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| <u>Business and Editorial Brief:</u> | the business and editorial brief set out in Schedule 1; |
| <u>Cashflow:</u> | the cashflow for the payment of the Budget as set out in Schedule 5; |
| <u>Catch-Up Rights:</u> | the right to make the Programme available to viewers for reception on demand at a time of their choice without charge from the official S4C website (at www.S4C.cymru or such URL as may be determined by S4C from time to time) or from any other website operated by S4C, on behalf of S4C, or under S4C licence via streaming and/or temporary download and to perform all such technical evolutions as are necessary to enable the full exploitation by S4C of the Catch-Up Rights; |
| <u>Children and Young Persons Act:</u> | the Children and Young Persons Act 1933 as updated from time to time; |
| <u>Commercial Breaks:</u> | the commercial breaks as specified in the Editorial and Business Brief and/or the document titled 'Actual Programme Length' published on the production page on the S4C Website on the date of this Agreement or any revised version thereof as published by S4C from time to time, or as otherwise agreed between S4C and the Producer in writing; |
| <u>Confidential Information:</u> | any information regarding the business, suppliers or customers of either party and the terms of the Agreement together with any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the affairs, property, assets, trading practices, developments, trade secrets, intellectual property rights, know-how of either party and all Personal Data; |
| <u>Confirmation of Rights:</u> | the confirmation of rights set out in Schedule 3; |
| <u>Commissioner:</u> | the individual content commissioner with specific responsibility for the Programme as identified in section 1.4 of the Business and Editorial Brief; |
| <u>Data Protection Laws:</u> | i) the Data Protection Act 2018 and the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018; and (iii) any new national data protection laws; |
| <u>Delivery:</u> | delivery of the Programme in accordance with the provisions of this Agreement and the Delivery |

Requirements by the Delivery Date and the Subtitles Delivery Date;

Delivery Date: the dates for Delivery of the Programme as specified in the Business and Editorial Brief and/or Schedule 4 and the date(s) for Delivery of the Programme Information specified in Clause 3.7;

Delivery Requirements: the requirements of Clauses 3.3 to 3.9.

Designated Person: the person(s) specified as such in section 6.10 of the Business and Editorial Brief;

Exploitation: any sale, hire, distribution, exhibition, use or exploitation by S4C in accordance with Clause 5.13 or by the successors, assignees and/or licensees of S4C of the Programme or the Programme Materials in every language and in any country and territory in the World without limitation in terms of time in any media by any means or form whether digital, linear or interactive, on-line or off-line, visual, audio or audio-visual or otherwise whether now known or in the future devised including but without limitation by means of:

broadcast via cable, on the internet or web (see below) and all other forms of television and radio whether free of charge or fee based (including video on demand and each other form of delivery or broadcast system) including (for the avoidance of doubt but without limitation) broadcast on any S4C Service and/or any other service established by S4C or any subsidiary of S4C whether on its own or jointly with others;

use on the internet (as such word is commonly used) including but without limitation the sole and exclusive right to establish a website or websites for or in connection with the Programme and to use clips or parts of the Programme on any website which is connected with the Programme and to webcast the Programme (being the right to show the Programme on the internet or web in a linear format without breaks or interference with the original running or sequence of the Programme) whether as a simulcast with the original Programme or otherwise;

optical, electronic and magnetic disks and every other computer and/or console system;

exercise of the rights set out in the Confirmation of Rights;

exhibition in any television or film festival;

archiving or educational purposes including without limitation the right to permit the Educational Recording Agency Limited to licence educational establishments to

use the Programme for educational purposes in accordance with the Act or otherwise;

exploitation of the publishing rights in the music in the case of music commissioned specifically for the Programme;

every form of publication or merchandising;

exploitation by videos, video disks, DVD and other invention;

exploitation of the rights referred to in Clauses 5.4 and/or 5.9;

and the word "Exploit" shall be construed accordingly.

FOIA: the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

Force Majeure: force majeure as defined in Clause 8.4;

Format: the format on which the Programme is based;

Fraud: any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud S4C;

General Dispute: any actual lock-out strike labour condition or other industrial action or other labour dispute which has not been brought about by some act or omission of the Producer its officers employees directors shareholders or group companies;

GDPR: General Data Protection Regulation EU 2016/679;

Gross Income: all income received by S4C pursuant to the Exploitation but excluding VAT and similar sales taxes and excluding the income received pursuant to Exploitation on any S4C Service and excluding the income received from exercise of the rights set out in Clauses 5.9 and/or 5.17;

Health and Safety Questionnaire: the health and safety questionnaire required to be completed by the Producer in accordance with the S4C Health and Safety policy available on the production section of the S4C Website;

Industrial Relations Contracts: the contracts regulating industrial relations negotiated with bodies which represent contributors to the making

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| | of the Programme or any part thereof and which have been approved in writing by S4C; |
| <u>Insurance Policies:</u> | the insurance policies set out in Clause 2.44; |
| <u>Key Elements:</u> | the key elements of the Programme set out in part 5.5 of the Business and Editorial Brief; |
| <u>Key Personnel:</u> | the personnel specified in the Business and Editorial Brief; |
| <u>Local Dispute:</u> | any actual lockout strike labour condition or other industrial action or labour dispute other than a General Dispute; |
| <u>Milestones:</u> | the milestones set out in Schedule 6; |
| <u>Minimum Rights Required:</u> | the minimum rights required to be cleared referred to in paragraph A of the Confirmation of Rights; |
| <u>Mobile Rights:</u> | the right to transmit the S4C Content, the Format and the Third Party Material to mobile devices by means of any form of point to multipoint technology developed principally for reception by mobile phone devices; |
| <u>Net Receipts:</u> | the Gross Income of the Programme less the total of the following: <ul style="list-style-type: none"> (i) fees, commissions and expenses payable to agents and distributors in connection with the Programme and/or Programme Materials; (ii) appropriate costs incurred in the sale and/or promotion of the Programme and/or the Programme Materials, including without limitation the costs connected with prints, leaflets, DVDs, launch costs, exhibition panels, posters, carriage and transport; (iii) any Repeats and Residual Payments and any other payments to performers, contributors and rights owners in connection with the Programme and/or the Programme Materials prior approved by S4C in writing; (iv) costs of any technical work and any other reasonably required work for the purpose of adapting the Programme and/or the Programme Materials for the purpose of Exploitation (including but without limitation improvements to the technical quality of the Programme and editorial work and costs of dubbing and/or subtitling in other languages and the cost of other versions); |

- (v) where required by licensees, errors and omissions insurance and copyright and title reports;
- (vi) any withholding tax and payments not received into the United Kingdom due to foreign government limitations or rules PROVIDED THAT these sums shall not be taken into account if S4C receives an equivalent tax credit for such sums and that S4C is free to use such sums;
- (vii) any monies received or to be received by S4C or its agents, assignees or licensees which directly result from the exploitation of the music or lyrics (or any part of the lyrics or music) included in the Programme and/or the Programme Materials in any form or means (whether now known or in the future invented).

New Media Rights: the right for S4C (and any third party new media service, portal or content providers as S4C may license from time to time) to exploit the S4C Content, the Format and the Third Party Material whether on a stand-alone basis or as part of any other service or portal, through any medium and in any format and on any platform now or hereafter known save by way of Transmission or by way of the Online Rights or Mobile Rights;

Online Rights: the Catch-Up Rights and the Webcasting rights. For the avoidance of doubt, the foregoing rights shall also include the right to perform all such technical evolutions as are necessary to enable the full exploitation by S4C of the Online Rights (for example to copy, transfer, cache, store and reformat, resize and repackage the S4C Content, the Format and the Third Party Material) and the right to cut, edit, reformat, resize and repackage the S4C Content, the Format and the Third Party Material as may be necessary to adapt it to the requirements of the technology used;

Overspend: any amount by which the Actual Costs exceed the Budget;

Personal Data: has the meaning given to that term in the Data Protection Laws;

Production Fee: the production fee specified in the Business and Editorial Brief and/or Schedule 2;

Production Schedule: the production schedule for the Programme set out in the Business and Editorial Brief;

Programme: the programme specified in the Business and Editorial Brief and each and every language version of such

programme including any or all subtitles and any interactive elements (if at all) in connection with such programme;

Programme Information: the information specified in Clause 3.7;

Programme Materials: all material of whatever nature produced, acquired or collected by the Producer in the development and production (including pre and post-production) of the Programme including but not limited to research material and information, filmed and material recorded by or on behalf of the Producer, performances and interviews recorded and all surplus derivative and rejected material created during development and production or derived during the development and production together with the entire contribution made by the Producer and all personnel contracted by the Producer or rendering services in respect of the Programme including without limitation the creation alteration or amendment of any work in which copyright subsists but for the avoidance of doubt, excluding any Third Party Material;

Quarter: the period of three calendar months ending on 30 June, 30 September, 31 December and 31 March in any calendar year from the date of this Agreement;

Regulations: the Environmental Information Regulations 2004;

Repeats and Residual Payments: repeat, residual and re-use fees and royalties which the Producer has notified to S4C on Delivery and which are payable upon Exploitation:-

- (i) in accordance with Industrial Relations Contracts; or
- (ii) in accordance with the terms of this Agreement, to the owners or controllers of Third Party Material or contributors to the Programme;

Reports: the progress reports and cost reports to be submitted by the Producer under Clause 4.6;

S4C Brand Guidelines: the S4C brand guidelines which are published on the production section of the S4C Website on the date of this Agreement or any revised version of such guidelines published by S4C from time to time during the term of this Agreement;

S4C Child Protection Policy: S4C's child protection policy which is published on the production section of the S4C Website on the date of this Agreement or any revised version of such policy published by S4C from time to time during the term of this Agreement;

S4C's Compliance

Guidelines: the guidelines which apply to every aspect of producing, delivering and broadcasting each and every programme commissioned and/or broadcast by S4C from time to time during the term of this Agreement including without limitation the following documents collectively which are in force at the date of this Agreement:

S4C Programme Compliance Guidelines;
S4C Brand Guidelines;
S4C Credits Guidelines;
S4C Diversity Commitment;
S4C Sponsorship Guidelines;
S4C Subtitling Guidelines;
S4C Welsh Language Guidelines;
S4C Interactivity and Competition Guidelines;
S4C Social Media Policy and Guidelines;
Technical Requirements;
S4C Guidelines on Product Placement;

together with S4C's current guidelines on health and safety, Commercial Breaks, S4C's Diversity and Equality Policy and S4C's Child Protection Policy or any revised versions of all or any of the above or any new versions which replace them or which are additional to any of them published by S4C at any time during the term of this Agreement in order to comply with S4C's statutory or legal obligations (including but without limitation the requirements of the Communications Act 2003 or any orders or regulations or statutory instruments published in its wake) provided always that any new or revised or additional guidelines shall not apply to the Programme until such time as S4C has notified the Producer of them and has provided the Producer with a copy of them;

S4C Content: the Programme and any and all parts thereof including rushes and outtakes and Third Party Material;

S4C Credits Guidelines: the credits guidelines and the document titled 'Production Credits' published on the production section of the S4C Website at the date of this Agreement or any revised version of such guidelines published by S4C at any time during the term of this Agreement;

S4C Data Protection Policy: the S4C data protection policy on the production section of the S4C Website as amended from time to time;

S4C Diversity Commitment: the diversity commitment published on the production section of the S4C Website at the date of this Agreement or any revised version of such commitment published by S4C at any time during the term of this Agreement;

S4C's Diversity and Equality Policy: S4C's diversity and equality policy which is published on the S4C Unitary Board section of the S4C Website on the date of this Agreement or any revised version of such

policy published by S4C from time to time during the term of this Agreement;

S4C Guidelines on Product Placement:

the document titled 'S4C Guidelines on Product Placement' published on the production section of the S4C Website on the date of this Agreement or any revised version of such policy published by S4C from time to time during the term of this Agreement;

S4C Interactivity and Competition Guidelines:

the document titled "Guidelines for Interacting or Competing on S4C Programmes" published on the production section of the S4C Website on the date of this Agreement or any revised version of such policy published by S4C from time to time during the term of this Agreement;

S4C Programme Compliance Guidelines:

the document titled "S4C Guidelines on Programme Compliance, Conflict of Interest and Political Interests" published on the production section of the S4C Website on the date of this Agreement in addition to Ofcom's Broadcasting Code on the date of this Agreement or any revised version of such guidelines published by S4C and/or Ofcom at any time during the term of this Agreement and the S4C Welsh Language Scheme and any other additional or supplemental guidelines (in addition to the Ofcom Broadcasting Code) published or adopted by the S4C Authority during the term of this Agreement;

S4C Services:

any service provided by, on behalf of or with the consent of S4C or any of its group companies to the public from time to time including without limitation any channel carrying a Timeshift Transmission, any high definition service, and service via which the New Media Rights, the Online Rights or the Website Rights are exercised and whether such services are linear or interactive or delivered by digital satellite, digital terrestrial or digital cable television, online, offline or by wireless technology or by telephone line or any other delivery system or platform now known or hereafter invented including standard or high definition television (HDTV) webcasting (simultaneous and non- simultaneous streaming) or by a combination thereof and whether or not receivable outside the United Kingdom;

S4C Social Media Policy and Guidelines:

S4C's social media policy and S4C's social media guidelines which is published on the production section of the S4C Website on the date of this Agreement or any revised version of such policy published by S4C from time to time during the term of this Agreement;

