



**ABORIGINAL  
PROGRAM**  
**GUIDELINES**  
**2012-2013**

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## 1. GENERAL INFORMATION

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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 Canada Media Fund (CMF). They provide an overview of the objectives of the CMF the manner in which the CMF is administered, and information on typical administrative practices of the CMF. Compliance with these Guidelines is a prerequisite to eligibility for any CMF funding.

The CMF 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 CMF shall prevail.

All Applicants and broadcasters (where relevant) must abide by the Accounting and Reporting Requirements (ARR) of the CMF 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 CMF website at [www.cmf-fmc.ca](http://www.cmf-fmc.ca). Information included in Appendices A and B is an integral part of these Guidelines.

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

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

### Provision of Documentation

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

### Failure to Comply

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

### Misrepresentation

If, at any time, an Applicant, as required by the Guidelines or as requested by the CMF, 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 CMF 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.

## 2. HOW THE ABORIGINAL PROGRAM WORKS

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### HOW TO READ THESE GUIDELINES

Projects in the Convergent Stream may involve both a Television Component and a Digital Media Component. The eligibility and technical requirements for these two components may be very different. In these Guidelines, sections dealing with requirements for the Television Component only use “.TV” in their section number, and sections dealing with requirements for the Digital Media Component only use “.DM”. Sections dealing with requirements for the entire convergent project—i.e. the Television Component and, where applicable, the Digital Media Component—simply use a section number without reference to “.TV” or “.DM”.

Unless otherwise indicated, in these Guidelines the term “broadcaster” includes both a traditional, schedule-based broadcaster and a CRTC-licensed video-on-demand (VOD) service; the term “broadcast” includes both traditional, scheduled broadcast and making content available via a CRTC-licensed VOD service.

### 2.1 INTRODUCTION

The Aboriginal Program, which forms part of the CMF’s Convergent Stream, supports the growth of Aboriginal production. The CMF recognizes the unique circumstances of the Aboriginal production community.

Eligible Projects (see [section 3.2](#)) in the Aboriginal Program must be convergent: they must have a Television Component (see [section 3.2.TV](#)) and one or more Digital Media Components (see [section 3.2.DM](#)), VOD presentation of the Television Component, digital distribution of the Television Component, or any combination of these three. Eligible Projects under this Program are administered under a selective process where the CMF evaluates applications according to an Evaluation Grid (see [section 2.4](#)). Eligible Projects may receive funds subject to per-project Maximum Contribution amounts (see [section 2.3](#)) and other specified limitations.

In order to be funded from the Aboriginal Program, a project must meet all eligibility and genre requirements under the CMF Guidelines. Digital Media Components seeking CMF funding must receive financing from a Canadian broadcaster (see [section 3.2.DM.4](#)). Television Components must receive Eligible Licence Fees (see [section 3.2.TV.5](#)). Maximum Contribution amounts are calculated based upon a project’s Eligible Costs (see [section 2.3.2](#)).

Aboriginal-language projects which are versioned into English or French can apply for financing from this Program or from the Performance Envelope Program, or through a combination of the Performance Envelope and this Program.

The CMF will apply a reasonable degree of flexibility in the administration of this Program.

#### 2.1.1 Definitions Applicable to the Aboriginal Program: In-house Programming and Affiliated Programming

A broadcaster-affiliated production company is an Applicant, as defined in section 3.1(1), that is affiliated with a Canadian broadcaster (the CMF uses the definition of “Affiliate” set out in the *Canada Business Corporations Act*). Affiliated Programming are projects produced by a broadcaster-affiliated production company, which are licensed by its affiliated broadcaster(s). In-house Programming are projects produced and owned by a Canadian broadcaster. A maximum of 7.5% of documentary funds, and 15% of funds for all other genres, available in the Aboriginal Program will be allocated to Affiliated Programming and In-house Programming.

#### 2.1.2 Development Financing

In addition, the CMF provides financial support for development in the Aboriginal Program. Up to 10% of the funds in this Program may be set aside for development and provided on a first come, first served basis. A maximum of 15% of the funds available for development will be allocated to Affiliated Programming and In-house Programming.

