

TRANSLATION FRAMEWORK AGREEMENT

THIS AGREEMENT is made the day of 2019

BETWEEN:

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

INTRODUCTION:

- (A) On 4 June 2019 S4C published a tender for a translation framework agreement.
- (B) Following the tender process, the Translator was chosen by S4C along with others to be a party to the framework, which means that S4C may give the Translator the opportunity to provide translation services from time to time.
- (C) Accordingly, the parties wish to enter into this framework agreement which sets out the terms and conditions governing the process for the provision of translation services by the Translator from time to time.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 The following words and expressions shall have the following meanings unless the context otherwise requires:

- "Act" the Copyright, Designs and Patents Act 1988 as amended from time to time;
- "Agreed Rates" the rates noted in Schedule 1;
- "Agreement" this agreement including the Introduction and any document referred to in this agreement, completed or to be completed in accordance with its provisions;
- "Applicable Laws" all regional, national or international laws, rules regulations and standards including those imposed by any governmental or regulatory authority and all applicable industry standards and practice guidelines determined by any self-regulatory body which apply from time to time to the provision of the Service including without limitation the Data Protection Laws;
- "Data Protection Laws" 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;

Subject to Contract

| | |
|--------------------------|---|
| "Delivery Date" | the date noted in the Project Brief, and/or any other date agreed between the S4C Representative and the Translator from time to time; |
| "Effective Date" | 2 August 2019; |
| "Fee" | the fee for the Service based on the Agreed Rates; |
| "FOIA" | the Freedom of Information Act 2000 and any secondary legislation made under that act from time to time along with any guidelines or codes of practice published in relation to such legislation; |
| "Fraud" | any offence under any laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud S4C; |
| "GDPR" | General Data Protection Regulation EU 2016/679; |
| "Good Industry Practice" | the degree of skill, care, diligence and prudence reasonably and ordinarily expected from experienced and competent persons engaged in the same type of undertaking as that of the Translator under the same or similar circumstances; using methods, standards, practices and procedures conforming to all Applicable Laws and using appropriately qualified and skilled personnel; |
| "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); |
| "Intellectual Property" | collectively any and all intellectual property rights in the Material or relating to the Service including inventions, patents, registered designs, trade marks (whether registered or unregistered), applications for any of the foregoing and the right to apply therefore in any part of the world; copyrights, rights in the nature of copyrights or affording equivalent protection to copyright, moral rights, design rights, database rights; domain names, trade names, logos, get-up, including the look and feel of any content; know-how, trade secrets and other confidential information; rights in the nature of unfair competition rights and the rights to sue for passing off; licences, consents, permissions and waivers in relation to any of the foregoing; and all or any similar or equivalent rights arising or subsisting in any country in the world; |
| "Key Personnel" | the key persons listed in Schedule 2; |

Subject to Contract

| | |
|-------------------------------------|--|
| "Material" | any translation work undertaken by the Translator during the Term under the directions of S4C in accordance with the terms of this Agreement; |
| "Personal Data" | has the meaning given to that term in the Data Protection Laws; |
| "Policies" | collectively all of the S4C policies expressly referred to in this Agreement or any Sub-Contract, as updated from time to time, including the S4C Glossary, the S4C Child Protection Policy, the S4C Equality and Diversity Policy, and all other policies and guidelines from time to time published on S4C's production website which can be accessed at http://www.s4c.cymru/en/production/page/1154/guidelines/ ; and the Cymdeithas Cyfieithwyr Cymru Professional Conduct Code; |
| "Project Brief" | a brief setting out the details of the translation work required by S4C including, where relevant, the number of words and the Delivery Date and/or the location for simultaneous translation services and the proposed number of hours, and whether the translation work is from English to Welsh or from Welsh to English along with any other relevant information; |
| "Regulations" | the Environmental Information Regulations 2004; |
| "S4C Equality and Diversity Policy" | the S4C equality and diversity policy as available on the S4C Authority website; |
| "S4C Glossary" | the glossary of Welsh and English words noted on the S4C website at http://www.s4c.cymru/production/downloads/guidelines/glossary.pdf ; |
| "S4C Representative" | Manon Wyn James and/or such other persons as notified by S4C to the Translator in writing from time to time during the Term; |
| "Services" | provision of translation services as required by S4C from time to time; |
| "Staff" | all persons engaged by the Translator or contributing to the Service whether on an employed or self-employed basis including the Key Personnel; |
| "Sub-Contract" | any sub-contract between the parties as defined at clause 4.3; |
| "Term" | the term of this Agreement being a period of three years starting on the Effective Date unless terminated earlier or extended in accordance with clause 10; |
| "VAT" | Value added tax. |

