CMF FMC

DIVERSE LANGUAGES PROGRAM

GUIDELINES

2020-2021

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1. GENERAL INFORMATION

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 CMF interpretation 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. 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 CMF policies in effect for that fiscal year. To be clear, changes to CMF Guidelines and/or policies made in a subsequent fiscal year will not apply 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 for the latest Guideline news and documentation

Provision of Documentation

It is the responsibility of the Applicant to ensure that the CMF receives all relevant documentation, and to update such documentation and information after a material change. The CMF may request other documentation and information 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 other outcomes:

- 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 DIVERSE LANGUAGES PROGRAM WORKS

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 use ".TV" in their section number, and sections dealing with requirements for the Digital Media Component 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 ".TV" or ".DM".

2.1 INTRODUCTION

The Diverse Languages Program, which forms part of the CMF's Convergent Stream, ensures that Canadians have access to content that reflects the variety of languages they speak. Eligible Projects (see section 3.2) in the Diverse Languages Program must be convergent, meaning they must have a Television Component (see section 3.2.TV) and accompanying multi-platform content that meets the criteria set out in section 3.2. 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.

To be funded from the Diverse Languages Program, a project must meet all eligibility and genre requirements under the CMF Guidelines. Eligible Projects must receive Eligible Licence Fees (see section 3.2.TV.5). Maximum Contribution amounts are calculated on a project's Eligible Costs (see section 2.3.2).

2.1.1 Definitions Applicable to the Diverse Languages Program: Canadian Broadcaster, In-house Programming and Affiliated Programming

Canadian Broadcaster

Any of the following will be considered a "Canadian Broadcaster":

a. A Canadian programming undertaking, public or private, licensed to operate by the Canadian Radio-television and Telecommunications Commission (CRTC)[1];
b. An online service[2] owned, controlled and operated by a Canadian CRTC-licensed programming undertaking;
c. An online service[3] owned, controlled and operated by a Canadian broadcasting distribution undertaking (**"BDU"**), licensed to operate by the CRTC; and
d. CRTC-licensed VOD services.

Broadcaster-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 covers Projects produced by a broadcaster-affiliated production company and licensed by its affiliated broadcaster(s).

[1]This includes exempt broadcasters regulated by the CRTC via *Broadcasting Order CRTC 2015-88*.
[2]This includes services accessed via a set-top box.
[3]This includes services accessed via a set-top box.

In-house Programming

In-house Programming comprises Projects produced and owned by a Canadian broadcaster.

There are no restrictions regarding access by Affiliated Programming and In-house Programming in the Diverse Languages Program.

2.2 NATURE OF FUNDING CONTRIBUTION

The Diverse Languages Program may provide to the Eligible Project 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. This type of contribution forms part of the Broadcaster's licence fee for the Eligible Project and is non-recoupable. An equity investment is a cash investment that results in the CMF acquiring an undivided copyright ownership interest in all versions of the Eligible Project. Equity investments are recoupable, and subject to a standard and non-negotiable recoupment schedule, as described and subject to, any exceptions in the CMF Standard Recoupment Policy (see Appendix B).

The first CMF contribution to the Eligible Project will be in the form of a licence fee top-up, to a maximum of 20% of the Eligible Project's Eligible Costs. Amounts in excess of this maximum will be in the form of an equity investment. The CMF considers an eligible equity investment request of less than $100,000 to be too small for equity participation. Such requests will be automatically converted to a licence fee top-up.

2.3 AMOUNT OF FUNDING CONTRIBUTION

2.3.1 CMF Contribution

The CMF will solely decide the amount of its financial contribution to an Eligible Project, up to a Maximum Contribution of the lesser of 49% of the Eligible Project's Eligible Costs or $200,000.

For audiovisual treaty coproductions, the CMF Maximum Contribution for the Eligible Project will be calculated on the lesser of the Eligible Costs of the Canadian portion of the Eligible Project's global budget and the Eligible Costs of the Canadian portion of the global final costs of the Eligible Project, as certified by Telefilm Canada's Business Affairs and Certification Department.

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.

2.3.2 Eligible Costs

Eligible Costs are costs set out in the production budget of the Eligible Project or the final cost report as applicable (including both related-party and non-related-party costs) – plus costs the CMF considers necessary[4] and minus costs the CMF considers excessive, inflated or unreasonable.

