**Clause 1** - **Definitions and Interpretation**

1.1 The following definitions apply in the Licence:

**2003 Act:** the Communications Act 2003;

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

**Appendix:** the appendix attached to the Licence;

**Bank**: the bank (if any) specified in the Appendix;

**Bank Account**: if required by the Appendix the bank account opened by the Producer under Clause 4.16;

**Bank Statements**: if required by the Appendix statements issued by the Bank in respect of the Bank Account;

**Budget:** the budget for production and Delivery of the Programme and securing all rights required by the Licence, being the budget which is part of the Editorial and Business Brief and attached to the Licence;

**Cashflow:** the cashflow for the payment of the Licence Fee which is attached to the Appendix;

**Charge:** a charge by way of legal charge and an assignment of the copyright by way of security over the assets of the Producer in the Programme and the Underlying Rights Material such charge to be in S4C’s standard form

**Children’s and Educational Programmes**: children’s and educational programmes as defined by OFCOM from time to time.

# Clip Rights: i) the non-exclusive right to use Clips and Rushes in new programmes made for the S4C Services and to exploit such programmes and all parts thereof (including such Clips and Rushes) in all media and by all manner and means now known or hereafter invented for the period of copyright and without further payment to the Producer or any third party unless the contrary is agreed in the Clips and Rushes Policy; and

ii) the right to use Clips and Rushes in promotional material and on websites and in the exercise of the Online Rights as set out in the Licence;

**Clips:** Clips from the S4C Programme as delivered to S4C;

**Clips and Rushes Policy:** the Clips and Rushes Policy agreed between S4C and TAC as reviewed annually and which includes a tariff for the use of Clips and Rushes;

**Code of Practice:** [**S4C Code of Practice in Commissioning Content from Independent Producers Third Edition - October 2018**](https://dlo6cycw1kmbs.cloudfront.net/media/media_assets/S4C_Code_of_Practice_2018_1.pdf)and any updated version of such document and any related document published by S4C from time to time;

**Competent Person**: the person(s) specified in the Appendix;

**Commissioner:** the commissioner named in the Appendix;

**Confidential Information:** any information regarding the business, suppliers or customers of either party and the terms of the Licence together with any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the affairs, property, assets, trading practices, developments, trade secrets, intellectual property rights, know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

**Deliverables Schedule:** the schedule incorporated in Section D of Part 2 of the Appendix;

**Delivery**: delivery of the Delivery Materials in accordance with the Delivery Requirements and all of the terms and conditions of the Licence by the Delivery Date and the terms “Deliver” and “Delivering” shall be interpreted accordingly;

**Delivery Date**: the date(s) and (if applicable) time for Delivery of the Delivery Materials as specified in the Appendix or such later date as S4C’s Contents Operations Manager may (at his or her sole discretion) agree in writing;

**Delivery Materials:** all delivery materials, documentation and information required to be delivered in respect of the S4C Programme pursuant to the Delivery Requirements;

**Delivery Requirements**: the requirements of [S4C Delivery Requirements August 2020](https://dlo6cycw1kmbs.cloudfront.net/media/media_assets/Aug2020_Delivery_Requirements.pdf) available on the [Production Website](http://www.s4c.cymru/en/production/),the [Technical Standards](https://dlo6cycw1kmbs.cloudfront.net/media/media_assets/s4c-technical-standards-for-delivery-of-television-programmes-to-s4c-2020.pdf), the [Subtitling Guidance](https://dlo6cycw1kmbs.cloudfront.net/media/media_assets/5._Guidance_on_how_to_submit_subtitles_and_other_access_services_to_S4C_English.pdf) and any updates to such documents published from time to time on the [Production Website](http://www.s4c.cymru/en/production/) and all of the other delivery requirements of the Licence;

**Designated Person**: the persons(s) specified in the Appendix for the purposes of child protection;

**DUK:** Directors UK;

**Editorial and Business Brief:** the brief attached in Part I of the Appendix;

**Education and Archive Rights:** the sole and exclusive right to allow designated libraries and archives (in accordance with the Copyright Designs and Patents Act 1988 (as amended)) to prepare and keep copies of the S4C Programme- to permit schools, colleges, universities, other educational establishments, museums, heritage centres, historical societies and charitable or other ‘non-commercial’ bodies to have copies of the Programme and to exhibit and use them for the educational or archival purposes of those organisations, and the right for S4C to use the S4C Programme and all parts thereof in all media now known or hereafter invented for the purpose of providing services and facilities for Welsh learners and for other educational purposes;

