**THIS AGREEMENT is made the day of 2022**

# BETWEEN

(1) **S4C** of Canolfan S4C: Yr Egin, Carmarthen, SA31 3EQ (“**S4C**”);

and

(2) **[Company]** (Company number [ ]**)** whose registered office address is situated at [address] (“**the Company**”).

# INTRODUCTION

Following the publication by S4C of an invitation to tender for the development and submission of connected device app and the submission by the Company of a response, S4C wishes to enter into an agreement with the Company and the Company has agreed to develop, maintain, update and distribute the App Versions (as defined below) on the terms and conditions set out in this Agreement.

IT IS AGREED as follows: -

1. **Definitions and Interpretation**

1.1 In this Agreement, including the recitals, the following terms shall have the meanings set opposite them unless the context otherwise provides:

Acceptance Tests: technical acceptance tests carried out by S4C and/or any third party distributor in respect of the App Versions;

Acceptance Date: the date on which S4C confirms in writing to the Supplier that the App Versions have been accepted by S4C;

Act: the Copyright Designs and Patents Act 1988 as amended from time to time;

App Versions: bi-lingual software Application Version for connected devices which are comprised of Software developed for operation on the Operating Systems in accordance with the App Design & Specification and the terms of this Agreement;

App Design

& Specification: the design and specification of the App set out in Schedule 1;

Bespoke Software: any developments enhancements or modifications of any Existing Software or Third Party Software together with the source code and any new software written produced or developed in accordance with the provision of the Services;

Business Day: a day, other than a Saturday or a Sunday on which clearing banks are generally open for business;

Compliance Guidelines: to the extent such guidelines apply to the Services, all policies and guidelines as published from time to time on the S4C production website at <http://www.s4c.cymru/en/cynhyrchu/page/1154/canllawiau/> including S4C’s Welsh Language Guidelines, S4C’s Equality and Diversity Policy the S4C Compliance Notice and such other guidelines as shall be provided to the Supplier by S4C during the Term all as varied or revised from time to time as S4C considers necessary and all of which are hereby incorporated into this Agreement by reference, and any further compliance or technical guidelines issued by any third party distributor of the App Versions from time to time during the Term;

 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 and/or the Supplier which is disclosed or made available for the purposes of or generated under this Agreement and whether before, on or after the Effective Date, together with the existence or subject matter of this Agreement and/or any information which has been designated as confidential in writing or that ought to be considered as confidential and/or all Personal Data;

Data Protection Laws: (i) the Data Protection Act 2018 and the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018; and (iii) any new national data protection laws;

Effective Date: [ ]

Existing Software: any software developed by the Supplier or any third party prior to the Term and to be used in the App Versions as listed in Schedule 1;

Fault: any fault, error, bug and/or configuration problem in the App Versions which results in the operation of the App Versions being impeded or not functioning in accordance with App Design & Specification and the terms of this Agreement;

Fee: £[ ];

FOIA: the Freedom of Information Act 2000;

Force Majeure: means as defined in clause 17;

Fraud: any offence under any laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud S4C;

GDPR: General Data Protection Regulation EU 2016/679;

Good Industry Practice: means the standard of skill, care, knowledge and foresight which would reasonably and ordinarily be expected from an experienced person engaged in providing services which are the same as, or similar to, the Services;

Intellectual Property Rights: means all intellectual property rights of any nature whatsoever throughout the world and for the full duration of any and all intellectual property protection afforded to the same including, without limitation, all: patents, registered trademarks, service marks, copyright, designs and any and all applications for registration of any of the same wherever made; and all unregistered trademarks, service marks, designs, design right and copyright; and databases, know how, trade secrets and confidential information howsoever arising; and computer software and source codes and any right or interest in any of the foregoing;

Key Personnel: the key individuals employed by the Supplier as listed in the App Design & Specification;

Launch: the launch to S4C’s satisfaction of the App Versions on the Operating Systems in accordance with the Work Timetable;

Manager: [ ];

Milestones: the approval stages listed in Schedule 2;

New Release: a new release of all or any part of the App Versions in which previously identified faults have been remedied;

New Supplier: a supplier (other than the Supplier) appointed by S4C to provide the Services (or a similar Service) as a successor to the Supplier on termination or expiry of this Agreement;

New Version: any new version of the App Versions released by the Supplier following the Acceptance Date which provides additional enhancements, revisions and/or improved functionality or performance;

Operating System: the operating system(s) controlling the devices on which the App Versions will be available as may be varied during the Term and as set out in Schedule 1;

Personal Data: has the meaning given to that term in Data Protection Laws;

Regulations: the Environmental Information Regulations 2004;

S4C Compliance Notice: the S4C Compliance Notice included on the S4C Authority website;

S4C Representative: **Steve Cowin**,or any other person or persons notified to the Supplier by S4C from time to time in writing;

Service Level Agreement: the agreement set out in Schedule 3;

Services: the services to be supplied by the Supplier under this Agreement as more accurately detailed in clause 2.2;

Software: together the Existing Software and the Bespoke Software;

Source Codes: the source codes and object codes of the App Versions;

Supplier’s Materials: all materials created by the Supplier (other than the Existing Software) directly in the performance of the Services in such language or languages as S4C shall request including text and other materials;

S4C Marks: S4C’s trade marks, trade names or logos as notified by S4C to the Supplier from time to time;

Term: the term of this Agreement which shall commence with effect on the Effective Date of this Agreement and shall continue thereafter for a period of 2 years subject to clause 12 with the option to extend thereafter;

Third Party Software: all software used by the Supplier (other than the Software) in the provision of the Services;

Warranty Period: the period of two (2) years following Launch of the App Versions; and

Work Timetable: the timetable for performance by the Supplier of the Services as set out in Schedule 2.

