**DATED 2024**

1. **S4C**

**(2)** [ ]

**AGENCY AGREEMENT FOR THE PROVISION OF MEDIA BUYING AND PAID SOCIAL MEDIA SERVICES**

THIS DOCUMENT IS ALSO AVAILABLE IN WELSH

**THIS AGREEMENT** is made day of 2024

**BETWEEN:**

1. S4C of Canolfan S4C: Yr Egin, Caerfyrddin, SA31 3EQ (“**S4C**”); and

(2) [ ] (the “**Agent**”)

**INTRODUCTION:**

Following the publication by S4C of an invitation to tender for Media Buying and Paid Social Media Services and the submission by the Agent of a tender, S4C wishes to appoint the Agent to provide the Services as its non-exclusive agent on the terms and conditions set out in this Agreement.

**IT IS AGREED** as follows:

1. **Definitions and Interpretation**

In this Agreement:

* 1. the following words and expressions shall have the following meanings unless the context otherwise requires:

|  |  |
| --- | --- |
| “Act” | the Copyright, Designs and Patents Act 1988; |
| “Agreement” | this agreement including the Introduction and any document referred to in this agreement, completed or to be completed in accordance with its provisions; |
| “Applicable Laws” | all regional, national or international laws, rules regulations and standards including those imposed by any governmental or regulatory authority and all applicable industry standards and practice guidelines determined by any self-regulatory body which apply from time to time to the provision of the Services including without limitation the DPA and the Advertising Standards Authority; |
| “Bribery Laws” | means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption; |
| “DPA” | Data Protection Act 2018; |
| “Effective Date” | [xxxx];  |
|  |  |
| “FOIA” | the Freedom of Information Act 2000; |
| “Fraud” | any offence under any laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud S4C; |
| “Good Industry Practice” | the degree of skill, care, diligence and prudence reasonably and ordinarily expected from experienced and competent persons engaged in the same type of undertaking as that of the Agent under the same or similar circumstances; using methods, standards, practices and procedures conforming to all Applicable Laws and using appropriately qualified and skilled personnel; |
| “Group Company” | any subsidiary or holding company from time to time and any subsidiary of such holding company from time to time (as such terms are defined in Section 1159 of the Companies Act 2006); |
| “Insurance Policies” | the insurance policies required to be maintained by the Company in accordance with clause 12; |
| “Intellectual Property” | collectively any and al intellectual property rights in or relating to the Product of the Services including inventions, patents, registered designs, trade marks (whether registered or unregistered), applications for any of the foregoing and the right to apply therefore in any part of the world; copyrights, rights in the nature of copyrights or affording equivalent protection to copyright, moral rights, design rights, database rights; domain names, trade names, logos, get-up, including the look and feel of any content; know-how, trade secrets and other confidential information; rights in the nature of unfair competition rights and the rights to sue for passing off; licences, consents, permissions and waivers in relation to any of the foregoing; and all or any similar or equivalent rights arising or subsisting in any country in the world; |
| “Key Personnel” | the key persons employed by the Agent in the provision of the Services as set out in Schedule 3; |
| “Media” | advertising space and marketing/promotional opportunities for S4C Advertising in various media including on digital platforms; |
| “Media Suppliers” | owners/managers of advertising space in whatever format;  |
| “Personal Data” | any personal data as defined in the DPA of any person contacting the Agent in connection with the performance of the Services; |
| “Policies” | collectively all of the S4C policies expressly referred to in this Agreement as updated from time to time, including to the extent applicable to the Services: the S4C Compliance Notice (Welsh Language Standards), the S4C Diversity and Equality Policy, the S4C Brand Guidelines and all other policies and guidelines from time to time published on S4C’s production website which can be accessed at http://www.s4c.cymru/en/production/page/1154/guidelines/ and the S4C Unitary Board website athttps://www.s4c.cymru/en/about-us/page/52717/policies-plans-and-guidelines/; |
| “Product of the Services” | each and every product of the Services created, acquired or developed by or on behalf of the Agent and the Staff in the course of providing the Services including but not limited to reports, databases, forms and statistics; |
| “Quarter” | a period of 3 calendar months ending on 30June, 30 September, 31 December or 31 March in any calendar year from the date of this Agreement; |
| “Regulations” | means the Environmental Information Regulations 2004; |
| “S4C Advertising” | S4C advertising/promotional/marketing material in whatever format provided by S4C to the Agent and/or Media Suppliers in connection with the Services; |
| ”S4C Brand Guidelines” | the S4C brand identity guidelines which can be found on S4C’s website at <https://www.s4c.cymru/media/media_assets/canllawiau-ar-hunaniaeth-y-brand.pdf>; |
| “S4C Confidential Information” | collectively any and all information, data and know-how of a confidential nature (in whatever form and on whatever media) relating to the Intellectual Property and/or the business of S4C and/or its Group Companies which is disclosed or made available for the purposes of or generated under this Agreement and whether before, on or after the Effective Date, together with the existence or subject matter of this Agreement and/or any information which has been designated as confidential by S4C in writing or that ought to be considered as confidential and/or all personal data and sensitive personal data within the meaning of the DPA; |
| “S4C Representative” | Rebecca Griffiths or such other persons as notified by S4C to the Agent in writing from time to time during the Term; |
| “Services” | media planning, buying and paid social media services further details of which are set out in Schedule 1; |
| “Staff” | all persons engaged by the Agent or contributing to the Services whether on an employed or self-employed basis including the Key Personnel; |
| “Term” | the period of three (3) years from the Effective Date during which this Agreement is in force and effect subject to the provisions of clause 13; |
| “Termination Date” | the date of expiry or termination of this Agreement howsoever arising; |
|  |  |
| “VAT” | value added tax; |
| “Warranties” | the representations and warranties set out in Schedule 2; and “Warranty” shall be construed accordingly; |
|  |  |
| “Working Day” | any day other than a Saturday, Sunday or public holiday in Wales. |

