

**GENERAL TERMS:  
FOR CHILDREN’S AND EDUCATIONAL CONTENT COMMISSIONED BY S4C  
UNDER THE S4C CODE OF PRACTICE AND TERMS OF TRADE THIRD EDITION**

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

1.1 The following definitions apply in the Licence: -

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

**Act:** the Copyright Designs and Patents Act 1988 as amended by the Copyright and Related Rights Regulations 1996 and 2003;

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

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

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

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

**Catch-Up Rights:** the right to make the S4C Content, available to viewers for reception on demand at a time of their choice without charge from the official S4C website (at [www.S4C.co.uk](http://www.S4C.co.uk) or such URL as may be determined by S4C from time to time) or from any other website operated by, on behalf of or under licence from S4C;

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

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

**Clip Rights:** i) the non-exclusive right to use Clips and Rushes in new programmes made for the S4C Services and to exploit such programmes and all parts thereof (including such Clips and Rushes) in all media and by all manner and means now known or hereafter invented for the period of copyright and without further payment to the Producer or any third party unless the contrary is agreed in the Clips and Rushes Policy; and ii) the right to use Clips and Rushes in promotional material and on websites and in the exercise of the Online Rights, Mobile Rights and the New Media Rights as set out in the Licence;

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

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

**Code of Practice:** S4C Code of Practice in Commissioning Content from Independent Producers. Second edition – April 2010 and any updated version of such document and any related document published by S4C from time to time.

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

**Commissioning Editor:** the commissioning editor named in the Appendix;

**Confidential Information:** any information regarding the business, suppliers or customers of either party and the terms of the Licence together with any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored)

including information which relates to the affairs, property, assets, trading practices, developments, trade secrets, intellectual property rights, know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

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

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

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

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

**Delivery Requirements:** the requirements of Clause 3, the document entitled “S4C’s Delivery Requirements dated April 2010” available on the Production Website, the Technical Requirements, the Subtitling Guidelines and any updates to such documents published from time to time on the Production Website, and all of the other delivery requirements of the Licence;

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

**DUK:** Directors UK;

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

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

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

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

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

**Exploitation:** subject always to the S4C Rights and the Holdbacks any sale, hire, distribution, performance, use or exploitation by the Producer its successors assigns and/or licensees of the Programme in all languages and in any and all countries and

territories of the World and in all media and by all manner and means whether digital, linear or interactive, online or off-line, visual, audio or audio-visual or otherwise and whether now known or hereafter invented BUT EXCLUDING expressly any exercise by S4C or any of its Group Companies of all or any of the S4C Rights and the term “Exploit” shall be interpreted accordingly;

**Extended Licence Period:** a further period of three (3) years commencing on the first day following the final day of the Licence Period and activated in accordance with Clause 5.3;

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

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

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

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

**General Terms:** these General Terms;

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

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

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

**Holdback(s):** the holdback(s) against Exploitation as set out in Clause 5.10;

**Holdback Period:** unless otherwise specified in the Appendix:-

- i) in respect of Transmissions the period prior to commencement of the Licence Period and the duration of the Licence Period and any Extended Licence Period;
- ii) in respect of the exploitation of the Programme by means of the New Media the periods specified in Clause 5.10.2;
- iii) in respect of producing and/or exploiting a Sequel in a language other than the Welsh language within the Territory the period prior to commencement of the Licence Period and the duration of the Licence Period and any Extended Licence Period;
- iv) in respect of any other Exploitation of the Programme within the Territory the period specified in Clause 5.10.3;

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

- i) the right to retain a Transmission copy of the S4C Programme in perpetuity for regulatory purposes; and
- ii) the right to retain copies of the S4C Programme in various technical formats in order to enable S4C to prepare different versions of the S4C Programme, e.g. a subtitled version, a signed version, a version with audio description etc., and in order to facilitate S4C's work.

