



Parc Tŷ Glas Llanisien Llanishen Caerdydd Cardiff Cymru Wales CF14 5DU
Epost Email s4c@s4c.co.uk / Gwefan Website s4c.co.uk
Ffôn Phone +44(0)29 2074 7444 / Ffacs Fax +44(0)29 2075 4444

**INVITATION TO TENDER FOR THE PROVISION OF A TELEVISION LISTINGS
AND EDITORIAL PUBLICATION SERVICE TO S4C**

Issued: Tuesday 12th August 2008

**Deadline for receipt of tenders: 12.00 midday Monday 29th September
2008**

Introduction

This Invitation To Tender (“ITT”) invites tenders from persons/organisations interested in providing a television listings and editorial publication service to S4C as more particularly described in this ITT and the draft contract set out in the appendix to this ITT (“Draft Contract”).

This ITT is divided into six parts as follows:

Part A	Background Information
Part B	Tender Process and Timetable
Part C	Contract Specific Information
Part D	Information to be included in Tender Responses
Part E	Evaluation Criteria and Contract Award
Part F	Legal Notes

Please read this ITT carefully. Tender responses that do not comply with the requirements set out in this ITT will not be considered as part of this tender process.

Please note that this tender process, including this ITT, is subject to the legal notes set out in Part F of this ITT.

Part A Background Information

A.1 Background Information relating to S4C

S4C is the Welsh television channel and one of the UK's five public service television broadcasters. The channel airs over 45 hours of Welsh-language programming on its analogue Service (which also re-broadcasts English Language Channel 4 programmes during out of peak hours) and around 110 hours on its all-Welsh digital service, S4C digidol. The digital channel is also available to watch live on the S4C website via broadband and a 35 day "window to view" service is also available. With digital switchover taking place in Wales between July 2009 and March 2010, S4C will for the first time become a wholly Welsh language channel as S4C's digital service becomes available to all households.

S4C is funded by the Department for Culture, Media and Sport. For more background information on S4C please refer to the Annual report 2007 which is available on S4C's website (s4c.co.uk).

A.2 Background Information relating to the Contract

One of the challenges facing S4C is to ensure that its range of high quality programmes continues to be effectively promoted in the multi-channel, post-switchover world.

The service contract will be managed by S4C's Communications Directorate, which supports the S4C brand through multi-platform campaigns involving on-screen, off-screen and online marketing, website content, corporate events and external media coverage. Newspapers, magazines and on-line services are an

important outlet for S4C in the promotion of its programmes and services to audiences.

As part of its communications strategy, S4C wishes to provide existing and potential audiences in the North Wales area and beyond with a high-impact bilingual information service about S4C programmes in an accessible and attractive television publication.

S4C wishes to appoint a service provider to facilitate the publication and distribution of a free weekly colour publication in the North Wales area. The publication will include articles and feature spreads in both English and Welsh (as required by S4C) and include photographs of forthcoming S4C Digidol programmes. The programmes featured would be agreed jointly between S4C and the successful tenderer on a monthly basis. The publication should also include full and prominent TV listings for S4C Digidol in addition to other main terrestrial broadcasters and selected digital broadcasters.

The Service Provider will also facilitate an on-line service in conjunction with the publication to publish some of the articles and listings featured in the main publication.

S4C produces a weekly press pack which includes 4 features which could form the basis for content in the publication. Photographs are usually available for each article.

Listings for S4C's analogue service should also be featured until switchover is completed in the North Wales area in October-December 2009.

S4C also welcomes the opportunity for cross promotional activities between S4C and the successful tenderer.

Part B Tender Process and Timetable

B.1 Stages

On **Tuesday 12th August 2008** a contract notice was published via the **SIMAP website** in the Official Journal of the European Union inviting persons/organisations interested in providing a television listings and editorial publication service to S4C to participate in this tender process. The procedure which S4C has chosen to use for this tender process is the open procedure.

The tender process will involve the following stages:

Stage 1 deadline for requests for clarification	12.00 midday Monday 15 th September 2008
Stage 2 deadline for receipt of tender responses	12.00 midday Monday 29 th September 2008
Stage 3 evaluation of tenders	30 th September 2008 – 12 th October 2008

(please note that during this stage S4C may invite tenderers to attend interviews/meetings with S4C at S4C's offices)

Stage 4 notification of results of evaluation	*Monday 13 th October 2008
Stage 5 signature of contract	*Wednesday 12 th November 2008

Please note that dates marked with an * may be subject to change.

B.2 Submission of Tender Responses

You are required to submit your tender response in accordance with the requirements of this ITT **electronically** by the deadline for receipt of tender responses set out in Part B.1 above.

Tender responses should be clearly marked “Provision of television listings and editorial publication service” and sent by email to:

tender.communications@s4c.co.uk

NO TENDER RESPONSES RECEIVED AFTER THE DEADLINE FOR RECEIPT OF TENDER RESPONSES SET OUT IN PART B.1 ABOVE OR RECEIVED BY S4C AT AN ADDRESS OTHER THAN THAT SET OUT ABOVE WILL BE CONSIDERED AND ANY SUCH TENDER RESPONSES WILL BE EXCLUDED FROM THIS TENDER PROCESS.

S4C accepts no responsibility for the shortcomings of any delivery system or for any lost, delayed or defective tender responses. It is up to you to ensure that your tender response (and any attachments) is prepared in good time (taking into account the possibility of staff absences or technical failures) and is submitted in advance of the deadline for receipt of tender responses set out in Part B.1 above. Proof of despatching will not be deemed to be proof of delivery and you are advised to seek an acknowledgement of receipt.

