

Memorandum of Understanding between the Department for Culture, Media and Sport and Channel Four Television Corporation

1. In March 2018, the Department for Digital, Culture, Media and Sport ('DCMS') and Channel 4 Television Corporation ('C4C') entered into a Memorandum of Understanding ("2018 MoU") intended to set out certain responsibilities and accountabilities of DCMS and C4C in relation to C4C, and the ways in which C4C will engage with DCMS in relation to areas for agreement, information sharing and reporting. The 2018 MoU has been revised following discussion between DCMS and C4C and as of 8 November 2023 the terms of this revised Memorandum of Understanding ('MoU') will replace the 2018 MoU.
2. For the avoidance of doubt this MoU indicates the agreed intention of DCMS and C4C; both DCMS and C4C confirm their intention to be bound by the terms of the MoU.
3. This MoU recognises the editorial independence of C4C, which DCMS and C4C agree to work together to safeguard as a matter of principle.
4. Further, this MoU recognises the importance attached to the long-term sustainability and success of C4C alongside its other obligations.
5. This MoU also recognises that C4C is a body corporate and that its powers and duties are clearly defined by the C4C Legislation (as defined and referred to below). Nothing in this MoU will, or is intended to, require C4C, its members, board, officers or employees to act in a manner which is inconsistent with the C4C Legislation (as defined below) or any duty or obligation which such members, board, officers or employees owe to C4C. In particular, nothing in this MoU will, or is intended to, require C4C to breach any contractual commitments to third parties in relation to the treatment of confidential information.

A. Purpose and Classification of C4C

6. C4C is a body corporate established in statute under the Broadcasting Act 1990 and classified by the Office for National Statistics as a non-financial public corporation. C4C's powers and duties stem from the 1990 and 1996 Broadcasting Acts and the Communications Act 2003 and the Digital Economy Act 2010 (together the "C4C Legislation"). Its primary functions are defined as:
 - (i) Securing the continued provision of the broadcasting service known as Channel 4; and
 - (ii) The fulfilment of the public service remit and media content duties set out in the C4C Legislation.
7. The C4C Legislation also requires C4C to comply with the terms of a broadcasting licence granted by the Office of Communications ("Ofcom") ("C4C Licence") and to agree with Ofcom, pursuant to Schedule 9 of the Communications Act 2003, proposals for arrangements to secure, so far as reasonably practicable, that all significant risks that its "other activities" may have an adverse effect on the carrying

out of its “primary functions” are identified, evaluated and properly managed. The Schedule 9 proposals must include the arrangements that C4C considers appropriate for securing the transparency objectives, namely (i) an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of its primary functions and its other activities and (ii) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities. The current arrangements proposed by C4C and agreed with Ofcom are dated 19 September 2016 (“Schedule 9 Arrangements”). The risk register set out in Annex 2 to this MoU (which is routinely supplied to Ofcom) gives examples of categories of primary functions and other activities.

8. Alongside C4C members’ duties in relation to ensuring provision of the aforementioned existing functions, the Government intends to legislate to create a new statutory duty for members of C4C to promote its long-term financial sustainability and success when making decisions about the future of the Corporation.

B. Accountability

9. The Secretary of State for Culture, Media and Sport (the “DCMS SoS”) will account for business related to C4C in Parliament. This includes, as soon as possible after the end of C4C’s financial year, laying copies of a general report of C4C’s business during the period before each House of Parliament, as required by the C4C Legislation. Upon request, C4C may be required to appear before committees of the Houses of Parliament.
10. The C4C Legislation sets out the obligations placed on C4C, in particular in relation to C4C’s primary functions, its remit and the framework within which further requirements can be established by Ofcom. The DCMS SoS is also concerned to ensure C4C’s delivery of these obligations and requirements.
11. In addition, the DCMS SoS is concerned to safeguard the future sustainability of C4C. In this respect the DCMS SoS is mindful of the need to:
 - (i) protect the value of C4C as a non-financial public corporation; and
 - (ii) protect DCMS, the UK Government and the public against circumstances that could adversely impact the public sector or public sector finances.
12. HM Treasury (“HMT”) has appointed the Permanent Secretary of DCMS as DCMS’s Principal Accounting Officer (the “DCMS PAO”), with personal responsibility for ensuring that DCMS and any arms length bodies and non-financial public corporations it sponsors operate effectively and to a high standard of probity. The DCMS PAO is therefore responsible for ensuring that C4C acts in a manner that is consistent with the relevant provisions relating to governance, decision making and financial management set out in Managing Public Money (“MPM”) which would be appropriate for a body corporate wholly funded by commercial revenues which is subject to the C4C Legislation, the C4C Licence and the Schedule 9 Arrangements.

