

DATED [ ] 2018

(1) S4C

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**AGREEMENT FOR THE PROVISION OF VIEWING AND AUDIENCE APPRECIATION  
DATA SERVICES**

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"Disaster Recovery Plan"	the disaster recovery plan of the Company set out at Schedule 7;
"DPA"	Data Protection Act 1998;
"Data Protection Laws"	(i) DPA until implementation of GDPR (ii) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (iii) any successor legislation to the GDPR or the Data Protection Act 1998, (iv) any new national data protection laws;
"Effective Date"	[ <i>insert date of grant of tender</i> ]
"Encumbrances"	liens, charges, mortgages, pledges, equities, encumbrances securing any obligation of any person, preferential arrangements (including retention of title arrangements) and other rights, interests and claims of any nature whatsoever;
"Fee"	the fee for the Services being [ <i>£insert fee</i> ] or [as set out in Schedule 4];
"FOIA"	the Freedom of Information Act 2000;
"Fraud"	any offence under any laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud S4C;
"GDPR"	General Data Protection Regulation EU 2016/679;
"Good Industry Practice"	the degree of skill, care, diligence and prudence reasonably and ordinarily expected from experienced and competent persons engaged in the same type of undertaking as that of the Company under the same or similar circumstances; using methods, standards, practices and procedures conforming to all Applicable Laws and using appropriately qualified and skilled personnel;
"Group Company"	any subsidiary or holding company from time to time and any subsidiary of such holding company from time to time (as such terms are defined in Section 1159 of the Companies Act 2006);
"Information"	All information supplied to the Company by the Panel (whether as a whole or a part) in connection with the provision of the Services;
"Insurance Policies"	the insurance policies required to be maintained by the Company in accordance with clause 12;

"Intellectual Property"	collectively any and all intellectual property rights in or relating to the Product of the Services including inventions, patents, registered designs, trade marks (whether registered or unregistered), applications for any of the foregoing and the right to apply therefore in any part of the world; copyrights, rights in the nature of copyrights or affording equivalent protection to copyright, moral rights, design rights, database rights; domain names, trade names, logos, get-up, including the look and feel of any content; know-how, trade secrets and other confidential information; rights in the nature of unfair competition rights and the rights to sue for passing off; licences, consents, permissions and waivers in relation to any of the foregoing; and all or any similar or equivalent rights arising or subsisting in any country in the world;
"Key Personnel"	the key persons employed by the Company listed in Schedule 3 including the Company Representative;
"New S4C Service"	any other channel, television service, website or application or other means of communication to the public whether now or hereinafter invented (other than the S4C Services) established following the date of this Agreement owned solely or mainly by S4C or any Group Company of S4C;
"Ofcom"	The Office of Communications or any successor body;
"Panel"	an audience reaction panel as described in Schedule 1 and consisting of a minimum of 1,400 adults residing in Wales and representative of the population of Wales, 1,000 of whom are Welsh speakers and 400 of whom are non-Welsh speakers;
"Performance Standards"	the performance standards detailed in Part B of Schedule 1;
"Personal Data"	has the meaning given to that term in Data Protection Laws;
"Policies"	collectively all of the S4C policies expressly referred to in this Agreement as updated from time to time, including the Ofcom Broadcasting Code, and to the extent applicable to the Services, the S4C Compliance Notice, and all other policies and guidelines from time to time published on S4C's production website which can be accessed at <a href="http://www.s4c.cymru/en/production/page/1154/guidelines/">http://www.s4c.cymru/en/production/page/1154/guidelines/</a> ; and the Code of Conduct of [insert

	<i>relevant society</i> ] as updated from time to time;
"Product of the Services"	each and every product of the Services created, acquired or developed by or on behalf of the Company and the Staff in the course of providing the Services including but not limited to the Reports, Databases, Diaries, Information, Questionnaires and any other data or information gleaned from or produced by the Panel;
"Quality Control Procedures"	the quality control procedures as set out in Schedule 5;
"Quarter"	a period of 3 calendar months ending on 30 June, 30 September, 31 December or 31 March in any calendar year from the date of this Agreement;
"Questionnaires"	questionnaires approved by S4C and which are used or to be used by the Panel;
"Regulations"	means the Environmental Information Regulations 2004;
"Reports"	reports in the form and containing the matters detailed in Part A of Schedule 1;
"S4C Brand Guidelines"	the S4C brand guidelines which can be found on S4C's website at <a href="http://www.s4c.cymru/media/media_assets/Logo_S4C.pdf">http://www.s4c.cymru/media/media_assets/Logo_S4C.pdf</a> as updated from time to time;
"S4C Compliance Notice"	the S4C Compliance Notice included on the S4C Authority website;
"S4C Confidential Information"	collectively any and all information, data and know-how of a confidential nature (in whatever form and on whatever media) relating to the Intellectual Property and/or the business of S4C and/or its Group Companies which is disclosed or made available for the purposes of or generated under this Agreement and whether before, on or after the Effective Date, together with the Product of the Services, the existence or subject matter of this Agreement and/or any information which has been designated as confidential by S4C in writing or that ought to be considered as confidential and/or all personal data and sensitive personal data within the meaning of the Data Protection Laws;
"S4C Representative"	[ <i>insert name</i> ] or such other persons as notified by S4C to the Company in writing from time to time during the Term;
"S4C Services"	any channel, television service or website or 'app' owned solely or mainly by S4C or any Group Company of S4C, including the digital television

	service "S4C", the website <a href="http://www.s4c.cymru">www.s4c.cymru</a> , and the on demand service;
"Services"	the viewing and audience appreciation data services further details of which are set out in Schedule 1;
"Staff"	all persons engaged by the Company or contributing to the Services whether on an employed or self-employed basis including the Key Personnel;
"Term"	the period of three (3) years from the Effective Date during which this Agreement is in force and effect subject to the provisions of this Agreement;
"Termination Date"	the date of expiry or termination of this Agreement howsoever arising;
"VAT"	Value added tax;
"Warranties"	The representations and warranties set out in Schedule 2; and "Warranty" shall be construed accordingly;
"Working Day"	any day other than a Saturday, Sunday or public holiday in Wales.

- 1.2 words and expressions (including words and expressions defined in clause 1.1) in the singular shall include the plural and vice versa; references to a "party" or the "parties" shall mean S4C and/or the Company as the context requires; references to any gender shall include every gender; references to a person shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality) and any combinations of any one or more of the foregoing;
- 1.3 headings are for convenience only and shall not affect the construction or interpretation of this Agreement; references to Schedules and clauses are to schedules to, and clauses of, this Agreement and references to sub-clauses are to sub-clauses of the clause in which the reference appears;
- 1.4 a reference to any statute or statutory provision shall include any subordinate legislation made thereunder and shall be construed as a reference to such statute, statutory provision or subordinate legislation as it may have been, or may from time to time be amended, modified or re-enacted (with or without modification);
- 1.5 the words "include" or "including" shall be construed and interpreted without limitation;
- 1.6 the rule known as the ejusdem generis rule shall not apply and accordingly general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;

- 1.7 in case of any conflict between this Agreement and the Policies the terms of this Agreement shall take precedence; and
- 1.8 time shall be of the essence in respect of the Company's obligations hereunder.