Applications for development financing beyond the first phase must include a commitment for financial participation by a Canadian broadcaster, however, there is no pre-set minimum amount for the broadcaster’s financial contribution.

For general information regarding development financing, please refer to the CMF's Development Program Guidelines: in particular, see section 3 for information on eligible projects, section 2.2 for information on the nature of the CMF contribution, and section 2.3 for information on Eligible Costs. The Aboriginal Program Guidelines shall prevail in the event there is a conflict of provisions between the two Guidelines, including in regards to eligible applicants for which [section 3.1](#) of these Aboriginal Program Guidelines shall prevail.

## **2.2 NATURE OF FUNDING CONTRIBUTION**

The Aboriginal Program may provide: to the Television Component, a mix of licence fee top-ups and equity investments according to a set formula; and to the Digital Media Component, a non-repayable contribution.

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 Television Component and is non-recoupable. An equity investment is a cash investment in the project that results in the CMF acquiring an undivided copyright ownership interest in all versions of the project. 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 CMF Standard Recoupment Policy (see [Appendix B](#)).

The first CMF contribution to the Television Component will be in the form of a licence fee top-up to a maximum of 70% of the total CMF contribution to the Television Component. Amounts in excess of this maximum will be in the form of an equity investment. However, the CMF 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.

## **2.3 AMOUNT OF FUNDING CONTRIBUTION**

### **2.3.1 CMF Contribution**

The CMF will decide, at its sole discretion, the amount of its financial contribution to each component of an Eligible Project, up to a Maximum Contribution. For the Television Component, the Maximum Contribution is 70% of the component's Eligible Costs or \$400,000 whichever is less. The CMF will consider, in its sole discretion, providing financing in excess of \$400,000 to the Television Component of an Eligible Project in a very limited number of cases for dramatic programming and series.

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

For the Digital Media Component(s), the Maximum Contribution is 75% of a component's Eligible Costs or \$200,000, whichever is less. Where there are multiple Digital Media Components (e.g. a website, a mobile application, and a game), the \$200,000 Maximum Contribution applies to each eligible component.

The CMF has a policy on the inclusion of tax credits in the financing structure for this Program. See [Appendix B](#), Treatment of Tax Credits for more information.

#### **2.3.1.1 Combining Funds from the Aboriginal and Performance Envelope Programs**

Broadcasters may combine funds from their Performance Envelopes with funding from the Aboriginal Program. In such a case, Licence Fee Threshold and Maximum Contribution amounts for the Performance Envelope portion will be calculated by the CMF by determining the ratio of the Eligible Costs for each component in proportion to the CMF Performance Envelope contribution to each component, compared with the total CMF contribution to the project. For example, if the CMF Performance Envelope contribution to each component represents 60% of the total CMF contribution, the Eligible Costs for each component will be pro-rated to 60% for the Performance Envelope and 40% for the Aboriginal Program.

Calculations relating to the Licence Fee Threshold and Maximum Contribution amounts will conform to the applicable requirements of the Performance Envelopes for the related portion of Eligible Costs and the other portion of Eligible Costs will conform to the requirements of the Aboriginal Program.

Calculations relating to the Evaluation Grid will be based on the total Eligible Costs.

### **2.3.2 Eligible Costs**

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

Costs related to a double shoot (i.e. shooting simultaneously in French or English and in an Aboriginal-language) may be eligible costs in this Program.

The provision of one or more apprentice positions for Aboriginal peoples will be considered an Eligible Cost for this Program.

Additional CMF business policies relating to Eligible Costs are in [Appendix B](#).

The Television Component and the Digital Media Component(s) must have separate budgets reflecting the separate and distinct work that is done on each component. The following subsections of 2.3.2 relate specifically to the Television and Digital Media Components as indicated.

#### **2.3.2.1 Related-Party Transactions**

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

- a) Disclosed to the CMF; and
- b) In accordance with the CMF Accounting and Reporting Requirements of April 1, 2012, more specifically but not limited to Sections 3 and 4.

