**S4C TERMS OF TRADE – THIRD ISSUE (2020)**

**FOR PROGRAMMES COMMISSIONED UNDER THE S4C CODE OF PRACTICE (2018).**

**1. Introduction**

1.1 In October 2018 S4C published a revised Code of Practice following negotiations with TAC and Ofcom. These Terms of Trade outline the terms upon which S4C usually commissions Programmes from the independent sector and expand upon the key principles contained in S4C’s Code of Practice 2018. These Terms of Trade reflect changes agreed between TAC and S4C during the review conducted in 2018. Following agreement of these Terms of Trade, S4C and TAC will update the standard terms of S4C’s Licence as set out in the S4C General Terms.

1.2 These terms are the minimum terms that apply to qualifying independent production companies where S4C has 100% funded a Programme. S4C publishes a range of tariffs for each genre of Programme commissioned by S4C on the Production Website.

1.3 A Producer can always choose to offer a Programme to S4C on a different basis than that suggested in S4C’s Terms of Trade. The following fall outside S4C’s Code of Practice:

(a) the programmes supplied by the BBC to S4C pursuant to the Broadcasting Acts 1990 and 1996;

(b) any programme or series where the Producer does not own or control the necessary rights in the programme idea or format (including but without limitation where S4C has acquired or licensed the necessary rights directly);

(c) all programmes commissioned from a supplier that is not classified as an ‘independent producer’ according to Ofcom’s Guidelines and Policies;

(d) programmes which the Producer chooses to offer to S4C on the basis of a full assignment of copyright; and

(e) programmes where S4C needs to own or control the necessary rights to ensure continuity between successive contracts for the service.

1.4 The parties to any commission may agree to an arrangement that is different to the terms included in S4C’s Code of Practice and Terms of Trade.

1.5 These Terms of Trade will be reviewed regularly, at the request of either Party, with a formal review after three years. Any changes will be made following discussions between S4C and TAC on behalf of its members. In particular, S4C and TAC agree to discuss in good faith, with a view to reaching agreement, terms of trade relating to the commission of short-form content.

1.6 This Third Issue of the Terms of Trade shall be deemed to replace the Second Issue in its entirety. However, S4C recognises that, where Programmes have been commissioned under the Second Issue, the additional rights conferred by this Third Issue may no longer be available because they have been exploited by the Producer. As such, where:

(a) a Programme was commissioned under the Second Issue; and

(b) S4C wishes, in relation to that Programme, to exploit rights which are conferred by this Third Issue but did not appear in the Second Issue,

S4C shall request the Producer’s consent before doing so.

1.7 The Producer shall respond promptly to any such request and shall not unreasonably withhold consent. Provided that consent shall be subject always to:

(a) S4C securing and paying for all necessary clearances of Third Party Material and Underlying Rights Material which the Producer was not required to clear under the original Licence; and

(b) in the case of the S4C VOD Rights, S4C paying to the Producer the sum set out in clause 1.8 below to reflect the greater period for which Programmes may be made available on demand under this Third Issue.

1.8 The sum referred to in paragraph 1.7 is either:

(a) where there is no prior Transmission of the Programme (e.g. some ‘Box Sets’ from the archive which are made available on S4C Clic), and/or in any case where S4C wishes to purchase additional VOD Windows or packages combining additional Transmissions and VOD Windows (whether during the Licence Period, the Extended Licence Period or thereafter) the relevant sum set out in tables 1-3 of the fee tables appended to this Third Issue; or

(b) where the Programme is Transmitted; and where S4C has already acquired the right to make the Programme available online for 35 days under the Second Issue; and where it is agreed between the Producer and S4C that the 35 day period may be increased to 150 days and be usable at any time; a “top up” fee as set out in table 5 of the fees tables appended to this Third Issue.

1.9. Should S4C wish to acquire wider rights than those in these Terms of Trade, they should discuss with the Producer.

1.10 Where English or other language rights have been licensed exclusively by the Producer to a third party for exploitation outside the UK, S4C shall not use subtitles other than Welsh-language subtitles on transmissions which are capable of reception outside the Territory. For the avoidance of doubt, S4C’s right to include English language subtitles in Programmes available within the UK is unaffected.

1.11 As at the date of publication of this Third Issue of the Terms of Trade, S4C and TAC are discussing a shared apprenticeship scheme for Producers who provide content to S4C. The Parties agree to continue those discussions in good faith, in accordance with their respective commitments to diversity, and with a view to reaching agreement. TAC supports the principle of a shared apprenticeship scheme with a particular emphasis on attracting to the independent production sector in Wales those with protected characteristics (as defined in the Equality Act 2010) and those from the poorest areas (as set out in the Welsh Government’s Index of Multiple Deprivation from time to time).

**2. Definitions**

Capitalised words shall (except where otherwise stated) have the meanings given to them in the General Terms.

**3. Developing Projects**

3.1 In most cases, Producers will develop a project without funds from S4C before any decision to commission is made. Encouragement to do so does not amount to a contractual commitment by S4C.