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[4]While gifts to the public are ineligible as marketing expenses per section 2.3.2.TV.2 below, gifts made to Indigenous communities recognized as cultural practice and referenced in the *On-Screen Protocols & Pathways* Media Production Guide will be accepted as Eligible Costs.

If applicable, Eligible DM Costs[5] must be submitted as line item 85 within the Television Component's application budget and, along with the TV Component's Eligible Costs, will be treated as one set of Eligible Costs for the purposes of:

- the Applicant's Financing Agreement with the CMF;
- the ultimate ratio of licence fee top-up/equity investment provided by the CMF;
- the Licence Fee Threshold ("LFT") (section 3.2.TV.5.1); and
- the Maximum Contribution amounts (section 2.3.1).

CMF participation is calculated on the Eligible Costs of each Eligible Project and assessment of an Eligible Project's Eligible Costs is at the CMF's sole discretion. The CMF estimates Eligible Costs at the time of application based on budgets for the project. Eligible Costs may include cost increases between budget and final costs which have been approved by a Canadian Broadcaster contributing an Eligible Licence Fee, but excludes increases which have not been so approved.

Additional CMF business policies relating to Eligible Costs are in Appendix B.

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 current CMF Accounting and Reporting Requirements.

2.3.2.TV.1 Versioning

For Television Components licensed, or which will be licensed for Canadian broadcast in an official language (English or French, as applicable) – prior to delivery to the first window Canadian Broadcaster – the CMF requires all versioning (i.e., dubbing or subtitling) be performed in Canada using Canadian artists, actors, employees and technicians (as applicable). Exceptions may be made in the case of audiovisual treaty coproductions.

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 of the Eligible Project may include:

- Unit publicity expenses incurred during production (e.g. production photographs, hiring a publicist to arrange interviews)

- Attendance at national and international media markets to generate sales or other revenues from the Eligible Project

- Submission/registration to an awards show/event

Eligible Projects' eligible marketing expenses shall be the lesser of 5% of Categories B+C of the production budget or $400,000. In the case of marketing expenses of $10,000 or less, however, no budget percentage cap will be imposed.

[5]Including budgeted upkeep and enhancement costs related to a period of up to 12 months after the launch of the Digital Media Component.

All marketing expenses of the Eligible Project – including those related to the DM Component, if applicable – should all be allocated to budget line item # 70 in the production budget.

Non-eligible marketing costs include:

- Costs already financed or paid for by another investor or funding body
- Wrap party
- Crew or Cast gifts
- Gifts to the Public (e.g., t-shirts, mugs)

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.TV.4 Prizes

Any prize that is won, awarded, presented, or granted to individuals in connection with any CMF-funded production, in any genre, shall be an ineligible cost, even if such prize is deemed to be educational in nature.

2.4 PROJECT ASSESSMENT IN THE SELECTIVE PROCESS

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

To make funding decisions, the CMF uses an Evaluation Grid for transparency.

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

Evaluation Grid

Assessment Criteria	Overall Points	Points details	Notes
Market Interest	20	Broadcaster commitment (10) Audience potential (10)	Broadcaster commitment is reflected by: • The level of licence fees paid by broadcasters to the Television Component.[6] • Licence fees from more than one broadcaster • A distribution agreement or licence fee from a foreign broadcaster. Audience potential for series is reflected by: • Presence of marquee elements such as well-known actors/narrators/hosts. • Renewal of a series for a second or subsequent season. Audience potential for one-off Projects is reflected by: • Presence of marquee elements such as well-known actors/narrators/hosts.
Team	20	Track record and experience of the Production and Creative teams (17) 40% of the cumulative positions on the Production and Creative Teams on the Television Component are held by women (3)	The Production Team is comprised of the producers of the project. For clarity, "Producers" shall be defined as either Producer, Executive Producer/Showrunner, Executive Producer, Co-executive Producer, Supervising Producer, Associate Producer, or Creative Producer positions. The Creative Team is comprised of the Writers and Directors on the project. For clarity, "Writer" shall be defined in accordance with Guild collective agreements and ascribed the same meaning as commonly understood in the broadcast, television and film industries. For clarity, "Director" shall be defined in accordance with Guild collective agreements and ascribed the same meaning as commonly understood in the broadcast, television and film industries.
Creative Elements	40	Originality, creativity and discoverability (30) Innovation in form and production values (10)	Creative elements include the subject matter, scripts, themes, issues, narrative and digital discoverability activities (including but not limited to, the DM Component, if any), which are assessed on originality and creativity. The appropriateness of the production budget size to the creative material is also considered.
Program Objectives	20	Degree to which content is directed to an ethnic community (20)	Ethnic cultural content encourages the highest level of content that is specifically directed to any culturally or racially distinct group, other than one that is Aboriginal Canadian or from France or the British Isles (i.e. an "ethnic program" as defined by the CRTC).
TOTAL	100		

[6]Please note, the maximum points the "Broadcaster commitment" section can receive will be limited to the highest commitment made by a Broadcaster to a Project produced by an independent producer.

