- 1.3 ‘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 (Entitlement to Benefits);
- 1.4 ‘competent authority’ means:

- a) on behalf of the Government of the Republic of India, the Ministry of Information & Broadcasting;
- b) on behalf of the Government of Australia, Screen Australia or such other entity as designated by the Australian Government;

1.5 'co-producer' means:

- a) one or more Indian nationals;
- b) one or more Australian nationals; or
- c) in the case of a third country co-production under Article 5 (Third Country Co-productions), any individual that falls within the relevant scope of the film or audiovisual agreement or arrangement of less-than-treaty status referred to in that Article;

involved in the making of a co-production film;

1.6 'legal entity' means any entity duly constituted or otherwise organised under applicable 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 India, citizens of India;
- b) in relation to Australia, Australian citizens and permanent residents;

1.8 'protection and reproduction material' means:

- a) those materials derived from the original film materials for protecting the final version of the film; and
- b) those materials used for making copies of the film for the purpose of distribution and exhibition of the film.

## **Article 2**

### **Competent Authority**

- 2.1 Each Party shall designate a competent authority for the purposes of implementing this Agreement. Either Party may change their appointed competent authority by giving notice to the other Party through diplomatic channels. The change in 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 Audiovisual Co-productions**

- 3.1 Prior to the commencement of the making of an audiovisual co-production, co-producers shall apply to the competent authorities for provisional approval of the audiovisual work.
- 3.2 The competent authorities, in consultation, shall apply the provisions of this Agreement and the Annex to this Agreement consistent with Article 17 (Status of Annex) when approving audiovisual works under this Agreement.
- 3.3 The approval process shall comprise two stages:
- a) provisional approval in accordance with Article 3.1; and
  - b) final approval upon completion of the co-production film.
- 3.4 When approving an audiovisual work as an audiovisual co-production, each competent authority may stipulate additional conditions of approval, ensuring that such conditions are consistent with the provisions of this Agreement, and framed 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 16.1.
- 3.5 In the event that the approval by both competent authorities is not granted, the audiovisual work concerned shall not be approved under this Agreement.
- 3.6 The approval of an audiovisual work as a co-production by the competent authorities shall not bind the relevant authorities of either Party to permit the public exhibition of the resulting audiovisual work.

**Article 4**  
**Co-producer Status**

- 4.1 The competent authorities shall ensure that:
- a) the Indian co-producer shall fulfil all conditions relating to status which are required to be fulfilled in order for the production to be eligible as an Indian audiovisual work or satisfy the provisions of this Agreement, and Rules or Procedures, made thereunder;
  - b) the Australian co-producer shall fulfil 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 Australian audiovisual work under Australian legislation and the provisions of this Agreement; 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 audiovisual co-production itself.

## **Article 5**

### **Third Party Co-productions**

- 5.1 Where either Party maintains with a third country a film or audiovisual co-production agreement, or arrangement of less-than-treaty status, the competent authorities may jointly approve an audiovisual work as a co-production film under this Agreement that is to be made in conjunction with a co-producer from that third party country.
- 5.2 Any third country co-producer shall fulfil all conditions relating to status which would be required to be fulfilled to produce an audiovisual work under the terms of the co-production agreement, or arrangement of less-than-treaty status, in force between that co-producer's country and either India or Australia.

## **Article 6**

### **Entitlement to Benefits**

- 6.1 An audiovisual co-production shall be entitled to the full enjoyment of all the benefits which are or may be accorded to national audiovisual works in India and Australia respectively subject to the laws in force from time to time 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 audiovisual work shall accrue to the co-producer who is permitted to claim those benefits in accordance with the laws, measures and other financial incentive arrangements 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 under Article 5 (Third Country Co-productions), any individual or legal entity that falls within the relevant scope of the film or audiovisual agreement or arrangement of less than treaty status referred to in that Article.
- 6.4 An audiovisual co-production 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 an audiovisual co-production and its co-producers shall accordingly be entitled to all the benefits of this Agreement.

