

## NATIONAL CREATION FUND OFFICIAL TERMS AND CONDITIONS

### 1. KEY DATES:

The *National Creation Fund* (the “**Fund**”) is administered by the National Arts Centre (the “**NAC**”) and is intended to be a multi-year investment program. These Official Terms and Conditions (the “**Terms**”) apply only to the third year of the Fund – which begins on November 1, 2019 at 12:00:00 a.m. Eastern Time (“**ET**”) and will end on October 31, 2020 at 11:59:59 p.m. ET, or whenever all Investments (as defined below in Section 9) have been made in accordance with these Terms (whichever occurs first) (the “**Fund Period**”).

IMPORTANT NOTE: Each subsequent year of the Fund will be subject to its own terms and conditions – which, may be the same as or different from these Terms.

### 2. ELIGIBILITY:

The Fund is open to both individual artists, as well as producing companies and organizations – provided the following eligibility criteria are satisfied:

- **Individual Artists:** To be eligible, an individual artist must be a resident (including permanent residents) or citizen of Canada who has reached the legal age of majority in his/her province/territory of residence at the time of participation.
- **Producing Companies and Organizations:** To be eligible, a producing company or organization must be a Canadian corporation, organization, partnership or sole proprietorship with its head office or principal place of business located in any province or territory of Canada. In addition, any and all actions contemplated herein on behalf of a producing company or organization must be completed by an authorized representative of the producing company or organization who: (a) is a resident (including permanent residents) or citizen of Canada; (b) has reached the legal age of majority in his/her province or territory of residence; (c) has authority and permission from the producing company or organization to participate on behalf of the producing company or organization; and (e) has the authority to legally bind the producing company or organization – including, without limitation, to the terms and conditions of these Terms and to any other required documentation as contemplated in these Terms.

The NAC reserves the right, in its sole and absolute discretion, to require proof of identity and/or eligibility (in a form acceptable to the NAC) for the purposes of verifying eligibility to participate. Failure to provide such proof to the complete satisfaction of the NAC within the timeline specified by the NAC may, in the sole and absolute discretion of the NAC, result in the ineligibility to participate.

### 3. AGREEMENT TO BE LEGALLY BOUND BY TERMS:

By submitting a Proposal (as defined below in Section 4), you are signifying your agreement that you have read and agree to be legally bound by these Terms.

### 4. HOW TO SUBMIT A PROPOSAL:

To submit a proposal for your project (a “**Proposal**”), go to <https://nac-cna.ca/en/creationfund/submit> (the “**Website**”) and click on “**Download the proposal form**” to obtain the Project Proposal Form (the “**Form**”). Next, fully complete the Form with all required information (adhering to the word count limits and other restrictions indicated on the Form). Once you have fully completed the Form, click on “**create a profile and submit your proposal**” and follow the on-screen instructions and prompts to create your profile (your “**Profile**”). After completing your Profile, follow the on-screen instructions and prompts to formally submit your Proposal. To be eligible, your Proposal must be submitted and received in accordance with these Terms during the Fund Period.

IMPORTANT NOTE: To be eligible, your Proposal must be submitted through the Website in accordance with the on-screen instructions and prompts on the Website. Proposals will not be accepted by any other means. The NAC encourages you to carefully review the Website for more details regarding the submission process.

If it is discovered by the NAC (using any evidence or other information made available to or otherwise discovered by the NAC) that any individual and/or entity has attempted to use any means not in keeping with the NAC’s interpretation of the letter and/or spirit of these Terms to participate in or to disrupt the Fund, then such individual and/or entity may, in the sole and absolute discretion of the NAC, be ineligible to participate. The NAC, its associated and affiliated entities, as well as any other individual(s), entity or entities involved in the development, production, implementation, administration or fulfillment of the Fund, and each of their respective agents, employees, shareholders, officers, directors, members, agents, successors and assigns (collectively, the “**Released Parties**”) are not responsible for, and accept no liability whatsoever in relation to, any late, lost, misdirected, delayed, incomplete or incompatible Materials (as defined below in Section 6) (all of which are void).

If you have any questions regarding your participation, please email us at [creation@nac-cna.ca](mailto:creation@nac-cna.ca)

## 5. SELECTION PROCESS (PHASE 1):

The first phase of the selection process will be completed by a panel of NAC curators (the “**Phase 1 Curators**”). The Phase 1 Curators will review each Proposal submitted and determine, in their sole and absolute discretion, how the project outlined in the Proposal responds to the following criteria (the “**Phase 1 Criteria**”):

- The project outlined in the Proposal must be led by Canadian creators in theatre, dance, music and/or inter-disciplinary performing arts.
- The project outlined in the Proposal must be artistically ambitious and compelling.
- The project outlined in the Proposal must be associated with a strong artistic team and a strong producing or presenting partner.
- The project outlined in the Proposal must be likely to have a national or international impact.
- The Proposal must clearly articulate how the Fund’s investment would enhance the Project’s development process and elevate the Project to a new level.

