

## **2016 SONY/S4C FORMAT INITIATIVE**

### **TERMS OF ENTRY**

The 2016 Sony/S4C Format Initiative (the “**Initiative**”) is promoted by S4C having its registered office at Parc Ty Glas, Llanishen, Cardiff, CF14 5DU AND Sony Pictures Television UK Rights Limited (“Sony”) a Sony Pictures Entertainment Company limited liability company incorporated in England and Wales under Company Number 02719242 having its registered office at Sony Pictures Europe House 25 Golden Square London W1F 9LU (together “**S4C/Sony**”).

#### **1. ENTRY REQUIREMENTS:**

In order to take part, entrants must submit the following by e-mail to [fformatsony@s4c.cymru](mailto:fformatsony@s4c.cymru) before midday 1 March 2016 (“the Closing Date”):

- (1) The entrant’s basic details including name, address and contact details;
- (2) A full written treatment (“**Treatment**”) of two (2) to ten (10) pages in length which may include a link to audio-visual “taster” or “sizzle” material describing or illustrating the key elements of the format, the target audience and any other relevant information (the “**Format**”); and
- (3) Details of the entrant’s experience in producing television programmes, the key personnel to be employed in the production of the Format and the relevant experience of those key personnel.

Each production company/individual entrant shall be entitled to submit a maximum of five (5) Treatments.

Formats **must** be:

- a) suitable for a prime time formatted light entertainment series, including, but not limited to, reality programmes and game shows;
- b) presented in Welsh and/or English (where the application is presented in Welsh, an English translation should be concurrently submitted);
- c) wholly original (e.g. not adapted from books, plays or any other source material and not a “spec” of existing television programmes or treatments);
- d) submitted by an established production company and that company must be the sole and exclusive owner of all rights in the Format and any elements contained within the Format, the Application and/or the Treatment. S4C/Sony may require entrants to obtain and deliver to S4C/Sony written evidence of all rights clearances in S4C/Sony’s sole discretion. Failure to provide S4C/Sony with written evidence of all clearances to a Format may be grounds for disqualification of the Format from the Initiative at any stage; and
- e) in compliance with these Terms of Entry and the Ofcom Broadcast Code.

Formats **must not**:

- a) currently be under option, development or production at a network, broadcaster, studio, third party production company or format distribution company;
- b) currently or have previously been submitted to any other competition, initiative or festival;
- c) have been previously pitched to a network, broadcaster, studio, third party production company or format distribution company and/or optioned, developed, purchased or produced by a network, broadcaster, studio, third party production company or format distribution company; or
- d) violate, misappropriate or infringe another person’s rights, including, but not limited to, privacy, publicity or intellectual property rights.

Where a Treatment exceeds the maximum length permitted, S4C/Sony may only evaluate the entry based on the first ten pages and S4C/Sony reserve the right to notify and require any such entrant to resubmit their entry to conform to the length requirements above or disqualify such entry in their sole and absolute discretion.

Neither S4C nor Sony will be responsible for late, lost, incomplete, illegible, damaged, garbled, technically corrupt, postage-due or misdirected entries. S4C/Sony are not responsible for false, incorrect, changed, incomplete or illegible contact information. It is the sole responsibility of the entrant to notify S4C/Sony in

writing if the entrant changes his/her address, phone number, or other contact information. To do so, e-mail: [ffformatsony@s4c.cymru](mailto:ffformatsony@s4c.cymru).

Entrants that do not meet the “Entry Requirements” set out above are subject to disqualification, at S4C/Sony’s sole and absolute discretion. By submitting an entry to the Initiative, each entrant agrees to comply with and be bound by these Terms of Entry and acknowledges that the decisions of S4C/Sony shall be binding and final in all matters relating to the Initiative. Those who do not abide by these Terms of Entry or other instructions of S4C/Sony may be disqualified.