S4C Sponsorship

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| <u>Guidelines:</u> | Section 9 of Ofcom's Broadcasting Code on the date of this Agreement or any revised code published by Ofcom at any time during the term of this Agreement; |
| <u>S4C Subtitling Guidelines:</u> | the document titled 'Guidelines for Subtitlers in Wales' published on the production section of the S4C Website on the date of this Agreement as varied by the terms of the Ofcom Code on Television Access Services and the document 'Guidance on how to submit subtitles and other access services to S4C' on the date of this Agreement or any revised version of such guidelines published by S4C and/or Ofcom at any time during the term of this Agreement; |
| <u>S4C Transmission Centre:</u> | the S4C transmission centre located at the address given for S4C at the beginning of this Agreement or as otherwise notified in writing by S4C to the Producer; |
| <u>S4C Website:</u> | the official S4C website located at url www.s4c.cymru and/or any other internet address created or established or approved by S4C from time to time during the term of this Agreement; |
| <u>S4C Welsh Language Guidelines:</u> | the S4C Welsh language guidelines on the date of this Agreement a copy of which is available on the production section of the S4C Website or any revised version thereof during the term of this Agreement; |
| <u>Simultaneous Transmission:</u> | simultaneous transmission of the Programme on more than one medium or platform and whether online or offline now or hereafter known at exactly or almost exactly the same time; |
| <u>Special Stipulations:</u> | the special stipulations set out in Part D of Schedule 3; |
| <u>Subtitles Delivery Dates:</u> | the date on which the subtitles are to be delivered as set out in the Business and Editorial Brief and/or Schedule 4 or as otherwise agreed between the Producer and S4C; |
| <u>TAC's Selection and Archive Policy:</u> | TAC's selection and archive policy published on the production section of the S4C Website on the date of this Agreement or any revised version of such policy published by S4C from time to time during the term of this Agreement; |
| <u>Technical Requirements:</u> | the document titled "Technical Standards for Delivery of Television Programmes to S4C" included on the production section of the S4C Website (https://www.s4c.cymru/media/media_assets/Technical_Standards_for_Delivery_of_Television_Programmes_to_S4C_2020_Rev_1a.pdf) as varied or revised from time to time as S4C considers necessary during the term of this Agreement; |

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| <u>Territory:</u> | the United Kingdom and any territory where the S4C Services may be received throughout the footprint of the Astra 2F satellite or of such other satellite(s) via which the S4C Services are transmitted from time to time and in the case of the Online Rights, Mobile Rights and New Media Rights, the Territory shall be worldwide; |
| <u>Third Party Material:</u> | any material incorporated or proposed to be incorporated in the Programme in respect of which any rights of copyright or any other rights of whatever nature are vested in or controlled by any third parties; |
| <u>Timeshift Transmission:</u> | the right to transmit the Programme on any element of the S4C Services that offers a time-delayed transmission of the output including the right to simulcast the same; |
| <u>Training Scheme:</u> | a training plan for the benefit of the creative media industries; |
| <u>Transmission Copy:</u> | the completed version of each episode of the Programme intended for transmission by S4C; |
| <u>Transmit/Transmission:</u> | any method of transmission or communication now known or hereafter invented whether linear or interactive and including digital platforms and appropriate networks as defined in paragraph 5(8) of Schedule 12 of the Communications Act 2003 but excluding by means of the Catch-Up Rights. Each Transmission shall be deemed to include one Simultaneous Transmission and one Timeshift Transmission without further cost to S4C; |
| <u>Underspend:</u> | with respect to the Programme, the amount (if any) by which the total of the Actual Costs is demonstrated by the final statement or an audit of the final statement referred to in Clause 4.17 to be less than the total of the Budget; |
| <u>Webcasting:</u> | the right to stream the Programme (whether at the same time as any Transmission or not) to relevant receiving devices or to enable viewers to watch the Programme on and through the medium of any systems which combine online and wireless elements, whether now known or hereafter invented, such as (without limitation) systems which use wire lines or fibre optics which reach the user ultimately through wireless connection points, such as WiMax and WiFi; |
| <u>Website Rights:</u> | the right to establish a website based on the Programme; |
| <u>Working Day:</u> | any day other than a Saturday, Sunday or public holiday in Wales; |

- 1.2 Any reference to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended modified extended or re-enacted whether before or after the date of this Agreement and to all statutory instruments orders and regulations amending, modifying and/or extending such statute or provision.
- 1.3 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.
- 1.4 The word "copyright" means the entire copyright, the data base right and design right subsisting under the laws of United Kingdom and all analogous rights subsisting under the laws of each jurisdiction throughout the world.
- 1.5 The term "Programme" shall include each individual episode of the Programme and any and all sound recordings included in the sound track of such Programme and any and all excerpts from sound recordings and/or other programmes incorporated in such Programme.
- 1.6 Unless otherwise stated time shall be of the essence for the purpose of the performance of the Producer's obligations under this Agreement. Unless otherwise stated time shall be of the essence for performance of S4C's payment obligations PROVIDED THAT this provision shall not extend to payments withheld by S4C in accordance with the other terms of this Agreement and PROVIDED FURTHER that the Producer shall notify S4C in writing of any breach of S4C's payment obligations hereunder and S4C shall have seven (7) Working Days from receipt of such notice to rectify such breach.
- 1.7 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.
- 1.8 The S4C Compliance Guidelines are hereby incorporated by reference into this Agreement. In the event of any conflict between this Agreement and the S4C Compliance Guidelines, this Agreement shall prevail.
- 1.9 Where the Producer is more than one legal person or entity then each of those persons and entities shall be jointly and severally liable for the performance and compliance with the obligations, warranties and liabilities of the Producer under this Agreement.

Section 2 - Producing the Programme

Programme Details

- 2.1 The Producer warrants undertakes and agrees to make and produce the Programme and each episode of it in accordance with the Business and Editorial Brief, the Milestones and this Agreement (including but not limited to the Special Stipulations) and to Deliver the Programme and each episode of it to S4C on or before the relevant Delivery Date.
- 2.2 If on the date of signature of this Agreement some of the elements of the Business and Editorial Brief are not specified or are yet to be agreed, the Producer shall obtain S4C's written approval to such elements and the securing of S4C's written approval to such elements shall be a precondition to S4C's unsatisfied payment obligations under this Agreement. S4C shall respond to a request for written approval in accordance with this clause as soon as reasonably practicable.

- 2.3 Unless otherwise agreed in writing by the parties, the Programme shall not be longer or shorter in duration than the length noted in the Business and Editorial Brief. If a slot of a specified duration and/or target audience has been set out in the Business and Editorial Brief, the Programme shall be produced by the Producer to conform with such requirements. The Programme shall be made in the language specified in the Business and Editorial Brief and contain the Commercial Breaks. The Programme shall not include any product placement, sponsorship arrangement or direct or indirect advertising without S4C's prior written agreement other than the Commercial Breaks. This Clause does not prohibit any sponsorship arrangements nor product placement agreed in accordance with S4C's Sponsorship Guidelines, S4C's Guidelines on Product Placement and Clause 2.19.2 or any interactive arrangements (if at all) to which S4C has given its express prior approval.
- 2.4 It is a precondition to S4C's payment and other obligations under this Agreement that the Producer shall before or by the Delivery Date or any other relevant date specified in the Business and Editorial Brief either: -
- 2.4.1 procure that the individual producer and the individual director of the Programme shall execute and deliver to S4C inducement letters in a form approved by S4C; or
- 2.4.2 engage each individual producer and each individual director of the Programme either in accordance with such standard form of engagement for the Producer's staff as S4C shall approve or in accordance with such form of engagement for freelance producers or directors as S4C shall approve

and the Producer undertakes to S4C that each producer and director who has not executed and delivered to S4C inducement letters shall be engaged in accordance with a standard agreement approved by S4C and the Producer shall not agree to any variations to such standard agreement without S4C's prior consent.

Editorial Control

- 2.5 The production and Delivery of the Programme and each episode of the Programme in accordance with this Agreement shall be the sole responsibility of the Producer but S4C shall have ultimate editorial control provided that due consideration shall be given to the views expressed by the Producer. All major creative decisions relating to the production of the Programme shall be made by the Producer and S4C jointly but in the event of any dispute the decision of S4C shall be final and binding on the Producer. The Producer shall comply with the requirements of S4C as explained to the Producer by the Commissioner.
- 2.6 The Producer shall ensure that the Commissioner shall be aware of the progress of each matter which requires approval under part 4.10 of the Business and Editorial Brief, and the Producer shall notify the Commissioner and shall ensure that the Commissioner shall be fully aware of any event or matter that the Producer is aware or should be aware could affect the Producer's ability to comply with its obligations under this Agreement. Without prejudice to the generality of the foregoing and as a condition precedent to S4C's payment obligations from time to time remaining to be discharged, the Producer shall submit to the Commissioner by the relevant date (if any) noted in part 4.10 of the Business and Editorial Brief and obtain the Commissioner's approval of all matters listed in part 4.10 of the Business and Editorial Brief in each case prior to proceeding to the next stage of production for the Programme. The Producer shall not without the prior written

consent of S4C make any changes to materials previously approved by S4C save that in the case of scripts previously approved, minor changes to meet the "on set" requirements shall be permitted. Failure to comply with this clause shall be a fundamental breach of this Agreement.

- 2.7 Where the Commissioner does not offer any comments on any item listed in part 4.10 of the Business and Editorial Brief within the period noted next to it for approval, the Commissioner shall be deemed to have approved that item provided that the Producer has delivered that item to the Commissioner by the relevant date (if at all) set out in part 4.10 of the Business and Editorial Brief and, if there is no such date specified, provided that the Producer has delivered that item to the Commissioner within a reasonable time (in the context of the Production Schedule in its entirety) in order to enable the Commissioner to give reasonable attention to that item.
- 2.8 At any period during the production stage of the Programme, the Commissioner shall have the right forthwith following notice to the Producer to view and to approve other elements or parts of the production and in such circumstances the Commissioner shall provide comments on such elements as soon as reasonably practicable and the Producer shall not proceed to the next production stage until approval of such elements shall be provided.
- 2.9 The Producer shall permit authorised representatives of S4C to be present at any time during any part of the making of the Programme.
- 2.10 S4C upon giving to the Producer reasonable notice in writing may require the Producer to procure the attendance of its representatives at S4C's offices (or such other place as may be specified by S4C in the notice) to discuss any aspect of the making of the Programme. The Producer shall use its reasonable endeavours to comply with S4C's request for the attendance of any individual involved in the making of the Programme.
- 2.11 The Producer shall carry out such editorial changes to the Programme as S4C shall require. If as a direct result of such editorial changes, the Actual Costs shall exceed the Budget for the Programme, the excess will be dealt with as follows: -
- 2.11.1 where the excess has arisen substantially because of: -
- (a) the Producer's unauthorised departure from any of the Business and Editorial Brief or the S4C Compliance Guidelines without approval; or
 - (b) the Producer's failure to obtain any approval required by this Agreement; or
 - (c) the Producer's failure to produce the Programme to the technical quality required by this Agreement; or
 - (d) the negligence or carelessness of the Producer; or
 - (e) some breach or non-observance of any provision of this Agreement on the part of the Producer
- then the Producer will notify S4C of the excess in accordance with Clause 4.23 and the excess will be dealt with in accordance with Clauses 4.24 to 4.26 inclusive.
- 2.11.2 where the excess has not arisen because of the reasons set out in clause 2.11.1 such excess (to the extent that it is a direct result of S4C's editorial changes and they cannot be absorbed within the Budget) shall be borne by S4C provided that at the time when S4C required the

changes the Producer notified S4C that such changes would or might result in such excess (although it is understood that the Producer may not be able to provide S4C with exact details of the excess at such time and, if so, the Producer undertakes to provide S4C details of the excess as soon as reasonable practicable thereafter) so that S4C could reconsider whether the changes would still be required. Such notification shall be in writing to S4C's Business Affairs department with a copy to the Commissioner noting:-

- (a) the amount of the projected excess which shall not be incurred without the written consent of S4C's Business Affairs department ;
and
- (b) to what extent (if at all), in the Producer's opinion, the excess can be absorbed within the Budget.

If the Producer does not comply with this Clause 2.11.2 then such excess shall be regarded as an overspend and dealt with in accordance with Clauses 4.23 to 4.26 inclusive.

- 2.12 Where S4C has requested editorial changes which are not required as a result of circumstances contemplated by Clause 2.11.1 and the execution of such editorial changes would lead to a delay in the Delivery of the Programme the Producer shall immediately give S4C full written details of such delay so that S4C can reconsider whether such changes will be required. In the event that S4C still requires such changes the Producer shall not be liable for a delay in Delivery to the extent that such delay is stipulated in the written notice referred to above.

Laboratories and Facility/Post-Production Houses

- 2.13 Where the Programme is recorded on film, the Producer shall obtain the approval of S4C regarding the film laboratory to be used (S4C shall not refuse such approval unreasonably).
- 2.14 The Producer shall deliver to the approved laboratory all film and sound materials and negatives and shall not use any other laboratory without the prior written approval of S4C (S4C shall not refuse such approval unreasonably). Where S4C has not provided a response to any request for approval within seven (7) Working Days of receipt of a request for approval, S4C shall be deemed to have approved the laboratory.

Underlying Rights

- 2.15 It is a material and fundamental condition of the payment and other obligations of S4C under this Agreement that the Producer in relation to the Programme shall by the date or dates specified in Paragraph C of the Confirmation of Rights secure in favour of S4C all rights licences clearances waivers consents and releases necessary for the Exploitation of the Minimum Rights Required free from all limitations and encumbrances and it shall use all reasonable endeavours to secure all rights licences clearances waivers consents and releases necessary for all other forms of Exploitation of the Programme in each case free from any limitations and encumbrance and that all such rights, licences, clearances and waivers and each consent and waivers are in writing in connection with all materials used in the making of the Programme and/or the Programme Materials. The Producer shall provide copies of any such agreements to S4C immediately upon request.

