

Terms of Trade Agreement

between

Astral Television Networks,
A Division of Astral Broadcasting Group Inc.
Bell Media Inc.
Rogers Broadcasting Limited
Shaw Media Inc.

- and -

The Canadian Media Production Association

1. Terms of Reference

- a) This Terms of Trade Agreement (“Agreement”) has been negotiated on behalf of the English-language Canadian independent production community by the Canadian Media Production Association (“CMPA”) with Astral Television Networks, A Division of Astral Broadcasting Group Inc., Bell Media Inc., Rogers Broadcasting Limited and Shaw Media Inc. (each individually, “Broadcaster”, collectively, “Broadcasters”), as well as with Corus Entertainment Inc. (“Corus”). Except as expressly excluded in subsection 1(c) below, it is applicable to all independent productions produced by English-language Canadian independent television producers (“Independent Producers” or “Independent Producer”).
- b) The terms of this Agreement will be applied in the ordinary course by the Broadcasters in their dealings with Independent Producers in the development, production and exhibition of Canadian audiovisual works intended for broadcast by the Broadcasters and intended for the Canadian market, across a variety of technological platforms, including conventional, specialty and pay television, as well as Internet and mobile.
- c) This Agreement does not apply to programs acquired by a Broadcaster for which it does not have industry standard commissioning broadcaster creative and financial approval rights, or to broadcaster-affiliated/in-house production and/or service production. A production that satisfies the five indicators enumerated in section 4.10 - “Production Control” of the Canadian Audiovisual Certification Office’s Canadian Film or Video Production Tax Credit Guidelines (March 31, 2010) is an independent production to which this Agreement applies. Notwithstanding the foregoing, and for greater certainty, an audiovisual work is a service production where, prior to the Independent Producer’s involvement:
 - (i) the idea or concept originates from, and all or substantially all of the development in the project is undertaken by the Broadcaster or its affiliate; or
 - (ii) the format rights were exclusively acquired by the Broadcaster and were assigned to the Independent Producer.

This Agreement also does not apply to digital production that is unrelated to a television program.

- d) The Broadcasters agree to stipulate before the Canadian Radio-television and Telecommunications Commission (CRTC) at the April 2011 Group Licence Renewal hearings that projects produced by broadcaster-affiliated/in-house production and/or service productions (as defined in subsection 1(c) above) will not count towards the CRTC’s independent production expenditure requirements that it may impose on any of the Broadcasters’ programming services.

- e) Independent Producers shall, in their dealings with any Canadian broadcaster or any subscription-based non-linear on-demand service in Canada, be required to ensure that any development or licence agreement entered into as between the Independent Producer and such broadcaster or service shall conform with this Agreement.
- f) The CMPA agrees and the Independent Producers agree that the Broadcasters shall be afforded most favoured nation treatment in respect of this Agreement. Accordingly, if the CMPA enters into any separate terms of trade or similar agreement with any third-party or parties at any time after the date of execution of this Agreement, and such separate terms of trade or similar agreement contains terms that are more favourable to such third-party or parties than are accorded to the Broadcasters under this Agreement, then this Agreement will automatically be amended such that the Broadcasters will have the full benefit of such more favourable terms at the same time as those more favourable terms are accorded to the third-party or parties.
- g) Both the Broadcasters and the CMPA agree that the Broadcasters and Independent Producers will negotiate individual contracts in good faith, and in a spirit of mutual respect and collaboration, in accordance with this Agreement.

2. Editorial Control

- a) Subject to the following paragraphs in this section, editorial and creative control of a project rest with the Independent Producer.
- b) A Broadcaster's standard creative, financial and technical approvals (collectively, "Standard Approvals") shall apply on a project, except where this Agreement stipulates otherwise. Each Broadcaster agrees to post its current Standard Approvals on its website.
- c) Any consultations and requests for approvals addressed to either the Broadcaster or the Independent Producer will be made in sufficient time to enable the recipient to reply within a reasonable period of time that does not cause unreasonable delay in the development and/or production process.
- d) The Broadcaster may request changes to, or additional creative elements for, the project not contemplated at the time of entering into the licence agreement, provided that the Broadcaster provides an enhanced licence fee, proportionate to the scope of the new work required, to the Independent Producer to cover any associated additional costs not contemplated in the approved budget. The Broadcaster shall communicate such requested changes or additional creative elements as soon as possible and will do so in writing.