1.2 Any reference to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended modified extended or re-enacted whether before or after the date of this Agreement and to all statutory instruments orders and regulations amending, modifying and/or extending such statute or provision.

1.3 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate unincorporated associations and partnerships.

1.4 Unless otherwise stated time shall be of the essence for the purpose of the performance of the Supplier’s obligations under this Agreement.

1.5 The subject headings to the clauses of this Agreement are for guidance only and are not intended to limit or restrict the wording of any clause in any way.

* 1. The terms "include" or "including" are to be construed without limiting the generality of the words that precede them.

1.7 References to clauses are to clauses and sub-clauses of this Agreement and references to schedules are to schedules to this Agreement.

1.8 “Writing” shall include any modes of reproducing words in a legible and non-transitory form and shall include facsimile transmission or similar and emails.

1.9 The provisions of this Agreement shall apply to all updating of the App Versions (if required in accordance with the App Design & Specification) as well as to the initial development and delivery of the App Versions.

2. **Engagement and Services**

2.1 S4C engages the Supplier to provide the Services to S4C throughout the Term in accordance with the terms of this Agreement.

* 1. The Supplier will undertake the following to the satisfaction of S4C (“**the Services**"):
		1. **App Development Services:** The Supplier will do all acts and things necessary to design, produce, develop, build, test and deliver the App Versions to S4C in accordance with the App Design & Specification, the Work Timetable and the reasonable instructions of S4C from time to time;
		2. **App Distribution:** The Supplier will ensure that the App Versions are distributed in accordance with the App Design and Specification and will do all acts and things necessary to maintain the App Versions and ensure that users are able to access the App Versions in the United Kingdom 24 hours a day every day throughout the Term subject only to the provision of the Service Level Agreement;
		3. **Management and Updating:** The Supplier will make any changes to the App Versions as required in order to resolves any Fault in accordance with the Service Level Agreement and in order to ensure that the App Versions are operational on any updated Operating System;
		4. **Software:** The Supplier will, at its cost and expense, (where relevant) acquire copies of all such Third Party Software and create and provide all Software as is necessary for the proper provision of the Services under this Agreement and shall ensure that all such Third Party Software and Software comply with the requirements of clause 4. In the case of any Third Party Software, the Supplier will (unless otherwise specifically agreed in writing by S4C) acquire the same on such terms as enable it to provide the Services under this Agreement without any limitation and will enable S4C or its subcontractors to license such Third Party Software direct from such third party upon the expiry or termination of this Agreement; and

2.2.5 **Reports:** The Supplier will provide reports confirming anonymous App Versions’ usage information including how the App Versions are used by those who downloaded it, throughout the Term in accordance with Schedule 1.

* 1. The Supplier undertakes to notify the S4C Representative immediately in writing if at any time and for any reason it appears that completion of any milestone set out in the Work Timetable may be delayed beyond the relevant completion date in respect thereof. Any such notice shall specify the reasons for any likely failure to meet such completion date.

3. **App Content and Acceptance Tests**

3.1 Creation and design of the App Versions in accordance with the App Design & Specification, the Compliance Guidelines and the terms of this Agreement shall be the responsibility of the Supplier and the Supplier shall consult on a regular basis with the S4C Representative on all aspects of providing the Services.

3.2 The Supplier acknowledges and agrees that S4C shall have ultimate editorial control of the App Versions and its contents and shall deliver to the S4C Representative a prototype version of the App Versions in accordance with the Work Timetable. Due consideration shall be given to ideas or suggestions offered by the Supplier but in the event of any dispute the decision of S4C shall be final and binding. The Supplier further agrees to comply with the requirements of S4C as explained by the S4C Representative from time to time.

3.3 The Supplier shall not publish the App Versions until they have received S4C’s written approval.

3.4 The Supplier shall not modify neither the App Versions nor the Software nor alter or amend any of their contents in any substantial way (other than minor technical modifications and routine content updates) nor add any new material to the App Versions without the prior approval of the S4C Representative.

3.5 The Supplier shall develop the App Versions in accordance with the requirements and Acceptance Tests required for publication on the Operating Systems. If an Acceptance Test fails, the Supplier shall carry out any necessary modifications and re-deliver the relevant item(s) as soon as reasonably practicable after such test (and in any event in time to enable the Launch of the App Versions in accordance with the Work Timetable).

3.6 Where the failure to satisfy an Acceptance Test is wholly or mainly attributable to the Supplier, the costs incurred by the Supplier in modifying and re-delivering the relevant item(s) shall be borne by the Supplier.

3.7 For the avoidance of any doubt the fact that an Acceptance Test has succeeded shall not in any way limit the Supplier's obligations under clause 11.1.

4. **Software**

4.1 The Supplier undertakes to ensure that all Software and Third Party Software:-

* + 1. conforms with and implements quality standards, which are generally accepted for apps of the same type that are available to the public from time to time;

4.1.2 is commercially available without restriction, including any restrictions or conditions of use imposed by shareware or analogous software;

* + 1. does not contain any disabling programs or similar devices; and

4.1.4 is approved in advance in writing by S4C.

4.2 The Supplier agrees that S4C shall at all times be entitled during normal working hours and upon reasonable notice to inspect any licences in respect of Third Party Software.

