



# PAS CO-PRODUCTION AGREEMENT template

By Juliette Grandmont (Clandestine Films – France)

## CO-PRODUCTION AGREEMENT

"Title of the feature film **XXXXXX**"

This Agreement is dated \_\_\_\_ (date) \_\_\_\_ 20XX

### BETWEEN:

1. **XXXXXX**, a limited liability company organised under the laws of XXXX, with a registered share capital of XXXX, registered with the Registry of Commerce and Companies of XXXX under the number XXXX, whose registered office is located at **XXXXXX**, duly represented for the purposes hereof by Juliette Grandmont (hereinafter referred to as "**XXXXXX**", which expression shall be deemed to include its successors in title and assigns)
2. **XXXXXX**, a company incorporated under the laws of XXXX, whose registered office address is XXXX, hereby represented by XXXX (hereinafter referred to as "**XXXXXX**", which expression shall be deemed to include its successors in title and assigns);

XXXX and XXXXX being hereinafter together referred to as the "**Parties**" or individually, from time to time, as a "**Party**".

### WHEREAS:

- A. XXXXX owns XX% of the copyright of a theatrical motion picture tentatively or definitely entitled "**XXXXXX**" (the "Film"), based on an original screenplay written by XXXX (the "Screenplay"), to be directed by XXXXX (the "Director").
- B. The Film was presented to XXXXX, which expressed its interest to co-produce the Film.
- C. The Parties now wish to enter into this co-production agreement (hereinafter the "Agreement") for the purpose of setting out the terms and conditions pursuant to which they will finance, co-produce and exploit the Film.

### OPERATIVE PROVISIONS:

#### Article 1. DEFINITIONS

**1.1.** In this Agreement the following words and expressions shall have the meanings hereby ascribed to them:

1.1.1. the "Agreement" or "this Agreement" shall mean this agreement together with any and all schedules, annexure or exhibits;

1.1.2. the "Budget" shall mean the final estimated cost of pre-production, production and postproduction of the Film as set forth in Schedule 1, which may be amended from time to time in full approval between the Parties.

1.1.3. "CAM" shall mean the collection account manager;

1.1.4. "CAMA" shall mean the collection account management agreement to be entered into, inter alia, between the Parties and the CAM;

1.1.5. the "Contributions" shall mean the XXXXX's Contribution and the XXXXX's Contribution;

1.1.6. the "Cost of Production" shall mean the final total aggregate cost of all items included in the original Budget of the Film actually incurred in the development, production, completion and delivery thereof in accordance with this Agreement;

1.1.7. the »Director" shall mean XXXXX;

1.1.8. the "Film" shall mean the full-length feature film referred to in the recitals;

1.1.9. the "Financiers" shall mean the financiers of the Film, as detailed in the Financing Plan;

1.1.10. the "Financing Plan" shall mean the financing plan attached hereto as Schedule 2, as may be amended from time to time by XXXXX;

1.1.11. the "Net Receipts" shall mean all non-refundable Gross Receipts (if any) after deduction of all applicable checking, collection, distribution, sale, fees commissions and expenses and following recoupment of all sale and distribution advances and minimum guarantees and any other sums due to the Financiers in accordance with the CAMA used in connection with the financing of the Film;

1.1.12. the "Rights" shall mean all rights of copyright and any and all other rights of whatsoever nature in respect of the Film and the Screenplay and any and all underlying elements thereof including but not limited to the following rights throughout the World for the full period of copyright and thereafter (so far as is possible) in perpetuity: (a) all rights to distribute, lease, license, sell or otherwise exploit the Film in all media (whether now known or hereafter invented or devised), including, without limitation, the rights in the Film; (b) all rights to exhibit and broadcast the Film by all means and in all media now known or hereinafter invented (including but not limited to theatrical exhibition, television, videograms, video on demand, Internet, pay-per view, festivals, markets, etc.); (c) all allied and ancillary rights (whether now known or hereafter invented) in respect of the Film and/or the Screenplay and/or any and all versions thereof (hereinafter the "Allied and Ancillary Rights") including but not limited to sequel, prequel, remake and spin-off rights, merchandising rights, sponsorship rights, commercial tie in rights, product placement rights, the right to create and publish "books of the Film" and "books of the making of the Film" and the right to publish the Screenplay or any story based on the whole or on any part of the Film or the Screenplay (as all such terms are customarily understood in the motion picture and television

industry), the stage adaptation rights, etc. ; all such other rights in and to the Film or any material on which it is based or which is incorporated in the Film as are needed for the full exploitation of the rights described in (a), (b) and (c) above; (d) all synchronization rights to the music and musical compositions contained in the Film, including the lyrics and all rights to exploit the same and to produce, publish, reproduce or synchronize all or any of the same with the Film and, as far as they are acquired by any of the Parties, the soundtrack album rights, the music publishing rights, the master recording rights and the copyright and all other rights to the music and musical compositions created for the Film; and (e) all rights to distribute, lease, license, sell or otherwise exploit or deal with any of the rights referred to above;

