

# Broadcaster Performance Envelope

## Guidelines

2009-2010



Canadian Television Fund  
Fonds canadien de télévision

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*Interpretation, Application, Disclaimer, and other Important Information:*

These Guidelines are for the information and convenience of Applicants (as defined in [Section 3.1](#)) to the Canadian Television Fund (CTF). They provide an overview of the objectives of the Fund, the manner in which the Fund is administered, and information on typical administrative practices of the Fund. Compliance with these Guidelines is a prerequisite to eligibility for any CTF funding.

The CTF has full discretion in the administration of its programs and in the application of these Guidelines to ensure funding is provided to those projects that contribute to the fulfillment of its mandate. In all questions of interpretation of these Guidelines, the interpretation by the CTF shall prevail.

All Applicants and broadcasters (where relevant) must abide by the Accounting and Reporting Requirements (ARR) of the CTF and follow applicable business policies as created and amended from time to time. Business policies, including the ARR, may be found in Appendix B of these Guidelines and are also available from the CTF website at [www.ctf-fct.ca](http://www.ctf-fct.ca). Information included in Appendices A and B is an integral part of these Guidelines.

Productions that receive CTF funding in a given year are subject to the Guidelines and the CTF policies that are in effect for that fiscal year. For greater clarity, changes to CTF Guidelines and/or policies made in a subsequent fiscal year will not be applied retroactively, unless specifically stated. The CTF fiscal year is April 1 to March 31.

Please note: These Guidelines may be changed or modified as required, without notice. Please consult the CTF website at [www.ctf-fct.ca](http://www.ctf-fct.ca) to receive the latest Guideline news and documentation.

## 1. INTRODUCTION TO THE CANADIAN TELEVISION FUND

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The CTF supports a high volume of distinctively and identifiably Canadian broadcast programming, reflecting Canadian culture, stories and themes. The CTF provides support to the development, production and broadcast in peak viewing hours of such television projects. This programming will be certified by the Canadian Audio-Visual Certification Office (CAVCO) and have achieved 10/10 points (or the maximum number of points appropriate to the project), as determined by the CTF using the CAVCO scale, and it is shot and set primarily in Canada.

These projects must be initiated by Canadian companies, under Canadian ownership, that exercise creative and financial control from development through production to distribution and exhibition. Their underlying rights are owned, and significantly and meaningfully developed by Canadians.

The CTF is a cultural programming fund. It does not support “industrial” or “foreign service” productions or those that cede control to foreign entities.

The CTF provides support to projects in the under-represented genres of Children’s and Youth, Documentary, Drama, and Variety and Performing Arts, in English, French and Aboriginal-Canadian languages.

The CTF focuses its support on currently licensed projects intended primarily for Canadian audiences and seeks to build audiences for this programming.

The CTF is dedicated to all of the public policy objectives associated with its mandate and aims to encourage diversity of Canadian voices in programming the CTF supports, in particular with regard to: programming in English, French and Aboriginal-Canadian languages; projects in both majority and minority official-languages settings (i.e. French-language production outside Quebec and English-language production inside Quebec); and regionally-based projects.

The Broadcaster Performance Envelope (BPE) Stream provides allocations to Canadian broadcasters with a track record of participation in the types of programs which it is the CTF’s aim to support. The BPE mechanism is used to provide meaningful CTF financing for such programs, and to disburse CTF funds in a timely, efficient and market-driven manner. The CTF redistributes BPE funds on an annual basis in a manner corresponding to the broadcaster’s comparative success in: attracting audiences for CTF and CTF-eligible programs, fostering regional production through their BPE envelopes and committing substantial licences for CTF programs they commission.

The CTF also seeks to foster a productive working relationship between the CTF and the production and broadcast industries, and to maximize the effective and efficient administration of CTF services.

## 2. HOW THE BROADCASTER PERFORMANCE ENVELOPE STREAM WORKS

### 2.1 Introduction

The CTF contributes to Eligible Projects (see [Section 3.2](#)) in this Stream through Broadcaster Performance Envelopes (BPEs), which are allocations of CTF program funds made to Canadian broadcasters with a track record of supporting Canadian programming. Broadcasters select which Eligible Projects may receive funds from their BPE up to the limit of the funds allocated to them and subject to per-project Maximum Contribution amounts (see [Sections 2.3.1](#) and [2.4](#)) and other specified limitations.

Broadcasters are expected to use their BPEs in a manner consistent with their Historic Access to the CTF. In particular, their BPEs should be expended within similar genres. Each year the CTF recalculates the BPEs to reward broadcasters who satisfy the CTF's objectives and mandate, as expressed in specific weighting factors.

In order to be funded from a BPE, a project must meet all eligibility and genre requirements under the CTF Guidelines. Projects must receive Eligible Licence Fees (see [Section 3.2.5](#)) that meet the applicable Licence Fee Threshold amount (see [Sections 2.4](#) and [3.2.5.1](#)). Maximum Contribution and Licence Fee Threshold amounts are calculated based upon a project's Eligible Costs (see [Section 2.3.2](#)).

For information on the administration of BPEs, including BPE calculation methodology, genre allocations and flexibility, transfer policies, and other information, please see the Broadcaster Performance Envelope Management and Administration Policy manual ("BPEMAP") available on the CTF's website at [www.ctf-fct.ca](http://www.ctf-fct.ca).

#### 2.1.1 Definitions Applicable to the BPE Stream: Affiliated Programming and Regional Production

Affiliated Programming are projects produced by a broadcaster-affiliated production company (see [Section 3.1.2](#)), which are licensed by its affiliated broadcaster(s). Broadcasters are limited in the amount of their BPE that they are permitted to commit on Affiliated Programming. The maximum amount of CTF funding available for Affiliated Programming in each Broadcaster Performance Envelope is based on the three-year Historic Access that the broadcaster's Affiliated Programming had to CTF funding.

