



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

PROGRAMME GUIDELINES

Foreign Film and Television Production and Post- Production Incentive

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Disclaimer:

This guidelines document provides the criteria to assess proposals from potential film and television projects and the process of applying for the incentive. The guidelines are approved and issued by the Minister of Trade and Industry for the purpose of ensuring clarity on the aim and requirements of the incentives programme. **the dti** reserves the right to amend the guidelines as it deems appropriate.

1. OVERVIEW

- 1.1 Government is aware that the film industry can make a significant contribution in stimulating South Africa's economic growth, strengthening the country's profile in the global creative environment and creating employment. The Department of Trade and Industry (**the dti**) extends its support to the growing post-production industry to sustain the film industry and increase South Africa's skills base.
- 1.2 This is confirmed by the growth of local and foreign film productions, with box office hits such as *Spud*, *Invictus*, *Jock* and *Oh Shucks It's 2010* being nominated for global awards and premiered at international film festivals.
- 1.3 Eligible enterprises are invited to present their business case to **the dti**, and the guidelines provide a framework for **the dti** to evaluate such presentations. There is, however, no guarantee that the incentive will be granted. **the dti** reserves the right to accept or reject applications, in its sole discretion, and any such decision will be final.
- 1.4 The guidelines may be changed from time to time, as deemed necessary. These changes will be published on **the dti** website and in the *Government Gazette*, and will be of immediate effect upon publication. Where the guidelines lend themselves to varying interpretations or do not deal with specific subject matter, the interpretation of **the dti** must be requested and such interpretation will be decisive and final.
- 1.5 I hereby extend an invitation to industry players to use this facility and support the South African Government in realising its goals of growth, employment and equity.

Dr Rob Davies, MP
Minister of Trade and Industry

2. DESCRIPTION OF THE FOREIGN FILM AND TELEVISION PRODUCTION AND POST-PRODUCTION INCENTIVE

- 2.1 The South African Government offers a package of incentives to promote its film production and post-production industry, which includes the Foreign Film and Television Production and Post-Production, and the South African Film and Television Production and Co-Production incentives. The Foreign Film and Television Production and Post-Production Incentive aims to attract foreign-based film productions to shoot on location in South Africa and conduct post-production activities locally.
- 2.2 The Foreign Film and Television Production and Post-Production Incentive is available to foreign-owned qualifying productions and South African qualifying post-production work as follows:
- 2.2.1 For shooting on location in South Africa, the Qualifying South African Production Expenditure (QSAPE) should be R12 million and above¹.
- 2.2.2 The Qualifying South African Post-Production Expenditure (QSAPPE) should be R1.5 million and above.
- 2.3 The objective of the incentive is to encourage and attract large budget films and television production and post-production work that will contribute towards employment creation, the enhancement of the international profile of the South African film industry and increase the country's creative and technical skills base.
- 2.4 An eligible applicant will be incentivised a sum totalling 20% of the QSAPE and up to 5% (cumulative) of QSAPPE. A cap of R50 million will apply.
- 2.5 The incentive will be effective from 1 September 2014 (subject to paragraph 3.1) and administered for a period of three years up to 2017.

¹ Note that there is a separate Programme Guideline document for the film incentive targeted at promoting locally owned productions and co-productions.

3. ELIGIBILITY CRITERIA

3.1 Commencement

- Principal photography should not commence until an approval letter has been received from **the dti**.
- Applications submitted without relevant supporting documents will not be considered.
- Applications for post-production must be received before commencement of online post-production.

3.2 Registered legal entity/special purpose corporate vehicle

- An applicant must be a Special Purpose Corporate Vehicle (SPCV) incorporated in the Republic of South Africa solely for the purpose of the production and/or post-production of a film or television project.
- The applicant must be the entity responsible for all activities involved in the production and/or post-production in South Africa and must have access to full financial information for the whole production and/or post-production worldwide.
- Only one entity per production and/or post-production for film, animation, television drama or documentary series can be eligible for the incentive.

3.3 Compliance with Broad-Based Black Economic Empowerment

- Both the applicant SPCV and holding company(ies) must comply with the requirements for Broad-Based Black Economic Empowerment (B-BBEE) as issued in the *Government Gazette* of 11 October 2013 in terms of the Codes of Good Practice.
- Both the applicant SPCV and holding company(ies) must achieve at least a level four B-BBEE contribution status in terms of the B-BBEE Codes of Good Practice.
- Both the applicant SPCV and holding company(ies) must submit a valid B-BBEE certificate issued by an accredited verification agency at application stage.

3.4 Schedule requirements

3.4.1 Eligibility requirements for the shooting schedule for productions with a QSAPE of R12 million to R99,999,999:

- At least 50% of the principal photography schedule must be filmed in South Africa; and
- A minimum of four weeks of the principal photography must be filmed in South Africa.

3.4.2 Eligibility requirements for post-productions with QSAPPE of R1.5 million and more:

- A minimum of two weeks post-production must be carried out in South Africa; and
- If 100% of the post-production is conducted in South Africa, the requirement for a minimum number of weeks will be waived.

NB: For productions with QSAPE of R100 million and more, the requirements of 3.4 may be waived at the discretion of the Adjudication Committee and such discretion will take into account the budgetary implications of the decision made.

4. ELIGIBLE FORMATS

The following formats are eligible: feature films; tele-movies; television drama series; documentaries; and animation. Each one is explained hereunder.