* 1. words and expressions (including words and expressions defined in clause 1.1) in the singular shall include the plural and vice versa; references to a “party” or the “parties” shall mean S4C and/or the Agent as the context requires; references to any gender shall include every gender; references to a person shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality) and any combinations of any one or more of the foregoing;
	2. headings are for convenience only and shall not affect the construction or interpretation of this Agreement; references to Schedules and clauses are to schedules to, and clauses of, this Agreement and references to sub-clauses are to sub-clauses of the clause in which the reference appears;
	3. a reference to any statute or statutory provision shall include any subordinate legislation made thereunder and shall be construed as a reference to such statute, statutory provision or subordinate legislation as it may have been, or may from time to time be amended, modified or re-enacted (with or without modification);
	4. the words “include” or “including” shall be construed and interpreted without limitation; and
	5. the rule known as the ejusdem generis rule shall not apply and accordingly general words introduce by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things.
	6. in the event of any conflict between this Agreement and the Policies, priority shall be given to the conditions of this Agreement.
	7. Time shall be of the essence regarding the Company’s obligations under this Agreement.
1. **Appointment and Services**
	1. S4C appoints the Agent as its agent to provide the Services in accordance with the requirements of Schedule 1 and the terms of this Agreement, and the Agent accepts the appointment and agrees to provide the Services from the Effective Date for the duration of the Term on the terms and conditions set out in this Agreement unless and until this Agreement is terminated by either party in accordance with its terms or otherwise expires.
	2. The Agent is authorised by S4C to negotiate and conclude contracts for the purchase of the Media on behalf of S4C, following prior written approval by the S4C Representative in each case. Conclusion of a contract between Media Suppliers and the Agent is subject to S4C’s written acceptance and S4C may refuse purchases without giving reasons.
	3. The Agent shall and shall procure that the Staff shall at all times during the Term perform the Services in accordance with Good Industry Practice, shall comply with all Applicable Laws, the Policies and all reasonable instructions and directions of S4C from time to time.
	4. The Agent shall not enter into any obligation to any person whether express or implied which would or might conflict with the full and proper performance of its obligations to S4C under this Agreement.
	5. The Agent shall and shall ensure that all Staff shall at all times during the Term act towards S4C conscientiously, in good faith and in S4C’s best interests and in particular and without limitation shall not do or omit to do anything or enter into any agreements with any person which may conflict with S4C’s best interests, adversely impact on S4C’s goodwill or reputation and/or the Agent’s obligations under this Agreement. The Agent undertakes and agrees not to allow its interests to conflict with the duties that it owes to S4C under this Agreement and the general law.
	6. Nothing in this Agreement shall oblige S4C to commence or to continue using the whole or any part of the Services or the Product of the Services. In the event that S4C shall in its absolute discretion elect not to use them the Agent shall not be entitled to claim any compensation for the loss of opportunity to provide the Services or for any other reason whatsoever.
	7. Except as authorised by S4C in writing, the Agent undertakes and agrees not to act in a way which will incur any liabilities on behalf of S4C nor to pledge the credit of S4C.
	8. The Agent undertakes and agrees to keep S4C fully informed of its activities concerning the Services and to provide S4C with reports on request.
	9. The Agent undertakes and agrees to inform S4C promptly of any complaint or enquiry in relation to the Services received by the Agent.

2.10 The Agent shall not edit, adapt, re-size, alter or in any way change the S4C Advertising without S4C’s prior written consent and shall not use any marketing, promotional or sales materials not supplied or approved by S4C.

1. **The Agent's terms of business with Media Suppliers**
	1. Unless otherwise notified to S4C in advance, the Agent’s contracts with Media Suppliers for the S4C Advertising will be made on the best achievable terms including all relevant discounts and on terms which are equal to or better than those as set out in Schedule 5. The Agent undertakes and agrees to act in accordance with sound commercial principles in its relations with Media Suppliers and to do nothing which S4C considers could be prejudicial to its goodwill or commercial interests.
	2. The Agent shall ensure that the Media Suppliers contractually commit to observe all S4C requirements in connection with the use of the S4C brand, including the S4C Brand Guidelines, and that the Media Suppliers agree not to edit, adapt, re-size, alter or in any way change the S4C Advertising without S4C’s prior written consent.
	3. The Agent undertakes that it will act in accordance with the terms of its agreements with Media Suppliers and will not breach the same including without limitation making timely payments for all sums due from time to time to Media Suppliers in connection with S4C campaigns. The Agent undertakes to enforce its rights under such agreements for S4C’s benefit.
	4. The Agent undertakes and agrees not without prior reference to S4C (and then only acting strictly on S4C’s express instructions) on behalf of S4C to take part in any dispute or commence or defend any court or other dispute proceedings in connection with the Services or settle or attempt to settle or make any admission concerning any such proceedings.
	5. If the Agent receives notification of any claim or legal proceeding under any Media agreements arising from its breach of the same the Agent agrees promptly to notify S4C of such claim or legal proceeding and to give S4C the opportunity to participate in and, subject to the agreement of the Agent, fully to control any compromise, settlement or other resolution or disposition of such claim or proceeding and to fully co-operate with all reasonable requests in S4C’s participation and control of any compromise, settlement or resolution or other disposition of such claim or proceeding and to take all such steps as S4C may reasonably request to mitigate any liability and costs, damages, losses and expenses in the context of the subject matter of such claim or proceedings. The parties agree that S4C shall have no liability under such contracts where such liability arises as a result of the Agent’s breach of the same.
	6. The Agent agrees it shall use its best endeavours to ensure that S4C may effect any changes or cancellations to the S4C Advertising at no cost to S4C.
	7. The Agent shall make clear to all Media Suppliers and prospective Media Suppliers that it is the agent of S4C only to the extent provided for in this Agreement.

