

**CORPORATION FOR PUBLIC BROADCASTING**

**RESEARCH AND DEVELOPMENT GRANT AGREEMENT  
(TELEVISION PRODUCTION)**

“[Title]”  
[February, 2004 Form]

CPB Account No. \_\_\_\_\_

This Research and Development Grant Agreement (this “Grant Agreement”) is made to be effective as of [month] [day], [year], by the Corporation for Public Broadcasting, a District of Columbia nonprofit corporation with its principal place of business at 401 9<sup>th</sup> Street, N.W., Washington, D.C. 20004-2037 (“CPB”), and [name], a {[[state] corporation with its principal place of business at [address]][an individual residing at [address]]} (“Grantee”).

Background

This Grant Agreement is made pursuant to CPB’s Terms and Conditions for Television, Radio and Other Media Production Grants (November, 2002) (the “Terms and Conditions”), a copy of which is available on the CPB web site at [www.cpb.org](http://www.cpb.org).

CPB agrees to provide a Grant to Grantee upon and in conformity with the terms and conditions set forth herein, subject to Grantee’s agreeing, by its execution and delivery of this Grant Agreement, to undertake and commit to the obligations and requirements applicable to Grantee that are set forth herein and in the Terms and Conditions.

Grantee desires to obtain the Grant from CPB and, in order to do so, is willing to agree and commit to the obligations and requirements applicable to Grantee that are set forth herein and in the Terms and Conditions.

NOW THEREFORE, CPB and Grantee hereby agree as follows:

**ARTICLE 1. DEFINED TERMS**

Terms used herein and not otherwise defined are used herein with the same meaning given to them in the Terms and Conditions. Section 6.1 hereof contains certain additional other definitions. The rules of interpretation set forth in the Terms and Conditions apply to the interpretation of the provisions of this Grant Agreement.

**ARTICLE 2. GRANT**

**2.1 Grant Amount.** CPB hereby agrees, subject to and upon the terms and conditions set forth herein, to provide up to \$\_\_\_\_\_ (the “Grant Amount”) of the total costs incurred by Grantee (a) in performing the Grant Project as described in the Work Scope

attached hereto and (b) if requested by CPB, a proposed pilot production based on the Grant Project, and/or a revised complete proposal for the production of the Proposed Television Program (the "Revised Proposal"). The project as defined in the Work Scope and the Revised Proposal (if any is required) shall together constitute the Grant Project for purposes of this Grant Agreement.

**2.2 Rights.** (a) Any copyright obtained for any and all Subject Data produced, developed, or created pursuant to this Grant Agreement shall be held by Grantee, subject to the rights granted to CPB in this Grant Agreement.

(b) Title to all Subject Data delivered to CPB under this Grant (exclusive of any copyright in the intellectual property embodied therein) shall vest automatically and solely in CPB, for use by CPB and any person or organization designated by CPB, in any manner consistent with the terms of this Grant Agreement. Neither CPB nor any third party authorized by CPB to use the Subject Data shall be liable to Grantee for any destruction or loss of any Subject Data delivered under this Grant Agreement.

(c) Subject to Paragraphs 2.2 (d) and 6.1(a), CPB shall have exclusive and unlimited rights in all Subject Data compiled, produced, or resulting directly from performance of this Grant, during the CPB Option Period. For purposes of this provision, "unlimited rights" means the right to use, duplicate or disclose the Subject Data in whole or in part, or permit others to do so, in any manner and for any purpose consistent with this Grant Agreement and CPB's need to evaluate the Grant Project.

(d) Notwithstanding anything to the contrary in this Grant Agreement, CPB agrees that it shall not authorize any third party to develop or produce any Grant Project-based program(s), unless otherwise agreed by Grantee and CPB.

(e) During the CPB Option Period, CPB may decide either to fund a Proposed Television Program, pilot production or additional Research and Development, in whole or in part, or to secure funding for such purposes, or to do none. In the event that CPB does elect to exercise its option to fund such production, CPB will provide such financial assistance to Grantee pursuant to a separate production grant agreement which, to the extent inconsistent herewith, will supersede this Research and Development Grant Agreement.