- e) The Broadcaster shall be entitled to corporate recognition in the credits of the program. Credit placement and credit titles, including credits awarded to the Broadcaster's personnel, shall be in conformity with industry standards. For clarity, the Broadcaster's personnel may be entitled to traditional credits, such as an "Executive in Charge of Production" credit, but shall not be entitled to Producer or Executive Producer credits.

3. Evaluation and Development

- a) The Broadcasters will continue to welcome program proposals from Independent Producers across Canada, making all reasonable efforts to effectively communicate with Independent Producers, on an ongoing and regular basis, as to the kind of projects it is interested in. Each Broadcaster shall identify on its website all programming services and the personnel who are responsible for responding to written program proposals for such programming services, including telephone number and e-mail address for each individual so identified, and agrees that it will not delegate this responsibility to other individuals not so identified. The evaluation phase for any project will begin with the submission by an Independent Producer of a written program proposal to a Broadcaster.
- b) All rights and ownership in the program proposal rest with the Independent Producer unless and until otherwise negotiated by a Broadcaster and the Independent Producer in a signed development agreement.
- c) The program proposal shall be treated as confidential by the Broadcaster. Any information provided to the Independent Producer by the Broadcaster with respect to programming strategies shall be treated as confidential by the Independent Producer. The parties recognize that from time to time the Broadcaster receives, and may be developing, multiple pitches pertaining to the same subject matter. The Broadcaster will not request that the Independent Producer waive any existing rights in the Independent Producer's program proposal.
- d) Sufficient creative materials must be supplied to the Broadcaster in order for the Broadcaster to determine whether it has an interest in the project. Written program proposals must be responded to by the Broadcaster within six (6) weeks of delivery. This timeline may be extended by mutual written consent for up to an additional six (6) weeks.
- e) In the event that the preceding timeline provided in subsection 3(d) above has elapsed without response from the Broadcaster, then the project is deemed to have been withdrawn and the Broadcaster shall have no rights or claims with respect to the written program proposal or any related elements. It is incumbent upon the Independent Producer to advise the Broadcaster in writing that the time period has elapsed or is about to elapse.

- f) If the Broadcaster expresses interest in a program proposal, the Independent Producer shall submit a business proposal (such as development budget, financing plan, details of any pre-existing contractual or financial commitments, underlying rights agreements, key production personnel, suggested locations) within sixty (60) days of reception of the written expression of such interest.

- g) Where the Broadcaster expresses interest in developing the project, then subject to the Broadcaster's approval of the creative plan and business proposal, the Broadcaster and the Independent Producer shall use best efforts to execute a development agreement within sixty (60) days that shall specify the creative and other materials to be developed by the Independent Producer, and other pertinent details of such development. The Independent Producer should not be expected by the Broadcaster to undertake development (including making development-related expenditures) without having an executed development agreement in place, nor should the Independent Producer seek reimbursement of development-related expenditures that have not been authorized by the Broadcaster.

- h) The development agreement will clearly specify each phase of development, with the Broadcaster having no more than eighteen (18) days, and no more than forty (40) days in the case of an animation co-production, following receipt of development materials from the Independent Producer, to inform the Independent Producer of whether it approves of the materials submitted. This timeframe may be extended by mutual written agreement. Should the Broadcaster not meet this timeframe, the Broadcaster will be deemed to have accepted the development materials.

- i) The development agreement shall stipulate that the payment schedule of development fees be linked to identification of the nature and number of the deliverables required under such agreement with no less than fifty per cent (50%) of the amount contributed by the Broadcaster to be paid by the Broadcaster to the Independent Producer upon signature of the development agreement, and no more than ten per cent (10%) of the amount tied to delivery of the final development materials.