B.3 Evaluation of Tender Responses

S4C will evaluate each tender response received which complies with the requirements of this ITT. S4C may require you to provide further information

and/or clarification of any matters contained in your tender response. S4C may also require you to attend an interview/meeting with S4C at S4C's offices.

B.4 Notification of Results of Evaluation

All persons/organisations who submitted a tender response will be notified of the outcome of S4C's evaluation by email. See further Part E.3 below.

B.5 Requests for Further information

All contact in relation to this tender process including any requests for further information and/or guidance must be made by email to S4C at tender.communications@s4c.co.uk.

Tenderers must not in any way canvass or solicit information relating to this tender process from any officer, employee, agent or adviser of S4C.

You are encouraged to identify any further information and/or guidance that you may require in connection with this tender process as early as possible. The deadline for submission of requests for further information and/or guidance is **12.00 midday Monday 15th September 2008**. Any requests received after this deadline will not be considered. S4C will endeavour to deal promptly with all requests received before this deadline.

In the interests of fairness and transparency please note that all requests for further information and/or guidance in respect of this tender process and S4C's responses to such requests will be disclosed to all tenderers. Such disclosures will be made via the S4C website (s4c.co.uk) and can be accessed by clicking on

“tenders” and following the link. It is your responsibility to ensure that you regularly check this link for disclosures.

If you consider any request for further information and/or guidance which you make to be commercially sensitive, you must clearly mark the request as “commercially sensitive” and supply the reasons why you consider it to be commercially sensitive. Please note, however, that S4C will determine, in its sole discretion, whether it considers any such request to be commercially sensitive. If S4C determines that a request is commercially sensitive S4C will not disclose the request or its response to such request to other tenderers. If S4C determines that a request is not commercially sensitive it will inform the tenderer making the request that this is the case. If the tenderer agrees that the request is not commercially sensitive S4C will respond to the request and will be entitled to disclose the request and its response thereto to all tenderers. If the tenderer does not agree that the request is not commercially sensitive or does not inform S4C whether or not it so agrees within a period of one working day, the request shall be deemed to be withdrawn and S4C will not respond to it. Nothing in this paragraph will be interpreted or construed as limiting in any way S4C’s ability to disclose any information to any person in complying with its freedom of information obligations as outlined in paragraph Part F.6 below.

Any requests and any responses thereto which are disclosed to all tenderers will be deemed to form part of this ITT.

Part C Contract Specific Information

C.1 S4C’s Requirements

The successful tenderer will be required to:

- Create, publish and distribute a weekly publication in both English and Welsh including TV features and listings to a minimum of 40,000 households within the North Wales area;
- Facilitate an on-line service to publish some of the articles plus listings featured in the publication;
- Liaise with S4C's Communications Directorate to identify priorities, ensure accurate information and the approval of features;
- Engage/employ suitable writers to produce the Welsh and English language articles featured in the publication to a high standard;
- Use suitable colour photographs, ensuring all clearances are obtained;
- Conform to all appropriate legislation and guidelines relevant to the service;
- Demonstrate a good knowledge of S4C's output and services and the television industry in general;
- Provide adequate training in order for its staff to undertake their duties to provide the service;
- Effectively market the publication in order to increase its readership.

Whilst this tender process is not limited to organisations of a specific size or based in a specific location, tenderers must demonstrate experience and understanding of the television industry and have expertise in producing and distributing similar publications.

C.2 Contract Duration

The successful tenderer will be required to commence provision of the television listings and editorial publication service to S4C with effect from in or around 17th November 2008. Subject to S4C's rights to terminate the contract early in accordance with the terms of the contract and S4C's option to extend the contract

for a further period of up to 12 months, the contract will operate for 3 years from its effective date.

C.3 (Fixed Fee) Costs

S4C estimates that the total cost of providing the television listings and editorial publication service over a three year period in accordance with S4C's requirements should not exceed £270,000 (exclusive of VAT) (the "Budget").

S4C requires the television listings and editorial publication service to be provided for a fixed price fee to include set up costs, administrative, staffing, translation and all other costs and expenses incurred by the successful tenderer in providing the service.

Part D Information to be Included in Tender Responses

Tender responses may be submitted in Welsh or English.

All tender responses must include the information set out below following the order and headings below. You may include additional information where relevant to your tender response, but you are encouraged to avoid expensive and overly colourful presentations.

Please note that if the tender response is being submitted by a consortium, the information referred to below in this Part D must be provided in respect of each member of the consortium with the exception of that required at D.1.7 which should be provided only in respect of the lead member.

D.1 Basic information about your organisation

D.1.1 Your full name.

D.1.2 Your Legal status (e.g. private limited company, partnership, sole trader).

D.1.3 Your registered number (if applicable).

D.1.4 Your registered office address (if applicable), or, if not applicable, the address of your principal place of trading.

D.1.5 Your telephone number.

D.1.6 Your fax number.

D.1.7 The name, position, address, telephone number, fax number and email address of the individual within your organisation to whom all correspondence should be addressed.

D.1.8 Your VAT registration number (if applicable).

D.1.9 A copy of your certificate of incorporation (if applicable).

D.1.10 A brief description of your primary business activities.

D.2 Economic and Financial Capacity

D.2.1 The length of time that you have been trading. If less than three years, details of any predecessor organisation may be provided.

D.2.2 A statement showing for the previous three financial years (a) your turnover; and (b) your turnover in respect of the provision of services similar to the television listings and editorial publication service, the subject of this tender process. If you have been trading for less than three years, equivalent information for any predecessor organisation or key personnel may be provided.

D.2.3 Copies of your statutory accounts for the previous three financial years, showing your overall turnover. If statutory accounts are not available, please provide equivalent financial information endorsed at an appropriate level. If you have been trading for less than three years, equivalent information for any predecessor organisation or key personnel may be provided.