4.1 Feature film

- A film, including animation, commonly screened as the main attraction in commercial cinemas.
- No less than 80 minutes, or in the case of a large format (IMAX) film, no less than 45 minutes.
- Shot and processed to commercial theatrical release standards for cinema exhibition or television broadcast or direct-to-video or DVD.

4.2 Tele-movies

- Drama programme of a similar nature to a feature film capable of exhibition on television.
- No less than one commercial television hour in length;
 - or in the case of „C“ classification material and material specifically designed for children under six years of age, not less than one half commercial television hour in length;
 - or in the case of a programme predominantly utilising cell, stop motion and/or computer animation, not less than one half commercial television hour;
- Shot and processed to commercial release standards, for cinema exhibition or television broadcast.

4.3 Television drama series and mini-series

An episodic television drama, including animation, which is:

- Either an extended, but self-contained drama made for television wherein the key dramatic elements of character, theme and plot are introduced, developed and concluded to form a narrative structure (similar to that of a novel), which features a major continuous plot enhanced by minor plots and contains the expectation of an ending that resolves the major plot tensions arranged consecutively for screening purposes limited to 26 hours or 26 episodes or less;
- Or an anthology of drama works for television wherein the key dramatic elements of character, theme and plot are introduced, developed and concluded so as to form a narrative structure within each episode (similar to that of a novel or short story), but without continuity of plot between episodes (although there may be host elements common to each episode) and made to be broadcast under one generic title;
- Shot and processed to commercial release standards for telecast; and
- Each episode has a minimum duration of one television half-hour.

4.4 **Documentary, documentary series and documentary feature**

- A non-fictional informative or educational programme or series recording real people or events that may involve some dramatisation.
- No less than 60 minutes in length, or in the case of a large format (IMAX) film, no less than 45 minutes.
- Shot and processed to commercial theatrical release standards for cinema exhibition, television broadcast, direct-to-video or DVD.
- A series limited to 13 episodes.

4.5 **Animation**

- Animation is a sequence of frames that when played in order at sufficient speed presents a smoothly moving image for broadcast, projection, new media and network use in an entertainment, educational, informative or instructive manner.
- An animation can be hand-drawn images (2D animation), digitised video, computer-generated images (3D and flash animation), live action objects or a combination thereof.

4.6 **Digital Content and Video Gaming**

- Video game development is the process of creating a video game or an interactive digital audio-visual experience during which an individual person or group of people can play or interact with the game through some kind of user interface. This process involves primarily the combination of digital art with programming.
- The resulting product of video game development is a computer program or collection of data containing all the elements necessary for the game to function as intended, including all computer programming and digital artwork. Video game development is mostly done for the commercial purposes of entertainment, but a video game can be developed for any purpose whatsoever, based on the intended goal of its progenitor.

5. **EXCLUSIONS**

5.1 The following formats are not eligible:

- Reality TV
- Discussion programme
- Current affairs
- News
- Advertising programme or commercial
- Panel programme
- Variety programme or a programme of a like nature
- Public events, including sports events
- A training or "how to" programme
- Soapies
- Speculative projects
- Mobile phone video gaming

- Other
- 5.2 Films that fall within schedules 6, 7 or 10 of the South African Films and Publications Act 1996, as amended, are not eligible for the incentive.
- 5.3 Commissioned projects owned 100% by a local broadcaster will not be eligible.
- 5.4 SPCV owned and controlled by South African broadcasters.

6. QUALIFYING PRODUCTIONS AND POST-PRODUCTIONS

- Productions eligible for the Foreign Film and Television Production Incentive must have a minimum expenditure on QSAPE of R12 million and above.
- Post-productions eligible for the Film and Television Post-Production Incentive must have a minimum expenditure on QSAPPE of R1.5 million and above.

7. CREDIT

- **the dti** must be credited for its contribution to the production.

8. DEFINITION OF PRODUCTION AND POST-PRODUCTION EXPENDITURE

All costs, including Total Production Expenditure (TPE), QSAPE, QSAPPE and Non-QSAPE, must be presented with each application for purposes of clarity.

8.1 Total Production Expenditure

A film or television production's TPE is that incurred or reasonably attributable to the making of the film from pre-production to the point at which the first copy of the film is ready to be distributed, broadcast or exhibited to the general public.

8.2 QUALIFYING SOUTH AFRICAN PRODUCTION EXPENDITURE

- QSAPE includes all production costs incurred by the applicant on intellectual property and goods owned, or facilities and services provided by South African companies.
- Where individuals or contractors are paid via an agency, proof of the South African citizenship status of the individual or contractor will be required.
- Where the purchase of South African copyright is being claimed as QSAPE, the relevant legal agreement verifying chain of title must be attached to the application form.
- Goods and services may be provided outside South Africa as long as the shooting schedule requirements are met.
- All expenditure in South Africa for international services that remains in South Africa will qualify as QSAPE.

- Only production costs discharged through the bank account of the SPCV will qualify as QSAPE.
- Sector Education and Training Authority (SETA) funding.

8.3 **QUALIFYING SOUTH AFRICAN POST-PRODUCTION EXPENDITURE**

- QSAPPE includes all post-production costs incurred by the applicant on goods owned or facilities and services provided by South African companies.
- Only post-production costs discharged through the bank account of the SPCV will qualify as QSAPPE.
- SETA funding.