The Phase 1 Curators will then determine, in their sole and absolute discretion, whether or not the Proposal will be advanced to the second phase of the selection process (as outlined below in Section 6). You will be notified accordingly once your Proposal has been reviewed by the Phase 1 Curators. It is anticipated that such notifications will be made within four (4) to six (6) weeks from the date your Proposal is received by the NAC in accordance with these Terms. Please note, however, that – except in the discretion of the NAC – no specific feedback will be provided regarding your Proposal and/or the first phase of the selection process.

## 6. SELECTION PROCESS (PHASE 2):

If the project outlined in your Proposal is advanced from the first phase of the selection process (as determined by the Phase 1 Curators, in their sole and absolute discretion), you will then be invited by the NAC to participate in the second phase of the selection process. During the second phase of the selection process, you will be required to submit detailed information to the NAC regarding your Proposal – including, but not limited to:

- Support material (which may include video, images, design concepts, audio recordings);
- A detailed production timeline and plan that clearly outlines the enhanced creation and development process for the project outlined in the Proposal;
- A detailed revenue and expense budget;
- Confirmation of partners, artists and funders;
- Most recent annual report, if applicable; and
- Financial statements (audited if an annual budget of more than \$1 million), if applicable.

The NAC will also arrange one (1) or more meetings (each, a “**Meeting**”) with the project’s artistic leadership (either in person or by phone/video) to further discuss the details of the project outlined in the Proposal and how it responds to the following criteria (the “**Phase 2 Criteria**”):

- The artistic strength, vision and originality of the project outlined in the Proposal.
- The clarity and ambition of the project outlined in the Proposal, and its potential for national and international impact.
- The feasibility of the project outlined in the Proposal – the track record, capacity and resources to successfully deliver the project.
- The potential impact of the Fund’s investment on the project outlined in the Proposal.
- The financial viability of the project outlined in the Proposal.

The second phase of the selection process will be completed by a panel of NAC curators (the “**Phase 2 Curators**”). Once a Meeting has (or Meetings have) taken place, the Phase 2 Curators will review your Proposal, Phase 2 submission materials and the information discussed in the Meeting(s) (collectively, your “**Materials**”), on the basis of the Phase 2 Criteria. The Phase 2 Curators will then determine, in their sole and absolute discretion, whether or not the Proposal will be advanced to the third and final phase of the selection process (as outlined below in Section 7).

During the Fund Period, a maximum of twenty (20) projects will be eligible to advance to the third and final phase of the selection process. It is anticipated that at least fifteen (15) projects will be eligible to advance to the third and final phase of the selection process – however, there may be fewer than fifteen (15) projects which will be eligible to advance to the final phase of the selection process. If for any reason whatsoever no projects are determined by the NAC, in its sole and absolute discretion, to be eligible to advance to the third and final phase of the selection process, then no projects will advance to the third and final phase of the selection process (as outlined below in Section 7).

## 7. SELECTION PROCESS (PHASE 3):

If the project outlined in your Proposal is advanced from the second phase of the selection process (as determined by the Phase 2 Curators, in their sole and absolute discretion), then you will be invited by the NAC to participate in the third and final phase of the selection process. This third and final phase of the selection process involves working directly with the NAC to negotiate, in good faith, investment by the NAC in your project (in accordance with Section 9).

## 8. SUBMISSION REQUIREMENTS AND LICENSE:

BY SUBMITTING A PROPOSAL, YOU AGREE THAT ANY AND ALL MATERIALS YOU SUBMIT TO THE NAC COMPLY WITH ALL CONDITIONS STATED IN THESE TERMS. THE RELEASED PARTIES WILL BEAR NO LIABILITY WHATSOEVER REGARDING: (I) THE USE OF ANY MATERIALS YOU SUBMIT TO THE NAC; AND/OR (II) ANY USE, COLLECTION, STORAGE AND DISCLOSURE OF ANY SUCH MATERIALS AND/OR ANY PERSONAL INFORMATION. THE RELEASED PARTIES SHALL BE HELD HARMLESS BY YOU IN THE EVENT IT IS DISCOVERED THAT YOU HAVE DEPARTED FROM OR NOT OTHERWISE FULLY COMPLIED WITH ANY OF THESE TERMS.