## **2. SELECTION OF DEVELOPMENT PROJECTS:**

Representatives from S4C and Sony will open all entries submitted in accordance with these Terms of Entry on or after the Closing Date and will evaluate all entries in accordance with the following criteria weighted equally:

- (i) originality;
- (ii) creativity;
- (iii) global adaptability;
- (iv) ability and experience of the entrant to deliver the Format; and
- (iv) overall impression.

Entrants may be required to submit further information to assist in the judges’ verification of eligibility.

Following evaluation, S4C and Sony will select between one (1) and three (3) Formats to develop further (“Development Projects”). Decisions of the judging panel as to the selection of the potential Development Projects will be in S4C and Sony’s absolute discretion and shall be final.

Each entrant submitting a Development Project (“Format Developer”), if any, will be notified by telephone and/or e-mail as soon as possible before the end of April 2016. S4C/Sony shall not be responsible in any way for any delayed, lost or misdirected notification or other communication from or to S4C/Sony.

Due to the high volume of entrants anticipated it may not be possible to contact all unsuccessful entrants.

## **3. DEVELOPMENT PHASE:**

The Format Developer will be required to enter into a Development Agreement with S4C and Sony within thirty (30) days of receipt or confirmation that the Format has been selected as a Development Project. The Development Agreement will detail terms associated with further development of the Development Project including the level of S4C and Sony’s investment in the Development Project and will include the following provisions:

- (a) an assignment of copyright in the Format to effect joint and equal ownership by S4C, Sony and the Format Developer;
- (b) the exclusive option for S4C to commission a Welsh language series based on the Format on terms similar to S4C’s standard general terms, taking into account the terms set out in paragraph 4 below; and
- (c) the exclusive option for Sony to be appointed sole and exclusive worldwide distributor of the Format on Sony standard distribution terms, taking into account the terms set out in paragraph 4 below.

If any potential Format Developer fails to return any required documentation within five (5) business days of delivery to the potential Format Developer, such potential Format Developer may be disqualified in the discretion of S4C/Sony and an alternate potential Format Developer may be selected.

S4C/Sony will notify the Format Developer of the level of the financial investment, if any, that S4C/Sony will make into the Development Project and the nature of the development materials which the Format Developer will be required to deliver to S4C/Sony (“Format Delivery Materials”) and the relevant delivery date. Such Format Delivery Materials will include a broadcast quality pilot in the Welsh language based on the Format (“Pilot”).

Potential Format Developers should not incur any expenditure prior to signature of the Development Agreement

by all parties. Any expenditure incurred prior to signature of the Development Agreement shall be at the potential Format Developer's own risk. S4C/Sony reserve the right to take over production of a Pilot if they have a reasonable concern that a Pilot will not be delivered to time and to budget.

Any expenditure incurred by a Format Developer in developing the Format in excess of the S4C and Sony investment as set out in the Development Agreement shall be at the Format Developer's risk.

Following delivery of all Format Delivery Materials in connection with all Development Projects, S4C/Sony will re-evaluate the Development Projects and:

- (a) S4C will decide whether S4C wishes to commission one or more of the Development Project(s) as a series for broadcast on S4C ("S4C Programme"); and
- (b) Sony will select which Development Project(s) Sony wishes to represent as the exclusive worldwide distributor ("Sony Distribution Project").

The same project may be both an S4C Programme and a Sony Distribution Project at the same time.

S4C and Sony intend to notify the Format Developers as soon possible. Each Development Project selected as an S4C Programme and/or Sony Distribution Project shall become a Successful Project.

#### **4. PRODUCTION/DISTRIBUTION DEALS:**

The producers of the S4C Programme will be required to enter into a programme agreement with S4C and the producers of the Sony Distribution Project will be required to enter into a distribution agreement with Sony.