3. ELIGIBILITY FOR FUNDING

3.1 ELIGIBLE APPLICANTS

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 Canada's *Income Tax Act* production company.

   b) Is Canadian-controlled as determined in sections 26 to 28 of the *Investment Canada Act*.

   c) Has its head office in Canada.

   d) Is in good standing with all applicable talent and industry associations and guilds.

or

2) A Canadian Broadcaster (as defined in section 2.1.1 above).

Applicants must own and control all the rights necessary to produce and exploit the Eligible Project. Entities that provide services but do not own applicable rights are not eligible to apply to the CMF.

Note: For the purposes of these Guidelines, the term Applicant includes all coapplicants, and/or all related, associated, affiliated or parent companies and/or individuals (as determined by the CMF at its sole discretion), as applicable.

3.2 ELIGIBLE PROJECTS

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

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

1) A Television Component (as defined in section 3.2.TV) made available by one or more Canadian Broadcasters;

and

2) Any or all of the following:

   a) One or more Digital Media Components (defined under section 3.2 DM).

   b) The Television Component made available to Canadians by:
      i. One or more Canadian Broadcasters (as defined in section 2.1.1).
      ii. A Canadian entity through non-simulcast digital distribution.

For clarity, a Television Component made available via the *same type* of Canadian Broadcaster cannot, by itself, satisfy the requirements of both 1) and 2) above for the same Eligible Project at the same time. For example, Applicants must elect whether making the Television Component available via an online service owned, controlled and operated by a CRTC-licensed programming undertaking is considered under 1) or 2) above.

In 2)b)ii) above, "Canadian" has the meaning ascribed in subsection 1106(1) of Canada's Income Tax Act ; "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. It does not include distribution of physical media, such as mail-order DVD rentals/sales.

Further, to meet the convergence requirements of 2)b) above, the multi-platform content 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.

3.2.TV The Television Component

A Television Component of an Eligible Project must be linear audiovisual content that meets the following requirements (that are further explained in this section):

- the CMF's Essential Requirements;
- the CMF's Genre requirements (as set out in Appendix A);
- ownership and control requirements;
- miscellaneous requirements; and
- is in exchange for Eligible Licence Fees which meet the applicable Licence Fee Threshold.

The original language of production of the Eligible Project must be a language other than English, French, or a Canadian Aboriginal language. However, if an Applicant wants any English or French to be used in a Project applying for funding through this Program, provided that the applicable Canadian Broadcaster also contributes a portion of their Performance Envelope allocation in the production financing of the project, the CMF shall determine exceptions on a case-by-case basis and qualify that the original language of production must *predominantly* be a language other than English, French or a Canadian Aboriginal language.

3.2.TV.1 Essential Requirements

A Television Component must meet the Essential Requirements listed here. For a series (or mini-series, as applicable), the Essential Requirements apply to every episode of the cycle, even if all episodes are not submitted for CMF funding. The CMF solely decides whether the Television Component meets the Essential Requirements and its interpretation shall prevail.

1) The Television Component will be certified[7] by the Canadian Audio-Visual Certification Office (CAVCO) and has achieved 10/10 points (or the maximum number of points appropriate to the Television Component), as determined by the CMF using the CAVCO scale.

   Note: For In-house Programming only, CRTC project certification as a "Canadian program" will be accepted in lieu of CAVCO certification for the purposes of meeting Essential Requirement #1.

2) Underlying rights are owned, and significantly and meaningfully developed by Canadians.

3) The Television Component is shot and set primarily in Canada.

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

[7]Exceptions may be granted by the CMF for exempt broadcasters regulated by the CRTC via *Broadcasting Order CRTC 2015-88*.

