

## **Governance Model**

### **1. Introduction**

Through further consideration of the proposed governance structure and its adherence to the Canvas principles, and through an understanding of industry stakeholder concerns, the BBC and its partners in project Canvas are proposing a revision to the governance structure submitted to the BBC Trust in July 2009.

The initial proposal stated that the venture would allow for “aligned PSB interests and a PSB-majority share split”. Also,

“It is proposed that the venture would be a private company limited by shares split into two categories – 33.3% to the ISPs and 66.7% to the PSBs. The category in which other potential partners, such as network infrastructure providers, will participate has yet to be decided.

The shares would be equally allocated between qualifying partners within each group both at launch and with regard to any later entrants. For example, each qualifying ISP would only acquire shares from the 33.3% ISP allocation –thereby diluting the existing ISPs but not the PSBs. The same would be true of the PSB 66.7% allocation.”

In accordance with the venture’s principles of an open venture structure, the following have been identified as potential issues:

- Specific share classes being reserved only for organisations within a specific part of the value chain (ie PSBs and ISPs)
- Enshrining a PSB majority share of votes
- Pre-emption rights in respect of such share classes being available only to members of that class, e.g. which has the effect, inter alia, of safeguarding a PSB majority
- Finalising funding commitments as part of the Shareholders Agreement

This paper proposes a revision to the proposed governance model, to address the outstanding issues whilst maintaining the core principles on which the original model was based.

This proposed revision is for the BBC Trust’s consideration and publication, as part of its wider industry consultation.

### **2. Concerns with the Current Governance Structure**

The following concerns with regard to the proposed Canvas venture structure have been highlighted:

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- Specific share classes being reserved only for organisations within a specific part of the value chain (ie PSBs and ISPs)
- An enshrined majority for PSBs
- Pre-emption rights in respect of such share classes being available only to members of that class, e.g. which has the effect, inter alia, of safeguarding a PSB majority

Positive stakeholder feedback was received in recognition of

- Decision-taking through majority voting
- Use of admission criteria to assess suitability of potential partners
- A process by which the number of initial partners is limited to ensure manageability, including a limited time period whereby applications will be reviewed prior to launch and during the life of the venture

### 3. Proposal for Revised Governance Structure

- The core principles of the governance model which underpinned the original submission in July 2009 are unchanged and partners are committed to upholding these:
  - Venture governed by clear commercial objects enshrined in the constitution of the JV company
  - Majority voting (save for material issues primarily relating to the business, constitution and funding of the venture)
  - Defined eligibility criteria to enable new entrants
- Under the revised proposal, described below, all partners take an equal shareholding of the same class of shares and will agree to equal funding obligations in the venture, at least for the first four years of operation.
  - With 4 partners – 25%
  - With 5 partners – 20%
  - With 6 partners – 16.6%
  - With 7 partners – 14.3%

#### *Principles of new structure*

- Any new entrants would dilute all parties equally
- If a shareholder were to leave the shares of that shareholder would be offered to all parties to acquire on a pro-rata basis
- No express limit would be set on the number of shareholders, however objective admission criteria will be set and applied, with a final decision at the discretion of the board (on a majority vote).
- All new entrants to sign up to the Venture's obligations and purposes.

### *Potential further concerns and mitigations*

- Without a guaranteed PSB majority there is concern that the free-to-air and open principles of Canvas, which are central to the rationale for BBC involvement, will no longer have adequate protection:
  - *Mitigation:* The venture will enshrine these principles within the Objects of the venture in the articles of association of the JV company (which can only be changed on a super-majority vote of the shareholders). All venture partners are assessed on their alignment to these and will become a partner on commitment to uphold the Objects.
- Without class shares the number of potential new entrants could be vast, rendering the board unable to operate effectively
  - *Mitigation:* The venture board will not consider any new applicants where it reasonably determines that the addition of any new members to the JV company would undermine the operational efficiency or viability of the Company or its operations

### **4. Summary**

The Canvas partners ask the Trust to consider the proposed revisions to the Canvas governance structure. It is understood that the BBC Trust will then consider these revisions as part of its initial conclusions and publish in order to garner comments from industry stakeholders.