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- j) In consideration of the Broadcaster's contribution to the development of the program, the Broadcaster (and any other broadcaster participating in the development of the program) will normally receive the first and exclusive right to:
- i. request changes to the delivered development materials;
 - ii. participate in additional development of the program (subject to agreement with the Independent Producer as to the nature and length of additional development); and
 - iii. negotiate a licence agreement in accordance with this Agreement. For greater clarity, the Broadcaster and the Independent Producer shall not negotiate, or pre-negotiate, licence terms in the development agreement, with licence terms only to be negotiated once the project has been fully developed, or upon a bona fide order of the project by the Broadcaster. Notwithstanding the foregoing, the Broadcaster may choose to provide the Independent Producer with either an outline of its usual expectations with respect to licensing and/or a template licence agreement for informational purposes only.
- k) Once a project has been fully developed to polished script (where applicable) and final deliverables have been received, as set out by the development agreement, the Broadcaster shall have up to six (6) months in which to decide to license such project. At this point, the Broadcaster shall:
- i. order the project (i.e. greenlight the project), subject to negotiation and agreement as to licence terms;
 - ii. agree with the Independent Producer to continue to further develop the project; or
 - iii. release its interest in the project in writing.
- l) Should the Broadcaster release its interest in the project at any stage in the development process, the rights in the project will immediately revert back to the Independent Producer, thereby permitting the Independent Producer to develop and produce the project with another broadcaster. The Broadcaster will only be entitled to reimbursement from the Independent Producer of its cash investment in the development of a project (as determined in the development agreement) if and when the project is greenlit by another broadcaster, with such reimbursement to be paid on the first day of principal photography or key animation. The Independent Producer will not be required to pay any interest, charges or other penalties on the Broadcaster's cash investment in the development of a project, except where the project has been greenlit and the Independent Producer has not reimbursed the Broadcaster on the first day of principal photography or key animation. In those circumstances where an Independent Producer assigns, in any manner, a project to another Independent Producer, the Independent Producer acquiring the rights in respect of the project will be required to assume the obligations to reimburse the original broadcaster's development contribution on the first day of principal photography or key animation.

4. Basic Licensing Conditions

- a) Once a project is greenlit by the Broadcaster, the Independent Producer will have up to ninety (90) days, or such other amount of time as may be reasonably and mutually be set so as to mesh with funding deadlines or exigencies of production, to confirm the other sources of financing for the project.
- b) The Broadcaster agrees that it will broadcast the program on a CRTC-licensed platform within twelve (12) months of the commencement of the licence term of the program to the Broadcaster.
- c) The Broadcaster will make good faith efforts to notify the Independent Producer of the first television broadcast of the program thirty (30) days in advance of such broadcast.
- d) Rights of first negotiation in both development and licence agreements will be required to be exercised by the Broadcaster by a fixed start date or in reference to a specified timeframe, with such start date or timeframe clearly identified in the development and/or broadcast licence agreement. In the absence of a fixed start date or timeframe, the timing of the exercise of such rights will be at the sole discretion of the Independent Producer. The timeframe for negotiations resulting from the exercise of a right of first negotiation shall be specified in the development and/or broadcast licence agreement, but in no event will exceed forty-five (45) days, except as provided in subsection 3(k) above and subsections 4(i) and 5(c) below.
- e) Development and broadcast licence agreements will grant no rights of last refusal to the Broadcaster, except that in the case of a broadcast licence agreement, the Broadcaster may be granted the right of last refusal to: (i) acquire exclusive exhibition rights (in accordance with this Agreement) for Additional Programs; and (ii) obtain an extension of the licence term as set out in subsection 5(c) below. For the purposes of this Agreement, "Additional Programs" means: any further episodes of the program subsequently produced for the same season or any subsequent season of the program; and any sequels, prequels or remakes of the program; or any spin-off programs (being programs based on, adapted from or derived from the program or the underlying property, including the characters and the format thereof). The broadcast licence agreement shall specify the period of time within which the Broadcaster must exercise its right of last refusal, but in no event will such period exceed forty-five (45) days from the Broadcaster's receipt of written notice of any third party offer received by the Independent Producer in respect of the licensing of Additional Programs (which notice shall include the material terms of the offer).