#### **2.3.2.TV.1 Versioning**

For those projects that have been licensed or will be licensed for Canadian broadcast in an official language (English or French, as applicable) prior to delivery of the project to the first window Canadian broadcaster, the CMF 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 CMF requires that versioning costs be included in the budget if it is required contractually by one of the Canadian financiers. The CMF will not support versioning costs normally incurred by distributors to assist in foreign market sales through this Program.

#### **2.3.2.TV.2 Marketing Expenses**

Eligible Costs include the following eligible marketing expenses:

- unit publicity expenses that were incurred during production of the project (e.g. production photographs, hiring a publicist to arrange interviews);
- digital media/viral marketing campaigns other than those normally undertaken by Canadian broadcasters;
- attendance at national and international media markets for the purposes of generating sales or other revenues from the Eligible Project;

- submission/registration of the Television Component to an awards show/event;
- expenses related to search engine optimization.

Costs that have already been financed or paid for by another financier or funding body are not Eligible Costs.

Eligible marketing expenses in the production budget must be used for these purposes in the production, and cannot be allocated to other expenses. Costs allocated as marketing expenses in the production budget but then reallocated to other expenses in the final cost report will not be considered Eligible Costs, and as such may reduce the CMF contribution.

For the Television Component, eligible marketing expenses cannot exceed 3% of Categories A+B of the production budget.

### **2.3.2.TV.3 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.

### **2.3.2.DM.1 Digital Media Costs**

Eligible Costs for the Digital Media Component(s) may include marketing expenses as described above for the Television Component at [section 2.3.2.TV.2](#) (including the rules related to ineligibility of already-financed costs and the requirement to spend budgeted marketing financing on marketing activities).

For Digital Media Components, eligible marketing expenses cannot exceed 15% of Categories A+B of the production budget.

Eligible Costs may include budgeted upkeep and enhancement costs related to a period of up to 12 months after the launch of the new media project.

## **2.4 PROJECT ASSESSMENT IN THE SELECTIVE PROCESS**

Projects in the Aboriginal Program compete for funding according to a selective process.

To make its funding decisions, the CMF uses an Evaluation Grid, which allows evaluations to be conducted based on transparency.

The CMF will not accept a revision to the evaluated elements of a project that would detrimentally affect its final weighting.

The CMF encourages projects to have a rich and substantial Digital Media Component as defined in [section 3.2.DM](#).

## Evaluation Grid

Assessment Criteria	Points	Notes
<b>Market Interest</b> <i>Broadcaster commitment</i> <i>Audience potential</i> <i>Marquee benefits</i>	30	Market interest is reflected by the level of licence fees paid by broadcasters to the Television Component. Additional points will be awarded to projects with licence fees from more than one broadcaster.
<b>Production Team</b> <i>Track record, experience and achievements of the Production team</i>	10	
<b>Creative Elements</b> <i>Originality &amp; creativity</i> <i>Innovation in form and Production values</i>  <i>Track record, experience and achievements of the Creative team</i>	30	Creative elements include the subject matter, scripts, themes, issues and narrative, which are assessed based on originality and creativity. The appropriateness of the size of the production budget to the creative material is also considered.
<b>Program Objectives</b> <i>Originally produced in Aboriginal language</i> <i>Number of Aboriginal persons, or apprentices, in key positions</i> <i>Degree of Aboriginal creative, financial, ownership and distribution control</i>	15	Program objectives for this Program encourage the highest level of Aboriginal content, language and control.
<b>SUB-TOTAL</b>	85	
<b>Digital Media Component</b> <i>Degree of richness and substantiality</i> <i>Originality &amp; Creativity</i> <i>Market Interest</i>	15	Only a Digital Media Component is eligible to receive points under this criterion; VOD (see section 3.2(2)(b)) and non-simulcast digital distribution (see section 3.2(2)(c)) are not eligible to receive points under this criterion.
<b>TOTAL</b>	<b>100</b> <b>85 (TV)</b> <b>15 (DM)</b>	

### 3. ELIGIBILITY FOR FUNDING

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#### 3.1 ELIGIBLE APPLICANTS

An eligible Applicant to this Program must meet the following eligibility criteria:

- a) The individual producer must be a self-declared Aboriginal person. The CMF reserves the right to request evidence of the individual producer's Aboriginal ancestry.
- b) The individual producer must own 51% of the production company and copyright in the Eligible Project.
- c) Co-productions between an Applicant(s) which is eligible to this Program (i.e. an Aboriginal Applicant) and an Applicant(s) which is not eligible to this Program (i.e. a non-Aboriginal Applicant) are not eligible in this Program, except where the non-Aboriginal Applicant is a treaty co-production partner in an official treaty co-production.