## **2. The Services**

- 2.1 S4C hereby engages the Company and the Company agrees to provide the Services from the Effective Date for the duration of the Term on the terms and conditions set out in this Agreement unless and until this Agreement is terminated by either party in accordance with its terms or otherwise expires.
- 2.2 In performing its obligations under this Agreement the Company shall and shall procure that the Staff shall at all times during the Term comply with all Applicable Laws, Policies and all reasonable instructions and directions of S4C from time to time.
- 2.3 The Company shall ensure that the Staff shall at all times provide the Services in a professional, courteous, timely, conscientious, and effective manner and in accordance with the standards required by S4C.
- 2.4 The Company shall ensure that all relevant Staff shall at all times have a clear, accurate and up to date knowledge of the S4C Services, and any New S4C Service and their relevant output, the Policies and the Applicable Laws.
- 2.5 The Company shall put in place and at all times during the Term maintain and adhere to the Quality Control Procedures.
- 2.6 The Company shall not and shall ensure that the Staff does not represent S4C's corporate responsibility on any matter. The Company shall ensure that the Services are not regarded by the public as S4C's method of communication policy or business plan, but that it is a service that compliments the Policies.
- 2.7 The Company shall not enter into any obligation to any person whether express or implied which would or might conflict with the full and proper performance of its obligations to S4C under this Agreement.
- 2.8 The Company shall immediately notify S4C in writing if it is for any reason unable to perform any of its obligations under this Agreement. Any such notification shall be without prejudice to any rights which S4C may have whether under this Agreement or otherwise at law in respect of such inability of the Company to perform any of its obligations.
- 2.9 The Company shall comply with the principles of S4C's Diversity and Equality Policy (as published on the S4C Authority page of the S4C website).
- 2.10 The Company shall and shall ensure that all Staff shall at all times during the Term act in S4C's best interests and in particular and without limitation shall not do or omit to do anything or enter into any agreements with any person which may conflict with S4C's best interests, adversely impact on S4C's goodwill or reputation and/or the Company's obligations under this Agreement.

## **3. Welsh Language Standards**

- 3.1 To the extent that they are relevant to the provision of the Services, the Company shall comply with the Welsh Language (Wales) Measure 2011 and the standards with which S4C is liable to comply in accordance with the S4C Compliance Notice, as if the Company were S4C.
- 3.2 The Company shall deliver the Services through the medium of English and Welsh (on an equal basis).
- 3.3 The Company shall be responsible for promoting the delivery of the Services in Welsh and English to the Panel members and shall use all reasonable steps to achieve this.
- 3.4 The Company shall report to S4C on a bi-annual basis by providing the following information in writing:
  - 3.4.1 The number of panellists requiring the Service in Welsh and English.
  - 3.4.2 The allocation of staff to deliver the Services in Welsh and English.
  - 3.4.3 Any changes in Service delivery made or anticipated by the Company as a consequence of the above and, if relevant, the timescale for their implementation.
  - 3.4.4 Any complaints of difficulties indicated by panellists or Staff in delivering the Services in compliance with Welsh language obligations during the report period and any advice or guidance that is required by the Company in delivering such Services.

#### **4. Records, Reporting and Communications Procedure**

- 4.1 The Company Representative shall be responsible for the supervision of the performance by the Company of the Services and its obligations hereunder throughout the Term. The Company Representative shall be the primary point of contact for S4C in respect of the provision of the Services and shall be available to liaise with the S4C Representative at all reasonable times during the Term.
- 4.2 The Company shall retain a detailed orderly written record of the following in the provision of the Services:
  - 4.2.1 *[Information to be inserted following identification of the successful bidder.]*;
- 4.3 The Company shall provide Reports to S4C in accordance with the timescales and frequencies set out in Schedule 1.
- 4.4 The Company shall ensure that all Reports are full, complete and accurate.

#### **5. Review Meetings**

- 5.1 The Company shall meet with S4C at such times and dates reasonably requested by S4C from time to time during the Term to discuss any matter arising out of the provision of the Services which needs to be addressed at short notice. The Company shall use all reasonable endeavours to ensure that such Staff as may reasonably be requested by S4C shall attend such a meeting.

- 5.2 S4C shall review this Agreement and the Company's performance of the Services following the period of twelve (12) months from the Effective Date ("the First Year Review").
- 5.3 If, following the First Year Review, S4C finds that the Company fails to meet the Performance Standards (or any of them) or S4C is dissatisfied with the Company's performance of the Services, S4C shall be entitled to terminate this Agreement with immediate effect on written notice to the Company.
- 5.4 S4C and the Company shall meet on a bi-annual basis to formally review matters arising out of the delivery of the Services. The Company shall use all reasonable endeavours to ensure that such Key Personnel and Staff as may reasonably be requested by S4C shall attend each review meeting and shall provide a written report containing all information as S4C shall reasonably request in respect of the preceding 6 months at least ten (10) Working Days in advance of any such meeting.
- 5.5 At the review meetings S4C and the Company shall review and discuss matters arising out of delivery of the Services including but not limited to the following:
- 5.5.1 the nature and standard of the Services;
  - 5.5.2 the Company's performance against the Performance Standards;
  - 5.5.3 the matters listed at clause 3.4;
  - 5.5.4 Panel response rates and attrition rates;
  - 5.5.5 any changes to be made to the Services and/or the Communications Procedure to improve the efficiency and effectiveness of the Services (including improvements to the staffing levels, training of Staff);
  - 5.5.6 the style, frequency, content, delivery timescale and any other matter relating to the Reports;
  - 5.5.7 [***details of additional matters to be discussed at review meetings to be agreed between S4C and the successful bidder based on the successful tender.***]
- 5.6 Following such review meetings, S4C shall be entitled to give the Company notice in writing:
- 5.6.1 to confirm the Company's appointment for the remainder of the Term in accordance with the terms and conditions of this Agreement;
  - 5.6.2 to confirm the appointment for the remainder of the Term upon such revised, additional or different terms and conditions as may be agreed between the parties and confirmed in writing; or
  - 5.6.3 to terminate this Agreement by giving three months notice.

## **6. Staffing**

- 6.1 The Company agrees to employ or engage the services of a sufficient number of Staff with the appropriate skills and experience and that are fluent in Welsh and

English where appropriate to ensure that the Services are provided in accordance with Good Industry Practice and the requirements of this Agreement.

- 6.2 The Company shall provide all necessary training to the Staff in accordance with Good Industry Practice and shall provide training to Staff, as appropriate, relating to the S4C Services and/or New S4C Services and [*Insert details*] the recording and reporting of information as set out in clause 3 of the Communications Procedure, legal implications of matters arising during the provision of the Services and any other training requirements reasonably required by S4C.

## **7. Key Personnel**

- 7.1 The Company will make every reasonable effort to ensure that Key Personnel remain employed and available to contribute to the provision of the Services throughout the Term.
- 7.2 The Company shall notify S4C in writing of any matters or circumstances which could affect the availability of the Key Personnel promptly upon becoming aware of the same.
- 7.3 If any of the Key Personnel are unavailable at any time during the Term the Company shall propose a suitable replacement to S4C in writing. No replacement for any Key Personnel shall be permitted to participate in the provision of the Services unless S4C has given its prior written approval of such replacement. If no replacement acceptable to S4C can be found, S4C shall be entitled by notice in writing to the Company to terminate this Agreement with immediate effect.
- 7.4 The Company shall promptly upon receiving written notice from S4C to do so remove or procure the removal of any member of Staff from any involvement in or with the provision of the Services whose conduct or behaviour is considered by S4C to be prejudicial to the interests, reputation or goodwill of S4C or inappropriate given the nature of the Services. The decision of S4C as to whether any member of Staff is to be so removed shall be final and conclusive. S4C shall under no circumstances have any liability to the Company or to any such member of Staff in respect of such removal and the Company shall indemnify S4C from and against any and all claims, demands, actions and/or proceedings made or brought or threatened to be made or brought against S4C by any such member of Staff (including legal costs and expenses on a solicitor own client basis) incurred in connection therewith and any damages awarded or settlement monies paid in connection therewith. The removal of any member of Staff under this clause 7.4 shall not relieve the Company of any of its obligations under this Agreement.