By submitting a Proposal, you hereby warrant and represent to the NAC that any and all Materials you submit to the NAC:

- i. are original to you and/or that you have obtained all necessary rights in and to such Materials for the purposes of submitting such Materials to the NAC in relation to your submission to the Fund;
- ii. do not violate any law, statute, ordinance or regulation;
- iii. do not contain any reference to or likeness of any identifiable third parties, unless consent has been obtained from all such individuals and their parent/legal guardian if they are under the legal age of majority in their jurisdiction of residence; and
- iv. will not give rise to any claims whatsoever, including, without limitation, claims of infringement, invasion of privacy or publicity, or infringe on any rights and/or interests of any third party.

The NAC reserves the right, in its sole and absolute discretion at any time and for any reason, to request you to modify, edit and/or re-submit any Materials in order to ensure that such Materials comply with these Terms, or for any other reason. If such an action is necessary at any point in time, then the NAC reserves the right, in its sole and absolute discretion, to take whatever action it deems necessary based on the circumstances to ensure that the Fund is being conducted in accordance with the NAC's interpretation of the letter and spirit of these Terms.

By submitting a Proposal, you hereby agree to release, indemnify and hold harmless the Released Parties from and against any and all claims, damages, liabilities, costs, and expenses arising from use of your Materials, including, without limitation, any claim based on publicity rights, defamation, invasion of privacy, copyright infringement, trade-mark infringement or any other intellectual property related or other cause of action whatsoever. THIS RELEASE AND INDEMNITY SHALL CONTINUE IN FORCE FOLLOWING THE TERMINATION OF THE FUND AND/OR AWARDING OF ANY INVESTMENT.

By submitting a Proposal, you hereby understand, acknowledge and agree that: (i) the NAC is not considering your Materials in confidence and that the NAC may disclose your Materials in accordance with the terms and conditions of these Terms and the NAC's Privacy Notice (<https://nac-cna.ca/en/legal/privacy>); (ii) the NAC is not, and will not be, bound by any confidentiality obligations, unless specifically stated in a written and signed agreement executed between you and the NAC; (iii) the NAC is not admitting that your Materials are novel, proprietary, or original; (iv) any Materials, projects or Proposals that you submit to the NAC may be similar or identical to projects, products, ideas, or other materials that the NAC may already be aware of and/or developed or in the process of developing; and (v) the NAC is not, and will not be, under any obligation with respect to your Materials, including, but not limited to, to pay you any compensation or otherwise provide any funding or other form of investment, unless specifically stated in a written and signed agreement executed between you and the NAC.

## 9. INVESTMENTS:

Each individual or entity who succeeds in advancing to the third and final phase of the selection process (as outlined in Section 7) will be eligible to receive financial investment (the "**Investment(s)**") by the NAC in the project outlined in their Proposal. There will be a maximum of twenty (20) Investments available during the Fund Period.

As outlined in Section 6, fewer than twenty (20) Investments may be awarded if fewer than twenty (20) projects fail to advance to the third and final phase of the selection process in accordance with these Terms.

Each Investment is intended to be used towards the development of the project outlined in the Proposal – not in its presentation or touring – and will consist of an amount of money (to be determined by the NAC, in its sole and absolute discretion) – up to a maximum of \$400,000 CAD during the Fund Period.

Prior to being able to receive an Investment, you will be: (i) provided a copy of the NAC's formal investment agreement (the "**Agreement**"); (ii) required to negotiate the Agreement, in good faith, with the NAC; and (iii) required to properly execute and return the

final negotiated form of the Agreement to the NAC within the time frame specified by the NAC.

If any individual or entity who is eligible to receive an Investment: (a) fails to negotiate the Agreement, in good faith, with the NAC; (b) is unable or unwilling to agree with the NAC on a final negotiated form of the Agreement; (c) fails to properly execute and return the final negotiated form of the Agreement (along with any other information and/or documents that may be required by the NAC in its sole and absolute discretion) to the NAC within the time frame specified by the NAC; (d) cannot accept (or is unwilling to accept) the Investment for any reason; and/or (e) is determined to be in violation of these Terms (all as determined by the NAC in its sole and absolute discretion); then such individual or entity may, in the sole and absolute discretion of the NAC, be ineligible to receive the applicable Investment and the NAC reserves the right, in its sole and absolute discretion and time permitting, but does not have the obligation, to select an alternate eligible recipient in accordance with these Terms (in which case the foregoing provisions of this section shall apply to such newly selected eligible recipient).

#### **10. GENERAL CONDITIONS:**

The Fund is subject to all applicable federal, provincial, territorial and municipal laws. The decisions of the NAC with respect to all aspects of the Fund are final and binding on all participants without right of appeal.

