



# SHORT-TERM COMPENSATION FUND FOR CANADIAN AUDIOVISUAL PRODUCTIONS

## GUIDELINES

APPLICABLE AS OF OCTOBER 28, 2020

## **SHORT-TERM COMPENSATION FUND FOR CANADIAN AUDIOVISUAL PRODUCTIONS**

The Short-Term Compensation Fund for Canadian Audiovisual Productions (“**STCF**” or the “**Fund**”) is a temporary measure whose purpose is to minimize the consequences of the void created by the lack of insurance coverage for interruptions in filming and the abandonment of productions caused by the COVID-19 pandemic in the sector of audiovisual production.

Through the Fund, Telefilm Canada (“**Telefilm**”) will indemnify eligible producers for reasonable Canadian production costs directly caused by an interruption of more than one day in filming or the producer’s abandonment of the production prior to the end of filming due to (i) a confirmed diagnosis (COVID-19) of an actor or director declared on the insurance policy covering the project or (ii) any confirmed outbreak (COVID-19) on set that requires a complete production shutdown in accordance with current standards required by the applicable authorities.

In order to benefit from the coverage offered under this Fund, eligible producers must submit an application for pre-eligibility to the STCF and enter into a pre-eligibility agreement with Telefilm before the start of principal photography and before the appearance of any case of infection with COVID-19 among the cast and crew. For more information on the pre-eligibility and compensation process, please refer to section 7 below.

### **1. DURATION OF STCF**

The STCF will come to an end upon the occurrence of the earliest of the following events (“**Fund Expiry Date**”):

- The implementation of a permanent alternative solution to cover interruptions in and the abandonment of filming due to the COVID-19 pandemic for the entire audiovisual industry;
- Notice from the Federal Government;
- The exhaustion or lapse of the budget envelope allocated to this Fund; or
- March 31, 2021.

### **2. ELIGIBLE APPLICANTS**

To be eligible for the compensation provided by the STCF, the applicant must:

- Be a Canadian corporation eligible for the [Canadian Film or Video Production Tax Credit \(CPTC\)](#);
- Have and apply a COVID-19 safety plan in accordance with the current applicable sanitary requirements and ensure that the project and all its participants systematically comply with the sanitary safety measures throughout the filming in accordance with the standards currently in effect as required by the applicable authorities and keep such plan updated. Among other things, this plan must provide for the implementation of measures in situations where social distancing is not possible and identify a person responsible for its application;
- Hold all the copyrights in the project necessary for its development, production and exploitation, as well as the control of the project; in the case of a coproduction, the applicant must hold these rights and control the project in proportion to its participation in it;

- Be an independent production company (not affiliated<sup>1</sup> with any broadcaster<sup>2</sup>).

**Note:** only one application for pre-eligibility will be processed per project. Therefore, in the case of national coproductions, the coproducers will be required to designate one coproducer from among them to submit the application.

### 3. ELIGIBLE PROJECTS

#### 3.1. At the time of pre-eligibility

To be eligible for the compensation provided by the STCF, a project must meet the following criteria:

- Be an audiovisual production eligible for the Canadian Film or Video Production Tax Credit (CPTC);
- Be covered by an insurance currently in effect provided by an insurance company specialized in audiovisual production (comprehensive producers insurance and general liability insurance) containing an exclusion relating to COVID-19 with respect to the project subject to the application;
- Not benefit from any coverage for interruptions or abandonment of filming caused by COVID-19 under any other compensation program or insurance policy; and
- Have a fully confirmed financial structure.

The fulfilment of the Fund's eligibility criteria does not guarantee access to the Fund. Applications will be processed on a first come, first served basis, incumbent on earliest date of start of principal photography. However, Telefilm reserves the right to apply its discretionary judgment to ensure a diversity of projects that reflects the many perspectives of the audiovisual industry.

#### 3.2. At the time of the compensation request

In addition to the foregoing criteria,

- The project must have been the subject of a pre-eligibility agreement under the STCF between the applicant and Telefilm **prior to** the start of principal photography and prior to the appearance of any cases of infection amongst the cast and crew;
- Principal photography of the project in Canada must have been interrupted by more than one day or abandoned by the applicant due to (i) a confirmed diagnosis (COVID-19) of an actor or director declared on the insurance policy covering the project or (ii) of any other confirmed

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<sup>1</sup> A production company is considered to be "affiliated" with a broadcaster in accordance with the definition of this term as set out in the [Canada Business Corporations Act](#).