An eligible Applicant to the CMF is either:

- 1) A company that:
  - a) is a for-profit: (i.e. a taxable Canadian corporation, within the meaning of the *Income Tax Act (Canada)*) production company;
  - b) is Canadian-controlled as determined for the purposes of sections 26 to 28 of the *Investment Canada Act*; and
  - c) has its head office based in Canada.
- or
- 2) A Canadian broadcaster, public or private, that is licensed to operate as such by the Canadian Radio-television & Telecommunications Commission (CRTC), including a CRTC-licensed VOD service.

In addition, when assessing an Applicant's eligibility, the CMF may choose to look at factors, including:

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

Applicants must own and control all the rights necessary to produce and exploit the Eligible Project or applicable component(s) of the Eligible Project; entities that provide services but do not own the applicable rights are not eligible to apply to the CMF.

*Note: For the purposes of these Guidelines, the term "Applicant" includes all co-applicants and/or parent companies as applicable.*

#### 3.2 ELIGIBLE PROJECTS

An "Eligible Project" in this Program is a project that meets all of the criteria of section 3.2 and all its subsections.

An Eligible Project is a convergent project. For the CMF's purposes, a convergent project must have:

- 1) A Television Component that is made available by:
  - a) One or more CRTC-licensed traditional, scheduled broadcasters; and/or

- b) One or more CRTC-licensed video-on-demand (VOD) services;

and

- 2) Any or all of the following:

- a) One or more Digital Media Components;
- b) The Television Component made available to Canadians by one or more CRTC-licensed video-on-demand services;
- c) The Television Component made available to Canadians by a Canadian entity via non-simulcast digital distribution.

In 2)c above, “Canadian” has the meaning ascribed in subsection 1106(1) of the *Income Tax Act (Canada)* regulations; “non-simulcast” means not made available simultaneously with the television broadcast; and “digital distribution” means any form of electronic distribution over a digital network to an end user, including internet-VOD, digital download, electronic sell-through, digital rental, and wireless/mobile distribution, but, for greater clarity, does not include distribution of physical media, such as mail-order DVD rentals/sales.

A Television Component made available via one or more CRTC-licensed VOD services cannot, by itself, satisfy the requirements of both 1) and 2) above for the same Eligible Project at the same time. Where VOD is relied upon for the purposes of the CMF’s “convergent project” requirements, Applicants must elect whether VOD is considered under 1) or 2) above. Where fees for the Canadian VOD Right are included within the Eligible Licence Fee, the VOD exploitation associated with those fees is considered part of the Television Component under 1)b above, and therefore cannot be used to meet the requirements of 2) above. (However, the foregoing sentence does not apply where there is a Terms of Trade Agreement in effect between the Canadian Media Production Association and a Canadian broadcaster which governs the Television Component of the Eligible Project.)

When relied upon to meet the requirements of 2) above, CRTC-licensed VOD and non-simulcast digital distribution must be made available to Canadians within 18 months of completion and delivery to the broadcaster of the Television Component.

Where there is a Digital Media Component, the Television and Digital Media Components must be associated with each other and must enhance the viewer/user’s experience of each other. The Television and Digital Media Components must be the subject of the same application for CMF funding with all components being submitted at the same time, unless one of the components was funded by the CMF in a previous CMF fiscal year.

## **3.2.TV The Television Component**

### **3.2.TV.1 Essential Requirements**

A Television Component 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 CMF funding. The CMF has full discretion to decide whether or not a project meets the Essential Requirements; the interpretation of the CMF shall prevail.

