

Subject to Contract

THIS AGREEMENT is made the day of 2020

BETWEEN

- (1) S4C of Canolfan S4C: Yr Egin, Carmarthen SA31 3EQ ("**S4C**"); and
- (2) [] (Company number: []) whose registered address is situated at [] ("**the Supplier**").

WHEREAS

- (A) S4C is the owner/licensee of the S4C Content.
- (B) The Supplier is the licensor of certain online content management/publication tools.
- (C) Following the publication by S4C of an invitation to tender for Access to Online Content Management Tools and the submission by the Supplier of a tender, the Supplier has agreed to grant to S4C, its group companies and certain authorised third parties a licence to use the content management/publication tools 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:

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

Agreement: this agreement including the schedules and any document incorporated into this agreement by reference;

Authorised Third Parties: any third party (including production companies) nominated by S4C and/or its Group Companies;

Business Day: a day, other than a Saturday, Sunday or a public holiday in Wales;

Cashflow: the cashflow for the payment of the Fee as detailed in Schedule 2;

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 Rights and/or the business of S4C and/or its Group Companies which is disclosed or made available for the purposes of or generated under this Agreement and whether before, on

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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 by S4C in writing or that ought to be considered as confidential and/or all personal data and sensitive personal data within the meaning of the Data Protection Requirements and/or any log-in details and passwords relevant to the Service;

Data Protection Requirements:

the prevailing applicable laws and regulations relating to the processing of Personal Data and privacy, including to the extent prevailing or applicable, (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: []

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

Fee: the agreed fee for the Supplier's Services as set out in Schedule 2;

Force Majeure: as defined in clause 19;

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;

Good Industry Practice: 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 Supplier's Services;

Group Company: any subsidiary or holding company from time to time and any subsidiary of such holding company from time to time (as such terms are defined in Section 1159 of the Companies Act 2006);

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Insurance Policies:	the insurance policies noted in clause 11;
Intellectual Property Rights:	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;
Manager:	[];
Open Source Software:	any software subject to a version of the General Public Licence, together with any other 'open source' software falling within the Open Source Definition issued by the Open Source Initiative (www.opensource.org/docs/osd) at the date of this Agreement and any 'free software' as defined by the Free Software Foundation (www.gnu.org/philosophy/free-sw.html) at the date of this Agreement;
Quarter:	a period of 3 calendar months ending on 30 June, 30 September, 31 December or 31 March in any calendar year from the date of this Agreement;
S4C Brand:	the S4C logo and any other logo associated with S4C whether registered or not;
S4C Content:	the content to be uploaded and/or streamed and/or published by or on behalf of S4C via the Service;
S4C Representative:	[] or any other person or persons engaged by S4C from time to time during the Term to supervise the performance of the Supplier's Services;
S4C Services:	any channel, television service, website, mobile application or other platform for making material available to the public (whether now known or hereinafter invented) which is owned or operated by, on behalf of or with the consent of S4C from time to time including without limitation S4C Digital, the S4C Website, any S4C branded mobile

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application, the S4C video on-demand service currently known as "Gwyllo" and the S4C on-demand service available via the BBC iPlayer;

Service:	the software and other services which deliver an [online platform, service or tool] to which access and a licence is provided to S4C under this Agreement as described in the Specification including any Updates and Upgrades to which S4C may be entitled under this Agreement or the Service Level Agreement and including any Third Party Software;
Service Level Agreement:	the agreement set out in Schedule 3 for the provision of Support Services;
Specification:	the descriptions of the functions, features, capabilities and design of the Service provided or made available by the Supplier to S4C including the specification set out in Schedule 1;
Supplier's Services:	all services to be supplied by the Supplier to S4C under this Agreement including without limitation the Support Services;
Support Services:	technical support and other services relating to the Service as specified in the Service Level Agreement;
Term:	the term of this Agreement which shall commence on the Effective Date and shall continue thereafter for a period of 1 year subject to clause 14;
Third Party Software:	any software which is owned by any person other than the Supplier including Updates and Upgrades of that software;
Unacceptable Content:	any material of any nature which is defamatory, indecent, obscene, or which would, if published, constitute a contempt of court; which promotes violence or illegal activities or promotes discrimination based on race, sex, religion, national origin, physical disability or age, which is unsuitable for children; which contains any viruses, worms, trojan horses, spyware, disabling code (including code intended by the Supplier to limit or prevent use of the Service), malicious software or other contaminants that may be used to interfere with or access and modify, delete or damage any data files or other computer programs or which provides access to any such contaminants or which breaches the rights, including the Intellectual Property

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Rights of any third party or any applicable legislation;

Update: all updates in respect of the Service other than an Upgrade;

Upgrade: any upgrade to the Service released by the Supplier that provides additional enhancements, revisions and/or improved functionality or performance.