**Environmental Information Regulations:** the Environmental Information Regulations 2004;

**Episode:** where the Programme is a series of programmes an episode in such series;

**ERA Rights:** the sole and exclusive right to allow the Educational Recording Agency Limited to licence educational establishments to record the S4C Programme off-air and to use it for educational purposes in accordance with the licensing scheme operated by the ERA from time to time whether pursuant to Section 35 of the Copyright, Designs and Patents Act 1988 (as amended) or otherwise and the right to retain all income derived therefrom;

**Exploitation:** subject always to the S4C Rights and the Holdbacks any sale, hire, distribution, performance, use or exploitation by the Producer, its successors assigns and/or licensees of the Programme in all languages and in any and all countries and territories of the World and in all media and by all manner and means whether digital, linear or interactive, online or off-line, visual, audio or audio-visual or otherwise and whether now known or hereafter invented BUT EXCLUDING expressly any exercise by S4C or any of its Group Companies of all or any of the S4C Rights and the term “Exploit” shall be interpreted accordingly;

**Extended Licence Period:** a further period of two (2) years commencing on the first day following the final day of the Licence Period and activated in accordance with Clause 5.3;

**FOIA**: means the Freedom of Information Act 2000 and any subordinate legislation made under that act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

**Force Majeure**: force majeure as defined in Clause 9.4;

**Format:** the format on which the Programme is based;

**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 Licence or defrauding or attempting to defraud or conspiring to defraud S4C;

**General Terms:** these General Terms;

**Gross Income**: all revenue generated by the Producer, its agents and distributors from Exploitation;

**Group Companies:** any subsidiary or holding company and any subsidiary of such holding company (and “holding company” and “subsidiary” are defined in Section 1159 of the Companies Act 2006);

**Guidelines and Policies:** (i) the codes, guidelines policies and requirements which apply to any programme or any other material Transmitted on the S4C Services from time to time, being the collection of documents appearing on or listed on the Production Website under the Sections “Forms" and "Guidelines" at the date of signature of the Licence and (ii) all codes, guidelines policies and requirements of Ofcom as issued, amended or replaced from time to time which apply to the S4C Services including the S4C Compliance Guidelines, and the term ‘the Guidelines and Policies’ shall include such codes, guidelines and requirements collectively unless the Licence refers to any one or more of them specifically in any case;

**Holdback(s):** the holdback(s) against Exploitation as set out in Clause 5.11;

**Holdback Period:** unless otherwise specified in the Appendix, the periods stated in paragraph 15 of the Terms of Trade”;

**Holdback Release Policy:** S4C’s *Policy on Early Release of Holdback* as agreed with TACfrom time to time.

**Incidental Rights:** all incidental rights required by S4C in order to be able to fulfil its statutory duties and responsibilities or in order to facilitate the same, including:

i) the right to retain a Transmission copy of the S4C Programme in perpetuity for regulatory purposes; and

ii) the right to retain copies of the S4C Programme in various technical formats in order to enable S4C to prepare different versions of the S4C Programme, e.g. a subtitled version, a signed version, a version with audio description etc., and in order to facilitate S4C’s work.

**Industrial Relations Contracts:** contracts regulating industrial relations as described in paragraph 10 of the Terms of Trade;

**Information**: has the meaning given under section 84 of the FOIA;

**Information Commissioner:** the information commissioner appointed under the FOIA;

**Instalments:** the instalments for payment of the Licence Fee specified in Cashflow;

**Insurance Policies:** the insurance policies taken out by the Producer in accordance with the Licence;

**Key Elements:** the key elements of the S4C Programme or to be used in the

 making of the S4C Programme which are identified in the Appendix;

**Key Personnel:** the personnel specified in the Appendix;

**Licence**: the licence under which the S4C Programme has been commissioned by S4C from the Producer and the Appendix and the documents and policies incorporated into it by reference including without limitation these General Terms;

**Licence Fee:** the licence fee specified in the Appendix;

**Licence Period:** either

1. five (5) years commencing on the date of first Transmission of the S4C Programme on the S4C Services where the Programme is an individual programme or film or, in the case of a series, in respect of each Episode five (5) years from the date of first Transmission of that Episode on the S4C Services provided that if S4C (except in the cases specified below) has not Transmitted the S4C Programme or the first Episode as the case may be within a period of six (6) months of Delivery of the S4C Programme or relevant Episode then the Licence Period shall commence on the date exactly six (6) months following the date of Delivery. The above proviso does not apply to Programmes commissioned far in advance of their expected Transmission date but where the Producer wishes to produce or deliver the Programme earlier than the contractual Delivery Date and/or any Programmes where S4C and the Producer agree to different arrangements; or
2. such other period as is noted in the Appendix and which shall have precedence over the General Terms;

**Live Stream:** communicate the public at scheduled times by means of streaming technology via the internet for reception by viewers on any device connected to the internet (including for the avoidance of doubt mobile phone devices and tablets) without the need for a set top box or other decoding equipment;

**Live Streaming Rights:** the exclusive right to Live Stream the S4C Programme within the Territory, with or without a simultaneous Transmission.