## **8. Intellectual Property**

- 8.1 The Company shall not use any brands, trade marks, trade names or logos of S4C in any manner without the prior written approval of S4C.
- 8.2 Where S4C approves such use, the Company shall be entitled to use the S4C brand in connection with the Services in accordance with the S4C Brand Guidelines and shall enter into the Brand Licence governing the use of the S4C brand and logos.
- 8.3 The Intellectual Property shall belong to and be the absolute property of S4C. S4C shall be free to use and to exploit (and to permit third parties to use and to exploit) the Intellectual Property in whatever form, by whatever means and on

whatever media (whether known at the Effective Date or invented hereafter) and the Company hereby assigns to S4C absolutely, irrevocably and unconditionally with full title guarantee and free from Encumbrances all worldwide right, title and interest in and to any and all future copyrights, rights in the nature of copyright, database rights and UK unregistered design rights comprised within the Intellectual Property to the intent and with the effect that all such rights shall vest in S4C automatically and immediately on the date that such rights are acquired, created, developed, designed or otherwise prepared in each case for the full term thereof including all renewals thereof and extensions thereto together with all rights, benefits or powers arising or accrued therefrom including the right to sue for damages and other remedies in respect of any past or existing infringements thereof.

8.4 The Company irrevocably and unconditionally warrants to S4C, its successors assigns and licensees:

8.4.1 that all Staff have assigned and/or granted to the Company 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 Intellectual Property in whatever form and by whatever means or media (whether now known or hereafter invented); and

8.4.2 that all Staff have irrevocably and unconditionally waived all their respective rights in respect of the Product of the Services to which such Staff 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 Staff may be entitled under any legislation now existing or in future enacted in any part of the world.

8.5 The Company shall at the cost and request of S4C do all such acts and execute all such documents as S4C may from time to time require to secure or properly to vest in S4C all rights, title and interest assigned or to be assigned or to be licensed to S4C pursuant to this clause 7 and/or to secure or to obtain patent, registered design, registered trade mark and/or other protection for the Intellectual Property. The Company hereby grants to S4C an irrevocable power of attorney (which is given to secure S4C's proprietary interest and is irrevocable in accordance with Section 4 of the Powers of Attorney Act 1971) with the right but not the obligation to do any and all acts and things necessary to give full or further effect to the provisions of this Agreement and to execute all such further deeds, documents and instruments in the name of and on behalf of the Company in the event that the Company fails to do so within a period of fourteen (14) days after receipt of a relevant request from S4C.

## 9. **Warranties**

9.1 The Company represents, warrants and undertakes to S4C in the terms set out in Schedule 2.

9.2 The Company accepts that S4C enters into this Agreement in reliance upon each of the Warranties.

9.3 Each of the Warranties shall be construed as a separate and independent warranty and shall not be limited or restricted by reference to or inference from the terms of any other Warranty or any other provision of this Agreement.

## **10. Financial Matters**

- 10.1 In consideration of the Services and the performance by the Company of its obligations under this Agreement and following receipt from the Company of a valid invoice S4C shall pay the Company the Fee.
- 10.2 The Fee shall be exclusive of VAT which shall be payable in addition by S4C subject to receipt of appropriate VAT invoices.
- 10.3 The Fee shall be inclusive of all costs and expenses incurred by the Company in providing the Services and S4C shall not be liable to meet any costs over and above the Fee.
- 10.4 [***Clauses dealing with payment of the Fee to be inserted following agreement between S4C and the successful bidder taking into account the pricing and invoicing structure set out in the successful tender.***]

## **11. Indemnity**

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

## **12. Insurance**

- 12.1 Prior to delivery of the Services, the Company undertakes to effect suitable insurance policies with reputable insurance companies or underwriters against all risks normally insured against in accordance with industry custom and practice and the specific circumstances of the Services for the duration of the Term. Without prejudice to the generality of the foregoing such insurance shall include adequate public liability insurance cover with a reputable insurance company to a minimum indemnity limit of £10,000,000 per claim unlimited in aggregate per annum, and employers liability insurance cover to a minimum indemnity limit of £5,000,000.
- 12.2 The Company undertakes to comply with the terms, conditions and limitations of the Insurance Policies throughout the Term, including prompt payment of all premiums, and that it will not do, or omit to do, anything to vitiate either in whole or in part any of the Insurance Policies.
- 12.3 The Company 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.
- 12.4 The Company 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 Company 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.

**13. Termination**

13.1 S4C may at any time by notice in writing to the Company terminate this Agreement:

13.1.1 the Company is in material breach of any of its obligations under this Agreement which (a) is incapable of remedy; or (b) if capable of remedy is not remedied within seven (7) days of S4C bringing such breach to the Company's attention (or such longer period as S4C may agree); or

13.1.2 any of the following occurs:

- (a) the presentation of a petition, or the convening of a meeting for the purpose of considering a resolution, for the winding up or dissolution of, the passing of any resolution for the winding up or dissolution of, or the making of a winding up order against or order for the dissolution of the Company;
- (b) the appointment of a receiver, administrative receiver, receiver and manager, administrator, sequestrator or similar officer over all or any of the assets or undertaking of the Company, the making of an administration application, or the making of an administration order or presentation of an administration petition, in relation to the Company;
- (c) the proposal of, application for or entry into of a compromise or arrangement or voluntary arrangement, or any other scheme, composition or arrangement in satisfaction or composition of any of its debts or other arrangement for the benefit of its creditors generally, by the Company with any of its creditors (or any class of them) or any of its members (or any class of them) or the taking by the Company of any action in relation to any of the same or the filing of any documentation for the purpose of obtaining a moratorium pursuant to section 1A and paragraph 7 of schedule A1 of the Insolvency Act 1986 in relation to the Company;
- (d) the taking by any creditor (whether or not a secured creditor) of possession of, or the levying of distress or enforcement or some other process upon, all or part of the property, assets or undertaking of the Company;
- (e) the deemed inability of the Company to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (with the words "proved to the satisfaction of the court" deemed to be omitted from that section for these purposes);
- (f) the suspension of payment of debts by the Company or the inability or admission of inability of the Company to pay its debts as they fall due;
- (g) the ceasing by the Company to carry on the whole or a substantial part of its business;

- (h) in the case of an individual or partnership, the presentation of a petition for bankruptcy, or the making of a bankruptcy order, in respect of the Company, the occurrence of circumstances in respect of the Company which would enable the presentation of a bankruptcy petition under Part IX of the Insolvency Act 1986 or the making of an application for an interim order or the making of an interim order under section 252 of the Insolvency Act 1986 in relation to the Company, or, where the Company is a partnership, the occurrence of any of the foregoing events in relation to any individual partner in the partnership; or
- (i) the occurrence of an event or circumstance in relation to the Company similar to any of those referred to in paragraphs (a) to (h) above in any jurisdiction other than England and Wales; or

13.1.3 there is a change of control (as 'control' is defined in Section 1124 of the Corporation Tax Act 2010) of the Company.