8.4 **The following qualifying costs for post-production expenditure are eligible:**

- Licence fees (Dolby, Music)
- Artist fees
- Travel, accommodation and *per diem* of overseas crew when based in South Africa
- Editing suites while out of South Africa, sound studios, roto/VFX outsource work and some animation outsource services
- Editorial and sound post-production
- Facilities and personnel usage in the post-production process
- Training components
- Movement of data, connectivity and couriers

8.5 **NON-QUALIFYING PRODUCTION AND POST-PRODUCTION EXPENDITURE**

- Financing expenditure
- General business overheads
- Other associated party fees
- Deferments, profit participation, residuals
- Advances
- Land and building
- Costs of services embodied in goods
- Depreciation
- Executive producer
- SPCV incorporation fees
- Publicity and marketing costs (Including EPK)
- Consultant fees charged by a consultant to prepare the application
- Purchase of production and software equipment
- Any other forms of funding received from national, provincial and local government and its entities
- Entertainment costs
- Other

9. TREATMENT OF EXPENDITURE

9.1 **Value Added Tax (VAT)**

All amounts set out in this document and provided in applications must be net of VAT.

9.2 **Currency exchange**

All QSAPE/QSAPPE will be incurred in South African Rand. All other production and/or post-production expenditure incurred in foreign currencies must be reported in South African Rand using the budgeted exchange rate on the audited expenditure statement.

9.3 **Arm's length expenditure**

The arm's length principle is to ensure that amounts charged between the applicant company and any connected parties for the provision of goods or services are commercially reasonable.

Where the applicant incurs expenditure under a non-arm's length arrangement, which inflates or deflates the cost of particular goods or services in relation to the film production, then a rate no greater than the commercial rate for those goods or services will be counted towards QSAPE/QSAPPE and TPE.

The commercial rate will be taken to be the amount that would have been incurred if the parties were dealing at arm's length with each other, charging what they would ordinarily to an unrelated party. If a lower rate is charged, it is that rate that must be claimed.

The arm's length principle applies to any act or transaction directly or indirectly connected with any expenditure incurred by the applicant – that is, the principle still applies if a non-arm's length deal between other parties otherwise inflates the expenditure of particular goods or services purchased by the applicant.

9.4 **Basis of expenditure**

To be included as QSAPE/QSAPPE, an expenditure item must have actually been incurred on the making of the specific film production and/or post-production for which the application is made. In addition, the applicant must have actually discharged its liability at the time of claiming for the incentive.

9.5 **Purchase and sale of goods**

Where an applicant purchases any goods for use in a film production and sells or disposes of those goods on the completion of the production, only the net cost of those items can be claimed as TPE or QSAPE.

In the event of the applicant or an associated party retaining any goods purchased beyond the completion of the film, an independent valuation must be made of those goods and that valuation must be deducted from the value of QSAPE for the purpose of calculating the incentive.

9.6 **Transfer pricing**

It is anticipated that the applicant company will charge a production and/or post-production services fee if the film is being produced for an overseas producer or studio. This fee must be at an arm's length commercial rate and will be considered QSAPE/QSAPPE if it satisfies the criteria.

If this fee is paid out of the incentive, it will not have been incurred before the completion of the film and will not qualify as QSAPE/QSAPPE under sections 8.2 and/or 8.3.

10. **INCENTIVE CALCULATION**

10.1 Shooting on location in South Africa, the incentive will be calculated as 20% of QSAPE. A cap of R50 million will be applicable.

10.2 Shooting on location and conducting post-production in South Africa, an additional 2.5% of QSAPPE will be added to the QSAPE (cumulative 22.5%).

10.3 An additional incentive of 2.5% QSAPPE added to QSAPE (cumulative 25%) is available to applicants conducting post-production activities in South Africa with a QSAPPE of R3 million and above.

10.4 For foreign post-production with a QSAPPE of R1.5 million, the incentive is calculated at 17.5% of QSAPPE.

10.5 For foreign post-production with a QSAPPE of R3.0 million and above, the incentive is calculated at 20% of QSAPPE.

11. **APPLICATION PROCESS**

11.1 **Application for approval – Form A**

The following documents must be included in the application:

- Summary and detailed budget in South African Rand;
- Financial plan, including letters of intent from investors;
- Distribution agreement;
- Provisional shooting schedule;
- Certificate of incorporation of the SPCV (CK1);
- Appointment of directors of the SPCV (CM 29);
- Written confirmation that **the dti** will be credited;
- Post-production schedule; and
- Valid B-BBEE Certificate (Level 4) of SPCV and holding company.

11.2 **Confirmation of commencement of principal photography – Form B**

The following documents must be included in the confirmation:

- Day one of principal photography call sheet;
- Day one of principal photography progress report;
- Current photography schedule;
- Production schedule;
- This form must be completed after the first day of principal photography; and
- If principal photography does not commence within the prescribed three months, the application will be cancelled. After cancellation, the applicant may resubmit an application.

11.3 **Revised completion date – Form C** (to be completed only if the completion date differs from the one indicated in the original application)

The following documents must be included:

- Revised production and/or post-production schedule; and
- Proof that due diligence has been carried out regarding the legality of software used

12. INCENTIVE DISBURSEMENT

- The incentive for production will be disbursed on the completion of production and the receipt of the final DVD.
- The incentive for post-production will be disbursed on completion of post-production and submission of the final DVD.
- **the dti** will verify the completeness of the claim/expenditure before payment is made.

12.1 **Application for payment of the incentive – Form D**

The following documents must be included:

- Audited summary and detailed expenditure report;
- Auditor's statement;
- Complete general ledger in electronic format;
- Certificate of incorporation of the SPCV (CK1);
- Full final cast and crew list showing the following information:
 - Nationality/residency
 - ID or passport numbers
 - Total fee/salary paid to all South African nationals/residents
 - Contract duration
 - Role in the production
- Distribution agreement;
- A VHS or DVD of the final production;
- An original valid tax clearance certificate issued by SARS;
- Valid B-BBEE certificate (level four);
- Original credit order instruction form; and
- Original cancelled cheque.

