

SUBJECT TO CONTRACT

DATED [] 2017

(1) S4C

(2) []

AGREEMENT FOR THE PROVISION OF IMAGE TRACKING SERVICES

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THIS AGREEMENT is made the [] day of [] 2017

BETWEEN:

- (1) S4C of Parc Tŷ Glas, Llanishen, Cardiff CF14 5DU ("S4C"); and
- (2) [] [Company Number: []] whose registered address is situated at [*insert address*] the "Company")

INTRODUCTION:

Following a competitive process and the submission by the Company of a tender, S4C wishes to commission the Company to undertake the Services and the Company agrees to provide the Services in accordance with the provisions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

In this Agreement:

- 1.1 the following words and expressions shall have the following meanings unless the context otherwise requires:

"Act" the Copyright, Designs and Patents Act 1988;

"Agreement" this agreement including the Introduction and any document referred to in this agreement, completed or to be completed in accordance with its provisions;

"Applicable Laws" all regional, national or international laws, rules regulations and standards including those imposed by any governmental or regulatory authority and all applicable industry standards and practice guidelines determined by any self-regulatory body which apply from time to time to the provision of the Services including without limitation the DPA;

"Cashflow" the cashflow for the payment of the Fee as set out in Schedule 4;

"Data Tables" the data tables provided by the Company as described in Schedule 1;

"DPA" Data Protection Act 1988;

"Effective Date" [*insert date of grant of tender*]

"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 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;
"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);
"Insurance Policies"	The policies of insurance required pursuant to clause 9;
"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;
"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 operated by, on behalf of or with the consent of S4C or any Group Company of S4C;
"Participants"	any members of the public contacting or contacted

	by the Company in relation to the Services;
"Personal Data"	any personal data as defined in the DPA of any person contacting the Company in connection with the performance of the Services;
"Policies"	collectively all of the S4C policies expressly referred to in this Agreement as updated from time to time, including 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 http://www.s4c.cymru/en/production/ ;
"Presentations"	the presentations delivered by the Company as detailed in Schedule 1;
"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 Questionnaire, Written Reports, Presentations, Data Tables, reports, databases, forms and statistics;
"Quality Control Procedure"	The quality control procedure set out in Schedule 5;
"Questionnaire"	the standard questionnaire for collecting information from the Participants as described in Schedule 1;
"Regulations"	means the Environmental Information Regulations 2004;
"Research Proposal"	the research proposal submitted by the Company as contained in the Appendix to Schedule 1;
"S4C Compliance Notice"	The notice in connection with the Welsh Language Standards provided to S4C and published 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 existence or subject matter of this Agreement and/or any information which has been designated as confidential by S4C in writing or that ought to be considered as confidential and/or all personal data and sensitive personal data within the meaning of the DPA;

"S4C Representative"	[] or such other persons as notified by S4C to the Company in writing from time to time during the Term;
"S4C Service"	any channel, television service, website or 'app' operated by, on behalf of or with the consent of S4C or any Group Company of S4C, including the digital television service "S4C", the website www.s4c.cymru , and the S4C on demand service;
"Services"	conducting research to track the image of S4C and reporting on the findings of such research to S4C, 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 term during which this Agreement is in force and effect being the period commencing on the Effective Date until the [] 2022] subject to the provisions of clause 10;
"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;
"Written Reports"	the written reports provided by the Company as detailed in Schedule 1.

- 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 The Company shall provide the Services in accordance with the Research Proposal and the requirements of S4C from time to time.
- 2.3 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, Good Industry Practice and the Quality Control Procedures and all reasonable instructions and directions of S4C from time to time.
- 2.4 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.
- 2.5 No questionnaires, correspondence or other materials will be used by the Company or provided by the Company to any Participant unless and until the same have been approved by the S4C Representative in accordance with Schedule 1.
- 2.6 The Company shall comply with the principles of S4C's Equality and Diversity Policy (as published on the S4C Authority page of the S4C website).
- 2.7 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.

2A Welsh Language Standards

- 2A.1 The Company shall at all times comply with the Welsh Language (Wales) Measure 2011 and the Welsh language standards with which S4C is liable to comply, as if it were S4C to the extent that the same relate to the provision of the Services.

- 2A.2 The Company shall deliver the Services (in accordance with the Specification) through the medium of English or Welsh (on an equal basis).
- 2A.3 The Company shall be responsible for promoting the delivery of the Services in Welsh or English to the Service user and shall use all reasonable steps to achieve this.
- 2A.4 The Company shall be responsible for monitoring the level of take-up for the Service through the medium of Welsh and English and shall report to the Authority on a bi-annual basis by providing the following information in writing:
- (a) The number of users requiring the Service in Welsh and English.
 - (b) The percentage increase/decrease from the previous report.
 - (c) The allocation of staff to deliver the Services in Welsh and English.
 - (d) Any complaints of difficulties indicated by Service users or staff of the Company in delivering the Services in compliance with Welsh language obligations during the report period.