**Merchandising Rights:** the non-exclusive right to exploit the merchandising rights in the S4C Programme including the Format, the Underlying Rights Material, characters, scenes, logos and designs in connection with all types of products including audio products, audio visual products, character merchandising, books, magazines and other publishing material but excluding the right to produce and/or to exploit a Sequel and/or the Online Rights.

**Milestones:** the approval and production milestones in respect of the S4C Programme specified in the Appendix;

**Net Proceeds**: Gross Income in respect of the Programme, less the total of the following:

(i) commission fees and expenses payable to the Producer its agents and distributors in respect of the Programme which shall not in the aggregate exceed the following as a percentage of Gross Income:

UK Terrestrial/ Standard TV (35% Commission)

UK Satellite/Non standard TV (35% Commission)

USA Cable/Sat/Pay TV (35% Commission)

USA Commercial Network TV-Non Primetime (35% Commission) USA Commercial Network – TV Primetime (35% Commission)

 TV Worldwide/Inflight/Footage (35% Commission)

 UK Video (25% Commission)

 Worldwide Video (25% Commission)

 Worldwide Merchandising (35% Commission)

 Worldwide Publishing (30% Commission);

All forms of VOD save for the S4C VOD Rights (25% Commission);

(ii) the proper costs of Exploiting the Programme including without limitation the costs of prints, brochures, launch and other promotional activities, panels, posters, freight and transport, Repeats and Residual Payments and the costs of technical and other work reasonably necessary to adapt the Programme for Exploitation which costs shall not in the aggregate exceed 5% of Gross Income;

**Non Theatric Rights:** the non-exclusive right to show the Programme and/or authorise others to do so for screening before an audience by institutions or organisations not primarily engaged in the business of exhibiting motion pictures to the public including cultural social and religious institutions, businesses, civic organisations, hospitals and at film festivals;

**Off Air Recording Rights:** the sole and exclusive right to authorise third parties to record the S4C Programme off air;

**Ofcom:** the Office of Telecommunications and any successor body;

**Online Rights:** the S4C VOD Rights and the Live Streaming Rights. For the avoidance of doubt, the foregoing rights shall also include the right to perform all such technical evolutions as are necessary to enable the full exploitation by S4C of the Online Rights (for example to copy, transfer, cache, store and reformat the S4C Programme) and the right to cut, edit, reformat, resize and repackage the S4C Programme as may be necessary to adapt it to requirements of the technology used;

**Personnel:** all individuals engaged by the Producer or contributing to the S4C Programme whether on an employed or self-employed basis;

**Platform:** the platform via which Services are accessed including but not limited to smart TV platforms, mobile phone operating systems, set top boxes, streaming devices, other peripherals and such other platforms as exist now or in the future.

**Primary Rights:** unless otherwise specified in the Appendix (i) the sole and exclusive right to Transmit the S4C Programme in the Territory by means of 15 Transmissions or (in the case of children’s and educational Programmes) an unlimited number of Transmissions during the Licence Period and any Extended Licence Period, at any time during the Licence Period or any Extended Licence Period; and (ii) the Online Rights, the Sequel Rights, the Merchandising Rights, the Clip Rights, the Educational and Archive Rights, the Off Air Recording Rights, the ERA Rights, the Simultaneous Retransmission Rights, the Incidental Rights, the Theatric Rights, the Sponsorship Rights, the Non-Theatric Rights, the Holdback , the Promotional Rights and the Website Rights;

**Private Copies Guidelines:** the guidelines at <http://www.s4c.co.uk/production/e_guidelines.shtml>;

**Producer:** the producer identified in the Licence;

**Production Website:** S4C’s Production Website at [<http://www.s4c.co.uk/production/rm/index/language/eng/>]

**Programme:** any programme or series of programmes based on or derived from whether in whole or in part the original programme brief as submitted by the Producer to S4C in respect of the S4C Programme including without limitation (i) the S4C Programme; (ii) any other language version of the S4C Programme or any adaptation or revised version of it in any language including without limitation any programme or series containing or incorporating the same programme material or content (whether in the same or a different order or arrangement); and (iii) any programme based on the same format as the S4C Programme and/or which is otherwise derived from the S4C Programme and/or its production;