4.3 The Supplier agrees:-

4.3.1 to deposit with S4C on completion of the Work Timetable true and complete copies of the Source Codes in the form supplied to the owner or operator of the Operating System(s) together with copies of all documentation, licences and material including, without limitation, program notes which S4C considers necessary for further operation of the App Versions; and

4.3.2 that it shall not destroy any Source Codes or program notes relating to the App Versions and the Software without the prior written approval of S4C, not to be unreasonably withheld or delayed.

4.4 The Supplier shall notify S4C in writing if the Supplier releases a New Version of the App Versions following the Acceptance Date noting the following:

4.4.1 the costs of delivery and operation of the New Version in accordance with the App Design & Specification; and

4.4.2 details of the differences between the New Version and the App Versions are delivered to S4C as to practicality, performance and compatibility.

4.5 Nothing in this Agreement shall oblige S4C to pay for any New Version.

5. **Supplier’s General and Staff Obligations**

* 1. The Supplier undertakes to S4C that the Services will be performed:
		1. in an efficient and safe manner in accordance with Good Industry Practice and by the Key Personnel;
		2. in accordance with the Compliance Guidelines and all laws and regulatory requirements from time to time applicable to the performance of the Services.
	2. The Supplier agrees to employ or engage a sufficient number of employees, staff or consultants necessary for provision of the Services, and the Supplier will ensure that such staff shall possess appropriate levels of qualification and experience and/or shall receive sufficient training and, further, that they shall work such number of hours as is necessary to perform the Services effectively and in accordance with the Work Timetable.
	3. Without prejudice to clause 5.2, the Supplier shall engage the Manager to supervise the provision of the Services during the Term. The Supplier acknowledges that the Manager is key personnel for the purposes of this Agreement and the Supplier shall not change the Manager nor use anyone else to perform the duties of the Manager without the prior written permission of S4C (such permission not to be unreasonably withheld or delayed).
	4. The Supplier will advise S4C immediately on becoming aware that it may be unable to perform the Services in accordance with this Agreement.

6. **Payment**

6.1 In full and final consideration of the Supplier complying with and performing in full its obligations under this Agreement and for the assignment and licences to S4C of the Intellectual Property Rights in accordance with the provisions of clause 9, S4C shall pay to the Supplier the Fee in accordance with the following cashflow:

 [ ]

* 1. The Supplier shall render invoices in accordance with the above cashflow and shall show VAT separately on such invoices, and S4C shall pay such invoices within thirty (30) days of receipt. Each payment noted in the above cashflow shall only be made upon satisfactory completion of the appropriate Milestones and upon satisfactory completion of any Acceptance Tests undertaken pursuant to clause 3 and the Supplier shall not issue an invoice before the due date for its issue.

* 1. S4C will have the right to retain any payments that would otherwise be due to the Supplier where it disputes, in good faith, that the Supplier has properly performed its obligations under this Agreement. Payment by S4C of the whole or part of an invoice shall not amount to an admission of the correctness or validity of it.
	2. The Supplier shall be responsible for all maintenance, running expenses and all ancillary overheads expenditure or running costs incurred in the performance of the Services.

7. **Review**

7.1 The Supplier shall meet with S4C in person or otherwise on a Quarterly basis and at such other times and places as S4C shall reasonably request and which are mutually convenient to the parties to review the matters set out in clause 7.2 and the Supplier shall ensure the attendance at such meeting of the Manager and any other relevant personnel. At S4C’s request, the Supplier shall provide a written report containing all information as S4C shall reasonably request in respect of the preceding Quarter at least ten (10) Working Days in advance of any such meeting.

7.2 At such review meetings and without prejudice to provisions of this Agreement the parties shall review: -

* + 1. the technical and artistic quality and functionality of the App Versions;
		2. any Faults reported since the previous meeting and the steps taken to deal with such Faults and any other matters arising in respect of the Service Level Agreement;
		3. the results of any impact analyses carried out by S4C or the Supplier in respect of the App Versions;
		4. performance by the Supplier of the Services and progress of production, design and implementation generally;
		5. any means of modifying or improving provision of the Services, any modifications to the design or content of the App Versions having regard to technological requirements or advances, or any change requests made by S4C as a result of any impact analyses; and

 7.2.6 such other matters as either party may wish to raise.

* 1. Following the initial review meeting, S4C shall be entitled to give the Supplier notice in writing:
		1. to confirm the Supplier’s appointment for the remainder of the Term in accordance with the terms and conditions of this Agreement;
		2. to confirm the appointment for the remainder of the Term upon such revised, additional or different terms and conditions as may be agreed between the parties and confirmed in writing;
		3. of all grievances raised during such review meetings relating to 7.1 above that require rectification to a reasonable standard within three months of such notice. If the Supplier fails to rectify the said grievances raised within the 3 month notice period to a reasonably satisfactory standard then S4C shall be entitled to terminate this Agreement by giving a further three months’ notice; or
		4. in exceptional circumstances, immediately terminate the Agreement.
1. Insurances
	1. The Supplier shall procure that there is effected and maintained with reputable insurance underwriters insurance policies sufficient to provide cover as required by law or in respect of any foreseeable liability that may arise in connection with this Agreement including products liability insurance, public liability insurance, cover for corruption to other systems and errors and omissions insurance with limits to be approved by S4C for all occurrences with no exclusions whatsoever to operate for the duration of the Term and shall supply to S4C a copy of such insurance policies and evidence to S4C that the premium relating to these insurances has been paid.
	2. Without prejudice to the generality of the foregoing, the Supplier shall for the duration of the Term maintain in effect adequate public liability insurance cover with a minimum indemnity limit of £5,000,000 per claim, products liability insurance cover with a minimum indemnity limit of £5,000,000 per claim, and errors and emissions insurance cover with a minimum indemnity limit of £5,000,000 per claim.
	3. The Supplier shall observe and perform all the warranties and conditions in such policies and shall ensure that all premiums are paid when due and the policies are maintained in full force and effect for such period(s) as shall be reasonable.