- 1) The project speaks to Canadians and is primarily intended for a Canadian audience.
- 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 CMF using the CAVCO scale. *Note: For In-house Programming only, certification of the project by the CRTC as a “Canadian program” will be accepted in lieu of CAVCO certification for the purposes of meeting Essential Requirement #2.*
- 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.TV.1.1 Official Treaty Co-Productions**

With respect to the eligibility of official treaty co-productions to access the CMF, 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.

### **3.2.TV.2 Genres of Programming**

The CMF supports the following programming genres: drama, documentary, children’s and youth, and variety and performing arts. The CMF’s definition of each of these genres is contained in [Appendix A](#) of these Guidelines.

The following is a non-exhaustive list of genres and programming formats that are not eligible to apply to the CMF: 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, galas, reporting and current events, religious programming, fundraising productions, benefits, tributes, promotional productions, pep-rallies, travelogues and interstitials.

*Note: Some flexibility exists for children’s and youth programming in this regard. See [Appendix A](#) for more information.*

### **3.2.TV.3 Canadian Ownership and Control**

The Television Component must meet the following criteria:

- a) It is under Canadian ownership and Canadian executive and creative control;
- b) It is under the financial control of Canadian citizens or permanent residents;
- c) 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;
- d) 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;
- e) 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; and
- f) The Applicant owns all rights (including copyright) and options necessary for the production and its distribution in Canada and abroad (with appropriate exceptions for a purchased format to be made on a case-by-case basis), and retains an ongoing financial interest in the project.

*Note: These criteria shall be interpreted so as to allow Canadian official treaty co-productions to access the CMF.*

### 3.2.TV.4 Miscellaneous Requirements

The Television Component must meet the following criteria:

- a) 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;
- b) 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;
- c) 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 CMF will consider the entire cycle when determining whether the project is a repackaging (e.g. some "making-of", "best 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;
- d) Generally, the CMF 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; and
- e) It has not been broadcast prior to its application for CMF funding.

### 3.2.TV.5 Eligible Licence Fee Requirements and Conditions

*Note: Where there is a Terms of Trade Agreement in effect between the Canadian Media Production Association and a Canadian broadcaster which governs the Television Component of an Eligible Project, the CMF will deem a fair market value licence fee under that agreement to be an Eligible Licence Fee under these Guidelines notwithstanding anything to the contrary in this section or any of its subsections, with the exception that section 3.2.TV.5(e)(i) below still applies. For more information on the impacts of this, see the document entitled "CMF approach to projects governed by a Terms of Trade Agreement" released on the CMF's website on September 15, 2011.*

The Television Component must have Eligible Licence Fees.

Eligible Licence Fees are:

- a) Cash fees;
- b) Paid by a Canadian broadcaster;
- c) To the Applicant to the CMF;
- d) Which are in exchange for the Canadian Broadcast Right and/or the Canadian VOD Right;
- e) All of which is provided for in one or more current, legally binding contract(s) – i.e. a broadcast licence agreement(s).

*Note: The CMF will consider the applicability of this section to In-house Programming on a case-by-case basis.*

Aspects of an Eligible Licence Fee are described below.

#### a) Cash Fees

Cash fees must be genuine, industry standard, fair market value and non-recoupable. Fees cannot 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 CMF's assessment, does not constitute a genuine cash licence fee. Fees cannot be reduced once the CMF has entered into a production financing agreement with the Applicant. The foregoing does not preclude a Canadian broadcaster from contributing as financing an equity investment, services, facilities, or other fees in addition to a cash Eligible Licence Fee.

In cases where the provision of a licence fee is wholly or partially dependent on a buyback of services from the licence fee provider, the CMF may elect to deduct the value of the services or facilities from the total value of the licence fee, for the purposes of determining Eligible Licence Fee amounts for Licence Fee Threshold assessment; this determination will be made on a case-by-case basis.

#### b) Canadian broadcaster

A Canadian broadcaster described in (b) above is a broadcaster licensed by the CRTC, including private, public, educational, specialty, pay-per-view broadcasters, and CRTC-licensed VOD services.