4. **S4C Obligations**

4.1 S4C shall act in good faith towards the Agent at all times during the Term.

4.2 S4C shall provide to the Agent the S4C Advertising as reasonably required by the Agent.

4.3 S4C shall provide the Agent with the information the Agent reasonably requires to perform the Services.

1. **Review Meetings**
	1. The Agent shall meet with S4C at such times and dates reasonably requested by S4C from time to time during the Term to discuss any matter arising out of the provision of the Services which needs to be addressed at short notice. The Agent shall use all reasonable endeavours to ensure that such Staff as may reasonably be requested by S4C shall attend such a meeting.
	2. S4C and the Agent shall meet once every 12 months to formally review matters arising out of the delivery of the Services. The Agent shall use all reasonable endeavours to ensure that such Key Personnel and Staff as may reasonably be requested by S4C shall attend each review meeting and shall provide a written report containing all information as S4C shall reasonably request in respect of the previous 12 months at least ten (10) Working Days in advance of any such meeting.
	3. At the review meetings S4C and the Agent shall review and discuss matters arising out of delivery of the Services including but not limited to the following:
		1. the nature and standard of the Services provided;
		2. any changes to be made to the Services and/or communication between S4C and the Agent to improve the efficiency and effectiveness of the Services;
		3. the style, frequency, content, delivery timescale and any other matter relating to the post campaing reports and any reports provided in accordance with clause 5.2;
		4. the details, development and any revision of current projects including any necessary changes to timescales;
		5. information and updates regarding industry developments and general industry trends;
		6. any other matter as required by S4C.
	4. Following the review meeting held on or around the anniversary of the Effective Date, S4C shall be entitled to give the Agent notice in writing:
		1. to confirm the Agent’s appointment for the remainder of the Term in accordance with the terms and conditions of this Agreement;
		2. to confirm the appointment for the remainder of the Term upon such revised, additional or different terms and conditions as may be agreed between the parties and confirmed in writing; or
		3. to terminate this Agreement by giving one months notice in accordance with clause 13.2.
2. **Staffing**
	1. The Agent agrees to employ or engage the services of a sufficient number of Staff with the appropriate skills and experience to ensure that the Services are provided in accordance with Good Industry Practice and the requirements of this Agreement.
	2. The Agent shall procure that all Staff sign a confidentiality agreement in the form set out in Schedule 4 hereof.
	3. The Agent shall provide all necessary training to the Staff in accordance with Good Industry Practice and the Policies and shall provide training to Staff, as appropriate, relating to the Services.

**7. Key Personnel**

* 1. The Agent will make every reasonable endeavour to ensure that the Key Personnel remain employed by the Agent. The Agent shall ensure that the Key Personnel is actively involved in the provision of the Services throughout the Term.
	2. The Agent shall notify S4C in writing of any matters or circumstances which could affect the availability of the Key Personnel promptly upon becoming aware of the same.
	3. If any of the Key Personnel are unavailable at any time during the Term the Agent shall propose a suitable replacement to S4C in writing. No replacement for any Key Personnel shall be permitted to participate in the provision of the Services unless S4C has given its prior written approval of such replacement. If no replacement acceptable to S4C can be found, S4C shall be entitled by notice in writing to the Agent to terminate this Agreement with immediate effect.
1. **Intellectual Property**
	1. The Agent shall not use any brands, trade marks, trade names or logos of S4C in any manner without the prior written approval of S4C.
	2. The Agent acknowledges and agrees that, as between the Agent and S4C, the copyright and all other right title and interest in the S4C Advertising is and shall remain the property of S4C.
	3. With effect from the end of the Term the Agent hereby irrevocably assigns to S4C with full title guarantee by way of an assignment of present and future copyright the entire copyright and all other right title and interest of whatsoever nature whether vested contingent or future in and to the Product of the Services which exist under the laws of England and Wales and all other analogous rights to which the Agent and/or the Staff may be entitled by virtue of the laws of all or any jurisdictions throughout the world TO HOLD the same for S4C its successors, assigns and licencees absolutely for the whole period of copyright throughout the world together with any and all renewals, reversions and extensions thereof.
2. **Warranties**
	1. The Agent represents, warrants and undertakes to S4C in the terms set out in Schedule 2.
	2. The Agent accepts that S4C enters into this Agreement in reliance upon each of the Warranties.
	3. Each of the Warranties shall be construed as a separate and independent warranty and shall not be limited or restricted by reference to or inference from the terms of any other Warranty or any other provision of this Agreement.
3. **Financial Matters**

10.1 The Agent will invoice S4C for all Media purchases at the end of the month in which the relevant S4C Advertising appeared.