9. **Grant of S4C Brand Licence**

9.1 S4C hereby grants the Supplier a non-exclusive, non-transferable, revocable licence for the Term to use the S4C Marks solely in connection with providing the Services and in accordance with the terms of this Agreement (including the relevant parts of the Compliance Guidelines) and subject to the terms set out at clause 9.2 below.

9.2 The Supplier warrants and undertakes to S4C that it shall not:

9.2.1 use the S4C Marks without the S4C Representative’s prior approval;

9.2.2 use the S4C Marks in any way which would in the opinion of S4C (acting reasonably) allow it to become generic, lose its distinctiveness, prejudice any future registrations of trademarks, reduce the commercial value of the S4C Marks or be materially detrimental to or inconsistent with the good name, goodwill, reputation or image of S4C;

9.2.3 use the S4C Marks (whether alone or in combination with any other name, trade mark or device) on or in relation to any products or services other than as set out in this Agreement without the express prior written consent of S4C;

9.2.4 register or seek to register any trade mark, service mark, logo, domain name or symbol which is identical with or substantially similar to or includes the S4C Marks other than as authorised in this Agreement;

9.2.5 knowingly do anything which impairs the rights of S4C in the S4C Marks or in any registrations or applications relating to the S4C Marks or which prejudices, dilutes or reduces the commercial value, reputation or goodwill of or in the S4C Marks;

9.2.6 obtain any proprietary rights in the S4C Marks and any and all goodwill generated by the use of the S4C Marks by the Supplier under the Agreement will enure exclusively to the benefit of S4C;

9.2.7 assert any claim of ownership to the S4C Marks or to the goodwill or reputation in the S4C Marks, by virtue of the Supplier’s use of the S4C Marks or otherwise; and

9.3 If the Supplier becomes aware of any possible infringement of the S4C Marks, including any passing off or unfair competition, or of any application to register a trade mark which may conflict with or be confused with the S4C Marks, the Supplier shall immediately notify S4C in writing.

9.4 Upon the expiry or termination of the Agreement, for whatever reason, the Supplier will immediately cease its use of the S4C Marks in connection with the Services and to the extent reasonably practicable deliver up to S4C or dispose of (as S4C may request) all material in its possession or control bearing in accordance with S4C's instructions.

10. **Intellectual Property Rights**

10.1 The Supplier hereby assigns to S4C with full title guarantee the entire property including all Intellectual Property Rights and all other rights of whatever nature (whether vested absolutely or contingently now or in the future) in the Bespoke Software, the App Versions, the App Design & Specification and the Supplier’s Materials TO HOLD the same unto S4C its successors, assigns and licensees absolutely for the whole period of such rights together with any and all renewals, reversions, revivals and extensions.

* 1. The Supplier also grants to S4C a non-exclusive royalty-free irrevocable perpetual licence to use the Existing Software and the Third Party Software in connection with the App Versions.
	2. S4C grants the Supplier a revocable non-exclusive licence during the Term in all rights in the Software and the App Versions necessary to enable the Supplier to fulfil its obligations under this Agreement.

10.4 The Supplier undertakes to perform each and any act and deed (including prosecuting or defending any legal action) and to prepare and provide any and all documents in any manner and at any location that S4C shall require in its absolute discretion in order to defend, perfect or enforce any of the rights granted to S4C in accordance with this Agreement PROVIDED THAT S4C shall reimburse to the Supplier the reasonable costs of so doing. As security for the performance of the Supplier’s obligations in the event that the Supplier shall have failed following fourteen days’ (14) notice from S4C to execute any document or perform any act in accordance with this clause, S4C shall have the right to do so in the place and stead of the Supplier as the lawful appointed attorney of the Supplier and the Supplier undertakes to, and warrants that it will, confirm and ratify and be bound by any and all actions of S4C pursuant to this clause and such authority and appointment shall take effect as an irrevocable appointment pursuant to the Powers of Attorney Act 1971, section 4.

10.5 The Supplier hereby warrants and represents to S4C that each and every person who contributes or has contributed to the Services has irrevocably waived all rights to which they are now or may be entitled under sections 77, 80, 84 and 85 of the Act and any other moral right to which they are or may be entitled under any legislation in force from time to time in any part of the world in respect of the App Versions, the Software, Third Party Software and the Supplier’s Materials hereunder.

 11. **Obligations, Warranties and Indemnity**

* 1. The Supplier represents warrants and undertakes that:-

11.1.1 the App Versions, the Software and the Supplier’s Materials shall be of first class technical and artistic quality and shall conform in all respects with the App Design & Specification and the Compliance Guidelines;

* + 1. it will perform the Services faithfully, conscientiously and punctually

and in accordance with the Compliance Guidelines and all applicable laws;