- 1.2 The word "copyright" shall mean the entire copyright the Translator may be entitled to under the laws of the United Kingdom.
- 1.3 Unless noted otherwise, time shall be of the essence in respect of the Translator's obligations hereunder.
- 1.4 Words and expressions (including words and expressions defined in clause 1.1) in the singular shall include the plural and vice versa; references to a "party" or the "parties" shall mean S4C and/or the Translator as the context requires; references to any gender shall include every gender; references to a person shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality) and any combinations of any one or more of the foregoing.
- 1.5 Headings are for convenience only and shall not affect the construction or interpretation of this Agreement; references to Schedules and clauses are to schedules to, and clauses of, this Agreement and references to sub-clauses are to sub-clauses of the clause in which the reference appears.
- 1.6 A reference to any statute or statutory provision shall include any subordinate legislation made thereunder and shall be construed as a reference to such statute, statutory provision or subordinate legislation as it may have been, or may from time to time be amended, modified or re-enacted (with or without modification).
- 1.7 The words "include" or "including" shall be construed and interpreted without limitation.
- 1.8 The rule known as the ejusdem generis rule shall not apply and accordingly general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things.
- 1.9 In case of any conflict between this Agreement and the Policies the terms of this Agreement shall take precedence. In case of any conflict between a Sub-Contract and the body of this Agreement, the former shall take precedence.

2. Scope of Agreement

- 2.1 This Agreement governs the general relationship between the parties in respect of the provision of the Service during the Term for the Agreed Rates. The Translator acknowledges that nothing in this Agreement shall require S4C to provide any translation work to the Translator.
- 2.2 The Translator undertakes to S4C that it shall provide the Service to the extent of its ability in a professional and conscientious manner, to a high standard and in accordance with the Policies, Good Industry Practice and Applicable Laws throughout the Term and in accordance with S4C's reasonable instructions from time to time. The Translator undertakes to S4C that it shall provide the Service in accordance with the relevant Project Brief, and, where relevant, to provide the Material to S4C on or before any relevant Delivery Date.

3. Selection of Provider

- 3.1 Following the tender Process, S4C established a list of successful translation Service providers, including the Translator, noting the type of Service the successful suppliers provide and their relevant rates for the provision of the Service ("the List"). If S4C requires the Service at any time during the Term, S4C will select an appropriate supplier who offers the best price, and will provide a Project Brief to that supplier ("the First Choice").
- 3.2 If it is not possible for the First Choice to complete the work within the timeframe noted by S4C in the Project Brief, or if the First Choice does not respond within 24 hours of the request, S4C may offer the work to another supplier from the List who offers the best price ("the Second Choice").
- 3.3 If it is not possible for the Second Choice to complete the work or if the Second Choice does not respond within 24 hours of the request, S4C may offer the work to another supplier from the List, and so on until one of the suppliers on the List agrees to provide the Service. Where none of the suppliers on the List agree to provide the Service, S4C may offer the work to any other person.

4. The Service [to be amended following award of successful tender]

- 4.1 If S4C requires the Service at any time during the Term, S4C may provide a Project Brief to the Translator noting the requirements of the translation work, including the Delivery Date. For simultaneous translation work, the Project Brief will note the times and location from where the Translator will be required to complete the work along with an estimation of the number of headphones required.
- 4.2 The Translator will confirm within 24 hours from receipt of the Project Brief whether it can complete the translation work in accordance with the Project Brief.
- 4.3 It is deemed that a sub-contract is created between the parties when the Translator confirms that it is able to complete the translation work noted in the Project Brief ("a Sub-Contract"). Each Sub-Contract shall constitute a separate agreement and shall incorporate the terms and conditions set out in this Agreement and in the relevant Project Brief, to the exclusion of any and all terms or conditions of supply proffered by the Translator.
- 4.4 Where an S4C Project Brief requires the Translator to provide a text translation Service, the Translator will use its best endeavours to ensure:
- a) that there are no mistakes or errors in the Material delivered to S4C;
 - b) that the Material reflects the font and layout of the original document(s) correctly; and
 - c) that the Material reflects S4C's house style.