1.1.13.the "Sale Agent" shall mean the sales agent chosen by XXXXX and the Financiers;

1.1.14.the "Screenplay" shall mean the screenplay as may be amended from time to time, upon which the Film will be based, written by the Author;

1.1.15.the "World" shall mean the universe;

1.1.16.the "Author" shall mean XXXXx;

**1.2.** Where the context so requires in this Agreement, words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender, and words denoting persons shall include corporations.

**1.3.** Unless the context otherwise requires, any reference in this Agreement to any directive, statute, statutory provision, delegated legislation, code, guideline or regulations shall be a reference thereto as the same may, from time to time, be amended, modified, extended, varied, replaced or re-enacted.

## **Article 2. THE FILM**

**2.1.** The principal elements of the Film are agreed as follows:

2.1.1. Title(definitiveorprovisional):XXXX

2.1.2. Genre:full-lengthfeaturefilm

2.1.3. Screenplay:XXXX

2.1.4. Director:XXXXX

2.1.5. Length:Between90and100mns

2.1.6. Format:HD

2.1.7. Shooting language: XXXXX

2.1.8. Shootinglocation:XXXXX

2.1.9. Shooting dates: XXXX

2.1.10. Delivery date: XXXX

2.1.11. Number of shooting days : XXXXX

**2.2.** Any and all changes to and replacements of the principal elements of the Film shall be made only in full written approval by CLANDESTINE.

### **Article 3. MANAGEMENT OF THE PRODUCTION**

**3.1.** The principal decisions concerning the pre-production, the production, the postproduction, the promotion and the distribution of the Film shall be made by XXXX and the Financiers.

**3.2.** XXXX shall keep XXXX advised on a regular and timely basis with respect to all material aspects of preproduction, production and post-production of the Film and shall provide XXXX with access, upon reasonable notice, to all records and documents in their possession related to such preproduction, production and post-production.

**3.3.** XXXX agrees and undertakes that the Film will:

3.3.1. not infringe any copyright and will not include or be based upon any material in respect of which the Producer shall not have obtained and hold necessary rights; and

3.3.2. not infringe any patent or other right or contain anything libelous or slanderous of any person.

**3.4.** All contracts entered into with creative talent (crew and cast) on the Film by a Party shall be in a form usual in the film industry and contain terms in accordance with the Budget and this Agreement and shall be entered into by such Party only in its own name and on its own behalf. Such contracts shall, to the extent authorized under applicable laws, contain a grant of rights if legally permissible on a buy-out basis so as to permit the widest legally permissible exploitation of the Film for the full period of copyright and neighboring rights. All said contracts for production of the Film shall include an assignment of rights for currently unknown media to the extent permissible by law.

### **Article 4. BUDGET AND FINANCING**

**4.1.** The Parties confirm that the Budget is hereby approved.

**4.2.** Each of the Parties undertakes to secure the following contributions to the Budget (the "Contributions", each of them being a "Contribution"):

4.2.1. XXXX € XXX (XXXX) from XXXX :

- XX% will be applied towards the expenses to be made in XXXX
- XX% will be applied towards the costs incurred for the production of the Film by XXX

4.2.2. XXXX: the remaining amount necessary to finance the Budget as more precisely provided in the Financing Plan.

**4.3.** Upon receipt by XXXX of each of the instalment of the XXXX in XXXX's Bank Account, XXXX will immediately transfer to XXXX's bank account each of these instalments (after deduction of the amount kept by XXXX for its own expenses).

**4.4.** Each of the Parties shall open and maintain (or arrange to have opened and maintained) in its country of residence separate production bank accounts into which the funds shall be funded (together, the "Production Accounts"). For purposes of clarity, the Production Accounts will only be used for transactions in relation to the Film and shall not be general production accounts used for the business of any other film. In addition, no off- setting can be made between each Party's aforementioned production bank account and any of its other bank accounts. The details of XXXX's Production Accounts shall be provided on or before start of the pre-production of the Film.