13. Acknowledging C4C's status as a non-financial public corporation wholly funded by commercial revenues utilising public assets, the DCMS PAO and C4C have agreed that the members of C4C will have regard to the principles of MPM in relation to the way C4C is managed where C4C considers such principles are relevant, appropriate and consistent with C4C's obligations under the C4C Legislation, the C4C Licence and the Schedule 9 Arrangements. C4C acknowledges that it should consult with the DCMS PAO in the event that the Board considers that it requires any guidance on the relevance of these principles (and that such questions should be channelled via C4C's CEO).
14. It is acknowledged that, in addition to the C4C Legislation, the C4C Licence and the Schedule 9 Arrangements, C4C operates having regard to other measures which would apply to other bodies which are commercially funded including the UK Corporate Governance Code and the Companies Act 2006.
15. In particular, the Members of C4C are bound by their contracts of engagement to have general legal responsibilities analogous of those of a company director (and in particular the general duty in the Companies Act 2006 s.172) and must take decisions objectively in the interests of C4C.
16. The members of C4C are responsible for assuring Parliament and the public of high standards of probity in the management of the assets of C4C as a non-financial public corporation.
17. The members of C4C, through the C4C Chief Executive, agree to make sure DCMS is kept informed of any material change in circumstance or event that could have a material impact on the Group's sustainability and ability to deliver its primary functions.

C. Membership of C4C

18. The C4C Legislation sets out the requirements for the board and membership of C4C, together with the responsibilities of Ofcom and the DCMS SoS for appointing certain of the members. Any appointment to the C4C board made by Ofcom requires the approval of the DCMS SoS. The process to be followed by Ofcom to secure approval has been separately agreed between Ofcom and DCMS.
19. Individual members of C4C should comply with the Code of Conduct for Board Members of Public Bodies (including the rules relating to the use of public funds and to conflicts of interest therein).

D. Areas for Agreement

20. To avoid any uncertainty, and reflecting the editorial independence of C4C, the provisions of this section D shall not apply to spending on:
 - (i) content to be broadcast or otherwise made available by C4C, including methods and systems for making that content available;

- (ii) costs incurred by C4C in the ordinary course of delivering its primary functions falling beneath/outside the threshold set out in paragraph 21(i); or
- (iii) salaries or other remuneration or employment-related costs, unless such approval relates to appointments made by Ofcom under the C4C Legislation.

21. In light of the DCMS SoS's concern to safeguard the future sustainability of C4C and the potential impact on public finances, C4C shall obtain the DCMS's prior written approval before incurring expenditure or making investments in relation to a single project:

(i) which a) is material to C4C and b) which could reasonably be considered novel or contentious or have potentially repercussive effects for the public sector; or

(ii) which a) either C4C considers should be categorised under "Other Activities" for the purposes of its Schedule 9 Arrangements, or which C4C considers is outside the ordinary course of its primary function activities, and b) which is in excess of 25% of the net asset value of C4C.

For the avoidance of doubt, "Other Activities" for the purposes of C4C's Schedule 9 Arrangements would be captured under paragraph 21(i) if the criteria in paragraph 21(i) are met.

22. C4C should provide to DCMS such information as DCMS may reasonably require with regard to such expenditure or investment and consult with DCMS regarding the relevant proposals, subject always to the confidentiality provision set out in paragraph 5 above. Where DCMS approval is not required under paragraph 21, there is no requirement for the provision of information to DCMS in addition to the information sharing and reporting provisions described in sections F and G below.

E. Borrowing

23. Legal powers for C4C to borrow are set out in the C4C Legislation. Under this legislation, the DCMS SoS may by order, and following consultation with C4C and with the consent of HMT, provide for a limit on the borrowing that C4C is allowed to undertake. The DCMS SoS may fix this limit either by:

(i) Specifying the sum which the outstanding borrowing of C4C must not at any time exceed; or

(ii) Providing a method of determining the sum which that borrowing must not exceed.

24. A limit on C4C borrowing is currently set at £200 million under the Channel 4 Television Corporation (Borrowing Limit) Order 2003.

25. External borrowing, defined as Public Corporations' Market and Overseas Borrowing in HMT's Consolidated Budgeting Guidance(1), scores in the Government's fiscal framework like any other expenditure. In recognition of this, C4C agrees to seek Government agreement in relation to any such borrowing.

26. For new borrowing arrangements up to the £200 million limit, C4C will engage with DCMS officials in relation to any external borrowing at the earliest opportunity

including to discuss the information required in order for DCMS to assess the request in a timely manner. As C4C's sponsor department, DCMS will coordinate engagement with HMT.

27. C4C acknowledges that, during the process of engagement with DCMS and prior to entering into any borrowing, DCMS will be concerned to understand any wider financial implications for the public finances which could be considered to be repercussive.
28. Any request to increase or change C4C's borrowing limit of £200m set out in the Channel Four Television Corporation (Borrowing Limit) Order 2003 will require a Full Business Case (FBC) approved by both DCMS and HMT, a change made in secondary legislation to reflect the revised limit, and appropriate accompanying governance and/or monitoring arrangements. C4C should submit any such request with supporting information, e.g. an internal business case or equivalent setting out the rationale for the increase or change, which can be assessed by DCMS and UKGI. As C4C's sponsor department, DCMS will produce the FBC, with input from UKGI, seek DCMS and HMT approvals, and work with UKGI to ensure any required governance and/or monitoring arrangements to support the revised limit are in place.
29. C4C agrees to provide sufficient prior notification in writing of any intention to draw down, renew or extend any agreed borrowing arrangements to ensure appropriate departmental budget cover is secured.