- 2.16 All agreements for original music shall be in a form approved by S4C and shall secure for S4C all rights of Exploitation (including without limitation the copyright and music publishing rights in the music).
- 2.17 Where the Producer wishes to incorporate music in the Programme, the Producer will not commission original music without S4C's prior written consent, and S4C shall not be obliged to pay more than a synchronisation fee at minimum S4C rates in respect of commissioned music unless S4C approves the agreement beforehand and receives a copy of the completed agreement with the composer before the composer commences work.
- 2.18 When the Producer enters into contracts with presenters, singers, commentators, guests, experts, musicians, choirs, other performers, authors of any script, any director, producer or freelance designer, or any other contributor or controller of any copyright material contained in the Programme and/or any Programme Material, the Producer shall ensure that such contracts shall secure for S4C all rights of Exploitation of the Minimum Rights Required in each case using its best endeavours to secure all rights in connection with all other forms of Exploitation of the Programme.
- 2.19 S4C shall have the right immediately on request to pre-approve any and all documents and contracts and to receive copies of any and all completed contracts relating to the Programme. S4C will give sufficient advance notice of any contract which it wishes to pre-approve. Without prejudice to the generality of the foregoing, the Producer shall not complete any of the following without obtaining the written approval of S4C to the terms thereof:
- 2.19.1 any contract with any person which seeks to give to such person share of marketing, merchandising or any other income from the Programme (save a share of the Producer's share of the Net Receipts) or which seeks to give to such person the right to approve or veto any form of Exploitation;
- 2.19.2 any contract which relates to product placement or the provision of any form of sponsorship in relation to the Programme and/or Programme Materials **(all product placement and sponsorship being in any event subject to the S4C Guidelines on Product Placement and the S4C Sponsorship Guidelines respectively).**

In the event that S4C does not comment on a contract submitted for approval at S4C's specific written request within seven (7) Working Days of receipt of the contract by S4C then S4C shall be deemed to have approved it.

- 2.20 The Producer having obtained the approval of S4C to any agreement in respect of the Programme shall not thereafter amend or vary such agreement without the further approval of S4C. The approval by or involvement of S4C in preparing any agreement or checking underlying rights or programme content on S4C's behalf shall not amount to a waiver by S4C of or be deemed to put S4C on notice of any breach or non-observance by the Producer of its obligations under the provisions of this Agreement unless (in the case of a contract) S4C's Legal Unit had specifically and in writing requested approval of that contract and subsequently confirmed its approval in writing (and S4C shall not be deemed to have waived or be aware of any breach of contract or failure to perform by the Producer where S4C is deemed to have approved a contract due to S4C's failure to respond within a specific period of time). No such approval or involvement should in any event be considered by the Producer to be a substitute for independent legal advice.

- 2.21 No agreement in respect of the Programme shall unless previously approved in writing by S4C contain provisions restricting the free assignment thereof to S4C or to any company which S4C may appoint to take over and complete production of the Programme, unless S4C shall have confirmed its acceptance of the same beforehand. The Producer shall if requested to do so execute forthwith formal assignments of any or all of such agreements in favour of S4C or such other company and provided such agreements conform in all respects to the requirements of this Agreement S4C shall indemnify the Producer against any loss suffered or incurred as a direct or indirect result of any breach by S4C of the terms of such agreements.
- 2.22 Promptly on request at any time the Producer shall provide S4C with such documents or confirmation required by S4C for the purposes of rights clearances, errors and omissions insurance or copyright registration.

Music and Effects Track

- 2.23 If required by the Business and Editorial Brief or subsequently requested by S4C, the Producer shall provide a music and effects track in respect of the Programme. The pre-agreed cost of doing so shall be borne by the Producer where it can be accommodated within the Budget but otherwise by S4C.

Copyright Notices

- 2.24 The following Copyright notice shall appear at the end of each episode of the Programme: -

| | | | | |
|----------|----------------------|-------|-------------------|-------------------------|
| Welsh: | Hawlfraint | © S4C | [production date] | <u>(Roman numerals)</u> |
| | Cedwir pob hawl | | | |
| English: | Copyright | © S4C | [production date] | <u>(Roman numerals)</u> |
| | All rights reserved. | | | |

Credits

- 2.25 Unless otherwise specified in the Business and Editorial Brief, the Producer shall be entitled to a reasonably prominent credit at the end of the Programme in the form set out in the S4C Credits Guidelines. The Producer shall not incorporate its name or logo at the beginning of the Programme nor any reference to any website at the beginning or end of the Programme without S4C's written consent. S4C shall have the right to require the Producer to display the address of any website which relates to the Programme or to superimpose such a credit at the end of the Programme.
- 2.26 S4C shall be credited in accordance with the S4C Credits Guidelines. S4C reserves the right to superimpose its own S4C presentation credit and/or logo at the commencement of the Programme. S4C reserves the right to move any and all credit(s) or to edit the credits or to generate its own credits in the event of a breach of the S4C Credits Guidelines or to meet S4C's operational requirements. S4C shall not exercise this right where it has approved any contractual commitment in respect of credits under clause 2.29. If such change is necessary as a result of a failure by the Producer to meet the S4C Credits Guidelines, S4C shall be entitled to demand reimbursement by the Producer of the cost of such changes (which demand shall be met promptly by the Producer) or alternatively offset such costs against other monies due from S4C to the Producer under this Agreement or any other agreement.

- 2.27 The remedy of the Producer and third parties arising out of a proven breach by S4C or its licensees of any contractual obligations hereunder in respect of credits shall be limited to damages and shall not extend to injunctive relief.
- 2.28 The Commissioner shall be entitled to request a copy of the list of credits proposed to be included in the Programme for approval both as to form and language. Where the Commissioner requests such a copy, S4C shall comment on the same within the time period specified in the Business and Editorial Brief or any other time period as agreed between S4C and the Producer, failing which approval shall be deemed. All credits shall comply with the S4C Credits Guidelines in all respects including without limitation as to placement prominence duration speed and form.
- 2.29 The Producer shall not enter into any contractual commitment in respect of the credits for the Programme with any third party without first obtaining the written approval of S4C. All requests for approval under this Clause shall be referred to the Commissioner with a copy to the S4C Legal department. The Commissioner shall offer comments on such request within seven (7) Working Days and, if he/she fails do to so, S4C's approval shall be deemed given.

Marketing and Presentation

- 2.30 Marketing and presentation of the Programme shall be at the discretion of S4C's Communications department. In particular but without limitation, unless specifically agreed in writing between S4C and the Producer, S4C (in relation only to S4C and the Producer) will have the sole right to create, establish and run a programme-related website or websites and/or a website for the purpose of promoting the Programme. The Producer shall contact S4C's Communication's department as soon as reasonably practicable (but in any case no later than the commencement of production) in order to discuss promotion and publicity for the Programme and the Producer shall not promote or advertise the Programme without the written consent of S4C's Communication's department. The Producer will promptly provide S4C with all necessary assistance and material in relation to promotional campaigns and advertising.
- 2.31 The Producer shall supply to S4C (by the Delivery Date and as part of the section regarding tape delivery in the "Programme As Completed" form or before that date if requested by S4C's Communication's department) the following material regarding the Programme:
- 2.31.1 a synopsis in Welsh and in English (approximately 100 words each);
 - 2.31.2 a listing in Welsh and in English (approximately 50 words each) and the relevant credits;
 - 2.31.3 any photographic material that S4C requests at S4C's cost.
- 2.32 S4C shall have the right to arrange for a photographer (nominated and paid for by S4C and who is working to a brief prescribed by S4C) to be present to take photographs for the purpose of promoting and publicising the Programme and, where relevant, to shoot promotional materials for on-screen trailers.
- 2.33 The Producer shall allow sufficient time in the Production Schedule to enable a photographer (nominated and paid for by S4C and working to a brief specified by S4C) to be present to take photographs for publicity and promotional purposes and where relevant to shoot promotional material for on-screen trailers.

- 2.34 The Producer shall use all reasonable endeavours to ensure the availability of the Key Personnel at any time during the Production Schedule for photographic shoots and interviews for publicity purposes. Attendance shall be at the Producer's cost where attendance is required on a day during which the Key Personnel involved are engaged for the purposes of the Programme but, otherwise, shall be at S4C's cost.
- 2.35 At S4C's request, the Producer will promptly (taking into consideration the intended Transmission dates of the Programme) supply S4C with material for on screen promotions. Ultimate editorial control over the on screen promotional material shall rest with the Commissioner. The Producer shall deliver the material to S4C in accordance with S4C requirements and the material shall be fully cleared in all media in perpetuity (subject to any Repeat and Residual Payments payable under the Industrial Relations Contracts and/or to the owners/controllers of Third Party Material used in the on-screen promotional material). The Producer hereby assigns all rights it holds in the on-screen promotional material to S4C to hold for the duration of copyright and where possible thereafter in perpetuity. Where the Producer shoots or records such promotional material during the Programme production period (when the appropriate personnel are available), it is expected that the Producer will bear the costs. Otherwise, S4C may agree to pay the reasonable costs of producing such material, providing that such costs are agreed in writing beforehand. S4C won't agree to pay such costs, where such costs are necessary as a result of a failure on the Producer's part to deliver the promotional materials to in accordance with S4C's requirements.

Children

- 2.36 Where arrangements for producing the Programme involve children or vulnerable adults whether as contributors, audience members or otherwise the Producer will comply with S4C's Child Protection Policy and with all relevant legislation and regulations from time to time necessary for securing the welfare of children and vulnerable people.
- 2.37 Strict rules exist in relation to reporting court cases involving children. The Producer shall comply in all cases with any instructions or orders given by a court forbidding the release of any details about any child taking part in any court case in any way, whether under the Children and Young Persons Acts or otherwise.
- 2.38 The Producer warrants that the Designated Person shall be available at all times throughout the period of pre-production, production and post-production of the Programme to and shall assess and advise on the risks to the welfare of children or vulnerable adults involved in the pre-production, production or post-production of the Programme and that the Designated Person has received training in child protection by the NSPCC to a level approved by S4C.

Health & Safety

- 2.39 In performing its obligations under this Agreement the Producer warrants that it shall comply and shall ensure that all individuals contracted by the Producer or contributing to the Programme (whether as an employee or freelance worker or otherwise) shall comply with all relevant health and safety rules, regulations and legislation from time to time in force.
- 2.40 The Producer warrants that it has provided information to S4C in relation to its health and safety standards, procedures and policies (including the Health and Safety Questionnaire) and that such information is correct and complete to the satisfaction of S4C. Where there is any change to such information or to the

Producer's position in relation to health and safety, the Producer agrees to immediately notify S4C in writing.

- 2.41 The Producer is responsible for the safety of everyone associated with the production. Health and safety legislation places this responsibility on the Producer. S4C's policy does not replace these statutory responsibilities.
- 2.42 S4C shall be entitled at any time upon reasonable notice to carry out or instruct a representative to carry out an audit of the Producer's health and safety policy and procedures and of the Producer's compliance with the provisions of this Agreement and the S4C Compliance Guidelines relating to health and safety. In the event that as a result of any such audit S4C is not satisfied that the Producer is complying with its obligations hereunder S4C may: -
- 2.42.1 require the Producer to adopt measures to improve the Producer's health and safety policy and procedures; and/or
 - 2.42.3 terminate this Agreement.

Insurance

- 2.43 The Producer undertakes prior to the commencement of production of the Programme or any episode of it to affect suitable insurance policies with reputable insurance companies or underwriters against all risks normally insured against by a prudent producer and to pay all premiums due in respect thereof. It is understood and agreed that it shall be the responsibility of the Producer to ensure that the amount of cover pursuant to the policies affected by it is adequate in accordance with industry custom and practice and the particular circumstances of the Programme. Without prejudice to the generality of the foregoing such insurance shall include (but not be limited to) the following:-
- 2.43.1 third party/public liability insurance until Delivery of the Programme;
 - 2.43.2 indemnity against damage to or loss of negative stock, the negative, the videotape and soundtrack and other property to be used in connection with the production of the Programme;
 - 2.43.3 indemnity against the risks of accident to or illness or death of the director, producers, executive producers, presenters, cast and contributors and any other person as may be specified by S4C;
 - 2.43.4 employers liability insurance for the duration of production of the Programme; and
 - 2.43.5 such other insurance as may be reasonably required by S4C or by law.
- 2.44 The Producer agrees that it is the Producer's responsibility to comply on a day-to-day basis with the terms, conditions and limitations of the insurance policies throughout the period of pre-production, production and post-production and until Delivery of the Programme. In particular, the Producer undertakes to notify S4C in the event that any matter or element is refused insurance cover or the cover therefore is withdrawn or if there are any exclusions from such cover or deductions in respect of any insured risks.
- 2.45 The Producer shall not do or allow to be done anything whereby any such policy may lapse or become wholly or partly void or voidable.
- 2.46 Any monies payable under any relevant Insurance Policy shall be applied to continue with the production of the Programme unless production of the Programme has been abandoned, in which case all such monies shall be applied in reimbursing monies paid by S4C under this Agreement.

- 2.47 The Producer shall maintain the Insurance Policies in full force and effect throughout pre-production and production and until Delivery and the Producer shall procure that S4C is noted as loss payee and as additional insured on all Insurance Policies.
- 2.48 The Producer shall pay all premiums in respect of the Insurance Policies.
- 2.49 The Producer 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.
- 2.50 The Producer 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 Producer from complying with its contractual responsibilities under this Agreement. The Producer shall provide S4C with copies of all correspondence and documentation relating to any such matter immediately on receipt. The Producer shall not make or advance or compromise or settle any insurance claim in such circumstances without the prior written approval of S4C, such approval not to be unreasonably withheld or delayed and the Producer shall and shall procure that all Personnel shall promptly follow the reasonable instructions of S4C.