**Article 7**  
**Immigration Facilitation and Import of Equipment**

- 7.1 Subject to their legislation and regulations in force from time to time, the Parties shall:
- a) permit the entry into, and temporary stay in, their respective territories of the creative and technical personnel and the performers engaged by the co-producer of the other country, or in the case of a third country co-production under Article 5 (Third Country Co-productions), individuals that fall within the relevant scope of the film or audiovisual agreement or arrangement of less-than-treaty status referred to in that Article, for the purpose of producing the audiovisual co-production; and
  - b) similarly permit the temporary entry and re-export of any equipment necessary for the purpose of producing the audiovisual co-production, free of import duties and taxes.

**Article 8**  
**Contributions**

- 8.1 Each co-producer shall make 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 audiovisual co-production.
- 8.2 The performing, technical and craft contribution (being the “creative” contribution) of each co-producer to an audiovisual co-production shall be in reasonable proportion to each co-producer's financial contribution.

**Article 9**  
**Location Filming**

- 9.1 The audiovisual co-production may undertake location filming in a country other than the countries of the participating co-producers, subject to the approval of the competent authorities. Where location filming in an additional country is agreed, the co-producers shall have the responsibility to ensure that all necessary approvals and permits of that additional country are obtained and complied with.

**Article 10**  
**Participation**

- 10.1 Subject to Articles 10.2 to 10.5, individuals participating in the making of audiovisual co-productions shall be nationals of India, Australia or in the case of a third country co-production under Article 5 (Third Country Co-productions),

individuals that fall within the relevant scope of the film or audiovisual agreement of less than treaty status referred to in that Article.

- 10.2 Performers who are citizens and permanent residents of countries other than the participating co-production countries may be engaged in the production:
- a) where the competent authorities are satisfied that there are exceptional circumstances;
  - b) where script or financing of a co-production dictates their participation; or
  - c) in the case of approved location filming in a country other than that of the participating co-production countries, in minor roles where this is reasonably necessary.
- 10.3 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.
- 10.4 The competent authorities may approve the participation of restricted numbers of technical personnel who are citizens and permanent residents of countries other than the co-production countries where the competent authorities are satisfied that the relevant technical expertise is not available in the co-producers' countries at the time the relevant audiovisual co-production is made.
- 10.5 A screen writer who is a citizen or a permanent resident of a country other than the participating co-production countries who makes a minor contribution to the screenplay of an audiovisual co-production and who does not receive a writer's credit shall not be considered to have participated in the making of the audiovisual co-production within the meaning of Article 10.1.

## **Article 11**

### **Soundtrack**

- 11.1 Unless otherwise decided by the competent authorities in consultation, the original soundtrack of each audiovisual co-production 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 dialect, of that third country, or in any combination of those languages.
- 11.2 The original soundtrack of each audiovisual co-production shall be made in India and/or Australia and/or, where there is a third country co-producer, in that third country.

- 11.3 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.
- 11.4 Narration, dubbing and subtitling of each audiovisual co-production shall take place in India and/or Australia and/or where there is a third country co-producer, in that third country.
- 11.5 Post release print dubbing into any other language may be carried out in a country other than the co-producers' countries.
- 11.6 The soundtrack may contain sections of dialogue in any language in so far as this is required by the script.
- 11.7 Any music specially composed for an audiovisual co-production shall, subject to any departure from this rule which is approved by the competent authorities, be composed by nationals of India, Australia, or in the case of a third country co-production under Article 5 (Third Country Co-productions), any individual that falls within the relevant scope of the film or audiovisual agreement or arrangement of less-than-treaty status referred to in that Article.

## **Article 12**

### **Making up to First Release Print**

- 12.1 Audiovisual co-productions shall be made and processed up to the creation of the first release print or digital equivalent in India and/or Australia and/or, where there is a third country co-producer, that 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. In the event that the financial contributions of the co-producers are equal, the location of the majority of the work shall be determined by agreement of the co-producers and approved by the competent authorities.
- 12.2 Dubbing of audiovisual co-productions, undertaken up to the making of the first release print or digital equivalent, may be carried out in India and/or Australia and/or, where there is a third co-producer, in that co-producer's country.
- 12.3 At least ninety per cent (90%) of the footage included in an audiovisual co-production shall, subject to any departure from this rule which is approved by the competent authorities, be specially shot for that audiovisual work.