13. INTERACTION OF THIS INCENTIVE WITH OTHER SOURCES OF FUNDING

- Any other South African incentives, training or internship funding specific to this project may be received, but must be deducted from the gross QSAPE/QSAPPE before calculation of the incentive. An exception is applicable for SETA funds, which may be received after the final application or payment of the incentive.

Appendix A: Glossary of terms and definitions

Advances	All payments made by way of an advance on a payment in respect of deferments, profit participation or residuals are excluded from QSA(P)PE unless they are non-recoverable.
Attested declaration	The information provided in an application must be certified in an attested declaration by an authorised person from the applicant company, normally a director of the applicant company or the chief executive officer.
Audited expenditure statement	All costs claimed as QSAPE/QSAPPE must be presented in an audited expenditure statement. The audit must be prepared by a person who is: <ul style="list-style-type: none"> • An auditor registered with IRBA; • If the auditor has any connection to the applicant that connection should be declared; • the dti reserves the right to appoint any other registered auditor to perform further checks at their own expense; • The statement should be in the format provided in annexure A or B; • The auditor's statement is provided at the applicant's expense, with the name of the auditor and auditor's company or practice, qualifications and contact details to be provided in the relevant section of the application form; and • Both the applicant and the auditor are to sign the auditor declaration form.
Completion date	The date on which the cut master negative and conforming soundtrack of the film are married to an answer print or, where such film is not a cinematographic film, the date on which the film is completed to an equivalent production stage.
Costs of services embodied in goods	If the cost of certain services are embodied in the cost of goods delivered to the applicant company and those services were predominantly (greater than 50% of cost) performed outside South Africa, then those services are not provided in South Africa for the purposes of determining QSAPE/QSAPPE. This does not apply to imported goods where the supplier has an established business that has a history of supplying those particular goods, for example, Kodak stock.
Deferments, profit participation, residuals	QSAPE does not include expenditure that is dependent on the film production's commercial performance and its earnings, as expenditure directly linked to the production's commercial performance cannot be quantified until after the production has been exhibited. Therefore, expenditure items specifically excluded from QSAPE/QSAPPE include: <ul style="list-style-type: none"> • Payments deferred until the film production provides financial returns through box office receipts, earnings or profits (for example, bonuses paid to directors); • Payments dependent on eventual profits made on the production; and • Amounts payable in relation to the residual rights of cast members concerning the commercial exploitation of the production through future exhibition and distribution.
Deliveries	This is the creation of deliveries elements for multiple distribution platforms and formats.
Financing expenditure	Financing expenditure includes returns payable on amounts invested in the film production and expenditure connected with raising and servicing finance for the production, such as executive producer fees and interest payments.
Further information as requested	the dti reserves the right to require any further information deemed necessary to complete the incentive process. This information must be provided at the applicant's expense within 28 days of the dti 's request, although the applicant may write to the dti requesting an extension of time.
General business overheads	South African business overheads, being general business overheads, are excluded from QSAPE/QSAPPE to the extent that they exceed the lower of: <ul style="list-style-type: none"> • 2% of the total of the company's TPE on the film production; or • R200 000.
Land and buildings	Any acquisition of land or buildings or the erection of buildings of a substantial nature is excluded from QSAPE as this expenditure would not be considered reasonably attributable to the making of the film.

	<p>Sets and props will not be classified as substantial in nature, however any proceeds on the sale of sets and props or the deemed value of such, if retained by the applicant or related party after completion of the film, must be deducted from the value of QSAPE/QSAPPE for the purpose of calculating the incentive.</p>
Online post production	<p>Once the offline picture has been agreed to the „on-line starts“. This is the process of combining the original shoot footage, animation, visual effects, title elements and colour grading/timing to picture to create a final picture.</p>
Other connected party fees	<p>The fees of any other connected parties that appear above the line, (that is, writer, director or cast member) inclusive of all their travel, accommodation and living expenses, are excluded from QSAPE to the extent that they exceed the lower of:</p> <ul style="list-style-type: none"> • 10% of the total of the company’s TPE on the film production; or • R1 million. <p>Section 31 of the Income Tax Act, 1962, defines a connected party as:</p> <p>(a) In relation to a natural person</p> <ol style="list-style-type: none"> (i) any relative; and (ii) any trust of which such natural person or such relative is a beneficiary. <p>(b) In relation to a trust.</p> <ol style="list-style-type: none"> (i) any beneficiary of such trust; and (ii) any connected person in relation to such beneficiary. <p>(c) In relation to a member of any partnership</p> <ol style="list-style-type: none"> (i) any other member; and (ii) any connected person in relation to any member of such partnership. <p>(d) In relation to a company</p> <ol style="list-style-type: none"> (i) its holding company as defined in section 1 of the Companies Act, 1973 (Act No 61 of 1973); (ii) its subsidiary as so defined; (iii) any other company where both such companies are subsidiaries (as so defined) of the same holding company; (iv) any person, other than a company as defined in section 1 of the Companies Act, who individually or jointly with any connected person in relation to himself, holds, directly or indirectly, at least 20% of the company’s equity share capital or voting rights; (v) any other company if at least 20% of the equity share capital of such company is held by such other company, and no shareholders hold the majority voting rights of such company; (vi) any other company if such other company is managed or controlled by <ol style="list-style-type: none"> (aa) any person who is a connected person in relation to such company, or (bb) any person who is a connected person in relation to a person contemplated in item (aa) (vii) where such company is a closed corporation <ol style="list-style-type: none"> i. any member; ii. any relative of such member or any trust that is a connected person in relation to such member; iii. any other close corporation or company that is a connected person in relation to <ol style="list-style-type: none"> 1. any member contemplated in item (aa) 2. any relative or trust contemplated in item (bb)
Other exclusions	<p>The following sundry items do not qualify as QSAPE:</p> <ul style="list-style-type: none"> ▪ Errors and omission insurance that protects the copyright holders from litigation once the film is exhibited; and