3. The Company's General Obligations

- 3.1 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.
- 3.2 The Company shall procure that the Staff shall keep reasonable, accurate and up-to-date records of all acts and activities carried out by them pursuant to this Agreement and the Company shall, at S4C's reasonable request, permit S4C or its representatives to examine and to take copies of the same.
- 3.3 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 or its policy or business plan, but that it is a service that compliments the Policies.
- 3.4 The Company shall not and shall ensure that the Staff do not communicate with the press or make any statements on financial or constitutional matters relating in any way to S4C or its Group Companies or the S4C Services or any New S4C Service.
- 3.5 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.
- 3.6 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.

4. Communications Procedure and Review Meetings

- 4.1 S4C and the Company shall meet at such times, dates and locations as reasonably requested by S4C to formally review the matters specified in clause

4.3 below. 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 at least ten (10) Working Days in advance of any such meeting.

- 4.2 Without prejudice to clause 4.1, 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.
- 4.3 At the review meetings held pursuant to clause 4.1, S4C and the Company shall review and discuss matters arising out of the delivery of the Services including but not limited to the following:
 - 4.3.1 the nature and standard of the Services;
 - 4.3.2 any changes to be made to the Services to improve the efficiency and effectiveness of the Services (including improvements to the staffing levels, training of Staff); and
 - 4.3.3 any other matters.
- 4.4 Following such review meetings, S4C shall be entitled to give the Company notice in writing:
 - 4.4.1 to confirm the Company's appointment for the remainder of the Term in accordance with the terms and conditions of this Agreement;
 - 4.4.2 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
 - 4.4.3 to terminate this Agreement by giving three months notice.

5. Staff and Key Personnel

- 5.1 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.
- 5.2 The Company shall ensure that the Key Personnel shall lead on the provision of the Services and they shall be the main contacts for S4C in relation to the Services.
- 5.3 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.
- 5.4 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.

- 5.5 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.
- 5.6 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 5.6 shall not relieve the Company of any of its obligations under this Agreement.

6. Intellectual Property

- 6.1 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.
- 6.2 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.
- 6.3 The Company irrevocably and unconditionally warrants to S4C, its successors assigns and licensees:
- 6.3.1 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
- 6.3.2 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.

- 6.4 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 6 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.

7. Warranties

- 7.1 The Company represents, warrants and undertakes to S4C in the terms set out in Schedule 2.
- 7.2 The Company accepts that S4C enters into this Agreement in reliance upon each of the Warranties.
- 7.3 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.

8. Financial Matters

- 8.1 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 in accordance with the Cashflow.
- 8.2 The Fee shall be exclusive of VAT which shall be payable in addition by S4C subject to receipt of appropriate VAT invoices.
- 8.3 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.

9. Indemnity and Insurance

- 9.1 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.

- 9.2 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 and £10,000,000 in aggregate per annum.
- 9.3 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.
- 9.4 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.
- 9.5 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.

10. Termination

- 10.1 S4C may at any time by notice in writing to the Company terminate this Agreement if:
- 10.1.1 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
- 10.1.2 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

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

- 10.2 S4C shall be entitled to terminate this Agreement by providing to the Company at least three (3) months written notice.
- 10.3 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 11 shall apply.

11. Effects of Expiry or Termination

- 11.1 Upon expiry or termination of this Agreement howsoever arising and subject always to the provisions of this clause 11 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.

- 11.2 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.
- 11.3 The Company shall immediately after the Termination Date deliver at its cost to S4C:
- i. 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
 - ii. all other documentation relating to this Agreement; and
- if requested to do so by S4C, provide all such assistance as S4C may reasonably require to enable S4C or any other Company(s) appointed by S4C to complete the provision of any Services.
- 11.4 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.
- 11.5 Where this Agreement is terminated by S4C pursuant to clause 10.1.1 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.
- 11.6 The following clauses shall survive the expiry or termination of this Agreement howsoever arising: 1 (Definitions), 6 (Intellectual Property), 7 (Warranties), 9 (Indemnity), 11 (Effects of Expiry or Termination), 14 (Set off), 16 (Remedies and Waiver), 17 (Announcements and Confidentiality), 18 (Data Protection and FOIA), 20 (Construction) and Schedule 2 (Warranties).

12. Assignment and Sub-Contracting

- 12.1 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.
- 12.2 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.

13. Force Majeure

- 13.1 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

- 13.2 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 13.3. 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.
- 13.2 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.

14. 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.

15. Notices

- 15.1 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 15.3 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).
- 15.2 Every notice addressed in accordance with the provisions of clause 15.3, 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.

15.3 S4C

Marked for the attention of: []
With copy to S4C Head of Legal

The Company

Marked for the attention of: []

- 15.4 Nothing in this clause 15 shall be interpreted or construed as an agreement on the part of S4C to accept service of any legal proceedings by facsimile or email.

