

Subject to Contract

DATED [] 2008

(1) S4C

(2) []

**AGREEMENT FOR THE PROVISION OF
AN AUDIENCE REACTION PANEL SERVICE**

S4C
Parc Tŷ Glas
Llanishen
Cardiff
CF14 5DU

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THIS AGREEMENT is made the [] day of [] 2008

BETWEEN:

- (1) **S4C** of Parc Tŷ Glas, Llanishen, Cardiff CF14 5DU (“S4C”); and
- (2) [] (the “Company”)

WHEREAS:

- (A) On 1st July 2008 S4C issued a tender for the provision of an audience reaction panel service.
- (B) Following the tender process the Company has been selected by S4C and has agreed to provide the Services in accordance with the terms set out in this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

In this Agreement and the recitals thereto:

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

“Agreement”	this agreement and any document referred to in this agreement;
“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, codes and practice guidelines determined by any self-regulatory body which apply from time to time including the Code of Conduct of the British Market Research Society (MRS);
“Commencement Date”	20 October 2008;
“Communications Procedure”	the communications procedure set out in Schedule 5;
“Company Representative”	the individual appointed by the Company pursuant to clause 7.1;
“Database”	the record paper log or computer programme containing all the data and other information (including Information) collected by the Company in setting up and recruiting the Panel and providing the Services;

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“Data Protection Legislation”	the Data Protection Act 1998 and all other relevant legislation and/or regulations and/or guidelines relating to data protection from time to time in force during the Term;
“Diaries”	diaries in the form approved by S4C in accordance with the Communications Procedure and used or to be used by the Panel;
“Effective Date”	1 st January 2009;
“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 provision of the Services set out in Schedule 4;
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
“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 relevant legislation and using appropriately qualified and skilled personnel;
“Group Company”	any subsidiary or holding company from time to time and any subsidiary of such holding company from time to time (as such terms are defined in Section 1159 of the Companies Act 2006);
“Information”	all information supplied to the Company by the Panel (whether as a whole or a part) in connection with the provision of the Services;
“Insolvency”	any of the following: (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;

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- (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 (if it is a 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) or if it is an individual, the Company appearing to be unable to pay a debt or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986;
- (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 death of the Company if it is an individual;

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- (i) 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;
- (j) the appointment of a receiver under the Mental Health Act 1983 in respect of the Company, or the Company becoming a patient under any mental health legislation or otherwise becoming incapable of managing his/her affairs; or
- (k) the occurrence of an event or circumstance in relation to the Company similar to any of those referred to in paragraphs (a) to (j) above in any jurisdiction other than England and Wales;

and the term “Insolvent” shall be construed accordingly; ***[Note: will require amendment depending on the legal status of the successful tenderer.]***

“Intellectual Property”

collectively any and all intellectual property rights 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, performance 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;

“IP”

all and any Intellectual Property in or relating to the Materials and/or the Reports and all and any other Intellectual Property acquired, created, developed, designed or otherwise prepared by or on behalf of the Company (and whether alone or in conjunction with any other person) in the course of providing the Services;

“Key Personnel”

the Personnel identified in Schedule3;

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“Materials”	collectively the Database, Diaries, Information, Questionnaires and all and any other documents and materials (excluding Reports) produced by or on behalf of the Company in the course of performing its obligations hereunder or otherwise relating to the Services;
“Operative Period”	the period commencing on the Effective Date and expiring at midnight on the Termination Date;
“Panel”	an audience reaction panel consisting of [] individuals residing in Wales and representative of the population of Wales , [] of whom are Welsh speakers and [] of whom are non-Welsh speakers; [panel composition will need to be agreed between S4C and successful tenderer to take account of S4C’s requirements as set out in the ITT and the successful tenderer’s tender response]
“Payment Schedule”	the payment schedule set out at Schedule 4;
“Performance Standards”	the performance standards detailed in Part B of Schedule 1;
“Persistent Breach”	either: (a) any breach of this Agreement (other than a material breach or a breach which is incapable of remedy) which has continued or recurred more than three (3) times in a period of six (6) months; or (b) more than three (3) breaches (whether of the same or of different provisions of this Agreement) of this Agreement (other than material breaches or breaches which are incapable of remedy) in any period of six (6) months;
“Personnel”	all persons engaged by the Company to provide the Services whether on an employed or self-employed basis;
“Policies”	collectively all of the S4C policies expressly referred to in this Agreement as updated from time to time including the Welsh Language Scheme;
“Preparation Period”	the period commencing on the Commencement Date and ending at midnight on 31 December 2008;
“Probation Period”	the period commencing on the Effective Date and ending at midnight on 30 June 2009;
“Quality Control Procedures”	the quality control procedures set out in Schedule 6;