The S4C programme agreement and the Sony distribution agreement will provide as follows:

- a) copyright in the Successful Projects will be owned jointly and in equal shares by S4C, Sony and Format Developer;
- b) S4C will be granted a broadcast licence in accordance with S4C General Terms, subject to certain variations to reflect the terms of these Terms of Entry and the Sony distribution agreement;
- c) Sony will be granted an exclusive licence of worldwide distribution rights in all media, now know or hereafter devised, for an initial term of three (3) years ("Sony Licence Term") plus the exclusive option to extend such rights for a further two (2) years subject to the rights granted to S4C and the provisions set out below;
- d) S4C and Sony shall be entitled to recoup the development funding invested by S4C and Sony from the gross receipts received from the exploitation of the Sony Distribution Project;
- e) Sony will be entitled to the following from gross receipts:
  - i) 25% distribution fee;
  - ii) all direct, out of pocket distribution and marketing expenses capped at 10% of gross receipts, such cap shall exclude residuals; royalties; duplication costs; dubbing costs; manufacturing costs; clearance costs; taxes; third party litigation costs; and duties or similar expenses;
  - iii) recoupment of any development, manufacturing or production costs incurred by or on behalf of Sony in connection with the distribution of the Sony Distribution Projects; and
  - iv) any third party profit participations.
- f) the Format Developer will be entitled to:
  - i) one third of international net format fees;
  - ii) one third of net receipts generated from exploitation of the S4C Programme and any related ancillary rights (i.e. aps and merchandising) worldwide;
  - iii) 10% of net receipts generated from the exploitation of any non-Welsh language series based on the Format and any related ancillary rights (i.e. aps and merchandising).
- g) as joint owners of the Format, S4C and Sony shall each be entitled to a share of net income from the exploitation of a Sony Distribution Project. After retaining a 15% share of net receipts, S4C will re-invest any additional net receipts received by S4C into the Format Developer's future S4C projects;

- h) the Format Developer of a Sony Distribution Project will be given the opportunity to render consultant services on or observe the production of a foreign version (“Local Series”) of that Sony Distribution Project produced by a Sony affiliate should one be produced. Sony will pay for travel and accommodation for such Format Developer per Sony’s customary travel parameters, such costs to be recoupable as distribution expenses . Should more than one Local Series be produced, Sony shall use its reasonable endeavours to give the Format Developer of the relevant Sony Distribution Project an opportunity to render consultant services on or observe the production of one other Local Series of that Sony Distribution Project on the basis that the Format Developer will be responsible for its own travel and accommodation.

If Sony exploits the Format in any way (including, without limitation, producing a pilot or making a format sale) during the Sony License Term, Sony will be assigned all rights in the Format worldwide in all media, now known or hereafter devised, in perpetuity. If there has been no exploitation and assignment two (2) months prior to the expiration of the Sony License Term, Sony shall have the exclusive right to extend the Sony License Term for up to two (2) additional years (the “**Extended License Term**”). If Sony does not exploit the Format in any way during the License Term or the Extended License Term, then the rights to the Format will revert to the Format Developer upon the expiration of the License Term or Extended License Term, as applicable.

At Sony’s sole and complete election, Sony may provide each Format Developer with a right of meaningful creative consultation in connection with the development of a project based on the Format, which may include, at Sony’s election in its sole and complete discretion, in-person participation in a working development meeting. Format Developers may be required to participate in a reasonable number of customary promotional and publicity activities (including public appearances, press junkets, interviews, and the like) to promote the S4C Programme or the Format or the Initiative.

## **5. UNSUCCESSFUL PROJECTS:**

Where a Development Project is not selected to be an S4C Programme nor a Sony Distribution Project, S4C/Sony will notify the relevant producer by telephone and/or by e-mail.

Those projects will then go into turnaround (“Turnaround”) from the date of notification by S4C/Sony to the Format Developer. Where the Format Developer requires a reassignment of rights in the Format and the Format Delivery Materials within three years of the date of Turnaround such reassignment will be subject to repayment to S4C/Sony of any development funding invested by S4C/Sony in the Format and/or the Format Delivery Materials.

Where the Format Developer requires a reassignment of rights in the Format and the Format Delivery Materials on a date after three years of the date of Turnaround such reassignment will not be subject to repayment to S4C/Sony of the development funding invested by S4C/Sony in the Format and/or the Format Delivery Materials.