16. Remedies and Waiver

- 16.1 No waiver by a party of any breach of any of the provisions in this Agreement shall be effective unless given in writing.
- 16.2 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.
- 16.3 S4C's rights powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.
- 16.4 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.

17. Announcements and Confidentiality

- 17.1 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 17.2 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.
- 17.2 The restrictions on disclosure contained in clause 17.1 shall not apply to any information which:
- 17.2.1 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,
 - 17.2.2 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.
- 17.3 On termination of this Agreement, the Company shall:
- 17.3.1 return to S4C all documents and materials (and any copies) containing, reflecting, incorporating or based on the S4C Confidential Information;
 - 17.3.2 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
 - 17.3.3 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.

- 17.4 Except as expressly stated in this Agreement, S4C makes no express or implied warranty or representation concerning the S4C Confidential Information.
- 17.5 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.
- 17.6 The provisions of this clause 17 shall continue to apply after the termination of this Agreement.

18. Data Protection and FOIA

- 18.1 All personal data, including the personal data of the Participants, provided to S4C by the Company in connection with the provision of the Services may be processed by S4C in accordance with the DPA 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 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.
- 18.2 The Company shall duly observe all its obligations under the DPA which arise in connection with this Agreement and in particular shall ensure that all Personal Data of Participants is kept secure and is processed in accordance with Applicable Laws, the Quality Control Procedures and Good Industry Practice and solely for the purpose of performing the Company's obligations under this Agreement or as otherwise instructed by S4C.
- 18.3 The Company shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the DPA; and
 - 18.3.1 shall provide S4C with such information as S4C may reasonably require to satisfy itself that the Company is complying with its obligations under the DPA;
 - 18.3.2 shall promptly notify S4C of any breach of the security measures required to be put in place and/or if any Personal Data is lost, destroyed, becomes damaged, corrupted, or unusable;
 - 18.3.3 shall promptly notify S4C if it receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the DPA and shall fully co-operate and assist S4C in relation to any such complaint, notice or communication;
 - 18.3.4 shall ensure it does not knowingly or negligently do or omit to do anything which places S4C in breach of S4C's obligations under the DPA;

- 18.3.5 shall take all reasonable steps to ensure the reliability of the Staff and of any other employees or independent contractors engaged in connection with the Services who may have access to Personal Data supplied or created pursuant to this Agreement;
- 18.3.6 shall not transfer or store any of the Personal Data that the Company processes on S4C's behalf to any country or territory outside the European Economic Area without S4C's prior written consent which may be withheld in S4C's absolute discretion. Any servers which will be storing the Personal Data will be located in the EEA.
- 18.4 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:
- 18.4.1 provide S4C with a copy of all relevant information in its possession or power in the form that S4C requires; and
- 18.4.2 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).
- 18.5 S4C shall be responsible for determining whether the information:
- 18.5.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Regulations; or
- 18.5.2 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.
- 18.6 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.
- 18.7 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.

19. Prevention of Corruption and Fraud

- 19.1 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.

- 19.2 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.
- 19.3 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.
- 19.4 If the Company, its Staff or anyone acting on the Company's behalf, engages in conduct prohibited by clauses 19.1 or 19.2 and/or commits Fraud in relation to this or any other contract with S4C, S4C may:
 - 19.4.1 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
 - 19.4.2 recover in full from the Company any other loss sustained by S4C in consequence of any breach of those clauses.

20. Construction

- 20.1 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.
- 20.2 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.
- 20.3 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.
- 20.4 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.
- 20.5 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.

- 20.6 No variation to this Agreement shall have any force or effect unless in writing and signed by duly authorised representatives of the parties.
- 20.7 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.

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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.]

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SCHEDULE 2

WARRANTIES

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 constitutional documents 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 response to the request for quotation 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 DPA.

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SCHEDULE 3

KEY PERSONNEL

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

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SCHEDULE 4

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[To be inserted following selection of successful tenderer]

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SCHEDULE 5

QUALITY CONTROL PROCEDURES

1. The Company and/or the Key Personnel shall maintain membership of the Market Research Society and shall adhere to its principles, regulations and guidelines, including the MRS Code of Conduct, as issued from time to time throughout the Term.
2. The Company shall ensure that it is registered with the Information Commissioner's Office throughout the Term.
3. The Company shall ensure that it adheres to ISO 20252 standards and shall ensure that best practices are adhered to throughout the Term.
4. The Company shall use robust automated and visual checks within the data files at all stages of the process to ensure all information and numbers are accurate.
5. The Company shall keep a record of every deliverable, which details the Staff responsible, timetable and any issues that arise in order to control and monitor performance.

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

Signature.....

Name

Signed and delivered as a deed
by [*name of company*]
acting by two Directors:

Director:

Director:

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