10.2 Subject to clause 10.3 below, the Agent will invoice the Media Suppliers directly for the Agent's commission.

10.3 The Agent acknowledges and agrees that the Agent shall not be entitled in any circumstances to receive commission from both a Media Supplier and S4C for the same Media purchase.

10.4 Following each campaign the Agent will provide the S4C Representative with a breakdown of all monies paid and received in respect of this Agreement outlining the commission received by the Agent from Media Suppliers.

10.5 The Agent shall retain all invoices and other paperwork, books and records relating to this Agreement at its offices and S4C shall be entitled on no less than 7 days notice to enter onto the premises of the Agent during work hours to audit and inspect the same. In the event that any audit and inspection by S4C reveals that the Agent has over-charged S4C in respect of any of the services provided, the Agent shall reimburse S4C within 7 days. In the event that such overcharge exceeds 5% of the item in question, the Agent agrees to reimburse S4C the cost of performing such audit.

10.6 S4C agrees to pay all valid invoices within [TBC based on successful tender response] thereof.

10.7 Notwithstanding the foregoing, the Agent agrees to provide S4C with written notice in the case of those Media Suppliers that require payment prior to the dates set out above and/or require payment of a surcharge if their accounts are not settled by a specified date. In such cases and provided that the Agent shall have notified S4C in advance the conditions of the Agent’s contract with such Media Suppliers, S4C agrees to pay the relevant charges on such earlier dates.

1. **Indemnity**

The Agent shall indemnify and hold harmless and keep indemnified and held harmless S4C on demand from and against any and all actions, claims, demands, proceedings, fines, costs, expenses (including legal expenses on a solicitor own client basis), charges, losses, damages and other liabilities of whatsoever nature and howsoever suffered, incurred or sustained by S4C as a result of or in connection with the performance or non-performance by the Agent of any of its obligations under this Agreement or breach by the Agent of any of the Warranties or any negligence or wilful act or omission on the part of the Agent or any member of Staff or any claim by any person that the use or exploitation by S4C or any of its successors, assigns or licensees of the Intellectual Property infringes the rights of any person.

1. **Insurance**
	1. With effect from the Effective Date, the Agent undertakes to effect suitable insurance policies with reputable insurance companies or underwriters against all risks normally insured against in accordance with industry custom and practice and the specific circumstances of the Services for the duration of the Term. Without prejudice to the generality of the foregoing such insurance shall includeadequate public liability insurance cover with a reputable insurance company to a minimum indemnity limit of [TBC based on successful tender response] per claim and [TBC based on successful tender response] in aggregate per annum.
	2. The Agent undertakes to comply with the terms, conditions and limitations of the Insurance Policies throughout the Term, including prompt payment of all premiums, and that it will not do, or omit to do, anything to vitiate either in whole or in part any of the Insurance Policies.
	3. The Agent shall promptly on request provide S4C with full information and documentation relating to all Insurance Policies and all modifications additions and extensions of such Insurance Policies.