## **6. GRANT OF RIGHTS:**

By submitting a Format into this Initiative, each entrant acknowledges and agrees that S4C/Sony shall have an exclusive, irrevocable, and royalty-free licence to use, reproduce and edit the submitted Formats for the purpose of administering this Initiative and otherwise solely in connection with the execution of the Initiative for a twelve month period from the Closing Date.

Entrants hereby waive and relinquish all so-called “moral rights (droit moral)” now or hereafter recognized in connection with Formats submitted as part of the Initiative.

## **7. FORMAT SUBMISSION TERMS**

Entrants acknowledge that S4C/Sony have no obligations to entrants with respect to the Formats submitted as part of the Initiative.

Entrants acknowledge that if any Format submitted to the Initiative is not new or novel, or was not originated by the entrant, or has not been reduced to concrete form, or if because other persons including S4C/Sony’s employees have previously submitted or subsequently submit similar or identical programme material which are not proven to be copied from the Formats and relating to which S4C/Sony have the right to use, then entrants

agree that S4C/Sony shall not be liable to entrants for S4C/Sony's use of any similar or identical programme material and S4C/Sony shall not be obligated in any respect whatsoever to compensate entrants for such use by S4C/Sony.

Entrants further agree that if S4C/Sony jointly or separately hereafter produce or distribute a television programme or programmes based upon the same general idea, theme or situation and/or having the same setting or background history as the Format, then, unless it is proven that S4C/Sony have substantially copied the expression and development of such idea, theme or situation included in the Format, including the characters and story line thereof submitted by the entrant, S4C/Sony shall have no obligation or liability to entrant of any kind or character by reason of the production or distribution of such programme(s), nor shall S4C/Sony be obligated to compensate entrant in connection therewith.

Entrants agree that nothing in these Terms of Entry, nor the submission of the Format, shall be deemed to place S4C/Sony in any different position from any other member of the public with respect to the Format. Accordingly, any part of the programme material that could be freely used by any member of the public may be used by S4C/Sony without liability to entrant.

## **8. ENTRANT REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION:**

By entering, each entrant represents and warrants to S4C/Sony that his/her entry:

- (i) is completely the original work of the entrant (or other contributor disclosed on the entry form) and was created solely by the entrant (and/or other contributor disclosed on the entry form);
- (ii) is not copied from any other source or previously broadcast or otherwise distributed or disseminated in any media or format, including currently or previously pitched to a network, studio, production company or format distribution company and/or optioned, purchased or produced by a network, studio, production company or format distribution company;
- (iii) is not in the public domain;
- (iv) is not in violation of or conflict with the trademark, copyright, rights of privacy, rights of publicity or any other rights, of any kind or nature, of any other person or entity;
- (v) has not previously been granted to any other person or organisation, nor does any third party have any interest in such entry;
- (vi) is in full compliance with the requirements in these Terms of Entry;
- (vii) is not the subject of any threatened or pending litigation, claim or dispute that might give rise to litigation, which adversely affects or in any way prejudices, impairs or diminishes the rights to be granted to S4C and/or Sony pursuant to the Development Agreements, S4C production agreements and Sony worldwide distribution agreements; and
- (viii) does not include any language or other content that is unfit for dissemination or broadcast, as determined by S4C/Sony in its discretion.

By entering, each entrant represents and warrants to S4C/Sony that:

- (i) they have the right to agree to and fully perform consistent with these Terms of Entry;
- (ii) the consent of no third parties are required to grant the rights hereunder; and
- (iii) they have signed or hereby agree to sign, and to obtain (at the entrant's expense) from all necessary third parties, all releases, permissions and other written documents, in a form acceptable to S4C/Sony, as may be required by S4C/Sony and any of their affiliates or sponsors upon request to confirm, record and/or perfect the rights granted pursuant to these Terms of Entry and/or any Development Agreements and/or the S4C programme agreement and/or Sony worldwide distribution agreement.