Safe Custody

- 2.51 The Producer shall be responsible for the safe custody of a duplicate master of each episode of the Programme. The Producer hereby gives to S4C the right to free and unrestricted access to such copies.

Industrial Relations

- 2.52 The Producer acknowledges that the Producer is responsible for industrial relations. S4C expects that the Producer shall have established appropriate industrial relations arrangements in connection with production and delivery of the Programme.
- 2.53 For the purpose of calculation and payment of the Repeats and Residual Payments that may be payable to actors, musicians and authors who contribute to the production of the Programme (if at all), S4C acknowledges that it is beneficial to S4C if such creative contributors are contracted and paid in accordance with the Industrial Relations Contracts and S4C encourages the Producer to use the Industrial Relations Contracts. It is therefore deemed that S4C has approved the Repeats and Residual Payments that are agreed in accordance with the terms of the Industrial Relations Contracts and the Producer shall not be required to secure S4C's prior written approval to such payments.

- 2.54 Deleted intentionally.

Subtitling, signing and audio-description

- 2.55 Where the Business and Editorial Brief indicates or S4C notifies the Producer that the Programme is to carry subtitles signing or audio description and that such material is to be produced by the Producer, the Producer undertakes to carry out or commission the subtitling signing or audio description and to Deliver to the same in accordance with the S4C Subtitling Guidelines other relevant guidelines, the Technical Requirements and the Delivery Requirements by the Subtitles Delivery Date. Where the requirement for such material is noted in the Business and Editorial Brief, the cost of the same is included in the Budget. Where such requirement is

communicated by S4C separately the cost of such material shall be a matter for agreement between the Producer and S4C.

- 2.56 S4C shall own any television access materials commissioned by it and shall be entitled to edit any subtitling audio description or signing material which is provided by the Producer. If the Producer requires a copy of such material as transmitted it shall be entitled to request a copy on reasonable notice and subject to paying S4C's costs of providing it.
- 2.57 For the avoidance of doubt S4C shall have absolute discretion as to how subtitling, audio description and signing material shall be sourced, whether that be in house, from the Producer or from a third party.

Selection and Archiving Policy

- 2.58 The Producer shall comply with the TAC Selection and Archive Policy or such other archive and selection policy as S4C may approve in writing.

Section 3 - Delivery

Delivery Requirements

- 3.1 The Programme shall not be deemed Delivered until the Producer shall have complied fully with the requirements of this Agreement including without limitation of Clauses 3.3 to 3.8 together with any additional or different requirements specified in the Business and Editorial Brief.

Delivery Date

- 3.2 The Producer undertakes to notify S4C immediately in writing if at any time and for any reason it appears that Delivery of the Programme may be delayed beyond the Delivery Date. Any such notice shall specify the reasons for any likely failure to meet the Delivery Date.

Delivery of the Programme

- 3.3 The Producer shall on or before:
- 3.3.1 the date (and if the Programme is to be Delivered to S4C on the day of first broadcast of the Programme, the time) specified in the Business and Editorial Brief and/or Schedule 4 as the Delivery Date for a Programme recorded beforehand, Deliver a Transmission Copy of the Programme and any related music and effects track to S4C's video library in the S4C Transmission Centre in Cardiff (clearly marked for the attention of the VTR Librarian) in accordance with the Technical Requirements. The Programme clock and the recording report shall be marked clearly and consistently with the title of the Programme, the identification number of the Programme as set out in the Business and Editorial Brief and whether or not the Programme is recorded in mono/stereo or through using the Dolby process and which audio track is used. The tape delivery section of the 'Programme As Completed' form shall be delivered electronically (unless otherwise specifically agreed by the S4C Head of Presentation Services) (which shall include without limitation the materials referred to in Clause 2.31) and all documents corporate materials and information described in the sections headed "Deliverables for Recorded Programmes" in the Technical Requirements and the recording reports in the form required by the section

headed "Documentation" in the Technical Requirements together with the Transmission Copy;

3.3.2 the time and date set out in the Business and Editorial Brief and/or Schedule 4 as the Delivery Date for the live Programme or any pre-recorded Programme for outside transmission to be delivered to S4C via a transmission link, Deliver the Programme in accordance with clause 3.5

and the Programme as Delivered shall be free of all claims liens charges mortgages or encumbrances whatsoever other than any Repeats and Residuals Payments (if any) and any limitation in connection with Third Party Materials which have been approved by S4C before hand in writing.

3.4 Unless otherwise agreed by S4C in writing the Transmission Copy of each episode of the Programme shall be Delivered in the format specified in the Editorial and Business Brief and otherwise wholly in accordance with the provisions of the Technical Requirements applicable to that format.

3.5 Where S4C agrees that a live Programme or a pre-recorded Programme for outside broadcast shall be Delivered through a transmission link to the S4C transmission centre, the transmission and communications links shall be re-paid by S4C to the Producer (in so far as such costs are agreed by S4C beforehand) and the process shall be completed in accordance with the Technical Requirements. S4C's agreement to such costs shall not be deemed unless agreed in writing.

3.6 The Producer warrants and undertakes that the Programme will be Delivered ready for transmission and without the need for subsequent return to the Producer for the correction of spelling mistakes, replacement of captions and the like. Without prejudice to the other right and remedies of S4C (whether under this Agreement or otherwise) where S4C needs to return the Programme to the Producer for correction, S4C can claim the fees as outlined in the document "Late Delivery Fees" and S4C shall be entitled to deduct such sums from monies due from S4C to the Producer under this Agreement or any other agreement or to render as a debt payable on demand. The parties accept and agree that such damages are a genuine pre-estimate of the loss likely to be suffered by S4C solely in respect of loss of S4C management time and resources and administrative costs suffered by S4C's departments in dealing with such circumstances.

Programme Information

3.7 The Producer shall Deliver (to S4C's Business Affairs department unless otherwise stated) before or by the date or dates specified in part 6.1 of the Business and Editorial Brief and/or Schedule 4:

3.7.1 the outstanding parts of the "Programme As Completed Form" (in addition to the section of the form delivered to S4C in accordance with clause 3.3.1) in S4C's standard form (delivered to S4C electronically) which shall include, without limitation:

3.7.1.1 music cue sheets in S4C's standard form;

3.7.1.2 full details of Repeats and Residual Payments payable in accordance with this Agreement;

3.7.1.3 details of any fees and/or terms applicable to the use of any Third Party Materials within the Programme;

- 3.7.1.4 moral rights waivers in respect of all persons contributing copyright material to the Programme;
- 3.7.1.5 details of any contributors to the Programme together with their forms of engagement;
- 3.7.1.6 any other contracts not already delivered to S4C in accordance with Clause 2.4 and/or 2.19.
- 3.7.2 deleted intentionally;
- 3.7.3 in the case of a live Programme or a pre-recorded Programme Delivered to S4C through a transmission link unless otherwise agreed by the S4C Business Affairs department, the Transmission Copy of the Programme to be delivered to the S4C library (at the S4C Transmission Centre) on the date set out in the Business and Editorial Brief and/or Schedule 4.
- 3.8 The Programme Information shall be full complete and accurate.
- 3.9 In addition to providing the Programme Information, the Producer shall keep full and accurate records and contractual paperwork relating to the engagement of contributors to the Programme and the licensing of Third Party Material for use in the Programme and shall allow S4C free and unrestricted access to the same.

Defects and Delay

- 3.10 The Programme (unless it is a live Programme or a Programme that is Delivered to S4C through a transmission link and/or a Programme that is delivered to S4C on the day of first broadcast of the Programme) shall be deemed to comply with the Technical Requirements and the materials shall be deemed approved in accordance with Clauses 2.6 and 2.7 and the requirements of the Business and Editorial Brief once S4C has broadcast the Programme PROVIDED THAT: -

3.10.1 the Programme had been Delivered in accordance with the Delivery Requirements; **and**

3.10.2 S4C has not prior to broadcast of the Programme notified the Producer in writing that, notwithstanding broadcast, it rejects the Programme.

Where the Producer has complied with Clause 3.10.1 and where S4C has provided a rejection notice in accordance with Clause 3.10.2 but despite that fact S4C has broadcast the Programme, then (without prejudice to its other rights and obligations) S4C shall not be entitled to rely on the fact that S4C has rejected the Programme as a reason to terminate this Agreement under Clause 7.1. For the avoidance of doubt, this clause shall not be relevant for live programmes nor to programmes delivered through transmission links nor to programmes delivered on tape on the date of first broadcast of the relevant programme.

- 3.11 The Programme (if it is a live Programme or a Programme that is Delivered to S4C through a transmission link or a Programme that is delivered to S4C on the day of first broadcast of the Programme) shall be deemed to comply with the Technical Requirements and the materials shall be deemed approved in accordance with Clauses 2.6 and 2.7 and the requirements of the Business and Editorial Brief once S4C has broadcast the Programme PROVIDED THAT: -

3.11.1 the Programme had been Delivered in accordance with the Delivery Requirements and in particular but without limitation by the time and date

set out in the Business and Editorial Brief and/or Schedule 4 as the Delivery Date; **and**

- 3.11.2 S4C has not notified the Producer in writing within fourteen (14) Working Days of its broadcast that S4C, notwithstanding its broadcast, rejects the Programme.
- 3.12 Subject to Clauses 3.10 and 3.11 and without prejudice to its other rights and remedies (whether under this Agreement or otherwise), S4C has the right to reject the Programme (or any episode thereof) for one or more of the following reasons (only): -
 - 3.12.1 that the Programme (or any episode thereof) is not in S4C's sole but reasonable opinion of sufficient technical standard in accordance with the Technical Requirements; or
 - 3.12.2 that the content of the Programme (or any episode thereof) is in S4C's sole but reasonable opinion in breach of any provision of this Agreement in a way that cannot be rectified within a reasonable time having regard to S4C's intentions in transmitting the Programme; or
 - 3.12.3 that the content of the Programme is in S4C's sole but reasonable opinion contrary to the S4C Compliance Guidelines.
- 3.13 Notwithstanding and except to the extent that the Programme is deemed to comply with the Technical Requirements or that the materials delivered in accordance with Clauses 2.6 and 2.7 and the requirements of the Business and Editorial Brief have been approved in accordance with Clause 3.10 or 3.11, broadcast of the Programme shall not deem the Programme to comply with the S4C Compliance Guidelines nor shall it amount to a waiver by S4C of any breach of this Agreement by the Producer nor S4C's rights and remedies in relation thereto including without limitation S4C's right to demand Delivery of any Programme Information or other information which S4C is entitled to receive under this Agreement and which has not been Delivered.
- 3.14 S4C may in its absolute discretion decide not to broadcast the Programme in whole or in part.
- 3.15 Where the Producer is late in Delivering any part of the Programme, S4C shall be entitled to deduct such sums as are set out in Schedule 4 for each day Delivery is delayed from monies due from S4C to the Producer under this Agreement or any other agreement or to render as a debt payable on demand. The parties accept and agree that such damages are a genuine pre-estimate of the loss likely to be suffered by S4C solely in respect of loss of S4C management time and resources and administrative costs suffered by S4C's departments in dealing with such delay and its consequences.
- 3.15A Where S4C exercises its rights under Clause 3.15, such liquidated damages as are paid or deducted shall constitute a complete remedy in respect of loss of S4C management time and administrative costs but shall not prevent the exercise by S4C of its rights and remedies (whether under this Agreement or otherwise) in respect of other losses.
- 3.15B In the event that any Programme Information has not been supplied to S4C within twenty eight (28) days of Delivery of the Programme then S4C may take whatever steps it deems necessary to obtain such information and the Producer agrees to compensate S4C for the cost of doing so (up to a maximum of £500 per episode).

S4C shall have the right to deduct such costs from any money payable by S4C to the Producer under this Agreement or any other agreement or render it as a debt payable on demand.

- 3.16 S4C shall not exercise its rights under Clause 3.15, 3.15A and 3.15B where late Delivery results solely from an event of Force Majeure which has been notified to S4C in accordance with Clause 8.5. In particular but without limitation to the above, S4C shall not levy liquidated damages in relation to any documents which form part of the Programme Information (including without limitation any licences from the PRS, MCPS, PPL, VPL or any other body which controls the performing right or synchronisation right in any musical works incorporated in the Programme, any licences from the owners of any archive or photographic material or any artistic works comprised in the Programme or any licence in respect of any other Third Party Material) where the Producer has attempted to and has received written or verbal permission from the copyright owner/controller but the Producer is unable to deliver a formal licence to S4C within the relevant period or periods specified in Clause 3.7 for reasons beyond the reasonable control of the Producer and in particular because of a delay on the part of the relevant third party. The Producer undertakes to use its reasonable endeavours to obtain and to deliver to S4C the outstanding Programme Information as soon as possible after the relevant date or dates specified in Clause 3.7. S4C and the Producer shall review the position as regards the outstanding Programme Information regularly and as long as the Producer can satisfy S4C that it has used its reasonable endeavours to obtain and deliver to S4C the outstanding Programme Information since the date(s) specified in Clause 3.7 on the occasion of any such review e.g. by providing copies of letters sent by the Producer to the owners of the Third Party Materials at least once a fortnight pressing them to provide the outstanding licences, then S4C shall not claim liquidated damages in respect of the outstanding Programme Information.

Section 4 - Financial Provisions

Payments to the Producer

- 4.1 Subject to and in consideration of the Producer complying with and performing in a full and timely manner its obligations and warranties under this Agreement, S4C shall pay to the Producer the cost of making the Programme as set out in and up to the total of the Budget in accordance with the Cashflow unless otherwise agreed by S4C and the Producer and subject to clause 4.8. S4C shall be entitled to withhold a proportion of the Production Fee (such sum to be specified by S4C in its discretion) to be payable in accordance with clause 4.19
- 4.2 S4C shall not suspend payment under this Clause unless any non-performance is of a material nature and shall give the Producer fourteen (14) days' written notice of any non-performance which S4C considers entitles S4C to suspend payment under this Clause so that the Producer has an opportunity to rectify such non-performance.