Where S4C is of the opinion that the Material delivered contains errors or the standard is lower than expected, on S4C's request, the Translator will correct the Material immediately and within 24 hours at the latest. S4C shall not be required to make any payment above the Fee to the Translator for any such correction work.

- 4.5 Where the S4C Project Brief requires the Translator to provide a simultaneous translation Service, the Translator will ensure:
- a) that the relevant member of Staff will attend the relevant venue on the relevant date and time set out in the Project Brief;

- b) that a sufficient number of headphones or other appropriate technology of good standard is provided to the event/meeting attendees; and
 - c) that the Staff will use its best endeavours to ensure that there are no mistakes or errors in the Material.
- 4.6 The Translator 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 Translator to perform any of its obligations.
- 4.7 The Translator shall ensure that the Services shall be provided in a professional, courteous, timely, conscientious, and effective manner and in accordance with the standards required by S4C.
- 4.8 The Translator shall not and shall ensure that the Staff does not represent S4C's corporate responsibility on any matter. The Translator shall ensure that the Service is not regarded by the public as S4C's method of communicating its policy or business plan, but that it is a service that compliments the Policies.
- 4.9 The Translator shall not and shall ensure that the Staff do not communicate with the press or make any statements on financial or constitutional matters relating in any way to S4C or its Group Companies or the S4C services.
- 4.10 The Translator shall not enter into any obligation to any person whether express or implied which would or might conflict with the full and proper performance of its obligations to S4C under this Agreement.
- 4.11 The Translator shall and shall ensure that all Staff shall at all times during the Term act in S4C's best interests and in particular and without limitation shall not do or omit to do anything or enter into any agreements with any person which may conflict with S4C's best interests, adversely impact on S4C's goodwill or reputation and/or the Translator's obligations under this Agreement.

5. Communications Procedure and Review Meetings

- 5.1 S4C shall review this Agreement and the Translator's performance of the Service following a period of twelve (12) months from the Effective Date ("the First Year Review").
- 5.2 Following the First Year Review, if S4C is of the opinion that the Translator fails to meet the required Standard or S4C is dissatisfied with the Translator's performance of the Service, S4C shall be entitled to terminate this Agreement with immediate effect by notice in writing to the Translator.
- 5.3 The Translator shall meet with S4C at such times and dates reasonably requested by S4C from time to time during the Term to discuss any matter arising out of the provision of the Service. The Translator shall use all reasonable endeavours to ensure that the Key Personnel attend all review meetings.
- 5.4 At the review meetings S4C and the Translator shall review and discuss matters arising out of delivery of the Services including but not limited to the following:
- 5.4.1 the nature and standard of the Service provided;

- 5.4.2 any changes to be made to the Service to improve the efficiency and effectiveness of the Service;
- 5.4.3 any other matters.
- 5.5 Following such review meetings, S4C shall be entitled to give the Translator notice in writing:
 - 5.5.1 to confirm the Translator's appointment for the remainder of the Term in accordance with the terms and conditions of this Agreement;
 - 5.5.2 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
 - 5.5.3 to terminate this Agreement by giving three months notice.