**Industrial Relations Contracts:** contracts regulating industrial relations negotiated with bodies which represent contributors to the making of the S4C Programme or any part thereof and which have been approved in writing by S4C;

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

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

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

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

**Key Elements:** the key elements of the S4C Programme or to be used in the making of the S4C Programme which are identified in the Appendix;

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

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

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

**Licence Period:** either

- (i) seven (7) years commencing on the date of first Transmission of the S4C Programme on the S4C Services where the Programme is an individual programme or film or, in the case of a series, in respect of each Episode seven (7) years from the date of first Transmission of that Episode on the S4C Services provided that if S4C (except in the cases specified below) has not Transmitted the S4C Programme or the first Episode as the case may be within a period of six (6) months of Delivery of the S4C Programme or relevant Episode then the Licence Period shall commence on the date exactly six (6) months following the date of Delivery. The above proviso does not apply to films or programmes commissioned under S4C's theatric policy and/or Programmes commissioned far in advance of their expected Transmission date but where the Producer wishes to produce or deliver the Programme earlier than the contractual Delivery Date and/or any Programmes where S4C and the Producer agree to different arrangements; or
- (ii) such other period as is noted in the Appendix and which shall have precedence over the General Terms;

**Merchandising Rights:** the non-exclusive right to exploit the merchandising rights in the S4C Programme including the Format, the Underlying Rights Material, characters, scenes, logos and designs in connection with all types of products including audio

products, audio visual products, character merchandising, books, magazines and other publishing material but excluding the right to produce and/or to exploit a Sequel and/or the Online Rights, Mobile Rights and/or New Media Rights;

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

**Mobile Rights:** the right to transmit the S4C Content, the Format and the Underlying Rights Material to mobile devices by means of any form of point to multipoint technology developed principally for reception by mobile phone devices. For the avoidance of doubt, the foregoing rights shall also include the right to perform all such technical evolutions as are necessary to enable the full exploitation by S4C of the Mobile Rights (for example to copy, transfer, cache, store and reformat the S4C Content, the Format and the Underlying Rights Material) and the right to cut, edit, reformat, resize and repackage the S4C Content, the Format and the Underlying Rights Material as may be necessary to adapt it to requirements of the technology used;

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

- (i) commission fees and expenses payable to the Producer its agents and distributors in respect of the Programme which shall not in the aggregate exceed the following as a percentage of Gross Income:
  - UK Terrestrial/ Standard TV (35% Commission)
  - UK Satellite/Non standard TV (35% Commission)
  - USA Cable/Sat/Pay TV (35% Commission)
  - USA Commercial Network TV-Non Primetime (35% Commission)
  - USA Commercial Network – TV Primetime (35% Commission)
  - TV Worldwide/Inflight/Footage (35% Commission)
  - UK Video (25% Commission)
  - Worldwide Video (25% Commission)
  - Worldwide Merchandising (35% Commission)
  - Worldwide Publishing (30% Commission);
- (ii) the proper costs of Exploiting the Programme including without limitation the costs of prints, brochures, VHS tapes, launch and other promotional activities, panels, posters, freight and transport, Repeats and Residual Payments and the costs of technical and other work reasonably necessary to adapt the Programme for Exploitation which costs shall not in the aggregate exceed 5% of Gross Income;

**New Media Rights:** the right for S4C (and any third party new media service, portal or content providers as S4C may license from time to time) to exploit the S4C Content, the Format and the Underlying Rights Material whether on a stand-alone basis or as part of any other service or portal, through any medium and in any format and on any platform now or hereafter known save by way of Transmission or by way of the Online Rights or Mobile Rights. For the avoidance of doubt, the foregoing rights shall also include the right to perform all such technical evolutions as are necessary to enable the full exploitation by S4C of the New Media Rights (for example to copy, transfer, cache, store and reformat the S4C Content, the Format and the Underlying Rights Material) and the right to cut, edit, reformat, resize and repackage the S4C Programme as may be necessary to adapt it to the particular new media in question;