3.2.TV.1.1 Audiovisual Treaty Coproductions

With respect to the CMF eligibility of audiovisual treaty coproductions, these Essential Requirements shall be interpreted so as to treat the treaty coproduction partner as "Canadian."

Accordingly, the term "Canadians" in Essential Requirement 2, and the term "Canada" in Essential Requirement 3 include the coproduction country. The 10/10 points referenced in Essential Requirement 1 must be attained by citizens of Canada or the coproducing country.

Notwithstanding the above, once a TV Component has received its preliminary recommendation from the Telefilm Canada coproduction office to be certified by CAVCO as an official audiovisual treaty coproduction, such project will not be required to meet the Essential Requirements listed herein.[8]

For information on audiovisual treaty coproduction between Canada and other territories, please see Telefilm Canada's treaty coproduction guidelines.

3.2.TV.2 Genres of Programming

The CMF supports the following genres: drama, documentary, children's and youth, and variety and performing arts. The CMF defines each 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 programs, foreign format buys without significant Canadian adaptation and creative contribution, magazine productions, talk shows, "talkshows culturels", non-cultural galas and award shows[9], reporting and current events, religious programs, fundraising productions, benefits, tributes, promotional productions, pep-rallies, travelogues and interstitials.

Note: Some flexibility exists for children's and youth programming. See Appendix A for more information.

3.2.TV.3 Canadian Ownership and Control

The Television Component must meet these 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. Moreover, 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.

[8]Should a TV Component receive a preliminary recommendation to be certified by the Telefilm coproduction office - but not ultimately receive audiovisual treaty coproduction certification by CAVCO - the failure of such TV Component to meet all applicable CMF eligibility criteria will be considered an event of default pursuant to the CMF Financing Agreement.

[9] Cultural award shows and galas that meet the CMF's Variety and Performing Arts definition shall be considered eligible programming.

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 the budget, subject to reasonable and standard approval rights customarily required by arm's-length financial participants, including Canadian Broadcasters and distributors.

f) The Applicant owns all rights (including copyright) and options necessary for the production and its distribution in Canada and abroad (with appropriate case-by-case exceptions for a purchased format), and retains an ongoing financial interest in the Television Component.

3.2.TV.4 Miscellaneous Requirements

The Television Component must meet these 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) Where required by the CRTC, it is closed-captioned[10] if it contains narrative, dialogue or lyrics. Exceptions may be permitted for Projects targeting children under the age of five, Projects in languages that do not use the Roman alphabet, and live-to-air productions.

c) If applicable it must be made meaningfully and coherently with the DM Component(s). What is meaningful and coherent in a particular instance will depend on the nature of the TV Component, the relative balance between both the TV Component and DM Component(s) and whether the project provides a coherent experience which cumulatively augments the television viewer's engagement to the project as a whole. The CMF will decide on a case-by-case basis whether the Television Component was made meaningfully and coherently with the DM Component(s).

d) It is a new production. A new production is one which is not substantially a repackaged version of a previously-produced production. For a series, the CMF will consider the entire cycle to determine if the project is a repackaging (e.g. some "making-of", "best of" and/or "catch-up" episodes may be permitted). Television Components comprised mainly of stock footage may be new productions provided the footage is not merely repackaged in whole or large segments for the Television Component.

e) 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 Television Components that need to capture a time-sensitive event.

f) It, or any version of it, has not been broadcast/presented on any platform prior to its application for CMF funding.

g) The CMF encourages all Applicants to respect the guiding principles and best practices set out in the *On-Screen Protocols & Pathways* Media Production Guide.

[10] As applicable, based on the respective platform.

3.2.TV.5 Eligible Licence Fee Requirements and Conditions

The Television Component must have Eligible Licence Fees which meet the applicable Licence Fee Threshold (see section 3.2.TV.5.1).

Eligible Licence Fees are:

a) Cash fees

b) Paid by a Canadian Broadcaster

c) To the CMF Applicant

d) Which are in exchange for the Canadian Broadcast Right

e) All of which is subject to one or more current, legally binding contract(s) – i.e. 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

a) <u>Cash Fees</u>

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 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) <u>Canadian Broadcaster</u>

A Canadian Broadcaster as defined in section 2.1.1 above.

c) <u>Applicant to the CMF</u>

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 affiliated with both the Applicant and the Canadian Broadcaster.

d) <u>Canadian Broadcast Right</u>

The Canadian Broadcast Right is the right of the Canadian Broadcaster to broadcast and/or make the Television Component of the Eligible Project available on any broadcast and online platforms the Canadian Broadcaster owns, operates and controls in Canada in the language of the Broadcaster in question during the Maximum Term.