	<ul style="list-style-type: none"> Any gifts, entertainment and gratuities.
Post-production	Post-production cost encompasses the elements and processes from the shoot to final delivery. Once film or digital data leaves set until final delivery masters/elements encompasses post -production. The process that follows once the acquisition process is completed.
Producer fees	South African producer fees, limited to two working producers, which should be inclusive of all their travel accommodation and living expenses, is excluded from QSAPE to the extent that it exceeds the lower of: <ul style="list-style-type: none"> 10% of the total of the company's TPE on the film production; or R1 million.
Roto/VFX	Roto involves cutting elements out of the picture frame by frame to make a matte.
Complete DVD including the dti credit	A complete DVD from the film production, together with a full final credit listing and proof of distribution or exhibition arrangements for the production must be included in the application to verify that the production is ready for distribution or exhibition to the general public. the dti reserves the right to be supplied with a DVD of the entire film production or alternatively to be invited to a filming of the production in its entirety following the production's release. The final copy of the production will be kept only for the purposes of the application process.
Sound post-production	Sound post-production is the process of combining shot sounds from the set, additional dialogue recording, dialogue editing, sound effects editing and sound design, music and the musical score (composition and licensing), Dolby, stereo sound mix for theatrical broadcast and DVD release.
Speculative project	Work done with no defined goal for broadcast or distribution and is not commissioned.
Total production expenditure	<p>A film or television production's total production expenditure is that incurred or reasonably attributable to the making of the film from pre-production to the point at which the first copy of the film is ready to be distributed, broadcast or exhibited to the general public.</p> <p>Section 12(o) of the Income Tax Act, 1962 (Act No. 58 of 1962)) defines production expenditure as follows:</p> <ul style="list-style-type: none"> "Production cost", in relation to a film, means the total expenditure incurred by a film owner in respect of the acquisition or production of such film, excluding expenditure incurred in the erection, construction or acquisition of any buildings or other structures or works of a permanent nature, but including, without in any way limiting the scope of this definition – <ul style="list-style-type: none"> any remuneration, salary, legal, accounting or other fee, commission or other amount paid or payable to any person for the purposes of or in connection with the production of the film; the cost of acquiring the story rights, script, screenplay, copyright or other rights in relation to the film; insurance premiums in respect of insurance against injury to or death of persons, or loss of or damage to property employed or used, as the case may be, in the production of the film; premiums or commission payable in order to secure a guarantee that the cost of the film will not exceed a specified amount; interest, finance charges and raising fees incurred for the purposes of or in connection with the production of the film; the cost of acquiring or creating music, sound and other effects that will form part of the film; any allowance that, but for the provisions of this section, would be allowed under section 11(e) or (o) or 12o in respect of any machinery, implements, utensils or articles used in the production of a film: provided that: <ul style="list-style-type: none"> any such allowance shall be deemed to be an amount of expenditure incurred; an amount equal to the total amount of any such allowance which may be granted in respect of any year of assessment divided by the number of days in that year.

Appendix B: Schedule for Incentive Programme

1. DEFINITIONS

The definitions contained in the incentive guidelines apply. In addition:

- 1.1. "The Beneficiary" means the legal or natural person that was approved by **the dti** for incentives and, where the payment is ceded to a service provider, also refers to the service provider.
- 1.2. "Business Project" or "Project" means the business operated by the beneficiary and that was approved for the incentive.
- 1.3. "**the dti**" refers to the Department of Trade and Industry, care of the Incentive Development and Administration Division, Block A, 77 Meintjies Street, Sunnyside, Pretoria; Private Bag X84, Pretoria, 0001.

2. NATURE OF THE INCENTIVES

- 2.1. **the dti** and the **beneficiary** do not enter into a partnership, agency or shareholding agreement or other representation because of the approval of an incentive application or claim.
- 2.2. The beneficiary has no authority to bind or attempt to bind **the dti**, in any manner, or to assume or incur any obligation or responsibility, expressed or implied on behalf of or in the name of **the dti**.

3. INCENTIVE GUIDELINES AND ECONOMIC POLICIES OF the dti

The incentive guidelines and/or this schedule may be amended from time to time. Amendments to the guidelines and/or this schedule will be published on **the dti** website and be effective immediately. Beneficiaries whose applications have already been approved will only be affected by retrospective amendments if it is not prejudicial to them or **the dti**.

Where the beneficiary is of the opinion that a word or sentence in the guidelines or this schedule is vague and/or has to be interpreted, the beneficiary must not make its own interpretation. **the dti** has the right, in its sole discretion, to provide interpretations on the meaning and intention of such words or sentences. Such decisions are binding on all beneficiaries.

The beneficiary is required to familiarise itself with the economic policies of **the dti**. Any failure to conduct its business in line with such policies may result in the beneficiary being regarded as having contravened the terms of this schedule. Specifically, the beneficiary is reminded of **the dti**'s competition and consumer laws, BEE policy, as well as **the dti**'s efforts to phase out import parity pricing in favour of non-discriminatory pricing and the efforts to promote downstream beneficiation. Should the beneficiary not be in compliance with these policies, it shall be expected of the beneficiary to submit with its claims an adopted business plan indicating how it is striving to become compliant.

