

Invitation for applications to create and sell merchandise

Date of publication: 16 November 2009

Deadline for expressions of interest: 17:00 on 27 November 2009

Deadline for receiving applications: 17:00 on 7 December 2009

1. **Introduction**

Following the Communications Act 2003, the relationship between S4C and its programme suppliers changed. As a result, the independent producers now usually own the intellectual property in the content they create for S4C and they reserve the right to exploit that intellectual property commercially. In some cases, however, S4C owns the intellectual property. S4C also owns the intellectual property for the period before the changes arising from the Communications Act 2003 were made.

S4C has licensed one of its subsidiaries, S4C Rhyngwladol Cyf (“S4C International”), to exercise merchandising rights in relation to programmes and characters owned by S4C. S4C International believes that opportunities may exist to create income from exercising merchandising rights in Welsh in these programmes and characters. S4C International wants to offer licences to others to produce and distribute merchandise and would like to invite applications from those with an interest in doing so. S4C International will not be contributing to the cost of production and distribution of merchandise.

2. **The Invitation**

S4C International invites applications for licences to exercise Merchandising Rights in the Programmes and Characters.

The **Merchandising Rights** are the rights to produce, publish and distribute books and other publishing material, tapes, CD’s, videos, DVD’s, other audio and audiovisual products, toys, clothes and other merchandise based on the Programmes and Characters. In the case of books and other publishing material and audio and audiovisual products, only rights to produce, publish and distribute Welsh versions are being offered. In the case of **Sam Tân**, only rights to produce and distribute DVDs (in Welsh) are being offered.

The **Programmes and Characters** are:

- **Cyw** (including Cyw, Plwmp, Deryn, Llew, Bolgi and Jangl). Rights are offered in relation to the characters, songs and content of links only, but not to other material relating to programmes which are based on **Cyw**’s characters. Also, no rights are being offered to create material relating to programmes which are not based on **Cyw** characters;
- **Sam Tân** (Series 6 which was broadcast in 2008/2009 and was produced by HIT Entertainment). Only rights to produce and distribute DVDs (in Welsh) are being offered.

Applicants may submit proposals to exercise the Merchandising Rights for all or only some of the Programmes and Characters. Applicants may also submit proposals to exercise only certain elements of the Merchandising Rights (e.g. only to produce DVD's).

As S4C International wishes to license the best applicant(s) to distribute the widest possible range of merchandise, it is possible that S4C International will decide to contract with more than one applicant for different categories of merchandise.

If an applicant intends to prepare applications for more than one category of merchandise, the applicant is asked to note whether it would be ready to accept a licence for only some of those categories. Please note that if the applicant states that it would not be ready to accept a licence for only some of the categories, it is possible that S4C International may decide not to award a licence for any category to that applicant.

3. **Application Form and Business Plan**

All applicants are required to complete and return an application form and business plan in the form which appears in the appendix to this invitation (the 'Appendix'). In order to enable S4C International to compare applications, applicants are asked to complete a business plan for each category of merchandise. For example, if the applicant wants to sell books, toys and DVD's, it will be required to complete three business plans.

4. **Conditions**

Any successful applicant will be expected to sign a licence agreement with S4C International. The conditions of the licence agreement will include (but not be limited to) the following conditions:

- The agreement will be for a period of two years.
- The licensed rights will be subject to the rights of third parties as disclosed by S4C International and to S4C's right to sell its old stock of merchandise as disclosed by S4C International, but otherwise they will be exclusive, worldwide rights.
- The material will be produced and sold under the brand of the successful applicant but will give credit to S4C and display S4C's logo.
- The applicant will comply with S4C's Brand Guidelines and (to the extent that material relates to any element of the **Cyw** service) with the **Cyw** Brand Guidelines.

- All material will require S4C International's approval (as regards its nature, form and content) before it is published and distributed. Material is expected to be of high quality.
- The material is expected to comply with relevant laws and regulations and with relevant S4C policies and guidelines, which are available on S4C's website.
- The successful applicant will be responsible for securing any certificate required by the BBFC (British Board of Film Classification) and ensure that any required certificate, warning, advice or information appears on relevant material.
- Applicants will be expected to arrange appropriate insurance, whether this be errors and omissions insurance or product liability insurance according to the nature of the product.
- The applicant will pay a licence fee and/or a share of net income from exercising the Merchandising Rights to S4C International in accordance with what is agreed in the contract.
- The applicant will be responsible for securing and paying for any rights clearances and music licences needed to produce, publish, distribute and sell the product.
- The applicant will be responsible for distributing the income resulting from product to those with rights to participate therein, including the licence fee and/or share of income to S4C International and payments to contributors.
- S4C International or S4C will have the right to ask to receive stock of the product from the applicant as reasonably required, and S4C International or S4C have the right to take commission on any sales of stock by them, in accordance with the level of commission agreed in the licence agreement.
- S4C International will have the right to terminate the licence agreement if the applicant does not meet the targets set out in the licence agreement.
- The applicant will be responsible for all costs of designing, producing, publishing, distributing and selling the material. S4C International will not contribute to these costs.
- S4C International will not give any warranty in relation to the commercial potential for the Programmes and Characters. Applicants are expected to satisfy themselves in relation to this.