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“Questionnaires”	questionnaires approved by S4C in accordance with the Communications Procedure and which are used or to be used by the Panel;
“Regulations”	the Environmental Information Regulations 2004;
“Reports”	reports in the form and containing the matters detailed in Part A of Schedule 1;
“S4C Confidential Information”	collectively any and all information (in whatever form and on whatever media) relating to: <ul style="list-style-type: none">(i) this Agreement;(ii) the Materials;(iii) the Reports;(iv) the IP; and/or(v) the affairs, properties, assets, trading practices, schedules, future programming, business strategies, developments, trade secrets, Intellectual Property, personnel of S4C, its Group Companies and their respective customers and/or suppliers;
“S4C Representative”	the individual appointed by S4C pursuant to clause 7.2;
“Services”	the work, services and activities detailed in Part A of Schedule 1;
“Term”	the period during which this Agreement is in force and effect pursuant to the provisions of clause 12.1;
“Termination Date”	the date of expiry or termination of this Agreement howsoever arising;
“Third Party”	any person other than S4C or the Company;
“VAT”	value added tax;
“Warranties”	the representations and warranties set out in Schedule 2; and “Warranty” shall be construed accordingly;
“Welsh Language Scheme”	S4C’s Welsh language scheme in force from time to time a copy of which can be accessed at http://www.s4c.co.uk/production/downloads/cynlluniaiith_e.pdf ;
“Working Day”	any day other than a Saturday, Sunday or public holiday in Wales;

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“Year” a calendar year (1st January to 31st December) during the Operative Period, or part thereof in the case of the last such calendar year of the Term;

- 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 and recitals are for convenience only and shall not affect the construction or interpretation of this Agreement; references to recitals, Schedules and clauses are to recitals, 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 the Schedules shall form part of this Agreement as if set out in the body of this Agreement and references to this Agreement shall include the Schedules;
- 1.5 a reference to any statute or statutory provision shall include any subordinate legislation made thereunder and shall (unless otherwise expressly stated to the contrary herein) 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);
- 1.6 the words “include” or “including” shall be construed and interpreted without limitation;
- 1.7 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;
- 1.8 general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- 1.9 in the case of any conflict or inconsistency between the provisions contained in the body of this Agreement and/or the Policies, the provisions contained in the body of this Agreement shall take precedence;
- 1.10 where the Company consists of more than one legal entity then the liability of each such entity for the performance and observance of the Company’s obligations warranties and undertakings under this Agreement shall be joint and several.

2. Preparation Period

- 2.1 During the Preparation Period the Company shall set up and recruit the Panel in accordance with the provisions of the Communications Procedure.

3. Services

- 3.1 The Company shall, during the Operative Period, provide the Services in accordance with all Applicable Laws, the Performance Standards, the Communications Procedure, Good Industry Practice, the Policies and the provisions of this Agreement.
- 3.2 The Company shall put in place and at all times during the Term maintain and adhere to the Quality Control Procedures.

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- 3.3 No questionnaires, diaries, correspondence or other materials will be used by the Company or provided by the Company to any person on the Panel unless and until the same have been approved by the S4C Representative in accordance with the Communications Procedure.
- 3.4 The Company shall take all reasonable steps to ensure that no person on the Panel is in any way adversely affected or embarrassed by any questions put to the Panel whether as part of a Questionnaire or otherwise.

4. The Company's General Obligations

- 4.1 In performing its obligations hereunder the Company shall and shall procure that the Personnel shall, at all times during the Term comply with:
- 4.1.1 the Data Protection Legislation; and
 - 4.1.2 all reasonable instructions and directions of S4C from time to time.
- 4.2 The Company shall employ or engage at its own expense a sufficient number of competent and experienced Personnel to perform its obligations hereunder including to set up and recruit the Panel and to provide the Services throughout the Term, in each case, bilingually in the English and Welsh languages.
- 4.3 The Company shall procure that the Personnel (including the Company representative) 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.
- 4.4 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.
- 4.5 The Company shall not, and shall procure that no Personnel shall do any thing or act in any way which might adversely impact on S4C's goodwill or reputation.
- 4.6 The Company shall immediately notify S4C in writing if it is for any reason unable to perform any of its obligations hereunder. 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 hereunder.
- 4.7 The Company shall, in its dealings with the public and the Panel respect the principles of the Welsh Language Scheme, of S4C's equal opportunities policy and of S4C's policy on racial equality.
- 4.8 The Company shall and shall ensure that all Personnel 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 and/or its obligations under this Agreement.