- 13.2 S4C shall be entitled to terminate this Agreement by providing to the Company at least three (3) months written notice.
- 13.3 S4C shall be entitled, at its option, to extend the Term for a period of up to 12 (twelve) months from the expiry of the Term by giving notice in writing to the Company at least one month in advance of such date. If S4C does not wish to extend this Agreement beyond the Term, this Agreement shall expire on the expiry of the Terms and the provisions of clause 14 shall apply.

#### **14. Effects of Expiry or Termination**

- 14.1 Upon expiry or termination of this Agreement howsoever arising and subject always to the provisions of this clause 14 all rights and obligations hereunder shall immediately cease and determine without prejudice to any rights of action then accrued hereunder including any rights which either party may have in respect of a claim for damages for breach by the other party or under any indemnity.
- 14.2 S4C's obligation to pay the Company shall be limited to such payment as is attributable to the Services actually and properly provided by the Company to the reasonable satisfaction of S4C in accordance with the terms of this Agreement up to the date of expiry or termination.
- 14.3 The Company shall immediately after the Termination Date deliver at its cost to S4C:
  - 14.3.1 all property belonging to S4C in its power, possession, custody or control including any and all S4C Confidential Information together with all copies thereof or extracts therefrom; and
  - 14.3.2 all other documentation relating to this Agreement; andif requested to do so by S4C, provide all such assistance as S4C may reasonably require to enable S4C or any other Company(s) appointed by S4C to complete the provision of any Services.

- 14.4 The Company acknowledges that the Company shall have no claim in respect of loss of opportunity to enhance reputation or otherwise howsoever if S4C terminates this Agreement.
- 14.5 Where this Agreement is terminated by S4C pursuant to clause 13.1.1 and the total cost (including any VAT) to S4C of completing the provision of the Services (whether in-house or via a third party) exceeds that part of the Fee that would have been payable to the Company had this Agreement not been terminated the Company shall pay to S4C on demand such sum as equals the amount of the excess.
- 14.6 The following clauses shall survive the expiry or termination of this Agreement howsoever arising: 1 (Definitions), 8 (Intellectual Property), 9 (Warranties), 11 (Indemnity), 14 (Effects of Expiry or Termination), 19 (Set off), 21 (Remedies and Waiver), 22 (Announcements and Confidentiality), 23 (Data Protection and FOIA), 25 (Construction) and Schedule 2 (Warranties).

## **15. Suspension and Rights of Step In**

- 15.1 If S4C believes that an act or omission of the Company constitutes a breach by the Company of a material term of this Agreement or that the Company or the Staff is not capable of delivering the Services in accordance with the requirements of this Agreement or if any of the events listed in clause 12.1.2 occurs or in S4C's reasonable opinion is likely to occur then without prejudice to S4C's rights at Clause 13 (Termination), S4C may take action in accordance with clauses 15.2 and 15.3 below.
- 15.2 In the circumstances set out in clause 15.1, S4C may take such steps as it considers necessary (either itself or by engaging any other person or persons to take such steps) to mitigate or rectify such state of affairs. Such steps may include the partial or total suspension of the rights and obligations of the Company in relation to its provision of the Services under this Agreement. While S4C is exercising its rights under this clause:
  - 15.2.1 the Company shall make available to S4C all facilities, equipment, data, records, information and personnel engaged in the provision of the Services; and
  - 15.2.2 the Company hereby grants to S4C full authority to act with regard to such facilities, equipment, data, records, information and personnel as are referred to in sub-clause 15.2.1 above as if it were the Company.
- 15.3 If S4C exercises its rights pursuant to clause 15.2, for so long as and to the extent that the Company is prevented from providing any Services:
  - 15.3.1 the Company shall be relieved of its obligations to provide such Services and S4C shall not be obliged to pay to the Company any part of the Fee payable during the period of suspension; and
  - 15.3.2 S4C shall be entitled to deduct from the Fee all reasonable third party costs and expenses incurred by S4C in exercising its rights under Clause 15.2 ("Costs") PROVIDED ALWAYS THAT if such Fee has already been paid by S4C to the Company, S4C shall be entitled to recover the Costs from the Company as a debt payable by the Company to S4C.

15.4 At the end of any period of suspension, save where such period of suspension is ended by termination of this Agreement:

15.4.1 the Term shall continue but shall not be extended by the duration of the period of suspension; and

15.4.2 the Company and the Staff shall co-operate with S4C in order to ensure the seamless and efficient transition of the Services back to the Company.

## **16. Disaster Recovery**

16.1 The Company shall ensure that appropriate contingency planning and disaster recovery arrangements are in place at all times following the Effective Date that allow for the continuing and seamless provision of the Services in accordance with the Disaster Recovery Plan.

16.2 The Disaster Recovery Plan shall take effect so as to avoid or minimise any interruption or disruption to the provision of the Services as a result of any loss of or damage to or destruction of any infrastructure, non-availability of any facilities, equipment, personnel, books, accounts or physical or computer records used by the Company in the provision of the Services.

16.3 Upon the occurrence of any event which would otherwise materially disrupt the provision of the Services to S4C, the Company shall put its contingency arrangements into operation in order to fulfil its obligations set out in clause 16.1. Each party must notify the other as soon as it is aware that such an event has happened or becomes aware of any matters, facts or circumstances which indicate that such an event is likely to happen.

## **17. Assignment and Sub-Contracting**

17.1 S4C shall be free to assign, novate, sub-contract or otherwise dispose of its rights or obligations under this Agreement and/or any part thereof and the Company shall enter into such deeds of novation in respect thereof as S4C shall reasonably require.

17.2 This Agreement is personal to the Company. Accordingly, the Company shall not assign, novate, sub-contract or otherwise dispose of its rights or obligations under this Agreement or any part thereof without the prior written consent of S4C which may be withheld or refused in S4C's reasonable discretion.

## **18. Force Majeure**

18.1 "Force Majeure" shall mean any of the following events or circumstances: fire, flood, national calamity, riot, act of God, act of terrorism, war or armed conflict, the enactment of any act of parliament which changes S4C's status as broadcaster or any direction to S4C by Ofcom.

18.2 If an event of Force Majeure occurs the party affected shall notify the other party thereof in writing without delay and, to the extent that any inability to observe or perform any obligation under this Agreement results from that event of Force Majeure, performance of the obligations so affected shall be deemed to be suspended from the date of service of such notice until such inability is removed or until earlier termination of this Agreement in accordance with clause 18.3.

Both parties undertake to use reasonable endeavours to minimise and reduce any period of suspension and all costs and expenses occasioned by an event of Force Majeure.

- 18.3 If an event of Force Majeure occurs and continues for a period of thirty (30) days or more S4C shall have the right to terminate this Agreement on notice in writing to the Company.

**19. Set-off**

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

**20. Notices**

- 20.1 Any notice given or made under or in connection with this Agreement shall be in writing and shall be given or made to the recipient at the address stated at the beginning of this Agreement or sent by facsimile to the recipient's facsimile number stated in clause 20.3 marked for the attention of the person named below (or such substituted person notified by the recipient to the other party from time to time).