- f) So as to enable the Independent Producer to secure the necessary financing for the program, the Broadcaster shall execute the long-form broadcast licence agreement at least two weeks prior to the scheduled commencement of principal photography or commencement of animation, provided that the Independent Producer has submitted reasonable agreed-upon deliverables to the Broadcaster. Where the broadcast licence agreement has not been executed in accordance with the foregoing requirements, the parties shall mutually agree
- i. that the Broadcaster will cashflow the production through an advance against the broadcast licence fee until the broadcast licence agreement has been duly executed;
 - ii. to defer commencement of production until a mutually agreed upon date, provided that the Independent Producer is not financially prejudiced in the event that the delay is caused by the Broadcaster; or
 - iii. to decide not to proceed with the project.
- g) Where a project comes in under budget, the Broadcaster will be entitled to a pro rata share of savings proportional to its investment in the financing of the project.
- h) Where the Broadcaster has approved a project's financing plan, and the Independent Producer subsequently receives surplus funds (such as, for example, through a subsequent pre-sale or as a result of currency fluctuations), the Broadcaster and the Independent Producer will give good faith consideration to whether some or all of such surplus funds should form a part of the financing of the production budget, provided that in no event shall such surplus entitle the Broadcaster to require a reduction in its fair market value licence fee. The Broadcaster will only be entitled to receive a share of such surplus funds in proportion to any equity investment it has made in the project.
- i) The Broadcaster's right to renew a program by ordering additional episodes for a new season of the program from the Independent Producer must be exercised within six (6) months of the first broadcast of the last commissioned episode of the program (Renewal Period). Upon expiry of the Renewal Period, and subject to the Broadcaster's last refusal right as set out in subsection 4(e) above, the Independent Producer may enter into a licence agreement for additional episodes of the program with another broadcaster, provided the parties shall in good faith consider negotiating a buy-out of the licensed rights to previous episodes held by the Broadcaster by any subsequent broadcaster.

- j) The Independent Producer will only be required to obtain Errors and Omissions (E&O) Insurance for the period commencing as of the first day that the program is publicly announced and concluding no later than the conclusion of the licence term (including subsequent extensions) of the program or five (5) years in total, whichever ends earlier, unless there is a material and substantial E & O insurance claim during the relevant above-noted period.
- k) Consistent with section 6 below, a licence agreement should not unnecessarily restrict the ability of the Independent Producer to seek to exploit a project in other territories outside of Canada, subject to reasonable exclusive exhibition premiere rights, not to exceed six (6) months from the commencement of the licence term, except with respect to theatrical exhibition premiere rights, as provided in subsection 6(d) below. The Broadcaster's premiere rights shall not prevent the Independent Producer from showing the program at film festivals (or equivalent venues).

5. Licence Term

- a) The licence term for the television broadcast will be for a maximum of five (5) years, with the term to commence no later than six (6) months from delivery of the program (or the last episode of the program where it is a series), or as of the first telecast of the program (or of any episode of the program where it is a series), whichever is sooner.
- b) In no circumstances will the broadcast licence agreement stipulate that in the event that the Broadcaster elects to renew a program for an additional season, the licence term for the current season will be automatically extended to conclude co-terminus with the expiry of the licence term of the additional season.
- c) The Broadcaster has a right of first negotiation and last refusal (in accordance with subsections 4(d) and 4(e) above) to acquire the broadcast rights beyond the original five (5) year term through the negotiation and payment of an additional fair market value licence fee to the Independent Producer. Each subsequent licence term shall be for a period of up to five (5) years, with subsequent renewals following the same timeline for renegotiation. The Broadcaster may acquire these rights as of the earlier of:
 - i) Six (6) months prior to the expiry of the third (3rd) year of the original five (5) year licence term; or
 - ii) three months following the execution of the licence agreement for the second and each subsequent season or cycle of the program.

6. Rights Allocation

The parties acknowledge that Broadcasters should be able to enjoy the full use of a program for the licence term and for those Canadian broadcast exhibition windows or new digital platforms for which they have licensed the program. All parties further recognize the importance of appropriate and reasonable holdbacks on the exploitation of a program in Canada, so as to encourage maximum promotion and to secure the value of the rights acquired by a Broadcaster. At the same time, all parties recognize that there are certain exclusive rights that must be retained by the Independent Producer so as to ensure the maximum exploitation of the value of the program.

a) Rights Acquired by the Broadcaster

In return for the payment of a fair market value licence fee, the Broadcaster acquires the following exclusive, Canadian rights, in all languages in which the Broadcaster is licensed to operate (in accordance with footnotes 6 and 7):

- Linear broadcast rights on all CRTC licensed television services owned or affiliated with the Broadcaster;
- Linear streaming rights on all platforms (simultaneous or non-simultaneous with the broadcast channels);¹
- Free-to-consumer non-linear on-demand exhibition on all platforms;²
- Subscription-based non-linear on-demand exhibition on all platforms;³ and
- Creation and operation of a program website⁴, including the creation of original free-to consumer or subscription-based content for the website.⁵

In addition to the Broadcaster's exclusivity with respect to the foregoing rights and the consequent holdback in Canada regarding such platforms/exploitation, the Broadcaster shall have a holdback (commencing at the start of the licence term) in Canada against the exploitation of the format for the duration of the licence term together with a twelve (12) month holdback (commencing at the start of the licence term) in Canada against exploitation of the rights set out in subsection 6 (b) below.