**4.5.** XXXX shall be responsible for the payment of any overage.

## **Article 5. RIGHTS OWNERSHIP**

The Parties will be the joint owners of all Rights of whatsoever nature in the Film (including but not limited to the original master and the soundtrack of the Film, and all technical and sound materials which result from the production of the Film) and in the underlying Screenplay in proportion to their final Contribution to the Cost of Production of the Film, being provisionally as follows:

- (i) XXXX: XX % (XXXx) of 100% (one hundred percent)
- (ii) XXXX: X% (XXXX) of 100% (one hundred percent)

## **Article 6. AGREEMENTS AND WARRANTIES**

**6.1.** The Parties hereby agree and warrant that they have the power and authority to execute and perform this Agreement and that they are properly incorporated under the laws of their respective territories;

**6.2.** XXXX irrevocably and unconditionally warrants the completion and delivery of the Film to the Sales Agent on or before the date set out in Article 3.1.9 subject to XXXX fully complying with any and all of their obligations pursuant to this Agreement.

## **Article 7. SALE**

The Sales Agent has been appointed to negotiate and to enter into any and all exploitation and distribution agreements in connection with the Rights worldwide.

## **Article 8. DIVISION OF RECEIPTS AND TERRITORIES**

The Net Receipts to be derived from the exploitation of the Rights in the Film worldwide shall be allocated between the Parties in accordance with the recoupment schedule attached to this Agreement as Appendix 3.

## **Article 9. REPRODUCTION MATERIAL**

**9.1.** There shall be one original master which shall be owned jointly by the Parties in the following proportions:

9.1.1. XXXX: XX % (xxxx) of 100% (one hundred percent)

9.1.2. XXXX: X% (xx percent) of 100% (one hundred percent)

**9.2.** The laboratory processing the master of the Film shall be elected by XXXXX and the Financiers and shall be given irrevocable instruction to make available access to the original master of the Film to each of the Parties. Any and all picture and sound material will be owned by all Parties in the aforementioned proportions. Therefore the material will be held at the laboratory in the name of all Parties. The laboratory agreement shall contain a provision that the original master can only be moved with the approval of all Parties.

**9.3.** All master prints and material shall contain the appropriate copyright symbol under the Universal Copyright convention with mention of XXXX.

## **Article 10. PUBLICITY AND CREDIT**

**10.1.** The name of XXXX shall be mentioned in the credit of the Film and in all paid advertising or publicity issued where the billing block appears (subject to the customary exclusions and exceptions), as "Co-producer".

**10.2.** The name of the XXXXX will also be mentioned in the credit and in the all paid advertising or publicity issued where the billing block appears (subject to the customary exclusions and exceptions of the Film under XXXX's control.

**10.3.** XXXXX shall make reasonable efforts to remedy on a prospective basis any such failure of which it receives written notice (or of which she otherwise becomes aware) as soon as reasonably practicable.

## **Article 11. COLLECTION AGREEMENT**

**11.1.** Unless otherwise agreed, an agent (the Collection Agent) shall be engaged by XXXX and the Financiers pursuant to a collection agreement (the Collection Agreement) to collect all gross receipts from the sale of any and all rights in and to the Film and to disburse the gross receipts in a manner consistent with the Recoupment Schedule.

**11.2.** The Collection Agent will be appointed to collect gross receipts and will maintain one bank account at a bank approved by XXXX and the Financiers.

**11.3.** The Collection Agent will prepare written accounting statements in accordance with the Collection Agreement for the Film.

**11.4.** The Collection Agent shall be instructed to disburse gross receipts from the Film in accordance with the Collection Agreement and the Recoupment Schedule.

## **Article 12. COMPLETION AND DELIVERY**

XXXX undertakes that the Film shall be completed and ready for delivery to the Sales Agent on or before the Delivery Date set out in Article 3.1.9 above subject to XXXX fully complying with any and all of their obligations pursuant to this Agreement; this shall mean that the Film shall be a technically finished version according to the Screenplay with a soundtrack and of quality such that it may be distributed and exhibited notably theatrically.

## **Article 13. FILM INSURANCES**

The following usual production insurances shall be effected and maintained and the premiums in respect of which shall be included in the Budget:

13.1.1. loss or damage or destruction of the original master;

13.1.2. death or other incapacity of the Director and principal performer;

13.1.3. loss or destruction of the sets, props or equipment used on the production;

13.1.4. public liability covering injury, damage to property;

13.1.5. all other liabilities normally covered during a production until delivery of the answer print;

13.1.6. liability for errors and omissions in chain of title to the production, infringement of copyright or for defamation or invasion of privacy only if mandatory;

## **Article 14. FORCE MAJEURE**

**14.1.** If prior to completion and delivery of the Film any Party shall be delayed by or prevented from exercising its obligations in accordance with this Agreement by reason of any act, delay or omission caused by circumstances beyond its control including, without limitation, strikes, lockouts, labor disputes, war, labor shortages, accidents, fire, explosion then and in any event the Party so delayed or prevented shall not be liable to the other for such delay or failure nor shall it give rise to a breach of this Agreement.