* 1. The Agent shall forthwith advise S4C in writing of the happening of any event which might give rise to a claim under any of the Insurance Policies and which may prevent the Agent from complying with its contractual responsibilities under this Agreement. The Agent shall provide S4C with copies of all correspondence and documentation relating to any such matter immediately on receipt.
1. **Termination**
	1. S4C may at any time by notice in writing to the Agent terminate this Agreement if:
		1. the Agent is in material breach of any of its obligations under this Agreement which (a) is incapable of remedy; or (b) if capable of remedy is not remedied within seven (7) days of S4C bringing such breach to the Agent’s attention (or such longer period as S4C may agree); or
		2. any of the following occurs:
2. the presentation of a petition, or the convening of a meeting for the purpose of considering a resolution, for the winding up or dissolution of, the passing of any resolution for the winding up or dissolution of, or the making of a winding up order against or order for the dissolution of the Agent;
3. the appointment of a receiver, administrative receiver, receiver and manager, administrator, sequestrator or similar officer over all or any of the assets or undertaking of the Agent, the making of an administration application, or the making of an administration order or presentation of an administration petition, in relation to the Agent;
4. the proposal of, application for or entry into of a compromise or arrangement or voluntary arrangement, or any other scheme, composition or arrangement in satisfaction or composition of any of its debts or other arrangement for the benefit of its creditors generally, by the Agent with any of its creditors (or any class of them) or any of its members (or any class of them) or the taking by the Agent of any action in relation to any of the same or the filing of any documentation for the purpose of obtaining a moratorium pursuant to section 1A and paragraph 7 of schedule A1 of the Insolvency Act 1986 in relation to the Agent;
5. the taking by any creditor (whether or not a secured creditor) of possession of, or the levying of distress or enforcement or some other process upon, all or part of the property, assets or undertaking of the Agent;
6. the deemed inability of the Agent to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (with the words “proved to the satisfaction of the court” eemed to be omitted from that section for these purposes);
7. the suspension of payment of debts by the Agent or the inability or admission of inability of the Agent to pay its debts as they fall due;
8. the ceasing by the Agent to carry on the whole or a substantial part of its business;
9. the presentation of a petition for bankruptcy, or the making of a bankruptcy order, in respect of the Agent, the occurrence of circumstances in respect of the Agent which would enable the presentation of a bankruptcy petition under Part IX of the Insolvency Act 1986 or the making of an application for an interim order or the making of an interim order under section 252 of the Insolvency Act 1986 in relation to the Agent, or, where the Agent is a partnership, the occurrence of any of the foregoing events in relation to any individual partner in the partnership; or
10. the occurrence of an event or circumstance in relation to the Agent similar to any of those referred to in paragraphs (a) to (h) above in any jurisdiction other than England and Wales; or
	* 1. there is a change of control (as ‘control’ is defined in Section 840 of the Income and Corporation Taxes Act 1988) of the Agent.
	1. S4C shall be entitled to terminate this Agreement by providing to the Agent at least one (1) month's written notice.
	2. S4C shall be entitled, at its option, to extend the Term for a period of up to 12 (twelve) months from the expiry of the Term by giving notice in writing to the Agent at least one month in advance of such date. If S4C does not wish to extend this Agreement beyond the Term, this Agreement shall expire on the expiry of the Terms and the provisions of clause 14 shall apply.
11. **Effects of Expiry or Termination**
	1. Upon expiry or termination of this Agreement howsoever arising and subject always to the provisions of this clause 14 all rights and obligations hereunder shall immediately cease and determine without prejudice to any rights of action then accrued hereunder including any rights which either party may have in respect of a claim for damages for breach by the other party or under any indemnity.
	2. S4C’s obligation to pay the Agent shall be limited to such payment as is attributable to the Services actually and properly provided by the Agent to the reasonable satisfaction of S4C in accordance with the terms of this Agreement up to the date of expiry or termination.
	3. The Agent shall immediately after the Termination Date deliver at its cost to S4C:
		1. all property belonging to S4C in its power, possession, custody or control including any and all S4C Confidential Information together with all copies thereof or extracts therefrom; and
		2. all other documentation relating to this Agreement; and

if requested to do so by S4C, provide all such assistance as S4C may reasonably require to enable S4C or any other company(s) appointed by S4C to complete the provision of any Services.

* 1. The Agent acknowledges that the Agent shall have no claim in respect of loss of opportunity to enhance reputation or otherwise howsoever if S4C terminates this Agreement.
	2. The following clauses shall survive the expiry or termination of this Agreement howsoever arising: 1 (Definitions), 8 (Intellectual Property), 9 (Warranties), 11 (Indemnity), 14 (Effects of Expiry or Termination), 17 (Set off), 19 (Remedies and Waiver), 20 (Announcements and Confidentiality), 21 (Data Protection and FOIA), 23 (Construction) and Schedule 2 (Warranties).
1. **Assignment and Sub-Contracting**
	1. S4C shall be free to assign, novate, sub-contract or otherwise dispose of its rights or obligations under this Agreement and/or any part thereof and the Agent shall enter into such deeds of novation in respect thereof as S4C shall reasonably require.
	2. This Agreement is personal to the Agent. Accordingly, the Agent shall not assign, novate, sub-contract or otherwise dispose of its rights or obligations under this Agreement or any part thereof without the prior written consent of S4C which may be withheld or refused in S4C’s reasonable discretion.
2. **Force Majeure**
	1. "Force Majeure" shall mean any of the following events or circumstances: pandemic or epidemic, fire, flood, national calamity, riot, act of God, act of terrorism, war or armed conflict, the enactment of any act of parliament which changes S4C’s status as broadcaster or any direction to S4C by Ofcom.
	2. If an event of Force Majeure occurs the party affected shall notify the other party thereof in writing without delay and, to the extent that any inability to observe or perform any obligation under this Agreement results from that event of Force Majeure, performance of the obligations so affected shall be deemed to be suspended from the date of service of such notice until such inability is removed or until earlier termination of this Agreement in accordance with clause 16.3. Both parties undertake to use reasonable endeavours to minimise and reduce any period of suspension and all costs and expenses occasioned by an event of Force Majeure.
	3. If an event of Force Majeure occurs and continues for a period of thirty (30) days or more S4C shall have the right to terminate this Agreement on notice in writing to the Agent.
3. **Set-off**

S4C shall have the right to set off any and all monies due it from the Agent against any amount owed by S4C to the Agent whether under this Agreement or any other agreement between the parties, or as a result of any settlement or judgment under which damages or indemnity in connection with this Agreement are due, whether such debt is owed now or at any time in the future, whether it is liquidated or not and whether it is actual or contingent. Any exercise by S4C of its rights under this clause will not prejudice any other right or remedy available to it, whether under this Agreement or otherwise.