¹ Must be geoblocked to Canada.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵The Independent Producer will have the right of first negotiation to develop and produce the original, free-to-consumer content for the program website.

b) **Rights Negotiated Between the Broadcaster and the Independent Producer**

At the Independent Producer's discretion, the Broadcaster may also acquire the following Canadian rights, subject to a 50/50 Broadcaster/Independent Producer revenue share on the Broadcaster's or Independent Producer's gross revenues, as the case may be. The foregoing revenue share arrangement may be modified where the Broadcaster contributes a super-licence fee, as provided under section 8 below. In addition, Games (non-promotional) and Merchandising (as listed in subsection 6 (d) below) are added to the rights set out in this subsection 6 (b) where the Broadcaster pays a super-licence fee. If the Broadcaster acquires any of the rights below, but does not exploit them within twelve (12) months of start of licence term, the rights so acquired will automatically revert to the Independent Producer.

- Transaction based (eg. on a per episode or discrete program basis) non-linear on-demand exhibition on all platforms, where the consumer secures temporary or rental access to the content, as opposed to a permanent copy;
- Electronic sell through or download to own via all platforms, where consumer secures a permanent copy of the content;
- In-flight; and
- DVD - Home Video

In the event the foregoing rights are retained by the Independent Producer, they shall be subject to the holdbacks set out in subsection 6 (a) above.

c) **Independent Producer-Created Original Digital Content (e.g. website, webisodes, mobisodes)**

(i) Free to Consumer Digital Content

For an additional fair market value licence fee, the Broadcaster may acquire Canadian rights to free-to-consumer original digital content produced by the Independent Producer. The Broadcasters and the CMPA agree to send a letter, in conjunction with Corus, to the President of the Canada Media Fund (CMF) stating that the current CMF Guidelines in respect of the financing of "rich and substantial" original digital content are inadequate and require revision and review.

(ii) Revenue-Generating Digital Content

At the Independent Producer's discretion, the Broadcaster may also acquire Canadian rights to revenue-generating original digital content produced by Independent Producer, subject to 50/50 Broadcaster/Independent Producer revenue share on the Broadcaster's gross revenues. If the Broadcaster acquires these rights but does not exploit them within twelve (12) months of start of licence term, the rights so acquired will automatically revert to the Independent Producer.

(d) **Rights Exclusively Retained by the Independent Producer**

The Broadcaster may not acquire or have revenue share/profit participation in any other rights (except as provided in sections 7 and 8 below), which rights shall not be subject to any holdback except as noted below, including the following:

- French-language (Canada)⁶
- Other languages (Canada)⁷
- Format⁸
- Theatrical⁹
- Music Publishing
- Games (non-promotional) and Merchandising¹⁰
- All other non-theatrical
- Canadian and International Retransmission
- Canadian and International Sublicensing¹¹ and/or Distribution¹²
- Publishing of any books or e-books or similar materials

(e) Any other rights not enumerated in this Agreement, whether related to the program or to original digital content produced for the program, shall, where necessary, be the subject of discussions between the CMPA, the Broadcasters and Corus in order to determine the appropriate placement of these rights in respect of the above sections.

⁶ For its fair market value licence fee as provided in subsection 6(a) above, the Broadcaster may acquire French-language rights for its own CRTC-licensed French-language programming service(s), where it intends to broadcast the program on that (those) service(s). If [BROADCASTER] acquires “premiere” rights in all languages, the Broadcaster shall have, at most, six (6) months from commencement of licence term to take its premiere.

⁷ For its fair market value licence fee as provided in subsection 6(a) above, the Broadcaster may acquire rights for other languages for its own CRTC-licensed programming service(s), where it intends to broadcast the program in those languages on that (those) service(s). If the Broadcaster acquires “premiere” rights in all languages, the Broadcaster shall have, at most, six (6) months from commencement of licence term to take its premiere.

⁸The Independent Producer will not exploit, or cause or authorize to be exploited, in Canada, any new program based on the format rights of the program during the Broadcaster’s licence term.

⁹ Subject to negotiated holdback for Canadian theatrical for no longer than licence term.

¹⁰ The Independent Producer will consult in good faith with the Broadcaster prior to exploitation.