- 20.2 Every notice addressed in accordance with the provisions of clause 20.3, shall be deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the recipient party, if sent by prepaid first class post, two (2) Working Days after the date of posting, if transmitted by facsimile at the time of transmission, provided that, where, in accordance with the above provisions, any notice would otherwise be deemed to be given or made on a day which is not a Working Day or after 5.30pm on a Working Day, such notice shall be deemed to be given or made at 9.00am on the next Working Day.

- 20.3 S4C

Faacsimilie number: [ ]  
Marked for the attention of: [ ]

The Company

Facsimilie number: [.....]  
Marked for the attention of: [.....]

- 20.4 Nothing in this clause 20 shall be interpreted or construed as an agreement on the part of S4C to accept service of any legal proceedings by facsimile or email.

**21. Remedies and Waiver**

- 21.1 No waiver by a party of any breach of any of the provisions in this Agreement shall be effective unless given in writing.
- 21.2 Failure or delay by any party in exercising any right, power or remedy of that party under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by any party of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 21.3 S4C's rights powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.
- 21.4 Any waiver of any breach of or default under any terms of this Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.

## **22. Announcements and Confidentiality**

- 22.1 The Company shall use the S4C Confidential Information solely for the purposes of performing its obligations under this Agreement and subject to the provisions of clause 22.2 shall not disclose the S4C Confidential Information to any person other than in confidence and on a strictly need to know basis to the Staff and the Company shall take all such steps as S4C may reasonably require to enforce any such obligations of confidentiality against any Staff.
- 22.2 The restrictions on disclosure contained in clause 22.1 shall not apply to any information which:
  - 22.2.1 is in or enters the public domain other than as a consequence of, any breach of the restrictions on disclosure by the Company or any Staff; or,
  - 22.2.2 is required to be disclosed by law or by any regulatory body with whose rules the parties are required to comply provided that, to the extent it is legally permitted to do so, the Company gives S4C as much notice of such disclosure as possible.
- 22.3 On termination of this Agreement, the Company shall:
  - 22.3.1 return to S4C all documents and materials (and any copies) containing, reflecting, incorporating or based on the S4C Confidential Information;
  - 22.3.2 erase all S4C Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
  - 22.3.3 certify in writing that it has complied with the requirements of this clause, provided that the Company may retain documents and materials containing, reflecting, incorporating or based on the S4C Confidential Information to the extent required by law or any applicable regulatory body.
- 22.4 Except as expressly stated in this Agreement, S4C makes no express or implied warranty or representation concerning the S4C Confidential Information.

- 22.5 S4C reserves all rights in the S4C Confidential Information. No rights in respect of the S4C Confidential Information other than those expressly stated in this Agreement are granted to the Company, or are to be implied from this Agreement.
- 22.6 The provisions of this clause 22 shall survive for a period of five years from termination of this Agreement.

**23. Data Protection and FOIA**

- 23.1 All Personal Data provided to S4C by the Company in connection with the provision of the Services may be processed by S4C in accordance with the Data Protection Laws and the use intended to be made by S4C of the Products of the Services. The Company shall secure the consent of all relevant individuals or confirm the lawful basis to the processing of their Personal Data for this purpose. All Personal Data supplied to S4C shall be processed in compliance with S4C's data protection policy in force from time to time.
- 23.2 Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Laws.
- 23.3 The parties acknowledge that for the purposes of the Data Protection Laws, S4C is the data controller and the Company is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Laws). Schedule 6 sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of personal data (as defined in the Data Protection Laws, Personal Data) and categories of Data Subject.
- 23.4 Without prejudice to the generality of clause 23.2, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this agreement:
- 23.4.1 process that Personal Data only on the written instructions of S4C unless the Company is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Company to process Personal Data (Applicable Laws);
- 23.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by S4C, 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);

- 23.4.3 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 Company's contractual obligations to S4C;
- 23.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of S4C has been obtained and the following conditions are fulfilled:
  - 23.4.4.1 S4C or the Company has provided appropriate safeguards in relation to the transfer;
  - 23.4.4.2 the data subject has enforceable rights and effective legal remedies;
  - 23.4.4.3 the Company complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
  - 23.4.4.4 the Company complies with reasonable instructions notified to it in advance by S4C with respect to the processing of the Personal Data;
- 23.4.5 assist S4C, 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;
- 23.4.6 notify S4C without undue delay and no later than within 24 hours on becoming aware of a Personal Data breach;
- 23.4.7 at the written direction of S4C, delete or return Personal Data and copies thereof to S4C on termination of the agreement;
- 23.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 23 and allow for audits by S4C or S4C's designated auditor; and
- 23.4.9 appoint a data protection officer if required to do so under the Data Protection Laws or if requested by S4C.
- 23.5 S4C does not consent to the Company appointing any third party processor of Personal Data under this agreement.
- 23.6 S4C may, at any time on not less than 30 days' notice, revise this clause 23 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 23.7 The Company acknowledges that S4C is a public body subject to the requirements of the FOIA and the Regulations and shall assist and co-operate with S4C to enable S4C to comply with its obligations thereunder and in connection therewith the Company shall and shall procure that the Staff shall:
  - 23.7.1 provide S4C with a copy of all relevant information in its possession or power in the form that S4C requires; and

23.7.2 provide all necessary assistance as reasonably requested by S4C to enable S4C to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Regulations

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

23.8 S4C shall be responsible for determining whether the information:

23.8.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Regulations; or

23.8.2 is to be disclosed in response to a request for information, and in no event shall the Company respond directly to a request for information unless expressly authorised to do so by S4C on behalf of S4C.

23.9 The Company acknowledges that S4C may be obliged under the FOIA, or the Regulations to disclose information or may decide that allowing a particular request for information will serve the public interest more than rejecting the request pursuant to any applicable exemption. S4C will consult with the Company where practicable and take its views into account. Where the Company's views conflict with S4C's legal advice nothing in this Agreement shall prevent S4C from acting in accordance with legal advice received by it.

23.10 The Company shall ensure that all information produced in the course of performing its obligations under this Agreement or relating to this Agreement is retained for disclosure and shall permit S4C to inspect such information as requested from time to time.

## **24. Prevention of Corruption and Fraud**

24.1 The Company 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.

24.2 The Company 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.

24.3 The Company shall take all reasonable steps to prevent Fraud by the Company 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.

24.4 If the Company, its Staff or anyone acting on the Company's behalf, engages in conduct prohibited by clauses 24.1 or 24.2 and/or commits Fraud in relation to this or any other contract with S4C, S4C may:

24.4.1 terminate the Agreement and recover from the Company the amount of any loss suffered by S4C resulting from such termination, including the cost reasonably incurred by S4C of making other arrangements for the

supply of the Services and any additional expenditure incurred by S4C throughout the remainder of the Term; and/or

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

**25. Construction**

- 25.1 It is agreed that the Company 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 Company and neither party shall hold itself out as the agent for the other party.
- 25.2 The Company undertakes and agrees that all contracts relating to the provision of the Services shall be entered into by the Company as a principal and that S4C shall not have any liability as an undisclosed principal of the Company and that the Company shall not pledge the credit of S4C or enter into any contractual arrangement on its behalf.
- 25.3 If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful, void or unenforceable, such provision shall to the extent required be severed from this Agreement and rendered ineffective and such severance shall not in any way affect any other provision of or the validity or enforceability of this Agreement.
- 25.4 With the exception of statements made fraudulently, this Agreement sets out the entire agreement between the parties hereto in connection with the subject matter hereof and supersede all prior agreements and undertakings relating to the provision of the Services and no party has relied upon any representation save for a representation expressly set out in this Agreement.
- 25.5 This Agreement does not create or confer any rights under the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to this Agreement.
- 25.6 No variation to this Agreement shall have any force or effect unless in writing and signed by duly authorised representatives of the parties.
- 25.7 This Agreement shall be construed as agreements made in Wales and subject to the laws of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.