D.2.4 Details of any relevant professional indemnity insurance held by you.

D.3 Technical Capacity

D.3.1 Detail how you would create, publish and distribute the publication, in particular; by providing:

- an example of the proposed publication;
- a breakdown of the proposed lead times from approval of features and confirmation of schedule through to print and delivery;
- examples of articles in both Welsh and English;
- examples of web pages for similar on-line publications; and
- a description of the proposed content for the on-line publication including the proposed website (standalone or part of an existing website).

D.3.2 Details of the services similar to the television listings and editorial publication service, which have been provided by you during the past three years including

details of the recipients of those services and the dates on which those services were provided.

- D.3.3 Contact details for two recipients of the services detailed in your response to D.3.1 above whom S4C may contact to obtain references. Please include postal address, telephone number, fax number and email address.
- D.3.4 Have you had any contract for the provision of services similar to the television listings and editorial publication service, the subject of this tender process, terminated for poor performance in the last three years, or have any damages been claimed against you under any such contract in the last three years? If so, please provide details.
- D.3.5 Details of the quality control procedures that you would apply to the contract.
- D.3.6 Details of your environmental policy in relation to this tender (ie disposal of printed over-runs);
- D.3.7 Brief details, including experience and qualifications, of key personnel who would be involved in performing the television listings and editorial publication service.
- D.3.8 Details of your staff training and development policy.
- D.3.9 Details of your average annual number of staff and managerial staff in each of the past three years.
- D.3.10 If you intend to sub-contract part or all of the television listings and editorial publication service, please provide details of the nature and proportion of the

service that would be sub-contracted and, if known, the identity of the principal sub-contractors.

D.3.11 If this tender response is being provided on behalf of a consortium, please specify what the role of each member of the consortium will be.

D.3.12 Describe the methodologies that you would use to circulate the publication, including demographic and geographic breakdown and, on-line, how the articles and listings would be made accessible.

D.3.13 Details of your proposed marketing strategy, in particular, your plans to maintain and increase readership of the publication.

D.3.14 Detail any additional benefits or factors that your provision of the television listings and editorial publication service would offer S4C.

D.4. Fixed Price Fee

S4C requires a fixed price fee for the provision of the television listings and editorial publication service.. Please provide details of the fixed price fee that you propose for the contract broken down to show separately the annual fee in respect of the publication for:

- feature writers
- occasional photography
- design
- print
- distribution
- online costs
- the cost of any additional benefits detailed under

D.3.14

The above list is not intended to be exhaustive. Please provide details of any other costs not listed. Please also provide your proposal for year 4 should S4C decide to exercise its option to extend the contract beyond the 3 year term.

D.5 Comments on Draft Contract

Detail any comments that you have on the draft contract set out in the Schedule to this ITT. Please note in this context the provisions of Part F.4 below.

D.6 Personal Situation of Tenderer

(Note: if the answer to any question in this section is yes, please provide details in your tender response.)

D.6.1 Have you, or any of your directors or any other person who has powers of representation, decision or control over your organisation, been convicted of any act of conspiracy, corruption, bribery, fraud, money laundering or any other offence within the meaning of Article 45(1) of the Public Sector Directive?

D.6.2 Are you bankrupt or have you had a receiving order or administration order or bankruptcy restrictions order made against you or have you made any composition or arrangement with or for the benefit of your creditors or are you unable to pay or to have no reasonable prospect of being able to pay a debt or have you granted a trust deed for your creditors or become otherwise apparently insolvent or are you the subject of a petition for the sequestration of your estate or are you the subject of any similar procedure under the law of any state?

D.6.3 Have you passed a resolution or are you the subject of an order by the court for your winding up or have you had a receiver, manager or administrator on behalf

of a creditor appointed in respect of your business or any part thereof or are you the subject of any similar procedures under the law of any state?

D.6.4 Have you or any of your directors or any other person who has powers of representation, decision or control over your organisation been convicted of a criminal offence relating to the conduct of your business or profession?

D.6.5 Have you or any of your directors or any other person who has powers of representation, decision or control over your organisation committed an act of grave misconduct in the course of your business or profession?

D.6.6 Have you failed to fulfil obligations relating to the payment of social security contributions or taxes under the law of any part of the United Kingdom or of the state in which you are established?

D.6.7 Do you not possess any relevant licence or membership of an appropriate organisation or registration on a professional or trade register, where required to do so by law?

D.6.8 Have you been guilty of any serious misrepresentation in supplying information required of you in relation to procurement?

If at any time you (or, in the case of a tender response submitted by a consortium, any member of the consortium) becomes aware that any information which it (or, in the case of a tender response submitted by a consortium, any member of the consortium) has provided to S4C in connection with this tender process is incomplete, inaccurate or misleading in any respect or has ceased to be correct, you must immediately notify S4C thereof.

Part E Evaluation Criteria and Contract Award

E.1 The contract will be awarded on the basis of the most economically advantageous tender. To assess which tender response is the most economically advantageous, a panel of S4C representatives will evaluate and score all tender responses submitted in accordance with this ITT in accordance with the following criteria and weightings (not in order of priority):

	Criteria	Weighting %
(a)	The most cost effective service for S4C.	(20%)
(b)	The tenderer's experience in providing a similar service.	(20%)
(c)	The tenderer's distribution capabilities including potential circulation and geographic/ demographic reach.	(20%)
(d)	The tenderer's planning, development and policies;	(10%)
(e)	The quality of the tenderer's publication	(25%)
(f)	The tenderer's marketing strategy	(5%)

E.2 **Disqualification of Tender Responses/Tenderers**

S4C reserves the right to disqualify a tender response and/or a tenderer from this tender process at any time if:

- (a) a tender response does not comply in any respect with the requirements of this ITT;
- (b) any information provided to S4C by the relevant tenderer (or, in the case of a consortium, any of its members), is incomplete, inaccurate or misleading in any respect or ceases to be correct;
- (c) the tenderer has colluded with any person (excluding, where the tenderer is a consortium, collusion between consortium members in relation to the consortium's tender response) in relation to or in connection with its or any other tenderer's tender response;

Disqualification of any tender response or tenderer will be without prejudice to any other rights or remedies of S4C.