3.2 Where S4C contributes to the cost of developing an idea, S4C will expect to own the rights in the development work jointly with the Producer in equal shares. In such circumstances, neither party should exploit the rights in the development work without the permission of the other.

3.3 Where S4C contributes to the cost of developing an idea, S4C will have the first option to commission a Programme based on that development work. The exercise of such option shall be subject to agreement of a Licence Fee. If S4C does not do so, or if the parties have not come to an agreement on the terms of a commission within a period of 12 calendar months from delivery of the development work (or such other period as may be agreed between the parties and specified in the development agreement), then the Producer shall have the right to require S4C to re-assign all the rights in the development work and to offer the idea to another broadcaster provided that the Producer or someone on their behalf repays to S4C a sum equivalent to S4C’s contribution to the development work. In these circumstances, development monies paid by S4C shall be repayable on the first day of principal photography.

3.4 If the parties reach agreement regarding a Programme commission, S4C will re-assign its entire rights in the development work to the Producer as part of the Licence so that the Producer may offer the Programme to S4C in accordance with S4C’s Code of Practice 2018.

3.5. The development costs (including any script fees) will be included as part of the Budget and S4C’s pre-payment of any development fee will need to be acknowledged and form part of the Licence Fee.

**4. The Commissioning Process**

4.1 An outline of S4C’s commissioning process and tendering policy is available on the Production Website.

4.2 Producers are required to submit Programme ideas via S4C’s online proposals system ( currently at <https://www.s4c.cymru/cwmwl/#c2>).and must submit all information requested in a timely fashion including realistic and true budget estimates.

4.3 The Editorial and Business Brief is the document which sets out S4C and the Producer’s understanding of the specification of the Programme and any Key Elements. The Editorial and Business Brief forms part of the Licence.

**5. Editorial Control**

5.1 Each Programme commissioned by S4C is expected to contribute to the objectives of S4C’s programme strategy. In addition, S4C has statutory responsibilities to ensure that the appropriate standards are maintained with regard to the quality and content of its programmes and that the programmes are suitable for their intended transmission slots and the target audience. Producers must ensure that programmes supplied to S4C are produced in accordance with the Guidelines and Policies available on the Production Website (which include the guidelines and codes issued by Ofcom from time to time) and the relevant laws.

5.2 The Producer will be responsible on a day to day basis for the production of the Programme and for ensuring that the version to be Delivered to S4C complies with the Editorial and Business Brief agreed in relation to it, all S4C Compliance Guidelines, statutory requirements and with the other requirements of the Licence. S4C will contact the Producer and be entitled on request during the production period to receive regular reports on how the production of the Programme is progressing. All decisions of substance shall be made by S4C and the Producer jointly and S4C shall give fair consideration to the Producer’s opinion. In the last resort, however, if there is a dispute, S4C shall have the final say in relation to the version of the Programme Delivered to S4C.

5.3 A timescale will be agreed for Delivery and/or notification of the Key Elements to the Commissioning Editor and their approval by the Commissioning Editor.

5.4 Once the Editorial and Business Brief has been agreed, the Commissioning Editor’s prior written approval will be required for any material proposed changes to the Key Elements. Provided that, if S4C has neither given nor refused consent within ten working days of being notified by the Producer of a material proposed change which does not a) increase S4C’s costs and b) delay Delivery, the Producer shall be entitled to proceed to make that change.

5.5 The Editorial and Business Brief will specify how many breaks are likely to be required for commercials, but S4C retains the right to edit the material after delivery in order to change the locations and / or number of the commercial breaks.

5.6 The S4C Programme credits must comply with S4C’s [Compliance Guidelines](http://www.s4c.cymru/en/production/page/1154/guidelines/) as amended from time to time.

**6. Delivery**

6.1 Every Programme should be Delivered in accordance with the Technical Requirements and the Delivery Requirements on the Delivery Dates specified in the Licence.

6.2 Any Producer unable to deliver by the contractual Delivery Date must discuss the matter with the S4C’s Business Affairs team via mb@s4c.cymru as soon as the delay is known or ought reasonably be known to the Producer. Any changes agreed (agreement not to be unreasonably withheld or delayed by S4C) must be confirmed in writing as soon as is reasonably practicable by S4C’s Business Affairs team before the required contractual term variation comes into force and can be relied upon.

6.3 Programmes must arrive ready for transmission without having to be returned to the Producer, for example, to correct spelling mistakes, reset titles or to obtain rights which should have been cleared. If the need arises to return a tape to the Producer, it will be noted in a report to the Director of Content.

6.4 In accordance with its published policy Tape and Paperwork Delivery and Liquidated Damages (January 2019) (or any amended version or replacement thereof which is agreed with TAC from time to time), S4C may claim liquidated damages for failure to deliver correctly and on time. Any failure by a Producer will be taken into consideration when deciding whether to commission the Producer in the future.