- 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.
- 1.6 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.

2. **Licence**

- 2.1 The Supplier's obligations under this Agreement shall continue throughout the Term unless determined earlier under the provisions of clause 14.
- 2.2 The Supplier grants to S4C, the S4C Group Companies and, subject to clause 2.3, the Authorised Third Parties an irrevocable (except in the event of termination or expiry of this Agreement), non-exclusive licence to access and use the Service for the Term.
- 2.3 The rights of Authorised Third Parties to access and use the Service under clause 2.2 shall be limited to those Authorised Third Parties who require access and use of the Service for the purpose of producing and/or managing the S4C Content for S4C or to any S4C Group Company and their use of the Service shall be for those purposes only.

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3. Scope of Use

- 3.1 The right to access and use the Service under clause 2.2 includes the right to allow an unlimited number of users to access and use the Service from any location.
- 3.3 Except as expressly permitted under this Agreement or by law, S4C shall not:
 - 3.3.1 copy, modify, adapt, correct errors, or create derivative works from, the Service;
 - 3.3.2 decode, reverse engineer, disassemble, decompile or otherwise translate or convert the Service.

4. Delivery and Communication with S4C

- 4.1 The Supplier shall deliver log-in details for the Service to S4C on or before the Effective Date. The Supplier will provide all reasonable instructions, including any necessary activation codes or licence keys to S4C.
- 4.2 The Supplier will provide such reports in relation to the Supplier's Services as requested by the S4C Representative during the Term.
- 4.3 The Supplier shall consult on a regular basis with the S4C Representative on all aspects of providing the Supplier's Services.
- 4.4 The Supplier further agrees to comply with the requirements of S4C as explained by the S4C Representative from time to time.

5. Support Services

- 5.1 The Supplier will provide the Support Services in accordance with the terms of the Service Level Agreement throughout the Term.
- 5.2 The Supplier will make any changes to the Service as required in order to resolve any Fault in accordance with the Service Level Agreement and in order to ensure that the Service is operational throughout the Term.
- 5.3 S4C shall be entitled to any Update and Upgrades that the Supplier issues in relation to the Service from time to time at no additional cost.
- 5.4 Any Update or Upgrade provided to S4C under this Agreement shall:
 - 5.4.1 result in the Service having at least the same functionality, performance and compatibility with equipment and systems as the Service as it was immediately prior to the relevant Update or Upgrade; and
 - 5.4.2 not have any adverse effect on the functionality, performance or compatibility of the Service.

6. The Service

- 6.1 The Supplier undertakes to ensure that the entire Service:-

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- 6.1.1 conforms with and implements quality standards, which are generally accepted for such services from time to time;
- 6.1.2 does not contain any Unacceptable Content;
- 6.1.3 does not contain any disabling programs or similar devices.

7. Training

- 7.1 The Supplier shall provide training to S4C on the use of the Service in the manner set out in this clause 7 and Schedule 1.
- 7.2 The Supplier acknowledges that the training shall be provided at no additional cost to S4C.
- 7.3 Any additional training shall be provided on such terms as the parties may agree and at the Supplier's standard training rates from time to time.

8. Supplier's General and Staff Obligations

- 8.1 The Supplier undertakes to S4C that the Supplier's Services will be performed:
 - 8.1.1 in an efficient and safe manner in accordance with Good Industry Practice and by the key personnel (if any) specified in the Specification;
 - 8.1.2 in accordance with all laws and regulatory requirements from time to time applicable to the performance of the Supplier's Services.
- 8.2 The Supplier agrees to employ or engage a sufficient number of employees, staff or consultants (including Welsh-speakers if applicable) necessary for provision of the Supplier's 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 Supplier's Services effectively and in accordance with the requirements of S4C.
- 8.3 Without prejudice to clause 8.2, the Supplier shall engage the Manager to supervise and/or to assist the Supplier with provision of the Supplier's Services throughout 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).
- 8.4 The Supplier shall immediately notify S4C in writing if it is for any reason unable to perform any of its obligations under this Agreement. Any such notification shall be without prejudice to any rights which S4C may have whether under this Agreement or otherwise at law in respect of such inability of the Supplier to perform any of its obligations.