**14.2.** However, the other Party shall have the right to terminate this Agreement jointly by written notice as against the Party so delayed or prevented if such delay or failure is not cured within 2 (two) months, but without having the right to claim for damages as against that Party; for the avoidance of doubt, such prevention or delay shall not be deemed a material breach of this Agreement.

**14.3.** Upon termination in accordance with this Article, it is agreed that Article 17.3. shall apply.

## **Article 15. TERMINATION AND INSOLVENCY**

**15.1.** None of the Party is entitled to terminate this Agreement except for the following reasons.

**15.2.** If one of the Party is in material breach of the essential conditions/obligations of this Agreement and/or Schedules and the Party in such a breach (the "**Defaulting Party**") fails to cure such breach (if curable) within 14 (fourteen) business days from any of the other Party's written notice of such breach (if this Party is not in breach itself of any essential conditions/obligations of this Agreement), the Agreement shall be automatically terminated, and all the rights, title and interest in and to the Film shall be automatically transferred to the other Party, the Defaulting Party being excluded from production and exploitation of the Film and undertaking to execute any document necessary to transfer its rights, title and interests in the Film. Such notice of breach or of termination shall be sent at the same time by fax and registered letter.

**15.3.** The Parties expressly agree, but subject always to each Party's right to terminate this Agreement, that throughout the duration of this Agreement, in the event of any default of any of the terms of this Agreement by the other(s), each of the Party's only remedy will be an action at law for damages and in no event shall any Party be entitled to rescind this Agreement or to receive any injunctive or other equitable relief or to restrain the distribution, exhibition, advertising and exploitation of the Film.

#### **Article 16. ASSIGNMENT**

**16.1.** Before production of the Film, none of the Parties may assign this entire Agreement without the prior written approval of the others. However, the foregoing shall not apply if such assignment is to: an entity into which a Party merges or is consolidated; any successor entity or any entity which acquires all or substantially all of a Party's business and assets; or a person or entity which is under common control with or controls a Party. Assignment by a Party of this Agreement or its rights and obligations hereunder shall not be deemed an election to abandon the Film.

**16.2.** After production of the Film, the Parties may assign this Agreement without the prior written approval of the others, provided that the other Parties are informed in writing beforehand and provided that any such assignment shall not relieve such Party of its obligations hereunder.

#### **Article 19. ADDITION OF NEW PARTIES**

The Parties may not add one or more additional persons, groups or entities as an additional Party or Parties of the Film, under the terms and conditions mutually agreed to in advance in writing by the Parties, and not in conflict with or on broader terms and conditions than those set forth in this Agreement, being agreed by the Parties that any new Party added by one Party shall benefit a recoupment of its participation from the said Party and not from the other Party, the equity share between the Parties remaining unchanged.

#### **Article 20. TERM**

This Agreement shall enter into force upon the execution hereof and shall remain in full force and effect for as long as the Film may be exploited in any of its versions and by any and all means in any country or region of the World, and at least for thirty (30) years and for the full term of the Rights acquired in connection with the Film, including any renewal(s) or extension(s) thereof.



## **Article 21. NOTICES**

**21.1.** Any notice, request, demand or other communication (collectively "Notices") required or permitted pursuant to this Agreement by one Party to the other Party or Parties or to any other person shall be given in writing in the English language only and shall be deemed to have been duly served if personally delivered or sent by email, facsimile transmission, telex or prepaid first class post correctly addressed to the relevant Party or Parties at the Party's or Parties' address given in this Agreement or such other address as may be notified by that Party to the other Parties hereto from time to time in a manner aforesaid, and any Notice so given shall be deemed to have been served:

**21.2.** if sent by email to the email address of a Party, at completion of transmission if during business hours at its destination, or at the opening of business on the next business day if not during business hours (and for this purpose "business hours" means between 09.00 and 17.30 in the country of the addressee and "business day" means Monday to Friday, excluding bank or other public holidays in the country of the addressee) but subject to proof by the sender that it holds an acknowledgement of receipt from the addressee;

**21.3.** if hand delivered at the time of delivery;

21.3.1. if sent by fax, at completion of transmission if during business hours at its destination, or at the opening of business on the next business day if not during business hours (and for this purpose "business hours" means between 09.00 and 17.30 in the country of the addressee and "business day" means Monday to Friday, excluding bank or other public holidays in the country of the addressee) but subject to proof by the sender that it holds a transmission report indicating uninterrupted transmission to the addressee and in each such case dispatches a copy of the Notice by prepaid post as provided above on the same day as such transmission (or the next business day in the country of the sender if such notice is transmitted outside post office hours);

21.3.2. if sent by registered mail as aforesaid within five days of posting if posted to an address within the country of posting and within ten days of posting if posted to an address outside the country of posting.