**ANYONE DEEMED BY THE NAC TO BE IN VIOLATION OF THE NAC'S INTERPRETATION OF THE LETTER AND/OR SPIRIT OF THESE TERMS FOR ANY REASON MAY NO LONGER BE CONSIDERED ELIGIBLE TO PARTICIPATE.**

The Released Parties will not be liable for: (i) any failure of any website or any platform; (ii) any technical malfunction or other problems of any nature whatsoever, including, without limitation, those relating to the telephone network or lines, computer on-line systems, servers, access providers, computer equipment or software; (iii) the failure of any Materials and/or other information to be received, captured or recorded for any reason whatsoever, including, but not limited to, technical problems or traffic congestion on the internet or at any website; (iv) any injury or damage to any individual's and/or entity's computer(s) or other device(s) related to or resulting from participating in the Fund; (v) anyone being incorrectly and/or mistakenly identified as an Investment recipient or an eligible Investment recipient; and/or (vi) any combination of the above.

**NO INDIVIDUAL OR ENTITY IS AN INVESTMENT RECIPIENT UNLESS AND UNTIL THE NAC OFFICIALLY CONFIRMS SUCH INDIVIDUAL OR ENTITY AS AN INVESTMENT RECIPIENT IN ACCORDANCE WITH THESE TERMS.**

The NAC reserves the right, in its sole and absolute discretion, to require proof (in a form acceptable to the NAC): (i) for the purposes of verifying the eligibility and/or legitimacy of any Materials and/or other information submitted; and/or (ii) for any other reason the NAC deems necessary, in its sole and absolute discretion, for the purposes of administering the Fund in accordance with the NAC's interpretation of the letter and spirit of these Terms. Failure to provide such proof to the complete satisfaction of the NAC within the timeline specified by the NAC may result in the inability to participate (or continue participating). The sole determinant of the time for the purposes of the Fund will be the official time keeping device(s) used by the NAC.

The NAC reserves the right, in its sole and absolute discretion, to withdraw, amend or suspend the Fund (or to amend these Terms) in any way, in the event of any cause beyond the reasonable control of the NAC that interferes with the proper conduct of the Fund as contemplated by these Terms, including, without limitation, any error, problem, computer virus, bugs, tampering, unauthorized intervention, fraud or failure of any kind whatsoever. Any attempt to undermine the legitimate operation of the Fund in any way (as determined by the NAC in its sole and absolute discretion) may be a violation of criminal and/or civil laws and should such an attempt be made, the NAC reserves the right to seek remedies and damages to the fullest extent permitted by law. The NAC reserves the right, in its sole and absolute discretion, to cancel, amend or suspend the Fund, or to amend these Terms, in any way without prior notice or obligation, in the event of any accident, printing, administrative, or other error of any kind, or for any other reason whatsoever.

By submitting a Proposal to the Fund you expressly consent to the NAC, its agents and/or representatives, storing, sharing and using any personal information submitted for the purpose of administering the Fund and in accordance with the NAC's Privacy Notice (available at: <https://nac-cna.ca/en/legal/privacy>) and Access to Information policy (<https://nac-cna.ca/en/legal/information>). This section does not limit any other consent(s) that an individual or entity may provide or have provided to the NAC or others in relation to the collection, use and/or disclosure of personal information.

The NAC reserves the right, in its sole and absolute discretion, to adjust any of the dates, timeframes and/or other mechanics stipulated in these Terms, to the extent deemed necessary by the NAC, for purposes of verifying compliance by any participant, Materials and/or other information with these Terms, or as a result of any technical or other problems, or in light of any other circumstances which, in the opinion of the NAC, in its sole and absolute discretion, affect the proper administration of the Fund as contemplated in these Terms, or for any other reason.

In the event of any discrepancy or inconsistency between these English Terms and disclosures or other statements contained in any Fund-related materials, including, but not limited to: the Website, French version of these Terms, television, print or online advertising and/or any instructions or interpretations of these Terms given by any representative of the NAC; the terms and conditions of these English Terms shall prevail, govern and control to the fullest extent permitted by law. The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of any other provision. In the event that any provision is determined to be invalid or otherwise unenforceable or illegal, these Terms shall otherwise remain in effect and shall be construed in accordance with the terms as if the invalid or illegal provision were not contained herein.

To the fullest extent permitted by applicable law, all issues and questions concerning the construction, validity, interpretation and enforceability of these Terms or the rights and obligations of participants, the NAC or any of the other the Released Parties in connection with the Fund will be governed by and construed in accordance with the domestic laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to any choice of law or conflict of law terms or provisions that would cause the application of any other jurisdiction's laws. The parties hereby consent to the exclusive jurisdiction and venue of the courts located in Ontario in any action to enforce (or otherwise relating to) these Terms or relating to the Fund.