## **ARTICLE 3. GRANT PROJECT**

**3.1. Completion and Delivery of Grant Project.** Grantee agrees to perform the activities of the Grant Project. Grantee agrees to complete and deliver the Grant Project in accordance with all of the terms and conditions set forth herein and in the Terms and Conditions, including the Work Scope and completion schedule (if any) contained in Attachment A, the Budget contained in Attachment B, and the Schedule of the Deliverables and Disbursements in respect of the Grant (if any) contained in Attachment C.

**3.2. Other Funding.** Grantee represents and warrants to CPB that those sources of funding set forth on Attachment B (if any) have made commitments to Grantee to provide funding for the Grant Project in the amounts specified.

**3.3. Revised Proposal.** The Revised Proposal shall constitute a part of the Grant Project and be eligible for the application of Grant funds only if the Revised Proposal is specifically requested by CPB in writing. If it is requested by CPB, the Revised Proposal shall (a) reflect any changes resulting from CPB's review of the deliverables hereunder, (b) be a stand-alone document which does not require the reader to refer to the original proposal to fully understand the material and (c) include a complete budget (revised, if necessary), work scope, production timeline and funding status report.

## **ARTICLE 4. TERM**

The term during which costs may be incurred pursuant to the Budget shall be from [date] through [date]. In all other respects, the term of this Grant Agreement shall commence upon execution and shall end, except for obligations hereunder that are explicitly made perpetual or that must survive beyond the term of this Grant Agreement by implication, upon delivery by CPB to Grantee of the final disbursement due under Attachment C, subject to earlier termination in accordance with the Terms and Conditions or this Grant Agreement.

## **ARTICLE 5. CPB FUNDING; BUDGET**

**5.1. Disbursement Schedule.** Disbursements by CPB to Grantee in respect of the Grant shall be paid in accordance with the Schedule of Deliverables and Disbursements set forth on Attachment C, subject to Grantee's compliance with the terms of this Grant Agreement.

**5.2. Deliverables.** Any obligation of CPB to disburse funds in respect of the Grant shall be conditioned upon Grantee's timely submission of deliverables as specified on Attachment C and CPB's approval thereof. Final Financial Reports shall be accompanied by an executed Certification in the form contained in Attachment D.

## **ARTICLE 6. PROPOSED TELEVISION PROGRAM**

**6.1 Certain Definitions.** For purposes hereof, the following terms have the meanings given to them below:

(a) “CPB Option Period” means the period beginning on the effective date hereof and continuing for two years following the date on which Grantee has completed and delivered the Grant Project to CPB in accordance with the terms hereof; provided, however, that in the event that CPB should at any point during such two-year period notify Grantee in writing that CPB will provide funding for the Proposed Television Program or pilot production, the CPB Option Period shall not terminate but shall continue indefinitely unless and until CPB, consistent with the terms of CPB’s notice of funding for the Proposed Television Program, pilot production or further research and development, notifies Grantee that CPB will not provide funding for the Proposed Television Program or pilot production;

(b) “Proposed Television Program” means a proposed television program based on the Grant Project [about [subject], entitled [proposed title], and consisting of a [one-hour] television [program][series]], which is intended for use by public broadcasting entities and other uses as described, and in accordance with, the terms of this Grant Agreement.

(c) “Subject Data” means any and all audiovisual works, dramatic works, research materials, literary works (including without limitation reports and other writings), musical works and sound recordings, pictorial, graphic and sculptural works, choreographic works, compilations and collective works, technical information, other works of similar nature, whether or not copyrighted, and any other intellectual property, which constitute part of the performance of this Grant Project.

**6.2** Representation of Necessary Rights. Grantee represents that it now has, or will obtain prior to the completion of the Grant Project, all of the necessary rights, licenses, clearances, permissions, releases and covenants to enable Grantee to use the Subject Data and Grant Project and its Elements for the potential production of the Proposed Television Program or pilot production.

**6.3** CPB Funding Decision. After Grantee completes the Grant Project and delivers it to CPB in accordance with the provisions hereof, CPB may determine whether it will fund the production, in whole or in part, of the Proposed Television Program, any pilot production to be created in connection therewith, or any additional research and development. If CPB decides to provide such financial assistance, CPB will provide such financial assistance under a separate production grant. Nothing in the Terms and Conditions or this Grant Agreement shall obligate CPB to provide financial assistance or any other support for production of the Proposed Television Program, any pilot production or additional research and development.