* + 1. it will comply with all of S4C’s reasonable instructions in respect of the Services;
		2. it will be the first and sole ‘author’ of the App Versions, all Supplier’s Materials and of the Software within the definition of section 9(2) of the Act, and that each and every person who contributes or has contributed to such materials is a ‘qualifying person’ within the definition of section 154 of the Act;
		3. subject only to the provisions of clause 10, it will be the sole absolute unencumbered legal and beneficial owner of all Intellectual Property Rights in the App Versions, the Software and the Supplier’s Materials and all rights granted to S4C pursuant to this Agreement (but excluding the Third Party Software) and has not assigned charged sublicensed or otherwise in any way encumbered any such rights;
		4. that S4C shall have the right to require the Supplier to add to, delete, not use and/or change in any way and/or edit, replace, adapt and/or translate any element of the App Versions or any part thereof to any extent and in any way on reasonable written request;
		5. nothing in this Agreement shall oblige S4C to begin or continue to use all or any part of the App Versions. If S4C in its absolute discretion decides not to use the App Versions the Supplier shall have no right to claim any compensation against S4C (other than the Fee or relevant part thereof);
		6. nothing contained in the App Versions, the Software, the Third Party Software or the Supplier’s Materials shall infringe any Intellectual Property Rights of any third party and that the Supplier has obtained in writing all necessary licences, clearances, waivers, consents and releases to enable unlimited exploitation (by sale or otherwise) of the App Versions without further payment;
		7. it is free to enter into this Agreement and has not made any arrangement, which may conflict with this Agreement and in particular it has not granted nor will it dispose of or grant to any third party any rights in the Software or the App Versions which are or might be inconsistent with or derogate from the rights granted to or purported to be granted to S4C under this Agreement and further that there will on delivery of the App Versions or at any time during the Term be no claims liens charges mortgages or other encumbrances of any nature affecting the Software, the App Versions or any part thereof or any of the Supplier’s Materials;
		8. the information, representations and other matters of fact committed in writing to S4C by the Supplier in connection with or arising out of its response to the Request for Quotation were, at the date on which the same were given to S4C, true and complete in all material respects and the Supplier shall inform S4C immediately if such information ceases to be true and complete;
		9. 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 Supplier, 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 Supplier to perform its obligations under this Agreement;
		10. it will forthwith notify S4C if it becomes aware of any such proceedings, arbitration or claim, whether in progress, pending or threatened and, at its own expense, take such action as S4C may reasonably require to mitigate and/or eliminate the consequences of the same;
		11. no New Release or New Version will adversely affect the performance and/or functionality of the App Versions or the Software;

11.2 The Supplier will indemnify and at all times keep S4C its successors and assigns fully indemnified on demand from and against all losses (including any loss of revenue or other economic loss) expenses, claims, demands, actions, proceedings, costs (including legal costs on an indemnity basis) damages or payments suffered incurred or awarded, compensation agreed or liability whatsoever or howsoever arising in consequence of any breach or non-observance by it of all or any of the agreements, undertakings or warranties herein contained or as a result of any negligent or wrongful act or omission of the Supplier (including for the avoidance of doubt in relation to any of the Supplier’s hyperlinks).

12. **Termination**

12.1 S4C shall be entitled to terminate this Agreement on giving no less than thirty (30) days written notice to the Supplier.

12.2 Without prejudice to any other right or remedy which either party may have against any other, either party shall be entitled to terminate this Agreement by giving written notice to the other if:-

12.2.1 the other is in breach of any term, condition or undertaking in this Agreement and either (a) it is not possible to remedy such breach or, (b) where it is possible to remedy the breach, the other has failed to remedy the breach within the period of seven (7) days from the date of receipt of a notice from the other giving details of the breach or such other remedy period as is referred to elsewhere in this Agreement;

* + 1. the other:
			1. has a receiver or administrative receiver appointed or passes a resolution for winding up (otherwise than for the purpose of a scheme of solvent amalgamation or reconstruction) or if a court having proper authority makes an order to that effect; or
			2. is the subject of an administration order or enters into any voluntary arrangement with its creditors.
	1. S4C shall be entitled to terminate this Agreement immediately on giving written notice to the Supplier:
		1. if the Supplier, its employees or staff is/are guilty of gross misconduct or negligence whilst performing its or their obligations under this Agreement;
		2. there is a change of control (as ‘control’ is defined in Section 1124 of the Corporation Tax Act 2010) of the Supplier.
	2. S4C shall be entitled, at its option, to extend the Term for a period of up to twelve (12) months from the expiry of the Term by giving notice in writing to the Supplier at least one month in advance of such date. If S4C does not wish to extend this Agreement beyond the Term, this Agreement shall expire on the expiry of the Term and the provisions of clause 13 shall apply.
	3. For the purposes of this clause 12 “written notice” shall mean notice in writing delivered by post in accordance with clause 16. Nothing in this Agreement shall permit either of the parties to terminate this Agreement via email or facsimile transmission.

13. **Consequences of Termination**

13.1 Without prejudice to the legal rights of the parties, the consequences of termination of this Agreement shall be as set out below:-

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

* + 1. the Supplier shall have no right, licence or permission following the date of termination to deal with the App Versions in any way or any other tangible materials created during or derived from the Services nor to keep them in its possession or under its control other than delivering up such items and all of the documents and materials produced up to the date of termination to S4C as soon as reasonably practicable (save to the extent that any information and/or materials are required to be maintained by law, regulation or any competent judicial, governmental or regulatory authority, in which case the Supplier may retain them for such purposes only provided that it supplies S4C with full copies of the same); and
		2. all licences granted to the Supplier under clauses 9 and 10.3 shall immediately cease and determine and the Supplier shall return to S4C forthwith any and all materials incorporating the S4C Marks.

* 1. In addition to the provisions of clause 13.1, on termination of this Agreement for whatever reason and for a period of six months thereafter the Supplier shall assist S4C, if required, to facilitate the continuance of the Services by S4C and/or a New Supplier (as appropriate).
	2. Unless otherwise provided, termination of this Agreement shall be without prejudice to the grants of rights and the warranties and undertakings given by the Supplier in accordance with clause 10 and all warranties and undertakings given by either of the parties and all other obligations and indemnities that have arisen or been given prior to termination, all of which shall continue in full force and effect after termination notwithstanding such termination.