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

Signature.....

Name .....

Signed and delivered as a deed  
by [**THE COMPANY**]  
acting by its authorised signatory:

SIGNED BY .....

NAME .....

Date .....

In the presence of: ..... (witness)

Name: .....

Address:.....

Occupation.....

## SCHEDULE 1

### SERVICES

***[The details of the description of the Services shall be agreed between S4C and the successful bidder based on the requirements of the Invitation to Tender document and the tender submission of the successful bidder.]***

*[include any specific proposals included by the Company within their successful tender to deal with Welsh language requirements]*

#### **PART A**

To include:

#### **1. Recruitment and management of the Panel**

- 1.1 The Company shall recruit and administer a Panel of members of the public to provide estimates of viewing and audience appreciation data in connection with S4C programmes. The Company shall recruit a suitable Panel by the 1<sup>st</sup> of February 2019.
- 1.2 The Panel shall consist of at least 1,400 adults made up of 1,000 Welsh speakers and 400 non-Welsh speakers. All Panel members shall be 16 years old or older and shall exclude individuals working in the media industry in Wales.
- 1.3 The Panel members shall all be based in Wales, and the geographical and demographic representation of the Panel should reflect that of Wales, with weighting to reflect either census populations or BARB Establishment Survey populations (to be discussed).
- 1.4 All recruitment must be conducted bilingually in Welsh and English, with Welsh at first contact for Welsh speakers.
- 1.5 Throughout the Term, each member of the Panel shall be contacted bilingually or in the language of their choice, Welsh or English, and all communication & documentation shall be bilingual or in the language of the panellist's choice.
- 1.6 The Company shall use its best efforts to optimise Panel response rates and minimise attrition rates throughout the Term.

#### **2. Reporting**

- 2.1 The results of all data collected by the Company shall be reported to S4C on a weekly and monthly basis.
- 2.2 The data collected by the Company shall comprise the following:
  - a) Questionnaires (diagnostic data), split into three sets of data: total panel, Welsh speakers and non-Welsh speakers; and

- b) appreciation index results, split into three sets of data: programmes ranked by genre, programmes ranked by genre, programmes ranked by day/time and the total appreciation index for each channel.
- 2.3 Where the Company provides reports in electronic format, the results referred to in clause 2.2 above should be split into two separate reports:
- a) one report for all responses with a sample size of 25 or more; and
  - b) one report for all programmes regardless of sample sizes.
- 2.4 The Company shall deliver to S4C a weekly report capturing consumption of S4C programmes (reach of viewing of S4C programmes) and the audience's appreciation of S4C at a channel level as well as individual programme level ("the Weekly Survey"). The appreciation indices will be scores out of 100, derived from a 10-point scale.
- 2.5 S4C may specify specific questions which shall be included in the Weekly Survey Questionnaires.
- 2.6 The Company shall deliver to S4C a general cross-channel appreciation report once a month (channel appreciation score – up to 10 channels).
- 2.7 The monthly report delivered to S4C as noted at paragraph 2.2 (a) above shall include responses of the Panel to supplementary questions. S4C shall nominate the supplementary questions which shall be limited to 3 topics per month.
- 2.8 The Company shall deliver to S4C a Panel profile including response rates at the end of each monthly wave of research.
- 2.9 The Company shall base reports on samples of over 25 (per genre per wave). S4C will also require reporting on programmes with smaller sample sizes, as well as averages over time.
- 2.10 All data delivered to S4C shall:
- a) note the sample size used;
  - b) be weighted to respective universes;
  - c) be split into sub demographic groups.
- 2.11 Surveys shall be conducted online and at least 20% shall be conducted by post.
- 2.12 Reports shall be delivered by the Company to S4C as follows:
- [details of timescales and delivery methods to be agreed between S4C and the successful tenderer based on S4C's requirements as detailed in the ITT and the tender response submitted by the successful tenderer.]

### **3. Correspondence**

3.1 Questionnaires, Diaries, correspondence and other materials shall be prepared and approved by S4C as follows:

[details to be agreed between S4C and the successful tenderer based on S4C's requirements as detailed in the ITT and the tender response submitted by the successful tenderer.]

## **PART B**

### **Performance Standards**

***[The details of the Performance Standards will be agreed between S4C and the successful tenderer based on S4C's requirements as detailed in the ITT and the tender response submitted by the successful tenderer but will include: response rates; attrition rates; sample sizes; quality of data reporting; and timeliness of reporting.]***

To include:

- 100% of initial communications with the Panel to be conducted bilingually;
- At least 1,400 active Panel members to be available throughout the Term;
- The Panel members to include 1,000 Welsh speakers and 400 non-Welsh speakers;
- Geographical and demographic representation of the Panel to reflect that of Wales,
- Any Panel drop-outs to be replaced within 4 weeks;
- Reports to be provided to S4C by deadlines noted in A above;
- Other.

## SCHEDULE 2

### WARRANTIES

**[Note: Warranties which are specific to limited companies may require amendment according to the legal status of the Company.]**

1. The Company represents, warrants and undertakes to S4C as follows:
  - a) it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
  - b) it has the power, to enter into and to exercise its rights and to perform its obligations under this Agreement;
  - c) the execution, delivery and performance by it of this Agreement does not contravene any provision of:
    - (i) the Memorandum and Articles of Association of the Company;
    - (ii) any order or decree of any court or arbitrator; or
    - (iii) any obligation which is binding upon the Company or upon any of its assets or revenues;
  - d) the information, representations and other matters of fact committed in writing to S4C by the Company in connection with or arising out of its tender were, at the date on which the same were given to S4C, true and complete in all material respects and the Company shall inform S4C immediately if such information ceases to be true and complete;
  - e) no claim is presently being assessed and no litigation, arbitration or administrative proceedings is presently in progress or, to the best of the knowledge of the Company, pending or threatened against it or any of its assets which is significant and will or is likely to have a material adverse effect on the ability of the Company to perform its obligations under this Agreement;
  - f) it is not subject to any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Company to perform its obligations under this Agreement;
  - g) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Company threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
  - h) in the provision of the Services the Company shall not and shall procure that the Staff shall not infringe any rights of any person or do any act that is libellous or blasphemous or defamatory or contravene the provisions of any Applicable Laws;
  - i) the Company has in place or will from the Effective Date have in place adequate technical and organisational security measures, including database software and equipment, governing the processing of the Personal Data and

the working practices of any employees involved in such processing in accordance with the requirements of the Data Protection Laws;

- j) that the Services shall be provided in accordance with Good Industry Practice and the Applicable Laws;
- k) that it will ensure that safe working practices are adopted and maintained in the provision of the Services;
- l) it has all necessary consents, licences and registrations as required to provide the Services.