For the purposes of the BPE Stream "regions" are defined as any part of Canada more than 150 km by shortest reasonable roadway route from Montréal or Toronto. The CTF defines a Regional Production as follows:

- ▶ Principal photography occurs in the regions, with suitable exceptions for documentaries; and
- ▶ The Applicant is based in the regions (with its head office situated in the regions); and
  - ▶ Exercises full control of the creative, artistic, technical and financial aspects of the project, or, in the case of a regional/non-regional co-production, the regional Applicant has such control in proportion to its copyright ownership;
  - ▶ In the case of a regional/non-regional co-production, the regional Applicant owns at least 51% of the copyright in the production;
  - ▶ In the case of a regional/non-regional co-production, the regional Applicant shares equitably in fees payable to producers and corporate overhead;

- ▶ Initially owns and controls the distribution rights to the project and retains an on-going financial interest in the project or, in the case of a regional/non-regional co-production, the markets and potential revenues are shared equitably in proportion to the financial participation of each co-producer; and
- ▶ Has meaningfully participated in the production's development.

Where the control and central decision makers in a project are located outside of the regions, the project is not considered to be a Regional Production.

### 2.1.2 Applicable Language Category and Double Shoots

In the BPE Stream, the CTF applies different Licence Fee Threshold amounts, Maximum Contribution amounts, Maximum Terms and other calculations depending upon the original language of production of the project.

Eligible Projects may receive contributions from both a French-language BPE and an English-language BPE. In such a case:

- ▶ Where a Drama project is simultaneously shot in English and French (a double shoot), the original language of production is considered both languages: English and French. As such, the Eligible Costs of the project will be divided so that two-thirds of the Eligible Costs represent the English-language portion and one-third the French-language portion. Each portion shall be subject to the Licence Fee Threshold and Maximum Contribution amounts of its respective language category. Consequently, the French- and English-language broadcasters' licences shall each meet the Licence Fee Threshold requirements applicable to its respective portion of the Eligible Costs, and each broadcaster shall be subject to the Maximum Contribution amounts applicable to that portion. When recalculating BPEs for the following fiscal year, any future Above Average Licence will be based on the licences measured against the specific Eligible Costs portion to which they were related.
- ▶ In all other cases, the applicable language category is a single language determined by the original language of production of the project. Where a project is versioned into another language, the language into which the project was versioned is not the original language of production.

## 2.2 Nature of Funding Contribution

The BPE Stream may provide a mix of licence fee top-ups and equity investments according to a set formula.

A licence fee top-up supplements a successful Applicant's Canadian broadcaster cash licence fees. As such, this type of contribution forms part of the broadcaster's licence fee for the production and is non-recoupable. An equity investment is a cash investment in the production, which results in the CTF acquiring an undivided copyright ownership interest in all versions of the production. Equity investments are recoupable, and subject to a standard and non-negotiable recoupment schedule (as described and subject to any exceptions set out in the CTF Standard Recoupment Policy, see Appendix B).

The first CTF contribution to an Eligible Project will be in the form of a licence fee top-up to a maximum of 20% of the project's Eligible Costs unless otherwise specified (see [Section 2.4](#)). Amounts in excess of this maximum will be in the form of an equity investment up to a maximum of 49% of Eligible Costs. However, the CTF considers any eligible equity investment request of less than \$10,000 to be too small for equity participation. Accordingly, any such requested amount shall be automatically converted into a licence fee top-up.

CTF contributions may be combined in the financing of an Eligible Project from more than one Broadcaster Performance Envelope. The total combined CTF contribution committed from all broadcasters' envelopes must respect the licence fee top-up and equity investment split described above and any applicable Maximum Contribution amounts.

## 2.3 Amount of Funding Contribution

### 2.3.1 Broadcaster Performance Envelope Contribution

Broadcasters can decide what proportion of their BPE to allot to an Eligible Project, up to specified Maximum Contribution amounts (see the table at [Section 2.4](#)). Maximum Contribution amounts do not apply to BPE contributions from broadcasters who are members of the Association for Tele-Education in Canada (ATEC) and who have a total BPE allocation that is equal to or less than \$750,000.

For official treaty co-productions, the CTF Maximum Contribution will be calculated on the lesser of the Eligible Costs of the Canadian portion of the production's global budget and the Eligible Costs of the Canadian portion of the global final costs as certified by Telefilm Canada's International Co-productions Department.

#### 2.3.1.1 Quebec Regional French-Language Production Incentive

French-language productions meeting the definition of a Regional Production (see [Section 2.1.1](#)) and produced by an Applicant with its head office in the province of Quebec are eligible for the Quebec Regional French-language Production Incentive.

The incentive will take the form of a CTF licence fee top-up contribution of 10% of an Eligible Project's Eligible Costs up to a per-project maximum of \$150,000. This incentive will be awarded to Eligible Projects on a first-come, first-served basis. It will be awarded directly by the CTF separately and in addition to what was awarded by the broadcaster through its BPE. This incentive will be applied toward the CTF's recalculation for the Historic Access factor of the licencing broadcaster's BPE.

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### 2.3.2 Eligible Costs

Eligible Costs are the costs set out in the production budget for the project or the final cost report, as applicable (including both related-party and non-related party costs), plus any costs the CTF considers necessary, minus any costs that the CTF considers excessive, inflated or unreasonable. Assessment of a project's Eligible Costs shall be done at the CTF's sole discretion. The participation of the CTF is calculated based on an Eligible Project's Eligible Costs. The CTF estimates Eligible Costs at the time of application, based upon the production budget for the project. Eligible Costs may include cost increases between budget and final costs approved by a broadcaster that has contributed an Eligible Licence Fee to the project, but exclude such increases which have not been so approved.

