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AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND
AND THE GOVERNMENT OF THE ITALIAN REPUBLIC
CONCERNING THE CO-PRODUCTION OF FILMS

Rome, 30 July 1997

[Entered into force for New Zealand, 15 February 2000]

Presented to the House of Representatives

AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE ITALIAN REPUBLIC CONCERNING THE CO-PRODUCTION OF FILMS

The Government of New Zealand and the Government of the Italian Republic (hereinafter referred to as the "Contracting Parties");

Considering that the film industries of their two countries will benefit from closer mutual co-operation in the production of films; and

Considering that films capable of enhancing the prestige of the film industries and of the two countries should benefit from the provisions of this Agreement;

Have agreed as follows:

ARTICLE 1

For the purposes of this Agreement:

- (1) (a) a "co-production film" shall be a film made in accordance with the terms of an approval given by the competent authorities of the two countries jointly
 - (i) by one or more Italian producers ("the Italian co-producer") in conjunction with one or more New Zealand producers ("the New Zealand co-producer"); or
 - (ii) by an Italian co-producer and a New Zealand co-producer in conjunction with one or more producers from a third country with which the Government of the Italian Republic, the Government of New Zealand, or the New Zealand Film Commission has signed a Co-production Agreement ("third co-producer"); or
 - (iii) by an Italian co-producer and a New Zealand co-producer in conjunction with one or more third co-producers;
- (b) "twinned co-production films" means
 - (i) two films which include participation, even if only financial, on the part of the minority co-producer and which together satisfy the following criteria:
 - (a) the production costs of both films have been borne jointly; and
 - (b) in the case of one of the films, the Italian co-producer has predominantly exercised creative and production control and, in the case of the other film, the New Zealand co-producer has predominantly exercised creative and production control; or

- (ii) subject to the approval of both competent authorities, three or more films made by Italian and New Zealand co-producers with one or more third co-producers with each of which either or both Contracting Parties under this Agreement or the New Zealand Film Commission have co-production Agreements and where:
 - (a) the production costs of all films have been borne by all co-producers; and
 - (b) in the case of one of the films, the Italian co-producer has predominantly exercised creative and production control and, in the case of another of the films, the New Zealand co-producer has predominantly exercised creative and production control;
- (c) "film" means any sequence of visual images, irrespective of format, including animation and documentaries, which falls within the scope of the laws of either country governing the provision of benefits in relation to film production as in force from time to time;
- (2) "nationals" means:
 - (a) in relation to Italy, Italian Citizens and Citizens of a Member State of the European Union;
 - (b) in relation to New Zealand, New Zealand Citizens;
- (3) in relation to New Zealand, "residents" means persons who are entitled in accordance with New Zealand law from time to time in force to be in New Zealand indefinitely;
- (4) "Competent authorities" means:
 - (a) for Italy: Presidenza del Consiglio dei Ministri, Dipartimento Spettacolo, (Prime Minister's Office, Entertainment Division);
 - (b) for New Zealand: the New Zealand Film Commission or any other public authorities in New Zealand designated by the Government of New Zealand.

ARTICLE 2

A co-production film shall be entitled to the full enjoyment of all the benefits which are or may be accorded in Italy and New Zealand respectively to national films subject to the laws in force from time to time in that country.

ARTICLE 3

In approving films made under this Agreement, the competent authorities, acting jointly, shall apply the rules set out in the Annex, which forms an integral part of this Agreement.

ARTICLE 4

Each of the Contracting Parties shall provide, in accordance with their respective legislation, including, for Italy, relevant European Union legislation, temporary admission, free of import duties and taxes, of cinematographic equipment for the making of co-production films.

ARTICLE 5

Each of the Contracting Parties shall permit the nationals and residents of the other country and citizens of the country of any third co-producer to enter and remain in Italy or New Zealand, as the case may be, for the purpose of making or promoting a co-production film, subject to the requirement that they comply with the laws relating to entry and residence.

ARTICLE 6

Notwithstanding any other provision in this Agreement, for the purposes of taxation, the legislation and regulations in force in each of the two countries shall apply, subject to the provisions of the Convention between the Government of the Republic of Italy and the Government of New Zealand for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion which entered into force on 23 March 1983¹.