5. Personnel and Key Personnel

- 5.1 The Company shall keep full and accurate records and contractual paperwork relating to the engagement of Personnel and shall allow access to the same as appropriate at S4C's reasonable request.

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- 5.2 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.
- 5.3 The Company shall notify S4C in writing of any matters or circumstance which could affect the availability of the Key Personnel promptly upon becoming aware of the same.
- 5.4 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.
- 5.5 The Company shall promptly upon receiving written notice from S4C to do so remove or procure the removal of any Personnel 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 Personnel 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 Personnel 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 Personnel (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 Personnel under this clause 5.5 shall not relieve the Company of any of its obligations hereunder.

6. Review

- 6.1 S4C shall review the Company's performance of the Services against the Performance Standards on a monthly basis.
- 6.2 S4C and the Company shall meet at such times and places as S4C shall reasonably require during the Term to review the matters specified in clauses 6.4 and 6.5.
- 6.3 The Company shall ensure that the Company Representative and such other Personnel as may reasonably be requested by S4C shall attend each review meeting and the Company shall provide a written report setting out details relating to those matters specified in clauses 6.4 and 6.5 and all such other information as S4C shall reasonably request in respect of the period since the last such report or in the case of the first such report the period since the Commencement Date (the "relevant period") at least ten (10) Working Days in advance of any such meeting.
- 6.4 At each review meeting held pursuant to clause 6.2 and without prejudice to the other provisions of this Agreement the parties shall review the following matters:-
- 6.4.1 the Company's performance against the Performance Standards;
 - 6.4.2 the nature and/or quality of the Services provided in the relevant period;
 - 6.4.3 the nature and quality of the information;
 - 6.4.4 Panel response and Panel attrition rates; and
 - 6.4.5 any changes or revisions which may be made to the Services to improve the Services.

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6.5 At each review meeting held pursuant to clause 6.2 and without prejudice to the other provisions of this Agreement the parties shall also review the following matters:

6.5.1 the working relationship between the Company and S4C; and

6.5.2 any other matters which either party wishes to raise.

6.6 If in any month during the Probation Period the Company fails to meet the Performance Standards (or any of them) S4C shall be entitled to terminate this Agreement with immediate effect on written notice to the Company.

7. Reporting and Communications Procedure

7.1 As soon as reasonably practicable following the date of this Agreement the Company shall:

7.1.1 appoint an individual to supervise and oversee the setting up and recruitment of the Panel

and the performance by the Company of the Services and its obligations hereunder during the Term and who shall be the primary point of contact for S4C in respect of the provision of the Services; and

7.1.2 notify S4C in writing of the identity of such individual.

The Company shall promptly notify S4C of any change in the identity of the Company Representative during the Term.

7.2.1 As soon as reasonably practicable following the date of this Agreement S4C shall:

7.2.1 appoint an individual who shall be the primary point of contact for Company in connection with this Agreement; and

7.2.2 notify the Company in writing of the identity of such individual.

S4C shall promptly notify the Company of any change in the identity of the S4C Representative during the Term.

7.3 The Company shall provide Reports to S4C in accordance with the timescales and frequencies set out in the Communications Procedure.

7.4 The Company shall ensure that all Reports are full, complete and accurate.

8. Intellectual Property

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8.1 The Materials, the Reports and the IP shall belong to and be the absolute property of S4C and S4C shall be free to use the Materials, the Reports and the IP in whatever form, by whatever means and on whatever media (whether known at the date of this Agreement or invented hereafter) and the Company hereby:

8.1.1 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 IP 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; and

8.1.2 agrees to assign to S4C absolutely, irrevocably and unconditionally with full title guarantee and free from Encumbrances all worldwide right, title and interest in and to all other IP

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 and the Company acknowledges that no use of the Materials and/or the Reports and/or the IP by S4C, its successors, assigns or licensees in whatever form, by whatever means and on whatever media (whether known at the date of this Agreement or invented hereafter) shall entitle the Company or any other person to any further payment.

8.3 Legal title in and to the Materials and the Reports shall pass to S4C on creation.

8.4 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:

8.4.1 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 8; and/or

8.3.2 to secure or to obtain patent, registered design, registered trade mark and/or other protection for the IP.