In this Program only, as a pilot initiative, the CMF may consider a digital distributor to be a Canadian broadcaster for the purposes of providing Eligible Licence Fees to an Applicant based in northern Canada (i.e. Nunavut, the Yukon Territory, or the Northwest Territories) if the CMF determines that the digital distributor: is a company that is Canadian-controlled (as determined for the purposes of sections 26 to 28 of the *Investment Canada Act*); operates in northern Canada; provides services and/or content that is targeted to Aboriginal communities in northern Canada; and licences Eligible Projects for distribution via digital platforms. In such a case, the CMF will interpret the remainder of section 3.2.TV.5 in a flexible manner so as to allow the digital distributor to provide Eligible Licence Fees. The CMF will determine whether a digital distributor qualifies for this pilot initiative on a case-by-case basis.

#### c) Applicant to the CMF

See [section 3.1](#). Eligible Licence Fees may be paid by the Canadian broadcaster either directly to the Applicant, or indirectly via an intermediary Canadian corporation that is affiliated with both the Applicant and the Canadian broadcaster.

#### d) Canadian Broadcast Right and Canadian VOD Right

The Canadian Broadcast Right is the right of the Canadian broadcaster to broadcast the Television Component of the Eligible Project on the traditional, scheduled broadcast platform in Canada in the language of the broadcaster in question during the Maximum Term. The Canadian VOD Right is the right of the CRTC-licensed video-on-demand service to make the Television Component of the Eligible Project available on the CRTC-licensed video-on-demand service in Canada in the language of the VOD service in question during the Maximum Term.

The Canadian Broadcast Right and the Canadian VOD Right must be separately identified and valued.

The Canadian Broadcast Right and the Canadian VOD Right cannot include:

- i) Broadcast or VOD rights for non-Canadian territories.
- ii) Other Rights (home video, merchandising, new media, theatrical, non-theatrical, on-line distribution, on-line broadcast/streaming, distribution on a mobile device, or any other rights analogous to these) for Canadian or non-Canadian territories.
- iii) An ownership, profit, repayment or recoupment position in the Eligible Project.
- iv) Rights in excess of the Maximum Term as described at [section 3.2.TV.5.2](#) below.

A broadcaster or an Eligible Distributor (as defined in the CMF Standard Recoupment Policy, see [Appendix B](#)) associated with the broadcaster may acquire rights other than the Canadian Broadcast Right or Canadian VOD Right as long as those 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.

e) The broadcast licence agreement terms and conditions

A broadcast licence agreement:

- i) Must include an unconditional commitment by the broadcaster to broadcast the Television Component closed captioned, in peak viewing hours, in an Aboriginal-Canadian language, 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 CMF will consider requests for extension to this period on a case-by-case basis. "Peak viewing hours" is defined by the CMF 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 within 18 months will start at the beginning of those broadcasters' licence periods. *Note: The CMF 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.*
- ii) Cannot restrict the Applicant's ability to exploit non-Canadian broadcast 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.
- iii) Cannot include the acquisition of French-language rights by an English-language broadcaster or of English-language rights by a French-language broadcaster, with the exception of dual-language broadcast channels. In such cases, the dual-language broadcaster must specify to the CMF 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.
- iv) Cannot confer upon the broadcaster or VOD service a right of last refusal for any rights other than additional broadcast windows for the currently licensed project/cycle. For greater certainty, a broadcaster cannot acquire a right of last refusal for broadcast windows for future cycles or versions of the project. Broadcasters may acquire the right of first negotiation and/or last refusal for additional broadcast windows for the currently licensed project/cycle.
- v) For the purposes of series television, cannot 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 licence agreement 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.

### 3.2.TV.5.1 Licence Fee Thresholds

A "Licence Fee Threshold" is the minimum amount of Eligible Licence Fees that a project must receive from one or more broadcasters to be eligible for CMF funding. The Licence Fee Threshold in the Aboriginal Program is 10% of the Television Component's Eligible Costs.

For official treaty co-productions, CMF 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 of the Television Component.

### 3.2.TV.5.2 Licence Terms

The CMF shall assess the maximum allowable time period of all broadcast windows granted in consideration for Eligible Licence Fees (Maximum Term). The Maximum Term, including both exclusive and non-exclusive terms for all genres of programming under this Aboriginal Program is six years.