**SCHEDULE 3**

**KEY PERSONNEL**

*[To be agreed between S4C and the successful bidder based on the successful tender.]*

**SCHEDULE 4**

**[FEE]**

***[Schedule to be inserted if necessary following agreement between S4C and the successful bidder based on the successful tender.]***

**SCHEDULE 5**

**QUALITY CONTROL PROCEDURES**

***[Details of the Quality Control Procedures are to be agreed between S4C and the successful bidder based on the invitation to tender document and the successful tender. The procedure must detail:***

- i. The Company's internal quality control procedures;***
- ii. Relevant standards certification and membership of relevant bodies;***
- iii. Other.***

**SCHEDULE 6**

**Processing, Personal Data and Data Subjects**

1. Categories of data subject
2. Types of personal data
3. Processing by the Company
  - 3.1 Scope, nature and purpose of processing
  - 3.2 Duration of the processing
4. Will the personal data leave the UK?
5. The Company's representative who is responsible for data security:

**SCHEDULE 7**

**DISASTER RECOVERY PLAN**

*[To be agreed between S4C and the successful bidder.]*

**SCHEDULE 8**

**BRAND LICENCE**

DATE 2018

PARTIES

- (1) S4C of Parc Tŷ Glas, Llanishen, Cardiff CF14 5DU Wales ("**the Licensor**")
- (2) [ ] a company registered in England and Wales under number whose registered office is ("**the Licensee**")

INTRODUCTION

- (A) The Licensor is the owner of all rights in the Trade Mark in the Territory (both as defined below)
- (B) The Licensor has appointed the Licensee to provide services under the Services Agreement.
- (C) Accordingly the Licensee wishes to licence the Trade Mark from the Licensor on the terms and subject to the conditions of this Licence, and the Licensor agrees to grant such a licence.

OPERATIVE PROVISIONS

**1 Definitions**

1.1 In this Agreement, including the Introduction, and unless the context otherwise requires, the following expressions shall have the following meanings:

"Effective Date"	The Date of this Agreement
"Materials"	Any programming material, links, products, merchandise, promotional, advertising and other material in any medium, whether tangible or intangible, and including without limitation all pages of any websites:  (a) on or in which the Trade Mark is used; and/or  (b) used or produced by the Licensor or sub-licensor in connection with fulfilling their obligations or exercising their rights in the Services' Agreement.
"Services Agreement"	the agreement dated [ ] between the Licensor and the Licensee under which the Licensee was appointed to provide services as more fully set out therein.
"Term"	the period of this Licence as set out in clause 6.
"Territory"	The universe.
"Trade Mark"	The trade marks set out in the Schedule

- 1.2 References to clauses, parties, and Schedules are references respectively to the clauses, parties, and Schedules of and to this Agreement.
- 1.3 Clause headings are for ease of reference only and shall not affect the construction of this Agreement.

## **2 Grant of Licence**

- 2.1 In consideration of the payment of £1 (receipt of which the Licensor acknowledges) the Licensor grants to the Licensee during the Term a non-exclusive, non-transferable, royalty free licence to use the Trade Mark in the Territory solely in performance of its obligations and services as set out in the Services Agreement, subject to the terms of this Agreement.
- 2.2 The Licensee acknowledges and agrees that:
- (a) the Licensee has no rights to use the Trade Mark, except as expressly granted under clause 2.1;
  - (b) the ownership and use of the Trade Mark is reserved to the Licensor for its own use or benefit (or for the use or benefit of its other licensees or nominees);
  - (c) the Licensee will not obtain any proprietary rights in the Trade Mark and any and all goodwill generated by the use of the Trade Mark by the Licensee under this Agreement will enure exclusively to the benefit of the Licensor; and
  - (d) it will not assert any claim of ownership to the Trade Mark or to the goodwill or reputation in the Trade Mark, by virtue of the Licensee's use of the Trade Mark or otherwise.

## **3 Use of the Trade Mark**

- 3.1 The Licensee warrants and undertakes that it shall:
- (a) only use the Trade Mark in the form set out in the Schedule and as permitted by this Agreement;
  - (b) only use the Trade Mark in conjunction with its obligations under the Services Agreement only and in compliance with all applicable laws and regulations;
  - (c) immediately cease further use of the Trade Mark if it is found that the Licensee's use of the Trade Mark is in breach of this Agreement, or if the Services Agreement shall have been terminated and in such circumstances shall destroy all material in its possession or control which breaches the provisions of this Agreement, and confirm in writing that destruction has taken place, without prejudice to any other right or remedy of the Licensor; and
  - (d) provide all reasonable assistance requested by the Licensor, at the reasonable cost of the Licensor, in obtaining and maintaining any Trade Mark registrations
- 3.2 The Licensee warrants and undertakes that it shall not:

- (a) use any other trade or service marks, domain names, words, logos or symbols similar to or so resembling the Trade Mark as to be likely to cause deception or confusion);
  - (b) represent to any party that it holds any rights in the Trade Mark beyond those expressly granted to the Licensee under this Agreement;
  - (c) use the Trade Mark in any way which would in the opinion of the Licensor (acting reasonably) tend to allow it to become generic, lose its distinctiveness, prejudice any future registrations of the Trade Mark, reduce the commercial value of the Trade Mark or be materially detrimental to or inconsistent with the good name, goodwill, reputation or image of the Licensor;
  - (d) use the Trade Mark (whether alone or in combination with any other name, Trade Mark or device) on or in relation to any products or services other than as set out in the Services Agreement without the express prior written consent of the Licensor, such consent to be given or denied in the sole discretion of the Licensor;
  - (e) register or seek to register any trade mark, service mark, logo, domain name or symbol which is identical with or substantially similar to or includes the Trade Mark without the express prior written consent of the Licensor, such consent to be given or denied in the sole discretion of the Licensor;
  - (f) knowingly do anything which impairs the rights of the Licensor in the Trade Mark or in any registrations or applications relating to the Trade Mark or which prejudices, dilutes or reduces the commercial value, reputation or goodwill of or in the Trade Mark.
  - (g) represent that it has any title in or ownership of the Trade Mark; nor
  - (h) act or purport to act as agent of the Licensor, or make any representation or give any warranty on behalf of the Licensor.
- 3.3 The Licensor warrants and undertakes that it is the sole legal and beneficial owner of the Trade Mark specified in part A of the Schedule and that it has the right to enter into this Licence. The Licensor gives no warranties (whether express or implied) in relation to the Trade Marks referred to in Part B of the Schedule and which have been devised by the Licensee pursuant to the Services Agreement.

#### **4. Approvals and Inspection**

- 4.1 The Licensee warrants, represents and covenants that it will not market, use, release or disclose to the public or any third party any Material incorporating the Trade Mark unless such Material has been previously approved by the Licensor.
- 4.2 For the avoidance of doubt, the Licensor's approval pursuant to clause 4.1 will not be construed to mean that the Licensor has determined that any such Material conforms to applicable local law, rules and regulations.

#### **5. Third Party Infringement**

- 5.1 If the Licensee becomes aware of any possible infringement of the Trade Mark, including any passing off or unfair competition, or of any application to register a trade mark which may conflict with or be confused with the Trade Mark, the Licensee shall immediately notify the Licensor in writing specifying the particulars of such infringement, passing off, unfair competition or application, as the case may be.
- 5.2 The Licensor is not obliged to take any legal or other action against third parties. However, if the Licensor decides to take action against any third party, the Licensor alone shall take reasonable measures which it considers appropriate in respect of any incidents of infringement, passing off or unfair competition, or in respect of any application to register a Trade Mark which may conflict or be confused with the Trade Mark. The Licensee shall, at the request and expense of the Licensor, provide all reasonable assistance in relation to such measures and the Licensee will not be entitled to take any such action or to receive any compensation received by the Licensor in relation to any such action, claim or proceeding.