¹¹ Except (a) within the Broadcaster’s corporate broadcast group, (b) if the Broadcaster operates a CRTC licensed conventional television service, then it shall also have the right to sub-license its conventional television rights to any unaffiliated conventional television service operating in those markets in Canada where the Broadcaster does not have a local station or in areas where its conventional television service is not receivable via over-the-air transmission (c) to sublicense to a distribution undertaking solely for the purposes of exploiting the rights granted in subsection 6(a) above, and, where applicable, subsection 6(b) above.

¹² If the Broadcaster acquires “premiere” rights, Broadcaster shall have, at most, six (6) months from commencement of licence term to take its premiere.

7. Equity

- (a) On all programs, at Independent Producer's discretion, the Broadcaster may make a recoupable equity investment over and above its fair market value licence fee. On any such project, the Broadcaster will recoup its equity investment pari passu with the Independent Producer (with any investment of tax credits recognized as an equity investment by the Independent Producer), and on a most favoured nations basis with other equity investors, following recoupment of any distribution advance in the financial structure.
- (b) Notwithstanding subsection 7(a) above, if, on any program that is a program of national interest (as defined by the CRTC, but for certainty, for the purposes of this Agreement includes drama programs), in addition to the payment of a licence fee that is in excess of the current (or subsequently increased) CMF threshold licence fee for the applicable genre, the Broadcaster makes an equity investment in a program that is \$C500,000 or more, then the Broadcaster's equity investment shall be recouped as is currently provided in CMF Guidelines, being pari passu with all other equity investors including any investment by the Independent Producer of provincial tax credits, and with Independent Producer's federal tax credit investment, if any, being recouped on a subsequent tier, following recoupment of any distribution advance in the financial structure. For clarity, if licence fees are paid by more than one Canadian broadcaster on a program, which together meet or exceed such threshold, then the \$C500,000 equity investment threshold referenced above may be met in the aggregate by the applicable broadcasters.
- (c) Notwithstanding subsection 7(a) above, if, on any program that is a program of national interest (as defined by the CRTC, but for certainty, for the purposes of this Agreement includes drama programs), in addition to the payment of a licence fee that is in excess of the current (or subsequently increased) CMF threshold licence fee for the applicable genre, or in the case of a made for television movie a fair market value licence fee, the Broadcaster makes an equity investment in a program that is thirty per cent (30%) or more of the program's production budget (but for greater certainty, no less than \$C500,000), then the recoupment terms applicable to the Broadcaster's equity investment shall be subject to negotiation with the Independent Producer. For clarity, if licence fees are paid by more than one Canadian broadcaster on a program, which together meet or exceed such threshold, then the thirty per cent (30%) equity investment threshold referenced above may be met in the aggregate by the applicable broadcasters.
- (d) In the case of feature films, the recoupment terms applicable to any equity investment made by the Broadcaster shall be subject to negotiation with the Independent Producer, and subsections 7(a), (b) and (c) above do not apply.

8. Super Licence Fees

- a) At the Independent Producer's discretion, in return for the payment of a super-licence fee (defined in subsection 8 (c) below), the Broadcaster will be eligible:
 - i. in accordance with the requirements of subsection 6(b) above, to enter into negotiations for a higher revenue share arrangement in respect of those rights enumerated in subsection 6(b) above, as well as with respect to revenue-generating original digital content produced by Independent Producer (as enumerated in subsection 6(c) above) and Games (non-promotional) and Merchandising (as enumerated in subsection 6(d) above), with the Broadcaster's revenue share to be not more than seventy-five per cent (75%); and
 - ii. to negotiate profit participation with respect to the rights enumerated in subsection 6(d) above. Such profit participation will be no greater than one and one half (1.5) times the dollar investment, as expressed as a percentage of budget, by the Broadcaster that is over and above the amounts indicated in paragraphs 8(c)(i) and (ii) below (or to such level that does not trigger additional financial entitlements to any applicable institutional financier of the project, as reflected in its published guidelines), up to a maximum of thirty per cent (30%).
- b) The Broadcaster's profit participation will be triggered once all equity investors in the project have recouped their investments, including any tax credit investment by an independent producer in the financing of the project.
- c) The Broadcaster's super-licence fee is defined as the lesser of:
 - i. the current (or subsequently increased) combined CMF threshold licence fee for the applicable genre (if any) plus the maximum licence fee top-up for that genre; or
 - ii. a licence fee representing at least sixty per cent (60%) of the project's production budget.