6.5 S4C does not guarantee to transmit the Programme.

**7. Television Access Services**

7.1 S4C will decide and specify how television access material (e.g. signing subtitles or audio description) for the Programme will be sourced, whether that is from the Producer or from a third party. If the Producer is required to provide such material, an allowance will be included in the agreed Licence Fee.

7.2 Any television access material provided by the Producer must be produced in accordance with the Technical Requirements, Subtitling Guidelines and any other relevant Guidelines and Policies published on the Production Website and notified to TAC and/or issued by OFCOM. S4C will own any television access materials commissioned by it and S4C will have the right to edit them and use them and to authorise others to use them as S4C sees fit.

**8. Promotion and Marketing**

8.1 Subject to paragraph 8.2, S4C shall have the non-exclusive right in the UK during the Licence Period and Extended Licence Period to promote, market and advertise the Programme and S4C’s exploitation of it by all customary means or methods and in all media now known or invented in the future and to use Clips from the Programme in doing so. S4C and the Producer shall liaise to discuss publicity for the Programme and

the nature and exact campaign as soon as possible after the Programme has been commissioned.

8.2 The Producer may promote the Programme within the UK provided that is done in co-operation with S4C and with the written approval of S4C’s marketing department, such approval to be given in a timely manner which shall not adversely affect the promotional window. The Producer will co-operate with S4C’s marketing department and assist in the promotional and advertising campaigns conducted by S4C.

8.3 At S4C’s request, the Producer will supply S4C with reasonable material for on screen promotions and, where filmed during the production period, it shall be at the Producer’s cost. Otherwise, S4C will pay the reasonable costs of producing such material, except where the request is necessary as a result of a failure on the Producer’s part to meet the contractual Delivery Date.

8.4 No Producer should commission any artwork/photography or any other promotional or marketing material on S4C’s behalf or at S4C’s cost without the prior written approval of S4C’s marketing department of each item of expenditure.

**9. Financial Matters**

9.1 Please refer to “Stages for Agreeing the Licence Fee” on the Production Website for an outline of the stages in agreeing the Licence Fee.

*Guidance on elements of the Budget*

9.2 The details of any Third Party Material will be confirmed as a part of the budgeting process and will be noted in the Editorial and Business Brief as an assumption. Where a Producer wishes to use Clips from programmes previously commissioned by S4C it should take note of the Clips and Rushes Policy and budget accordingly.

*Legal Fees*

9.3 S4C’s legal department represents S4C’s interests. In order to avoid any conflict of interests, Producers should seek separate independent legal advice where appropriate. S4C anticipates that the budgets for the majority of programmes commissioned by it will not include an allowance for legal advice.

*Insurance*

9.4 S4C requires Producers to maintain comprehensive insurance cover on all Programmes commissioned by S4C. Producers should discuss the insurance requirements for the production of any Programme commissioned by S4C with reputable insurance brokers as soon as possible in order to ensure suitable insurance arrangements are in place before pre-production begins.

*Production Fee*

9.5 The production fee will be negotiated individually in each case but, in the majority of cases will be up to 7% of the direct costs of the Programme.

9.6 Where S4C finances development work, no production fee is payable at the point of development funding. However, if a Programme is commissioned, the development costs will be included in the cost of the programme and a production fee paid in the usual way.

*Cashflow*

9.7 S4C will generally cashflow the Licence Fee as follows, although this may be varied in certain circumstances at S4C’s discretion:

25% on signature of the production agreement;

35% on commencement of filming;

30% on commencement of post-production;

5% on acceptance of delivery of all technical material;

5% on Delivery (including paperwork).

*Monitoring and Managing Costs*

9.8 The Producer will keep financial records sufficient to enable S4C, if necessary, to have an audit trail of production costs.

9.9 S4C retains the right to audit the accounts and records occasionally during the production period and to audit the full costs within eight weeks of delivering the final cost report and paperwork of the S4C Programme (save where a latent issue arises rendering it not reasonably practicable to do so). Notwithstanding the generality of this clause S4C may also audit any programme at any time where:

(a) the commission is the Producer’s first, or the finance management personnel are new to their posts or inexperienced, or there have been administrative problems during production; or

(b) there are substantial variations (above or below) the Budget line items; or

(c) the programme as delivered is different from the Editorial and Business Brief/the other terms of the Licence.

*Overspends*

9.10. The Producer will be expected to fund any overspend. The only exceptions to this are where:

(a) S4C will pay additional costs which have been noted and agreed in writing by S4C Business Affairs beforehand (communication of S4C’s decision regarding whether or not to fund such overspend shall not be unreasonably withheld or delayed) arising from requesting the Producer to carry out additional work as a result of S4C’s editorial decisions. Provided that S4C shall not be responsible for meeting the costs of editorial changes required to a Programme where the Producer has not complied with the requirements of the Editorial and Business Brief. In such a situation, the Producer shall be responsible for informing the S4C Business Affairs team of any additional work arising from the Commissioning Editor’s editorial decisions in good time and prior to incurring any additional expenditure; or

(b) S4C agrees that the overspend has arisen for reasons beyond the Producer’s control in which case S4C at its own discretion may agree to contribute to the overspend.

