

AUDIOVISUAL COPRODUCTION TREATY

BETWEEN

THE GOVERNMENT OF CANADA

AND

THE GOVERNMENT OF NEW ZEALAND

**THE GOVERNMENT OF CANADA AND THE GOVERNEMENT OF
NEW ZEALAND** (the “Parties”),

RECOGNIZING that quality audiovisual treaty coproductions contribute to the vitality of their audiovisual industries and to the development of their economic and cultural exchanges;

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

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

AGREEING that these exchanges may enhance the relations between the Parties;

RECOGNIZING that these objectives may be achieved by granting domestic benefits to qualified audiovisual treaty coproductions;

HAVE AGREED as follows:

ARTICLE 1

Definitions

For the purpose of this Treaty:

“administrative authority” means for each Party, the designated authority which administers this Treaty;

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

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

“coproducing parties” means the Parties, along with third parties when applicable;

“elements”:

- (a) “Canadian elements” means:
 - (i) expenditures incurred in Canada by the Canadian producer; and
 - (ii) expenditures on Canadian creative and technical personnel incurred in other States and territories by the Canadian producer, in the course of the production of a work;
- (b) “New Zealand elements” means:
 - (i) expenditures incurred in New Zealand by the New Zealand producer; and
 - (ii) expenditures on New Zealand creative and technical personnel incurred in other States and territories by the New Zealand producer, in the course of the production of a work;

“national” means a natural or legal person, as defined by the laws of the respective States and territories, who has the right under those laws to benefit from the application of this Treaty; in the case of New Zealand, “national” also includes any person who is required to be treated as a New Zealander for the purposes of implementing this Treaty;

“non-party” means a State or territory other than the coproducing parties;

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

“third party” means a State or territory that has a coproduction treaty or memorandum of understanding with at least one of the Parties and that has a producer involved in the work;

“work” means an audiovisual work, including every version of that work, to be subsequently recognized as an audiovisual treaty coproduction by each Party.

ARTICLE 2

General Conditions

1. Each Party shall consider every work as if it were its own production in establishing whether that work is entitled to the same benefits as that Party's own audiovisual industry.
2. Each Party shall grant the benefits referred to in paragraph 1 to the producers of the work who are its own nationals.
3. For works coproduced over a period of five years, each Party shall strive to achieve overall balance of:
 - (a) financing; and
 - (b) the use of nationals of each Party in key positions.
4. Each Party shall ensure that its producer fulfills the requirements herein for a work to be considered eligible for benefits from the application of this Treaty.
5. The provisions relevant to the administration of this Treaty will be set out in the Annex.

ARTICLE 3

Participating Producers

1. To be eligible under this Treaty, a work shall be coproduced by producers of both Parties.
2. Third-party producers may also participate in the work.
3. None of the producers shall be linked to each other by common management, ownership, or control.

ARTICLE 4

Proportionality

1. The share of work expenditures spent on Canadian elements shall be in reasonable proportion to the Canadian financial participation.
2. The share of work expenditures spent on New Zealand elements shall be in reasonable proportion to the New Zealand financial participation.
3. The Parties, through the mutual written consent of their respective administrative authorities, may grant exemptions from paragraphs 1 and 2, notably for storyline and creative purposes.

ARTICLE 5

Nationality of Participants

1. Every participant in a work shall be a national of the coproducing parties, unless otherwise provided for in the Annex of this Treaty.

2. The Parties, through the mutual written consent of their respective administrative authorities, may grant exemptions from paragraph 1, notably to allow non-party nationals to participate in a work for storyline, creative, or production purposes.

ARTICLE 6

Temporary Entry and Residence

Subject to their respective laws and regulations, each Party shall facilitate the following:

- (a) the temporary entry into and residence for the creative and technical personnel engaged by the producer of the other Party for the purpose of the work;
- (b) the temporary entry and re-export of any equipment necessary for the purpose of the work.

ARTICLE 7

Copyright and Revenues

The Parties, through their respective administrative authorities, shall ensure that the sharing of copyright and revenues is, in principle, proportional to their producer's financial contribution, and no lesser than the minimum financial contribution identified in the Annex.

ARTICLE 8

Distribution

1. Each Party, through its administrative authority, shall ensure that its producer demonstrates the existence of a distribution or broadcasting commitment for the work in each of the coproducing parties.

2. The Parties, through the mutual written consent of their respective administrative authorities, may accept an alternative distribution commitment in lieu of the commitment described in paragraph 1.

ARTICLE 9

Material Changes

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

ARTICLE 10

Communication

1. Each Party, through its competent authority, shall promptly notify the other of any amendment or judicial interpretation of domestic law that may affect benefits from the application of this Treaty.

2. Each Party, through its administrative authority, shall collect and share its statistical information on the performance, distribution or exhibition of the work receiving benefits from the application of this Treaty.