Budget

- 4.3 The Budget has been submitted to S4C by the Producer and approved by S4C after consultation with the Producer. Such approval by S4C shall not be deemed to be a representation or statement by S4C that the Budget is sufficient to complete the Programme to the standard required by this Agreement or at all.

- 4.4 The Producer shall manage and apply the funds made available by S4C faithfully and conscientiously towards the making of the Programme and for no other purpose whatsoever and shall pay all debts relating to the Programme promptly.
- 4.5 If the Producer wishes to increase expenditure on a particular item in the Budget, it shall be entitled to do so provided such increase can be found by reducing expenditure on other items (**other than the costs of the Key Elements**) without affecting the overall quality of the Programme and provided further that S4C's Business Affairs department is notified in writing of all such adjustments.

Progress and Cost Reports

- 4.6 The Producer shall complete and submit to S4C in relation to the Programme progress reports and/or cost reports for the Programme as required by S4C and in such form as S4C shall require for the purposes of its normal budgeting and cost control procedures, details of the format required will be provided to the Producer prior to the Producer commencing production of the Programme. All Reports shall be signed by the producer referred to in the Business and Editorial Brief. S4C shall be entitled to request copies of contemporaneous Bank Statements to evidence spending set out in all cost reports.
- 4.7 The Producer warrants that all Reports will be completed fully accurately and faithfully and acknowledges that S4C shall make payments on the basis of the Reports as they are submitted. If S4C makes a payment on the basis of an incorrect, false or misleading Report the Producer shall re-pay any over-payment to S4C as a contract debt on request within twenty eight (28) days of such request and S4C shall have the right (save the where a mistake is clear and easy to remedy or where the Producer reasonably believes that the Report is correct) to terminate this Agreement forthwith by written notice to the Producer and/or to exercise its rights under clause 4.9.

Payments and Cashflow

- 4.8 Payment shall be made on the basis of production funding requirements as stated in Reports completed and signed correctly and submitted and not on the basis of sums set out in the Cashflow since such sums are estimates. In the event of a dispute as to the production funding requirement S4C's decision shall prevail. The dates on the invoices and number of payments shall be in accordance with the Cashflow and S4C shall not be liable to make early payment of any instalment. Proper VAT invoices shall be submitted by the Producer to coincide with the dates in the Cashflow and S4C shall have fourteen (14) days from receipt of each invoice to settle such invoice.
- 4.9 Without prejudice to its rights and remedies elsewhere in this Agreement or generally S4C shall be entitled to withhold all or any part of any payment due to the Producer under this Agreement if: -
- 4.9.1 S4C has rejected the Programme (or any episode thereof); or
 - 4.9.2 the Producer has not Delivered (in accordance with Clause 3.1) the Programme (or any episode thereof) by the Delivery Date; or
 - 4.9.3 all approvals required by this Agreement have not been obtained or the Producer is otherwise in breach of this Agreement and such breach has not arisen as a result of an identifiable breach of this Agreement by S4C; or
 - 4.9.4 S4C following a check or audit under Clause 4.20 has notified the Producer that S4C is not satisfied that all expenditure has been incurred reasonably and in accordance with the terms of this Agreement; or

- 4.9.5 S4C has made payment on the basis of an incorrect false or misleading Report (except in the case of an obvious and simple error or where the Producer reasonably believed the Reports to be correct).
- 4.10 Payment by S4C of the whole or any part of an invoice shall not amount to an admission of the correctness or validity of it.

V.A.T

- 4.11 All amounts stated in this Agreement are exclusive of Value Added Tax which shall be paid where appropriate upon receipt of a proper VAT invoice. Where the Programme is made wholly or partly outside the UK and overseas local value added and other taxes are payable the Producer shall use its best endeavours to secure such credits and refunds as are normally available from the relevant territory and shall credit the same towards the Actual Costs of the Programme.

Bank Account

- 4.12 It shall be a condition precedent to S4C's payment obligations that the Producer shall use a bank account allocated by the Producer for S4C productions only in connection with the Programme. The Producer acknowledges and agrees that such account shall be in its own name and shall notify S4C in writing of all details requested by S4C in connection with such bank account. All sums payable to the Producer by S4C shall be paid into the Bank Account in accordance with the provisions of this Agreement.
- 4.13 The Producer shall not pay any monies out of the Bank Account unless such payments are for the purposes of this Agreement or another agreement(s) between the parties in relation to S4C productions only. It is intended that the Bank Account shall be a true and full record of all receipts and payments in connection with the Programme and any other S4C productions only, and the Producer shall under no circumstances use the Bank Account as its business account.
- 4.14 The Producer shall not place any monies received from S4C in accordance with this Agreement in any interest bearing account or in any investments vehicle of any sort without S4C's prior written approval provided that if at any time a substantial sum is held in the Bank Account which is not required to defray the Actual Costs then the Producer, after giving written notice to the Business Affairs department of S4C will transfer such sums to an interest bearing account and shall account to S4C for the interest earned on such sums and such interest shall be put towards the Actual Costs. Any such interest bearing account shall be deemed to be part of the Bank Account and subject to the requirements that are relevant to it.
- 4.15 The Producer declares that it shall deal with all such funds strictly in accordance with the provisions of this Agreement.

Accounts Financial Records and Cost Statements

- 4.16 The Producer shall maintain true faithful accurate and up-to-date accounts and financial records of the making of the Programme and shall not dispose of relevant vouchers invoices and receipts until S4C shall have completed all checks and/or audits under Clause 4.20.
- 4.17 After completing the Programme, the Producer shall at its own cost prepare a statement of final cost (which shall give details of the Actual Costs and S4C may require evidence in the form of the Bank Statements) and shall forward a copy to

S4C as soon as is reasonably practicable and in any event within four (4) months of Delivery of the last episode of the Programme.

- 4.18 The statement of final cost referred to in Clause 4.17 shall be certified as accurate by the Producer identified in the Business and Editorial Brief.
- 4.19 Subject to the Programme having been produced and Delivered in full accordance with this Agreement, S4C shall pay to the Producer the remainder of the Production Fee within fourteen (14) Working Days of the last to occur of the following: (i) S4C finalising any verification or audit of the final cost statement or confirmation from S4C that S4C shall not undertake such verification or audit of the final cost statement or (ii) receipt by S4C of the last to be Delivered of the materials, documents or information to be Delivered in accordance with the Delivery Requirements. S4C shall notify the Producer in writing if it does not intend to verify or audit the final cost statement.

Financial Checks and Audits

- 4.20 S4C shall be entitled to inspect check and take copies of all accounts and financial records relating to the Programme and any other accounts and records of the Producer relevant to this Agreement at any time within usual business hours on reasonable notice and at its discretion (and at its own cost) may carry out at any time detailed checks and/or a full audit, which may be carried out by S4C's staff or by any recognised firm of accountants engaged by S4C.
- 4.21 The Producer shall render all reasonable assistance and shall co-operate fully with regard to all inspections checks and audits carried out under Clause 4.20. S4C will bear the pre-agreed or, in default of agreement, reasonable out of pocket costs of such assistance unless any check or audit discloses misreporting on the part of the Producer.
- 4.22 If a financial check or audit carried out under Clause 4.20 shows that a repayment should be made by the Producer to S4C or by S4C to the Producer where the Producer had inadvertently understated the production funding requirement in Reports, then the Producer or S4C shall make such repayment within twenty eight (28) days of a request to do so by the other.

Overspends

- 4.23 If the Producer becomes aware that an Overspend will or is likely to occur after making such adjustments as are possible under Clause 4.5 the Producer shall forthwith notify S4C's Business Affairs department in writing giving full details and the reasons for the Overspend or likely Overspend (although it is acknowledged and agreed that the exact figure or full details of the excess may need to follow and, if so, shall be provided as soon as is reasonably practicable thereafter) and the extent (if any) to which (in the Producer's opinion) such Overspend or likely Overspend can be absorbed within the Budget.
- 4.24 In the event that: -
- 4.24.1 the Producer shall have notified S4C under Clause 4.23; or
- 4.24.2 in the reasonable opinion of S4C it appears that an Overspend is likely
- then the following provisions shall take effect:-

- (i) S4C may by notice in writing require the Producer's representatives to attend a meeting at S4C's offices (or some other place specified by S4C) for the purpose of investigating and discussing the costs of producing the Programme;
 - (ii) the Producer having received a notice under para (i) of this Clause shall not make any further payment or incur any further financial obligation in connection with the Programme without the specific consent of S4C, which shall (except in the circumstances of Clause 4.25) not be required to make any payment to the Producer in the meantime other than in respect of payments which the Producer is contractually obliged to make to third parties and which commitments have been properly entered into in pursuance of this Agreement;
 - (iii) the Producer's representatives shall attend any meeting specified in a notice served under para.(i) of this Clause, shall co-operate fully in any investigation and discussion, and shall disclose fully any relevant information requested, and the Producer's failure to do so shall be a material breach by the Producer;
 - (iv) if, following such meeting, S4C is reasonably of the opinion that the Producer will not complete the Programme within the Budget, then S4C shall have the right (after giving the Producer the opportunity to discuss the options) in its absolute discretion to: -
 - (1) require changes in the Programme so that the Programme may be completed within the Budget ; and/or
 - (2) authorise an amended Budget; and/or
 - (3) unless the Overspend has arisen identifiably as a direct result of a breach by S4C of this Agreement or an event of Force Majeure which has been notified in accordance with Clause 8.5 require the Producer to obtain additional finance to complete the Programme such additional finance to be found:-
 - a. out of any Production Fee payable or paid to the Producer, and thereafter;
 - b. out of the Producer's own resources; or
 - (4) (except in the circumstances of Clause 4.25) in its absolute discretion give notice to the Producer that it will terminate this Agreement forthwith.
- 4.25 S4C shall not withhold payment under Clause 4.24.2(ii), nor require the Producer to obtain additional finance under Clause 4.24.2(iv) (3) or give notice to terminate this Agreement under Clause 4.24.2(iv) (4) in relation to any Overspend for which S4C is responsible under Clause 2.11 or in circumstances where S4C is satisfied in its sole discretion that such Overspend or likely Overspend can be met from an Underspend elsewhere in the Budget (other than from the costs attributed to the Key Elements budgeted for the Programme) without, in S4C's sole discretion, affecting the on-screen quality of the Programme.
- 4.26 The provisions of Clauses 4.23, 4.24 and 4.25 shall not prejudice any other rights of S4C in the event that any Overspend or likely Overspend arises out of any breach of this Agreement by the Producer.

Underspends

4.27 If an Underspend on Key Elements arises then the balance of budgeted costs of the Key Elements underspent shall be retained by/repaid forthwith to S4C unless S4C agrees in writing that it shall be treated in accordance with the following provisions of this Clause 4.27. If the total of the Actual Costs (excluding the costs of the Key Elements unless S4C agrees otherwise as noted above) is demonstrated by an audit of the final statement referred to in Clause 4.20 to be less than the total of the Budget (excluding budgeted costs of the Key Elements unless S4C otherwise agrees as noted above) then subject to Clause 4.28 the balance of the Budget underspent shall be applied as follows: -

4.27.1 to pay for making such enhancements to the Programme as may be authorised by S4C's Business Affairs department by prior notice in writing;

4.27.2 then (if applicable) to pay for the production of such programmes or additional or other material as S4C's Business Affairs department and the Producer may agree in writing. If S4C's Business Affairs department and the Producer are not able to reach agreement in this regard within one (1) month after the later of receipt by S4C of the final cost statement from the Producer or completion of an audit by S4C of the final cost statement (where S4C exercises its right to undertake an audit), then the Underspend shall be shared equally between S4C and the Producer subject to any cap on the Producer's share which is specified in the Special Stipulations in Schedule 3.

4.28 The application of any Underspend in accordance with Clause 4.27 shall be subject to the signature of such supporting documentation as S4C thinks reasonably necessary. In the event that in S4C's reasonable opinion any Underspend has arisen as a result of over-budgeting or currency fluctuations or at the expense of programme quality (whether technical or editorial) or as a result of provisions or contingencies in the Budget not being required then S4C may in its absolute discretion retain or require repayment of 100% of such Underspend.

Props and Sets

4.29 Following the completion of the Programme, the Producer shall follow S4C's directions relating to the storage and/or dismantling and/or disposal of props sets and items (including by way of example only wardrobe technical equipment and vehicles) the cost of purchase or making of which has been met by S4C. Where S4C is unable to arrange storage for the props, sets and items for the Programme itself, S4C shall pay the pre-agreed cost of storage dismantling or disposal (as appropriate) of the props, sets and items. The Producer shall supply promptly such cost estimates for storage or disposal of sets as S4C may reasonably require. No action shall be taken by the Producer in relation to such props sets and items without S4C's prior written consent.

4.30 Upon delivery of the props, sets and items to the storage facility, the Producer shall prepare a true inventory of all such props sets and items together with details of the amounts actually paid by the Producer for each prop, set and item listed and shall deliver the list to S4C. Where the props, sets and items are not stored at the storage facilities provided by S4C for this purpose, the Producer shall promptly on request procure such access to the place of storage of all such props sets and items as S4C may require for the purposes of inspection.

- 4.31 In the event that the proceeds of disposal of any prop set or item referred to in Clause 4.29 exceed the cost of dismantling and disposing of the same then the difference shall be paid to S4C by the Producer within seven (7) days of receipt.