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9. Payment

- 9.1 In consideration of the Supplier complying with and performing in full its obligations under this Agreement S4C shall pay to the Supplier the Fee in accordance with the Cashflow and the other provisions of this Agreement.
- 9.2 The Supplier shall render invoices in accordance with the Cashflow and shall show VAT separately on such invoices, and S4C shall pay such invoices within thirty (30) days of receipt. The Supplier shall not issue an invoice before the due date for its issue.
- 9.3 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.
- 9.4 The Supplier shall be responsible for all maintenance, running expenses and all ancillary overheads expenditure or running costs incurred in the performance of the Supplier's Services.

10. Review

- 10.1 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 10.2 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.
- 10.2 At such review meetings and without prejudice to provisions of this Agreement the parties shall review: -
 - 10.2.1 the technical quality, functionality and usability of the Service;
 - 10.2.2 any Faults reported since the previous meeting and the steps taken to deal with such Faults;
 - 10.2.3 any Service analytics received;
 - 10.2.4 performance by the Supplier of the Supplier's Services generally;
 - 10.2.5 any means of modifying or improving provision of the Supplier's Services, any modifications to the design or functionality of the Service having regard to technological requirements or advances (particularly as new features become available on the various platforms), or any change requests made by S4C as a result of any impact analyses or Service analytics received; and
 - 10.2.6 such other matters as either party may wish to raise.
- 10.3 Following such review meetings, S4C shall be entitled to give the Supplier notice in writing:

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- 10.3.1 to confirm the Supplier's appointment for the remainder of the Term in accordance with the terms and conditions of this Agreement;
- 10.3.2 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; or
- 10.3.3 to terminate this Agreement by giving three months notice.

11. Insurances

- 11.1 Prior to the Effective Date, the Supplier undertakes to effect suitable insurance policies with reputable insurance companies or underwriters against all risks normally insured against in accordance with industry custom and practice and the specific circumstances of the Supplier's Services for the duration of the Term. Without prejudice to the generality of the foregoing such insurance shall include adequate public liability insurance cover with a reputable insurance company to a minimum indemnity limit of £5,000,000 per claim and £5,000,000 in aggregate per annum and products liability insurance cover to a minimum indemnity limit of £10,000,000 per claim and £10,000,000 in aggregate per annum.
- 11.2 The Supplier undertakes to comply with the terms, conditions and limitations of the Insurance Policies throughout the Term, including prompt payment of all premiums, and that it will not do, or omit to do, anything to vitiate either in whole or in part any of the Insurance Policies.
- 11.3 The Supplier shall promptly on request provide S4C with full information and documentation relating to all Insurance Policies and all modifications additions and extensions of such Insurance Policies.
- 11.4 The Supplier shall forthwith advise S4C in writing of the happening of any event which might give rise to a claim under any of the Insurance Policies and which may prevent the Supplier from complying with its contractual responsibilities under this Agreement. The Supplier shall provide S4C with copies of all correspondence and documentation relating to any such matter immediately on receipt.

12. Intellectual Property Rights

- 12.1 S4C grants the Supplier a revocable non-exclusive royalty free licence during the Term in the S4C Content solely for the purpose of providing the Supplier's Services being the right to (i) deliver the S4C Content in accordance with the preferences set by S4C; (ii) secure, encode, reproduce, host, cache, route, reformat, analyse and create algorithms and reports based on access to and use of the S4C Content; (iii) use, exhibit, broadcast, publish, publicly display, publicly perform, distribute, promote, copy, store, and/or reproduce (in any form) the S4C Content all in accordance with the preferences set by S4C.
- 12.2 The Supplier shall indemnify, keep indemnified and hold harmless S4C, S4C's Group Companies and the Authorised Third Parties from and against any losses, claims, damages, liability, costs (including legal and other professional fees) and expenses incurred as a result of or in connection

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with any action, demand or claim that the access to or use of the Service infringes the Intellectual Property Rights of any third party (an "**IP Claim**").