1. **Notices**
	1. Any notice given or made under or in connection with this Agreement shall be in writing and shall be given or made to the recipient at the address stated at the beginning of this Agreement or sent by e-mail to the recipient’s e-mail address stated in clause 18.3 marked for the attention of the person named below (or such substituted person notified by the recipient to the other party from time to time).
	2. Every notice addressed in accordance with the provisions of clause 18.3, shall be deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the recipient party, if sent by prepaid first class post, two (2) Working Days after the date of posting, if transmitted by e-mail at the time of transmission, provided that, where, in accordance with the above provisions, any notice would otherwise be deemed to be given or made on a day which is not a Working Day or after 5.30pm on a Working Day, such notice shall be deemed to be given or made at 9.00am on the next Working Day.
	3. S4C

Marked for the attention of: Rebecca Griffiths

With copy to Head of Legal and Business

The Agent

Marked for the attention of: [ ]

* 1. Nothing in this clause 18 shall be interpreted or construed as an agreement on the part of S4C to accept service of any legal proceedings by e-mail.
1. **Remedies and Waiver**
	1. No waiver by a party of any breach of any of the provisions in this Agreement shall be effective unless given in writing.
	2. Failure or delay by any party in exercising any right, power or remedy of that party under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by any party of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
	3. S4C’s rights powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.
	4. Any waiver of any breach of or default under any terms of this Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.
2. **Announcements and Confidentiality**
	1. The Agent shall use the S4C Confidential Information solely for the purposes of performing its obligations under this Agreement and subject to the provisions of clause 20.2 shall not disclose the S4C Confidential Information to any person other than in confidence and on a strictly need to know basis to the Staff and the Agent shall take all such steps as S4C may reasonably require to enforce any such obligations of confidentiality against any Staff.
	2. The restrictions on disclosure contained in clause 20.1 shall not apply to any information which:
		1. is in or enters the public domain other than as a consequence of, any breach of the restrictions on disclosure by the Agent or any Staff; or,
		2. is required to be disclosed by law or by any regulatory body with whose rules the parties are required to comply provided that, to the extent it is legally permitted to do so, the Agent gives S4C as much notice of such disclosure as possible.
	3. On termination of this Agreement, the Agent shall:
		1. return to S4C all documents and materials (and any copies) containing, reflecting, incorporating or based on the S4C Confidential Information;
		2. erase all S4C Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
		3. certify in writing that it has complied with the requirements of this clause, provided that the Agent may retain documents and materials containing, reflecting, incorporating or based on the S4C Confidential Information to the extent required by law or any applicable regulatory body.
	4. Except as expressly stated in this Agreement, S4C makes no express or implied warranty or representation concerning the S4C Confidential Information.
	5. S4C reserves all rights in the S4C Confidential Information. No rights in respect of the S4C Confidential Information other than those expressly stated in this Agreement are granted to the Agent, or are to be implied from this Agreement.
	6. The provisions of this clause 20 shall continue to apply after the termination of this Agreement.
3. **Data Protection and FOIA**
	1. All Personal Data provided to S4C by the Agent in connection with the provision of the Services may be processed by S4C in accordance with the DPA, the S4C Privacy Policy and the use intended to be made by S4C of the Products of the Services. All Personal Data supplied to S4C shall be processed in compliance with S4C’s data protection policy in force from time to time and in accordance with contractual necessity.
	2. The Agent acknowledges that S4C is a public body subject to the requirements of the FOIA and the Regulations and shall assist and co-operate with S4C to enable S4C to comply with its obligations thereunder and in connection therewith the Agent shall and shall procure that the Staff shall:
		1. provide S4C with a copy of all relevant information in its possession or power in the form that S4C requires; and
		2. provide all necessary assistance as reasonably requested by S4C to enable S4C to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Regulations

subject to reasonable advance notice in writing by S4C to the Agent (the reasonableness of the notice to be judged in the context of the statutory timeframe for the provision of the information).

* 1. S4C shall be responsible for determining whether the information:
		1. is exempt from disclosure in accordance with the provisions of the FOIA or the Regulations; or
		2. is to be disclosed in response to a request for information, and in no event shall the Agent respond directly to a request for information unless expressly authorised to do so by S4C on behalf of S4C.
	2. The Agent acknowledges that S4C may be obliged under the FOIA, or the Regulations to disclose information or may decide that allowing a particular request for information will serve the public interest more than rejecting the request pursuant to any applicable exemption. S4C will consult with the Agent where practicable and take its views into account. Where the Agent’s views conflict with S4C’s legal advice nothing in this Agreement shall prevent S4C from acting in accordance with legal advice received by it.
	3. The Agent shall ensure that all information produced in the course of performing its obligations under this Agreement or relating to this Agreement is retained for disclosure and shall permit S4C to inspect such information as requested from time to time.

**22. Prevention of Bribery, Corruption and Fraud**

22.1 For the purposes of this clause 22.1 and clause 22.2 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it. The Agent shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that all of its Staff, all others associated with the Agent and any subcontractors involved in performing the Services or with this Agreement so comply.

22.2 Without limitation to clause 22.1, the Agent shall not make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

22.3 The Agent shall immediately notify S4C as soon as it becomes aware of a breach of any of the requirements in clauses 22.1 and 22.2.

22.4 The Agent shall not offer or give, or agree to give, to S4C or any other public body or any person employed by or on behalf of S4C or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any improper act in relation to the obtaining or execution of the Agreement or any other contract with S4C or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract.

22.5 The Agent warrants that it has not paid commission or agreed to pay commission to S4C or any other public body or any person employed by or on behalf of S4C or any other public body in connection with the Agreement.