**New S4C Service :** any service owned solely or mainly by S4C or any Group Company of S4C which is in the Welsh language and targeted at a UK audience (notwithstanding that where such service is delivered by satellite or online or via new media the footprint may be wider than the UK) and which is available free of charge to the public (except for any costs payable by subscribers to satellite or cable television services for supplying channels by

means of satellite or cable television but where the subscribers do not pay a higher fee or price for the programmes transmitted);

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

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

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

**Online Rights:** the Catch-Up Rights and the Webcasting Rights. For the avoidance of doubt, the foregoing rights shall also include the right to perform all such technical evolutions as are necessary to enable the full exploitation by S4C of the Online Rights (for example to copy, transfer, cache, store and reformat the S4C Content, the Format and the Underlying Rights Material) and the right to cut, edit, reformat, reize and repackage the S4C Content, the Format and the Underlying Rights Material as may be necessary to adapt it to requirements of the technology used;

**Package:** the sole and exclusive right to Transmit the S4C Programme on the S4C Services up to 5 times within a 28 day period .;

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

**Primary Rights:** unless otherwise specified in the Appendix (i) the sole and exclusive right to Transmit the S4C Programme in the Territory without limitation as to timing or numbers of transmissions during the Licence Period or any Extended Licence Period; and (ii) the Online Rights, the Mobile Rights, the New Media Rights, the Sequel Rights, the Merchandising Rights, the Clip Rights, the Educational and Archive Rights, the Off Air Recording Rights, the ERA Rights, the Simultaneous Retransmission Rights, the Incidental Rights, the Theatric Rights, the Sponsorship Rights, the Non-Theatric Rights, the Holdback ,the Promotional Rights and the Website Rights;

**Private Copies Guidelines:** the guidelines at [http://www.s4c.co.uk/production/e\\_guidelines.shtml](http://www.s4c.co.uk/production/e_guidelines.shtml);

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

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

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

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

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

- i) means of trailers or on-screen promotions (and the right to use Clips and Rushes in such trailers or promotions);
- ii) preparing and releasing summaries of the S4C Programme to the press along with articles and other material about the S4C Programme, or individuals contributing to the S4C Programme;
- iii) radio advertisements, posters, pamphlets, post cards;
- iv) exhibiting clips or extracts from the S4C Programme in public, e.g. in public meetings or exhibitions, in film or television festivals, on S4C's stand at events, e.g. at eisteddfodau or international matches;
- v) exhibiting the S4C Programme and/or Clips and/or Rushes via Online Rights, Mobile Rights and New Media Rights;
- vi) preparing corporate tapes or disks/showreels and similar corporate materials or products (e.g. CD-ROMs or DVDs) (and the right to use Clips and Rushes in any such corporate materials);
- vii) holding premieres or theatrical exhibitions of the S4C Programme;
- viii) nominating the S4C Programme for film or television awards or otherwise to submit for exhibition or for an award at any film or television festival;
- ix) exercising the Merchandising Rights;

**Quarter:** a period of 3 calendar months ending on 30 June, 30 September, 31 December or 31 March in any calendar year from the date of the Licence;

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

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

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

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

**S4C Compliance Guidelines:** the documents which are available under the heading Compliance Guidelines on the Production Website including the Ofcom Broadcasting Code, S4C Programmes Guidelines 10/03/10, Language Guidelines 11/12/08 (only available in Welsh) and any updated versions of such documents and any separate requirements published by S4C from time to time;

**S4C Content:** the S4C Programme and Rushes and all parts thereof;

**S4C Digital:** the digital television service 'S4C Digidol' which commenced broadcasting on 15th November 1998;

**S4C Programme:** the Welsh language version of the Programme described in the Appendix and any and all excerpts from and/or sound recordings and/or other

programmes incorporated in such programme and all or any subtitles, audio description, signing or interactive elements associated with such programme and all Delivery Materials;

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

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

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

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

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

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

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

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

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

**TAC Selection and Archive Policy:** the selection and archive policy to be found on the Production Website;

**Technical Requirements:** the Technical Standards for Delivery of Television Programmes to S4C dated 30/01/13, and any updated version of such document and any separate requirements published by S4C from time to time;