ARTICLE 11

Annex

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

2. The Annex may be modified by the Parties, through the mutual written consent of their respective competent authorities, provided that these modifications do not conflict with this Treaty.

ARTICLE 12

Meetings and Amendments

1. Meetings will be held as needed between representatives of the competent authority of each Party to discuss and review the terms of this Treaty.
2. The Parties may amend this Treaty by mutual written consent. Each Party shall notify the other Party in writing of the completion of the domestic procedures required for the entry into force of the amendments. The amendments shall enter into force on the first day of the first month following the date of the second of these notifications.

ARTICLE 13

Transitional Provisions

1. The Parties shall not discontinue benefits granted for a work for a period of two years following termination of this Treaty, solely due to that termination.
2. This Treaty replaces the *Agreement on Film and Video Relations between the Government of Canada and the Government of New Zealand*, done at Vancouver on 16 October 1987, as amended. The Parties, through the mutual written consent of their respective administrative authorities, may continue to confer benefits to the producers whose work qualified for benefits from the application of that Agreement, provided that:
 - (a) the producers whose work qualified under that Agreement notify their respective administrative authorities, in writing, that they elect to continue receiving such benefits from the application of that Agreement; and
 - (b) the election is made within six months from the date of the entry into force of this Treaty.

ARTICLE 14

Settlement of Disputes

The Parties shall endeavor to resolve, through consultations and by mutual consent, any dispute regarding the interpretation or application of this Treaty.

ARTICLE 15

Entry into Force

1. Each Party shall notify the other Party, in writing, of the completion of its internal procedures required for the entry into force of this Treaty. This Treaty shall enter into force on the first day of the first month following the date of the second notification of the completion of the procedures required for the entry into force.
2. This Treaty shall remain in force for a period of five years from the date of entry into force.
3. This Treaty shall renew automatically at the end of five years from the date of entry into force and at the end of every subsequent five-year period, unless notice of termination is provided by a Party in accordance with paragraph 4 below.

4. A Party wishing to terminate this Treaty shall give written notice of termination to the other Party at least six months before the end of the fifth year following its entry into force or, if this Treaty is renewed, at least six months before the end of any subsequent five-year period.

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

DONE at _____ on the _____ day of _____, 2016, in duplicate, in the English and French languages, each version being equally authentic.

**FOR THE GOVERNMENT
OF CANADA**

**FOR THE GOVERNMENT
OF NEW ZEALAND**

ANNEX

This Annex is for administrative purposes and is not part of the *Audiovisual Coproduction Treaty between the Government of Canada and the Government of New Zealand* (the “Treaty”), done at _____ on the _____ day of _____, 2016.

The Parties to the Treaty understand that:

1. Definitions

The definitions of the Treaty apply to this Annex.

In this Annex:

- (a) “key positions” means the eight (8) positions, listed below in respect of each type of work:
 - (i) animation: director, screenwriter, music composer or sound designer, lead actor (voice) or second lead (voice), animation director, storyboard supervisor or picture editor, special effects director or stereoscopy director, and layout director;
 - (ii) documentary: director, screenwriter or researcher, music composer, lead actor or narrator, second lead actor or narrator, director of photography, art director or production designer, and picture editor;
 - (iii) fiction: director, screenwriter, music composer, lead actor, second lead actor, director of photography, art director or production designer, and picture editor;
 - (iv) for types of work, other than those described above, such as non-linear digital works, the positions to be included as key positions will be determined by mutual written consent of the administrative authorities.

In exceptional circumstances, the administrative authorities may, by mutual written consent, allow a non-key position in a work to replace one of the eight key positions listed in sub-sub-paragraphs (i), (ii), and (iii).

- (b) “dubbing” means the production of any version of the work in a language other than its original language or languages.

2. Minimum Financial Contribution by Producers

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

3. Key Positions

- (a) The key positions identified under paragraph 1 of this Annex will be filled by one or more nationals of each of the coproducing parties.
- (b) One of those key positions may be filled by a non-party national.
- (c) In the case of a high-budget work, the administrative authorities may, by mutual written consent, allow a second non-party national to fill one of those key positions. The threshold for what constitutes a high-budget work will be defined by the administrative authorities of each Party, and applied accordingly as mutually determined by those authorities.

4. Location and Technical Services

- (a) A work will be coproduced in the coproducing parties.
- (b) The administrative authorities may, by mutual written consent, allow a work to be coproduced in a non-party for storyline and/or creative reasons.
- (c) The administrative authorities may, by mutual written consent, allow technical services to be provided in one or more non-parties provided that producers demonstrate the non-availability of those services in any of the coproducing parties, and provided that the value of such services does not exceed twenty-five (25) percent of the total production budget of a work.

5. Dubbing

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