**6.4** Additional Funding for Proposed Television Program or Pilot Production. Grantee agrees to use its best efforts to seek funding for the Proposed Television Program or any pilot production to be created in connection therewith from sources in addition to CPB, unless Grantee itself is willing and able to fund the Proposed Television Program or such pilot production. However, Grantee agrees that during the CPB Option Period, CPB will have the right to approve any other funders of the Proposed Television Program or such pilot production. Moreover, for a period of two (2) years from the effective date hereof, Grantee will not enter into any agreement with other funders of the Proposed Television Program or such pilot production

without first having obtained CPB's written consent thereto, unless CPB has waived its rights under the CPB Option Period pursuant to Section 6.5(b).

**6.5 Rights Relating to Proposed Television Program or Pilot Production.**

**(a) Adequacy of Rights.** Grantee agrees to ensure, and to reflect in the Revised Proposal (if any), that, in the event that CPB agrees to provide funding for the production of the Proposed Television Program or pilot production, rights with respect to the entire Proposed Television Program or pilot production equivalent to the rights of CPB set forth in the Terms and Conditions, or such more limited rights as CPB may authorize in writing, will be available to CPB and its distributors without the payment by CPB or its distributors of any additional fees beyond those contemplated by the Revised Proposal or any residuals to talent or production personnel.

**(b) Limits on Transfer of Rights.** During the CPB Option Period, Grantee shall be prohibited from granting, licensing, transferring, assigning or otherwise disposing of rights of any nature (including Ancillary Rights and the right of underwriter identification) in the Grant Project, the Proposed Television Program or any aspect thereof to any third party for any reason whatsoever. Any disposition or attempted disposition by Grantee of any such rights in the Grant Project, the Subject Data, or the Proposed Television Program in violation of the provisions of this Section shall, at CPB's option, be deemed null and void. In the event that CPB elects not to fund a project beyond this R&D phase, a waiver of CPB's rights under this paragraph shall be in CPB's sole and absolute discretion. In order to be effective, any such waiver must be in writing, signed by an authorized CPB employee.

**ARTICLE 7. ANCILLARY REVENUES**

**7.1 CPB Share.** Subject to Section 7.5 below, CPB shall be entitled to \_\_\_% of all Net Proceeds arising out of the exercise of Ancillary Rights (the "CPB Share") as follows.

**7.2 Recoupment of Production Deficits.** If Grantee completes the Grant Project in compliance with the terms of this Grant Agreement, then Grantee may retain any and all Net Proceeds up to a total amount equal to the lesser of: (A) Grantee's Guarantee, as defined in the Budget, or (B) an amount equal to the Budget less the sum of the Grant Amount and the total dollar amount of all funding commitments and the total fair market value of all commitments of in-kind contributions to the Project from third parties, whether in exchange for rights or otherwise, and whether reflected in the original Budget attached hereto or received since the execution of this Grant ("Grantee's Right of Recoupment").

**7.3. Term of CPB Share.** Subject to Grantee's Right of Recoupment:

**[FOR: MAJOR EVENTS]**

A. The CPB Share for the period from execution of this Grant Agreement through the end of the twentieth (20th) consecutive year following the first National

Public Television Release of the [last] program(s) of the Grant Project [to be nationally distributed] shall be paid to CPB on an annual basis, not later than November 15 of each year, covering the previous twelve-month period (from October 1 to September 30) and such subsequent years as necessary until CPB has received all sums to which it is due.

**[FOR: OTHER PROGRAMS]**

A. The CPB Share for the period from execution of this Grant through the end of the fifteenth (15th) consecutive year following the first National Public Television Release of the [last] program(s) of the Grant Project [to be nationally distributed] shall be paid to CPB on an annual basis, not later than November 15 of each year, covering the previous twelve-month period (from October 1 to September 30) and such subsequent years as necessary until CPB has received all sums to which it is due; provided, however, that Grantee shall not be required to make any payment to CPB of the CPB Share derived from the first \$250,000 (including any amounts applied to Grantee's Right of Recoupment) of Net Proceeds earned from the exercise of any and all Ancillary Rights if, by the end of such period, such sums in excess of sums applied to Grantee's Right of Recoupment (the "Retention Amount") have been contractually committed to or expended for Direct Production Costs of programs to be initially distributed on public television. If any portion of the Retention Amount has not been contractually committed or expended by the end of such period, the CPB Share of that portion shall be immediately paid to CPB with interest compounded annually at the rate of 10% from the first day of the next calendar quarter following the date of receipt by Grantee to the date of payment to CPB. For the purposes of determining Grantee's date of receipt, any portions of retained sums to be paid to CPB shall be deemed to have been received by Grantee contemporaneously with Grantee's most recent actual receipt of an equal amount of the Gross Proceeds from the exercise of Ancillary Rights in such period.