<sup>2</sup> The term "Broadcasters" refers to (i) a Canadian programming undertaking, public or private, licensed to operate by the Canadian Radio-television and Telecommunications Commission (CRTC), including exempt broadcasters regulated by the CRTC via Broadcasting Order CRTC 2015-88; (ii) an online service (including services accessed via a set-top box) owned, controlled and operated by a Canadian CRTC-licensed programming undertaking; (iii) an online service (including services accessed via a set-top box) owned, controlled and operated by a Canadian broadcasting distribution undertaking, licensed to operate by the CRTC; or (iv) or CRTC-licensed VOD services.

outbreak (COVID-19) on the set that requires a complete production shutdown in accordance with current standards required by the applicable authorities. These events must not have been the result of an omission, fault, or negligence on the part of the applicant;

- Project filming must have been interrupted or abandoned prior to the Fund Expiry Date;
- The COVID-19 safety plan and all of the sanitary requirements applicable at the time of filming have been systematically complied with throughout the filming; and
- A minimum of 15% of the production budget or, in the case of audiovisual coproductions governed by treaties, 15% of the Canadian production budget, must have been incurred and contractually payable at the time of the interruption or abandonment.

#### **4. APPLICATION FOR PRE-ELIGIBILITY TO THE STCF**

The application for pre-eligibility must be accompanied by the following documents:

- The attestation of and commitment to comply with the eligibility criteria referred to in sections 2 and 3.1 above;<sup>3</sup>
- Proof of a comprehensive producers insurance policy and the applicant's comprehensive general liability insurance policy for the project, including the names of the actors and directors covered;
- The detailed final budget for the project, based on the standard budget template available on the STCF's website;
- In the case of national coproductions, the Applicant Designation Form duly completed by all the coproducers;
- The production schedule;
- The list of cast and crew; and
- A list of the different filming locations.

Telefilm reserves the right to request any other document it considers necessary to process the application.

#### **5. SCOPE OF COVERAGE**

##### **5.1. Eligible costs**

The coverage is limited to the reasonable Canadian production costs incurred and contractually payable directly caused by an interruption of more than one day in filming or the producer's abandonment of the production prior to the end of principal photography due to (i) a confirmed diagnosis (COVID-19) of an actor or director declared on the insurance policy covering the project or (ii) of any other confirmed outbreak (COVID-19) on set that requires a complete production

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<sup>3</sup> Based on the form available on the Fund's webpage.

shutdown in accordance with current standards required by the applicable authorities (hereinafter the “**Eligible Costs**”).

#### **5.1.1. Interruption cases**

In the event of an interruption, the Eligible Costs are limited to all additional production costs incurred by the applicant until the resumption of filming activities and which are contractually payable, other than the ineligible costs specified in section 5.2 below. Without being limited to it, the majority of additional Eligible Costs should be found among the budget items in Part B of a standard production budget<sup>4</sup>.

#### **5.1.2. Abandonment cases**

In the case of abandonment, the Eligible Costs include all production costs incurred by the applicant up to the moment of abandonment and which are contractually payable, other than the non-eligible costs specified in article 5.2 below.

The Eligible Costs may include sick leave payable to the members of the cast and crew infected with COVID-19, as well as the compensation payable to the directors, actors and other members of the team under the collective agreements and labour laws applicable in case of an interruption in filming or an abandonment of production caused by the aforementioned events.

## **5.2. Ineligible costs**

The ineligible costs include the following:

- Non-Canadian costs;
- Costs incurred outside of Canada;
- Expenses related to any interruption in filming resulting directly or indirectly from an event other than those referred to in subsection 5.1 above;
- Expenses caused by interruptions related to the tightening of the sanitary protocols by the national, provincial, or local sanitary authorities and the confinement orders/decrees;
- Revenue losses;
- Expenses otherwise covered by private insurers or other public programs;
- Producers’ fees and administrative expenses;
- Costs relating to an interruption or abandonment which occurred outside of Canada;

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<sup>4</sup> Based on the form available on the Fund's webpage.

- Costs relating to an interruption or abandonment occurring outside the filming dates declared and agreed to in the pre-eligibility agreement under the FICT between the applicant and Telefilm; and
- Expenses not directly related to production.

## **6. COMPENSATION**

### **6.1. Temporary interruption**

In case of a temporary interruption in the project's production, the compensation provided by Telefilm under this Fund shall take the form of an indemnity equal to the total of the Eligible Costs indicated in subsection 5.1.1 less a deductible equal to the lesser of the following amounts: (i) 15% of the said Eligible Costs; or (ii) \$100,000.

The total compensation for a temporary interruption, per project, shall not exceed the lesser of the following amounts:

- \$1.5 million;
- 20% of the total production budget submitted to Telefilm at the pre-eligibility application stage.

### **6.2. Permanent abandonment of production**

In case of the permanent abandonment of the project's production before the end of filming, the compensation provided by Telefilm under this Fund shall take the form of an indemnity equal to the total of the Eligible Costs indicated in subsection 5.1.2 less a deductible equal to the lesser of the following amounts: (i) 15% of the said Eligible Costs; or (ii) \$350,000.

The total compensation for the abandonment of the production, per project, shall not exceed the lesser of the following amounts:

- \$3 million;
- 20% of the total production budget submitted to Telefilm at the pre-eligibility application stage.