ARTICLE 7

There shall be a Mixed Commission composed of representatives of the Contracting Parties, which shall include the competent authorities and industry representatives, to supervise and review the working of this Agreement and to make any proposals considered necessary for any modification of this Agreement.

Representatives from Italy and New Zealand shall be approximately equal in number.

The Commission shall meet within six months of a request to meet being made by either Contracting Party with the venue alternating, as far as possible, between New Zealand and Italy.

ARTICLE 8

Each of the Contracting Parties shall notify the other in writing through the diplomatic channel of the completion of any procedure required by its constitutional law for giving effect to this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.

¹ See NZTS 1983 No. 5

ARTICLE 9

The provisions of this Agreement are without prejudice to the international obligations of the Contracting Parties, including, in relation to Italy, obligations devolving from European Union law.

ARTICLE 10

This Agreement shall not apply to Tokelau.

ARTICLE 11

This Agreement shall remain in force initially for a period of three years from the date of its entry into force. Either Contracting Party wishing to terminate it shall give written notice to terminate to the other six months before the end of that period and the Agreement shall then terminate at the end of the three years. If no such notice 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 Contracting 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 Representatives, duly authorised thereto by their respective Governments, have signed the present Agreement.

Done in duplicate at Rome on the 30th day of July 1997 in the Italian and English languages, both texts being equally authoritative.

For the Government of New Zealand

For the Government of the Italian
Republic

ANNEX

PART 1

TWO PARTY PRODUCTIONS AND CO-PRODUCTIONS WITH THREE OR MORE CO-PRODUCERS

- (1) The component authorities shall consult to enable them to ensure that a project for a co-production film conforms with the provisions of this Agreement. When approving a project for a co-production film, the competent authorities may stipulate conditions of approval framed in order to achieve the general aims and objects of this Agreement. If there is no agreement between the competent authorities on the approval of a project for a co-production film, the project shall not be covered by this Agreement.
- (2) A co-production film shall be made within the terms of approval prescribed by the competent authorities. Only the Italian co-producer shall be entitled under Article 2 to the benefits accorded to national films in Italy and only the New Zealand co-producer shall be entitled under Article 2 to benefits accorded to national films in New Zealand.
- (3) The competent authorities shall satisfy themselves that conditions of work in the making of co-production films under this Agreement in Italy or New Zealand are consistent with the standards prevailing in each country. Conditions of work in the making of co-production of films, including location shooting in a third country, shall not, in general, be less favourable than those under such standards.
- (4) For any co-production film
 - a) The Italian co-producer shall fulfill all 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 Italian film;

- b) the New Zealand co-producer shall fulfill 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 New Zealand film;
- c) any third co-producer participating under the terms of Article 1(1)(a) shall fulfill all the conditions relating to status which would be required to be fulfilled to produce a film under the terms of the co-production treaty in force between that co-producer's country or its competent authority, and either Italy, New Zealand, or the New Zealand Film Commission;
- d) 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.

(5)

- (a) Co-production films shall be produced and post-produced (including all film processing) up to the creation of the first release print in Italy and/or New Zealand, and/or, where there is one or more third co-producers, in the countries of the third co-producers. The competent authorities shall have the power to approve location filming in a country other than the countries of the participating co-producers. Post-release print dubbing into languages other than Maori, English and Italian may be carried out in third countries and all versions of the film may contain passages of dialogue in other languages if this is required by the script:
- (b) The majority of the work of making a co-production film including studio and location shooting, processing and pre-release print dubbing shall, subject to any departure from this rule which is approved by the competent authorities, be carried out in the country of the co-

producer which has made the major financial contribution. The contributions of two or more co-producers from any one country shall be aggregated for this purpose.

(6)

(a) Individuals participating in the making of co-production films shall be nationals of Italy, or nationals or residents of New Zealand or, where there is a third co-producer, citizens of that co-producer's country. Performers from the participating co-production countries shall be engaged in the production: however, in exceptional circumstances, where script or financing dictates, performers from other countries may be engaged subject to the approval of the competent authorities. The engagement of such performers shall be restricted.

(b) Where the competent authorities have, under the provisions of Paragraph 5 (a) of this Annex, approved location filming in a country other than that of the participating co-producers, nationals or residents of that country may be employed where their services are necessary for the location work to be undertaken subject to the specific approval of the competent authorities.

