CMF FMC

INDIGENOUS 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 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 INDIGENOUS 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 Indigenous Program which forms part of the CMF's Convergent Stream supports the growth of Indigenous production. The CMF recognizes the unique circumstances of the Indigenous production community.

Eligible Projects (see section 3.2) in the Indigenous Program must be convergent, meaning: they must have an eligible 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 Indigenous 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) that meet the Licence Fee Threshold amount applicable (see section 3.2.TV.5.1). Maximum Contribution amounts are calculated on a project's Eligible Costs (see section 2.3.2).

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

2.1.1 Definitions Applicable to the Indigenous 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.

[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.

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 Canadian Broadcaster-affiliated production company and licensed by its affiliated Canadian Broadcaster(s).

In-house Programming

In-house Programming comprises projects produced and owned by a Canadian Broadcaster.

A maximum of 25% of funds for all CMF-supported genres available in the Indigenous Program will be allocated to Affiliated Programming and In-house Programming.

2.1.2 Development Financing

In addition, the CMF provides financial support to Eligible Projects (i.e., either a TV Component or a combined TV and DM Component) for development in the Indigenous Program. Up to 10% of the funds in this Program may be set aside for development and predevelopment. The allocation will be disbursed on a first-come, first-served basis. If many projects are submitted on the same date, creating oversubscription, the CMF may distribute funds on a proportional (pro-rated) basis to projects deemed eligible. Up to 15% of the funds available for development may be allocated to Affiliated Programming and In-house Programming.

For clarity, in cases where the Applicant is applying with both a TV and DM Component(s), both Components will be submitted through one single application budget.

Development

Applications for development financing must include a commitment for financial participation by a Canadian Broadcaster. There is no pre-set minimum amount for the broadcaster's financial contribution.

The CMF may contribute financially to an Eligible Project, in development at the level requested by the Applicant, up to 50% (or 75% for a Regional Development Project) of the Eligible Costs, to a maximum of $200,000 for all development activities combined and all eligible types of programming.

Eligible Applicants may apply with a maximum of two Eligible Projects in development.

Predevelopment

Applications for predevelopment financing must include a letter of interest from a Canadian Broadcaster. There is no requirement for a Broadcaster to commit a Development Fee for predevelopment projects. The CMF may contribute financially to an Eligible Project in predevelopment and the allowable types and amounts of Eligible Costs for a project in the predevelopment stage are set out in Table 1 below.

For clarity, despite the fact that the figures listed in Table 1 are fixed costs that will be automatically provided to Applicants who claims one or many of them (subject to verification), it is important to note that the total contribution the CMF may provide is limited to 84% of a project's Eligible Costs.

Table 1

<table>
<tr><th>ACTIVITY</th><th colspan="2">INDIGENOUS PREDEVELOPMENT</th></tr>
<tr><td>Creative Documents
Preliminary research
Scriptwriting consultant
Story editor
Writing (Treatment, Bible, preliminary stages of script)</td><td colspan="2">$17,000</td></tr>
<tr><td>Short non-broadcast Demo (live-action projects only)
Or
Production of Drawings (animation projects only)</td><td colspan="2">$3,000</td></tr>
<tr><td rowspan="2">Producer Fees and Corporate Overhead</td><td colspan="2">$2,000 (Creative Documents)</td></tr>
<tr><td colspan="2">$1,200 (Short non-broadcast Demo)
Or
$1,200 (Production of Drawings)</td></tr>
<tr><td>Printing/Collating Costs
Creation/packaging of documents related to pitching projects to Canadian broadcasters</td><td colspan="2">$500</td></tr>
<tr><td rowspan="2">Travel Expenses within Canada</td><td>If no air travel required</td><td>If air travel required</td></tr>
<tr><td>$800</td><td>$1,300</td></tr>
</table>

Eligible Applicants may apply with a maximum of two Eligible Projects in predevelopment. Returning series, affiliated and in-house programming are not eligible in predevelopment.

For Indigenous development and predevelopment only, as a pilot initiative, the CMF may consider a digital distributor to be a Canadian Broadcaster for the purposes of providing a commitment for financial participation (development), or a letter of interest (predevelopment), if the CMF determines that the digital distributor is a company that is Canadian-controlled (as determined in sections 26 to 28 of the *Investment Canada Act*). The CMF will decide case-by-case whether a digital distributor qualifies for this initiative.