The Canadian Broadcast Right cannot include:

i) Broadcast rights for non-Canadian territories.

ii) Other Exploitation Rights (as detailed further below in section 3.2.TV.5.3) 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 in 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 Canadian Broadcaster may acquire rights other than the Canadian Broadcast 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 from the Eligible Licence Fee.

For clarity, regardless of whether the CMF has made an equity investment in a project, such Other Exploitation Rights (discussed further below in section 3.2.TV.5.3) shall only apply to the various subsidiary and ancillary exploitation rights of the project and not merely consist of additional access to revenue or recoupment to the Canadian Broadcast Right or Other Exploitation Rights themselves. Broadcasters may only recoup on exploitation revenues if they are making an investment in a project.

e) <u>The broadcast licence agreement terms and conditions</u>

A broadcast licence agreement:

i) Must include an unconditional commitment by the Canadian Broadcaster providing the highest Eligible Licence Fee to broadcast and/or make the Television Component available to be viewed on any of the broadcast and online platforms the Canadian Broadcaster owns, operates and controls in peak viewing hours and closed captioned[11] in the original language of production, as the first window broadcast/availability, within 18 months of completion and delivery of the TV Component[12]. Should the Canadian Broadcaster fail to comply with these requirements the licence fee will be deemed not to be an Eligible Licence Fee. The CMF will consider requests for an extension to this period case-by- case. "Peak viewing hours" is defined by the CMF as 7:00 pm to 11:00 pm, with an exception for some Children's and Youth programming as described in Appendix A. For second and subsequent window Broadcasters, the commitment to broadcast the Television Component in peak viewing hours (or make the TV Component available to be viewed), within 18 months will start at the beginning of those Broadcasters' licence periods. Second and subsequent window Canadian Broadcasters operating in a language other than the original language of production may contribute Eligible Licence Fees to meet Licence Fee Threshold and broadcast the Television Component in peak viewing hours (or make the Television Component available to be viewed) in their language of operations.

Note: The CMF may waive the broadcast/availability requirement for pilots where both the broadcaster and Applicant agree, upon completion and delivery of the Television Component, that the pilot should not be broadcast or made available.

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

[11] As applicable, based on the respective platform.
[12] For dual-language productions, this requirement shall be interpreted to mean 18 months from the first completed version.

broadcast the program within six months of delivery to the Canadian Broadcaster. To be clear, a Broadcaster cannot hold world premiere rights longer than six months from delivery if a bona fide sale has been made to a foreign broadcaster.

iii) Cannot include the acquisition of French-language rights by an English-language Canadian Broadcaster or of English-language rights by a French-language Canadian Broadcaster, with the exception of dual-language broadcast channels. The dual-language Canadian Broadcaster in such cases 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 Canadian Broadcaster a right of last refusal for any rights other than additional broadcast windows for the currently licensed Television Component/cycle. This means a Canadian Broadcaster cannot acquire a right of last refusal for broadcast windows for future cycles or versions of the Television Component. Canadian Broadcasters may acquire the right of first negotiation and/or last refusal for additional broadcast windows for the currently licensed Television Component/cycle.

v) For the purposes of series, 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 the 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 an Eligible Project must receive from one or more Canadian Broadcasters to be eligible for CMF funding. The Licence Fee Threshold in the Diverse Languages Program is 10% of the Eligible Project’s Eligible Costs.

For audiovisual treaty coproductions, the CMF Licence Fee Threshold will be calculated on the Eligible Costs of the Canadian portion of the production’s global budget as certified by Telefilm Canada’s Business Affairs and Certification Department.

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

3.2.TV.5.2 Licence Terms

The CMF shall assess the maximum allowable period of all broadcast windows granted in consideration for Eligible Licence Fees (Maximum Term). The Maximum Term for an Eligible Project in the aggregate and including both exclusive and non-exclusive terms for all genres of programming under this Diverse Languages 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 Canadian Broadcaster. The term is the period in which a Canadian Broadcaster has the right to exploit a program. In the case of a series (or mini-series, as applicable), 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 Canadian Broadcaster’s term may be from September 1, 2020 to September 1, 2026, but the broadcaster may choose to make the first broadcast date November 15, 2020. For eligibility purposes, the licence term begins on September 1, 2020.