14. **Confidentiality**

14.1 The Supplier and S4C will each treat as confidential all Confidential Information obtained from the other under this Agreement. They will not, without the prior written consent of the other, disclose Confidential Information to any person or use the same except for the purposes of this Agreement.

* 1. Clause 14.1 does not prohibit disclosure of Confidential Information to;
		1. the receiving party’s own employees (including agents and permitted sub-contractors) who need to know it;
		2. the receiving party’s auditors, professional advisors, HM Revenue & Customs and any other person having a statutory or regulatory right to request and receive that information (including under the Freedom of Information Act 2000); and
		3. a person to whom an assignment has been permitted under Clause 15.
	2. Clause 14.1 does not apply to information which the receiving party can show by reference to documentary or other evidence:
		1. was rightfully in its possession before the start of negotiations leading to this Agreement;
		2. is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this clause);
		3. is received from a third party who is not under an obligation of confidentiality in relation to the information; and/or
		4. is developed independently without access to, or use or knowledge of, the Confidential Information.
	3. Each party will make all reasonable efforts to ensure that anyone mentioned in Clause 14.2 is made aware, prior to any disclosure of Confidential Information, that it is confidential and that they owe a duty to the owner of it to keep it confidential.
	4. The Supplier will not make any announcement about this Agreement nor will it disclose its terms without the prior written consent of S4C.
	5. The obligations in this Clause 14 will remain in full force and effect even if this Agreement is terminated.

15. **Assignment**

15.1 This Agreement is personal to the Supplier, which shall not assign the benefit of it or any right under it without the written consent of S4C, which shall be entitled to refuse such consent at its sole discretion.

15.2 The Supplier shall not grant to any other party any right, licence, consent or permission, which could or might infringe upon any of the rights or benefits granted to S4C.

15.3 S4C shall have the right to assign the benefit and the burden of this Agreement absolutely.

16. **Notices**

* 1. The address of both parties given in this Agreement shall be the relevant address for the service of notices until such party notifies the other of an address in the United Kingdom.
	2. Every notice addressed in accordance with the provisions of clause 16.1, shall be deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the recipient party, if sent by prepaid first class post, two (2) Business Days after the date of posting.
	3. Nothing in this clause 16 shall be interpreted or construed as an agreement on the part of S4C to accept service of any legal proceedings by facsimile or email.

17. **Force Majeure**

17.1 For the purposes of this Agreement, "Force Majeure" shall mean an event outside the control of the parties which prevents the observance or performance by either party of its obligations hereunder including fire, flood, unavoidable accident, national calamity, riot, disputes, acts of God, the enactment of any Act of Parliament (or any other legally constituted authority) or any event arising out of or attributable to war or armed conflict (including any restriction imposed by Government on national, regional or local television services or the financing of the same) or any other event outside the control of the parties and not due to any lack of reasonable prudence and foresight by either party.

17.2 If an event of Force Majeure occurs the party so affected shall notify the other in writing without delay and, provided any inability to observe or perform any obligation under this Agreement results solely from such event, performance of the obligations so affected shall be deemed to be suspended from the date of such notice until such inability is removed or until termination or take over. The parties undertake to use all reasonable endeavours to minimise and reduce any period of delay and all costs and expenses occasioned by an event of Force Majeure. During any such period of delay S4C shall be under no obligation to pay the Supplier save in respect of contractual obligations of the Supplier which the Supplier cannot avoid or delay and which have been incurred in accordance with the requirements of this Agreement.

17.3 If completion of any milestone set out in the Work Timetable may be materially delayed beyond the date in respect of such milestone by reason of an event of Force Majeure, S4C may take and/or require the Supplier to take whatever steps it considers appropriate to complete such milestone and/or reduce the period of delay and/or the financial loss resulting from it, including (but not by way of limitation) the termination of this Agreement.

1. **Data Protection *[to be completed following award of successful application]***
	1. All Personal Data provided to S4C by the Supplier in connection with the provision of the Services may be processed by S4C in accordance with the Data Protection Laws and the use intended to be made by S4C of the App Versions, the Software, the Third Party Software and the Supplier’s Materials. The Supplier shall ensure it has an appropriate legal basis in order to share the Personal Data with S4C 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.
	2. Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 18.2 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Laws.
	3. The parties acknowledge that for the purposes of the Data Protection Laws, S4C is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Laws). Schedule 4 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined in the Data Protection Laws, Personal Data) and categories of Data Subject.
	4. Without prejudice to the generality of clause 18.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

18.4.1 process that Personal Data only on the written instructions of S4C unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (“Applicable Laws”). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify S4C of this before executing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying S4C;

18.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by S4C, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

18.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential, that they are reliable and understand the Supplier’s contractual obligations to S4C;

18.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of S4C has been obtained;

18.4.5 assist S4C, free of charge, to respond to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

18.4.6 notify S4C without undue delay and no later than within 24 hours on becoming aware of a Personal Data breach;

18.4.7 at the written direction of S4C, delete or return Personal Data and copies thereof to S4C on termination of the agreement;

18.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 18.4 and allow for audits by S4C or S4C's designated auditor; and

18.4.9 appoint a data protection officer if required to do so under the Data Protection Laws or if requested by S4C.