Additional CTF business policies relating to Eligible Costs are in Appendix B of this document.

#### 2.3.2.1 Related-Party Transactions

All related-party fees, related-party allowances and any other related-party transactions must be:

- ▶ Disclosed to the CTF; and
- ▶ In accordance with the CTF/Telefilm Canada Accounting and Reporting Requirements of January 1, 2006, more specifically, but not limited to [Sections 3](#) and [4](#).

#### 2.3.2.2 Insurance and Completion Protection

Productions receiving financing from the CTF must have insurance and completion protection safeguards in a form and amount acceptable to the CTF. The insurance and completion protection requirements are defined in the CTF business policies (see Appendix B).

### 2.3.2.3 Versioning

For those projects that have been licensed or will be licensed for Canadian broadcast in the other official language (English or French, as applicable) prior to delivery of the project to the first window Canadian broadcaster, the CTF requires that all versioning (i.e. dubbing or subtitling) of the project be performed in Canada using Canadian artists, actors, employees and technicians (as applicable). Exceptions may be made in the case of official treaty co-productions.

The CTF requires that English and French versioning costs be included in the budget if it is required contractually by one of the Canadian financiers. The CTF will not support versioning costs normally incurred by distributors to assist in foreign market sales through this Stream.

### 2.3.2.4 Marketing Expenses

Eligible Costs may include marketing expenses that were incurred during production of the project (e.g. production photographs, hiring a publicist to arrange interviews), but exclude all other marketing expenses.

### 2.3.2.5 Multi-Platform Projects

Eligible Costs for Children's and Youth programming projects may include new media costs where the storytelling and/or narrative of the television and new media components are inextricably linked and interdependent.

The CTF will not support any new media component that primarily focuses on promotion, marketing, administrative processing, or other aspects of the project unrelated to the storytelling and/or narrative element that enhances the experience for the viewer.

The CTF requires that Licence Fee Thresholds be met against the integrated costs – i.e. both television and new media costs.

### 2.3.2.6 Pilots and Series

Eligible Costs for a series may include costs related to enhancements to a previously produced pilot where the series is consequent to that pilot.

## 2.4 Licence Fee Thresholds and Maximum Contributions

“Maximum Contribution (BPE Stream)” refers to contributions from all BPEs from the BPE Stream only, while “Maximum Contribution (CTF)” refers to the contributions from all CTF Streams (for example, combined contributions from French-language Outside Quebec and BPE).



## DRAMA PROGRAMMING

Language	Project Type	Project's Eligible Costs	Licence Fee Threshold	Maximum Contribution (BPE Stream)	Maximum Contribution (Licence Fee Top-up)	Maximum Contribution (CTF)
English	½ Hour Series or One-Offs	Less than \$800,000 per hour	45% of Eligible Costs or \$315,000 per hour, whichever is less	n/a	20% of Eligible Costs per project or \$2.25 million, whichever is less	\$4.25 million per project
		\$800,000 per hour or more	\$315,000 per hour	n/a		
	1-Hour Series or One-Offs (including MOWs and mini-series)	Less than \$800,000 per hour	45% of Eligible Costs or \$315,000 per hour, whichever is less	n/a		\$5.25 million per project
	1-Hour Series or One-Offs (excluding MOWs and mini-series)	\$800,000 per hour or more	\$315,000 per hour	n/a	25% of Eligible Costs per project or \$4.2 million, whichever is less	\$507,692 per hour or \$6.6 million per project, whichever is less
	Returning 1-Hour Series (excluding mini-series)	\$800,000 per hour or more	\$315,000 per hour	n/a	25% of Eligible Costs per project or \$5.8 million, whichever is less	\$507,692 per hour or \$9.1 million per project, whichever is less
	Returning ½ Hour Series (excluding mini-series)				20% of Eligible Costs per project or \$3.1 million, whichever is less	\$5.88 million per project
	MOWs	\$800,000 per hour to \$1,857,143 per hour	\$325,000 per hour	n/a	20% of Eligible Costs per project or \$750,000, whichever is less	\$1.75 million per project
		More than \$1,857,143 per hour	17.5% of Eligible Costs	n/a		
	Mini-series	\$800,000 per hour to \$1,857,143 per hour	\$325,000 per hour	n/a	20% of Eligible Costs per project or \$2 million, whichever is less	\$4.0 million per project
		More than \$1,857,143 per hour	17.5% of Eligible Costs	n/a		
French	½ Hour Pilots*	More than \$700,000 per ½ hour	\$205,000 per ½ hour	n/a	20% of Eligible Costs per project	\$350,000 per project
	1 Hour Pilots*	More than \$1,750,000 per hour	\$525,000 per hour	n/a	25% of Eligible Costs per project	\$850,000 per project
	Drama projects excluding MOWs and mini-series	Less than \$250,000 per hour	50% of Eligible Costs	20% of Eligible Costs per project	n/a	\$1.3 million per project
	Drama projects excluding MOWs and mini-series	\$250,000 per hour or more but less than \$800,000 per hour	23% of Eligible Costs	52% of Eligible Costs per project	20% of Eligible Costs per project	\$5.5 million per project
	Drama projects excluding MOWs, mini-series, and series	\$800,000 per hour or more	20% of Eligible Costs	53% of Eligible Costs per project	20% of Eligible Costs per project	\$545,000 per hour or \$6.5 million per project, whichever is less
	½ hour and 1 hour Drama series	\$800,000 per hour or more	20% of Eligible Costs	53% of Eligible Costs per project	25% of Eligible Costs per project	\$545,000 per hour or \$6.5 million per project, whichever is less
	Mini-series	All	18% of Eligible Costs	55% of Eligible Costs per project	20% of Eligible Costs per project	\$4.0 million per project
	MOWs	All	\$150,000 per project	55% of Eligible Costs per project	20% of Eligible Costs per project	\$1.75 million per project

\* For English-language Drama programming, a pilot and a series consequent to that pilot are treated as separate projects for the purposes of determining the applicable Maximum Contribution amounts, whether or not they are funded in the same fiscal year.