By submitting an entry, entrants agree to indemnify on demand, defend, release, discharge and hold harmless the Designated Entities (defined below) from any and all claims and liabilities arising from or in connection with participation of the entrant in this Initiative, including, without limitation: (a) claims for injury, loss or damage of any kind resulting from the entrant's participation in this Initiative; and (b) claims based on rights of privacy, rights of publicity, false light, defamation, copyright and/or trademark infringement relating to the submission

or exploitation of the entrant's Format.

#### 9. DISQUALIFICATION OF ENTRIES:

Without prejudice to any other right to disqualify any entry in accordance with these Terms of Entry or otherwise at law, if either S4C and/or Sony, in their sole discretion, have reason to believe that any entry contains any material that may infringe or violate any law or any rights of a third party, or that the use or broadcast of such entry in the manner described herein may infringe or violate any law or any rights of a third party, then S4C/Sony may immediately disqualify such entry and take any other measures S4C/Sony may deem appropriate.

S4C/Sony reserve the right at their sole discretion to disqualify any individual who tampers with the entry process and/or to cancel, modify or suspend this Initiative should entrant fraud or misconduct or other causes beyond the control of S4C/Sony corrupt the administration, integrity, security or proper operation of the Initiative.

Entries not satisfying these Terms of Entry in any respect may be disqualified.

#### 10. RELEASE OF CLAIMS:

Each entrant acknowledges that S4C and Sony and each of their parent companies, affiliates and subsidiaries, and each of their employees, officers, directors, licensees, assigns and sponsors (collectively, the "**Designated Entities**") engage and have engaged in the developing, writing, acquiring, producing, publishing, disseminating and broadcasting of literary, artistic, and other material, including stories, ideas, themes, plots, titles, screenplays, teleplays, treatments, formats, and concepts (collectively, the "**Materials**"). By submitting an entry in the Initiative, each entrant acknowledges and agrees that any Materials that the Designated Entities may subsequently use or exploit may have originated with the Designated Entities themselves or may have been acquired from the Designated Entities' employees or other parties, and that such Materials may duplicate, parallel or resemble the Format submitted in the Initiative by the entrant. By submitting an entry, each entrant acknowledges that he or she understands and agrees that the Designated Entities' use of Materials containing features, ideas, material and/or elements similar to or identical with those contained in their entry but which has not been copied from a Format shall not entitle the entrant to any compensation whatsoever.

As an inducement to S4C/Sony to accept the entrant's entry into the Initiative, each entrant hereby waives any claim or right of action against any of the Designated Entities or their successors in connection with the Designated Entities' use of any Materials (or any portions thereof) whether or not such Materials contain any features, ideas, material and/or elements similar or identical to those contained in an entrant's entry. Finally, each entrant acknowledges that, with respect to any claim by entrant relating to or arising out of a Designated Entities' actual or alleged exploitation or use of any entry or other material submitted in connection with the Initiative, the damage, if any, thereby caused to the applicable entrant will not be irreparable or otherwise sufficient to entitle such entrant to seek injunctive or other equitable relief or in any way enjoin the production, distribution, exhibition or other exploitation of any production based on or allegedly based on the entry, and the entrant's rights and remedies in any such event shall be strictly limited to the right to recover damages, if any, in an action at law.

#### 11. GENERAL TERMS AND CONDITIONS:

By taking part in the Initiative all entrants grant permission to the Designated Entities to use their respective names, photographs, likenesses, voices, and/or biographical information for Designated Entities programming, publication, publicity, advertising and all other promotional purposes without compensation, review or approval unless prohibited by law.

Without limitation of the foregoing, S4C/Sony reserve the right to terminate, modify or suspend this Initiative due to any of the following reasons: act of God; unavoidable accident; epidemic; fire; blackout; act of public enemy; war, riot or civil commotion; enactment, rule, order or act of government or governmental instrumentality or tribunal; strike, lockout or other labour dispute; inclement weather or other cause beyond its control.