* 1. S4C does not consent to the Supplier appointing any third party processor of Personal Data under this agreement.
	2. S4C may, at any time on not less than 30 days’ notice, revise this clause 18 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
1. **Freedom of Information Act**
	1. The Supplier 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 Supplier shall and shall procure that the Staff shall:
		1. provide S4C with a copy of all relevant information in its possession or power in the form that S4C requires; and
		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 Supplier (the reasonableness of the notice to be judged in the context of the statutory timeframe for the provision of the information).

* 1. S4C shall be responsible for determining whether the information:
		1. is exempt from disclosure in accordance with the provisions of the FOIA or the Regulations; or
		2. is to be disclosed in response to a request for information, and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by S4C on behalf of S4C.
	2. The Supplier 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 Supplier where practicable and take its views into account. Where the Supplier’s views conflict with S4C’s legal advice nothing in this Agreement shall prevent S4C from acting in accordance with legal advice received by it.
	3. The Supplier 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.

20. **Prevention of Corruption and Fraud**

20.1 The Supplier shall not offer or give, or agree to give, to S4C or any other public body or any person employed by or on behalf of S4C or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any improper act in relation to the obtaining or execution of the Agreement or any other contract with S4C or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract.

20.2 The Supplier warrants that it has not paid commission or agreed to pay commission to S4C or any other public body or any person employed by or on behalf of S4C or any other public body in connection with the Agreement.

20.3 The Supplier shall take all reasonable steps to prevent Fraud by the Supplier and/or its staff (including its shareholders, members, directors) in connection with the receipt of monies from S4C and shall notify S4C immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

20.4 If the Supplier, its staff or anyone acting on the Supplier’s behalf, engages in conduct prohibited by clauses 20.1 or 20.2 and/or commits Fraud in relation to this or any other contract with S4C, S4C may:

* + 1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by S4C resulting from such termination, including the cost reasonably incurred by S4C of making other arrangements for the supply of the Services and any additional expenditure incurred by S4C throughout the remainder of the Term; and/or

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

21. **Construction**

21.1 The provisions of this Agreement shall apply to every part of the provision of the Services including any work done prior to the signature of it.

21.2 It is agreed that the Supplier 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 Supplier and neither party shall hold itself out as the agent for the other except as expressly provided herein.

21.3 No waiver by either party of any breach of any of the provisions of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same of any other provision.

* 1. If any provision of this Agreement shall be prohibited by or judged 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 as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement.
	2. 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.
	3. This Agreement shall be construed as an agreement made in Wales and subject to the laws of England and Wales and embodies all the terms and conditions agreed between the parties and shall be modified only by a written legal instrument.

**SCHEDULE 1**

**APP DESIGN AND SPECIFICATION**

***[To be completed following award of the successful application]***

**SCHEDULE 2**

**WORK TIMETABLE**

***[To be completed following award of the successful application]***

**SCHEDULE 3

SERVICE LEVEL AGREEMENT [To be completed following award of successful application]**

This Service Level Agreement (the **“SLA”**) forms part of the Agreement and sets out the service levels agreed for the Supplier to resolve Faults arising in connection with the App Versions and its structure during the Warranty Period.

# **1. Definitions and Interpretation**

In this SLA:

1.1 the words and expressions used hereunder (including in the introductory paragraph above) shall have the same meaning as defined in the Agreement. In addition, the following words and expressions shall have the following meanings:

|  |  |
| --- | --- |
| **“Bug Fix”** | means either a modification or addition that, when made or added to the App Versions, corrects a Fault or a procedure or routine that, when observed in the regular operation of the App Versions, eliminates the practical adverse effect of a Fault on the end user; |
|  |  |
| **“Business Hour”** | (i) in respect of Faults designated by S4C as Priority Level 1 means an hour between 9.00am and 10.00pm Greenwich Mean Time or British Summer Time (as applicable) during any day of the year; and(ii) in respect of other Faults means an hour between 9am and 5.15pm Greenwich Mean Time or British Summer Time (as applicable) during any day of the year  or such other hours as S4C, in consultation with the Supplier, may require; |
|  |  |
| **“Fault Report”**  | means, as described in paragraph 3.1, the process by which S4C will notify the Supplier of a Fault; |
|  |  |
| **“Fault Resolution”**  | means the resolution of a Fault by the Supplier in accordance with paragraph 5;  |
|  |  |
| **"Fault Resolution Time"** | means, as set out in paragraph 5, the agreed time period within which the Supplier will provide a Fault Resolution; |
|  |  |
| **“Hotline”** | shall have the meaning given in paragraph 3.1;  |
|  |  |
| **“Priority Level”** | means, as set out in paragraph 4, the classification of a Fault by the assignment of a priority level; |
|  |  |
| "**Queries**" | means queries regarding the App Versions that are not answered satisfactorily, or at all, by any training documentation provided by the Supplier to S4C under the Agreement (but excluding all liaison between the Supplier and S4C that occurs during the investigation, management and resolution of any Fault or subsequent trend analysis or review of resolved Faults); |
|  |  |
| **“Workaround”**  | means a temporary solution to a Fault that allows the Software to continue as near normal as practicable, and Workarounds may include operational processes specified by the Supplier that avoid the Fault affecting the normal operation of the App Versions until such time as a New Release is provided. |

1.2 references to paragraphs are references to paragraphs to this SLA;

1.3 the singular shall include the plural and vice versa;

1.4 the headings are for ease of reference only and shall not affect the construction of this SLA; and

1.5 the terms "**include**" and "**including**" shall be construed without limitation.

#

# **2. Services**

2.1 The Supplier shall during the Warranty Period provide the service level commitments relating to fault reporting, fault classification and fault resolution as set out in paragraphs 3 to 5 below.