## VARIETY AND PERFORMING ARTS PROGRAMMING

Language	Project Type	Project's Eligible Costs	Licence Fee Threshold	Maximum Contribution (BPE Stream)	Maximum Contribution (CTF)
English	Variety and Performing Arts	Less than \$750,000 per hour	40% of Eligible Costs or \$240,000 per hour, whichever is less	n/a	\$0.75 for every \$1.00 of licence fee per BPE
		\$750,000 or more per hour	\$240,000 per hour	n/a	\$1.25 for every \$1.00 of licence fee per BPE
French	Variety	Less than \$750,000 per hour	50% of Eligible Costs	25% of Eligible Costs per project	\$1.1 million per project
		\$750,000 or more per hour	25% of Eligible Costs	35% of Eligible Costs per project	\$1.1 million per project
	Performing Arts	All	20% of Eligible Costs	43% of Eligible Costs per project	\$500,000 per project

## DOCUMENTARY PROGRAMMING

Language	Project	Licence Fee Threshold	Maximum Contribution (BPE Stream)	Maximum Contribution (CTF)
English	Projects of six episodes or less, and with Eligible Costs of less than \$400,000 per hour*	30% of Eligible Costs or \$100,000 per hour, whichever is less	n/a	\$1.25 for every \$1.00 of Eligible Licence Fees per BPE
	Projects of seven episodes or more, and with Eligible Costs of less than \$400,000 per hour	40% of Eligible Costs or \$100,000 per hour, whichever is less	n/a	\$1.00 for every \$1.00 of Eligible Licence Fees per BPE
	Projects with Eligible Costs of \$400,000 per hour or more*	\$100,000 per hour	n/a	\$1.50 for every \$1.00 of Eligible Licence Fees per BPE
French	Projects with Eligible Costs of less than \$100,000 per hour	35% of Eligible Costs	35% of Eligible Costs per project	\$700,000 per project
	Projects with Eligible Costs of \$100,000 per hour to \$400,000 per hour	20% of Eligible Costs	47% of Eligible Costs per project	\$700,000 per project
	Projects with Eligible Costs of more than \$400,000 per hour to \$750,000 per hour	15% of Eligible Costs	47% of Eligible Costs per project	\$700,000 per project
	Projects with Eligible Costs of more than \$750,000 per hour	10% of Eligible Costs	50% of Eligible Costs per project	\$700,000 per project
	Feature-length Documentary projects with Eligible Costs of \$100,000 to \$750,000	12% of Eligible Costs	50% of Eligible Costs per project	\$375,000 per project
	Feature-length Documentary projects with Eligible Costs of more than \$750,000	10% of Eligible Costs	50% of Eligible Costs per project	\$500,000 per project

## CHILDREN'S AND YOUTH PROGRAMMING

Language	Project	Licence Fee Threshold	Maximum Contribution (BPE Stream)	Maximum Contribution (CTF)
English	Projects with Eligible Costs of less than \$750,000 per hour	25% of Eligible Costs or \$160,000 per hour, whichever is less	n/a	\$1.50 for every \$1.00 of Eligible Licence Fees per BPE
	Projects with Eligible Costs of \$750,000 or more per hour	\$160,000 per hour	n/a	\$2.00 for every \$1.00 of Eligible Licence Fees per BPE
French	Live-action projects with Eligible Costs of less than \$750,000 per hour	35% of Eligible Costs	37% of Eligible Costs per project	\$2,500,000 per project
	Live-action projects with Eligible Costs of \$750,000 or more per hour	15% of Eligible Costs	47% of Eligible Costs per project	\$545,000 per hour or \$2,500,000 per series
	Animation	15% of Eligible Costs	30% of Eligible Costs per project	\$2,000,000 per project

\* For English-language feature-length documentaries, the project's running time will be rounded up to the nearest half-hour for the purposes of the CTF per-hour based calculations in this Section.

## 3. ELIGIBILITY FOR FUNDING

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### 3.1 Eligible Applicants

#### 3.1.1 Production Companies

An eligible Applicant\* to the CTF must be a corporation that is Canadian-controlled, as determined for the purposes of sections 26 to 28 of the *Investment Canada Act*, with its head office based in Canada. In addition, when assessing an Applicant's eligibility, the CTF may choose to look at factors, including:

- ▶ If the Applicant's activities take place in Canada;
- ▶ The financial stability of the Applicant (with appropriate exceptions for new production companies without established parent companies); and
- ▶ Whether or not the Applicant operates principally as a television or film production entity.

\* For the purposes of these Guidelines, the term "Applicant" is deemed to mean and include all co-applicants and/or parent companies as applicable.

#### 3.1.2 Broadcaster-Affiliated Production Companies

A broadcaster-affiliated production company is a production company, as defined in [Section 3.1.1](#) above, that is affiliated with a Canadian broadcaster. The CTF uses the definition of "Affiliate" set out in the *Canada Business Corporations Act*. An Applicant that is a broadcaster-affiliated production company is only eligible for CTF funding if it is:

- ▶ A separately incorporated entity and is distinct from the operations of its affiliated Canadian broadcaster; and
- ▶ Not affiliated with a publicly funded Canadian broadcaster.