6. Key Personnel

- 6.1 The Translator will make every reasonable effort to ensure that Key Personnel remain employed and available to contribute to the provision of the Services throughout the Term.
- 6.2 The Translator shall notify S4C in writing of any matters or circumstances which could affect the availability of the Key Personnel promptly upon becoming aware of the same.
- 6.3 If any of the Key Personnel are unavailable at any time during the Term the Translator shall propose a suitable replacement to S4C in writing. No replacement for any Key Personnel shall be permitted to participate in the provision of the Service unless S4C has given its prior written approval of such replacement. If no replacement acceptable to S4C can be found, S4C shall be entitled by notice in writing to the Translator to terminate this Agreement or any Sub-Contract with immediate effect.
- 6.4 The Translator shall promptly upon receiving written notice from S4C to do so remove or procure the removal of any member of Staff from any involvement in or with the provision of the Service whose conduct or behaviour is considered by S4C to be prejudicial to the interests, reputation or goodwill of S4C or inappropriate given the nature of the Service. The decision of S4C as to whether any member of Staff is to be so removed shall be final and conclusive. S4C shall under no circumstances have any liability to the Translator or to any such member of Staff in respect of such removal and the Translator shall indemnify S4C from and against any and all claims, demands, actions and/or proceedings made or brought or threatened to be made or brought against S4C by any such member of Staff (including legal costs and expenses on a solicitor own client basis) incurred in connection therewith and any damages awarded or settlement monies paid in connection therewith. The removal of any member of Staff under this clause 6.4 shall not relieve the Translator of any of its obligations under this Agreement or any Sub-Contract.

7. Intellectual Property

- 7.1 The Intellectual Property shall belong to and be the absolute property of S4C. S4C shall be free to use and to exploit (and to permit third parties to use and to exploit)

the Intellectual Property in whatever form, by whatever means and on whatever media (whether known at the Effective Date or invented hereafter) and the Translator hereby assigns to S4C absolutely, irrevocably and unconditionally with full title guarantee and free from encumbrances all worldwide right, title and interest in and to any and all future copyrights, rights in the nature of copyright, database rights and UK unregistered design rights comprised within the Intellectual Property to the intent and with the effect that all such rights shall vest in S4C automatically and immediately on the date that such rights are acquired, created, developed, designed or otherwise prepared in each case for the full term thereof including all renewals thereof and extensions thereto together with all rights, benefits or powers arising or accrued therefrom including the right to sue for damages and other remedies in respect of any past or existing infringements thereof.

7.2 The Translator irrevocably and unconditionally warrants to S4C, its successors assigns and licensees:

7.2.1 that all Staff have assigned and/or granted to the Translator all rights and consents pursuant to the Act and all other laws now or in the future in force in any part of the world which may be required for the exploitation of the Intellectual Property in whatever form and by whatever means or media (whether now known or hereafter invented); and

7.2.2 that all Staff have irrevocably and unconditionally waived all their respective rights in respect of the Material to which such Staff are now or may in future be entitled pursuant to the provisions of Sections 77, 80, 84 and 85 of the Act and any other moral rights to which such Staff may be entitled under any legislation now existing or in future enacted in any part of the world.

8. Payment

8.1 Subject to the full and timely performance by the Translator of its undertakings, warranties and obligations under this Agreement and any relevant Sub-Contract, S4C shall pay the Fee (along with VAT if payable) in full and final consideration of the Service, all Intellectual Property Rights, and other rights in the Service and the Material and for every other undertaking on the part of the Translator in accordance with this Agreement and any Sub-Contract.

8.2 The Fee shall be paid to the Translator in arrears and following receipt by S4C of the Translator's valid invoice which shall be satisfactory for VAT purposes if payable.

8.3 The Translator acknowledges that the Fee is in full consideration for the Service and the rights granted and assigned under this Agreement and any Sub-Contract and for all waivers of rights and confirmations made and all other undertakings on behalf of the Translator.

8.4 The time of delivery shall be of the essence of this Agreement. If the Translator fails to undertake the Service by the relevant Delivery Date, or if it is not present on time for any simultaneous translation work, S4C shall be under no obligation to pay the Fee and S4C shall be entitled to terminate this Agreement and the Translator's engagement immediately without the payment of any fee, compensation or damages on giving notice in writing to the Translator.

9. Indemnity and Insurance

- 9.1 The Translator shall indemnify and hold harmless and keep indemnified and held harmless S4C on demand from and against any and all actions, claims, demands, proceedings, fines, costs, expenses (including legal expenses on a solicitor own client basis), charges, losses, damages and other liabilities of whatsoever nature and howsoever suffered, incurred or sustained by S4C as a result of or in connection with the performance or non-performance by the Translator of any of its obligations under this Agreement or any Sub-Contract or breach by the Translator of any of the Warranties or any negligence or wilful act or omission on the part of the Translator or any member of Staff or any claim by any person that the use or exploitation by S4C or any of its successors, assigns or licensees of the Intellectual Property infringes the rights of any person.
- 9.2 Prior to delivery of the Services, the Translator 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 Services for the duration of the Term. Without prejudice to the generality of the foregoing such insurance shall include:
- 9.1.1 adequate public liability insurance cover with a reputable insurance company to a minimum indemnity limit of £5,000,000 per claim and unlimited in aggregate per annum;
- 9.1.2 adequate employer's (Compulsory) liability insurance with a reputable insurance company to a minimum indemnity limit of £5,000,000 per claim and unlimited in aggregate per annum; and
- 9.1.3 adequate professional indemnity insurance with a reputable insurance company to a minimum indemnity limit of £5,000,000 per claim and unlimited in aggregate per annum.
- 9.3 The Translator undertakes to comply with the terms, conditions and limitations of the insurance policies listed in clause 9.2 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.
- 9.4 The Translator 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.
- 9.5 The Translator 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 Translator from complying with its contractual responsibilities under this Agreement. The Translator shall provide S4C with copies of all correspondence and documentation relating to any such matter immediately on receipt.

10. Term and Option to Extend

- 10.1 This Agreement shall commence on the Effective Date and, unless extended by S4C in accordance with the provisions of this clause or terminated earlier, shall continue in force until midnight on the day immediately preceding the third anniversary of the Effective Date.
- 10.2 S4C shall have the option to extend the term of this Agreement by twelve (12) months on giving notice in writing to the Translator at any time prior to midnight on the day immediately preceding the third anniversary of the Effective Date. If

S4C does not wish to extend the Agreement following the end of the Term, then the Agreement shall expire at the end of the Term.

11. Termination

- 11.1 Without prejudice to any other rights or remedies which S4C may have S4C shall be entitled to terminate this Agreement immediately by written notice to the Translator and without payment of any further Fee, any pay in lieu of notice, damages or otherwise if the Translator: -
- 11.1.1 commits any act of serious misconduct;
 - 11.1.2 commits any material or persistent breach of this Agreement including any refusal to provide the Service, to deliver the Material in good time or to comply with the instructions of the S4C Representative;
 - 11.1.3 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 is struck off the register of companies or otherwise ceases to exist or suffers any distress or execution to be levied on any of its assets or becomes unable to pay its debts as and when they become due;
 - 11.1.4 is the subject of an administration order or enters into any voluntary arrangement with its creditors;
 - 11.1.5 there is a change of control (as 'control' is defined in section 1124 of the Corporation Tax Act 2010) of the Translator; or
 - 11.1.6 fails to comply with the requirements of S4C.
- 11.2 S4C shall be entitled to terminate this Agreement or any Sub-Contract by providing to the Translator at least thirty (30) days written notice.

12. Effects of Expiry or Termination

- 12.1 Upon expiry or termination of this Agreement and/or any Sub-Contract howsoever arising and subject always to the provisions of this clause 12 all rights and obligations hereunder shall immediately cease and determine without prejudice to any rights of action then accrued hereunder including any rights which either party may have in respect of a claim for damages for breach by the other party or under any indemnity.
- 12.2 S4C's obligation to pay the Translator shall be limited to such payment as is attributable to the Services actually and properly provided by the Translator to the reasonable satisfaction of S4C in accordance with the terms of this Agreement and/or the relevant Sub-Contract up to the date of expiry or termination.
- 12.3 The Translator shall immediately after the Termination Date deliver at its cost to S4C:
- 12.3.1 all property belonging to S4C in its power, possession, custody or control including any and all S4C Confidential Information together with all copies thereof or extracts therefrom; and

12.3.2 all other documentation relating to this Agreement.

12.4 The Translator acknowledges that the Translator shall have no claim in respect of loss of opportunity to enhance reputation or otherwise howsoever if S4C terminates this Agreement.

12.5 The following clauses shall survive the expiry or termination of this Agreement howsoever arising: 1 (Definitions), 7 (Intellectual Property), 9 (Indemnity), 12 (Effects of Expiry or Termination), 13 (Warranties), 14 (Confidentiality), 15 (Data Protection), 16 (FOIA), 18.3, 18.10 ac 18.12.

