

## ABORIGINAL PEOPLES TELEVISION NETWORK

**THIS PROPOSAL AGREEMENT FOR PRODUCERS** made with effect as of the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

**BETWEEN:**

\_\_\_\_\_  
a company incorporated under the laws of  
(hereinafter called the "**Producer**"),

**OF THE FIRST PART,**

- and -

**ABORIGINAL PEOPLES TELEVISION NETWORK INCORPORATED**  
a not-for-profit company incorporated under the laws of Canada,  
(hereinafter called "**APTN**"),

**OF THE SECOND PART.**

**WHEREAS** the objectives of **APTN** include supporting and promoting the production of Aboriginal programming that will meet its overall goals;

**AND WHEREAS** the goals of **APTN** include, among other things, promoting the broadcasting of Aboriginal programming and the establishment of a professional and world-class viable Aboriginal media production industry in Canada;

**AND WHEREAS** the Producer is Aboriginal or qualifies as an Aboriginal Production Company or the Proposal (as defined below) otherwise qualifies for funding or licencing under the Acquisition and Licensing Policy (the "**Policy**") of APTN;

**AND WHEREAS** program formats, ideas, titles, names and characters, as well as literary and other materials ("**Materials**") submitted from time to time by producers to APTN in connection with a proposal ("**Proposal**") by the Producer seeking development funding from or a licence agreement with APTN may be identical or similar to Materials in the public domain, already submitted or which may be submitted by other producers or which may already have been developed or which may be developed or licensed independently by APTN;

**AND WHEREAS** APTN requires all producers, when submitting a Proposal for development funding or licensing, to sign this Agreement before APTN will consider any Proposal, to avoid any misunderstandings between APTN and producers as to the use of Materials submitted with Proposals submitted to APTN;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

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## ARTICLE 1 - DEFINITIONS

### 1.01 Defined Terms

As used herein and in any schedule hereto, the following terms shall have the following meanings respectively:

- (a) **“Aboriginal Person”** - means a First Nation, Métis or Inuk individual who is ordinarily resident in Canada, as verified to the satisfaction of **APTN**;
- (b) **“Aboriginal Production Company”** - means a sole proprietorship, a limited company, a co-operative, a partnership or a not-for-profit organization in which Aboriginal Persons have at least fifty-one (51%) percent ownership and control, or a joint venture consisting of two (2) or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business, provided that the Aboriginal business(es) has at least fifty-one (51%) percent Aboriginal ownership and control of the joint venture, as verified to the satisfaction of **APTN**;
- (c) **“Affiliate”** - where used to indicate the relationship between companies, means any company where:
  - (i) one is the subsidiary of the other;
  - (ii) both are subsidiaries of the same company; or
  - (iii) each company is controlled by the same person or company;
- (d) **“Agreement”** - means this agreement and the attached schedules and all amendments hereto made by written agreement between the Producer and **APTN**;
- (e) **“Associate”** - where used to indicate a relationship with any person or company, means:
  - (i) any other company of which that person or the company first mentioned beneficially owns, directly or indirectly, equity shares carrying more than ten (10%) percent of the voting rights attached to all equity shares of that other company for the time being outstanding;
  - (ii) any trust or estate in which that person or company has a substantial beneficial interest or as to which that person or company serves as trustee or in a similar capacity;
  - (iii) any spouse, son or daughter of that person;
  - (iv) any relative of that person, or of his spouse, other than a relative referred to in clause (iii), who has the same home as that person; or
  - (v) any partner of that person or company;

## **ARTICLE 2 - THE PRODUCER'S ACKNOWLEDGEMENTS, REPRESENTATIONS AND WARRANTIES**

### **2.01 Ownership and Qualification**

The Producer represents and warrants that:

- (a) the Materials being submitted to APTN with this Agreement in connection with the Proposal are original, were created and are solely owned by the Producer, and no other person, firm or corporation has any right, title or interest in the Materials, including, without limiting the generality of foregoing, any copyright in the Materials (except as noted in the description of Materials attached hereto as Schedule "1");
- (b) the Producer has secured all necessary waivers of moral rights in the Materials;
- (c) the Producer has the right to submit the Materials to APTN and agrees to do so on the terms and conditions set out in this Agreement in connection with the Proposal for development funding or a licence agreement submitted to APTN.
- (d) the Producer:
  - (i) is an Aboriginal Person or an Aboriginal Production Company; or
  - (ii) has submitted a Proposal that otherwise qualifies for funding or licensing under the Policy.