E.3 **Contract Award**

Subject to the provisions of Part F.1 below:

- (a) following completion of the evaluation of tender responses, S4C will inform tenderers of the results of the evaluation;
- (b) at this point tenderers will be entitled to request a debriefing from S4C if required; and
- (c) the tenderer whose tender response has been successful will be required to enter into an agreement with S4C in the form of the Draft Contract. No contract will be formed unless and until S4C executes the agreement. No

oral or written acceptance of any tender or notification that a tenderer has been successful will constitute a contract.

Please note that if a consortium submits a tender response which is acceptable to S4C, S4C may require the consortium to form a legal entity before entering into a framework agreement and/or joint and several liability of all consortium members and/or guarantees and/or undertakings by some or all consortium members in respect of some or all other consortium members may be required.

Part F Legal Notes

F.1 No Obligation to Award the Contract

Nothing contained in this ITT nor any communication between S4C and a tenderer shall constitute a contract for the provision of any service covered by this tender process nor a warranty or a representation that any contract will or may be awarded.

S4C reserves the right:

- (a) to withdraw from and/or abandon and/or defer this tender process at any time;
- (b) not to award any contract as a result of this tender process;
- (c) to supplement, revise and/or clarify the terms and conditions of this ITT;
- (d) to require tenderers to clarify their tender responses and/or to provide additional information in relation thereto; and

- (e) not to enter into a contract with a person who is not an entity which submitted a successful tender response and, where a successful tender was returned by a consortium, not to enter into a contract as a consequence thereof including without limitation if the members of the consortium differ in any respect from those members identified in the tender response.

Any supplements, revisions and/or clarifications to the terms and conditions of this ITT may be made available to tenderers via the S4C website (s4c.co.uk) by clicking on “tenders” and following the link. It is the responsibility of tenderers to ensure that they regularly check this link for supplements, revisions and clarifications.

No publicity regarding this tender process or the award of any contract is permitted without the prior express written permission of S4C.

F.2 Disclaimer

S4C gives no warranty or representation regarding the completeness or accuracy of any information contained in this ITT and any reliance placed on any such information by you is at your own risk.

F.3 Conflict Of Interest

You are required to provide details if you consider that there may be a conflict of interest between individuals involved in your tender response and S4C Staff. This is to enable S4C to ensure that it assigns staff to the tender process that have

no personal relationship with you or any of your staff or consortium members or their staff.

F.4 Draft Contract

Any comments on the Draft Contract should be included in your tender. Otherwise, by submitting a tender response you will be deemed to have accepted the terms and conditions of the Draft Contract. Notification of comments does not necessarily mean that they are or will be accepted by S4C. S4C reserves the right to amend the Draft Contract once the details of the successful tender response are known to reflect the successful tender response.

F.5 Codes of Practice and Guidelines

The successful tenderer will be required to comply with the following codes of practice and guidelines (amongst others):

- Gambling legislation applicable to any competitions which the successful tenderer runs as part of the services provided.
- The most up to date “CAP” (Committee of Advertising Practice) Competition and Promotion Code.
- S4C Welsh Language Scheme and language Guidelines (available on the S4C Production Website which is available at S4C.co.uk/production).

F.6 Freedom of Information

S4C is subject to the provisions of the Freedom of Information (“FOI”) Act 2000. If you consider that any information supplied by you to S4C pursuant to this ITT is commercially sensitive or confidential in nature, this should be highlighted

explicitly and the reasons for its sensitivity set out in full in your tender. Please note, however, that identifying information as confidential or commercially sensitive does **not** guarantee that it will be exempt from disclosure. S4C retains the discretion to decide whether or not particular information is exempt from disclosure.

F.7 Data Protection

By submitting a tender response you authorise S4C to process all information provided as part of your tender response and confirm that you have obtained all necessary third party consents to enable S4C to do so.

F.8 Confidentiality

By submitting a tender response, you agree to keep confidential any information which is not already in the public domain at the time it is disclosed or made available to you which is disclosed or otherwise made available to you by S4C in any medium whatsoever during or in connection with this tender process not to use such information for any purpose other than the preparation of your tender and not to disclose such information to any person other than in confidence and on a need to know basis to those persons who are directly involved in the preparation of your tender.

F.9 Tender Costs

Each tenderer shall be responsible for its own costs and expenses incurred in connection with this tender process. S4C will not under any circumstances contribute towards any such costs and expenses.

F.10 Amendments to Tender Documents

S4C reserves the right to make changes to the tender documents prior to the deadline for receipt of tender responses set out in Part B.1 above. To allow time for such amendment to be taken into account S4C may, at its discretion, extend the dates set out in Part B.1 above.

F.11 This ITT shall be governed by the laws of England and Wales and each tenderer agrees, by returning a tender response, to submit to the exclusive jurisdiction of the courts of England and Wales.