*Underspends*

9.11 The Producer will be entitled to retain any underspend resulting from the Programme production provided that S4C is satisfied that such underspend has not arisen at the expense of editorial or technical content or in breach of the Licence (e.g. where the Producer has expended less on the Key Elements, or on the on-screen quality of the Programme or where the Programme’s production values are lower than agreed in the Editorial and Business Brief).

**10. Collective Bargaining**

10. S4C encourages Producers to establish and operate suitable industrial relations policies and arrangements which are consistent with industry standards and practice. It is advantageous to S4C that creative contributors to S4C Programmes have been contracted in accordance with the terms of appropriate industrial relations contracts recognised by S4C (being in most cases the industrial relations contracts negotiated by TAC with the relevant talent unions and the Writer’s Guild of Great Britain which represent the creative contributors specifically for use on Programmes commissioned by S4C. Where a Producer makes any other arrangements with the creative contributors to its Programmes, then S4C retains the right to approve those arrangements specifically.

**11.** **Copyright and Credit**

11.1 Under S4C’s Code of Practice, any rights in any Programme commissioned by S4C from an independent Producer on the basis of a Licence (other than the S4C Rights specifically granted to S4C by the Producer) remain the absolute property of the Producer. This means that the copyright in any such Programme (including any copyright which exists independently in the S4C Programme) is the sole property of the independent Producer.

11.2 S4C Programmes commissioned under S4C’s Code of Practice shall carry the following credit and copyright notice:

“Cynhyrchiad [Producer] ar gyfer S4C”

“©[Producer] [year]”

**12. Rights**

12.1 The Primary Rights shall (save where expressly stated otherwise) be exclusive to S4C within the UK during the Licence Period or during the Holdback Period if shorter. The Licence Period will start from the earlier of the date of the Licence or the date of Delivery and will run until a date which is five years after the date of first Transmission by S4C for all Programmes other than Children’s and Educational Programmes where it will be seven years after the date of first Transmission by S4C. In the case of a series, each episode shall have an individual Licence Period running from the date of its Delivery to S4C. If S4C has not Transmitted a Programme (or the first episode in the case of a series) within six months of Delivery to S4C, the Licence Period will come to an end five or seven years and six months after Delivery, as appropriate.

12.2 S4C will have the right to purchase additional Transmission rights and S4C VOD Rights during the Licence Period and/or Extended Licence Period and/or after the Licence Period and/or Extended Licence Period has ended upon payment of a further fee to the Producer in accordance with Tables 1-3 and 5 of the fee tables attached as a schedule to these Terms of Trade.

12.3 In accordance with Ofcom’s Guidelines and Policies, S4C’s Code of Practice sets out the minimum rights package that S4C will expect to acquire in any Programme or series offered to S4C on the basis of a Licence, being the Primary Rights. The rights package that S4C acquires may (in agreement with the Producer) vary from Programme to Programme and will be confirmed in the Licence. The Primary Rights (subject to clearances as set out in paragraph 16 below) are the rights set out in these Terms of Trade.

**13. Transmission Rights**

13.1 S4C shall have exclusive right to Transmit the S4C Programme on the S4C Services at any time in the UK during the Licence Period and the Extended Licence Period (or the Holdback Period if shorter) both with or without English and/or Welsh subtitles and/or other television access material necessary to comply with S4C’s statutory obligations;

13.2 The number of Transmissions to which S4C is entitled will depend on the programme genre:

(a) For genres apart from Children’s and Educational Programmes, S4C will have 15 Transmissions during the Licence Period and Extended Licence Period.

(b) For Children’s and Educational Programmes an unlimited number of Transmissions during the Licence Period and Extended Licence Period.

13.3 Transmissions carrying in-vision signing within a recognised signing block or slot shall not count as a Transmission and shall be an additional Transmission within the Licence Fee.

13.4 Where a Programme commissioned as a Children’s Programme or an Educational Programme is subsequently scheduled for Transmission as part of S4C’s general schedule (i.e. outside the hours set aside for such Programmes), S4C will make a bonus payment to the Producer in accordance with table 4 of the fee tables appended to this Third Issue in order to acquire the right to Transmit it as part of the general schedule by means of the 15 Transmissions described above.

**14. Live Streaming and S4C VOD Rights**

14.1 S4C shall have the exclusive right to Live Stream the S4C Programme worldwide, exercisable subject to clearances as set out in paragraph 16 below, with or without a simultaneous Transmission. For the purposes of paragraph 13.2 above, a Live Stream will count as one Transmission.

14.2 The S4C VOD Rights shall include three VOD Windows of 150 days each which may be used by S4C at any time during the Licence Period and/or Extended Licence Period, whether or not linked to a linear Transmission. The S4C VOD Rights apply to S4C Programmes made available without charge at the point of viewing.