### 3.2 Eligible Projects

An "Eligible Project" in this Stream is a project that meets all of the criteria of [Section 3.2](#) and all its subsections.

#### 3.2.1 Essential Requirements

A production must meet all of the Essential Requirements listed below. In the case of a series, the Essential Requirements are applicable to every episode of the cycle, whether or not all such episodes are submitted for CTF funding. The CTF has full discretion to decide whether or not a project meets the Essential Requirements; the interpretation of the CTF shall prevail.

1. The project speaks to Canadians about, and reflects, Canadian themes and subject matter.
2. The project will be certified by the Canadian Audio-Visual Certification Office (CAVCO) and has achieved 10/10 points (or the maximum number of points appropriate to the project), as determined by the CTF using the CAVCO scale.
3. Underlying rights are owned, and significantly and meaningfully developed by Canadians.
4. The project is shot and set primarily in Canada.

Further details on these Essential Requirements and permissible genre-specific exceptions are provided in Appendix A to these Guidelines. This Appendix includes additional important information and is an integral part of these Guidelines.

### 3.2.1.1 Official Treaty Co-Productions

With respect to the eligibility of official treaty co-productions to access the CTF, these Essential Requirements shall be interpreted so as to treat the treaty co-production partner as “Canadian.”

Accordingly, the terms “Canadian” and “Canadians” in Essential Requirements 1 and 3, and the term “Canada” in Essential Requirement 4 will be deemed to include the co-production country. The 10/10 points referenced in Essential Requirement 2 must be attained by citizens of Canada or the co-producing country.

For Essential Requirement 2: in the case of a co-production between Canada and a European country that is part of the European Union, the CAVCO points positions may be filled by a citizen of Canada, or any country of the European Union.

If a production submitted to the CTF as an official treaty co-production is unable to obtain final approval as an official treaty co-production from the competent authorities, the final production must meet all Essential Requirements under [Section 3.2.1](#) above (and under the applicable genre of programming, see Appendix A) and all other eligibility requirements applicable to projects that are not official treaty co-productions in order to remain eligible for CTF funding.

### 3.2.2 Genres of Programming

The CTF supports the following programming genres: Drama, Documentary, Children’s and Youth, and Variety and Performing Arts. The CTF’s definition of each of these genres is contained in Appendix A to these Guidelines.

The following is a non-exhaustive list of genres and programming formats that are not eligible to apply to the CTF\*: sponsored productions, sports, news, game shows, current affairs, public affairs, lifestyle productions, “how-to” productions, reality television, instructional television, infomercials, music videos, formal or curriculum-based educational programming, foreign format buys without significant Canadian adaptation and creative contribution, magazine productions, talk shows, “talkshows culturels”, award shows, special event celebrations, galas, reporting and current events, religious programming, fundraising productions, benefits, tributes, promotional productions, pep-rallies, travelogues and interstitials.

\* Some flexibility exists for Children’s and Youth programming in this regard. See Appendix A for more information.

### 3.2.3 Canadian Ownership and Control

An Eligible Project must meet the following criteria\*:

- ▶ It is under Canadian ownership and Canadian executive and creative control;
- ▶ It is under the financial control of Canadian citizens or permanent residents;
- ▶ It is, and has been, controlled creatively and financially by a Canadian production company during all phases of production, from development through post-production, and all distribution and exploitation rights are owned and initially controlled by a Canadian production company;
- ▶ A project formerly produced in-house by a broadcaster is eligible as long as the Applicant is an independent production company and has full control of the proposed project;

- ▶ Generally, no more than 49% of the production financing/final cost is provided by a single non-Canadian entity, person or related entity (via licence fees, distribution advances, goods and services and/or equity investment). Interim lending of more than 49%, however, may be provided by a non-Canadian arm's-length entity in the business of lending money and taking security;
- ▶ The Applicant retains and exercises all effective controls or approvals consistent with those of a producer. This includes control and final approval of creative decisions and production financing, distribution and exploitation, and preparation and final approval of budget, subject to reasonable and standard approval rights customarily required by arm's-length financial participants, including Canadian broadcasters and distributors;
- ▶ The Applicant owns all rights (including copyright) and options necessary for the production and its distribution in Canada and abroad, and retains an ongoing financial interest in the project.

\* These criteria shall be interpreted so as to allow Canadian official treaty co-productions to access the CTF.

### 3.2.4 Technical Requirements

An Eligible Project must meet the following criteria:

- ▶ It conforms to the Canadian Association of Broadcasters' (CAB) Code of Ethics and to all programming standards endorsed by the Canadian Radio-television and Telecommunications Commission (CRTC), including the CAB Violence Code and the CAB Equitable Portrayal Code;
- ▶ It has a broadcast length of at least 30 minutes (including commercial breaks). A package of children's programming "shorts", however, may be eligible regardless of length; this is not applicable for youth programming;
- ▶ It is closed-captioned if it contains narrative, dialogue or lyrics. Exceptions may be permitted for projects targeted to children under the age of five, projects in Aboriginal languages that do not use the Roman alphabet, and live-to-air productions;
- ▶ It is a new production. A new production is one which is not substantially a repackaged version of a previously produced production. In the case of a series, the CTF will consider the entire cycle when determining whether the project is a repackaging (e.g. some "making-of" and/or "catch-up" episodes may be permitted). Projects comprised mainly of stock footage may be new productions provided that the footage is not merely repackaged in whole or in large segments for the project;
- ▶ Generally, the CTF expects a production to begin principal photography/key animation within the fiscal year in which it is funded or within three months thereafter. Special considerations may be made, for example, for projects that need to capture a time-sensitive event.