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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) [] [Company Number:[]] whose registered address is situate at [insert address] (the “Company”)

INTRODUCTION:

Following the publication by S4C of an invitation to tender for the provision of a television listings and editorial publication service for the North Wales area 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 policies and guidelines issued by the Regulators;
“ASA”	the Advertising Standards Agency;
“CAP”	the Committee of Advertising Practice;
“Company’s Website”	[www.]
“DPA”	Data Protection Act 1988;
“Distribution”	together the distribution of the Printed Publication throughout the North Wales area and access to the Online Publication in accordance with clause [4];
“Effective Date”	[insert date on which contract terms become effective]

“Encumbrances”	liens, charges, mortgages, pledges, equities, encumbrances securing any obligation of any person, preferential arrangements (including retention of title arrangements) and other rights, interests and claims of any nature whatsoever;
“Fee”	the fee for the Services being [<i>£insert fee</i>] or [as set out in Schedule [4]];
“FOIA”	the Freedom of Information Act 2000;
“Good Industry Practice”	that degree of skill, care, diligence and prudence reasonably and ordinarily expected from experienced and competent persons providing first class services of the same type as the Services , 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 Sections 736 and 736A of the Companies Act 1985);
“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 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;
“Issue”	each issue of the Publication;
“Key Personnel”	the key persons employed by the Company listed in Schedule 3;
“Marketing Strategy”	the marketing strategy of the Company the purpose of which is to increase readership of the Publication, the marketing strategy for [<i>dates to be inserted following agreement between S4C and the successful bidder</i>] is annexed at Schedule 5 and in respect of subsequent Years such definition shall refer to the marketing strategy directly in support of the Services as is submitted by the Company and approved by S4C in writing in accordance with clause 4;

“Ofcom”	Office of Communications;
“OFT”	the Office of Fair Trading;
“On-line Publication”	a weekly colour publication in conjunction with the Printed Publication available to access free from the Company’s web pages located via the Company’s Website comprising some of the articles/editorials and listings featured in the Printed Publication as agreed between the parties;
“Policies”	collectively all of the S4C policies expressly referred to in this Agreement as updated from time to time, including the Welsh Language Scheme and all other relevant 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 ;
“Printed Publication”	a free weekly colour publication of approximately [] pages including editorial/articles in English and Welsh about S4C Programmes, photographs relating to S4C Programmes and key analogue (until switchoff), terrestrial, digital, cable and satellite television channel listings and conforming in all respects with the Specification;] <i>[This definition will be revised following agreement between the successful bidder and S4C based on the successful tender.]</i>
“Publication”	together the Printed Publication and the On-Line Publication
“Regulations”	means the Environmental Information Regulations 2004;
“Regulators”	together ASA, CAP, OFT and any successors thereto;
“Relevant Employees”	those employees who are assigned (as the term “assigned” is defined in TUPE) to the provision of the Services immediately before the expiry or termination of this Agreement whose employment transfers to a Successor Company pursuant to TUPE;
“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 Programmes”	Welsh language programmes appearing on the S4C Service;

“S4C Representative”	Hannah Thomas or such other persons as notified by S4C to the Company in writing from time to time during the Term;
“S4C Service”	any channel, television service or website owned solely or mainly by S4C or any Group Company of S4C, including the analogue television service “S4C”, the digital television service “S4C Digidol” and the digital television service “S4C2”;
“Services”	the creation, publication and Distribution of the Publication in accordance with the terms of this Agreement;
“Specification”	the specification of the Publication as 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;
“Successor Company”	each and every company who shall provide any similar service equivalent to the Services after expiry or earlier termination of this Agreement;
“Term”	the period of three (3) years from the Effective Date during which this Agreement is in force and effect subject to the provisions of clauses 12 and 13;
“Termination Date”	the date of expiry or termination of this Agreement howsoever arising;
“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“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;
“Year”	a calendar year (1 st January to 31 st December) during the Term, or part thereof in the case of the first and 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 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 for the duration of the Term on the terms and conditions set out in this Agreement.

2.2 The Services shall include:

- 2.2.1 the design of each Issue
- 2.2.2 page and webpage make up
- 2.2.3 accurate translations of articles/editorial into English/Welsh
- 2.2.4 obtaining listings from the appropriate listings agency [to be confirmed by S4C]
- 2.2.5 proof reading articles/editorial
- 2.2.6 the supply of photographs and paper
- 2.2.7 printing and folding in respect of the Printed Publication

and all work necessary to facilitate the On-line Publication and to create, produce, print, market and distribute the Publication to the standards required by this Agreement.

- 2.3 In performing its obligations under this Agreement the Company shall and shall procure that the Staff shall at all times during the Term comply with all Applicable Laws, Policies and all reasonable instructions and directions of S4C from time to time.
- 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. Any such notification shall be without prejudice to any rights which S4C may have whether under this Agreement or

otherwise at law in respect of such inability of the Company to perform any of its obligations.

2.6 The Company shall respect the principles of the Welsh Language Scheme, of S4C's equal opportunities policy and of S4C's policy on racial equality.

2.7 The Company shall and shall ensure that all Staff shall at all times during the Term act in S4C's best interests in respect of the Publication and in particular and without limitation shall not do or omit to do anything or enter into any agreements with any person which may adversely impact on S4C's goodwill or reputation or which may conflict with S4C's best interests and/or its obligations under this Agreement.

3. **Creation, Design and Editorial Control of the Publication**

3.1 The Company shall design the format, look and outline content of the Publication in accordance with the provisions of the Specification. ***[The approval process for the design and layout of the Publication shall be subject to an approval process by S4C to be agreed with the successful bidder].***

3.2 The Company shall ensure that each Issue conforms to the Specification and the design approved by S4C and contains feature articles in Welsh and English relating to S4C Programmes to be broadcast during the seven (7) days following Distribution of that Issue.

3.3 The Company shall ensure that the Publication contains articles and editorial of a high journalistic quality including grammatically correct language (Welsh and English), interesting and relevant content.