22.6 The Agent shall take all reasonable steps to prevent Fraud by the Agent and/or its Staff (including its shareholders, members, directors) in connection with the receipt of monies from S4C and shall notify S4C immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

22.7 If the Agent, its Staff or anyone acting on the Agent’s behalf, engages in conduct prohibited by clauses 22.1, 22.2, 22.4 or 22.5 and/or commits Fraud in relation to this or any other contract with S4C, S4C may:

* + 1. terminate the Agreement and recover from the Agent the amount of any loss suffered by S4C resulting from such termination, including the cost reasonably incurred by S4C of making other arrangements for the supply of the Services and any additional expenditure incurred by S4C throughout the remainder of the Term; and/or

22.7.2 recover in full from the Agent any other loss sustained by S4C in consequence of any breach of  those clauses.

1. **Construction**
	1. It is agreed that the Agent enters into this Agreement and undertakes its obligations as an independent contractor and nothing in this Agreement shall imply any form of partnership, trust, joint venture, employment, fiduciary or other relationship as between S4C and the Agent other than the contractual relationship expressly provided for in it. Save as expressly provided for in this Agreement, none of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party’s behalf.
	2. For the avoidance of doubt the Agent acknowledges that it is not a ‘commercial agent’ for the purposes of the Commercial Agents (Council Directive) Regulations 1993.
	3. If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful, void or unenforceable, such provision shall to the extent required be severed from this Agreement and rendered ineffective and such severance shall not in any way affect any other provision of or the validity or enforceability of this Agreement.
	4. With the exception of statements made fraudulently, this Agreement sets out the entire agreement between the parties hereto in connection with the subject matter hereof and supersede all prior agreements and undertakings relating to the provision of the Services and no party has relied upon any representation save for a representation expressly set out in this Agreement.
	5. This Agreement does not create or confer any rights under the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to this Agreement, save that any successor in title or assign of S4C shall also be entitled to enforce this Agreement.
	6. No variation to this Agreement shall have any force or effect unless in writing and signed by duly authorised representatives of the parties.
	7. This Agreement shall be construed as agreements made in Wales and subject to the laws of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.

|  |  |
| --- | --- |
| **SIGNED** by a duly authorisedsignatory for and on behalf of **S4C**Signature ……………………………………………..Name …………………………………………….. | Signed and delivered as a deedby **[ ]**acting by its authorised signatory:SIGNED BY ……………………………………………………....NAME …………………………………………………………………Date…………………………………………………………………..In the presence of: ………………………………………….. (witness)Name:………………………………………………………………..Address:……………………………………………………….…… |
|  |  |

**SCHEDULE 1**

**SERVICES**

**[To be completed in line with successful tender details and invitation to tender]**

**SCHEDULE 2**

**WARRANTIES**

**[To be completed in line with successful tender details]**

* 1. The Agent represents, warrants and undertakes to S4C as follows:
		+ 1. it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
			2. it has the power, to enter into and to exercise its rights and to perform its obligations under this Agreement;
			3. the execution, delivery and performance by it of this Agreement does not contravene any provision of:

(i) the Memorandum and Articles of Association of the Agent;

(ii) any order or decree of any court or arbitrator; or

(iii) any obligation which is binding upon the Agent or upon any of its assets or revenues;

* + - 1. the information, representations and other matters of fact committed in writing to S4C by the Agent in connection with or arising out of its tender were, at the date on which the same were given to S4C, true and complete in all material respects and the Agent shall inform S4C immediately if such information ceases to be true and complete;
			2. no claim is presently being assessed and no litigation, arbitration or administrative proceedings is presently in progress or, to the best of the knowledge of the Agent, pending or threatened against it or any of its assets which is significant and will or is likely to have a material adverse effect on the ability of the Agent to perform its obligations under this Agreement;
			3. it is not subject to any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Agent to perform its obligations under this Agreement;
			4. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Agent threatened) for its winding‑up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
			5. in the provision of the Services the Agent shall not and shall procure that the Staff shall not infringe any rights of any person or do any act that is libellous or blasphemous or defamatory or contravene the provisions of any Applicable Laws;
			6. the Agent has in place or will from the Effective Date have in place adequate technical and organisational security measures, including database software and equipment, governing the processing of the Personal Data and the working practices of any employees involved in such processing in accordance with the requirements of the DPA.

**SCHEDULE 3**

**KEY PERSONNEL**

**[To be completed in line with successful tender details]**

**SCHEDULE 4**

**CONFIDENTIALITY AGREEMENT**

This Agreement is made the [*insert date*] of [*insert month*] 20[*insert year*]

**BETWEEN**

* 1. [ ] (“**the Company**”); and
	2. [*Insert name of Individual*] of [*Insert home address of Individual*] (“**the Individual**”)

INTRODUCTION

The Individual agrees that during his/her employment or engagement (as appropriate) by the Company, the Individual shall be in receipt of and shall use confidential information relating to the business of S4C. The Company is prepared to grant the Individual access to the Confidential Information subject to and in accordance with the provisions of this Agreement.