4. APPROVAL OF THE INCENTIVE APPLICATION AND SUBMISSION OF CLAIMS

- 4.1. The approval set out in the letter of approval is only relevant to the specific business project that applied. A business project, activity or expenditure can only qualify once for an incentive (unless the incentive guidelines state different). A business project will be disqualified if it contravenes this clause.

- 4.2. No representation, communication (including official the **dti** letters), or offer made prior to the approval of the application/claim shall be valid in so far as it does not agree with the letter of approval, or the requirements of the claim.
- 4.3. No information may be submitted with the claim on any, or part of any, project other than the business project that has been approved.
- 4.4. The calculation method of the maximum incentive approved, replaces any calculation method explained in the incentive guidelines and shall be final. The approved maximum amount is fixed and shall not be adjusted due to changes in macroeconomic variables like inflation; exchange; or interest rate etc.
- 4.5. The beneficiary is not automatically entitled to the full amount of the maximum incentive offered. **the dti** further reserves the right to correct any calculation error at any stage before or after approval/payment. A further calculation will be made based on the figures set out in the claim form. This calculation may result in an amount that is less than the maximum amount, but can never be more than the offered maximum amount.

5. AMENDMENTS TO THE INFORMATION SUBMITTED BY THE BUSINESS PROJECT

Any change (including amendment, addition or variation) in the information set out in the application that is relevant to the approved incentives must immediately be communicated to **the dti** in writing. This includes, but is not limited to, changing an approved service provider and changes to time frames.

The beneficiary must request written approval from **the dti** that the planned changes do not affect the incentive in a manner that is unacceptable to **the dti**, before the planned changes take place. The decision to amend the information submitted for the incentive shall be solely in the discretion of **the dti** and is final.

the dti may accept or refuse to make the change applicable to the approval; or may accept the change as part of the approval, but make the approval subject to (additional/other) conditions; or may reject the whole application or claim based on the planned changes. The application or claim shall be rejected where, among others, the beneficiary will no longer qualify for the incentive because of the planned changes.

An approval of an amendment may affect the approved incentive amount.

6. PAYMENT OF THE INCENTIVE

- 6.1. **the dti** or its representative (including independent engineers or other experts) may visit the premises where the business project is conducted/executed/produced/recorded/edited and inspect such business project before it approves an application or claim. **the dti** may do this with or without prior notice.
- 6.2. Such inspection will be, among other things, to verify the information submitted with the application and/or claim and to inspect the premises, financial books, technology, documents, reports and any other information that may pertain to this incentive.
- 6.3. The beneficiary, or its successor in title (including the executor/trustee of a deceased/sequestered/liquidated estate), must keep records (electronic or paper) of all documents relevant to the incentive for five years after it received the last payment. This includes a copy of its application and

all its claims; originals of documents submitted with the application and claims; copies of reports or other information provided to **the dti** and relating to the incentive.

- 6.4. The beneficiary must allow **the dti** reasonable access to the records mentioned in paragraph 6.3 above, during normal business hours, and must also provide **the dti** with any information required for the inspection. Should the **Beneficiary** hinder **the dti** or its representative and/or refuse access to such records in any way so that the inspection cannot be effectively completed, **the dti** may summarily reject the application and/or claim.
- 6.5. **the dti** may verify the information contained in the application, claim and/or supporting documents by carrying out an independent investigation. To do such an investigation **the dti** may contact any person who **the dti** feels may be of assistance. If the beneficiary hinders **the dti** or its representative in any way so that the investigation cannot be effectively completed, **the dti** may summarily reject the application and/or claim.
- 6.6. Should **the dti** find that a price claimed by the beneficiary is not market related, **the dti** may, in its sole discretion, and despite the contents of the letter of approval, reduce the approved claim amount to reflect such market-related price, or may reject the full claim.
- 6.7. **the dti** shall only evaluate claim forms that are fully and correctly completed to the satisfaction of **the dti** (including that all the supporting documents required by the incentive guidelines be attached). Approval of a claim is in **the dti**'s sole discretion.
- 6.8. **the dti** shall make payment within 30 calendar days after an approval by **the dti** of the relevant claim in accordance with the requirements and conditions of the incentive scheme's guidelines (which may include a physical inspection). **the dti** may delay payment for an indefinite period, provided that it shall inform the beneficiary of the reasons for such delay so as to ensure that no delay is for unjust administrative reasons.
- 6.9. Payment shall be made directly into the bank account of the beneficiary only. The beneficiary must notify **the dti** of the correct account details in writing when submitting its claim form.
No interest shall be payable by **the dti** on any amounts due and payable. Payment is subject to availability of funds as approved by National Treasury and parliament on a yearly basis, and allocated to **the dti** in terms of the annual Division of Revenue Act.
Where a service provider is involved in terms of the incentive guidelines, **the dti** accepts no liability for non-performance, poor or failed execution of the activity/ies by a service provider or for damages or penalties incurred by the beneficiary for using the services of a service provider.
It is the duty of the beneficiary to inform **the dti** in writing should any of the instances below occur and **the dti** reserves its rights in the event of any of the instances occurring to reject a claim and /or refuse any further payment:
 - 6.9.1. The business project stops manufacturing/production/operations for any reason. This includes provisional/final liquidation (or sequestration of the sole proprietor/partner/firm); becoming dormant; being destroyed. It is irrelevant whether this cessation is permanent or temporary (seasonal business projects must at least be operational during the relevant seasons);
 - 6.9.2. the beneficiary enters into a compromise offer or arrangement with creditors, or where the beneficiary is placed under judicial management;
 - 6.9.3. and where investment is a requirement, the business project reduces the qualifying investment without replacing it again with qualifying investment;
 - 6.9.4. the business project reduces jobs and/ or reduces permanent staff or reduces permanent staff in favour of casual, contract or temporary staff;
 - 6.9.5. the business project stops complying with the incentive guidelines and/or this schedule.