9. Warranties

9.1 The Company warrants to S4C in the terms set out in Schedule 2.

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

9.3 The Company shall be deemed to have repeated the Warranties on the Effective Date.

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

10. Financial Matters

10.1 Subject to the performance by the Company of its obligations hereunder S4C shall pay the Company the Fee in instalments in arrears in accordance with the Payment Schedule.

10.2 The Fee is exclusive of VAT which shall be payable in addition by S4C subject to receipt of appropriate VAT invoices.

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- 10.3 The Fee is inclusive of all costs and expenses incurred by the Company in setting up and managing the Panel and providing the Services.
- 10.4 Payment of the Fee or any instalment thereof shall be without prejudice to any claims or rights which S4C may have against the Company and shall not constitute any admission by S4C as to due performance by the Company of its obligations hereunder.
- 10.5 Without prejudice to any other rights or remedies to which S4C may be entitled whether hereunder or at law, S4C shall be entitled to withhold payment of the Fee or any instalment thereof if the Company is in breach of any of its obligations hereunder.

11. Indemnity

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

12. Term and Termination

- 12.1 This Agreement shall commence with effect from the Commencement Date and, unless terminated earlier in accordance with clauses 5.4, 6.6, 12.3 or 16.3 or extended in accordance with clause 12.2 shall continue until midnight on 31 December 2011.
- 12.2 S4C shall be entitled, at its option, to extend the term of this Agreement for a further twelve (12) months beginning 1 January 2012 by giving notice in writing to the Company on or before 1 July 2011.
- 12.3 Without prejudice to any rights or remedies to which S4C may be entitled whether under this Agreement or at law S4C may at any time by notice in writing to the Company terminate this Agreement with immediate effect if:
- 12.3.1 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 thirty (30) days of S4C bringing such breach to the Company's attention (or such longer period as S4C may agree); or
 - 12.3.2 the Company is in Persistent Breach; or
 - 12.3.3 the Company becomes Insolvent; or
 - 12.3.4 there is a change of control (as 'control' is defined in Section 416 of the Income and Corporation Taxes Act 1988) of the Company.

13. Effects of Expiry or Termination

- 13.1 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

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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 of any of the terms hereof.

- 13.2 S4C's obligation to pay the Company shall be limited to such payment as is attributable to the work actually and properly done by the Company to the reasonable satisfaction of S4C in accordance with the terms of this Agreement up to the Termination Date.
- 13.3 The Company shall immediately after the Termination Date deliver at its cost to S4C:
- 13.3.1 all property belonging to S4C in the Company's power, possession, custody or control including all Materials, Reports and any and all S4C Confidential Information together with all copies thereof or extracts therefrom; and
- 13.3.2 all other documentation relating to this Agreement; and
- if requested to do so by S4C, provide all such assistance as S4C may reasonably require in either handing back the provision of the audience reaction panel service to S4C or handing over the provision of the audience reaction panel service to any successor service provider appointed by S4C including transferring the Panel to S4C or, at S4C's option, to any such successor service provider.
- 13.4 Where this Agreement is terminated by S4C pursuant to clauses 6.6 or 12.3.1 or 12.3.2 and the total cost (including any VAT) to S4C of providing the Services (whether the same are provided or produced in-house or via a Third Party) for what would but for the termination of this Agreement have been the remaining term of this Agreement 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 and such payment shall be without prejudice to any rights or remedies to which S4C may be entitled whether under this Agreement or at law.
- 13.5 The following clauses shall survive the expiry or termination of this Agreement howsoever arising: clauses 1, 5.5, 8, 11, 13, 17, 18, 20, and 21.

14. Disputes

- 14.1 All disputes between the parties arising out of or in connection with this Agreement shall be referred by either party to the S4C Representative and the Company Representative. If the dispute cannot be resolved by such individuals within fourteen (14) days of any such referral the dispute shall be referred to mediation in accordance with the CEDR model mediation procedure. To initiate mediation either party may give notice in writing to the other party requesting mediation. The mediation shall commence not less than twenty eight (28) days after the date of the notice requesting mediation.
- 14.2 The parties shall continue to perform their respective obligations under this Agreement during the resolution of any dispute under the provisions of this clause 14.

15. Assignment and Sub-Contracting

- 15.1 S4C shall be free to assign, novate, sub-contract or otherwise dispose of its rights or obligations under this Agreement or any part thereof and the Company shall enter into such deeds of novation in respect thereof as S4C shall reasonably require.
- 15.2 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.