14.3 S4C may seek to purchase additional VOD Windows during the Licence Period and/or Extended Licence Period, as well as after the Licence Period and/or Extended Licence Period have ended, upon payment of a further fee to the Producer in accordance with the fee tables set out in the Appendix to these Terms of Trade.

14.4 The S4C VOD Rights may, subject to paragraph 14.5 below, be exercised:

(a) worldwide in the case of the first 150 day VOD Window;

(b) as follows in the case of the second, third and any additional VOD Windows:

(i) in the UK only if, at the relevant time, the Producer has agreed terms with a third party for the Exploitation of the S4C Programme which prevent S4C from exercising the S4C VOD Rights worldwide; or

(ii) where 14.4(b)(i) does not apply, worldwide

14.5 The S4C VOD Rights shall be UK only where worldwide VOD rights are not available.

14.6 The S4C VOD Rights are Primary Rights. Rights in relation to all other types of VOD are, in accordance with S4C’s Code of Practice, Secondary Rights and are reserved to the Producer.

14.7 For the avoidance of doubt, nothing in these Terms of Trade prevent S4C from including, or restrict its ability to include, commercial (third party) advertising on its Services.

14.8 S4C will not authorise the downloading of the S4C Programme unless it has implemented digital rights technology to ensure that copies of the Programme may not be kept by the user after the expiry of the VOD Window.

14.9 If S4C wishes to exercise the Live Streaming Rights it shall make this clear at the time of commission. The Producer shall be responsible for all necessary clearances unless informed otherwise by S4C in advance. For the avoidance of doubt, such clearances will only be required where S4C confirms at the time of commission that it intends to exercise the Live Streaming Rights.

**15. Holdbacks**

15.1 The Producer may Exploit the Programme by any medium or means or method outside the UK during the Holdback Period.

*UK Transmission Holdback*

15.2 There shall be no Exploitation of the Programme by the Producer or its licensees:

(a) in any media in the UK until after the expiry of seven days from S4C’s first Transmission of the S4C Programme (being first Transmission of the last episode in the case of a series); nor

(b) by any means of Transmission during the Licence Period and any Extended Licence Period nor at any time prior to the commencement of the Licence Period. Where the programme is a Returning Series, the Holdback against Transmission shall apply equally to all programmes to which the Programme is a Sequel notwithstanding that the original Holdback in respect of them may have expired.

*VOD Holdback*

15.3 There shall be no Exploitation of the Programme by the Producer or its licensees via any form of Video on Demand accessible in the UK, and the S4C VOD Rights shall be exclusive, for the following periods:

(a) where the Programme is a single programme, for a period of six months from the date upon which the Programme is first made available by S4C whether on demand or in linear form in the UK. For the remainder of the Licence Period or Extended Licence Period the S4C VOD Rights shall be non-exclusive in the UK.

(b) where the Programme is part of a series of programmes, for a period of 12 months from the date upon which the first episode of the Programme is first made available by S4C whether on demand or in linear form in the UK. For the remainder of the Licence Period or Extended Licence Period the S4C VOD Rights shall be non-exclusive in the UK.

*Reduction of Holdback*

15.4 S4C will always be willing to discuss the possibility of agreeing to a shorter Holdback Period in order to enable the Producer to Exploit or permit other broadcasters in the UK to transmit the Programme or an adaptation of the Programme or a programme similar to and deriving from the Programme during the Licence Period.

15.5 There is no obligation on S4C to agree a shorter Holdback Period, but the minimum periods to which the Holdback may be reduced are set out in the Holdback Release Policy which include, in the case of Transmission:

|  |  |
| --- | --- |
| Programme Type | Minimum periods to which Holdback may be reduced  |
| One-off Programme | Six months after first Transmission of the Programme on S4C  |
| Series | Eighteen months after first Transmission of the Programme on S4C |
| Returning Series (excluding format rights) | First Series released after the first Transmission of the final episode of the third series or (if only two series are commissioned) 18 months after Transmission of the final episode of the second series. |

15.6 Where S4C agrees to release the Holdback to the minimum periods set out above, S4C will expect to be compensated. Such compensation will be agreed on a case by case basis (neither party to unreasonably withhold consent) having regard to the provisions of S4C’s Early Release of Holdback policy as agreed with TAC from time to time and the circumstances of the request.

**16. Clearances and the Editorial and Business Brief**

16.1 The Licence will specify which Transmissions and what uses of the Programme should be cleared as part of the Programme Budget and which Transmissions and what uses will attract Repeat and Residual Payments from S4C to the Programme contributors, owners of Third Party Material such as archive and photographs and other third party rights holders. It will be S4C’s responsibility to pay any repeat or use fees or residual payments payable to any contributor to the Programme or rights owner for any use of their contributions to the Programme over and above what is required to be cleared beforehand within the Licence Fee.