Training

- 4.32 Where noted in the Business and Editorial Brief that the Producer wishes to use the services of the Training Scheme and to contribute 5% (five per cent) of the Production Fee to the Training Scheme, S4C will deduct the contribution from the last instalment of the Production Fee, and will pay it directly to the Training Scheme fund on the Producer's behalf.
- 4.33 Where the Producer does not contribute to the Training Scheme, it will be asked to confirm this in writing, giving reasons why not. Where the Producer is a member of TAC, S4C will provide TAC with a copy.

Section 5 - Ownership, Use and Exploitation of the Programme

Ownership and Copyright

Clauses 5.1 to 5.4 (inclusive) and clause 5.8 shall be subject to the requirements set out in the Confirmation of Rights.

- 5.1 Ownership of and the copyright in the Programme shall belong to S4C absolutely and, subject to clauses 2.15 to 2.22 inclusive, all of the following shall belong exclusively to S4C as commissioner of the Programme: -
- 5.1.1 the copyright and title in the Programme and all parts thereof in the picture and sound (excluding any Third Party Material) and any interactive elements (if at all);
 - 5.1.2 the right to make the Programme (as a minimum) and, unless the S4C Business Affairs department has agreed otherwise, the copyright in any treatments or scripts (if any) on which the Programme is based (including all drafts thereof);
 - 5.1.3 the copyright and title in the Transmission Copy and all copies of it;
 - 5.1.4 the copyright and title in all the Programme Materials;
 - 5.1.5 the copyright and title in the music and the music publishing rights in all music commissioned by the Producer for the Programme;
 - 5.1.6 the benefit of any and all rights of action under all contracts entered into by the Producer in respect of the Programme;
 - 5.1.7 the copyright and title in all the materials referred to in Clause 4.29 which have been designed for the purposes of the Programme and in which copyright subsists.
- 5.2 Ownership and title in all the Programme Materials and physical materials created in connection with the Programme (but, for the avoidance of doubt, excluding any Third Party Material) shall vest in S4C on a sole absolute and unencumbered basis immediately on its creation. S4C hereby grants to the Producer the right during the period of production of the Programme (and subject to earlier termination of this Agreement in whole or in part) to use such materials for the purpose of fulfilling the Producer's obligations hereunder.

- 5.3 The Producer as beneficial owner with full title guarantee hereby irrevocably assigns to S4C 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 all the materials and property referred to in Clause 5.1 and including without limitation the interests of individuals as authors of the Programme and the Programme Material, all the performers' proprietary rights including all rental and lending rights and the making available rights (as such terms are defined in the Act), all rights of communication to the public by satellite and cable retransmission rights, the rights of the director or directors of the Programme as the joint copyright owners in the Programme and all subsidiary and ancillary rights TO HOLD the same unto S4C absolutely, throughout the world, for the full period of copyright therein, whether subsisting or hereafter acquired, and all reversions, renewals and extensions thereof, and thereafter (insofar as the Producer is able to do so) in perpetuity.
- 5.4 The Producer confirms that S4C shall be entitled solely and exclusively (with respect to S4C and the Producer only) to all such merchandising and ancillary rights as may be available in the Programme and/or the Programme Materials including (but without limitation) the right to use the title of the Programme, the format of the Programme, and characters, scenes, designs, incidents and articles appearing in, and other material from, the Programme and/or the Programme Materials in association with all kinds of goods and services and to apply for and register in the name of S4C (or otherwise as S4C may deem expedient) trademarks or designs or such other protection as may be available in any country of the world and to register the same in S4C's name (or otherwise as S4C deems expedient).
- 5.5 The Producer irrevocably and unconditionally grants and confirms to S4C its successors assigns and licensees: -
- 5.5.1 the assignment and grant by all relevant persons of all rights and consents pursuant to the Act and all other laws now or in the future in force in any part of the world which may be required for the Exploitation of the Programme and the Programme Materials (and any adaptations of either) including without limitation all the performers' proprietary rights including the rental and lending rights and the making available rights (as such terms are defined in the Act), all rights of communication to the public by satellite and cable retransmission rights and in the case of the director or directors of the Programme an assignment by each of such directors of all his or her rights, title and interest in the copyright in and to the Programme;
- 5.5.2 that every author of every script or treatment and every composer of any original music for the Programme has assigned and transferred the rental and lending rights in their work and the products of their services in connection with the Programme to the Producer, its successors, assigns and licensees for the entire period of such rights which such persons are entitled to assign in any part of the world and that all other contributors to each episode of the Programme acknowledge agree and confirm that the presumptions contained in Sections 93A and 191F of the Act shall apply to their contributions and every contributor to the Programme (including without limitation every script writer and composer) that the remuneration paid to them by the Producer constitutes "equitable remuneration" for the rights granted by them to the Producer in the Programme including the rental and lending rights in their contributions;
- 5.5.3 the irrevocable and unconditional waiver by all relevant production personnel and all artists of all rights in respect of the Programme and

Programme Materials to which such persons are now or may in future be entitled pursuant to the provisions of Sections 77, 80, 84 and 85 of the Act and any other moral rights to which such persons may be entitled under any legislation now existing or in future enacted in any part of the world;

- 5.5.4 the right to use the name likeness and approved biography of all persons contributing to the Programme and the Programme Materials in the Exploitation of and publicity for the Programme and the Programme Materials and in corporate publicity.
- 5.5.5 all contributors to the Programme and the Programme Material have confirmed in writing that their contributions shall be deemed for the purpose of the Copyright Act 1976 (US) to be "works for hire" made for the Producer, that the Producer shall be deemed to be the author of such contributions in all circumstances and that the Producer shall be the sole and exclusive owner of all rights in or to their contribution.
- 5.6 As between S4C and the Producer, S4C shall have the exclusive right to register the copyright in the Programme and the other property referred to in Clause 5.1 in its absolute discretion in the name of S4C or otherwise or take steps which S4C deems necessary or suitable at S4C's cost and discretion to secure perfect or exploit the rights granted to S4C under this Agreement or to curtail any actual or proposed infringements of such rights.
- 5.7 As between S4C and the Producer, S4C and S4C only shall have the right to initiate and maintain any actions or proceedings it deems necessary in its absolute discretion in order to establish initiate or maintain any of S4C's rights without it impairing on S4C's right to join the Producer as a plaintiff or defendant into any such action and the Producer confirms that it does not have right title or interest in respect of any monies recovered by S4C as a result of such actions or proceedings. S4C shall indemnify the Producer against reasonable fees, costs and expenses incurred by the Producer as a result of S4C bringing the Producer into any such action as a plaintiff PROVIDED THAT this indemnity shall not apply where S4C exercises its rights under this Agreement wholly and directly due to a breach of contract or negligence on the part of the Producer and in such circumstances the Producer shall bear its own costs.
- 5.8 The Producer warrants that the Producer and the Producer only is or will by Delivery or the creation date of the materials referred to in Clause 5.1 be the sole exclusive unencumbered legal and beneficial owner of all rights of copyright and all other rights hereby granted to S4C in respect of the items referred to in Clause 5.1 save for the Third Party Rights.
- 5.9 For the purposes of Exploitation and/or broadcast on the S4C Services, S4C shall have the right in its discretion to re-edit or amend the Programme or to exclude any part of it or to use parts of the Programme to be broadcast individually and separately or as a part of any other programme subject to the payment of the Repeats and Residual Payments by S4C as notified by the Producer to S4C on Delivery.
- 5.10 For the purpose of Exploitation, S4C shall be entitled to dub or subtitle the Programme to other languages.
- 5.11 For the purposes of Exploitation, S4C shall be entitled to and to authorise others to use the Programme and/or the Programme Materials and any part or parts thereof in such manner as S4C in its absolute discretion thinks fit, including without limitation, the right to make changes, alterations, substitutions, and additions

thereto, and deletions therefrom, and adaptations, rearrangements, and translations thereof into any and all languages.

- 5.12 The Producer undertakes to do any and all acts and execute any and all documents in such manner and at such locations as may be reasonably required by S4C in its sole discretion in order to protect perfect or enforce any of the rights granted or confirmed to S4C pursuant to this Agreement PROVIDED THAT S4C shall reimburse to the Producer the reasonable costs of so doing. It will (without limitation) be reasonable for S4C to require the Producer to act under this Clause where such action is necessary to perfect S4C's title for the purposes of potential litigation.

Exploitation

- 5.13 Unless otherwise agreed, S4C and its licensees shall have the right to Exploit the Programme and/or the Programme Materials and any parts thereof on a commercial basis throughout the world provided only that the rates of commission payable to it and its sales agents and distributors shall be consistent with industry practice.
- 5.14 Provided that this Agreement shall not be terminated by S4C due to any breach of contract by the Producer or because the Producer is insolvent or affected by an analogous event the Producer shall be entitled to receive a share of the Net Receipts received from the Exploitation as set out in the Confirmation of Rights.
- 5.15 Any monies payable to the Producer in accordance with Clause 5.14 shall be paid in sixty (60) days from the end of the Quarter when such monies are received by S4C.
- 5.16 Sixty (60) days after the end of each Quarter, S4C or its licensees shall send to the Producer a statement of Net Receipts (if there are any) payable to the Producer during that Quarter. If no sums are payable to the Producer in connection with any Quarter, neither S4C nor its licensees shall be obliged to send a statement to the Producer in relation to that Quarter and either S4C or its licensees shall notify the Producer that no such statements shall be sent until the next Quarter when Net Receipts are received. The Producer and its representatives and/or accountants appointed by the Producer shall be entitled to inspect the accounting books relating to the Programme and shall have the right to request an audit (at its own costs) of those accounts during usual business hours and after giving reasonable notice. Where such inspection or audit reveals that any payment has been too low by over ten percent (10%) then S4C or its licensees shall pay the reasonable professional fees incurred by the Producer in undertaking such inspection or audit.

Film Library

- 5.17 Subject to Repeats and Residual Payments which may be payable, S4C shall have the right to Exploit the Programme by any and all means, in any and all media and any and all out-takes music tracks dialogue tracks sound effects tracks and any other surplus film or sound or other material of whatsoever description shot or made for the purposes of the Programme for the full duration of copyright without further remuneration to the Producer or to any individual who contributed to the production.

Section 6 - Obligations and Warranties

- 6.1 The Producer represents warrants guarantees and undertakes with S4C so that such representations warranties guarantees and undertakings (whether under this Clause or elsewhere in this Agreement) shall (save for the warranties contained in

sub-clauses 6.1.3 and 6.1.4) continue to remain in full force and effect after Delivery of the Programme that: -

- 6.1.1 the Programme and all the delivery materials referred to in Clause 3 shall be made and produced to first class dramatic and artistic quality as to content, and to a standard of technical and pictorial quality suitable without further expenditure or process for television broadcasting and in accordance with S4C's Compliance Guidelines;
- 6.1.2 the Producer accepts sole responsibility for the amount and adequacy of the Budget which represents a comprehensive and realistic estimate of all expenditure likely to be incurred in the making of the Programme and the acquisition of all rights required by this Agreement;
- 6.1.3 the Producer shall produce the Programme in accordance with the Business and Editorial Brief, the Special Stipulations and the Programme details shall not be varied by the Producer without the written consent of S4C;
- 6.1.4 the Producer shall not without the written consent of S4C (such consent not to be unreasonably withheld or delayed) substitute any person or location for or dispense with or change any Key Personnel specified in the Business and Editorial Brief and the identity of whom or which the parties hereby agree is fundamental to the making of the Programme and essential to the purpose of this Agreement;
- 6.1.5 nothing contained in the Programme or the Programme Materials shall infringe any of the Convention Rights as defined in the Human Rights Act 1998 ("the Convention Rights") any right of copyright right of trademark right of privacy right of publicity or any other right of any other nature of any person or be obscene or libellous or blasphemous or defamatory or contravene the provisions of any statutes, regulations or orders or infringe the guidelines contained in S4C's Compliance Guidelines (including without limitation the guidelines issued by S4C from time to time relating to the promotion of equal opportunities and fair treatment);
- 6.1.6 in complying with its obligations hereunder the Producer shall at all times have regard for the Convention Rights of any third parties and shall not act in any way which is incompatible with any of the Convention Rights of any third party;
- 6.1.7 the Producer will acquire all rights necessary to enable S4C to Exploit the Programme and/or Programme Materials free from any and all liens claims and encumbrances subject only to the payment of Repeats and Residual Payments and the rights of the MCPS, the PRS and PPL in respect of the music and lyrics contained in the Programme;
- 6.1.8 the Producer warrants that it is or shall be the sole person by whom the arrangements necessary for the making of the Programme were undertaken and that each of the Producer and the principal director of the Programme shall at all material times during the production of the Programme be a "qualifying person" within the meaning of Section 154 of the Act and the principal director has assigned to the Producer free from all encumbrances the principal director's entire interest in the copyright in the Programme and the Programme Material;
- 6.1.9 prior to the date of this Agreement there has been and after the date of this Agreement there shall be no binding understanding assignment grant of

right or licence binding the Producer to use the Programme and the Programme Materials or any part of it whether by television broadcast or otherwise;

- 6.1.10 there are no liens claims actions or proceedings pending or threatening affecting or relating to the Programme or the Programme Materials or any Transmission Copy or the rights granted in this Agreement or the actual or working title of the Programme;
- 6.1.11 the Producer will not charge or otherwise encumber the Programme or the Programme Materials or any material relating to either or create any lien over the Programme otherwise than in the ordinary course of business;
- 6.1.12 the Producer shall proceed with the making of the Programme expeditiously and without unreasonable delay, having regard to the Delivery Date and the standard of work required by and all of the provisions of this Agreement; and
- 6.1.13 in complying with its obligations hereunder the Producer will, in its dealings with the public, respect the principles of the Welsh Language Scheme which the Producer confirms it has read and understood.