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16. Force Majeure

- 16.1 "Force Majeure" shall mean any act or circumstance or event or combination of acts, circumstances or events beyond the reasonable control of a party.
- 16.2 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 16.3. 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. S4C shall be under no obligation to pay the Fee (or any instalment thereof) to the Company in respect of such period of suspension.
- 16.3 If an event of Force Majeure occurs and continues for a period of two (2) months or more S4C shall have the right to terminate this Agreement on notice in writing to the Company.

17. 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.

18. Notices

- 18.1 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 in clause 18.3 or sent by facsimile to the recipient's facsimile number stated in clause 18.3 or sent by email to the recipient's email address stated in clause 18.3 to such other address, facsimile number or email address as either party may from time to time notify to the other party, and in each case, 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).
- 18.2 Every notice addressed in accordance with the provisions of clause 18.3, 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 or email 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.

18.3 S4C

Address: Parc Tŷ Glas
Llanishen
Cardiff
CF14 5DU

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

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The Company

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

18.4 Nothing in this clause 18 shall be interpreted or construed as an agreement on the part of either party to accept service of any legal proceedings by facsimile or email.

19. Remedies and Waiver

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

19.2 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.

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

19.4 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.

20. Confidentiality

20.1 The Company acknowledges that it and the Personnel have been or will be in a position to receive, have access to or discover S4C Confidential Information.

20.2 The Company shall during the Term and at all times thereafter keep private and confidential all of the S4C Confidential Information and shall not and shall procure that the Personnel do not disclose reveal, make public or communicate to any person or persons whether before, during or after this Agreement such S4C Confidential Information or any part thereof or any other information which comes to its attention during and as a result of performing its duties under this Agreement. The Company shall only use the S4C Confidential Information for the purpose of providing the Services to S4C.

20.3 The Company shall take all necessary precautions to ensure that all S4C Confidential Information:-

20.3.1 is disclosed only to such of the Personnel and professional advisors or consultants engaged to advise them in connection with this Agreement as is strictly necessary for the performance of this Agreement;

20.3.2 is treated as confidential and not disclosed (without prior written approval) or used by any Personnel or such individuals or advisors or consultants otherwise than for the purposes of this Agreement.

20.4 The restrictions on disclosure contained in clause 20.2 shall not apply to any information which:

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- 20.4.1 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 Personnel; or
- 20.4.2 is required to be disclosed by law or by any regulatory body with whose rules the Company is required to comply.

21. FOIA

21.1 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 Personnel shall:

- 21.1.1 provide S4C with a copy of all relevant information in its possession or power in the form that S4C requires; and
- 21.1.2 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).

21.2 S4C shall be responsible for determining whether the information:

- 21.2.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Regulations;
- 21.2.2 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.

21.3 The Company acknowledges that S4C may be obliged under the FOIA, or the Regulations to disclose information (including confidential information belonging to the Company) 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, S4C's legal advice shall prevail.

21.4 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.

22. Construction

22.1 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.

22.2 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.

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- 22.3 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 supersedes 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.
- 22.4 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.
- 22.5 No variation to this Agreement shall have any force or effect unless in writing and signed by duly authorised representatives of the parties.
- 22.6 This Agreement shall be construed as an agreement made in Wales and subject to the laws of England and Wales and subject (subject to the provisions of clause 14) 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.

SCHEDULE 1

PART A Services

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

PART B

Performance Standards

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

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SCHEDULE 2 Warranties

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

1. The Company warrants to S4C as follows:
 - (a) it is properly constituted and incorporated under the laws of [] 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;
 - (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) nothing contained in the Materials or the Reports nor the use thereof by S4C will infringe any rights (including any Intellectual Property) of any person or be obscene or libellous or blasphemous or defamatory or contravene the provisions of any Applicable Laws;
 - (i) all information provided by the Company under this Agreement will be accurate and complete and shall be provided in a timely manner electronically or in hard copy as appropriate;

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- (j) to comply with all relevant Data Protection Legislation when handling data and information which it obtains or to which it has access as a result of or in the course of providing the Services;
- (k) there are no liens, claims, actions or proceedings pending or threatened affecting or relating to the Reports, the Materials or the IP.

SCHEDULE 3 Key Personnel

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**SCHEDULE 4
Fee and Payment Terms**

SCHEDULE 5

Communications Procedure

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

SCHEDULE 6

Quality Control Procedures

[The details of the Quality Control Procedures will be agreed between S4C and the successful tenderer based on S4C's requirements as detailed in the ITT and the tender response submitted by the successful tenderer.]

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SIGNED by

duly authorised representative
for and on behalf of
S4C

SIGNED by
duly authorised representative for and on behalf of
[]