### 3.2.5 Eligible Licence Fee Requirements and Conditions

An Eligible Project must have a current licence agreement(s) with a Canadian broadcaster(s) licensing the right to broadcast the production in Canada that meets all the requirements of [Section 3.2.5](#) and all its subsections and which entitles the Applicant to cash fees in exchange for the licensed rights (Eligible Licence Fees). Such licences must be genuine, industry standard, fair market value and non-recoupable. Canadian broadcasters include all private, public and educational broadcasters and all specialty, pay and pay-per-view undertakings.

Eligible Licence Fees must be paid in cash, and may not include facilities, goods or services, equity, a producer time-buy, donations or corporate sponsorship monies negotiated and obtained by the Applicant, tax credits or any arrangement which, in the CTF's assessment, does not constitute a genuine cash licence fee. Eligible Licence Fees cannot be reduced once the CTF has entered into a production financing agreement with the Applicant.

In cases where provision of a licence is wholly or partially dependent on a buyback of services from the broadcast licence provider, the CTF may elect to deduct the value of the services or facilities from the total value of the licence, for the purposes of determining Eligible Licence Fee amounts for Licence Fee Threshold assessment (see [Section 3.2.5.1](#)). This determination will be made on a case-by-case basis.

The foregoing does not preclude a Canadian broadcaster from contributing as financing an equity investment, services, or facilities to an eligible production, in addition to a cash Eligible Licence Fee.

The acquisition of French-language rights by an English-language broadcaster and of English-language rights by a French-language broadcaster will not be accepted in licences containing Eligible Licence Fees, with the exception of licences from dual-language broadcast channels. In such cases, the dual-language broadcaster must specify to the CTF the licence fee paid for each language right acquired. No single-language licence shall prevent the exploitation of the other language rights by the producer.

A broadcast licence agreement containing an Eligible Licence Fee must include an unqualified commitment by the broadcaster to broadcast the production closed captioned, in peak viewing hours, within 18 months of completion and delivery of the production. Should the broadcaster fail to comply with these broadcast requirements the licence fee will be deemed not to be an Eligible Licence Fee\*. The CTF will consider requests for extension to this period on a case-by-case basis. "Peak viewing hours" are defined by the CTF as 7 p.m. to 11 p.m., with an exception for some Children's and Youth programming as described in Appendix A. For second and subsequent window broadcasters, the commitment to air the production in peak viewing hours within 18 months will start at the beginning of those broadcasters' licence periods.

\* The CTF may waive the broadcast requirement for pilots where both the broadcaster and Applicant agree, upon completion and delivery of the project, that the pilot should not be broadcast.

### **3.2.5.1 Licence Fee Thresholds**

A "Licence Fee Threshold" is the minimum amount of Eligible Licence Fees that a project must receive from a broadcaster(s) to be eligible for CTF funding. The Licence Fee Threshold amounts applicable to each genre are provided in the tables in [Section 2.4](#).

For official treaty co-productions, CTF Licence Fee Threshold amounts will be calculated on the greater of the Eligible Costs of the Canadian portion of the production's global budget and the level of Canadian participation as certified by Telefilm Canada's International Co-productions Department.

The entirety of the Eligible Licence Fees contributing to meeting the Licence Fee Threshold must be used in the production financing.

### 3.2.5.2 Additional Rights

An Eligible Licence Fee cannot confer upon a Canadian broadcaster any of the following rights:

- ▶ An ownership, profit, repayment or recoupment position in the production;
- ▶ Broadcast rights for non-Canadian territories or restrictions on the Applicant's ability to exploit these rights, with the exception of traditional broadcast spill-over protections and exclusive world premiere rights. Where exclusive world premiere rights are taken by a broadcaster, licence agreements must provide for waiver of the world premiere rights if a bona fide sale to a foreign entity is made, provided the foreign entity agrees not to broadcast the program within six months of delivery to the Canadian broadcaster. For greater clarity, under no circumstances shall a broadcaster hold world premiere rights longer than six months from delivery where a bona fide sale has been made to a foreign broadcaster; or
- ▶ Other Rights (home video, merchandising, new media, non-theatrical, on-line distribution, on-line broadcast/streaming, any form of video on demand, or any other method of distribution analogous to these) for Canadian or non-Canadian territories.

A broadcaster may acquire an ownership, profit, repayment or recoupment position in the production, as long as these additional rights do not form part of the Eligible Licence Fee. All such rights must be valued and paid for separately.

A broadcaster or an Eligible Distributor (as defined in the CTF Standard Recoupment Policy, see Appendix B) associated with the broadcaster may acquire Other Rights or broadcast rights for non-Canadian territories as long as these additional rights are not part of the rights being acquired in exchange for the Eligible Licence Fee. All such rights must be valued and paid for separately. Notwithstanding the foregoing, [Section 2.3.2.5](#) remains in effect.

#### *Safeguards for Negotiations of Other Rights*

The CTF recognizes that significant technological changes are occurring in the broadcast landscape that affect rights negotiations between broadcasters, producers and creators. To help ensure proper governance of negotiations pertaining to Other Rights, the CTF has created these temporary safeguards. They are meant to be reviewed periodically as the industry progresses in settling guild agreements and in determining the impact of the technological changes on the value of different platform rights, etc.

The CTF requirements regarding the negotiation and acquisition of Other Rights (as described in bullet point #3 of [Section 3.2.5.2](#)) differ according to the geographic location of the producing company.