2.2 The Supplier shall perform its obligations under this SLA in accordance with the agreed service levels, but S4C acknowledges that the Supplier shall not be held responsible for any delay in performing its obligations under this SLA if any such delay was caused solely by S4C’s failure to meet any of its obligations under this SLA.

2.3 The Supplier shall be obliged to provide the service levels as set out in this SLA in connection with each New Version of the App Versions (if applicable) as developed and released by the Supplier pursuant to the terms of the Agreement, and used by S4C, during the Warranty Period. The Supplier shall not at any time during the Warranty Period cease supporting any previous version of the App Versions or any part of it which S4C is still using in accordance with the Agreement.

**3. Fault Reporting**

3.1 The Supplier shall during the Warranty Period operate a fault reporting service for the purpose of enabling S4C to report any Fault by telephoning [ ] on [ ] during Business Hours (the **"Hotline”**), with subsequent email confirmation to [ ].

3.2 The Supplier shall ensure that the Hotline is sufficiently resourced by properly trained personnel to comply with its obligations under this SLA.

3.3 To enable the Supplier to properly assess and diagnose the Fault and assign a Priority Level, each such Fault Report shall include:

3.3.1 a name, email address and telephone number of S4C’s point of contact reporting the Fault;

3.3.3 a full description and details of the nature of the Fault; and

3.3.4 the Priority Level which the Fault is believed to be in.

3.4 At the time of submitting a Fault Report, S4C shall wherever possible provide the Supplier with any additional relevant information which is reasonably required by the Supplier to assist the Supplier in complying with its obligations under this SLA. In addition, S4C shall confirm any password or reference number provided by the Supplier for reasons of security.

**4. Fault Classification Times & Assignment of Priority Level**

4.1 Each Fault Report shall be classified by Priority Level in accordance with the table set out below. S4C shall in all cases decide the Fault Priority Level.

|  |  |
| --- | --- |
| **Priority****Level** | **Fault**  |
| 1. | Any of the following:* App Versions unable to operate (total loss); or
* Any matter which could lead to a breach of the law or any codes or guidelines of Ofcom or other regulator
 |
| 2. | Any of the following:App Versions suffering degraded operation for example certain elements not working.  |
| 3. | Any Fault resulting in attributes and/or functionality of App Versions software not operating as stated but causing minimal impact to the App Verions' overall operations. |

4.2 S4C shall be entitled to receive a reasonable amount of general support and to make, and receive responses to, Queries during the Warranty Period. The Supplier shall use all reasonable endeavours to respond to any such Query within twenty-four hours of receiving it.

**5.** **Fault Resolution & Fault Resolution Times**

5.1 The Supplier shall use its best endeavours to respond to all Faults logged within the fault response times referred to below.

|  |  |  |
| --- | --- | --- |
| **Priority****Level** | **Response Times** | **Resolution Times** |
| 1. | Half a Business Hour | One Business Hour |
| 2. | One Business Hour | Three Business Hours, plus progress report each Business Hour  |
| 3. | One Business Hour | Three Business Days, plus progress report each Business Day |

The Supplier shall provide S4C with a D list of emergency telephone number to enable S4C to report Faults outside Business Hours. Such number shall be used only in exceptional circumstances such as matters arising which impact seriously on S4C’s business or reputation.

5.2 The Fault Resolution Times set out in paragraph 5.1 above are the applicable resolution times as at the date of execution of the Agreement. With the agreement of the Supplier (not to be unreasonably withheld or delayed) S4C shall be entitled to reclassify the Fault Resolution Times in light of changing customer numbers or amended priorities by providing at least twenty Business Days' notice to the Supplier detailing the corresponding re-classification. The measurement of the Fault Resolution Time will run from the point at which the corresponding call or email is received by the Supplier and will end when S4C has in its reasonable opinion received a satisfactory Fault Resolution to the Fault in question.

5.3 The Supplier will within the corresponding Fault Resolution Time provide a Fault Resolution by either:

5.3.1 undertaking all necessary corrective work to resolve the Fault (or, if agreed with S4C, by advising S4C so as to enable it to undertake such corrective work as may be possible to resolve the Fault itself); or

5.3.2 where appropriate by providing a Bug Fix to correct and resolve the Fault.

5.4 If the Supplier is unable to provide a Fault Resolution in accordance with paragraph 5.3 above it will instead provide a Workaround solution within the corresponding Fault Resolution Time. The Supplier shall, in every case where it provides a Workaround instead of a Fault Resolution, use and continue to use its best endeavours to provide a Fault Resolution.

5.5 Where the Supplier is unable to correct or resolve a Fault within the corresponding Fault Resolution Time, the Supplier shall within three hours of the expiry of the relevant Fault Resolution Time provide S4C with a plan outlining how the Supplier will address and correct the Fault together with an estimate of how long it will take to do so.

**SCHEDULE 4

DATA PROCESSING**

***[To be completed following award of the successful application]***

* + 1. Processing by the Supplier

Scope

Nature

Purpose of processing

Duration of the processing

* + 1. Types of personal data
		2. Categories of data subject

IN WITNESS whereof the authorised representatives of the parties have signed and dated this Agreement on the date and year first above written.

SIGNED for and on behalf of **S4C**

.....................................................................

Signed and delivered as a deed for and on behalf of **THE SUPPLIER**

SIGNED BY ……………………………………………………………….

NAME ………………………………………………………………………

Date ………………………………………………………………………….

In the presence of: …………………………………………………….. (witness)

Name: ……………………………………………………………………….

Address:……………………………………………………………………..

Occupation…………………………………………………………………