3.4 Editorial decisions in respect of the Publication shall be discussed between the Company and S4C in good faith throughout the Term.

3.5 Each Issue shall be approved by S4C in accordance with the following procedure:

[The procedure for approval of each Issue shall be agreed between the successful bidder and S4C based on the successful tender.]

3.6 Without prejudice to its other rights and remedies S4C shall be entitled to reject an Issue if:

3.6.1 the Issue is not of a technical quality acceptable to S4C;

3.6.2 the Issue does not conform to the Specification;

3.6.3 S4C is not satisfied with the Issue editorially and the Company has not complied with the requirements of this clause 3; or

3.6.4 the Issue has not been provided for approval in accordance with the timescales set out in clause 3.5 above.

3.7 If S4C rejects an Issue, without prejudice to its other rights and remedies, S4C shall be entitled to withhold all or part of the Fee attributable to that Issue.

3.8 Notwithstanding the approval process set out in clause 3.5, S4C shall in no way be liable for the content of the Publication or any Issue and the Company shall remain responsible for the content and accuracy of all proofs.

4. **Printing, Distribution and Marketing**

- 4.1 The Company shall print and distribute a minimum of 40,000 copies of each Issue of the Printed Publication to households within the North Wales area each week during the Term.
- 4.2 The Company shall make the On-line Publication free to access via the Company's Website [] days following the date of the Printed Publication.
[The service levels, maintenance and archiving procedure for the Online Publication shall be agreed between the successful bidder and S4C based on the successful tender;
- 4.3 The Company shall throughout the Term seek to increase the readership numbers of the Publication and shall do all such activities as are set out in the Marketing Strategy during each relevant Year to achieve this aim.
- 4.4 On **[date to be agreed between S4C and the successful bidder based on the successful tender]** in each Year the Company shall provide to S4C a draft Marketing Strategy in respect of the following Year of the Term.
- 4.5 The Marketing Strategy for each Year following the first Year of the Term shall be subject to S4C's approval, which it may withhold in its absolute discretion. If S4C does not approve a Marketing Strategy submitted to it, the Company shall incorporate S4C's comments and submit further drafts for approval within ten (10) Working Days of receipt of S4C's comments. If during any Year the Marketing Strategy cannot be agreed the Marketing Strategy for the previous year shall apply until such time as the parties can agree the Marketing Strategy for the Year in question with such revisions as notified by S4C to the Company in writing.

5. **Review Meetings**

- 5.1 The Company shall meet with S4C at such times and dates reasonably requested by S4C from time to time during the Term to discuss any matter arising out of the provision of the Services which needs to be addressed at short notice. The Company shall use all reasonable endeavours to ensure that such Staff as may reasonably be requested by S4C shall attend such a meeting.
- 5.2 S4C and the Company shall meet on a six (6) monthly basis to formally review matters arising out of the delivery of the Service. 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 report setting out details relating to those matters specified in clause 5.3 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 Effective Date (the "relevant period") at least ten (10) Working Days in advance of any such meeting.
- 5.3 The review meeting shall review matters arising out of delivery of the Services including but not limited to the following:
- 5.3.1 the design, layout, editorial quality and any other issues relating to the Publication;

- 5.3.2 any changes to be made to the Services to improve the efficiency and effectiveness of the Services;
 - 5.3.3 the Company's progress against the Marketing Strategy;
 - 5.3.4 distribution figures for the Publication including demographic and geographic breakdown of readership;
 - 5.3.5 the number of viewers accessing the On-line Publication;
 - 5.3.6 effectiveness and appropriateness of the approval procedure set out in clause 3.5;
 - 5.3.7 *[details of additional matters to be discussed at review meetings to be agreed between S4C and the successful bidder based on the successful tender].*
- 5.4 Following a review meeting in accordance with clauses 5.2 and 5.3, S4C and the Company shall discuss and seek to agree in good faith any relevant amendments required to the Specification, Marketing Strategy 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 Specification, the Services or the Marketing Strategy that is agreed during any such review meeting for the outstanding duration of the Term.
- 5.5 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.

6. Staffing and Key Personnel

- 6.1 The Company agrees to employ or engage the services of a sufficient number of Staff with the appropriate journalistic, linguistic, design, web design, printing, marketing, distribution and publication skills (both printed and on-line) and experience and that are fluent in Welsh and English to ensure that the Services are provided in accordance with Good Industry Practice and the requirements of this Agreement.
- 6.2 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.
- 6.3 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.
- 6.4 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.

- 6.5 The Company shall promptly upon receiving written notice from S4C to do so remove or procure the removal of any member of Staff from any involvement in or with the provision of the Services whose conduct or behaviour is considered by S4C to be prejudicial to the interests, reputation or goodwill of S4C or inappropriate given the nature of the Services. The decision of S4C as to whether any member of Staff is to be so removed shall be final and conclusive. S4C shall under no circumstances have any liability to the Company or to any such member of Staff in respect of such removal and the Company shall indemnify S4C from and against any and all claims, demands, actions and/or proceedings made or brought or threatened to be made or brought against S4C by any such member of Staff (including legal costs and expenses on a solicitor own client basis) incurred in connection therewith and any damages awarded or settlement monies paid in connection therewith. The removal of any member of Staff under this clause 5.4 shall not relieve the Company of any of its obligations under this Agreement.

7. **Additional Benefits**

[Provisions relating to any additional benefits to be provided by the Company to S4C are to be agreed between successful bidder and S4C based on the tender document.]

8. **Intellectual Property**

- 8.1 The Company shall not use any brands, trade marks, trade names or logos of S4C in any manner during the Term or thereafter without the prior written approval of S4C.