13. Translator's Warranties [to be amended in accordance with the legal status of the successful tenderer]

The Translator represents, warrants and undertakes to S4C:

13.1 that it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

13.2 that it has the power, to enter into and to exercise its rights and to perform its obligations under this Agreement;

13.3 that the execution, delivery and performance by it of this Agreement does not contravene any provision of:

(i) the Memorandum and Articles of Association of the Translator;

(ii) any order or decree of any court or arbitrator; or

(iii) any obligation which is binding upon the Translator or upon any of its assets or revenues;

13.4 that the information, representations and other matters of fact committed in writing to S4C by the Translator in connection with or arising out of its tender were, at the date on which the same were given to S4C, true and complete in all material respects and the Translator shall inform S4C immediately if such information ceases to be true and complete;

13.5 no claim is presently being assessed and no litigation, arbitration or administrative proceedings is presently in progress or, to the best of the knowledge of the Translator, pending or threatened against it or any of its assets which is significant and will or is likely to have a material adverse effect on the ability of the Translator to perform its obligations under this Agreement;

13.6 it is not subject to any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Translator to perform its obligations under this Agreement;

13.7 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Translator threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

- 13.8 that it is free to enter into this Agreement and to assign and grant to S4C the Intellectual Property and any other rights assigned and transferred under this Agreement and that it has not and will not commit to any other arrangement which could obstruct or restrict S4C's or its successors assigns and licensees to exercise such rights;
- 13.9 it will not reveal or make public any information in connection with the Service or this Agreement or the business of S4C and that the same shall be kept entirely confidential at all times, subject to clause 14;
- 13.10 that the Service shall be provided to the highest possible standard and the Material shall be delivered to S4C by the relevant Delivery Date in each case;
- 13.11 it has, and shall ensure that it shall always have at all times during the Term, where appropriate, a sufficient number of headphones in good working order for the provision of simultaneous translation work;
- 13.12 that it is a full/corporate member of Cymdeithas Cyfieithwyr Cymru;
- 13.13 that the Translator shall and shall ensure that all Staff shall at all times during the Term act in S4C's best interests and in particular and without limitation shall not do or omit to do anything or enter into any agreements with any person which may conflict with S4C's best interests, adversely impact on S4C's goodwill or reputation;
- 13.14 in the provision of the Services the Translator shall not and shall procure that the Staff shall not infringe any rights of any person or do any act that is libellous or blasphemous or defamatory or contravene the provisions of any Applicable Laws;
- 13.15 that the Translator has in place or will from the Effective Date have in place adequate technical and organisational security measures, including database software and equipment, governing the processing of the Personal Data and the working practices of any employees involved in such processing in accordance with the requirements of the Data Protection Laws.

14. Confidentiality

- 14.1 For the purpose of this Clause, "**Confidential Information**" shall mean all information, data and know-how of a confidential nature (whether in writing, in electronic format or otherwise) relating to 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 or after the date of this Agreement, which shall include (without limitation):-
 - 14.1.1 all confidential information in the document(s) to be translated as part of the Service or shared in any meeting where the Translator is providing simultaneous translation or set out in any Project Brief;
 - 14.1.2 the existence and subject matter of this Agreement and any Sub-Contract;
 - 14.1.3 any S4C Personal Data; and
 - 14.1.4 any other information which the Translator has been informed is confidential or which the Translator should reasonably expect S4C would regard as confidential.