### **2.02 No Obligation To Proceed**

The Producer acknowledges that APTN has not made any prior promises or representations to the Producer regarding the Materials or any development funding or licence agreement in respect to the Proposal, and agrees that no fiduciary relationship is created by the making or consideration of the Proposal, and that APTN is under no obligation to the Producer if APTN, through its Independent Selection Committee, chooses not to proceed with any development funding or licensing of the Proposal in respect of which the Materials have been provided to APTN.

### **2.03 Return of Materials**

The Producer acknowledges that APTN is under no obligation to return the Materials to the Producer and agrees that APTN shall not be liable for loss of or damage to the Materials or any part thereof, and the Producer confirms that it has maintained copies for its file.

### **2.04 No Compensation**

The Producer specifically acknowledges and agrees that it shall not be entitled to any payment or compensation from APTN if APTN produces, funds or licences any

production based upon Materials similar to the Materials provided to APTN by the Producer which have been received prior to receipt of the Materials from the Producer or which are received subsequent thereto or Materials in the public domain, or if APTN uses program formats, ideas, titles, names and/or characters independently developed by APTN, based on such similar or public domain Materials, but which are not based on any concrete, original work or works protectable as a literary or dramatic work under the *Copyright Act of Canada* (“**Protected Work**”) provided to APTN by the Producer.

## **2.05 Similar Materials**

The Producer further specifically acknowledges and agrees that APTN may have previously independently developed, funded or licensed a production based upon Materials, or may hereafter independently develop, fund or licence a production based upon Materials, including Materials in the public domain, which, in either case, are identical or similar to the Materials being submitted to APTN in connection with the Proposal, and the Producer agrees that APTN shall have the unrestricted right to use such identical or similar Materials, including identical or similar titles, names and/or characters, developed independently, funded or licensed by APTN, and the Producer agrees that the Producer shall have no right of recourse against APTN for such usage, and shall not be entitled to any compensation as a result.

## **ARTICLE 3 - APTN'S ACKNOWLEDGEMENTS, REPRESENTATIONS AND**

### **WARRANTIES 3.01 Confidentiality**

To the extent that any of the Materials provided by the Producer to APTN constitute a Protected Work which the Producer has not published or made available to any third party (“**Confidential Protected Work**”), APTN shall hold in strictest confidence the Confidential Protected Work submitted by the Producer to APTN in connection with the Proposal, and shall not reveal the Confidential Protected Work to any other person, firm or corporation nor make any disclosure of the Confidential Protected Work, except as permitted herein, without the prior written consent of the Producer.

### **3.02 Reliance on Producer**

APTN acknowledges and is relying upon the representations of the Producer that the Producer is the owner of all right, title and interest in the Materials being submitted by the Producer to APTN in connection with the Proposal, including, without limitation, the copyright in such Materials, subject to the exceptions noted in the description of Materials attached to this Agreement, and that the Producer has secured all necessary waivers of moral rights in the Materials.

### **3.03 Use of Protected Work**

APTN shall make no use of any Protected Work being submitted by the Producer to APTN in connection with this Proposal, except in connection with the independent production, funding or licensing of a production pursuant to the terms of APTN's standard form of Development Agreement, Program Production and License Agreement or other agreement entered into between APTN and the Producer should APTN consider it advisable.

## **ARTICLE 4 - INDEMNIFICATION**

### **4.01 Indemnification**

The Producer hereby agrees to indemnify and save harmless APTN from and against all claims, demands, actions, causes of actions, debts, damages and costs (including without limitation, court costs, professional fees and counsel fees on a solicitor/client basis) of any nature or kind whatsoever which APTN may incur or suffer arising out of this Agreement, the Proposal or the Materials submitted with the Proposal, or any use thereof.

## **ARTICLE 5 - ASSIGNMENT**

### **5.01 Assignment by APTN**

APTN shall be entitled, without notice to the Producer, to assign any or all of its interest herein to any assignee without restriction of any kind whatsoever.

### **5.02 Assignment by Producer**

The Producer shall not be entitled to assign any interest herein without the prior written consent of APTN, which consent may be arbitrarily withheld by APTN or provided, subject to such terms and conditions as APTN in its sole discretion may allow.