For general information regarding development financing, please see the CMF's Development Program Guidelines: section 3 concerns Eligible Projects, section 2.2 relates to the nature of the CMF contribution, and section 2.3 covers Eligible Costs. The Indigenous Program Guidelines shall prevail if there is a conflict of provisions between the two Guidelines, including those regarding eligible applicants, in which case section 3.1 of these Indigenous Program Guidelines shall prevail.

2.2 NATURE OF FUNDING CONTRIBUTION

The Indigenous 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 Canadian 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 Television Component. 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 40% of the Project's Eligible Costs. Amounts in excess of this maximum will be in the form of an equity investment, to a maximum of 60% of Eligible Costs, licence fee top-up and equity investments combined. The CMF considers an eligible equity investment request of less than $100,000 too small for equity participation. Such requests will be automatically converted to a licence fee top-up. Applicants should note that if an Eligible Project is accessing funds between multiple CMF Programs, the license fee top-up/equity investment division will be applied to the project's entire budget according to the same maximum contribution percentages noted above.

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. The Maximum Contribution shall be the lesser of 60% of the Eligible Project's Eligible Costs or the following amounts (depending on the applicable genre):

- Drama and Animation: $750,000
- Documentary, Variety and Performing Arts and Children & Youth: $550,000

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.

2.3.1.1 Combining Indigenous Program Funds with other CMF Programs

Applicants should note that funding offered through the Indigenous Program may be affected by funds offered through other CMF Programs:

- If an Applicant is eligible to apply for other CMF incentives in the same fiscal year (e.g., Regional Bonus), the amount offered to such Applicant through the Indigenous Program may be lower than the Applicant's originally requested amount.

- Additionally, Canadian Broadcasters may combine funds from their Performance Envelope allocations with funding from the Indigenous Program in the same fiscal year. The Licence Fee Threshold amount for the Indigenous Program will then apply to the total Eligible Costs. Projects may receive amounts up to the Maximum Contribution specified for the Indigenous Program; any additional funds will be taken from the broadcaster's Performance Envelope. The total CMF contribution from all programs is limited to 84% of Eligible Costs.

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.

[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 an Eligible Project's Eligible Costs and assessment of a 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.

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

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

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 TV 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 TV Component's financiers. The CMF will not support versioning costs normally incurred by distributors to assist in foreign market sales through this Program.

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

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.

All marketing expenses should be allocated to budget line item # 70 in the production budget.

Non-eligible marketing costs include:

- Costs already financed or paid for by another financier or funding body;
- Wrap party;
- Crew and 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 Indigenous Program compete for funding according to a selective process. To make funding decisions, the CMF will rely on an Indigenous jury and projects will be selected using the Evaluation Grid below.

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	**15**	Broadcaster commitment (5) Audience potential (10)	Broadcaster Commitment is reflected by: • the level of licence fees paid by Broadcasters to the Television Component. • Licence fees from more than one Broadcaster. • an allocation from Broadcaster(s) Performance Envelope(s). • a distribution agreement with a third-party distributor or a licence 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	**45**	Originality, creativity and discoverability (35) 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**	Proportion of Indigenous language in the original production (7) Number of Indigenous persons, or apprentices, in key positions & degree of Indigenous creative, financial, ownership and distribution control (13)	Program objectives encourage the highest level of Indigenous content, language and control. For clarity, only projects that are going over and above the minimal 20% Indigenous language requirement (as set out in section 3.2.TV.4.g) will be awarded points under this criteria.
TOTAL	**100**		

3. ELIGIBILITY FOR FUNDING

3.1 ELIGIBLE APPLICANTS

To be eligible under the Indigenous Program, Applicants must meet both the specific Program and overall CMF eligibility requirements detailed below.

An Eligible Applicant to this Program must meet the following criteria:

a) At least 51% of the ownership of the Applicant company and copyright in the Eligible Project must be owned by an individual producer (or multiple producers) that is an Indigenous person that meets the definition of Aboriginal peoples under the *Employment Equity Act* (“**Indigenous Owner”**). The CMF reserves the right to request evidence of Indigenous ancestry.

   For clarity, in cases where the Indigenous Owner is comprised of multiple individual producers that are Indigenous persons, no individual Indigenous producer shall own less than 15% of the Applicant company and copyright in the Eligible Project.

b) The Indigenous Owner exercises full creative, executive, artistic, technical and financial control of the Eligible Project.

c) The Indigenous Owner has meaningfully participated in the Eligible Project’s development and retains a financial interest in the Eligible Project that is proportional to its ownership.

It is important to note that coproductions between Eligible Applicants (as defined in section 3.1) and ineligible Applicants are only possible where the ineligible Applicant is a treaty coproduction partner in an audiovisual treaty coproduction.

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; and

   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 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 its subsections.

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

1) A Television Component 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 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.

For Projects seeking production funding, either the screenwriter or the director of the Television Component must be an Indigenous person. For clarity, if the Television Component is episodic, this requirement will apply to every episode of the Television Component.

3.2.TV The Television Component

A Television Component of an Eligible Project must be linear audiovisual content that meets the following requirements:

- 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.

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[6] 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.

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.[7]

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,

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

[7] 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.

“talkshows culturels,” non-cultural galas and award shows[8], 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 and Indigenous 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) In this Program, the Indigenous Owner (defined in section 3.1) exercises full creative, executive, artistic, technical and financial control of the Television Component and has meaningfully participated in its development.

e) 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;

f) The Indigenous Owner (defined in section 3.1) 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; and

g) 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) It is closed-captioned if it contains narrative, dialogue or lyrics. Exceptions may be permitted for television components targeting children under the age of five, projects in Indigenous languages that do not use the Roman alphabet, and live-to-air productions;

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

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 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) Applicants shall make best efforts to ensure that, on average, at least 20% of the original Indigenous version of the Television Component's on-screen dialogue and/or narration must have been originally shot in an Indigenous language. Exceptions to this requirement, as determined by the CMF in its sole discretion, will be made on a case-by-case basis. However, in all cases, an Indigenous-language version of the entire Television Component must be broadcast (see section 3.2.TV.5 e) i).

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

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) 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, as defined in section 2.1.1 above.

In this Program only, as a pilot initiative, the CMF may consider a digital distributor to be a Canadian Broadcaster with regard to Eligible Licence Fees for an Applicant in northern Canada (i.e. Nunavut, Nunavik, the Yukon Territory, or the Northwest Territories) – provided the CMF determines that the digital distributor: is a Canadian-controlled company (as determined in sections 26 to 28 of the *Investment Canada Act*); operates in northern Canada; provides services and/or content targeted to Indigenous communities in northern Canada; and licences Eligible Projects for distribution via digital platforms. The CMF will then interpret the remainder of section 3.2.TV.5 in a flexible manner to let the digital distributor provide Eligible Licence Fees. The CMF will decide if a digital distributor qualifies for this pilot initiative case-by-case.

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 affiliated with both the Applicant and the Canadian broadcaster.

d) Canadian Broadcast Right

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 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) The broadcast licence agreement terms and conditions

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[9], in an Indigenous-Canadian language, as the first window broadcast, within 18 months of completion and delivery of the TV Component[10]. 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, if applicable, make the Television 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 Indigenous-Canadian language may contribute Eligible Licence Fees to meet Licence Fee Threshold and broadcast the Television Component in peak viewing hours (or, if applicable, 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 project, 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 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.

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

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 Indigenous 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 Indigenous 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 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 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 Canadian 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 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 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[11], audiovisual, multimedia, or interactive promotional project that:

a) Is associated with and derived from the Television Component that is funded by the CMF;

b) Is made available to the Canadian public in an Indigenous-Canadian language by way of a digital network, including internet and mobile;

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

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 and Indigenous 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) In this Program, the Indigenous Owner (defined in section 3.1) exercises full creative, executive, artistic, technical and financial control of the Digital Media Component and has meaningfully participated in its development.

d) The Indigenous Owner retains and exercises all effective controls or approvals consistent with those of a producer; and

e) 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 co-productions 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 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.