- 6.10. The beneficiary is required to report to **the dti** in writing within seven days any discrepancy (insufficient / excess) on payments made must repay **the dti** within seven days from such report any excess received.
- 6.11. Any erroneous payment (including those resulting from a miscalculation, mistake or irregularity) will immediately be recoverable and may be deducted from any future payments that are, or will become, payable. **the dti** reserves the right to reverse, apportion or recall any payment or any part thereof at its sole discretion. **the dti** levies interest at the rate prescribed in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) on any outstanding amounts payable as from 30 days of date of demand.

7. MONITORING

- 7.1. The beneficiary must use the incentive amounts received from **the dti** for the approved business project or activities that it described in its application form and an inspector may require evidence at any time after an amount has been received for verification of this requirement. In contravention of this rule, the amount will be recovered from the beneficiary and prescription cannot be pleaded.
- 7.2. **the dti** may ask the beneficiary to complete questionnaires and submit same within the requested period or to report to **the dti** on its business project/activities, as well as on the incentive received for **the dti** to monitor and evaluate compliance as well as the contribution that the incentive is making or has made to the South African economy. If the beneficiary does not comply with the request, **the dti** may, in addition to any other legal remedies that it may have, stop or reduce all further payments in its sole discretion and may refuse any other applications being evaluated at that stage or that may be submitted in future, from the beneficiary or any of its shareholders, directors or principal officers, whether presented directly or indirectly through another legal person for this or any other scheme.
- 7.3. **the dti** may appoint an auditor to perform an audit on the beneficiary to ascertain whether the beneficiary has complied with the incentive guidelines and this schedule. **the dti** will notify the beneficiary in writing of the audit and the **beneficiary** must co-operate with the auditor.

8. NON-COMPLIANCE WITH THE INCENTIVE GUIDELINES OR THIS SCHEDULE

- 8.1. Should the beneficiary not comply with any requirement of the incentive guidelines or this schedule, **the dti** shall be entitled, without prejudice of any other rights that it may have, to reject the application and/or claim; to stop all further payments and/or benefits; and to reclaim any or all of the moneys already paid in its sole discretion. In addition, should the beneficiary be in breach of clause 3.3. *supra* regarding economic policies and commercial statutes, **the dti** reserves the right to implement any of the conditions under clause 10 *infra*.

9. DISPUTES

- 9.1. Any dispute relating to a decision (including the rejection of an application) taken by **the dti** must be resolved by way of one internal appeal only, lodged within such time as is set out in the letter of rejection. No appeals on inspections are allowed. Should the beneficiary dispute the appeal decision, it must proceed by way of review in the High Court of South Africa.

- 9.2. If the beneficiary wishes to place new facts before **the dti** for reconsideration, the beneficiary must explain in writing why these facts could not be provided at the first hearing. If this explanation is, in the sole discretion of **the dti**, unsatisfactory, it may reject the request.
- 9.3. Any other dispute or disagreement between **the dti** and the beneficiary may be submitted in writing, for mediation. If the matter can still not be resolved, it may be referred in writing for arbitration. The decision of the arbitrator shall be final and binding.
- 9.4. Arbitration shall be in accordance with the rules of AFSA (Arbitration Foundation of South Africa) and the arbitration costs shall be shared equally.
- 9.5. A beneficiary has no legal right or any entitlement to any grant irrespective whether a letter of approval has been issued or not as a grant is an act of grace and should a beneficiary or its consultant wish to litigate against **the dti** the law of contract will not apply

10. CRIMINAL, MISLEADING, DISHONEST and UNLAWFUL ACTIVITIES

- 10.1. **the dti** shall, in the case of criminal/misleading/dishonest activities/information, or activities/information that contravenes any Act of the Republic of South Africa, specifically Acts that regulate commercial activities, be entitled to exercise any rights that it may have in terms of common law or statutory law. In addition, the following paragraphs will be applicable:
- 10.2. The beneficiary's application/claim is approved conditional on the correctness and completeness of information provided by the beneficiary in the application/claim/addenda/supporting documents/reports. Should the information be substantially incorrect and/or incomplete, **the dti** may immediately reject the application/claim and claim back all monies already paid.
- 10.3. Where **the dti** suspects criminal/misleading/dishonest activities/information in relation to the beneficiary's incentive application or claim or commercial practices of **the dti** or its consultant **the dti** may immediately suspend any payments that may be due or may become due to the beneficiary
- 10.4. **the dti** may, where the final findings of a forensic investigation, or the findings of a competent authority indicates criminal/misleading/dishonest activities/information or the contravention of an Act, without prejudice to any other rights that it may have, reject an application or any pending claim and reclaim any payments already made, with *mora* interest, together with the costs of any legal or other costs, which may also include costs of forensic investigators and/or costs of an auditor.
- 10.5. **the dti** may refer financial statements or supporting documents submitted by the beneficiary to SARS for comment and comparison. If SARS informs **the dti** of a difference in financials, **the dti** may without prejudice to any other rights that it may have, reject any pending claim and reclaim any payments already made, with *mora* interest, and refuse any further payment to the beneficiary.
- 10.6. **the dti** shall not be liable for any damages, interest or other claims that may ensue, should incentive payments be delayed, suspended or terminated for whatsoever reason. In addition, the beneficiary's risk of business failure is solely for the beneficiary and no delay, suspension or termination shall render **the dti** liable to the beneficiary or any other related party whatsoever.
- 10.7. Where **the dti** rejected an application or claim due to misrepresentation/discrepancy/abuse/fraud/contravention of an Act by the beneficiary and/or the consultant, **the dti** may reject any current or future application from the beneficiary, its shareholders, directors or principal officers or application from the appointed consultant whether presented directly or indirectly through another legal person. **the dti** shall have the right to immediately refuse any other applications/claims or terminate any contract(s) in existence between **the dti** and the beneficiary, its shareholders, directors or principal officers, whether represented directly or indirectly through another legal person. If it comes to light