- 12.3 If S4C becomes aware of an IP Claim:
 - 12.3.1 it shall notify the Supplier promptly; and
 - 12.3.2 the Supplier shall defend or settle the IP Claim and shall consult regularly with S4C on all aspects of the defence or settlement.
- 12.4 If the Service is or is likely to become subject to an IP Claim, the Supplier shall:
 - 12.4.1 obtain the right for S4C to continue to use the Service; or
 - 12.4.2 replace or modify the Service (or the part of it subject to the IP Claim) so that it becomes non-infringing without materially affecting the functionality of the Service as set out in the Specification.
- 12.5 Any failure of the Supplier to achieve either of the outcomes described in clause 12.4 within a reasonable period of time, but in any event within [30] calendar days of the Supplier becoming aware of the IP Claim, shall be a material breach of contract which is not remediable.
- 12.6 Where the Supplier replaces or modifies the Service under clause 12.4.2, the warranties in clauses 13.1 and 13.2 shall continue to apply to the replaced or modified Service.
- 12.7 The Supplier shall have no liability under clause 12.2 to the extent that any IP Claim arises from any modification of the Service undertaken without the Supplier's written consent or from any use of the Service by S4C in breach of the terms of this Agreement.
- 12.8 The provisions of this clause 12 are in addition to, and not exclusive of, any other rights and remedies to which S4C, S4C's Group Companies or the Authorised Third Parties may be entitled whether under this Agreement, at law or otherwise.
- 12.9 The Intellectual Property Rights in the Service are owned by the Supplier. Except for the rights to access and use the Service expressly granted in this Agreement, S4C shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Service or in any copies of it and no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement save as noted expressly in this Agreement.

13. Obligations, Warranties and Indemnity

- 13.1 The Supplier warrants and represents to S4C that the Service shall:
 - 13.1.1 perform in accordance with, and provide all of the facilities and functions set out in the Specification;
 - 13.1.2 operate successfully on the equipment and systems specified in Schedule 1 (if any);

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- 13.1.3 not be adversely affected by any date and will be capable of processing all dates (including leap years).

13.2 The Supplier represents warrants represents and undertakes that:-

- 13.2.1 it has the right, power and authority to enter into this Agreement and to grant the licence to access and use the Service on the terms set out in this Agreement;
- 13.2.2 the access or use of the Service in accordance with the Agreement will not infringe the Intellectual Property Rights of any third party;
- 13.2.3 it will perform the Supplier's Services faithfully, conscientiously and punctually and in accordance with all applicable laws, rules and guidelines;
- 13.2.4 it will comply with all of S4C's reasonable instructions in respect of the Supplier's Services;
- 13.2.5 it will be the sole absolute unencumbered legal and beneficial owner of all Intellectual Property Rights in the Service and all rights granted to S4C pursuant to this Agreement and has not assigned charged sublicensed or otherwise in any way encumbered any such rights;
- 13.2.6 nothing contained in the Service shall contain, comprise or give access to any Unacceptable Content;
- 13.2.7 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 Service which are or might be inconsistent with or derogate from the rights granted to or purported to be granted to S4C under this Agreement;
- 13.2.8 it is not aware of any proceedings, arbitration or claim presently in progress, pending or threatened in relation to the Service, the title and/or ownership of copyright in any of the underlying copyright works on which the Service is to be based which might adversely affect the Service or which might in any way impair, limit, diminish, or infringe any of the rights hereby granted;
- 13.2.9 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;
- 13.2.10 the Service does not contain any Open Source Software and no part of the Service has been compiled, modified or prepared using any Open Source Software;
- 13.2.11 no Update or Upgrade will adversely affect the performance and/or functionality of the Service;

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- 13.2.12 in providing the Supplier's Services it shall comply with the Data Protection Requirements and shall ensure that any personal data collected or processed by the Supplier in connection with this Agreement shall be processed in accordance with the requirements of the Data Protection Requirements and S4C's Data Protection and Privacy Policies.
- 13.3 The Supplier does not warrant or represent that the Service will operate free of minor errors that do not adversely affect the performance, presentation or operation of the Service.
- 13.4 Subject to clause 14, the warranties and representations in this clause 13 are granted by the Supplier to any S4C Group Company and Authorised Third Party licensed to use the Service under this Agreement on the same terms as granted to S4C.
- 13.5 S4C shall be entitled to the benefit of all warranties, conditions and terms implied by statute, fact, law or custom (which are hereby deemed incorporated by reference to the extent necessary to give effect to this clause 13.5). The provisions of this clause 13 are in addition to, and are not exclusive of, any other rights and remedies to which S4C, S4C's Group Companies and the Authorised Third Parties may be entitled and, in particular, the warranties and conditions implied by the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982 are not excluded.
- 13.6 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 or 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.