Contempt of Court

- 6.2 The Producer warrants that the Programme shall not constitute a Contempt of Court under the Contempt of Court Act 1981 (hereinafter in this Clause referred to as "the 1981 Act"). In the event of proceedings for Contempt of Court being brought against S4C under the 1981 Act its officers servant or agents or the members of S4C, the Producer shall make available to S4C forthwith for the purpose of dealing with such proceedings all relevant information which it may possess or which shall be within its power and control provided that the Producer shall not be obliged to require any of its employees to reveal sources of information except and to the extent provided for under the 1981 Act and pursuant to an order made thereunder.

Limitation of Warranties

- 6.3 The Producer shall not be liable under the warranties guarantees and undertakings contained in Clauses 6.1.1 and 6.1.5 in respect of the Programme or the Programme Materials to the extent that the Programme or the Programme Materials have been affected by any editing repackaging amendments or alteration following Delivery so as to render such warranties guarantees and undertakings incorrect or untrue in relation to the Programme and/or the Programme Materials PROVIDED THAT the limitation in this Clause 6.3 shall be of no effect where any such editing repackaging amendment or alteration after Delivery is carried out by the Producer or its nominee other than at the specific written request of S4C. If the Producer believes that carrying out any editing repackaging amendment or alteration requested by S4C would, if acted upon, lead the Producer to be in breach of any warranties guarantees or undertakings of the Producer under Clauses 6.1.1 or 6.1.5 then the Producer shall notify S4C in writing of that, giving full and precise details and shall await S4C's further directions. In the event that S4C does not amend its requirements despite such notice then the Producer shall not be liable to S4C for breach of Clauses 6.1.1 or 6.1.5 arising directly from any specific item of editing repackaging amendment or alteration to which it drew S4C's attention in accordance with this Clause.

Indemnity

- 6.4 The Producer shall indemnify S4C completely and ensure that the indemnity remains in force at all times from and against all losses (including without limitation any loss of revenue or other economic loss) expenses claims demands actions proceedings costs damages or payments suffered, incurred or awarded, compensation agreed or liability whatsoever or howsoever arising in consequence of any breach or non-observance by the Producer of all or any of the agreements undertakings or warranties on its part contained in this Agreement or arising in any way out of the oral or visual content of either episode of the Programme and/or Programme Materials, or as a result of any negligent or wrongful act or omission on behalf of the Producer or any of its employees agents freelancer sub-contractor or invitees including (but not by way of limitation) claims by rights owners, contributors to the Programme and/or the Programme Materials and personnel engaged by the Producer for the making of the Programme PROVIDED THAT:-
- 6.4.1 the Producer's indemnity shall not apply to matters arising directly as a result of the specific exercise by S4C of its editorial control or as a consequence of Clause 5.9 above; and
- 6.4.2 S4C shall keep the Producer informed of the progress of any action or claim (where such action or claim is made by a third party) in respect of which the Producer indemnifies S4C against and agrees to consult with the Producer with regard to any proposed settlement or voluntary submission to judgement before the same is entered into.

Complaints

- 6.5 The Producer acknowledges and agrees that should it receive a complaint relating to the Programme, whether from a contributor, member of the public or otherwise, and whether or not such complaint occurs during or after the production of the Programme, the Producer will notify the Commissioner of the complaint immediately and provide a copy of all correspondence relating to the complaint.
- 6.6 The Producer will not issue a response to a complaint without S4C's prior written approval and will refrain from issuing a response where it is deemed appropriate by the Commissioner that S4C responds directly to the complaint.
- 6.7 The Producer agrees to assist S4C to the best of its ability and will provide S4C will all available information in order to enable S4C to respond to a complaint.

Section 7 - Termination Provisions

Termination

Without prejudice to any other rights or remedies which the relevant party may have (howsoever arising) including without limitation the rights of S4C under Clause 6.4 of this Agreement, this Agreement may be terminated by notice in writing: -

- 7.1 by S4C or the Producer if the other is in breach of any of its material obligations under this Agreement which is incapable of remedy or if capable of remedy is not remedied within 7 days (or such longer period as the Commissioner may agree) of receipt of notice in writing from the other requiring such breach to be remedied; or
- 7.2 by S4C or the Producer if the other transfers disposes of or threatens to transfer or dispose of any part of its assets which is likely in the reasonable opinion of the

terminating party to prevent or materially inhibit the performance by the other of its obligations under this Agreement; or

- 7.3 by S4C or the Producer if any indebtedness, guarantee, liability or similar obligation of the other or of any guarantor of the other or any entity whose obligations the other has guaranteed becomes due or capable of being declared due before its stated maturity or is not discharged at maturity or the other or any guarantor of the other defaults under or commits a breach of the provisions of any guarantee or other obligation (whether actual or contingent) of any agreement pursuant to which any such indebtedness guarantee or obligation was incurred all or any of which shall in the reasonable opinion of the terminating party materially affect its rights and entitlements under this Agreement; or
- 7.4 by S4C or the Producer if the other or any guarantor of the other or any entity whose obligations the other has guaranteed is declared or becomes bankrupt or insolvent or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- 7.5 by S4C or the Producer if the other or any guarantor of the other convenes a meeting of its creditors or proposes or makes any arrangement or composition with or any assignation for the benefit of its creditors or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other (save for the purpose of and followed by a voluntary reconstruction or amalgamation previously approved in writing by S4C/the Producer as the case may be) or if an encumbrancer takes possession of or a trustee receiver administrator administrative receiver liquidator or similar officer is appointed in respect of all or any part of its business or assets or any distress execution or other legal process is threatened enforced upon or sued out against any of such assets; or
- 7.6 by S4C if 'control' as defined in the Corporation Tax Act 2010 Section 1124 of the Producer shall change before Delivery without the prior approval of S4C and in S4C's reasonable sole opinion such change of control affects or will affect the ability of the Producer to Deliver the Programme in accordance with this Agreement; or
- 7.7 by S4C if for any reason whatsoever any Key Person specified in the Business and Editorial Brief shall be unavailable or cannot reasonably be used and the Producer is unable to secure a substitute reasonably acceptable to S4C; or
- 7.8 by S4C if a Local Dispute prevents the performance by the Producer of any of its obligations hereunder; or
- 7.9 by S4C if any other circumstances arise in which, pursuant to Clauses 2.42, 4.7, 4.24 or 8.6, S4C is entitled to terminate the whole or any part of this Agreement.

Consequences of Termination

- 7.10 Without prejudice to the legal rights of the parties (other than any which conflict with the following provisions) the consequences of termination of this Agreement shall be as set out below.
- 7.11 Any sums held by the Producer for the purposes of this Agreement as at termination shall be repaid by the Producer to S4C on demand and the Producer shall supply to S4C forthwith a detailed statement of income and expenditure up to the date of termination, with full details of all unpaid debts, and all outstanding commitments for which no invoices have been received.

- 7.12 Subject to Clause 8.7, S4C's obligation to pay the Producer shall be limited to such payment as is attributable to the work actually and properly done by the Producer to the reasonable satisfaction of S4C together with all outstanding third party commitments properly incurred by the Producer in accordance with the terms of this Agreement up to the date of termination or take-over (as the case may be) together with (in circumstances where the Agreement has not been terminated by reason of the Producer's default or insolvency) a proportionate share or part of the Production Fee.
- 7.13 All parts of the Programme and the Programme Materials as shall have been completed and all documents and materials produced up to the date of termination shall be delivered by the Producer to S4C on demand.
- 7.14 Without prejudice to any other remedy in respect of any breach, S4C shall have the right on giving notice in writing to the Producer (but shall not be obliged) to take over and complete the making of the Programme and/or the remaining episode of the Programme and for that purpose to use all physical properties, facilities, supplies, equipment, documents and materials relating to the Programme and in such event: -
- 7.14.1 S4C shall have the right to assume supervision and control of the making of the Programme and/or to appoint and contract with any third party to complete the production of the Programme;
- 7.14.2 S4C shall be and is irrevocably appointed the agent of the Producer with absolute discretion and with power and on behalf of the Producer to exercise or assign any right of the Producer (whether under any contract or otherwise) which is relevant to the making of the Programme but for no other purpose;
- 7.14.3 upon request the Producer shall execute a formal assignment in favour of S4C in respect of the benefit of any agreements made by the Producer and relevant to the making of the Programme; the Producer shall fully indemnify S4C against liability arising from any breach of such contracts by the Producer prior to the take-over date. For the purposes of this sub-clause and sub-Clauses 7.14.4 and 7.14.5 "take over date" means the date of physical take over of production by S4C or its nominee, and not the date of notification of any intention to take over;
- 7.14.4 S4C agrees to indemnify the Producer against liability arising from any fraudulent or negligent act or omission by S4C in the exercise of S4C's rights of take-over and against any liability which the Producer may incur in circumstances where S4C has taken over production following an event of Force Majeure. Such indemnity does not extend to liability arising from any event occurring or circumstances existing before or at the take-over date or from S4C adhering to the terms of contracts entered into by the Producer on or before the take-over date, in relation to all of which the Producer indemnifies S4C; and
- 7.14.5 S4C shall use facilities contracted for by the Producer prior to the take over date provided the Producer has assigned the relevant agreements to S4C on condition that such facilities have not become unavailable for whatever reason and that S4C is unable to secure cheaper facilities from elsewhere.
- 7.15 In the event of termination following a breach by the Producer and if the total cost to S4C of completing the Programme in accordance with the Business and Editorial

Brief and this Agreement is increased, the additional cost over and above the total of the Budget (excluding the Production Fee) (which S4C shall use reasonable endeavours to minimise) shall be paid by the Producer to S4C either by deduction from any money payable by S4C to the Producer or as an ordinary debt payable on demand.

- 7.16 Unless otherwise provided termination of this Agreement shall be without prejudice to the grant of rights and the warranties and undertakings given by either party and all other obligations and indemnities that have arisen or been given prior to termination all of which shall continue in full force and effect after termination notwithstanding that termination has taken place.

Section 8 - General Provisions

Assignment

- 8.1 This Agreement is personal to the Producer which shall not assign the benefit of it or any rights under it without the written consent of S4C which shall be entitled to refuse consent at its discretion except where such assignment is to another member of the Producer's group of companies in which case S4C shall not withhold its consent unreasonably provided always that the Producer remains liable for any breach of this Agreement by any such assignee.
- 8.2 The Producer shall not grant to any other party any right licence consent or permission which could or might infringe upon any of the rights or benefits granted to S4C.
- 8.3 S4C shall be entitled to assign the benefit of this Agreement and in its absolute discretion to sub-contract, distribute or Exploit the Programme and to deal with the Programme in such manner as S4C shall deem expedient.

Force Majeure

- 8.4 For the purposes of this Agreement the expression "Force Majeure" shall mean any event outside the reasonable control of either party which prevents the observance or performance by either party of its obligations hereunder including fire, flood, unavoidable accident, national calamity, terrorism, riot, General Disputes, act of God, the enactment of any Act of Parliament or the act of any other legally constituted authority or any event arising out of or attributable to war or armed conflict or terrorism (and including, without limitation any restrictions implemented by the Government on national, regional or local television services or the funding of these services) or any other event outside the reasonable control of both parties and not due to any lack of reasonable prudence and foresight by either party but excluding the illness or incapacity of any person (other than Key Personnel in respect of whom Key Personnel insurance has been maintained and which covers the illness or incapacity in question) involved in the making of the Programme and excluding Local Disputes.
- 8.5 If an event of Force Majeure occurs the party so affected shall notify the other in writing without delay and, provided any inability to observe or perform any obligation under this Agreement results solely from that event of Force Majeure, performance of the obligations so affected shall be deemed to be suspended from the date of such notice until such inability is removed or until termination or take over. Both parties undertake to use all reasonable endeavours to minimise and reduce any period of delay and all costs and expenses occasioned by an event of Force Majeure. During any such period of delay, S4C shall be under no obligation

to pay any money to the Producer save in respect of contractual obligations of the Producer which the Producer cannot avoid or delay and which have been incurred in accordance with the requirements of this Agreement and the Budget.

- 8.6 If the making or Delivery of the Programme is materially delayed by reason of an event of Force Majeure having regard to the intended time of transmission, S4C may take and require the Producer to take whatever steps S4C may consider appropriate to complete the Programme and/or reduce the period of delay and/or the financial loss resulting from it, including (but not by way of limitation) the termination of this Agreement (either in relation to the Programme as a whole or in relation to the affected episodes) and the exercise of S4C's right of take-over.

Set-off

- 8.7 Without limiting S4C's rights of set-off at common law, S4C has the right to offset all monies due or to which it is otherwise entitled (whether under this Agreement or as a result of any settlement or judgement under which damages or indemnity in connection with this Agreement are due to S4C) from the Producer to S4C from time to time against and deduct them from all monies due from S4C to the Producer under this Agreement or any other Agreement or arrangement.

Notices

- 8.8 The address of each party given in this Agreement shall be the relevant address for the service of notices until such party notifies the other of a new address in the United Kingdom.
- 8.9 A notice shall be deemed served on the next following Working Day if delivered by hand to the relevant address as aforesaid or if handed in at a Post Office properly addressed and prepaid for transmission by first class post within the United Kingdom, 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 5.00pm on a Working Day, such notice shall be deemed to be given or made at 9.00am on the next Working Day.

Waiver

- 8.10 No waiver by a party of any breach of any of the provisions in this Agreement shall be effective unless given in writing.
- 8.11 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. The single or partial exercise by any party to this Agreement 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.
- 8.12 The rights powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies provided by law.
- 8.13 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.