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

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

- (i) (as a result of the inherent inability of non-encrypted satellite signals to be confined to national borders and the worldwide nature of the Internet and other means of communication used in the exercise of the New Media Rights) the S4C Services shall be capable of reception throughout the footprint of Astra 2A or of such other satellite(s) via which the S4C Services are transmitted from time to time and in the case of the Mobile Rights, Online Rights and New Media Rights the Territory shall be worldwide; and

(ii) the S4C Rights include Simultaneous Retransmission Rights outside the Territory;  
neither of which shall amount to a breach by S4C of the Licence;

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

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

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

**Training Scheme:** a training scheme for the benefit of the creative media industries;

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

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

**Unit Manager:** the Unit Manager specified in the Editorial and Business Brief;

**Webcasting Rights:** the exclusive right to communicate the S4C Programme to the public either at scheduled times or on demand by means of streaming technology via the Internet for reception by viewers on any device connected to the Internet without the need for a set top box or other decoding equipment;

**Website Rights:** the rights in Clauses 5.13 to 5.18 inclusive;

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

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

- 1.2 Any reference to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended modified extended or re-enacted whether before or after the date of the Licence and to all statutory instruments orders and regulations amending, modifying and/or extending such statute or provision.
- 1.3 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate unincorporated associations and partnerships.
- 1.4 The word "copyright" means the entire copyright the data base right and design right subsisting under the laws of United Kingdom and all analogous rights subsisting under the laws of each jurisdiction throughout the world.

- 1.5 The subject headings to the Clauses of the Licence are for guidance only and are not intended to limit or restrict the interpretation of any Clause.
- 1.6 The versions of all documents, Guidelines and Policies in existence at the date of the Licence and referred to in the Licence as being incorporated into the Licence by reference shall take effect as part of the Licence as if they were reproduced in it in full. In the event that any Guidelines or Policies are amended following the date of the Licence the version deemed to be incorporated into the Licence shall be the version in existence at the date of the Licence. In the event of any conflict between the documents Guidelines and Policies which have been incorporated in the Licence on the one hand and the General Terms and the Appendix on the other, the latter shall prevail. In the event of conflict between the General Terms and the Appendix the latter shall prevail.
- 1.7 Where the Producer consists of more than one legal entity then the liability of each such entity for the performance and observance of the Producer's obligations warranties and undertakings under the Licence shall be joint and several.
- 1.8 "Including" means "including without limitation".
- 1.9 References to "days" shall mean clear days.

**Clause 2 - Producing the S4C Programme**

- 2.1 The Producer warrants undertakes and agrees to make the S4C Programme *Editorial Matters* precisely in accordance with the specifications set out in the Appendix and to Deliver the S4C Programme to S4C on or before the Delivery Date.
- 2.2 The Producer will be responsible on a day to day basis for the production of the Programme and for ensuring that the S4C Programme complies with the Editorial and Business Brief and with the other requirements of the Licence. The Commissioning Editor and other S4C representatives shall be entitled to contact the Producer during the production period and 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. If there is a dispute, S4C shall have the final say in relation to the S4C Programme.
- 2.3 The Editorial and Business Brief lists the essential elements that the Commissioning Editor has the right to approve and specifies the timescale for delivery or notification of the essential elements to the Commissioning Editor and for their approval by the Commissioning Editor.
- 2.4 The Commissioning Editor's prior written approval will be required for any proposed changes such essential elements.
- 2.5 The Producer will make any changes that the Commissioning Editor requests so that the S4C Programme complies with:
  - 2.5.1 the Editorial and Business Brief;
  - 2.5.2 the terms of the Licence;
  - 2.5.3 the Guidelines and Policies;

Any such changes shall be made within the Licence Fee unless otherwise agreed in writing by the Unit Manager.