For a period of 48 months following a claim for abandonment, the applicant and their beneficiaries will be required to obtain the prior approval of Telefilm for any transaction involving, directly or indirectly, the project.

Applicants can file more than one claim for the same project. In such cases, the amounts of compensation offered by Telefilm are cumulative and subject to the limits indicated in subsections 6.1 and 6.2. Individual claims for losses of less than \$5,000 in Eligible Costs are not admissible. However, where an applicant has several claims, and the total of which exceeds \$5,000 in Eligible Costs, said claims are admissible.

The costs relating to the analysis of the claim are the responsibility of the applicant, even if the claim for compensation is refused in whole or in part. These costs will be deducted, where applicable, from

the amount of compensation offered by Telefilm or, in the event of refusal of compensation, payable by the Applicant upon receipt of an invoice from Telefilm to this effect.

## 7. APPLICATION PROCESS

There are two steps to the application process: pre-eligibility and the application for compensation.

### 7.1. Pre-eligibility of projects

As indicated above, to be able to submit claims under this Fund, applicants must conclude a pre-eligibility agreement with Telefilm under the STCF **prior to** the start of principal photography of the project and prior to the appearance of any cases of infection amongst the cast and crew. To this end, applicants should file their application within a reasonable time, but no less than five (5) business days before the start of principal photography, to allow the pre-eligibility agreement to be entered into before filming begins. Telefilm will assess the applications filed in accordance with the criteria set out in sections 2 and 3 above. Telefilm is not subject to any time limit for processing applications, so its response times may vary depending on the volume and complexity of the applications submitted. Telefilm cannot be held responsible in the event an application is submitted too late and cannot be processed prior to the starting date of principal photography.

Applicants must submit their application for pre-eligibility online via [Dialogue](#). Therefore, all new applicants must create an account in Dialogue before submitting their application, which may result in a few days' delay. Applicants must submit the appropriate application form on Dialogue. All the other relevant documents indicated in Section 4 above must also be submitted online, via Dialogue. If you have any technical problems, please contact us at [services@telefilm.ca](mailto:services@telefilm.ca).

### 7.2. Evaluation of claims

Applicants must notify Telefilm in writing no later than 24 hours after an interruption in filming of more than one day if they have reasonable grounds to believe that it is due to (i) a confirmed diagnosis (COVID-19) of an actor or director declared on the insurance policy covering the project or (ii) any confirmed outbreak (COVID-19) on set that requires a complete production shutdown in accordance with current standards required by the applicable authorities.

**Any claim under the STCF must be submitted within 30 days following the resumption of filming, and in all events, no more than 15 days after the Fund Expiry Date, or be subject to the refusal or non-availability of funds.** The claim must be accompanied by a letter from the project insurer confirming the denial of insurance coverage for the costs claimed. Furthermore, the applicant must clearly identify, among the costs claimed, which are Related Parties transactions<sup>5</sup>.

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<sup>5</sup> "Related Parties" are defined as parties that are related within the meaning of the CPA Canada Handbook, as that definition may be amended, completed or replaced from time to time, and as that definition may be adapted by Telefilm to the context of the film and television industry.

Once a claim has been made, Telefilm and/or its representative, i.e. an independent claims adjuster, will review the file and submit a recommendation to Telefilm, which will render a decision on the payment of compensation, as the case may be.

Any decision concerning the eligibility for the program or the estimate of the eligible losses and value of the compensation offered by the Fund shall be final and without appeal. Telefilm shall have absolute discretion to accept or refuse the payment of compensation or an application for pre-eligibility.

Applicants are required to cooperate with Telefilm and/or its representative and submit any information or document requested by them, as soon as possible, failing which, Telefilm may refuse the payment of compensation under the STCF. Furthermore, the evaluation of any application submitted under this Fund must be completed no later than 30 days following the Fund Expiry Date, or be subject to the refusal or non-availability of funds.

Applicants have an obligation to minimize the damages caused by the interruption or abandonment of production, failing which, Telefilm may refuse the payment of compensation under the STCF.

Telefilm reserves the right to assess the reasonableness of the costs claimed and to refuse the payment of compensation for any costs it deems unreasonable, in its absolute discretion.

## **8. GENERAL INFORMATION**

While compliance with the guidelines is a prerequisite to eligibility, compliance does not guarantee entitlement to access to the STCF. Telefilm may adjust its guidelines and application forms from time to time as required. Telefilm has full discretion in the application and interpretation of these guidelines and the exceptions thereto. In all questions of interpretation of either these guidelines, or the spirit and intent of the STCF, Telefilm's interpretation shall prevail.

The STCF shall not have the effect of creating any right or cause of action in favour of the applicants and against Telefilm and/or its representative for any compensation provided for herein.

Any information, in any form, provided, obtained, created, or communicated in connection with an application is subject to the [Access to Information Act](#) and the [Privacy Act](#).

The STCF is subject to the availability of funding from government.