(7) The performing, technical and craft contribution of each co-producer to a co-production film shall be in reasonable proportion to each of the co-producers financial participation.

(8) Subject to any departure from this rule approved by the competent authorities, each co-producer shall have a financial and creative contribution of not less than twenty percent (20%) of the total financial and creative contribution for the co-production film.

(9) Any music specially composed for a co-production film shall, subject to any departure from this rule which is approved by the competent authorities, be

composed by nationals of Italy or nationals or residents of New Zealand, or where there is a third co-producer, by citizens of that co-producer's country.

- (10) At least ninety percent (90%) of the footage included in a co-production film shall, subject to any departure from this rule which is approved for historical and/or cultural reasons by the competent authorities, be specially shot of that film.
- (11) The contracts between the co-producers shall:
 - (a) 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 shall be the owner of a copy of the protection and reproduction material and shall be entitled to use it to make the necessary reproductions. Moreover, each co-producer shall have access to the original production material in accordance with the conditions agreed upon between the co-producers;
 - (b) set out the financial liability of each co-producer for costs incurred:
 - (i) in preparing a project for co-production film which is refused conditional approval by the competent authorities;
 - (ii) in making a co-production film which has been given such conditional approval and fails to comply with the conditions of such approval;
 - (iii) in making an approved co-production film, permission for whose public exhibition is withheld in any of the countries of the co-producers;
 - (c) 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. Such a division of receipts shall recognize the principle that receipts

earned from the screening of a co-production film within the respective territory of each co-producer be awarded exclusively to that co-producer;

- (d) specify the dates by which their respective contributions to the production of that film shall have been completed in accordance with their respective legislation, if applicable.
- (12) Each co-production film shall include either a separate credit title indicating that the film is either an "Italian-New Zealand co-production" or a "New Zealand-Italian co-production" or, where relevant, a credit which reflects the participation of Italy, New Zealand and the countries of the third co-producers.
- (13) A co-production film made in accordance with an approval by the competent authorities under this Agreement but completed after the termination for this Agreement shall be deemed to be made in accordance with this Agreement and its co-producers shall accordingly be entitled to all the benefits of this Agreement.
- (14) It is the intention of the Contracting Parties to achieve an overall balance between Italy and New Zealand during the term of this Agreement with respect to financial participation, as well as to creative staff, technicians, performers and technical resources (studios and laboratories). It shall be the responsibility of the Mixed Commission to ascertain from time to time that such a balance exists.
- (15) Either competent authority may withhold approval of a project for a co-production film on the basis that the overriding aim of overall balance referred to in rule (14) would be prejudiced by such approval.
- (16) The approval of a project for a co-production film by the competent authorities shall not bind the relevant authorities in either country to permit the public exhibition of the resulting film.

PART II

TWINNED CO-PRODUCTION FILMS

- (17) Rules 1,2,4,10,11,12,13,14,15 and 16 of this Annex shall apply to twinned co-production films.
- (18) One film of a twinned co-production must satisfy all the conditions for it to be an Italian film under the relevant Italian legislation as amended from time to time; and one film of a twinned co-production must satisfy all the conditions for it to be a New Zealand film in accordance with Section 18 subsection (2) of the New Zealand Film Commission Act 1978 as amended from time to time.
- (19) Where there is a third or fourth twinned co-production film each film must satisfy the conditions necessary for it to be a national film in the country of its producer.
- (20) The total production costs of each twinned co-production film must be approximately equal and there shall be an overall balance in the respective financial contributions made by the Italian and New Zealand co-producers and any co-producer from a third country. The contributions of two or more co-producers from one country shall be aggregated for this purpose.
- (21) Twinned co-production films:
- (a) must belong to the same programme category and be of approximately similar length;
 - (b) must be in production either simultaneously or consecutively, provided, in the latter case, that no more than six months shall elapse between the completion of the first film of a twinned co-production

and the commencement of the second film of a twinned co-production.

- (22) The provisions of this Annex may be amended from time to time by the mutual consent in writing of the competent authorities after mutual consultation with the Mixed Commission, provided that those amendments do not conflict with Articles 1 to 11 inclusive of this Agreement.

END