**IT IS AGREED** as follows:

1. **Definitions and Interpretation**
	1. The following definitions where the context admits apply in this Agreement:

|  |  |
| --- | --- |
| “Confidential Information’” | without limitation all data, contact information of S4C employees, details of individuals or companies that contact the Company in connection with the Service, details of S4C suppliers and customers, details of S4C’s working practices, research material, financial information, computer printouts, notes, letters, memoranda, reports, contracts, licences, agreements, intellectual property of any kind, charts, materials, databases, and all other documentation and materials of a confidential nature relating to the business of S4C which is prepared or made available by S4C or any subsidiary, holding or associated company of S4C to the Company pursuant to the Permitted Purpose, or generated in connection with the Service, whether provided in documentary form or otherwise and whether mechanically or electronically storable, recoverable, accessible or reproducible and whether before, on or after the date of this Agreement, together with any information which has been designated as confidential by S4C in writing or that ought to be considered as confidential; |
| “Permitted Purpose” | the sole purpose of providing the Service in accordance with the S4C Contract; |
| “S4C Contract” | the agency agreement between the Company and S4C in relation to the provision of the Services of the Company as an agent; |
| “S4C Services” | any channel, television service, website or application owned solely or mainly by S4C or any Group Company of S4C, including the digital television service “S4C,” the website www.s4c.cymru and the VOD catch-up service “Clic” available on the iphone and ipad; and |
| “The Service” | the Media Buying and Paid Social Media Services. |

* 1. Unless the context otherwise requires words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate unincorporated associations and partnerships.
	2. The subject headings to the Clauses of this Agreement are for guidance only and are not intended to limit or restrict the wording of any clause in any way.
1. **Obligations of the Individual**
	1. As a condition of and in consideration of the Company entering into the Individual’s contract of employment or contract of engagement (as appropriate) the Individual hereby undertakes to the Company:
		1. to keep the Confidential Information secret and confidential at all times unless otherwise directed by S4C in writing;
		2. not to disclose or use the Confidential Information and to ensure that the Confidential Information is not disclosed or used for any purpose other than the Permitted Purpose;
		3. to ensure that the Individual does not lose control of the Confidential Information;
		4. not to make or attempt to make or allow or attempt to allow any third party to make any commercial use or gain from the Confidential Information; and
		5. to take all reasonable steps to ensure that any summaries notes or records made by the Individual of any Confidential Information disclosed hereunder remain under the effective control of the Individual.
	2. The Individual agrees that no right or licence is granted to him/her in respect of the Confidential Information save as expressly provided hereunder.
	3. On completion of the Individual’s and/or the Company’s obligations in connection with the Service, the Individual shall:
		1. return to S4C all documents and materials (and any copies) containing, reflecting, incorporating or based on the Confidential Information;
		2. erase all Confidential Information from computer and communications systems and devices used by the Individual, including such systems and data storage services provided by third parties (to the extent technically practicable); and
		3. certify in writing that the Individual has complied with the requirements of this clause, provided that the Individual may retain documents and materials containing, reflecting, incorporating or based on the Confidential Information to the extent required by law or any applicable regulatory body.
	4. The Individual acknowledges and agrees that a breach of the obligations of confidentiality as set out in this agreement shall constitute gross misconduct and be considered by the Company to be a material breach of the terms of the Individual’s contract of employment or contract of engagement (as appropriate) with the Company entitling the Company to terminate its contract with the Individual without notice and without any damages, costs or any other sums being payable to the Individual.
2. **Limitations**
	1. Clause 2 shall not apply to Confidential Information:
		1. which is or becomes in the public domain otherwise than by reason of the default of the Individual or any person acquiring it from the Individual (and in this respect the Individual agrees not to acknowledge, comment or confirm to any third party any part of the Confidential Information in the public domain without the prior written approval of the Company); and/or
		2. the disclosure of which is required by law save that if the Individual is required to disclose Confidential Information to any third party then the Individual will seek to disclose only the minimum amount of Confidential Information consistent with satisfying such requirement and, to the extent that the Individual is permitted to do so, having given the Company prior written notice of the Confidential Information which the Individual has been requested to disclose.
	2. The Individual acknowledges and agrees that property title and copyright in the Confidential Information (together with any documents property or other items on which the Confidential Information is provided) remains the property of S4C at all times.
3. **Waiver**

Failure or delay by any party to this Agreement in exercising any right power or remedy of that party under this Agreement shall not in any circumstances impair such right power or remedy nor operate as a waiver of it.

1. **General Provisions**
	1. This Agreement shall remain in force and effect during the term of the S4C Contract and at all times thereafter for a period of five years.
	2. The Individual may not assign grant or assign any right, undertaking or obligation hereunder without the prior written consent of the Company.
	3. The Individual hereby agrees that its obligations under this Agreement to the Company shall apply mutatis mutandis to S4C and that S4C may enforce and rely on this Agreement to the same extent as if it were a party to this Agreement.
	4. This Agreement is without prejudice to the provisions of any other confidentiality agreement or undertaking which the Individual may have entered into with the Company.
	5. If any provision of this Agreement shall be prohibited by or adjudged by a Court to be unlawful void or unenforceable such provision shall to the extent required be severed from this Agreement and rendered ineffective, as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement.
	6. This Agreement shall be subject to the laws of England and Wales whose courts shall be the courts of competent jurisdiction.

IN WITNESS WHEREOF this Agreement is signed by the authorised representatives of the parties the day and year first before written.

SIGNED by the Individual.......................................................................

SIGNED by the Company........................................................................

**SCHEDULE 5**

**INDICATIVE COMMERCIAL TERMS**

**[To be completed in line with successful tender details]**