F. Information Sharing

30. Under the C4C Legislation, C4C is required at all reasonable times upon demand made by the DCMS SoS (or any persons authorised by the DCMS SoS) to:
 - (i) afford the DCMS SoS (or any persons authorised by the DCMS SoS) full liberty to examine the accounts of C4C; and
 - (ii) furnish the DCMS SoS (or any persons authorised by the DCMS SoS) with all forecasts, estimates, information and documents which they may require with respect to the financial transactions and commitments of C4C.
31. C4C is responsible for ensuring that any request made by the DCMS SoS (or any person authorised by the DCMS SoS including HMT and UKGI) to examine the accounts of C4C or for forecasts, estimates, information and documents, is granted or provided in a timely fashion and in a form reasonably deemed appropriate by the DCMS SoS.
32. DCMS shall hold all confidential information provided to it by C4C in strict confidence and will not copy, reproduce or disclose it to any person other than to an authorised recipient. Prior to any confidential information being provided to DCMS, DCMS and C4C will agree a list of authorised recipients.
33. In the event that DCMS receives a request for information under the Freedom of Information Act (or any other applicable legislation or ruling governing access to information) that requires it to disclose information provided by C4C under this

Section E, it needs to comply with the requirements of that legislation or ruling, which may include making any disclosure subject to consideration of whether relevant exemptions apply. DCMS will consult with C4C as soon as reasonably practicable taking into account C4C's views as to whether there are grounds for withholding such information but the decision about whether to disclose the information ultimately rests with DCMS.

34. This MoU will be published as part of Channel 4's publication scheme. Section 19 of Freedom of Information Act requires every public authority to have a publication scheme, approved by the Information Commissioner's Office (ICO), and to publish information covered by the scheme. Channel 4 has adopted the model publication scheme for public authorities which are only covered for part of the information they hold, as set out by the ICO.

G. Reporting to DCMS

35. It is expected that the DCMS SoS will meet the C4C Chair and the C4C Chief Executive once a year. The DCMS SoS or the C4C Chair may, at their discretion, request additional meetings.
36. In order for DCMS officials to advise the DCMS SoS about C4C's delivery of its obligations and requirements and its sustainability, C4C will share with DCMS:
- (i) each quarter, a financial and commercial performance update (the "Monitoring Information"), together with re-forecast for the remainder of the year; and
 - (ii) each year, C4C's corporate plan covering a detailed budget for the following year and forecasts for at least two further years (the "C4C Strategy"). The C4C Strategy, in a form substantively the same as that shared with C4C's members, should be submitted to DCMS no later than two weeks following its review by C4C's members; and
 - (iii) ad hoc information regarding planned new material business investments, including expected returns on investment (where 'material' shall be defined as not less than £100m); and
 - (iv) Summary downside and upside sensitivity and scenario analyses for material business elements [to be defined] to be provided annually, following audit review.

A template of the Monitoring Information and the C4C Strategy, setting out the form and information to be included, is set out at Annex 1 to this MoU.

The Monitoring Information will be accompanied by (a) detailed commentary(ies) as appropriate.

Nothing in this clause shall alter or restrict the Secretary of State's statutory power to require financial information under the C4C Legislation.

37. C4C and DCMS will meet to discuss the Monitoring Information and the C4C Strategy after it is provided to DCMS. The C4C Chair and Chief Executive will attend meetings with DCMS officials to discuss the C4C Strategy.
38. DCMS may also request other information from, or meetings with, C4C on an ad hoc basis, in relation to other matters.
39. Meetings will be attended by UK Government Investments (“UKGI”), in its capacity as monitor of C4C governance and financial performance on DCMS’s behalf. Meetings may also be attended by representatives from Ofcom. Monitoring Information, the C4C Strategy and other ad hoc information will be shared with UKGI.

H. Review of the Memorandum of Understanding

40. It is intended that this MoU will be reviewed by the parties two years from the new commencement date. Thereafter it is intended that this MoU will be reviewed not more often than every 10 years, unless both parties agree that an earlier review is appropriate in the event of a material change in the circumstances, objectives or priorities of C4C or DCMS or the DCMS SoS’s interests in relation to C4C. However both parties agree that this MoU will need to be reviewed once the Government has brought forward proposed reforms in relation to C4C, including setting out in legislation a new sustainability duty for C4C members and in the event any increase or change to the current borrowing limit is agreed.

Annexes

Annex 1 - Agreed-form monitoring and strategy information

Annex 2 - C4C Schedule 9 risk register

Signed:  (on behalf of C4C)

Date: 7th November 2023

Signed:  (on behalf of DCMS)

Date: 7th November 2023