14. Termination

- 14.1 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:-
- 14.1.1 the other is in breach of any term, condition or undertaking in this Agreement and it is not possible to remedy such breach or, 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;
- 14.1.2 the other:
- a) 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

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- b) is the subject of an administration order or enters into any voluntary arrangement with its creditors.

14.2 S4C shall be entitled to terminate this Agreement immediately:

14.2.1 if the Supplier, its employees or staff is/are guilty of gross misconduct or negligence whilst performing its or their obligations under this Agreement; or

14.2.2 there is a change of control (as 'control' is defined in Section 1124 of the Corporation Tax Act 2010) of the Supplier.

14.3 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 15 shall apply.

14.4 Where S4C has exercised its option to extend the Term in accordance with Clause 14.3, S4C may decide to extend the Term for a further period of 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 15 shall apply.

14.5 For the purposes of this clause 14 "written notice" shall mean notice in writing delivered by post in accordance with clause 18. Nothing in this Agreement shall permit either of the parties to terminate this Agreement via email or facsimile transmission.

15. **Consequences of Termination**

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

15.1.1 S4C's obligation to pay the Fee (or any balance of it) shall cease;

15.1.2 the Supplier shall have no right, licence or permission following the date of termination to deal with the S4C Content in any way nor to keep them in its possession or under its control other than delivering up such items to S4C and/or erasing such items from the Service and from any computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable)(in accordance with the instructions of 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);

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- 15.1.3 all licences granted to the Supplier by S4C under this Agreement shall immediately cease and determine; and
 - 15.1.4 S4C shall cease its use of the Service and shall procure that the S4C Group Companies and the Authorised Third Parties also stop using the Service.
- 15.2 Unless otherwise provided, termination of this Agreement shall be without prejudice to the grants of rights and the warranties and undertakings given by either party 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.
- 15.3 All clauses required for the proper interpretation and enforcement of this Agreement shall survive the expiry or termination of this Agreement including the following: 1 (Definitions), 12.2, 13 (Obligations, Warranties and Indemnities), 15 (Consequences of Termination), 16 (Confidentiality), 17 (Assignment), 20 (Data Protection and FOIA), 21 (Construction), 22 (Prevention of Corruption and Fraud).
- 16. **Confidentiality**
 - 16.1 The Supplier shall use the Confidential Information solely for the purposes of performing its obligations under this Agreement and subject to the provisions of clause 16.2 shall not disclose the Confidential Information to any person other than in confidence and on a strictly need to know basis to its staff and the Supplier shall take all such steps as S4C may reasonably require to enforce any such obligations of confidentiality against any of its staff.
 - 16.2 The restrictions on disclosure contained in clause 16.1 shall not apply to any information which:
 - 16.2.1 is in or enters the public domain other than as a consequence of, any breach of the restrictions on disclosure by the Supplier or any of its staff;
 - 16.2.2 is required to be disclosed by law or by any regulatory body with whose rules the parties are required to comply provided that, to the extent it is legally permitted to do so, the Supplier gives S4C as much notice of such disclosure as possible; or
 - 16.2.3 is required to be disclosed to a person to whom an assignment has been permitted under Clause 17.
 - 16.3 On termination of this Agreement, the Supplier shall:
 - 16.3.1 return to S4C all documents and materials (and any copies) containing, reflecting, incorporating or based on the Confidential Information;
 - 16.3.2 erase all Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and

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- 16.3.3 certify in writing that it has complied with the requirements of this clause, provided that the Supplier may retain documents and materials containing, reflecting, incorporating or based on the Confidential Information to the extent required by law or any applicable regulatory body.
- 16.4 Except as expressly stated in this Agreement, S4C makes no express or implied warranty or representation concerning the Confidential Information.
- 16.5 S4C reserves all rights in the Confidential Information. No rights in respect of the Confidential Information other than those expressly stated in this Agreement are granted to the Supplier, or are to be implied from this Agreement.
- 16.6 The provisions of this clause 16 shall continue to apply after the termination of this Agreement.