- 8.2 S4C shall retain all Intellectual Property in all materials provided by S4C to the Company in connection with the provision of the Services and shall grant to the Company a non-exclusive, non-transferable, royalty free licence to use such materials solely in connection with performance by the Company of its obligations and services under this Agreement.

- 8.3 ***[Clauses dealing with ownership of Intellectual Property in each Issue to be agreed between the parties in accordance with the terms of the successful tender. In any event S4C must be granted a royalty free unrestricted licence to use any material created by the Company in connection with any S4C Programme or the S4C Service.]***

- 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 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. The Company hereby grants to S4C an irrevocable power of attorney (which is given to secure S4C's proprietary interest and is irrevocable in accordance with Section 4 of the Powers of Attorney Act 1971) with the right but not the obligation to do any and all acts and things necessary to give full or further effect to the provisions of this Agreement and to execute all such further deeds, documents and instruments in the name of and on behalf of the Company in the event that the Company fails to do so within a period of fourteen (14) days after receipt of a relevant request from S4C.

9. **Warranties**

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

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

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

10. **Financial Matters**

10.1 Subject to the performance by the Company of its obligations under this Agreement S4C shall pay the Company the Fee.

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

10.3 The Fee shall be inclusive of all costs and expenses incurred by the Company in providing the Services and S4C shall not be liable to meet any costs over and above the Fee.

10.4 [*Clauses dealing with payment of the Fee to be inserted following agreement between S4C and the successful bidder taking into account the pricing and invoicing structure set out in the successful tender*]

11. **Indemnity**

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

12. **Term and Option to Extend**

12.1 This Agreement shall commence with effect from the Effective Date and, unless terminated earlier in accordance with the provisions of clauses 6.4, 13 or 16.3 (Force Majeure), shall continue for the Term.

12.2 S4C shall have the option to extend the term of this Agreement by a period of twelve (12) months from the end of the Term.

12.3 S4C may exercise its option to extend the Term pursuant to the provisions of clause 12.2 at any time by giving notice in writing to the Company.

13. **Termination**

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

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

13.1.2 any of the following occurs:

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

13.1.3 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

13.1.4 S4C has rejected an Issue in accordance with clause 3.7.

13.2 Notwithstanding clause 3.1 S4C shall be entitled to terminate this agreement by providing to the Company [three (3) months] written notice at any time.

14. **Effects of Expiry or Termination**

14.1 Upon expiry or termination of this Agreement howsoever arising and subject always to the provisions of this clause 14 all rights and obligations hereunder shall immediately cease and determine without prejudice to any rights of action then accrued hereunder including any rights which either party may have in respect of a claim for damages for breach by the other party or under any indemnity.

14.2 S4C's obligation to pay the Company shall be limited to such payment as is attributable to the Services actually and properly provided by the Company to the reasonable satisfaction of S4C in accordance with the terms of this Agreement up to the date of expiry or termination.

14.3 The Company shall immediately after the Termination Date deliver at its cost to S4C:

14.3.1 all property belonging to S4C in its power, possession, custody or control including any editorial and photographic material and all S4C Confidential Information together with all copies thereof or extracts therefrom; and

14.3.2 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.

14.4 The Company acknowledges that the Company shall have no claim in respect of loss of opportunity to enhance reputation or otherwise howsoever if S4C terminates this Agreement.

14.5 Where this Agreement is terminated by S4C pursuant to clause 13.1.1 and the total cost (including any VAT) to S4C of completing the provision of the Services (whether in-house or via a third party) exceeds that part of the Fee that would have been payable to the Company had this Agreement not been terminated the Company shall pay to S4C on demand such sum as equals the amount of the excess.

14.6 The following clauses shall survive the expiry or termination of this Agreement howsoever arising: 1 (Definitions), 8 (intellectual Property), 9 (Warranties), 11 (Indemnity), 14 (Effects of Expiry or Termination), 17 (Set off), 19 (Remedies and Waiver), 20 (Announcements and Confidentiality), 21 (Data Protection and FOIA), 22 (Construction) and Schedule 2 (Warranties).

- 14.7 TUPE may apply to the expiry or termination of this Agreement and the parties agree that in the event that TUPE does so apply, that the contracts of employment of the Relevant Employees shall transfer to a Successor Company as at the Termination Date. In the event that TUPE does apply:
- 14.7.1 the Company shall ensure that all wages, salaries and other benefits including without limitation all holiday pay, payments of PAYE, national insurance contributions and pension contributions of Relevant Employees and other employees including former employees of the Company who have been engaged in the provision of the Services up to the Termination Date are satisfied;
 - 14.7.2 the Company shall indemnify and keep indemnified S4C (for itself and for the benefit of any Successor Company) from and against all actions and proceedings and all liability, loss, damages, injury, claims, costs and expenses (including legal expenses) arising from any claim whatsoever by any current or former employee of the Company in respect of or in any way relating to any period prior to and including the Termination Date;
 - 14.7.3 the Company shall comply with its obligations under Regulation 11 and 13 TUPE and shall indemnify S4C (for itself and for the benefit of any Successor Company) against all liability, loss, damages, injury, claims, costs and expenses (including legal expenses) as a result of or in connection with any breach by the Company of Regulation 11 and/or 13 of TUPE;
 - 14.7.4 S4C shall or shall use its reasonable endeavours to procure that any Successor Company shall be responsible for the payment of all salaries and the provision of all other benefits (together with relevant deductions) for Relevant Employees from the Termination Date and shall use all reasonable endeavours to procure that any Successor Company agrees to indemnify and keep indemnified the Company from and against all actions and proceedings and all liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded or incurred by the Company arising directly or indirectly in connection with the employment or termination of employment by the Successor Company of the Relevant Employees.
- 14.8 In the event that TUPE does not apply on expiry or termination of this Agreement, the Company shall be responsible for any ongoing costs (including redundancy payments) in relation to all of its employees and shall indemnify S4C (for itself and on behalf of any Successor Company) against all direct claims, costs, demands, liabilities and expenses (including legal expenses) arising from any claim whatsoever by or on behalf of any current or former employee of the Company or person who is or has at any time been engaged in the provision of the Services prior to the Termination Date or otherwise.
- 14.9 The Company shall within a period of 6 months prior to the expiry of this Agreement or following notification by S4C to the Company of its intention to terminate or re-tender this Agreement:
- 14.9.1 provide to S4C promptly and at no cost full and accurate details regarding the number, identity, age, sex, length of serve, job title and terms and conditions of employment, which shall include all employee liability information under Regulation 11 TUPE, in respect of and other matter affecting any person employed or engaged by the Company in the provision of the Services (“Company Assigned Employees”) who it is expected, if they remain in the employment of the Company until immediately before the Termination Date, would be Relevant Employees (“Retendering Information”);