16.2 As a guide, it is S4C’s intention (save where it reasonably requests otherwise) to require Producers to clear five Transmissions and one worldwide VOD Window as standard. S4C shall, where reasonably practicable, make it clear at the time of commission if:

(a) a Live Stream is required; and/or

(b) worldwide VOD rights are not required.

16.3 The Producer shall not be under any obligation to clear non-PRS registered works where:

(a) the rights are not available, or

(b) where the costs are prohibitive, or

(c) where there is potential to exploit the Programme and / or Format and Underlying Rights Material outside the Territory.

16.4 This paragraph applies where S4C wishes to make a recording of a Live Stream available on demand, and/or to subsequently Transmit it on S4C. In such circumstance S4C shall, where reasonably practicable, make it clear at the time of commission whether the recording to be Transmitted and/or made available will be “as-live” or an edited version. If an edited version (or the ability to elect to have an edited version) is required, the Editorial and Business Brief will specify whether the Producer will be responsible for such editing. If so, the editing requirement shall be noted as a line item in the Budget.

16.5 Where S4C wishes to subsequently broadcast a recording of a Live Stream on S4C (whether “as-live” or an edited version) S4C and the Producer shall in good faith discuss the availability and cost of the necessary third party rights. S4C shall not insist that the Producer clears commercial music, archive/library footage and other Third Party Material for this purpose where the cost of so doing cannot reasonably be absorbed within the Licence Fee.

16.6 S4C and TAC shall work together in good faith to:

(a) revise the Editorial and Business Brief so that the information required reflects the requirements of this Third Issue; and

(b) ensure that the Editorial and Business Brief is completed in relation to all productions fully for the benefit of both S4C and the Producer.

**17. Option to Extend the Licence Period and to purchase additional Transmissions and/or VOD Windows**

*Extension to Licence Period*

17.1 S4C may extend the Licence Period by three years (Children’s and Educational Programmes) and two years (all other programmes) upon payment of the fees in Table 2 appended to this Third Issue, and subject to giving four weeks’ notice prior to the expiry of the Licence Period. S4C shall not be entitled to use transmissions or VOD Windows from the initial Licence Period during the Extended Licence Period.

17.2 S4C shall be entitled to request an extension to the Extended Licence Period subject to giving four weeks’ notice prior to the expiry of the Extended Licence Period and upon payment of the fees in Table 3 and/or 5 appended to this Third Issue.

*Additional Transmissions and/or VOD Windows*

17.3 S4C may purchase additional Transmissions and/or VOD Windows and /or Box Sets during the Licence Period and the Extended Licence Period upon payment of the relevant fee in fee tables 1-2 as appended to this Third Issue, and subject to giving four weeks’ notice of the request.

17.4 S4C shall be entitled to request additional Transmissions and/or VOD Windows and/or Box Sets outside the Licence Period and/or any Extended Licence Period upon payment of the relevant fee in fee tables 3 and/or 5 as appended to this Third Issue, subject to giving four weeks’ notice of the request.

17.5 The fees referred to in this paragraph 17 will be paid to the Producer within 28 days of serving the notice or request (unless such request is declined) on the Producer

**18 Website Rights**

18.1 S4C shall have the non-exclusive right to create and maintain, and/or to authorise the Producer or a third party to create and maintain, a programme-related website or websites for the S4C Programme and the right to use Clips or extracts from the S4C Programme on any programme-related website(s) and on any corporate/generic website(s) of S4C provided that S4C shall first have checked with the Producer to ensure that Clips or extracts do not contain Third Party Material. S4C shall be responsible for clearing and paying for all Third Party Material contained in the S4C Programme which it uses on its website(s).

18.2 S4C and the Producer will discuss whether a programme-related website or pages on S4C’s website should be created and maintained for the Programme and if so by whom and at whose cost. Provided that if S4C commissions the Producer to create and/or maintain a programme-related website, the cost for so doing to S4C’s specification will be borne by S4C.

18.3 Where the Producer creates and maintains its own website(s) in connection with the Programme, the Producer will not display or authorise or allow any third party to display any Clip or extract from the programme in any media until after S4C’s first Transmission of the S4C Programme unless S4C agrees otherwise. The Producer may use a Clip or Clips from the S4C Programme (no individual Clip being longer than 30 seconds and the Clips in total being no longer than 10% in total of the true length of the Programme or five minutes in total whichever is lower) on the Producer’s website(s) for the purposes of promoting the Programme and the S4C Programme and S4C’s broadcast(s) of the S4C Programme before S4C’s first Transmission of the S4C Programme. Such promotion shall be subject to a prior discussion and agreement with S4C’s marketing department.

**19. Sequel Rights**

S4C shall have the sole right during the Licence Period and thereafter the non-exclusive right to commission Welsh language programmes based on the Format in accordance with the procedure specified in the General Terms as agreed with TAC from time to time.

**20. Merchandising Rights**

S4C shall have the non-exclusive right to exploit the Merchandising Rights during the Licence Period and Extended Licence Period in accordance with the procedure set out in the General Terms as agreed with TAC from time to time).