The Editorial and Business Brief specifies how many breaks are likely to be

- 2.6 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.
- 2.7 The Commissioning Editor may ask during the post-production period to see a list of the intended credits to be included in the S4C Programme. If so, the Commissioning Editor's approval should be sought prior to producing the credits. The credits must comply with the S4C Compliance Guidelines. If the S4C Programme contains unacceptable credits, S4C may reject the S4C Programme or omit and/or change the credits without contacting the Producer.
- 2.8 S4C reserves the right to make further changes for purely editorial reasons. S4C does not guarantee to transmit the S4C Programme.
- 2.9 The Producer warrants undertakes and agrees to produce and Deliver the S4C Programme in accordance with the Guidelines and Policies including S4C's Guidelines on Product Placement and any variation or update to this document which is available on the Production Website from time to time. The Producer shall obtain S4C's prior approval for any credit or other benefit of any kind requested by any programme sponsor or event organiser. In particular, the prior written permission of S4C must be obtained before any product placement can be arranged (as defined in S4C's Guidelines on Product Placement). *Compliance*
- 2.10 The Producer shall not without the written consent of S4C incorporate its name or logo at the beginning of the S4C Programme nor any reference to a website at the beginning or end of the S4C Programme. S4C shall have the right to require the Producer to display the address of any website which relates to the S4C Programme or to superimpose such a credit at the end of the S4C Programme. *Copyright Notices Credits*
- 2.11 The Producer undertakes to comply with the Programme Credit Guidelines 17/03/11 and any variation or update to this document which is available on the Production Website from time to time. Without prejudice to the generality of the foregoing, S4C shall be credited as follows:- "Cynhyrchiad [producer] ar gyfer S4C". S4C reserves the right to superimpose its own S4C presentation credit and/or logo at the commencement of the S4C Programme. S4C reserves the right to move any and all credit(s) or to edit the credits or to generate its own credits. If such change is necessary as a result of a failure by the Producer to comply with the S4C Credit Guidelines S4C shall be entitled to demand reimbursement by the Producer of the cost of such changes (which demand shall be met promptly by the Producer) or alternatively offset such costs against other monies due from S4C to the Producer under the Licence or any other agreement.
- 2.12 S4C confirms and agrees that on all Transmissions by S4C of the S4C Programme the Producer shall be credited as above. The remedy of the Producer and third parties arising out of a proven breach by S4C or its licensees of any contractual obligations hereunder in respect of credits shall be limited to damages and shall not extend to injunctive relief.
- 2.13 The Producer may promote the Programme outside Wales. The Producer may promote the Programme within Wales provided that is done in co-operation with S4C and with the written approval of S4C's marketing department. The Producer will co-operate with S4C's marketing department and assist in the promotional and advertising campaigns conducted by S4C. *Promotion and Marketing*

- 2.14 The Producer will liaise with S4C's marketing department and press office to discuss publicity for the S4C Programme and the nature and extent of the promotional campaign (if any) as soon as possible after the S4C Programme has been commissioned.
- 2.15 S4C shall give the Producer a credit in any promotional or marketing material published by or on S4C's behalf in relation to the S4C Programme as far as is reasonably practicable (e.g. on any programme-related website, on S4C's corporate website and on any press releases but not where size/time/design limitations make it impractical).
- 2.16 S4C shall have the sole and exclusive right to promote repeat transmissions of programmes and Returning Series by means of extended clips from any previous series and/or the whole of the final episode of the last series (where still under licence to S4C) to be communicated to the public on any S4C Service including via the Internet or any other point to multipoint technology for a period of seven (7) days before the proposed television showing of the repeated programme or Returning Series. There will be no fee payable to the Producer but S4C will be responsible for any clearance payments which are due. In the event that there is a commercial version of the Programme in distribution, consideration will be given to how appropriate it would be to exercise this right.
- 2.17 The following material must be delivered to S4C at least three weeks prior to the intended transmission date or on the Delivery Date for the S4C Programme tape if sooner:
- 2.17.1 a synopsis in Welsh and in English (approximately 100 words each);
  - 2.17.2 a listing in Welsh and in English (approximately 50 words each) and the relevant credits; and
  - 2.17.3 any photographic material that S4C requests at S4C's cost.
- 2.18 At S4C's request the Producer will promptly (taking into consideration the intended date of first Transmission of the programme) supply S4C with material for on screen promotions. Where the Producer shoots or records such promotional material during the production period (when the appropriate personnel are available), the Producer will bear the cost. Otherwise, S4C will pay the reasonable costs of providing such material, except where the request is necessary as a result of a failure on the Producer's part to meet the Delivery Date.
- 2.19 In all cases, S4C's marketing department will be responsible for preparing or supervising the work of preparing any on-screen promotions and trailers for Transmissions on S4C (although S4C may ask the Producer to provide material or to carry out the production work on its behalf).
- 2.20 The Producer shall not 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.
- 2.21 Subject to agreement with the production manager as to a convenient date and time, S4C shall be entitled to arrange for a photographer (nominated and paid for by S4C and working to a brief specified by S4C) to be present to take photographs for publicity and promotional purposes and where relevant to shoot promotional material for on-screen trailers.