- 14.9.2 notify S4C forthwith in writing of any material changes to the Retendering Information as and when such changes arise;
 - 14.9.3 be precluded from making any increase or decrease in the numbers of Company Assigned Employees without the prior written consent of S4C (such consent not to be unreasonably withheld);
 - 14.9.4 be precluded from transferring any of the Company Assigned Employees to another part of its business or moving other employees from elsewhere in its business who have not previously been employed or engaged in providing the Services without the prior written consent of S4C (such consent not to be unreasonably withheld); and
 - 14.9.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of employment of the Company Assigned Employees without the prior written consent of S4C (such consent not to be unreasonably withheld).
- 14.10 The Company shall indemnify and keep indemnified in full S4C and/or any Successor Company against all losses arising from any claim by any party as a result of the Company failing to provide or promptly to provide S4C with any Retendering Information or failing to provide full Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information.

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 and/or any part thereof and the Company shall enter into such deeds of novation in respect thereof as S4C shall reasonably require.
- 5.2 This Agreement are 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.

16. Force Majeure

- 16.1 "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.
- 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 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.
- 16.3 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.

20. Announcements and Confidentiality

- 20.1 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.
- 20.2 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 20.3 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.
- 20.3 The restrictions on disclosure contained in clause 20.2 shall not apply to any information which:
- 20.3.1 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
 - 20.3.2 is required to be disclosed by law or by any regulatory body with whose rules S4C is required to comply.

21. Data Protection and FOIA

- 21.1 All personal data of Staff provided to S4C by the Company in connection with the provision of the Services may be processed by S4C in accordance with the management and administration of this Agreement and 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, a copy of which shall be provided to the Company.
- 21.2 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:
- 21.2.1 provide S4C with a copy of all relevant information in its possession or power in the form that S4C requires; and
 - 21.2.2 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).
- 21.3 S4C shall be responsible for determining whether the information:
- 21.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Regulations; or

- 21.3.2 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.
- 21.4 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.
- 21.5 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.
- 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 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.
- 22.3 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.
- 22.4 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 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.
- 22.5 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.
- 22.6 No variation to this Agreement shall have any force or effect unless in writing and signed by duly authorised representatives of the parties.
- 22.7 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.

SCHEDULE 1

SPECIFICATION

[The specification for the publication shall be agreed between S4C and the successful bidder based on the requirements of the Invitation to Tender document and the tender submission of the successful bidder. The Specification shall include the following details:

- ***In respect of the Printed Publication, the dimensions of the Publications***
- ***In respect of the On-line Publication, the web page(s) design and layout***
- ***The requirement for the Publication to include editorial/articles in respect of S4C programmes in English and Welsh***
- ***The requirement for the Publication to include the listing of terrestrial and digital channels targeting viewers and potential viewers in the North Wales area.***
- ***Details of any regular editorial content requirements of the Publication***
- ***Minimum requirement regarding information to be provided on the front cover of the Publication regarding the S4C Service***
- ***Days on which each Issue of the Publication is to be distributed/made available for access via the Company's Website.***
- ***Requirements regarding representation of the S4C brand.***

SCHEDULE 2

WARRANTIES

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

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

- (j) the number of copies of each Issue of the Printed Publication distributed shall be not less than the required number specified in clause 4.1 and shall be distributed each week on the weekday specified in the Specification;
- (k) each issue of the On-line Publication shall be available to access for free via the Company's Website and shall be maintained for a minimum period of [] days from the date of the corresponding Printed Publication.
- (l) each Issue and all material contained in each Issue shall (except to the extent supplied by S4C) be wholly original to the Company, shall not have been previously published by the Company or any other third party in any place in the world and shall not infringe the copyright or any other rights of whatever nature of any other party;
- (m) it shall ensure that S4C shall be granted the right to use, edit, modify, adapt and re-use all or part of any material featured in any Issue which relates to S4C, the S4C Service or any S4C Programme in any manner as S4C deems appropriate in its absolute discretion;
- (n) it shall not without S4C's prior written consent enter into or conclude any agreement with any third part relating to the Publication and shall not include any material in the Publication that could be construed as an advertisement on the part of another broadcaster;
- (o) the Company has maintained or will from the Effective Date maintain comprehensive registrations under the DPA in relation to the processing of Personal Data by the Company; and
- (p) 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.

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

MARKETING STRATEGY

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

Executed and unconditionally)
delivered as a deed by)
S4C)
acting by its Authorised Representative)

Authorised Representative

Executed and unconditionally)
delivered as a deed by)
[])
acting by two directors /)
a director and its secretary)

Director

Director/Secretary