## **6. Term and Termination**

- 6.1 This Agreement shall commence on the Effective Date and shall continue until the termination or expiration of the Services Agreement unless and until terminated in accordance with the remaining provisions of this clause 6.
- 6.2 Either party may terminate this Agreement immediately, without prejudice to its other rights, by giving written notice to the other party, in the event that such party:
- (a) commits any material breach of any of the provisions in this Agreement and, in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days of receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
  - (b) commits a series of breaches or is in persistent breach or default (whether of the same kind or not) and whether each breach (individually or collectively) is material; or
  - (c) goes into liquidation (except for the purpose of re-construction or amalgamation), has a receiver, administrator or administrative receiver appointed over any of its assets, makes any voluntary arrangement with its creditors generally or suffers any other similar consequence under the laws of the country where it is established or incorporated.
- 6.3 The Licensor may terminate this Agreement immediately, without prejudice to its other rights, by giving notice to the Licensee, in the event that the Licensee:
- (a) undergoes a change of control, "control" bearing the meaning of that expression as set out in section 1124 of the Corporation Tax Act 2010;
  - (b) challenges the validity of the Trade Mark or any of the Licensor's existing or future Trade Mark applications;
  - (c) challenges the validity of the Trade Mark or any of the Licensor's existing or future Trade Mark applications/ registrations

- (d) acts in any way which may in the opinion of the Licensor in its absolute discretion bring the Licensor and/or the Trade Mark into disrepute or discredit.

6.4 Clause 8 and 9 of this Agreement along with all provisions of this Agreement to give effect to their meanings need to survive the termination of the Contract fully or partially continue in full force and effect after termination

## **7 Consequences of Termination**

7.1 Upon the expiry or termination of this Agreement, for whatever reason, the Licensee will:

- (a) immediately cease its use of the Trade Mark;
- (b) to the extent reasonably practicable dispose of all Material in its possession or control bearing or relating to the Trade Mark in accordance with the Licensor's instructions;
- (c) to the extent reasonably practicable ensure that all brochures, or other materials in its possession or control containing representations of the Trade Mark are removed or disposed of in accordance with the Licensor's instructions within 28 days of the date of termination of this Agreement;
- (d) within the time reasonably required by the Licensor, execute all documents necessary, including powers of attorney, for cancellation of the Licensee as a registered user or registered licensee.

## **8 Indemnity**

8.1 The Licensee shall at all times (notwithstanding the termination of this Agreement) be liable for, indemnify and hold harmless the Licensor (together with its officers, servants and agents) from and against any and all liability, loss, damages, fines, costs (including legal costs), professional and other expenses of any nature whatsoever incurred or suffered by the Licensor arising out of or in connection with:

- (a) any claims by third parties arising out of the provision, marketing and/or promotion of any service or product by the Licensee and/or the Licensee's use of the Trade Mark ("Third Party Claim") in breach of the Services Agreement; and
- (b) any breach by the Licensee of this Licence.

8.2 The Licensor will, at its absolute discretion, have the right to defend any Third Party Claim, or require the Licensee (subject to the assumption by the Licensor of all out of pocket expenses of the Licensee) to conduct the defence of the Third Party Claim.

8.3 If the Licensor requires the Licensee to conduct the defence of a Third Party Claim, the Licensee shall:

- (a) keep the Licensor fully informed of the details of the conduct of the defence;
- (b) comply with all of the Licensor's reasonable demands in relation to the conduct of the defence; and

- (c) not settle the Third Party Claim without the agreement of the Licensor, which may be granted or withheld in the Licensor's absolute discretion.

8.4 The Licensor will, at its absolute discretion, have the right to defend any Third Party Claim, or require the Licensee (subject to the assumption by the Licensor of all out of pocket expenses of the Licensee) to conduct the defence of the Third Party Claim.

## **9 Confidentiality**

9.1 The parties agree that, other than as required by law or any relevant regulatory authority, all information relating to this Agreement or the business and affairs of either party shall be treated as confidential and shall not be disclosed to any third party without the prior written consent of the party to whom the information relates except where any information:

- (a) is or will be (otherwise than by breach of this Agreement) in the public domain; or
- (b) is in the possession of the recipient party other than pursuant to disclosure from the other party; or
- (c) subsequently comes lawfully into possession of the recipient party from a third party without the imposition of any duty of confidentiality by such third party;
- (d) is required to be disclosed in accordance with the Freedom of Information Act 2000.

## **10. Amendment**

No amendment, modification or variation of any of the terms or conditions in this Agreement shall be valid unless in writing and signed by both the parties hereto.

## **11. Notice**

11.1 Any notice required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand or by registered post to the relevant address set out above or such other address as such party may from time to time designate by written notice to the others.

11.2 Any such notice shall be deemed to have been received by the addressee two working days following the date of despatch if the notice or other document is sent by registered post or simultaneously with the delivery if sent by hand.

## **12. Waiver**

No failure to exercise, or delay on the part of either party in exercising or enforcing any right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any rights preclude any other or future exercise of that right or the exercise of any other right, power or privilege. If either party shall expressly waive any breach, such waiver shall not operate as a waiver of a similar breach on another occasion or as a waiver of any other breach.

## **13. General Provisions**

- 13.1 If any part, term or provision of this Agreement shall be held to be illegal, unenforceable or in conflict with the law of any relevant jurisdiction, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.
- 13.2 Except in relation to the parties' group companies the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and no third party is intended to hold any right or benefit under this Agreement or entitled to enforce it.
- 13.3 This Agreement supersedes any understandings or agreements made or existing between the parties prior to the date of this Agreement and constitutes the entire understanding between the parties in relation to its subject matter, provided that this shall not exclude any liability which a party would otherwise have to the other in respect of any fraudulent or negligent statements made prior to the date of this Agreement.
- 13.4 This Agreement may be executed in any number of counterparts (each of which taken together will be deemed to constitute one and the same agreement and each of which individually will be deemed to be an original) with the same effect as if the signatures on each counterpart were the same original document.
- 13.5 The parties agree to execute such further documents and provide all reasonable assistance as may be reasonably requested by the other party to give effect to this Agreement and at the expense of the Licensor to provide reasonable assistance to assist the Licensor in obtaining or maintaining any Trade Mark registrations in any territory. The Licensee agrees (at the Licensor's request) to execute, at its own expense, any documents and take all steps reasonably required for the registration or recordal of the licence granted under this Agreement and the corresponding cancellation of such registration or recordal on the termination or expiry of this Agreement for whatever reason.
- 13.6 None of the parties hereto shall have any right or authority to nor shall do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other party nor shall it bind the other party in any way or hold itself out as being connected with or acting in any capacity on behalf of the other party.
- 13.7 The Licensee shall not assign, transfer, charge or otherwise deal in any way with any of its rights or obligations under this Agreement. The Licensor may assign the Trade Mark to any third party provided that such assignee shall take the Trade Mark subject to the rights granted to the Licensee under this Agreement and the Licensee shall enter into any assignment or novation agreement requested by the Licensor in connection therewith.

**14. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

SIGNED as a DEED for and behalf of the Licensee:

.....

DIRECTOR

in the presence of

.....  
.....  
.....  
.....

Name and address of Witness

SIGNED for and behalf of Licensee

.....

**SCHEDULE**

**Trade Mark**