- 2.22 The Producer shall use all reasonable endeavours to ensure the availability of the Key Personnel at any time during the production schedule for photographic shoots and interviews for publicity purposes.
- 2.23 Where arrangements for producing the S4C Programme involve children or vulnerable adults whether as contributors, audience members or otherwise the Producer will comply with S4C's Policy for the Protection of Children and other Vulnerable People in force at the date of production which is available on the Production Website and with all relevant legislation and regulations from time to time necessary for securing the welfare of children and vulnerable people. *Children and Vulne People*
- 2.24 Strict rules exist in relation to reporting court cases involving children. The Producer shall comply in all cases with any instructions or orders given by a court forbidding the release of any details about any child taking part in any court case in any way, whether under the Children and Young Persons Acts or otherwise.
- 2.25 The Producer warrants that the Designated Person shall be available at all times throughout the period of pre-production, production and post-production of the S4C Programme to and shall assess and advise on the risks to the welfare of children or vulnerable adults involved in the pre-production, production or post-production of the S4C Programme and that the Designated Person has received training in child protection by the NSPCC to a level approved by S4C.
- 2.26 In performing its obligations under the Licence the Producer warrants that it shall comply and shall ensure that all Personnel shall comply with all relevant health and safety rules, regulations and legislation from time to time in force. *Health and Safety*
- 2.27 The Producer warrants that the Competent Person shall be available at all times throughout the period of pre-production production and post-production of the S4C Programme to and shall assess and advise on the risks to health and safety of all persons who could be affected by the Producer's actions in relation to the production of the S4C Programme and that the Competent Person has completed a course to X3/X3.5 standard in Health and Safety which has been refreshed within the last three years.
- 2.28 If the Competent Person does not have final responsibility on the Producer's behalf for fulfilling the Licence, administering the budget and producing the Programme then the person who does have such responsibility must have the same health and safety qualifications as the Competent Person.
- 2.29 The Producer shall follow the advice of the Competent Person with regard to all aspects of planning, budgeting and producing the Programme and ensure that the Competent Person assesses all the risks of all aspects and stages of the production and devises systems and procedures and otherwise advises the Producer on how to eliminate or minimise the possible dangers as far as possible.
- 2.30 The Producer is responsible for the safety of everyone associated with the production. Health and safety legislation places this responsibility on the Producer. S4C's policy does not replace these statutory responsibilities.