**Programme Information:** the information and documentation specified in the, Technical Requirements, the Subtitling Guidelines and the Delivery Requirements;

**Promotional Rights:** the non-exclusive right to promote, market and advertise the S4C Programme and S4C’s exploitation of it and to use it in corporate marketing by all customary means or methods now known or invented in the future, including by:

i) means of trailers or on-screen promotions (and the right to use Clips and Rushes in such trailers or promotions);

ii) preparing and releasing summaries of the S4C Programme to the press along with articles and other material about the S4C Programme, or individuals contributing to the S4C Programme;

iii) radio advertisements, posters, pamphlets, post cards;

iv) exhibiting clips or extracts from the S4C Programme in public, e.g. in public

meetings or exhibitions, in film or television festivals, on S4C’s stand at events, e.g. at eisteddfodau or international matches;

v) exhibiting the S4C Programme and/or Clips and/or Rushes via Online Rights.

vi) preparing corporate materials or products (and the right to use Clips and Rushes in any such corporate materials);

vii) holding premieres or theatrical exhibitions of the S4C Programme;

viii) nominating the S4C Programme for film or television awards or otherwise to submit it for exhibition or for an award at any film or television festival;

ix) exercising the Merchandising Rights;

**Quarter**: a period of three calendar months ending on 30 June, 30 September, 31 December or 31 March in any calendar year from the date of the Licence;

**Reports:** the progress reports and cost reports to be submitted by the Producer to S4C and specified in the Appendix or in the Licence**;**

**Repeats and Residual Payments**: repeat residual and reuse fees and royalties (including in relation to Third Party Material) which are notified to S4C on Delivery and are payable in relation to the exploitation of the S4C Rights which shall either be in accordance with Industrial Relations Contracts or shall otherwise have been noted in the Appendix. No Repeats and Residual Payments shall be payable by S4C in respect of uses which are stated in the Appendix as being “bought out”;

**Returning Series:** a series which is a Sequel to a previous programme or series commissioned by S4C;

**Rushes:** material produced during the course of production of the Programme but which does not feature in the S4C Programme as Delivered;

**Secondary Rights**: has the meaning set out in S4c’s Code of Practice as agreed with TAC from time to time.

**Streaming Service:** any service on any Platform from time to time for VOD and/or Live Streaming of audio or audio-visual content

**S4C Clic:** S4C’s branded Service

**S4C Compliance Guidelines:** the documents which are available under the heading Compliance Guidelines on the Production Website including (but not limited to) the [Ofcom Broadcasting Code](https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code#:~:text=The%20Ofcom%20Broadcasting%20Code%20%28%22the%20Code%22%29%2C%20the%20most,viewed%20in%20each%20section%20of%20the%20Code%20below), [S4C Guidance on Programme Compliance, Conflict of Interest and Political Interest](https://dlo6cycw1kmbs.cloudfront.net/media/media_assets/2017_05_03_Canllawiau_S4C_ar_Gydymffurfiaeth_Rhaglenni_Saesneg.pdf), [Offensive Language Guidelines](https://dlo6cycw1kmbs.cloudfront.net/media/media_assets/2018_03_29_Offensive_Language_Guidelines.pdf) and any updated versions of such documents and any separate requirements published by S4C from time to time;

**S4C Programme**: the Welsh-language version of the Programme described in the Appendix and any and all excerpts from and/or sound recordings and/or other programmes incorporated in such programme and all or any subtitles, audio description, signing or interactive elements associated with such programme and all Delivery Materials;

**S4C Rights:** in respect of the S4C Programme the Primary Rights as varied (if at all) by the Appendix, all other rights of S4C under the Licence and the sole and exclusive right to assign or sub-licence such rights;

**S4C Service(s):** any service provided by S4C or any of its Group Companies to the public from time to time, whether in existence now or in the future, any channel carrying a Timeshift Broadcast, any service via which the Online Rights or the Website Rights are exercised and whether such services are linear or interactive or delivered by digital satellite, digital terrestrial or digital cable television, online, offline or by wireless technology or by telephone line or any other digital media or platform now known or hereafter invented including standard or high definition television (HDTV), Live Stream and VOD or by a combination thereof and whether or not receivable outside the United Kingdom.

**S4C VOD Rights:** the exclusive right during the VOD Windows to make the S4C Programme available to viewers for reception by way of VOD without charge at the point of viewing from:

(i) the S4C Clic website (at www.s4c.cymru/clic) or any other S4C Services or from any other website operated by, on behalf of or under licence from S4C;

(ii) such mobile phone and tablet applications as exist now or in the future which are branded S4C Clic;

(iii) any section or part of a third party web/social-media channel, Streaming Service or Platform which is UK based, branded S4C and where S4C manages or controls the content made available within it;

(iv) any other channel, Streaming Service or Platform subject to the Producer’s written consent (not to be unreasonably withheld).