Applicants can 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. 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 Exploitation Rights

All other rights that a Canadian Broadcaster chooses to acquire or to substantially restrict the Applicant from exploiting (in addition to the Canadian Broadcast Right outlined in 3.2.TV.5.d), must be separately identified and valued from the Canadian Broadcast Right). For clarity, if a particular right cannot be classified under the Canadian Broadcast Right definition, that right will be classified as an Other Exploitation Right.

Other Exploitation Rights include (but are not limited to) the following:

i) Free Internet broadcast/distribution.
ii) CRTC-licenced VOD.
iii) Paid Internet broadcast/distribution (including Subscription Video On Demand).
iv) Mobile/wireless distribution.
v) Electronic sell-through and/or digital rental.
vi) DVD, Blu-ray, or other compact video device distribution.
vii) Theatrical distribution.
viii) Non-theatrical distribution (e.g., educational institutions and airlines).
ix) Merchandising and ancillary rights.

All of the above-listed Other Exploitation Rights and any exploitation right which is not encompassed by the above, whether currently existing or developed in the future, shall be ascribed the meaning as commonly understood and in accordance with the standards of the television, digital media and communications industries. Canadian 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 Exploitation Rights acquired by a Canadian Broadcaster must be subject to a “use it or lose it” provision that requires the Canadian Broadcaster to exploit the right(s) within 12 months of that Broadcaster’s first broadcast/premiere of the Television Component, failing which the rights revert to the producer without restriction. For Other Exploitation Rights not acquired by a Canadian Broadcaster the broadcast licence agreement cannot restrict the Applicant’s ability to exploit the Other Exploitation Rights for longer than 12 months from that Broadcaster’s first broadcast/premiere of the Television Component.

Where the CMF provides an equity investment to the Eligible Project, Other Exploitation Rights acquired by a Canadian Broadcaster must:

a) Be exploited in accordance with the CMF’s Standard Recoupment Policy, with the Canadian 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 Canadian 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 of an Eligible Project must be an audio[13], audiovisual, multimedia, or interactive promotional project that:

a) Is associated with and derived from the Television Component that is funded by the CMF;
b) The original language of production is the same language as the original language of production of the Television Component, and is made available to the Canadian public by way of a digital network, including internet and mobile;
c) Provides a coherent digital or social media experience to the audience before, during or after the broadcast of the Television Component, expands the television viewer's experience beyond the Television Component and aims to augment engagement and discoverability towards the Television Component; and
d) Meets either one or a mix of the following activities:

    1. Interactive or linear original content related to the Television Component but created specifically to be consumed on digital media platforms.
    2. Promotion, marketing and discoverability activities and applications using digital and social media aimed at locating, leveraging or building audiences.
    3. Interactive online activities or applications providing a synchronised experience during the broadcast of the Television Component.

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.

Digital media coproductions are eligible if they comply with the Framework for international digital media coproduction.

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 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.

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[13] For example, podcasts, audio books, smart speaker applications.

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 case-by-case exceptions for a purchased format, and retains an ongoing financial interest in the project.

Note: These criteria shall be interpreted so as to allow international coproductions that have an acceptable degree of Canadian ownership and control to access the CMF. Digital media coproductions are eligible if they comply with the Framework for international digital media coproduction.

3.2.DM.4 Broadcaster Financing

In cases where an Eligible Project contains a Digital Media Component, in exchange for the Eligible Project's applicable original digital content rights related to the DM Component, a Canadian Broadcaster's contribution to such DM Component will be included in the Licence Fee Threshold based on the total Eligible Costs of the Eligible Project as a whole (see section 2.3.2).

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 DM Component and its distribution plan. The CMF will decide on a case-by-case basis, but unless there is an acceptable distribution/exploitation plan to the contrary, the CMF considers that making the DM Component available to the Canadian public for at least 3 months, contemporaneously with the associated Television Component, will be meaningful.

b) It must be made meaningfully and coherently with the TV Component. What is meaningful and coherent in a particular instance will depend on the nature of the DM Component(s), the relative balance between the TV Component and DM Component(s) and whether the project provides a coherent experience which cumulatively augments the television viewer's engagement to the project as a whole. The CMF will decide on a case-by-case basis whether the Television Component was made meaningfully and coherently with the DM Component(s).

c) 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.