9. Producer Fees and Overhead

Producer fees and overhead will be industry standard, as accepted by Canada Revenue Agency. Independent Producers will not defer and/or invest producer fees and overhead.

10. Retention of Producer Tax Credits

At the Independent Producer's discretion, the Independent Producer may invest tax credits in a project to a maximum of seventy-five per cent (75%) of eligible tax credits for the project.

11. Audit Rights

Where either the Independent Producer or the Broadcaster is entitled to a revenue share under this agreement, the applicable party will have standard industry audit rights, including the right to recoup reasonable audit fees and expenses in those circumstances where audit reveals a variance greater than five per cent (5%). Such audit rights and remedial provisions will only be triggered where the amount(s) in dispute is (are) greater than \$C1,000.

12. Dispute Resolution

Disputes relating to breaches of this Agreement, and any agreement to which this Agreement is subject, shall be resolved through the Dispute Resolution Provision as set out in Appendix "A" attached hereto. For greater clarity, disputes regarding individual matters of contract not relating to this Agreement are not subject to arbitration through this process.

13. Timeframe and Administration

- a) This Agreement shall come into effect as of June 1, 2011 (save and except for sections 7, 9 and 10 above, which shall be effective as of August 1, 2011) and shall remain in force with respect to each Broadcaster until the expiry of the longest of the next issued licence terms of the Broadcasters (excluding Astral's licence term). The parties acknowledge and agree that there shall be a three (3) month transitional period following June 1, 2011 to allow for the full working implementation of the agreement. Six (6) months prior to its expiry, each Broadcaster and the CMPA shall review this Agreement and determine whether it should be renewed or amended. The negotiations in respect of any subsequent Agreement will conclude in time for each respective Broadcaster's subsequently issued licence renewal. Notwithstanding the foregoing, the parties may re-open this Agreement any time after two (2) years following its coming into force. If, however, no agreement is reached in respect of any modifications, then this Agreement in its current form will remain in force for the length of each respective Broadcaster's licence term.
- b) Semi-annually, the Broadcasters, Corus, and the CMPA shall meet to discuss any new issues or any current provisions which are no longer effective. The parties agree to set up a working committee ("Working Committee") for this purpose, and to this end, the Broadcasters, Corus and the CMPA each shall name, within thirty (30) days of signing this Agreement, two (2) delegates to represent them.
- c) It is the intention of the parties that the Working Committee shall address issues arising under this Agreement, if any, and is not intended as the forum for resolution of concerns arising out of any specific contract or negotiation.
- d) This Agreement may be signed in one or more parts, each part of which shall constitute one part of the originally signed agreement.

Signed this day of April, 2011 in the City of Toronto in the Province of Ontario.

**For the Canadian Media
Production Association:**

Norm Bolen
President & Chief Executive Officer

John Barrack
Chief Legal Officer &
Chief Operating Officer

**For Astral Television Networks,
A Division of Astral Broadcasting Group Inc.:**

For Bell Media Inc.:

For Rogers Broadcasting Limited:

For Shaw Media Inc.:

APPENDIX "A"

Dispute Resolution Provision

1. Objectives

The Dispute Resolution Provision outlined below is intended to facilitate rapid and efficient resolution of disagreements relating to the interpretation or application of this Agreement, and to provide effective remedies for any finding of breaches thereof.

A dispute is considered to have been identified and commenced where an Independent Producer, a Broadcaster or the CMPA ("Party" or "Parties") serves written notice on the other(s) that it has concerns with respect to the interpretation or application of this Agreement.

This Dispute Resolution Provision shall not apply to subsection 3(c) of this Agreement (except with respect to a Broadcaster requesting that the Independent Producer waive any existing rights in the Independent Producer's program proposal) or to disputes arising from interpretation or allegations of breach in respect of matters unrelated to, or unaffected by, the terms set out in this Agreement.