5. Applications

5.1 Expressions of Intention to Apply

If you wish to make an application following this Invitation, you must confirm your intention to do so by 17:00 on 27 November 2009, noting the category/categories of merchandise which you intend to apply for. You must send an e-mail containing such confirmation and details by the time noted above to:

E-mail: panel@s4c.co.uk

If no such confirmation and details are received by the time noted above, S4C International has the right to disregard your application. S4C International also has the right to disregard any application relating to a category/categories of merchandise not referred to in the confirmation of intention to apply.

5.2 Submission of Applications

You are requested to submit an application form and business plan in Welsh or in English in accordance with the requirements in the Appendix, in electronic form, by 17:00 on 7 December 2009.

You should clearly mark “Merchandise Application” as the header of the e-mail, and send it by the deadline stated above to:

E-mail: panel@s4c.co.uk

S4C International accepts no responsibility for any shortcomings in the delivery system or for any lost, delayed or defective applications. You are responsible for ensuring that your applications (and any attachments) are prepared in good time (taking into account the possibility of staff absences or that technical failures could arise) and that they are submitted prior to the closing deadline noted above.

Please note that 20Mb is the maximum e-mail size that S4C International can accept and permissible file formats are Word, Excel, PDF and Jpeg. These file formats are acceptable as Zip files. You should be aware that your own ISP (Internet Service Provider) may impose lower limits on the maximum e-mail capacity and as such you are advised to check the size limit with your own ISP or IT department well in advance of the closing deadline.

Proof of despatch will not be deemed to be proof of delivery and you are advised to seek an acknowledgement of receipt in a separate e-mail.

5.3 **Consideration of Applications**

We will consider all applications received by S4C International in accordance with the requirements set out in this Invitation and all additional information provided at S4C International's request. The award of licence(s) will be based on S4C International's assessment of the proposals which offers best overall value in accordance with the criteria set out in Section 5.8 below.

5.4 **Clarification of Applications**

S4C International may require you to provide further information and/or clarification of any matters contained in your application.

5.5 **Interviews**

It is not intended to hold interviews, but S4C International reserves the right to hold discussions with any applicant where further information or clarification is needed.

5.6 **Notification of Results of Evaluation**

Everyone who submits an application will receive our evaluation via e-mail. See 5.8.4 below.

5.7 **Requests for Further Information**

If you need to contact S4C International regarding this process, including making any request for further information and/or guidance on completing an application or business plan, this should be done by sending an e-mail to: panel@s4c.co.uk

You must not in any way seek information about this process from any officer, employee, agent or adviser of S4C International or S4C.

You are encouraged to identify any further information and/or guidelines which may be necessary in relation to this process as soon as possible.

In the interests of fairness and transparency please note that all requests for further information and/or guidance in respect of this process and responses by S4C International to any such requests will be disclosed to all applicants. Such disclosures will be published on S4C's website http://www.s4c.co.uk/tendrau/e_index.shtml and you are advised to check whether any such responses have been disclosed prior to completing your application.

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 for this. However, please note that S4C International will determine, in its sole discretion, whether it considers any such request to be commercially sensitive. If S4C International determines that a request is commercially sensitive it will not disclose the request or its response to such request to other applicants. If S4C International determines that a request is not commercially sensitive it will inform you. If you agree that the request is not commercially sensitive S4C International will respond to the request and will be entitled to disclose the request and its response thereto to all applicants. If you do not agree that the request is not commercially sensitive or do not inform S4C International whether or not you so agree within a period of one working day, the request shall be deemed to be withdrawn and S4C International will not respond to it. Nothing in this paragraph will be interpreted or construed as limiting in any way S4C International’s ability to disclose any information it must disclose by law or relevant regulations.

Any requests and any responses to them which are disclosed to all applicants will form part of this Invitation.

5.8 Evaluation Criteria and Contract Award

5.8.1 Compliance Check

Prior to commencing formal evaluation of applications, S4C International will review them to ensure that they fully comply with the requirements of this Invitation. Non-compliant applications may be rejected. Applications that fully comply will be evaluated by S4C International in accordance with the provisions set out in 5.8.2.

5.8.2 Evaluation

Any licence(s) will be awarded based on the best overall value offered to S4C International, with the intention of ensuring that licences are issued for the widest possible range of categories of merchandise and Programmes and Characters and to ensure that the merchandise reaches as wide a market as possible. In order to assess the applications, a panel of S4C International representatives will evaluate and compare the business plans relating to the category of merchandise. The business plans will be scored in accordance with the criteria and weightings at (i) to (vi) below.

After evaluation of the criteria at (i) to (vi) below, S4C International will consider whether licensing more than one category of merchandise to any applicant would represent the best overall value to S4C International. In considering the best overall value, it is possible that S4C International will not offer a licence to those who have scored highest in all (or any) category of merchandise.

	Criteria	Weightings
(i)	The turnover expected to be achieved for each category of merchandise.	15
(ii)	The applicant's ability to design, produce, publish, distribute and sell the category of merchandise during the term of the agreement (including consideration of the applicant's financial standing, the applicant's insurance arrangements, distribution arrangements, lead-in time before the material will be available to the public).	15
(iii)	Experience of designing, producing, publishing, distributing and selling the category of merchandise, including obtaining BBFC certificates where appropriate.	15
(iv)	The key individuals in the application for the category of merchandise.	10
(v)	The share of net income and/or the licence fee payable to S4C International and the payment arrangements for the category of merchandise.	15
(vi)	Rate of commission if S4C International/S4C sells the category of merchandise.	5

5.8.3 Disqualification of Applications/Applicants

We reserve the right to disqualify applications or applicants from this process at any time if the following applies:

- (a) the application does not comply with the requirements of this Invitation in any way;
- (b) any information given to us is incomplete, inaccurate or misleading in any way or is no longer correct; or
- (c) the applicant has colluded with any person (excluding, where the applicant is part of a consortium, collusion between consortium members in relation to this application) in relation to its own or any other application.

Disqualification of an application or applicant will not affect S4C International's other rights and remedies.

5.8.4 **Awarding the Licence(s)**

After completing the evaluation of applications, S4C International will notify the applicants of the evaluation results. Applicants will have the right to ask for feedback as necessary. Successful applicants will be asked to commit to an agreement with S4C International in the form of a licence. No agreement shall be formed unless and until S4C International signs the licence agreement. No oral or written acceptance of any application, or notification that any applicant has been successful, will constitute a binding agreement.

6. **Legal Notes**

6.1 **Disclaimer**

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

6.2 **No obligation to offer a licence**

Nothing contained in this Invitation or any communication between S4C International and the applicant regarding this process or the application shall constitute a contract for the provision of any service covered by this application process, nor a warranty or representation that any contract will or may be awarded.

S4C International reserves the right to withdraw from and/or abandon and/or defer this process at any time, not to award any contract as a result of this process, to supplement, revise and/or clarify the terms and conditions of this Invitation and/or to require applicants to clarify their responses and/or provide additional information in relation thereto.

6.3 **Conflict of Interests**

Each applicant must provide details if it is envisaged that there may be a conflict of interests between individuals involved in the application and S4C staff or S4C International officers. This is to enable S4C International to ensure that it assigns staff to this process who have no personal relationship with any applicant or any member of a consortium.

6.4 **Freedom of Information**

The Freedom of Information (“FOI”) Act 2000 applies to S4C but not to S4C International. If S4C possesses any information from or relating to S4C International, then the FOI Act applies to that information. If any applicant considers that any information provided by it to S4C International as a result of this Invitation is of a confidential or

commercially sensitive nature, the applicant should indicate this explicitly and the reasons for considering such information to be confidential or sensitive information. If relevant, S4C International and/or S4C will consider this when deciding whether to release information in response to FOI requests. However, applicants must accept that S4C International and/or S4C will release such information if it has legal advice that it must do so in order to comply with the FOI Act. S4C International and/or S4C retain the right, in their absolute discretion, to decide whether any particular information is exempt from disclosure.

6.5 Data Protection

By submitting an application, the applicants authorise S4C International and S4C to process all personal information provided as part of the application in accordance with the Data Protection Act 1998 and confirm that they have obtained all necessary third party consents to enable S4C International and S4C to do so.

6.6 Confidentiality

By submitting an application, the applicants agree to keep confidential any information disclosed or made available to applicants by S4C International in any way during or in connection with this process. Applicants agree not to use such information for any purpose other than the purpose of preparing an application, and not to disclose such information to any other person other than in confidence and on a need to know basis, to those persons who are directly involved in the preparation of the application. The confidentiality obligations will not apply to information already in the public domain at the time it is disclosed.

6.7 Implications of Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)

S4C International does not foresee that any employee of S4C, S4C International or other provider will be subject of a TUPE transfer in connection with providing licence(s) as a result of this process.

6.8 Application Costs

Each applicant is responsible for the costs and expenses which are payable in connection with this process. S4C International will not under any circumstances contribute towards any such costs and expenses.