## **Article 22. NO PARTNERSHIP / NO AUTHORITY**

Nothing herein contained or to be done hereunder shall be deemed to constitute a partnership between the parties hereto and none of them shall do or suffer to be done anything whereby it shall or may be represented that it is the partner of the others. Neither Party shall have the right, power or authority at any time to act on behalf of or represent the other or to bind the other or pledge the other Parties' credit in any way, except as expressly provided for under this Agreement. Each Party hereto shall be separately and entirely liable for its own business.

## **Article 23. THIRD PARTY RIGHTS**

A person or entity who is not a party to this Agreement shall have no right under this Agreement or under any law worldwide to rely upon or enforce any term of this Agreement.

## **Article 24. NO WAIVER**

No waiver of any breach of any of the provisions of this Agreement by either Party shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

## **Article 25. PARTIAL UNENFORCEABILITY**

**25.1.** If any Article or any part of this Agreement or the applications thereof to any person shall for any reason be adjudged by any court or other legal authority of competent jurisdiction to be invalid such judgment shall not affect the remainder of this Agreement, which shall continue in full force and effect.

**25.2.** Where any Article or any part of this Agreement, or the application thereof as aforesaid, is so adjudged but would be valid if amended or modified, such provision shall thereafter be read and construed as if it were so amended or modified, to the extent such amendment or modification does not materially affect a Party's obligation under such Article.

## **Article 26. FURTHER ASSURANCES**

Each Party shall do or procure to be done all such further acts and things and shall execute or procure the execution of all such other documents and instruments as the other Parties shall from time to time reasonably require to vest in or further assure to the other Parties any of the rights either granted to it or to revert to it under this Agreement or otherwise to give full effect to the provisions of this Agreement.

## **ARTICLE 27. INDEMNITY**

Each of the Parties hereby agrees to indemnify the other Parties against all claims, costs (including reasonable attorney costs), proceedings demands, losses, damages, expenses or liabilities whatsoever arising directly or indirectly as a result of any material breach by the Parties of any of the representations and warranties contained or implied in this Agreement.

## **Article 28. ENTIRE AGREEMENT**

**28.1.** This Agreement details the entire understanding between the Parties with regard to the production, financing and exploitation of the Film and supersedes any and all previous agreements, deal memos undertakings and warranties between the Parties whether written or oral including, without limitation, the Deal Memo.

**28.2.** For the avoidance of doubt each Party irrevocably waives any right it may have to seek a remedy for:

28.2.1. any misrepresentation which has not become a term of this Agreement; or

28.2.2. any breach of warranty or undertaking (other than those contained in this Agreement) whether express or implied, statutory or otherwise, unless such misrepresentation, warranty or undertaking was made fraudulently.

**28.3.** No variation, modification or amendment of any of the terms or conditions of this Agreement or of any Schedule attached hereto may be made unless such variation, modification or amendment is agreed in writing and signed by all the Parties.

**Article 29. DISPUTE RESOLUTION**

Any dispute between the Parties concerning the interpretation, construction, performance or application of this Agreement shall be subject to negotiations in good faith or other peaceful means of settlement of their own choice. More specifically, the Parties shall first try to resolve in an amicable manner any dispute which may arise under, or as a result of, or in any way relating to, the interpretation, construction, performance or application of this Agreement and shall so endeavor to resolve said dispute within fourteen (14) business days from the receipt of the first written Notice given pertaining to the dispute in question. If said dispute is not resolved within this fourteen (14) business day period, then the Parties hereto agree that any and all disputes, claims, or controversies arising out of or relating to this Agreement shall be resolved in accordance with Article 29 below.

**Article 30. GOVERNING LAW**

The Parties agree that this Agreement shall be governed by, and construed in accordance with, the laws of France.

**Article 31. HEADINGS**

The headings of this Agreement are for convenience only and shall not limit govern or otherwise affect the construction of any provision of this Agreement.

As witness the hands of the authorized signatories for and on behalf of the Parties hereto the day and year first written above.

XXXX, for and on behalf of  
XXXXX,

XXXX, for and on behalf of  
XXXXX

**LIST OF APPENDIXES**

**APPENDIX 1 - BUDGET**

**APPENDIX 2 – FINANCING PLAN**

**APPENDIX 3 – RECOUPMENT SCHEDULE**