- 14.2 The Translator shall use the Confidential Information solely for the purposes of performing its obligations under this Agreement and subject to the provisions of clause 14.4 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 Translator shall take all such steps as S4C may reasonably require to enforce any such obligations of confidentiality against any of its Staff.
- 14.3 The Translator hereby undertakes to procure that it (or its employees, nor any third party engaged in the provision of the Services) shall not during the Term (except in the proper provision of the Services) nor at any time following the termination of this Agreement (howsoever caused), whether directly or indirectly:-
- 14.3.1 use for Translator's own purposes or for the benefit of any other person, company, business or other organisation of whatever nature; or
 - 14.3.2 disclose or communicate to any person or persons, company, business or other organisation of whatever nature;
- any Confidential Information and the Translator shall use its best endeavours to prevent any publication or disclosure of any Confidential Information by a third party.
- 14.4 The restrictions on disclosure contained in clause 14.2 and 14.3 shall not apply to any information which:
- 14.4.1 is in or enters the public domain other than as a consequence of, any breach of the restrictions on disclosure by the Translator or any Staff; or,
 - 14.4.2 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 Translator gives S4C as much notice of such disclosure as possible.
- 14.5 Without prejudice to the generality of this Clause 14 the Translator agrees that following termination of this Agreement and/or any relevant Sub-Contract (howsoever caused) it will:-
- 14.5.1 return to S4C all documents and materials (and any copies) containing, reflecting, incorporating or based on the Confidential Information;
 - 14.5.2 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
 - 14.5.3 certify in writing that it has complied with the requirements of this clause, provided that the Translator may retain: i) documents and materials containing, reflecting, incorporating or based on the Confidential Information to the extent required by law or any applicable regulatory body; and ii) material reflecting or based on the Confidential Information to the extent required in order to provide the Service effectively in accordance with clause 4.4.
- 14.6 S4C shall be entitled to treat any disclosure, communication or misuse of Confidential Information during the Term as an act of serious misconduct which shall entitle S4C to terminate this Agreement forthwith without notice.

- 14.7 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 Translator, or are to be implied from this Agreement.

15. Data Protection

- 15.1 All Personal Data provided to S4C by the Translator in connection with the Service may be processed by S4C in accordance with the Data Protection Laws and for the purpose of operating this Agreement. The Translator acknowledges that S4C shall process the Personal Data provided by the Translator on the legal basis of contractual necessity. The Translator shall secure the consent of all relevant individuals to the processing of their Personal Data for the purpose of operating this Agreement. All Personal Data supplied to S4C shall be processed in compliance with S4C's data protection policy and privacy notice in force from time to time, copies of which are available on the S4C website.
- 15.2 Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 15.2 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Laws.
- 15.3 The parties acknowledge that for the purposes of the Data Protection Laws, S4C is the data controller and the Translator is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Laws). Schedule 3 sets out the scope, nature and purpose of processing by the Translator, the duration of the processing and the types of personal data (as defined in the Data Protection Laws, Personal Data) and categories of Data Subject.
- 15.4 Without prejudice to the generality of clause 15.2, the Translator shall, in relation to any Personal Data processed in connection with the performance by the Translator of its obligations under this agreement:
- 15.4.1 process that Personal Data only on the written instructions of S4C unless the Translator is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Translator to process Personal Data (Applicable Laws);
- 15.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by S4C, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 15.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential, that they are reliable and understand the Translator's contractual obligations to S4C;

- 15.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of S4C has been obtained and the following conditions are fulfilled:
 - 15.4.4.1 S4C or the Translator has provided appropriate safeguards in relation to the transfer;
 - 15.4.4.2 the data subject has enforceable rights and effective legal remedies;
 - 15.4.4.3 the Translator complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - 15.4.4.4 the Translator complies with reasonable instructions notified to it in advance by S4C with respect to the processing of the Personal Data;
- 15.4.5 assist S4C, free of charge, to respond to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 15.4.6 notify S4C without undue delay and no later than within 24 hours on becoming aware of a Personal Data breach;
- 15.4.7 at the written direction of S4C, delete or return Personal Data and copies thereof to S4C on termination of the agreement;
- 15.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 15.4 and allow for audits by S4C or S4C's designated auditor; and
- 15.4.9 appoint a data protection officer if required to do so under the Data Protection Laws or if requested by S4C.
- 15.5 S4C does not consent to the Translator appointing any third party processor of Personal Data under this agreement.
- 15.6 S4C may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

16. Freedom of Information Act

- 16.1 The Translator acknowledges that S4C is a public body subject to the requirements of the FOIA and the Regulations and shall assist and co-operate with S4C to enable S4C to comply with its obligations thereunder and in connection therewith the Translator shall and shall procure that the Staff shall:
 - 16.1.1 provide S4C with a copy of all relevant information in its possession or power in the form that S4C requires; and

16.1.2 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 Translator (the reasonableness of the notice to be judged in the context of the statutory timeframe for the provision of the information).

16.2 S4C shall be responsible for determining whether the information:

16.2.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Regulations; or

16.2.2 is to be disclosed in response to a request for information, and in no event shall the Translator respond directly to a request for information unless expressly authorised to do so by S4C on behalf of S4C.