## **ARTICLE 6 - GENERAL**

### **6.01 Notices**

All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be made or given by delivering or mailing by prepaid registered mail or by transmittal by telecopier or facsimile the same to the respective addresses hereinafter set forth or such other address in the City of Winnipeg which the Producer or APTN may from time to time designate by written notice to the other as herein required.

Any notice directed to the Producer shall be addressed as follows

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- 

Attention:

Any such notice directed to APTN shall be addressed as follows:

ABORIGINAL PEOPLES TELEVISION  
NETWORK 339 Portage Avenue  
Winnipeg, Manitoba R3B 2C3

Attention:

Any such notice, demand, request or other communication shall be deemed to have been received by the party to whom it is addressed in the manner aforesaid on the date of delivery in the case of delivery and on the fifth (5<sup>th</sup>) business day following the date of such mailing, if mailed by registered mail and on the date of transmittal if transmitted by telecopier or facsimile. If there exists a labour dispute or other event at the time of mailing, or within five (5) business days thereafter, which could affect normal delivery by mail, then notice will only be effective hereunder if actually delivered.

## **6.02 Amendments**

Except as otherwise expressly provided herein, no provision of this Agreement may be modified, waived or terminated except by agreement in writing executed by the party against whom such modification, waiver or termination is sought to be enforced.

## **6.03 Validity**

In the event any provision of this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## **6.04 Benefit of the Agreement**

This Agreement is for the sole benefit of APTN and the Producer and is not for the benefit of any other party and this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

### **6.05 Headings**

The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify or modify any provision hereof. All words herein in the male gender or singular number shall be deemed to include the female and the neutral gender and the plural number, and vice versa, as the case may be, whenever the context shall so require.

### **6.06 Preamble**

The preamble shall form part of this Agreement.

### **6.07 Time of the Essence**

Time shall be of the essence hereof.

### **6.08 Governing Law Attornment**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the jurisdiction of the courts of the Province of Manitoba.

### **6.09 No Partnership**

Nothing in this Agreement shall be construed or deemed to constitute the Producer as agent, partner or co-venturer of APTN, nor shall the Producer be entitled to represent any such relationship to any third party and for the purposes hereof any reference to APTN shall be interpreted to include APTN's directors, officers, solicitors, agents, employees, licensees, successors and assigns and all parent and Affiliates and Associates of APTN and their respective directors, officers, solicitors, agents, employees, licensees, successors and assigns.

### **6.10 Consent**

Wherever in this Agreement, the consent or approval of APTN is required, such consent or approval shall be valid only if it is confirmed in writing.

### **6.11 Investigation**

APTN shall have no obligation whatsoever to make any investigation of the facts relevant to any warranty or representation made in this Agreement.

### **6.12 Survival of Terms**

Any and all representations, warranties, undertakings and indemnities given by the Producer herein shall survive the making of the Loan and the execution, delivery and termination of this Agreement and shall continue as if made on a continuous basis.

### **6.13 Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. There are no any representations, warranties, covenants, terms, conditions, promises, undertakings or collateral agreements, express, implied or statutory, between the parties other than expressly set forth herein.

### **6.14 Other Agreements**

The Producer agrees that the provisions of any contract or agreement with any investor, lender, distributor or third party shall be consistent with, and shall in no way conflict with, the terms of this Agreement.

### **6.15 Non-Performance**

It is agreed between the parties hereto that neither APTN nor the Producer shall be held responsible for damages caused by delay or failure to perform undertakings hereunder when such delay or failure is due to fires, strikes, floods, acts of God or the Queen's enemies, lawful acts of public authorities, or delays or defaults caused by common carriers.

### **6.16 Execution in Counterpart**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same Agreement. For the purposes of this Section, the delivery to one party of a facsimile copy of an executed counterpart of this Agreement shall be deemed to be a valid execution and delivery of this Agreement in favour of the remaining party, but the party delivering a facsimile copy shall deliver an original of this Agreement as soon as possible after delivering the facsimile copy.

**AGREED AND ACCEPTED BY THE PRODUCER:**

NAME OF PRODUCER (please print)

SIGNATURE OF PRODUCER  
OR SIGNING OFFICER

ADDRESS OF PRODUCER

PRODUCER'S TELEPHONE NUMBER

TITLE OF PROPOSAL

**AGREED AND ACCEPTED BY APTN:**

ABORIGINAL PEOPLES TELEVISION NETWORK

INCORPORATED By:

Name: \_\_\_\_\_

Title:

DATE:

Name: \_\_\_\_\_

Title:

DATE: