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THIS AGREEMENT is made the [] day of [] 2011

BETWEEN:

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

INTRODUCTION:

Following the publication by S4C of an invitation to tender for CDN Services and Multiplatform Multi-device Server/Encoding Services and the submission by the Company of a tender, S4C wishes to enter into an agreement with the Company for the provision of the Services on the terms and conditions set out in 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;
“CDN”	the content delivery network supplied by the Company to S4C for carriage of the S4C Services and any New S4C Service [further details to be inserted as necessary]
“Communications Procedure”	the communications procedure set out in Schedule 5, and updated from time to time during the Term;
“Disaster Recovery Plan”	the disaster recovery plan of the Company set out at Schedule 6;
“DPA”	Data Protection Act 1988;
“Effective Date”	[tbc]
“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 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”	that 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);
“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 therefor 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;
“Necessary Consents”	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for performance of the Services;
“New S4C Service”	any channel, television service, website, application or other method 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 subsidiary of S4C;
“Ofcom”	The Office of Communications or any successor body;
“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 Ofcom Broadcasting Code and all other policies and guidelines from time to time published on S4C’s production website which can be accessed at http://www.s4c.co.uk/production/e_guidelines.shtml ;
“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 reports, databases, forms and statistics;
“Quarter”	a period of 3 calendar months ending on 30 th June, 30 th September, 31 st December or 31 st March in any calendar year from the date of this Agreement.
“Regulations”	means the Environmental Information Regulations 2004;
“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;
“S4C Representative”	Arshad Rasul 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, website or application owned solely or mainly by S4C or any Group Company of S4C, including the digital television service “S4C,” the high definition service “Clirlun” the website www.s4c.co.uk and the VOD catch-up service “Clic” available on the iphone and ipad;

“Services”	CDN services and multiplatform multi-device server/encoding 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 2 years from the Effective Date during which this Agreement is in force and effect subject to the provisions of clause 11;
“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; and
- 1.7 in case of any conflict between this Agreement and the Policies the terms of this Agreement shall take precedence.

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. The Company shall further ensure that all Necessary Consents are in place to provide the Services, and S4C shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 2.3 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, any New S4C Service and their relevant output, the Policies and the Applicable Laws.
- 2.4 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.
- 2.5 The Company shall immediately notify S4C in writing if it is for any reason unable to perform any of its obligations under this Agreement. This shall include any intention to cease, suspend or interrupt the CDN and/or the Services. Any such notification shall be without prejudice to any rights which S4C may have whether under clauses 12 and 14 of this Agreement or otherwise at law in respect of such inability of the Company to perform any of its obligations.
- 2.6 The Company shall use its best endeavours to promptly resolve any operational problems in relation to the Services, including any problem notified by S4C to the Company, without any recourse to S4C.
- 2.7 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.
- 2.8 At regular intervals during the Term, the Company and S4C shall discuss projects to be undertaken and goals to be achieved by the Company together with timescales for the meeting of such goals and key milestones for each project. Any such projects and goals shall be confirmed between the Company and S4C in writing and the meeting of such goals and successful completion of such projects shall form a material part of this Agreement.

3. Records and Reporting

- 3.1 The Company shall retain a detailed orderly written record of the following in the provision of the Services:
 - 3.1.1 service availability;
 - 3.1.2 outages;
 - 3.1.3 detailed demand figures for bit rates;
 - 3.1.4 connections;
 - 3.1.5 storage in use; any
 - 3.1.6 any other information notified by S4C to the Company.

4. Communications Procedure and Review Meetings

- 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.

- 4.2 S4C and the Company shall meet on a [monthly] 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 [month] at least ten (10) Working Days in advance of any such meeting.
- 4.3 At the review meeting S4C and the Company shall review and discuss matters arising out of 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 and/or the Communications Procedure to improve the efficiency and effectiveness of the Services (including improvements to the staffing levels, training of Staff);
 - 4.3.3 the style, frequency, content, delivery timescale and any other matter relating to the reports;
 - 4.3.4 the details, development and any revision of current goals including any necessary changes to timescales;
 - 4.3.5 ***[details of additional matters to be discussed at review meetings to be agreed between S4C and the successful bidder based on the successful tender].***
- 4.4 Following a review meeting in accordance with clause 4.2, S4C and the Company shall discuss and seek to agree in good faith any relevant amendments required to the Communications Procedure or any other part of this Agreement. Without limiting the generality of the foregoing, the parties shall note and confirm in writing any matters agreed following such review meeting to any other provision of this Agreement and the Company shall implement any such changes or variation to the Services, their nature or quality or the Communications Procedure that is agreed during any such review meeting for the outstanding duration of the Term.
- 4.5 S4C and the Company shall give fair consideration in good faith to the views of the other as stated in any review meeting provided that this clause shall not affect any other clause in this Agreement and S4C shall retain the final authority in connection with any matter and the Company shall comply with the directions of S4C.

5. Staffing

- 5.1 The Company agrees to employ or engage the services of a sufficient number of Staff with the appropriate, skills and experience to ensure that the Services are provided in accordance with Good Industry Practice and the requirements of this Agreement. Without prejudice to the generality of the foregoing, the Company shall ensure that there is an adequate number of Staff available during non-office hours and on non-Working Days to deal with any technical issues which may arise.
- 5.2 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 any New S4C Service and the recording and reporting of information as set out in clause 3 the Communications Procedure, legal implications of matters arising during the provision of the Services and any other training requirements reasonably required by S4C.

6. Key Personnel

- 6.1 The Company shall use all reasonable endeavours to ensure that the Key Personnel remain employees of the Company and available to participate in the provision of the Services during the Term.
- 6.2 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.
- 6.3 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.
- 6.4 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 6.4 shall not relieve the Company of any of its obligations under this Agreement.

7. Intellectual Property

- 7.1 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.
- 7.2 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.
- 7.3 The Company irrevocably and unconditionally warrants to S4C, its successors assigns and licensees: -
- 7.3.1 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
- 7.3.2 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.

- 7.4 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 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.
- 7.5 S4C hereby grants to the Company a non-exclusive royalty-free licence under copyright and otherwise in the S4C Services and any New S4C Service to enable it to carry out the Services upon the terms and conditions set out in this Agreement.
- 7.6 The Company acknowledges and accepts that all intellectual property rights in the S4C Services and any New S4C Service and any part thereof and in the transmission of the same hereunder shall belong absolutely to S4C or its sub-licensees and their licensors. The Company agrees that any copyright arising from the transmission of the S4C Services and any New S4C Service hereunder that vests in the Company under the terms of this Agreement is hereby assigned to S4C by present assignment of present and future copyright.

8. Warranties

- 8.1 The Company represents, warrants and undertakes to S4C in the terms set out in Schedule 2.
- 8.2 The Company accepts that S4C enters into this Agreement in reliance upon each of the Warranties.
- 8.3 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.

9. Financial Matters

- 9.1 Subject to 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.
- 9.2 The Fee shall be exclusive of VAT which shall be payable in addition by S4C subject to receipt of appropriate VAT invoices.
- 9.3 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.
- 9.4 ***[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]***

10. 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.

11. Termination

11.1 S4C may at any time by notice in writing to the Company terminate this Agreement with immediate effect if:

11.1.1 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

11.1.2 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) 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
- 11.1.3 there is a change of control (as 'control' is defined in Section 840 of the Income and Corporation Taxes Act 1988) of the Company; or
- 11.1.4 at the expiry of one calendar year from the Effective Date.
- 11.2 S4C shall be entitled to terminate this Agreement at any time by providing to the Company at least three (3) months' written notice.
- 11.3 S4C shall be entitled, at its option, to extend the Term for a further 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.

12. Effects of Expiry or Termination

- 12.1 Upon expiry or termination of this Agreement howsoever arising and subject always to the provisions of this clause 12 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.
- 12.2 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.
- 12.3 The Company shall immediately after the Termination Date deliver at its cost to S4C:
- 12.3.1 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
 - 12.3.2 all other documentation relating to this Agreement; and
- if requested to do so by S4C, provide all such assistance as S4C may reasonably require to enable S4C or any other Company(s) appointed by S4C to complete the provision of any Services.
- 12.4 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.
- 12.5 Where this Agreement is terminated by S4C pursuant to clause 11.1.1 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.

- 12.6 The following clauses shall survive the expiry or termination of this Agreement howsoever arising: 1 (Definitions), 7 (Intellectual Property), 8 (Warranties), 10 (Indemnity), 12 (Effects of Expiry or Termination), 18 (Set off), 20 (Remedies and Waiver), 21 (Announcements and Confidentiality), 22 (Data Protection and FOIA), 25 (Construction) and Schedule 2 (Warranties).

13. not used

14. Suspension and Rights of Step In

- 14.1 If S4C believes that an act or omission of the Company constitutes a breach by the Company of a material term of this Agreement (including cessation, suspension or interruption of the CDN) 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 11.1.2 occurs or in S4C's reasonable opinion is likely to occur then without prejudice to S4C's rights at Clause 12 (Termination), S4C may take action in accordance with clauses 14.2 and 14.3 below.

- 14.2 In the circumstances set out in clause 14.1, 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.

- 14.3 If S4C exercises its rights pursuant to clause 14.2, for so long as and to the extent that the Company is prevented from providing any Services:

14.3.1 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

14.3.2 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 14.2 ("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.

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

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

14.4.2 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.

15 Disaster Recovery

- 15.1 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.

- 15.2 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.

- 15.3 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 15.1. 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.

16. Assignment and Sub-Contracting

- 16.1 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.
- 16.2 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.

17. Force Majeure

- 17.1 "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.
- 17.2 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 17.3. 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.
- 17.3 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.

18. Set-Off

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

19. Notices

- 19.1 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 19.3 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).

19.2 Every notice addressed in accordance with the provisions of clause 19.3, 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.

19.3 S4C

Facsimile Number +44(0)29 2075 4444
Marked for the Attention of: Arshad Rasul

The Company

Facsimile Number []
Marked for the Attention of: []

19.4 Nothing in this clause 19 shall be interpreted or construed as an agreement on the part of S4C to accept service of any legal proceedings by facsimile or email.

20. Remedies and Waiver

20.1 No waiver by a party of any breach of any of the provisions in this Agreement shall be effective unless given in writing.

20.2 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.

20.3 S4C's rights powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

20.4 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.

21. Announcements and Confidentiality

21.1 No announcement concerning the existence or subject matter of this Agreement and no disclosure to any person of the terms of this Agreement shall be made by the Company except as required by law or any regulatory body with whose rules the Company is required to comply or with the prior written approval of S4C.

21.2 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 21.3 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.

21.3 The restrictions on disclosure contained in clause 21.2 shall not apply to any information which:

21.3.1 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

21.3.2 is required to be disclosed by law or by any regulatory body with whose rules S4C is required to comply.

22. Data Protection and FOIA

22.1 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 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.

22.2 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:

22.2.1 provide S4C with a copy of all relevant information in its possession or power in the form that S4C requires; and

22.2.2 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).

22.3 S4C shall be responsible for determining whether the information:

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

22.3.2 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.

22.4 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.

22.5 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.

23. Prevention of Corruption

23.1 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 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.

23.2 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.

23.3 If the Company, its Staff or anyone acting on the Company's behalf, engages in conduct prohibited by clauses 23.1 or 23.2, S4C may:

23.3.1 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; or

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

24. Prevention of Fraud

24.1 The Company shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Company (including its shareholders, members, directors) in connection with the receipt of monies from S4C.

24.2 The Company shall notify S4C immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

24.3 If the Company or its Staff commits Fraud in relation to this, or any other contract with S4C, S4C may:

24.3.1 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; or

24.3.2 recover in full from the Company any other loss sustained by S4C in consequence of any breach of this clause.

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.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

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

Signature

Name

Signed and delivered as a deed
by **THE 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 set out in section 2.9(a) of the Invitation to Tender document and the tender submission of the successful bidder.]

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 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 DPA;
 - (j) it shall use its best endeavours to promptly resolve any operational problems in relation to the Services, including any problem notified by S4C to the Company, without any recourse to S4C;

- (k) as soon as reasonably practical, it shall suspend provision of the Services when so instructed by S4C; and
- (l) all information presented in its tender document dated [] is true complete and accurate in all respects and shall remain so for the duration of the Term.

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

COMMUNICATIONS PROCEDURE

[Details of the Communications Procedure 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

(A) the reporting obligations of the Company to S4C including the nature, content, layout and frequency of reports to be provided by the Company to S4C in connection with the enquiries, comments and complaints received.

(B) the reporting obligations of the Company to S4C in connection with the operation of the Services including staffing and other issues; and

(C) the procedures for the provision by S4C of information to the Company in connection with the S4C Services and S4C staff responsibilities]

SCHEDULE 6

DISASTER RECOVERY PLAN

[To be agreed between S4C and the successful bidder]