#### *1. Productions produced by a company based outside the province of Quebec*

The following requirements apply to all production companies based outside of Quebec regardless of the language of production, the language of the producer, or the province of the licensing broadcaster(s):

Negotiation for Other Rights may commence no earlier than two weeks after the execution of a long-form licence agreement for broadcast rights in Canada. Such negotiation must, therefore, be separate and distinct from the broadcast rights negotiation. The producer and broadcaster may negotiate any exploitation arrangement for Other Rights if the arrangement is mutually agreed upon. If no mutual agreement is reached, the exploitation of Other Rights by either party is forbidden for one year from the earlier of the exploitation of rights date and the first telecast, and the licence agreement for broadcast rights in Canada must remain in force. In regard to the foregoing negotiation for Other Rights, if both the producer and broadcaster agree that the negotiation for Other Rights be concurrent with the licence agreement negotiation, a letter addressed to the President of the CTF, signed by both parties, may be used as the basis to waive the two-week delay in the negotiation for Other Rights.

## *2. Productions produced by, or co-produced with, a company based in the province of Quebec*

For productions produced by, or co-produced with, a company based in the province of Quebec, the governance of negotiations for Other Rights differs from the previous section.

The requirements that follow apply to all production companies based in the province of Quebec regardless of the language of production, the language of the producer, or the province of the licencing broadcaster(s):

- ▶ Licence agreements may not unreasonably restrict the producer's exploitation of "Other Rights -Traditional Distribution" defined as merchandising, home video, DVD, or any other method of distribution analogous to these.
- ▶ For Drama, the maximum allowable time restriction on exploitation of Other Rights-Traditional Distribution is two broadcasts or one year from delivery, whichever occurs first. In the case of a series, this refers to two broadcasts of the first episode or one year from delivery of the first episode, whichever occurs first. For all other genres, the maximum time restriction is three months after the first broadcast of the project or the first episode.
- ▶ For "Other Rights-New Platform" defined as new media, on-line distribution, on-line broadcasting/streaming, any form of video on demand, or any other method of distribution analogous to these, a producer may not assign or sell Other Rights-New Platform to a third party for the same territory and term for which a broadcaster(s) has acquired the exclusive broadcast right (by providing an Eligible Licence Fee) without first having obtained the assent of the aforementioned broadcaster(s).

### **3.2.5.3 Licence Terms**

The CTF shall assess the maximum allowable time period of all broadcast windows granted in consideration for Eligible Licence Fees (Maximum Term). The Maximum Term, in the aggregate and including both exclusive and non-exclusive terms is:

- ▶ Children's and Youth, Documentary, and Variety and Performing Arts projects: 6 years.
- ▶ English-language Drama projects: 7 years.
- ▶ French-language Drama projects: 5 years.

The start of the licence term shall begin at the contractually agreed-upon term commencement date, as negotiated between the Applicant and the broadcaster. The term is the period of time in which a broadcaster has the right to exploit a program. In the case of a series, the term is measured from the commencement date of the first episode and not the commencement dates of each episode.

For clarity, the start of the term and the first air date may not always coincide. By way of example, a broadcaster's term may be from September 1, 2009 to September 1, 2013, but the broadcaster may choose to make the first broadcast date November 15, 2009. For eligibility purposes, the licence term begins on September 1, 2009.

Applicants continue to have the flexibility to incorporate licences in excess of the Maximum Term within the financial structure. Only that portion of the licences, however, within the Maximum Term will be used for the purposes of all CTF calculations, including Licence Fee Threshold assessment, allowable Broadcaster Performance Envelope contributions and the calculation of licence fees above Historic Access. Those licences that commence within the Maximum Term but extend beyond it will be pro-rated to match the Maximum Term set for each genre.



Broadcasters may acquire, in addition to the Maximum Term, the right of first negotiation and last refusal for additional broadcast windows for the currently licensed project/cycle. The right of first negotiation may not be exercised prior to delivery of the program for the first broadcast window. Broadcasters may not acquire the right of last refusal for any other rights, including broadcast windows for future cycles or versions of the project.

For the purposes of series television, licences containing Eligible Licence Fees may not include co-terminus rights clauses. Co-terminus clauses (i.e. clauses that extend the terms of existing licences to the end of the term of the renewal licence with no additional payment) are prohibited in eligible licences for renewed series, but these licences may include rights of first negotiation and/or last refusal for extension of licences for existing episodes of the series.

The Maximum Term does not apply to licences acquired by broadcasters for Affiliated Programming given the limited access to CTF funds by broadcaster-affiliated production companies. The Maximum Term, however, does apply to projects produced by broadcaster-affiliated production companies that are licensed by unaffiliated broadcasters (where the financial structure does not contain a licence from an affiliated broadcaster).

## 4. COMPLIANCE AND REPRESENTATIONS

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### 4.1 Provision of Documentation

It is the responsibility of the Applicant to ensure that the CTF is in receipt of all documentation relevant to their application, and to update such documentation and information after a material change. The CTF may request other documentation and information, as required, in order to conduct an assessment and evaluation of the project and, once assessed, to complete CTF file reviews. For the purposes of project assessment and evaluation, the CTF reserves the right to rely solely on the written and audiovisual materials initially submitted by the Applicant.

### 4.2 Failure to Comply

If an Applicant fails to comply with these Guidelines, as determined by the CTF, then the CTF may refuse the application, revoke the eligibility status of the Applicant's project and may demand repayment of any sums paid to the Applicant.

### 4.3 Misrepresentation

If, at any time, an Applicant, as required by the Guidelines or as requested by the CTF, provides false information or omits material information in connection with an application, the Applicant may suffer serious consequences. These may include, among others:

- ▶ Loss of eligibility for funding of the current project;
- ▶ Loss of eligibility for funding of future productions;
- ▶ Repayment of any funds already advanced, with interest;
- ▶ Criminal prosecution, in the case of fraud.