17. Assignment

- 17.1 This Agreement is personal to the Supplier. The Supplier 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.
- 17.2 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.
- 17.3 S4C shall have the right to assign, subcontract, sublicense or otherwise dispose of its rights or obligations under this Agreement and/or any part thereof.

18. Notices

- 18.1 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 a new address in the United Kingdom.
- 18.2 A notice shall be deemed served on the next following working day if delivered by hand to the relevant address as aforesaid or if handed in at a Post Office properly addressed and prepaid for transmission by first class post on that day. Any period of notice specified herein shall commence on the day of presumed service and (unless otherwise provided) shall not be inclusive of Saturdays, Sundays and public holidays.

19. Force Majeure

- 19.1 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,

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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.

- 19.2 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.
- 19.3 If an event of Force Majeure occurs and continues for a period of thirty (30) days or more S4C shall have the right to terminate this Agreement on notice in writing to the Supplier.

20. **Data Protection and Freedom of Information Act 2000 ("FOIA")**

- 20.1 All personal data provided to S4C by the Supplier in connection with the provision of the Supplier's Services may be processed by S4C in accordance with the Data Protection Requirements and the use intended to be made by S4C of the Supplier's Services. The Supplier shall secure the consent of all relevant individuals to the processing of their personal data for this purpose. All personal data supplied to S4C shall be processed in compliance with S4C's Data Protection and Privacy Policies in force from time to time.
- 20.2 Prior to transferring any Personal Data to S4C, the Supplier shall ensure that it has an appropriate lawful basis for the transfer of the Personal Data to S4C and has ensured an appropriate lawful basis to enable S4C to process the Personal Data for the use intended to be made by S4C of the Supplier's Services and in the administration of this Agreement.
- 20.3 Without prejudice to the generality of clause 20.1 and 20.2 above, the Supplier shall ensure that all contracts with relevant individuals identified in the provision of the Supplier's Services include that S4C shall be a controller in relation to the relevant individual's Personal Data for the use intended to be made by S4C of the Supplier's Services, and shall direct the contributors to a link to the S4C Privacy Notice (available at http://www.s4c.cymru/media/media_assets/2018.11.29_Privacy_Note_for_Contributors.pdf).
- 20.4 Both parties agree to comply with all applicable requirements of the Data Protection Requirements. This clause 20.4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Laws.
- 20.5 Without prejudice to the generality of clause 20.4 above, each party shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:

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- 20.5.1 assist the other party, free of charge, to respond to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Requirements with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 20.5.2 maintain adequate records, policies and procedures to demonstrate its compliance with Data Protection Requirements, and make such records, policies and procedures available to the other party on reasonable request; and
- 20.5.3 appoint a data protection officer if required to do so under the Data Protection Requirements, or, where it is not required to do so, to appoint an individual responsible for data protection and inform the other party of the name of that individual.
- 20.6 Without prejudice to the generality of clause 20.3, the parties agree in relation to any Personal Data processed by that party solely as a processor on behalf of the other party as controller under this Agreement, that the processor shall:
 - 20.6.1 process the Personal Data only on the written instructions of the controller and, on the written direction of the controller, delete or return such Personal Data and copies thereof to the controller on termination of this Agreement (unless precluded from doing so pursuant to any applicable laws);
 - 20.6.2 allow for audits by the controller or its designated auditor of the processor's data protection procedures and processes in connection with this Agreement;
 - 20.6.3 ensure that it has in place appropriate technical and organisational measures 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);
 - 20.6.4 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 processor's contractual obligations to the other;
 - 20.6.5 not transfer any Personal Data outside of the European Economic Area or appoint a third party to process the Personal Data unless the prior written consent of the other has been obtained; and
 - 20.6.6 notify the other party without undue delay and no later than within 24 hours on becoming aware of a Personal Data breach. S4C should be notified via the following email address: data@s4c.cymru

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- 20.7 Laws and guidelines relating to Personal Data regularly develop and S4C may, at any time on not less than 30 days' notice, revise this clause 20 in order to reflect any change in good practice or guidelines by replacing them with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 20.8 The Supplier acknowledges that S4C is a public body subject to the requirements of the FOIA and the Environmental Information Regulations 2004 ("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 its staff shall:
- 20.8.1 provide S4C with a copy of all relevant information in its possession or power in the form that S4C requires; and
 - 20.8.2 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).
- 20.9 S4C shall be responsible for determining whether the information:
- 20.9.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Regulations; or
 - 20.9.2 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.
- 20.10 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.
- 20.11 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.
21. **Construction**
- 21.1 The provisions of this Agreement shall apply to every part of the provision of the Supplier's Services including any work done prior to the signature of it.