**21. Clip Rights**

During the Licence period and Extended Licence Period, S4C shall have the exclusive right to do the following in accordance with the Clips and Rushes Policy as agreed with TAC from time to time:

(a) use Clips and Rushes in all media worldwide to promote the Programme and S4C Services without payment to the Producer. S4C shall be responsible for payment of royalties due to actors, writers and musicians and appropriate clearances.

(b) use Clips and Rushes in new programmes made for the S4C Services and exploit such programmes and all parts thereof (including such Clips and Rushes) in all media worldwide without further payment to the Producer or any third party.

**22. Ancillary Educational Rights**

The right to allow the following:

(a) 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;

(b) museums, heritage centres, historical societies and charitable or other non-commercial bodies to have copies of the S4C Programme and to exhibit and use them for the educational or archival purposes of these organisations;

(c) schools, colleges, universities and other educational establishments to have copies of the S4C Programme and to use them for the educational and non-commercial purposes of the establishment (only); and

(d) 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.

(e) to authorise third parties to record the S4C Programme off air

**23. Incidental Rights**

All the other incidental rights required by S4C in order to be able to fulfil its statutory duties and responsibilities or in order to facilitate the same as set out in the Licence, including:

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

(b) 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; and

(c) the sole and exclusive right to permit third party channels and services both within and outside the United Kingdom to include the S4C Programme in cable programme services or multi-point microwave distribution systems or any other service regardless of the method of delivery to or reception by the viewer where such service(s) simultaneously transmit the content of the S4C services.

(d) the sole and exclusive right to seek sponsorship for S4C’s exploitation of the S4C Programme; and

(e) the right to offer Platform driven functionalities such as startover, backwards EPG, NPVR and sideloading.

**24 Theatrical Screenings**

S4C shall have the non-exclusive right to request theatrical and non-theatrical screenings of the S4C Programme. The Producer and S4C shall maintain contact regarding proposed screenings many of which shall be free of charge or in exchange for a small administrative fee charged by the organiser. Where a screening (theatrical or non-theatrical) occurs at the request of S4C, S4C shall be responsible for pre-clearing any applicable third-party rights

**25 Exploitation and Distribution Rights**

Secondary Rights are the property of the Producer. The Producer will have the sole and exclusive right to exercise or authorise others to exercise these rights, which include, without limitation, international distribution rights via any medium or platform, other distribution and merchandising rights including DVD, advertiser funded VOD, pay per use VOD and subscription VOD (SV0D) and programmes and clip services to third parties in the UK and worldwide. There will be no obligation on the Producer to grant the Secondary Rights to S4C. Producers will be entitled to negotiate the terms of the Secondary Rights and S4C will expect no greater terms than those generally negotiated by a 100% financing broadcaster.

**26 Net Proceeds and Reporting**

26.1 Unless otherwise agreed with the Producer, S4C shall have the right to receive a share of the Net Proceeds derived from any exploitation of the Programme by the Producer or on its behalf, as follows:

(a) where S4C finances a pilot programme whether in full or partially as part of the development work: 20%

(b) where S4C does not finance a pilot programme in any way: 15%

26.2 Net Proceeds received by S4C from exploiting Secondary Rights shall be divided as agreed on a case by case basis.

26.3 Any income (if any) earned by S4C from exercising the S4C Rights will be the absolute property of S4C and S4C will not be expected to account for it.

**27 Film and Television Festivals**

27.1 S4C will have the non-exclusive right to nominate the S4C Programme for television and film awards or otherwise to offer the programme or the S4C Programme for exhibition or for judging at any film or television festival or awards ceremony.

27.2 Where S4C is the majority funder, S4C shall have the exclusive right to nominate the Programme or the S4C Programme for any award or festival. Otherwise, where S4C wishes to nominate the Programme or the S4C Programme for any award or festival, S4C will inform the Producer beforehand and will take the Producer’s comments into consideration.

**28 Co-productions**

28.1 Where a Programme is co-produced, S4C will require approval of the terms on which any third party will contribute to the co-production. S4C will wish to ensure that terms offered to any other third party do not conflict with S4C’s rights and that the terms offered to S4C are fair and reasonable taking into account the position of the other financiers making a comparable financial contribution and taking similar rights. The most appropriate contractual structure must be agreed in advance on a case by case basis.

28.2 Any Producer using S4C’s name to raise funds for a Programme must obtain S4C’s prior permission in the form of a letter of intent before doing so.

**29. Resolving Disputes**

29.1 In the event that a difference of opinion arises between S4C and the Producer, the Producer should, in the first instance, attempt to resolve the matter in good faith with the members of S4C staff with whom it has been negotiating the commission.

29.2 Where the matter cannot be resolved in this way, it should be referred to the Director of Content, and thereafter (if still unresolved) to S4C’s Chief Executive.

29.3 If the Producer remains unhappy with the decision of the Chief Executive, the Producer may appeal under that part of the S4C Complaints Procedure relating to appeals.