The start of the licence 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, 2012 to September 1, 2018, but the broadcaster may choose to make the first broadcast date November 15, 2012. For eligibility purposes, the licence term begins on September 1, 2012.

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 CMF calculations, including Licence Fee Threshold assessment. 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.

The Maximum Term does not apply to licences acquired by broadcasters for Affiliated Programming and In-House Programming.

### 3.2.TV.5.3 Treatment of Other Rights

All Other Rights that a Canadian broadcaster or a Canadian VOD undertaking chooses to acquire or to substantially restrict the Applicant from exploiting must be separately identified and valued, both from the Canadian Broadcast Right and Canadian VOD Right, and from each other. In particular, the CMF recognizes the following classification of rights which must be separately valued in a broadcast licence agreement containing Eligible Licence Fees:

- i) Free Internet broadcast/distribution, whereby the Television Component is made available to the Canadian public on the Internet for free, either on a live, scheduled, or on-demand basis, and whether transmitted via streaming, download, or another method.
- ii) Paid Internet broadcast/distribution, whereby the Television Component is made available to the Canadian public for a fee (be it transaction-based, subscription-based, or some other payment structure), either on a live, scheduled, or on-demand basis, and whether transmitted via streaming, download, or another method. For greater clarity, this does not include where an electronic copy is made available for repeated offline viewing on a local device(s) by an end user (see paragraph v below).
- iii) Mobile/wireless distribution, whereby the Television Component is made available to the Canadian public on a mobile or wireless device by a mobile/wireless service provider, including on a live, scheduled, or on-demand basis. For greater clarity, this refers to content made available directly by a mobile/wireless service provider; it does not include content made available via the Internet, whether or not that content is viewed on a mobile/wireless device. It also does not include where an electronic copy is made available for repeated offline viewing by an end user (see paragraph v below), regardless of whether this is done on a mobile/wireless device or by a mobile/wireless service provider.
- iv) Original digital content rights, such as the right to produce and exploit digital interactive or digital linear content derived from the Television Component and distributed to the Canadian public by digital distribution.
- v) Electronic sell-through and/or digital rental, whereby an electronic copy of the Television Component is sold or rented, via digital distribution, for repeated private offline viewing on a local device(s) by an end user. For greater clarity, where an electronic copy is made available for repeated offline viewing on a local device(s) by an end user, this will be considered an electronic sell-through and/or digital rental right, regardless of whether this is done via the Internet, mobile/wireless distribution or another form of digital distribution, and regardless of platform/device.
- vi) DVD, Blu-ray, or other compact video device distribution of the Television Component.

- vii) Theatrical distribution of the Television Component.
- viii) Non-theatrical distribution of the Television Component, such as to educational institutions and airlines.
- ix) Merchandising and ancillary rights, such as the right to produce and exploit products, merchandise, or services derived from the Television Component, or the right to produce and exploit formats based on the Television Component. For greater clarity, this does not include original digital rights described at iv above.

Any right which is not encompassed by the above-listed rights, whether currently existing or developed in the future, must also be separately identified and valued. Broadcasters and producers are free to further delineate separate rights within or in addition to these categories, but the above list represents the minimum degree of distinct rights valuation in an eligible broadcast licence agreement.

All Other Rights acquired by a Canadian broadcaster or Canadian VOD service must be subject to a “use it or lose it” provision that requires the broadcaster/VOD service to exploit the right(s) within 12 months of that broadcaster/VOD service’s first broadcast/premiere of the Television Component, failing which the rights revert to the producer without restriction. For Other Rights not acquired by a Canadian broadcaster or Canadian VOD service, the broadcast licence agreement cannot restrict the Applicant’s ability to exploit the Other Rights for longer than 12 months from that broadcaster/VOD service’s first broadcast/premiere of the Television Component.

Where the CMF provides an equity investment to the Television Component, all Other Rights acquired by a Canadian broadcaster or Canadian VOD service must:

- a) Be exploited in accordance with the CMF’s Standard Recoupment Policy, with the broadcaster acting as a distributor for the purposes of that policy. For rights under paragraphs i-v above only, the CMF may consider a 50/50 gross revenue sharing arrangement between the producer and the broadcaster (or other arrangement that is no less preferable to the CMF than a 50/50 gross revenue share); or
- b) For rights under paragraphs i-iv above only, be paid for at a reasonable, fair-market value.