that any beneficiary, its shareholders, directors or principal officers or application from the appointed consultant whether presented directly or indirectly through another legal person were involved in any misrepresentation/discrepancy/abuse/fraud/contravention of an Act and when a payment has all ready been received , **the dti** reserves the right to recover the payment(s) and hold the beneficiary, its shareholders, directors or principal officers or application from the appointed consultant all the parties will be held liable serially and jointly the one absolving the other

- 10.8. **the dti** subscribes to the principles set out in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) („PRECCA“), beneficiaries are requested to contact **the dti** fraud hotline on 0800 701 701 should they wish to report any suspicious activities.

NOTE: The date and time when the criminal/misleading/dishonest activities/information or contravention of an Act took place shall be irrelevant. **the dti** will only contribute to businesses that at all times and in all aspects conduct its business in a way that is exemplary and in accordance with the laws of the republic. Failure to notify **the dti** of any record that may indicate the contrary will be seen as aggravating circumstances when **the dti** exercises its discretion in this regard.

11. CONFIDENTIALITY

- 11.1. Both **the dti** and the beneficiary, its employees, members and directors, and agents shall treat all information they gain access to as a result of communications between **the dti** and the beneficiary relating to the incentive (e.g. application/claim/reports), whether on paper or electronic, and which information is not otherwise public knowledge, as confidential.
- 11.2. Confidential information may only be disclosed to any person outside the immediate working environment of **the dti** or the beneficiary with the prior written permission of the other. Any information required by the public sector or its appointees in terms of the reporting duties of **the dti** may be reported by **the dti** without such consent.
- 11.3. Where either **the dti** or the beneficiary receives a court order or a subpoena requiring disclosure of confidential information, it must notify the other in writing within seven days. Where the court order or subpoena gives shorter notice than 20 days, written notice must be given as soon as is reasonably possible. The reason for the written notification is so that **the dti** or the beneficiary may seek a protective order or waive the provision of this clause in writing.
- 11.4. **the dti**/beneficiary must take reasonable care to ensure that only the exact information required by the court order or subpoena, or as is limited by a protective/other order, is disclosed.
- 11.5. This paragraph shall apply even after the relationship between **the dti** and the beneficiary has ceased.
- 11.6. This paragraph does not apply to litigation and/or arbitration proceedings between **the dti** and the beneficiary.

12. CESSION

- 12.1. The approval of an incentive application does not give the beneficiary any right to payment. An approval merely allows the beneficiary to submit a claim form in accordance with the requirements and conditions of the incentive guidelines and this schedule.
- 12.2. Cession of the right to submit a claim is not allowed. The possible right (*spes*) that the claim will be successful and that payment will accordingly follow may only be ceded with the prior written

agreement of **the dti** and shall be subject to such strict conditions as **the dti** in its sole discretion will determine.

- 12.3. **the dti** may refuse cession, in its sole discretion, to certain institutions.
- 12.4. Assignment of any of the beneficiary's obligations is not allowed.
- 12.5. No right that the beneficiary might obtain by way of the approval of an incentive may be otherwise encumbered or subjected to any form of pledge or used as the basis for any form of security or guarantee to bind the state whatsoever.
- 12.6. **the dti** may cede or assign any of its rights or obligations in accordance with a decision from National Treasury, Parliament or Cabinet. This decision will include any decision that causes a policy shift within **the dti** so that in order to align itself with the shift in policy, **the dti** has to so cede or assign. **the dti** will take reasonable steps to ensure that the beneficiary is not unreasonably prejudiced by such assignment or cession.

13. GENERAL

- 13.1. No waiver, indulgence and/or relaxation of whatever nature of any of the provisions of the guidelines or this schedule by **the dti** shall be valid or enforceable against **the dti**, unless such waiver, indulgence or relaxation is in writing and signed by **the dti**.
- 13.2. The guidelines, the completed application form (with attachments), this schedule and the claim form(s) (with attachments) are the only documents that set out the requirements and conditions applicable to the relationship between **the dti** and the beneficiary as well as the information on which the relationship is based. Amendments to the guidelines and this schedule may be made by **the dti** in accordance with this schedule.
- 13.4. The beneficiary agrees that the laws of South Africa, excluding the law of conflicts (which determines the legal system applicable to a dispute), shall govern the relationship between **the dti** and the beneficiary.
- 13.5. The beneficiary, consultant and auditor are required to sign this schedule where it appears in the application form and claim form to confirm that the beneficiary has read the content hereof and knows that it forms part of the requirements of the incentive scheme and that the beneficiary is in compliance with same and it is binding on the beneficiary.