6.9 Amendments to the Invitation

S4C International reserves the right to make changes to this Invitation and any other document forming part of this Invitation prior to the deadline set out in 5.1 above. In order to enable consideration of any such amendments, S4C International may, in its discretion, extend the date set out in 5.1 above.

6.10 Copyright

S4C International owns the copyright in relation to this Invitation and any other materials published or provided by S4C International. Applicants are not permitted to copy, reproduce, use or issue copies of the Invitation or such materials (or any part of them) except to the extent required in order to prepare and submit their responses.

6.11 Non-Collusion

By submitting an application in response to this Invitation, each applicant confirms that:

1. the application is bona fide and competitive;
2. the applicant has not submitted or changed the application in accordance with any agreement or arrangement with any other person (except in relation to a consortium, with other members of the consortium) or asked any other applicant to do the same thing; and
3. the applicant has not discussed or consulted with any person other than S4C International in relation to any sum or draft budget or financial terms in its response, except where such discussion or consultation is confidential and necessary to obtain an insurance premium or other quotations required for preparing its response to this Invitation.

6.12 Governing Law

This Invitation is governed by the laws of Wales and England and all applicants agree, by returning the application, to be bound by the exclusive jurisdiction of the courts of Wales and England.

APPENDIX

APPLICATION FORM TO S4C RHYNGWLADOL CYF FOR CREATING AND SELLING MERCHANDISE

PART 1: APPLICANT'S DETAILS

Name of Applicant:																					
Address:																					
Contact Name:																					
Contact Details: E-mail: Tel: Fax:																					
How many business plans are enclosed and category/categories of merchandise to which they relate:	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Books</td> <td style="width: 10%; text-align: center;"><input type="checkbox"/></td> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;"><input type="checkbox"/></td> <td style="width: 10%;">Tapes/CD</td> </tr> <tr> <td>Video/DVD</td> <td style="text-align: center;"><input type="checkbox"/></td> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Clothes</td> </tr> <tr> <td>Toys</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Other (provide details)</td> <td style="text-align: center;"><input type="checkbox"/></td> <td></td> </tr> <tr> <td colspan="5" style="text-align: right;">.....</td> </tr> </table>	Books	<input type="checkbox"/>		<input type="checkbox"/>	Tapes/CD	Video/DVD	<input type="checkbox"/>		<input type="checkbox"/>	Clothes	Toys	<input type="checkbox"/>	Other (provide details)	<input type="checkbox"/>					
Books	<input type="checkbox"/>		<input type="checkbox"/>	Tapes/CD																	
Video/DVD	<input type="checkbox"/>		<input type="checkbox"/>	Clothes																	
Toys	<input type="checkbox"/>	Other (provide details)	<input type="checkbox"/>																		
.....																					
If you are supplying business plans for more than one category of merchandise, please state whether you are prepared to accept a licence for some of the categories only:	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>Note any relevant comments:.....</p> <p>.....</p>																				
Applicant's accounts for the last two financial years (to be attached). If the accounts have been audited, please send the audited accounts.																					

PART 2: BUSINESS PLAN

Please note:

- (1) Applicants are expected to complete a separate business plan for each individual category of merchandise.**
- (2) If there is insufficient space below, further pages may be added.**

Category of merchandise:	
Character and Programmes:	
How and where the category of merchandise will be distributed (including details of shops and websites):	
The projected turnover from the category of merchandise over the next two years, indicating how many units are expected to be sold and price for each unit:	
How the applicant will pay S4C International for exercising the Merchandising Rights for the category of merchandise i.e. licence fee and/or share of net income:	
Rate of licence fee and/or share of net income payable by the applicant to S4C International for the category of merchandise:	
How often the applicant would account to S4C International for the payments:	
Full details of how the payment to S4C International is calculated in relation to the category of merchandise. For example: <ul style="list-style-type: none">(a) which items are deducted from the gross income to calculate net income; and(b) the maximum sum that can be deducted for these items (can be expressed as a percentage of gross income).	

<p>When the applicant would begin making payments to S4C International for the category of merchandise, noting any threshold for payments to begin:</p>	
<p>Expected costs of the applicant for designing, producing, publishing, distributing and selling the category of merchandise, showing full details of these costs:</p>	
<p>Details of the applicant's arrangements with third parties for services or goods needed to design, produce, publish, distribute and sell the category of merchandise:</p>	
<p>Applicant's experience of designing, producing, publishing, distributing and selling the category of merchandise:</p>	
<p>Key individuals who will be involved with the category of merchandise and relevant experience:</p>	
<p>Insurance details for the category of merchandise:</p>	
<p>Experience of obtaining BBFC certificates for such material where relevant:</p>	

<p>What commission or other terms are offered to S4C International/S4C if S4C International/S4C sells the category of merchandise on behalf of the applicant:</p>	
<p>Length of time following the award of the licence to the applicant before the category of merchandise is available to the public:</p>	