**Sequel:** a sequel, remake or prequel, programme or series which is based on or contains elements from the Programme or the Format whether such sequel is temporally prior to, concurrent with or subsequent to the events portrayed in the Programme;

**Sequel Rights:** the sole and exclusive right to make or commission a Sequel in the Welsh language;

**Streaming Service:** any service on any Platform from time to time for the making available On Demand and/or Live Streaming of audio or audio-visual content

**Simulcast:** a simultaneous exhibition of the S4C Programme on more than one medium or platform now or hereafter known at exactly or almost exactly the same time;

**Simultaneous Retransmission Rights:** the sole and the exclusive right (but subject to the provisions of the Act) to permit third party channels and services both within and outside the Territory to capture the S4C Transmission and simultaneously (or almost simultaneously) to re-transmit the signal for reception by viewers by any means in any medium;

**Sponsorship Rights:** the sole and exclusive right to seek sponsorship for S4C’s exploitation of the S4C Programme;

**Subtitling Guidelines:** the guidelines entitled “Submitting Subtitling Materials to S4C”;

**TAC:** Teledwyr Annibynnol Cymru or any successor body;

**TAC Selection and Archive Policy:** the selection and archive policy to be found [on](http://www.s4c.co.uk/production/downloads/e_polisi_dethol_ac_archifo.pdf) the Production Website;

**Technical Requirement****s:** the [Technical Standards](https://dlo6cycw1kmbs.cloudfront.net/media/media_assets/s4c-technical-standards-for-delivery-of-television-programmes-to-s4c-2020.pdf) and any updated version of such document and any separate requirements published by S4C from time to time;

**Terms of Trade:** S4C’s terms of trade from time to time;

**Territory**: the United Kingdom provided that it is recognised by the Producer that:

1. (as a result of the inherent inability of non-encrypted satellite signals to be confined to national borders and the worldwide nature of the Internet and other means of communication) the S4C Services shall be capable of reception throughout the footprint of Astra 2A or of such other satellite(s) via which the S4C Services are transmitted from time to time and in the case of the Online Rights the Territory shall (save where expressly stated otherwise) be worldwide; and
2. the S4C Rights include Simultaneous Retransmission Rights outside the Territory;

neither of which shall amount to a breach by S4C of the Licence;

**Theatric Rights:** the sole and exclusive right to show the S4C Programme in public by any manner or means in any medium to an audience which has paid for admission to the place where the S4C Programme is to be seen;

**Third Party Material:** any material incorporated or proposed to be incorporated in the S4C Programme or on which the S4C Programme is to be based in respect of which any rights of copyright or any other rights of whatever nature are vested in or controlled by any third parties;

**Timeshift Transmission:** the right to transmit the Programme on any element of the S4C Service or any service provided by a licensee of S4C that offers a time- delayed Transmission of the output including the right to simulcast the same;

**Transmit/Transmission:** any method of linear transmission or communication now known or hereafter invented whether linear or interactive and including digital platforms and appropriate networks as defined in paragraph 5(8) of Schedule 12 of the 2003 Act but (except in the exercise of the Simultaneous Retransmission Rights) excluding by means of the Online Rights. The expression “Transmit” shall for the avoidance of doubt include the simultaneous transmission of the Programme in the exercise of the Simultaneous Retransmission Rights;

**Underlying Rights Material:** any material upon which the S4C Programme is based or which is incorporated into the S4C Programme;

**VOD:** video on demand, i.e.at a time chosen by the viewer including for the avoidance of doubt the ability for the viewer to:

(i) start, stop, pause, startover; fast-forward and/or rewind the exhibition of the S4C Programme including by way of reverse EPG; and

(ii) record and download/store the S4C Programme for a maximum of 150 days.

For the avoidance of doubt the viewer shall not be entitled to download the S4C Programme permanently.

**VOD Window(s):** 150 day period(s) during the Licence Period and/or Extended Licence Period in which S4C may exercise the S4C VOD Rights, whether or not linked to a linear Transmission. The relevant VOD Window shall begin when S4C makes the Programme available to viewers for reception by way of VOD. S4C may choose to amalgamate VOD Windows.

**Website Rights:** the rights in Clauses 5.14 to 5.19 inclusive;

**Welsh Language Scheme:** the Welsh language scheme to be found on the Production Website; and

**Working Day**: any day other than a Saturday, Sunday or public holiday.