2. Appointment of Mediator

- (a) In the event of a dispute between the Parties regarding this Agreement, the Parties agree to use commercially reasonable efforts to resolve the dispute.
- (b) If the Parties are unable to resolve the dispute within fifteen (15) business days (excluding statutory holidays in the jurisdiction) from the date that one of the Parties notifies the other(s) in writing of such dispute, the Parties agree to refer the matter to a private mediator for mediation.
- (c) The sole mediator will be appointed jointly by the Parties. If the Parties have failed to appoint a mediator as required, the Parties shall refer the matter to a neutral agent ("Agent"), who shall be The Honourable Patrick J. LeSage, or, where unavailable, an alternate agent, who shall be The Honourable Coulter A. A. Osborne ("Alternate Agent"), to select a mediator in accordance with the following procedure:
 - i. The Agent will send to each Party a list of at least five (5) impartial and independent candidates, showing the name, address and resume of each proposed candidate.
 - ii. Within five (5) business days of receipt of the proposed list of candidates each Party shall return the list deleting any names of candidates unacceptable to that Party. The remaining names on the list shall be ranked by each Party in order of preference.
 - iii. From the returned list the Agent shall designate as the Mediator for the dispute the person available to serve as Mediator who has received the most favorable acceptance on both of the lists.

- iv. A prospective Mediator shall disclose any conflicts of interest or any circumstances likely to give rise to justifiable doubt as to the Mediator's impartiality or independence. A Mediator may be challenged if such circumstances are disclosed and the Parties shall appoint a replacement Mediator in accordance with this process.
- (d) If the matter referred to mediation is not resolved within thirty (30) days, the Party initiating the dispute may refer the matter to arbitration.

3. Appointment of Arbitrator

- (a) Provided the Parties agree, nothing in this Agreement shall prevent a person who has mediated the dispute from arbitrating it as well.
- (b) If either Party does not wish the mediator to act as arbitrator the sole arbitrator will be appointed jointly by the Parties. If the Parties have failed to appoint an arbitrator as required, the Parties may use the Agent, if unavailable, the Alternate Agent to select an arbitrator in accordance with the following procedure:
 - i. The Agent will send to each party a list of at least five (5) impartial and independent candidates, showing the name, address and resume of each proposed candidate.
 - ii. Within five (5) business days of receipt of the proposed list of candidates each Party shall return the list deleting any names of candidates unacceptable to that Party. The remaining names on the list shall be ranked by each Party in order of preference.
 - iii. From the returned list the Agent shall designate as the Arbitrator for the dispute the person available to serve as Arbitrator who has received the most favorable acceptance on both of the lists.
 - iv. A prospective Arbitrator shall disclose any conflicts of interest or any circumstances likely to give rise to justifiable doubt as to the Arbitrator's impartiality or independence. An Arbitrator may be challenged if such circumstances are disclosed and the Parties shall appoint a replacement Arbitrator in accordance with this process.

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4. Powers of Arbitrator

- a) The Arbitrator is vested with the powers provided for in the *Arbitration Act, 1991* (Ontario). With the understanding that the Arbitrator shall not have the power to prescribe a specific licence fee, he or she has the authority to do any of the following:
 - i. Hear any complaints by any Party relating to:
 - 1. The interpretation or application of this Agreement;
 - 2. Alleged breach or breaches by either a Broadcaster or an Independent Producer of this Agreement.
 - ii. Render a binding decision regarding:
 - 1. The correct interpretation or application of this Agreement;
 - 2. A finding or non-finding of breach or breaches of this Agreement.
 - iii. Order what action any Party should take or refrain from taking in order to comply with this Agreement.
 - iv. Where the Arbitrator finds a breach or breaches of this Agreement, to fashion any remedy that the Arbitrator regards as appropriate, including an award of general damages which compensates a Party for any harm caused to it as a result of a breach of this Agreement by the other Party.
 - v. Award costs to either Party, where the circumstances warrant.

5. Arbitral Decisions

The Arbitrator's decisions will be delivered in a timely manner to the Parties, with a copy to the CMPA.

6. Costs

Unless otherwise determined by the Arbitrator, costs of each arbitration will be borne equally by the Parties (which in this case shall include the Independent Producer(s)).

7. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The *Arbitration Act, 1991* (Ontario) shall apply to all arbitrations under this Agreement.

8. Filing of Agreements

The Independent Producer may file with the CMPA copies of development or licence agreements where the Independent Producer has issues of concern with respect to the interpretation or application of this Agreement. The Independent Producer may do so notwithstanding any confidentially language contained in those agreements. The CMPA agrees to keep confidential, on a solicitor-client basis, particulars of any development or licence agreements that are filed with it by an Independent Producer.

9. CMPA as Necessary Party

The CMPA is a necessary party to any mediation or arbitration under this Agreement. For greater clarity, the CMPA may only initiate disputes on its own behalf in relation to the administration of the agreement itself, and not in respect of any particular development or licence agreement.