29.4 Both S4C and the Producer will be responsible for their own costs in relation to any dispute.

**29 Requests for Private Copies**

Where members of the public contact S4C asking for a copy of the Programme, S4C will refer them to the Producer who will deal with all such requests in accordance with the Private Copies Guidelines.

The [DYDDIAD I’W GYTUNO] of September 2020

**Appendix – Fee tables**

**Table 1 – Purchase of additional Transmissions and/or VOD Windows and / or Box Sets within the Licence Period.**

**Categories accord with OFCOM definitions**

**Contributor/repeat fees are separate to the fees noted below.**

|  |  |  |  |
| --- | --- | --- | --- |
| Category | 5 Transmissions at any time  | 2 x 150 day VOD Windows  | 5 Transmissions and 2 x 150 day VOD Windows |
|  | £ per hour or pro rata thereof  | £ per hour or pro rata thereof | £ per hour or pro rata thereof |
| Drama and Film | 550 | 275 | 600 |
|  |  |  |  |
| Light Entertainment and Music Adloniant  | 440 | 220 | 480 |
|  |  |  |  |
| Arts and Music  | 440 | 220 | 480 |
|  |  |  |  |
| General Factual, Religions and Sport.  | 330 | 165 | 375 |

**Table 2 – Purchase of additional Transmissions and/or VOD Windows within the Extended Licence Period.**

**Categories accord with OFCOM definitions**

**Contributor/repeat fees are separate to the fees noted below.**

|  |  |  |  |
| --- | --- | --- | --- |
| Category | 5 Transmissions at any time | 2 x 150 day VOD Windows | 5 Transmissions and 2 x 150 day VOD Windows |
|  | £ per hour or pro rata thereof | £ per hour or pro rata thereof | £ per hour or pro rata thereof |
| Drama a Film  | 550 | 275 | 600 |
|  |  |  |  |
| Light Entertainment and Music  | 440 | 220 | 480 |
|  |  |  |  |
| Arts and Music  | 440 | 220 | 480 |
|  |  |  |  |
| General Factual, Religion and Sport.  | 330 | 165 | 375 |
|  |  |  |  |
| Children – animation[[1]](#footnote-2) | 140 | 70 | 155 |
|  |  |  |  |
| Children – nursery[[2]](#footnote-3) | 140 | 70 | 155 |

**Table 3 - Purchase of additional Transmissions and/or VOD Windows outside the Licence Period and any Extended Licence Period.**

**Categories accord with OFCOM definitions**

**Contributor/repeat fees are separate to the fees noted below.**

|  |  |  |  |
| --- | --- | --- | --- |
| Category | 5 Transmissions at any time | 2 x 150 day VOD Windows | 5 Transmissions and 2 x 150 day VOD Windows |
|  | £ per hour or pro rata thereof | £ per hour or pro rata thereof | £ per hour or pro rata thereof |
| Drama a Film  | 550 | 275 | 600 |
|  |  |  |  |
| Light Entertainment and Music  | 440 | 220 | 480 |
|  |  |  |  |
| Arts and Music  | 440 | 220 | 480 |
|  |  |  |  |
| General Factual, Religion and Sport.  | 330 | 165 | 375 |
|  |  |  |  |
| Children – animation[[3]](#footnote-4) | 140 | 70 | 155 |
|  |  |  |  |
| Children – nursery[[4]](#footnote-5) | 140 | 70 | 155 |

**Table 4 – Bonus Payments**

For Programmes originally commissioned for childrens’ slots but are now broadcast within the general schedule.

**Categories accord with OFCOM definitions. Bonus payment acquires a 5 year licence.**

**Contributor/repeat fees are separate to the fees noted below.**

|  |  |
| --- | --- |
| Category | 15 Transmissions |
|  | £ per hour or pro rata thereof |
|  |  |
| Children – drama | 1,500 |
|  |  |
| Children - entertainment | 1,200 |
|  |  |
| Children – factual  | 900 |
|  |  |
| Children – animation  | 400 |
|  |  |
| Children - nursery | 400 |
|  |  |

**Table 5 – “Top-up” fee (paragraph 1.8(b))**

|  |  |
| --- | --- |
| **Category** | **“Top-up Fee” for increasing from 35d to 150d** |
|  | £ per hour or pro rata thereof |
| Drama a Film  | 50 |
|  |  |
| Light Entertainment and Music  | 40 |
|  |  |
| Arts and Music  | 40 |
|  |  |
| General Factual, Religion and Sport.  | 30 |

1. Payments for childrens’ Programmes to secure unlimited Transmissions for 1 year and 2 x 150 day VOD Windows rather than a limited number of Transmissions. [↑](#footnote-ref-2)
2. Ditto for nursery Programmes [↑](#footnote-ref-3)
3. Payments for childrens’ programmes to secure unlimited Transmissions for 1 year and 2 x 150 day VOD Windows rather than a limited number of transmissions. [↑](#footnote-ref-4)
4. Ditto for nursery programmes [↑](#footnote-ref-5)