These measures may be imposed not only on the Applicant but also on related, associated and affiliated companies and individuals (as determined by the CTF at its sole discretion). Any Applicant receiving approval for funding will be required to sign a legally enforceable agreement, which includes further provisions concerning misrepresentations, defaults, and related matters.

## 5. APPLICATION SUBMISSIONS

### APPLICATION DEADLINES

Open for Submissions	First Closing Date	Final Closing Date
March 2, 2009	October 16, 2009	December 7, 2009

#### Deadline Definitions:

##### *Open for Submissions*

All Applicants to this Stream may submit applications beginning on the date indicated above.

##### *First Closing Date*

For broadcasters with Broadcaster Performance Envelopes (BPEs) which total \$2,000,000 or more, complete, eligible applications representing 75% of the value of this/these envelope(s), including flex amounts, must be received by the first closing date.

In the case of broadcasters in a corporate group, as determined by the CTF, the first closing date applies to all broadcasters that have initial envelopes in excess of \$2,000,000 (i.e. prior to any transfer of funds). Furthermore, 75% of such envelopes must be spent regardless if any portion of that amount is transferred to an affiliated broadcaster (i.e. any such transferred dollars must be spent by the receiving broadcaster by the deadline regardless if the receiving broadcaster started with an envelope in excess of \$2,000,000).

If the CTF does not receive applications representing at least 75% of the BPE from broadcasters which are required to do so by the first closing date, the unused portion of the 75% of the relevant BPE will be transferred into the CTF's reserve fund.

##### *Waiver:*

- a. A broadcaster (or corporate group of broadcasters) may apply to the CTF for a waiver of the First Closing Date in the BPE Stream where, as a result of a significant corporate event involving the broadcaster (or corporate group of broadcasters) including without limitation a merger, acquisition or other consolidation transaction, the broadcaster (or corporate group of broadcasters) cannot reasonably be expected to make commitments to projects to be funded from the broadcaster's (or corporate group of broadcasters') BPE(s) that will allow a sufficient number of applications to be made to satisfy the requirements the First Closing Date;
- b. Each application for a waiver described in (a) must satisfy the following requirements:
  - i. It must be made within a reasonable period of time before the First Closing Date in order to provide the CTF with sufficient time to consider the application before that date;
  - ii. It must describe the significant corporate event that is the basis for the application;
  - iii. It must set out the reasons the broadcaster (or corporate group of broadcasters) cannot reasonably be expected to satisfy the First Closing Date Requirements; and

- iv. It must include a timetable for committing the remaining funds in the BPEs of the broadcaster (or corporate group of broadcasters) over the period from the application date to the Final Closing Date that takes into account the policy objectives that the First Closing Date Requirements were designed to achieve and a commitment from the broadcaster (or corporate group of broadcasters) to use its (their) remaining BPE(s) in accordance with the timetable.
- c. Decisions respecting applications for waivers of the First Closing Date Requirements will be made by the CTF at its sole discretion.

#### *Final Closing Date*

The final closing date is the final deadline for submitting applications for the fiscal year. Any amount remaining in a Broadcasters Performance Envelope for which the CTF has not received a complete, eligible application by the final closing date will be transferred into the CTF's reserve fund.

#### *Projects Not Fully Financed at Application*

Applications will be accepted without the 100% confirmed financing prior to the Final Closing Date. If the entirety of an application's financing is not confirmed prior to the date of application, at a minimum, signed agreements must be submitted with the application to show proof of the following:

- ▶ BPE contributions and all licence fees contributing to the Licence Fee Threshold;
- ▶ 60% of total Canadian financing (accompanied by a viable financing plan for the remainder of the project financing).

The Applicant, however, must confirm 100% of the financing of the project by way of signed agreements, no later than the Final Closing Date.

### *Application Offices*

The Television Business Unit at Telefilm Canada administers BPE applications on behalf of the Canadian Television Fund.

Applicants may submit their CTF funding application through eTelefilm at [www.telefilm.gc.ca](http://www.telefilm.gc.ca).

Applicants may also submit their CTF funding application to any of the following Television Business Unit offices:

#### *MONTREAL*

360 Saint-Jacques Street, 6<sup>th</sup> Floor  
Montréal, Quebec H2Y 1P5  
Toll Free: 1-800-567-0890  
T: (514) 283-6363  
F: (514) 283-8212

#### *HALIFAX*

1717 Barrington Street, Suite 300  
Halifax, Nova Scotia B3J 2A4  
Toll Free: 1-800-565-1773  
T: (902) 426-8425  
F: (902) 426-4445

#### *TORONTO*

474 Bathurst Street, Suite 100  
Toronto, Ontario M5T 2S6  
Toll Free: 1-800-463-4607  
T: (416) 973-6436  
F: (416) 973-8606

#### *VANCOUVER*

609 Granville Street, Suite 410  
Vancouver, British Columbia V7Y 1G5  
Toll Free: 1-800-663-7771  
T: (604) 666-1566  
F: (604) 666-7754

For inquiries on the status of your CTF funding application, please contact the Television Business Unit at Telefilm Canada at 1-800-463-4607.

For inquiries regarding CTF policies, please contact the Canadian Television Fund at 1-877-975-0766 or at [ctf@ctf-fct.ca](mailto:ctf@ctf-fct.ca).

To contact the Canadian Television Fund:

Canadian Television Fund  
50 Wellington Street East, 4<sup>th</sup> Floor  
Toronto, Ontario M5E 1C7  
Toll Free: 1-877-975-0766  
T: (416) 214-4400  
F: (416) 214-4420  
[ctf@ctf-fct.ca](mailto:ctf@ctf-fct.ca)

For additional information, updates and to learn more about CTF policies, please visit [www.ctf-fct.ca](http://www.ctf-fct.ca).