- 2.31 All personal data provided to S4C in connection with the Programme may be processed by S4C for the purpose of exercising the S4C Rights. The Producer shall secure the consent of all relevant individuals to the processing of their personal data for this purpose. All personal data supplied to S4C shall be processed in compliance with S4C's Data Protection Policy. *Data Protection*
- 2.32 The Producer undertakes prior to the commencement of production of the Programme to effect suitable insurance policies with insurance companies or underwriters who are experienced in the media and entertainment industry against all risks normally insured against in accordance with industry custom and practice and the specific circumstances of the Programme. Without prejudice to the generality of the foregoing such insurance shall include (but not be limited to) the following:- *Insurance*
- (i) third party/public liability insurance;
  - (ii) indemnity against damage to or loss of negative stock, the negative, the videotape and soundtrack and other property to be used in connection with the production of the Programme;
  - (iii) indemnity against the risks of accident to or illness or death of the director, producers, executive producers, cast and contributors and any other person as may be specified by S4C;
  - (iv) employers liability insurance for the duration of production of the Programme; and
  - (v) such other insurance as may be reasonably required by S4C or by law.
- 2.33 The Producer agrees that it is the Producer's responsibility to comply on a day-to-day basis with the terms, conditions and limitations of the Insurance Policies throughout the period of pre-production, production and post-production and until Delivery of the S4C Programme. In particular, the Producer undertakes to notify S4C in the event that any matter or element is refused insurance cover or the cover therefor is withdrawn or if there are any exclusions from such cover or deductions in respect of any insured risks.
- 2.34 The Producer shall not do or allow to be done anything whereby any such policy may lapse or become wholly or partly void or voidable.
- 2.35 Any monies payable under any relevant policy of insurance shall be applied to continue with the production of the S4C Programme unless production of the S4C Programme has been abandoned, in which case all such monies shall be applied in reimbursing monies paid by S4C under the Licence.
- 2.36 The Producer shall maintain the Insurance Policies in full force and effect throughout pre-production and production and until Delivery and the Producer shall procure that S4C is noted as loss payee and as additional insured on all Insurance Policies.
- 2.37 The Producer shall pay all premiums in respect of the Insurance Policies.
- 2.38 The Producer 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.
- 2.39 The Producer 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 Producer from complying with its contractual responsibilities under the Licence. The Producer shall provide S4C with copies of all correspondence and documentation relating to any such matter

immediately on receipt. The Producer shall not make or advance or compromise or settle any insurance claim in such circumstances without the prior written approval of S4C, such approval not to be unreasonably withheld or delayed.

- 2.40 If the Producer fails to obtain and maintain any Insurance Policy S4C may without prejudice to any of its rights under the Licence obtain and maintain such insurance in the name of the Producer as the agent of the Producer or in its own name at the Producer's expense. The Producer shall promptly repay the amount of any premiums paid by S4C for any such policy.
- 2.41 The Producer shall be responsible for the safe custody of a duplicate master of the S4C Programme for the duration of the Licence Period and any Extended Licence Period plus six (6) years from the expiry of the Licence Period and any Extended Licence Period. S4C shall have free and unrestricted access to such master during the Licence Period and the Extended Licence Period and upon reasonable advance notice to the Producer thereafter. *Safe Custody*
- 2.42 The Producer shall comply with the TAC Selection and Archive Policy or such other archive and selection policy as S4C may approve in writing. *TAC's Selection and Archiving Policy*
- 2.43 All creative contributors to the S4C programme shall be 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 Unions/Guild which represent the creative contributors specifically for use on programmes commissioned by S4C and/or the agreements negotiated by PACT with the Unions/Guild for the benefit of its members). Where the Producer makes direct arrangement with the Unions/Guild and/or the creative contributors to the S4C Programme, the S4C retains the right to approve those arrangements specifically. *Collective Bargaining*
- 2.44 Where the Appendix indicates or S4C subsequently notifies the Producer that the S4C Programme is to carry subtitles signing or audio description and that such material is to be produced by the Producer the Producer undertakes to carry out or commission the subtitling signing or audio description and to Deliver to the same in accordance with the S4C Subtitling Guidelines other relevant guidelines, the Technical Requirements and the Delivery Requirements by the Delivery Date. Where the requirement for such material is noted in the Appendix, the cost of the same is included in the Licence Fee. Where such requirement is communicated by S4C separately the cost of such material shall be a matter for agreement between the Producer and S4C's Channel Management Department. *Subtitles, signing, audio description*
- 2.45 S4C shall own any television access materials commissioned by it and shall be entitled to edit any subtitling audio description or signing material which is provided by the Producer. If the Producer requires a copy of such material as transmitted it shall be entitled to request a copy on reasonable notice and subject to paying S4C's costs of providing it.
- 2.46 For the avoidance of doubt S4C shall have absolute discretion as to how subtitling, audio description and signing material shall be sourced, whether that be in house, from the Producer or from a third party.
- 2.47 Disputes relating to the commissioning, contracting, production, transmission *Disputes*