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- 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.
- 21.4 No variation of this Agreement shall be effective unless it is in writing and signed by the parties.
- 21.5 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.
- 21.6 Except as expressly provided in clause 21.7, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.
- 21.7 The S4C Group Companies and the Authorised Third Parties shall be entitled to the benefits granted to S4C under this Agreement (including under clauses 2, 3, 12 and 13) and shall be entitled to enforce its terms under the Contracts (Rights of Third Parties) Act 1999.
- 21.8 Notwithstanding the provisions of clause 21.7, this Agreement may be amended or rescinded by agreement between S4C and the Supplier without the consent of any third party.
- 21.9 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.

22. Prevention of Corruption and Fraud

- 22.1 The Supplier shall not offer or give (or agree to offer or 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.
- 22.2 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.
- 22.3 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. The Supplier shall notify

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S4C immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

- 22.4 If the Supplier, its staff or any person acting on behalf of the Supplier acts in a way prohibited by clauses 22.1 or 22.2 above, or commits Fraud in relation to this Agreement, or any other contract with S4C, S4C may give written notice to the Supplier to either terminate the Agreement immediately and/or recover in full from the Supplier any loss sustained by S4C in consequence of any breach of this clause.

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SCHEDULE 1

SPECIFICATION

[The details shall be agreed between S4C and the successful bidder based on the requirements of the Invitation to Tender document and the tender submission of the successful bidder.]

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SCHEDULE 2

FEE AND CASHFLOW

[Schedule to be inserted following agreement between S4C and the successful bidder based on the successful tender.]

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SCHEDULE 3 SERVICE LEVEL AGREEMENT

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 Service and its structure during the Term.

1. Definitions and Interpretation

- 1.1 In this SLA, 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"	either a modification or addition that, when made or added to the Service corrects a Fault or a procedure or routine that, when observed in the regular operation of the Service, eliminates the practical adverse effect of a Fault on the user;
"Business Hour"	<p>(i) in respect of Faults designated by S4C as Priority Level 1: an hour between 9.00am and 10.00pm Greenwich Mean Time or British Summer Time (as applicable) during any day of the year; and</p> <p>(ii) in respect of other Faults: an hour between 9am and 5.15pm Greenwich Mean Time or British Summer Time (as applicable) during any day of the year</p> <p>or such other hours as S4C, in consultation with the Supplier, may require;</p>
"Fault Report"	as described in paragraph 3.1, the process by which S4C will notify the Supplier of a Fault;
"Fault Resolution"	the resolution of a Fault by the Supplier in accordance with paragraph 5;
"Fault Resolution Time"	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"	as set out in paragraph 4, the classification of a Fault by the assignment of a priority level;

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"Queries"

queries regarding the Service 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); and

"Workaround"

a temporary solution to a Fault that allows the Service 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 Service until such time as an Update 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.
- 1.5 The terms "include" and "including" shall be construed without limitation.

2. Services

- 2.1 The Supplier shall during the Term 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 Upgrade of the Service (if applicable) as developed and released by the Supplier during the Term. The Supplier shall not at any time during the Term cease supporting any previous version of the Service 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 Term operate a fault reporting service for the purpose of enabling S4C to report any Fault by telephoning [] 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.

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- 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: Service 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: Service suffering degraded operation for example certain elements not working.
3.	Any Fault resulting in attributes and/or functionality of Service software not operating as stated but causing minimal impact to the Service's 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 Term. 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

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		progress report each Business Hour
3.	One Business Hour	Three Business Days, plus progress report each Business Day

The Supplier shall provide S4C with an emergency telephone number to enable S4C to report Faults outside Business Hours. Such number shall be used only in exceptional circumstances such as Unacceptable Content appearing on the Service or other 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 ten 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.

[Content of this SLA to be completed in accordance with the successful tender]

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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 by and on behalf of
the **Supplier**

.....

Director

.....

Director