Confidentiality

- 8.14 Each party acknowledges that it has been or will be in a position to receive, have access to or discover Confidential Information.
- 8.15 Both parties shall for the duration of the Agreement and at all times thereafter keep private and confidential all of the Confidential Information of the other party and shall not and shall procure that their personnel do not disclose reveal, make public or communicate to any person or persons whether before, during or after the Agreement the Confidential Information or any part thereof or any other information which comes to its attention during and as a result of the Agreement provided that a disclosure by S4C under the FOIA and in accordance with the FOIA and/or any appropriate regulations or supplemental codes or to Ofcom or to the DUK or as otherwise required by law shall not be a breach of this nor the following clause. The Producer shall only use the Confidential Information for the purpose of making and Delivering the Programme.
- 8.16 Both parties shall take all necessary precautions to ensure that all Confidential Information obtained from the other party or any of its Group Companies under or in connection with the Agreement:
- 8.16.1 is given only to such of the personnel and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement to the extent necessary for the performance of the Agreement;
- 8.16.2 is treated as confidential and not disclosed (without prior written approval) or used by any personnel or such professional advisors or consultants otherwise than for the purposes of the Agreement.

Data Protection

- 8.17 Prior to transferring any Personal Data to S4C, the Producer shall ensure that it has an appropriate lawful basis for the transfer of the Personal Data to S4C and has ensured an appropriate lawful basis to enable S4C to process the Personal Data for the purposes of Transmission and Exploitation of the Programme. Where appropriate, the Producer shall obtain from each contributor a signed contributor contract (in a form agreed between the parties) stating that the lawful basis for processing non-special category personal data shall be in performance of the contract. All Personal Data supplied to S4C shall be processed in compliance with S4C's Data Protection Policy and privacy notice in force from time to time.
- 8.18 Without prejudice to the generality of clause 8.17 above, the Producer shall ensure that all contracts with contributors to the Programme include that S4C shall be a data controller in relation to the relevant contributor's Personal Data for the purposes of Transmission and Exploitation of the Programme and any interactive elements and/or competitions connected with the Programme and shall direct the contributors to a link to the S4C Privacy Notice (as published from time to time).
- 8.19 Both parties agree to comply with all applicable requirements of the Data Protection Laws. This clause 8.19 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Laws.
- 8.20 Without prejudice to the generality of clause 8.19 above, each party shall, in relation to any Personal Data processed on behalf of S4C in connection with the performance by the Producer of its obligations under this Agreement:
- 8.20.1 assist the other party, free of charge, to respond to any request from a data subject and in ensuring compliance with its obligations under the

Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 8.20.2 maintain adequate records, policies and procedures to demonstrate its compliance with Data Protection Laws, and make such records, policies and procedures available to the other party on reasonable request; and
 - 8.20.3 appoint a data protection officer if required to do so under the Data Protection Laws, or, where it is not required to do so, to appoint an individual responsible for data protection and inform the other party of the name of that individual.
- 8.21 Without prejudice to the generality of clause 8.19, the parties agree in relation to any Personal Data processed by that party solely as a processor on behalf of the other party as controller under this Agreement, that the processor shall:
- 8.21.1 process the Personal Data only on the written instructions of the controller and, on the written direction of the controller, delete or return such Personal Data and copies thereof to the controller on termination of this Agreement (unless precluded from doing so pursuant to any applicable laws);
 - 8.21.2 allow for audits by the controller or its designated auditor of the processor's data protection procedures and processes in connection with this Agreement;
 - 8.21.3 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 8.21.4 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential, that they are reliable and understand the processor's contractual obligations to the other;
 - 8.21.5 not transfer any Personal Data outside of the European Economic Area or appoint a third party to process the Personal Data unless the prior written consent of the other has been obtained;
 - 8.21.6 notify the other party without undue delay and no later than within 24 hours on becoming aware of a Personal Data breach. S4C should be notified by using the following email address: data@s4c.cymru
- 8.22 Laws and guidelines relating to Personal Data regularly develop and S4C may, at any time on not less than 30 days' notice, revise these clauses 8.17 - 8.21 in order

to reflect any change in good practice or guidelines by replacing them with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

Freedom of Information

- 8.23 The Producer acknowledges that S4C is a public body subject to the requirements of the Code of Practice on Access to Government Information (2nd edition), the FOIA and the Regulations and the Producer shall assist and co-operate with S4C to enable S4C to comply with its obligations thereunder.
- 8.24 S4C shall be responsible for determining whether the information:
- 8.24.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information (2nd edition), the FOIA or the Regulations;
 - 8.24.2 is to be disclosed in response to a request for information, and in no event shall the Producer respond directly to a request for information unless expressly authorised to do so by S4C on behalf of S4C.
- 8.25 The Producer acknowledges that S4C may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the FOIA, be obliged under the Code of Practice on Access to Government Information (2nd edition), the FOIA, or the Regulations to disclose information (including the Producer's confidential 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 Producer where practicable and take its views into account. Where the Producer's views conflict with S4C's legal advice, nothing in this Agreement shall prevent S4C from following S4C's legal advice.
- 8.26 The Producer acknowledges that any lists or schedules provided by it outlining the Producer's Confidential Information are of indicative value only and that S4C may nevertheless be obliged to disclose the Producer's Confidential Information in accordance with Clause 8.25.

Disputes

- 8.27 If a dispute arises between the parties, the Producer shall provide formal notice of the dispute to the S4C member(s) of staff with whom the Producer has been discussing the commission in writing ("the Dispute Notice").
- 8.28 On service of the Dispute Notice;
- 8.28.1 the parties shall attempt in good faith to resolve the dispute;
 - 8.28.2 if these discussions fail to resolve the dispute within twenty (20) Working Days of receipt of the Dispute Notice by S4C, the parties may refer the dispute to S4C's Director of Commissioning who shall attempt in good faith to resolve it; and
 - 8.28.3 if these discussions fail to resolve the dispute within ten (10) Working Days of referral, the parties may refer the dispute to S4C's Chief Executive for resolution. The Chief Executive may invite the parties to attend a meeting(s) with such representatives of both parties present as the Chief Executive considers appropriate. The Chief Executive will endeavour to announce

her/his decision as soon as is reasonably practicable following her/his final meeting with the parties.

- 8.29 If the Producer is unhappy with the decision of S4C's Chief Executive, the Producer may appeal to the S4C Authority Complaints and Compliance Committee and that part of the Complaints Policy published on the S4C Website relating to appeals to the S4C Authority shall apply.
- 8.30 The commencement of the procedure set out in clauses 8.27 to 8.29 above shall not prevent the parties commencing or continuing court proceedings in relation to the dispute.

Construction

- 8.31 The provisions of this Agreement shall apply to every part of the making of the Programme including (except where noted otherwise) work done prior to the signing of it.
- 8.32 Nothing in this Agreement shall imply any obligation on S4C to broadcast the Programme.
- 8.33 It is agreed that the Producer enters into this Agreement and undertakes its obligations as an independent contractor and nothing in this Agreement shall imply any form of partnership or joint venture as between S4C and the Producer and neither party shall hold itself out as the agent for the other except as expressly provided herein.
- 8.34 The Producer undertakes and agrees that all contracts relating to the making of the Programme shall be entered into by the Producer as a principal and that S4C shall not have any liability as an undisclosed principal of the Producer and that the Producer shall not pledge the credit of S4C or enter into any contractual arrangement on its behalf. The Producer acknowledges that the Producer shall have no claim in respect of loss of opportunity to enhance reputation or otherwise howsoever if S4C terminates this Agreement or abandons production of the Programme or any part of it in accordance with clause 7.
- 8.35 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.
- 8.36 This Agreement shall be construed as an agreement made in Wales and subject to the Laws of England and Wales and embodies all the terms and conditions agreed between the parties and shall be modified only by written agreement signed by the authorised representatives of both parties. The parties acknowledge that they have not relied on any representations on the part of the other or the other's officers or employees except as expressly provided for in this Agreement.

Prevention of Corruption and Fraud

- 8.37 The Producer 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.

- 8.38 The Producer 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.
- 8.39 The Producer shall take all reasonable steps to prevent Fraud by the Producer 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.
- 8.40 If the Producer, its staff or anyone acting on the Producer's behalf, engages in conduct prohibited by clauses 8.37 or 8.38 and/or commits Fraud in relation to this or any other contract with S4C, S4C may:
 - 8.40.1 give written notice to the Producer to either terminate the Agreement immediately or to take over production of the Programme in accordance with the terms of this Agreement; and/or
 - 8.40.2 recover in full from the Producer any loss sustained by S4C in consequence of any breach of those clauses and any loss suffered by S4C resulting from termination of the Agreement and/or takeover of production of the Programme.

SCHEDULE 1

Editorial and Business Brief

[Programme Title]

(Please see document attached)

SCHEDULE 2

The Budget

[Programme Title]

| Item | Category | Budget Cost |
|-------------|------------------------|--------------------|
| 03 | Management Fee | £0.00 |
| 05 | Copyright / Scripts | £0.00 |
| 06 | Producer / Director | £0.00 |
| 07 | Artists | £0.00 |
| 08 | Presenters | £0.00 |
| 09 | Prod' Unit Salaries | £0.00 |
| 10 | Assistant Directors | £0.00 |
| 11 | Crew – Camera | £0.00 |
| 12 | Crew – Sound | £0.00 |
| 13 | Crew – Lighting | £0.00 |
| 14 | Crew – Design | £0.00 |
| 15 | Crew – Wardrobe | £0.00 |
| 16 | Crew – Editing | £0.00 |
| 17 | Crew – Others | £0.00 |
| 18 | N.I. Personnel | £0.00 |
| 19 | Design & Set Materials | £0.00 |
| 20 | Ward' / M-Up Materials | £0.00 |
| 21 | Production Equipment | £0.00 |
| 22 | Facilities | £0.00 |
| 23 | Studios / Ob | £0.00 |
| 24 | Other Prod' Facilities | £0.00 |
| 25 | Film / Tape Stock | £0.00 |
| 26 | Post Production – Film | £0.00 |
| 27 | Post Production – Tape | £0.00 |
| 28 | Archive Materials | £0.00 |
| 29 | Titles & Graphics | £0.00 |
| 30 | Music | £0.00 |
| 31 | Travel / Transport | £0.00 |
| 32 | Hotel / Living | £0.00 |
| 33 | Other Prod' Costs | £0.00 |
| 34 | Insurance | £0.00 |
| 35 | Administration | £0.00 |
| 36 | Misc' Direct Costs | £0.00 |
| | Total Budget | £0.00 |

SCHEDULE 3

Confirmation Of Rights

[Programme Title]

A. MINIMUM RIGHTS REQUIRED TO BE INCLUDED IN THE BUDGET:

The right to permit the Educational Recording Agency Limited to licence educational establishments to use the Programme for educational purposes in accordance with Section 35 of the Act; and

S4C shall be entitled to Exploit the Programme without limit as to the timing or number of Transmissions and without any further payment to the Producer, to any contributor to the Programme (including originally composed music, contributions by musicians who have been engaged on the combined use fee, contributions of presenters, commentators, scriptwriters, titles and graphics) or any other matter. (It should be noted that the Online Rights, the Mobile Rights and the New Media Rights are worldwide in accordance with the definition of Territory in the Standard Terms).

[To be completed]

B. EXPLOITATION

1. The Producer shall secure to S4C the Exploitation rights in and to the Programme within the Budget provided only that S4C or its licensees pay the Repeats and Residual Payments for the clearances and rights not required to be bought out within the Budget in accordance with Paragraph A above.

Important Note

For the definition of "Repeats and Residuals" the Producer is referred to Clause 1. Other relevant provisions are the definition of "Third Party Material" and Clauses 2 and 5 in relation to clearances generally.

2. Net Proceeds

Net Proceeds will be divided as to 70% S4C and 30% Producer in all media world-wide.

C. LICENCES ETC. REFERRED TO IN CLAUSE 2.15

The Producer shall obtain the following rights licences clearances waivers consents or releases by the times noted below: -

In respect of each producer and director which contribute to the Programme, the Producer shall obtain all necessary rights, licences, clearances, waivers, consents and releases (including without limitation an assignment of their rights, title and interest in the copyright in the Programme and a waiver of their moral rights but in the case of any director subject to the rights of Directors UK Ltd - see paragraph A above) in accordance with Clause 2.4 on or by the first day of the pre-production period;

In respect of the scripts and any outlines or Treatments from which the scripts are derived, the Producer shall obtain all necessary rights, licences, clearances, waivers, consents and releases (including without limitation an assignment by the author(s)

of the rental and lending rights in the work) in accordance with Clauses 2.15 and 2.18 on or by the first day of the production period;

In respect of the rest, the Producer shall obtain all necessary rights, licences, clearances, waivers, consents and releases in accordance with Clause 2.15 on or by the Delivery Date.

D. SPECIAL STIPULATIONS

1. Ceiling/Maximum share of Producer of any Underspend
25% of the Production Fee payable for the Programme.

SCHEDULE 4

Delivery Materials

[Programme Title]

The following materials shall be Delivered to S4C by the following dates, and if there is a failure to do so (in any individual occurrence) S4C shall have the right to deduct liquidated damages of £100.00 a day for any Transmission Copy and the fees noted in the 'Late Delivery Fees' document on the production section of the S4C Website, from any monies payable to the Producer or to demand the same from the Producer as a debt payable on demand to S4C:

[To be completed]

SCHEDULE 5

Cashflow

[Programme Title]

[To be completed]

SCHEDULE 6

Milestones

[Programme Title]

[To be completed]

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

SIGNED by a duly authorised signatory for and on behalf of **S4C**

Signature.....

Name

Signed and delivered as a **Deed** by the **Producer** acting by its authorised signatory:

SIGNED BY

NAME

In the presence of: (witness)

Name:

Address:.....

Occupation.....