By entering, each entrant agrees that should this Initiative be terminated for any reason such entrant irrevocably waives any right to seek and/or obtain rescission and/or equitable and/or injunctive relief.

Neither S4C nor Sony are responsible for lost, late, illegible, incomplete, damaged, mutilated, misdirected, misdelivered, or delayed entries, including failures of any mail service used to submit entries, or for technical or

human errors or failures of any kind in connection with the submission, transmission, processing or judging of entries.

S4C's Website clock will be the official time clock for the Initiative.

If any attempt is made by an entrant to damage the S4C website or undermine the legitimate operation of the Initiative, S4C and/or Sony reserve the right to seek damages from any such entrant to the fullest extent of the law.

By entering, each entrant agrees to keep confidential any information which is disclosed or otherwise made available by S4C and/or Sony as part of the Initiative. Each entrant agrees not to use such information for any purpose other than the preparation of a response to this Initiative and shall not disclose such information to any person other than in confidence on a need to know basis and to those persons who are directly involved in the preparation of the response. Entrants agree not to issue any publicity concerning S4C/Sony without S4C and Sony's prior written approval.

Entrants must provide details if it is envisaged that there may be a conflict of interest between individuals involved in any submission and S4C/Sony staff.

S4C/Sony may vary the dates set out in these Terms of Entry and will inform all those who submitted a Format or those who become a Format Developer, as appropriate, of any such changes.

## **12. GOVERNING LAW/LIMITATION OF LIABILITY:**

These terms shall be read and construed in accordance with and shall be governed by the laws of England and Wales and the parties hereby irrevocably submit to the exclusive jurisdiction of the English and Welsh Courts.

By taking part in the Initiative, entrant agrees that to the extent permitted by applicable law: (1) any and all disputes, claims and causes of action arising out of or connected with the Initiative, will be resolved individually, without resort to any form of class action; (2) under no circumstances will any entrant be permitted to obtain any award for, and entrant hereby knowingly and expressly waives all rights to seek, punitive, incidental, consequential or special damages, lost profits and/or any other damages, and/or any rights to have damages multiplied or otherwise increased; and (3) entrants' remedies are limited to a claim for money damages (if any) and entrant irrevocably waives any right to seek injunctive or equitable relief.

## **13. DATA PROTECTION AND FREEDOM OF INFORMATION:**

S4C and Sony will ensure that any information provided for the purpose of administering the Initiative will be used in accordance with the Data Protection Act 1998. By entering the Initiative, the entrant grants S4C and Sony permission to share the entrants email address and any other personally identifiable information with the other Designated Entities for the purposes of administering and promoting the Initiative. All information provided by an entrant will be kept secure and treated as confidential and save as set out above will only be disclosed with the entrant's permission an entrant's personal information will not be used for any other direct commercial purposes including direct marketing.

Entrants should be aware that S4C is subject to the provisions of the Freedom of Information ("FOI") Act 2000 and may be required to disclose information contained in any document provided by entrants in response to an FOI request.

## **14. MISCELLANEOUS:**

The invalidity or unenforceability of any provision of these Terms of Entry will not affect the validity or enforceability of any other provision. In the event that any provision of the Terms of Entry is determined to be invalid or otherwise unenforceable or illegal, the other provisions will remain in effect and will be construed in accordance with their terms as if the invalid or illegal provision were not contained herein.

S4C and/or Sony's failure to enforce any term of these Terms of Entry will not constitute a waiver of that provision.

Headings are solely for convenience of reference and will not be deemed to affect in any manner the meaning or intent of the documents or any provision hereof.

In the event there is a discrepancy or inconsistency between disclosures or other statements contained in any

Initiative-related materials, privacy policy or terms of use on the S4C Website and/or the terms and conditions of the Terms of Entry, the Terms of Entry shall prevail, govern and control and the discrepancy will be resolved in S4C/Sony's sole and absolute discretion.

//End Terms of Entry//

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