The CMF will apply this section in an adaptable and purposive manner, with the objectives of promoting transparency in the rights market, maximizing the availability of CMF-funded content on multiple platforms for the benefit of Canadian audiences, and maximizing the CMF’s return on investment when the CMF is an equity investor.

### **3.2.DM Digital Media Components**

A Digital Media Component must be an audiovisual, multimedia, or interactive project that:

- a) is associated with the Television Component that is funded by the CMF;
- b) is made available to the Canadian public in an Aboriginal-Canadian language by way of a digital network, including internet and mobile; and
- c) is rich and substantial.

For greater clarity, in these Guidelines “Digital Media Component” refers to original content that is separate and distinct from the Television Component.

Rich and substantial digital media content includes: “Web 2.0” and higher applications; highly immersive or highly interactive websites, mobile applications/content, or videogames; content or applications that meet or exceed current market standards for richness; or analogous content/applications.

Digital media content that is not rich and substantial is not considered a CMF-eligible Digital Media Component, and therefore is not eligible to meet the requirements of [section 3.2\(2\)](#) or to receive funding as described at [section 2.3.1](#).

With the exception of section 3.2.DM.4, section 3.2.DM and all its subsections apply to all Digital Media Components associated with a CMF-funded Television Component, whether or not the Digital Media Component is funded by the CMF.

### **3.2.DM.1 Canadian Content**

A Digital Media Component must meet the following criteria:

- a) Its underlying rights are owned and significantly and meaningfully developed by Canadians;
- b) It is produced in Canada, with at least 75% of its Eligible Costs being Canadian costs; and
- c) Its content is intended primarily for a Canadian audience.

International co-productions may be eligible where there is an acceptable degree of Canadian ownership and control.

### **3.2.DM.2 Ineligible Content**

The following is a non-exhaustive list of types of content that are not eligible as a Digital Media Component: industrial, corporate, or primarily promotional projects; curriculum-based projects; and system software.

### **3.2.DM.3 Canadian Ownership and Control**

A Digital Media Component must meet the following criteria:

- a) It is under Canadian ownership and Canadian executive and creative control;
- b) It is under the financial control of Canadian citizens or permanent residents;
- c) The Applicant retains and exercises all effective controls or approvals consistent with those of a producer; and
- d) The Applicant owns all rights (including copyright) and options necessary for the production and distribution of the digital media project in Canada and abroad (with appropriate exceptions for a purchased format to be made on a case-by-case basis), and retains an ongoing financial interest in the project.

*Note: These criteria shall be interpreted so as to allow international co-productions that have an acceptable degree of Canadian ownership and control to access the CMF.*

### **3.2.DM.4 Broadcaster Minimum Financing**

A Digital Media Component that is funded by the CMF must receive financing from a Canadian broadcaster. There is no minimum financing amount required. This financing must be in cash; it cannot include facilities, goods or services, a producer time-buy, donations or corporate sponsorship monies negotiated and obtained by the Applicant, tax credits or any arrangement which, in the CMF's assessment, does not constitute genuine cash financing. Where there are multiple Digital Media Components (e.g. a website, a mobile application, and a game), the financing requirement applies to each eligible component.

### **3.2.DM.5 Miscellaneous Requirements**

A Digital Media Component:

- a) Must be made available to the Canadian public in a meaningful way. What is meaningful in a particular instance will depend on the nature of the project and its distribution plan. The CMF will make this determination on a case by case basis, but in general, in the absence of an acceptable distribution/exploitation plan to the contrary, the CMF considers that making the project available to the Canadian public for at least 3 months contemporaneously with the associated Television Component will be meaningful;
- b) Cannot contain elements of excessive violence, sexual violence, or sexual exploitation or elements which are obscene, indecent or child pornography within the meaning of the *Criminal Code* (as amended from time to time), or libellous or in any other way unlawful; and
- c) Must, when the CMF funds it, be new content. The CMF will not fund an already-existing Digital Media Component.