16.3 The Translator 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 Translator where practicable and take its views into account. Where the Translator'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.

16.4 The Translator 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.

17. Prevention of Corruption and Fraud

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

17.2 The Translator 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.

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

17.4 If the Translator, its Staff or anyone acting on the Translator's behalf, engages in conduct prohibited by clauses 17.1 or 17.2 and/or commits Fraud in relation to this or any other contract with S4C, S4C may:

17.4.1 terminate the Agreement and recover from the Translator the amount of any loss suffered by S4C resulting from such termination, including the cost reasonably incurred by S4C of making other arrangements for the

supply of the Services and any additional expenditure incurred by S4C throughout the remainder of the Term; and/or

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

18. General

- 18.1 This Agreement and any Sub-Contract is personal to the Translator. Accordingly, the Translator shall not assign, novate, sub-contract or otherwise dispose of its rights or obligations under this Agreement or any Sub-Contract without the prior written consent of S4C.
- 18.2 The Translator shall not grant to any party any right, licence or permission which could or is likely to breach or conflict with any right or interest granted to S4C under this Agreement or any Sub-Contract.
- 18.3 Without limiting S4C's rights of set-off at common law S4C shall have the right to offset all monies due or to which it is otherwise entitled (whether under this Agreement or as a result of any settlement or judgment under which damages or indemnity in connection with this Agreement are due) from the Translator from time to time against and deduct them from all monies due from S4C to the Translator under this Agreement or any other agreement or arrangement.
- 18.4 If any provision of this Agreement or any Sub-Contract shall be prohibited by or adjudged 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 such severance shall not in any way affect any other provision of or the validity or enforceability of this Agreement.
- 18.5 This Agreement constitutes the entire agreement between the parties and supersedes any previous arrangements or understandings whether written or oral relating to the subject matter of this Agreement which may only be changed or altered by an instrument in writing signed by the parties.
- 18.6 This Agreement and any Sub-Contract does not create or confer any rights under the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to this Agreement.
- 18.7 The address given to each party in this Agreement shall be the relevant address for the service of notices until either party notifies the other in writing of a new address in the United Kingdom. To be effective, all notices served by the Translator on S4C shall be in writing and marked for the attention of the S4C Representative with copy to S4C's Head of Legal and Business.
- 18.8 A notice shall be deemed served on the next following working day if delivered by hand and following two (2) working days if sent by first class post. Any period of notice specified herein shall commence on the day of presumed service and (unless otherwise provided) shall be inclusive of Saturdays, Sundays and public holidays.
- 18.9 Failure or delay by any party in exercising any right, power or remedy of that party under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it and shall not be deemed a waiver of any subsequent breach or default. The single or partial exercise by any party of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power

or remedy, each of which are cumulative and not exclusive of any rights, powers and remedies provided by law or in equity.

- 18.10 Nothing in this Agreement shall imply any form of partnership or joint venture as between the parties. Neither of the parties hereto shall have any right or authority to nor shall do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other party nor shall it bind the other party in any way or hold itself out as being connected with or acting in any capacity on behalf of the other party.
- 18.11 This Agreement and any Sub-Contract shall be governed by and construed in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales. The parties acknowledge that they have not relied on any representations on the part of the other or the other's officers or employees except as expressly provided for in the Agreement and any Sub-Contract.

IN WITNESS HEREOF the parties to this Agreement have signed this Agreement on the date and year set out above at the beginning of this Agreement.

SIGNED by a duly authorised
signatory for and on behalf
of **S4C**

Signature.....

Name

SIGNED by a duly authorised
Signatory for and on behalf of
[THE TRANSLATOR]:

Signature

Name

SCHEDULE 1

AGREED RATES

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

SCHEDULE 2

KEY PERSONNEL

[To be agreed between S4C and the successful bidder based on the successful tender.]

SCHEDULE 3

PERSONAL DATA

[To be completed following award of tender]

1. Processing by the Translator
 - 1.1 Scope
 - 1.2 Nature
 - 1.3 Purpose of processing
 - 1.4 Duration of the processing
2. Types of personal data
3. Categories of data subject