## **Article 13**

### **Working Conditions**

- 13.1 To the extent possible, the competent authorities will satisfy themselves that conditions of work in the making of audiovisual co-productions under the Annex



in each of the countries of the participating co-producers are in broad terms comparable and, in relation to each country, consistent with the standards generally prevailing in that country, and that in the event that location shooting of the audiovisual work takes place in a country other than that of a co-producer, conditions will be, in broad terms, comparable.

#### **Article 14** **Acknowledgement and Credits**

- 14.1 The competent authorities shall ensure that each audiovisual co-production includes either a separate credit title indicating that the audiovisual work is either an “Indian-Australian co-production” or an “Australian-Indian co-production”, or where relevant, a credit which reflects the participation of Australia, India and the country of the third co-producer.

#### **Article 15** **Taxation**

- 15.1 Notwithstanding any other provision of this Agreement other than Article 7 (Immigration Facilitation and Import of Equipment), for the purposes of taxation the laws in force in each Party shall apply subject to the provisions of any treaty governing tax matters between the Parties.

#### **Article 16** **Balance**

- 16.1 An overriding aim of the 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 audiovisual co-productions;
  - 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.
- 16.2 Either competent authority may withhold approval of an audiovisual work as an audiovisual co-production on the basis that the overriding aim of overall balance referred to in Article 16.1 would be prejudiced by such approval, provided that

approval may not be withheld on this ground where a film has received provisional approval under Article 3.1.

**Article 17**  
**Status of Annex**

- 17.1 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 understanding of the Parties and does not create legally binding obligations.
- 17.2 Any modification 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.
- 17.3 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 18**  
**Amendment**

- 18.1 This Agreement may be amended at any time by mutual consent of the Parties. Any such amendment shall be made in writing.
- 18.2 An amendment agreed to by the Parties shall enter into force once the Parties have notified each other through diplomatic channels that their respective internal legal requirements for entry into force of the amendment have been completed. The amendment shall enter into force on the latter date of these two notifications.

**Article 19**  
**Settlement of Disputes**

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

**Article 20**  
**Entry into Force**

20. The Agreement shall enter into force once the Parties have notified each other through diplomatic channels that their respective internal legal requirements for entry into force have been completed. The Agreement shall enter into force on the latter date of these two notifications.

**Article 21**  
**Duration and Termination**

- 21.1 This Agreement shall remain in force initially for a period of three years from the date of its entry into force. Either Party wishing to terminate it shall give written notice to terminate to the other Party six months before the end of that period, and the Agreement shall then terminate at the end of the three years.
- 21.2 If no notice of termination is given the Agreement shall automatically remain in force for successive periods each of three years, unless written notice to terminate is given by either Party at least six months before the end of any period of three years, in which case it shall terminate at the end of that period.

In witness whereof, the undersigned being duly authorised thereto by their respective governments, have signed this Agreement.

Done in two originals at \_\_\_\_\_ on this day of \_\_\_\_\_, in two originals, each in English and Hindi languages, both the versions being equally authentic. In case of divergence in interpretation, the English text shall prevail.

**For and on behalf of the Government of  
Australia**

**For and on behalf of the Government of  
the Republic of India**

Name:

Name:

Designation:

Designation:

## ANNEX

### **(1) Status of Annex**

This Annex constitutes an implementing arrangement in respect of the Film Co-production Agreement between the Government of India and the Government of Australia (“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 Ministry of Information & Broadcasting in India and Screen Australia in Australia or such other entity as designated by the Australian Government.

### **(4) Co-producer Contracts**

In approving films, the competent authorities will ensure that the contracts between the co-producers:

- a) 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;
- b) 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;
- c) set out the financial liability of each co-producer for costs incurred in the following situations where:
  - i. a film is refused provisional approval as a co-production film by the competent authorities;
  - ii. a film which has been given such provisional approval fails to comply with the conditions of such approval;
  - iii. 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;
- d) 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; and
- e) specify the dates by which their respective contributions to the production of that film will have been completed.

### **(5) Rules of procedure**

The competent authorities will assess co-productions in accordance with the Agreement and:

- a) for India, the Rules of Procedure as in force from time to time (<https://mib.gov.in/film/films-codes-guidelines-and-policies> ) ; and
- b) for Australia, the International Co-production Program Guidelines as in force from time to time (<http://www.screenaustralia.gov.au/coproductions/guidelines.aspx>)