**7.4 Effect of Funding for Proposed Television Program or Pilot Production.**

CPB's rights under Section 7.1 hereof are limited to the right to receive amounts due to it pursuant to Section 7.1 with respect to the Grant Project and do not extend to the Proposed Television Program or any pilot production created in connection therewith. In the event that CPB funds the production of the Proposed Television Program or pilot production, this Article 7 shall be superseded by the revenue sharing provisions of the agreement related to the production of the Proposed Television Program or pilot production, as the case may be.

**7.5 Effect of Non-Funding of Proposed Television Program or Pilot Production.** In the event that CPB elects not to fund any part of the production of the Proposed Television Program or any pilot production produced in connection therewith, at the conclusion of the CPB Option Period, if Grantee elects to proceed with such production for distribution outside of United States public broadcasting, Grantee shall repay to CPB the entire amount of this Grant. Thereafter, CPB shall no longer be entitled to the CPB Share.

## **ARTICLE 8. TERMS AND CONDITIONS**

**8.1. Incorporation of Terms and Conditions.** Except as provided in Section 8.2 hereof, the parties agree to observe and comply with the Terms and Conditions. The Terms and Conditions are intended to be a part of this Grant Agreement as fully as if they were set forth in full herein.

**8.2. Conflicts with Terms and Conditions.** In the event of a conflict between the provisions of this Grant Agreement and the Terms and Conditions, this Grant Agreement shall govern.

## **ARTICLE 9. MISCELLANEOUS**

**9.1. Survival of Obligations.** The warranties, covenants, and indemnities set forth herein shall survive any termination of this Grant Agreement and continue in perpetuity unless terminated by the mutual consent of the parties, reflected in writing.

**9.2. Notification of Claims.** CPB and Grantee agree to notify each other promptly, in writing, of any threatened or filed legal claim or action, of which either has knowledge, which is related in any way to the Grant or performance hereunder.

**9.3. Waivers; Changes.** The waiver by CPB of any breach of this Grant Agreement by Grantee shall not be effective unless in writing, and no such waiver shall operate or be construed as a waiver of a breach of any other provision or another breach of the same provision on a subsequent occasion. All changes shall be made in writing signed by an authorized representative of each party. No change shall be binding upon CPB unless made by express written amendment signed by a duly authorized officer. Grantee acknowledges that CPB is not committed, expressly or by implication, to agree to an increase or decrease in the Total Project Cost, to increase the Grant Amount, to extend the scope of the Grant Project or the term of this Grant Agreement, to change the due dates of reports or other deliverables, or in any other way to change any of the terms, conditions or provisions of this Grant Agreement.

**9.4. No Other Agreement.** This Grant Agreement, together with the Terms and Conditions, constitutes the entire understanding of the parties with respect to the Grant Project, and no representations or statements made by either party that are not set out herein or in the Terms and Conditions shall be binding on the parties.

**9.5. Headings.** The captions and headings of this Grant Agreement have been inserted solely for convenience and are not to be considered in matters of its interpretation.

**9.6. Assignment.** This Grant Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. It shall not be assigned in whole or in part by Grantee without the prior written consent of CPB. Any assignment or attempted assignment of rights under this Grant Agreement by Grantee without the prior written consent of CPB may be deemed null and void, at the option of CPB.

**9.7. Counterparts.** This Grant Agreement may be executed in any number of counterparts, each of which shall be an original but all of which taken together shall be but one instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Grant Agreement to be effective as of the date first set forth above.

ACCEPTED AND AGREED:

[If an entity]:

[NAME OF GRANTEE]

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

[If an individual]:

\_\_\_\_\_  
[Name of Grantee]

Date: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

CORPORATION FOR PUBLIC BROADCASTING

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_