and exploitation of the Programme shall be dealt with in accordance with Section 18 of the Terms of Trade PROVIDED THAT Section 18 shall be without prejudice to the rights and remedies at law of the parties in respect of any breach or non performance of any warranty obligation or undertaking set out in the Licence or any negligence carelessness or fraudulent acts of either of the parties.

### **Clause 3 - Delivery**

- 3.1 The S4C Programme shall not be deemed Delivered until the Producer shall have complied fully with the requirements of the Licence including the Guidance Note, the Guidelines and Policies, the Appendix, the Technical Requirements and the Delivery Requirements. *Delivery Requirements*
- 3.2 The S4C Programme 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 Commissioning.
- 3.3 Delivery shall be effected on or before the Delivery Date free of all claims liens charges mortgages or encumbrances whatsoever other than Repeats and Residual Payments and any limitations in relation to Third Party Material which S4C has approved in the Appendix. No Repeats and Residual Payments shall be payable by S4C in respect of uses which are stated in the Appendix to be "bought out." If the Producer is unable to Deliver by the Delivery Date it must discuss the matter with the S4C's Head of Planning as soon as possible. Any changes agreed must be confirmed in a supplemental agreement before they come into force. *Delivery Date*
- 3.4 The Programme Information shall be full complete and accurate. The Producer undertakes to deliver the Programme Information by the relevant dates specified in the Deliverables Schedule. *Programme Information*
- 3.5 In addition to providing the Programme Information, the Producer shall keep full and accurate records and contractual paperwork relating to the engagement of contributors to the S4C Programme and the licensing of Third Party Material for use in the S4C Programme and shall allow S4C free and unrestricted access to the same.
- 3.6 Once the S4C Programme has been delivered, S4C will inform the Producer if any changes need to be made under Clause 2.5.
- 3.7 On condition that the S4C Programme and Programme Information have been Delivered by the Delivery Date S4C will be deemed to have accepted the Programme: *Acceptance of S4C Programme*
- 3.7.1 in the case of programmes delivered on tape (with the exception of programmes delivered to S4C on tape on the date of first transmission) when the S4C Programme is transmitted unless S4C has informed the Producer in writing prior to the first transmission of the S4C Programme that it rejects the S4C Programme;

- 3.7.2 in the case of programmes delivered by transmission link or on tape on the date of the first transmission of the S4C Programme, unless S4C has informed the Producer in writing that it rejects the S4C Programme within 14 days of the transmission.
- 3.8 Transmission of the S4C Programme or other exercise of the S4C Rights shall not deem the S4C Programme to comply with the Guidelines and Policies nor shall it amount to a waiver by S4C of any breach of the Licence by the Producer nor of S4C's rights and remedies in relation thereto including S4C's right to demand Delivery of any Programme Information or other information which S4C is entitled to receive under the Licence and which has not been Delivered.
- 3.9 Where the Producer makes late or inadequate Delivery of the S4C Programme or any Episode of it, S4C shall be entitled to deduct from monies due from S4C to the Producer under the Licence or any other agreement or to render as a debt payable on demand liquidated damages for each day of delay in the amount specified in the Deliverables Schedule. The parties accept and agree that such damages are a genuine pre-estimate of the loss likely to be suffered by S4C solely in respect of loss of management time and administrative costs caused to S4C departments in dealing with such delay and its consequences. *Liquidated Damages for late or inadequate Delivery*
- 3.10 Where S4C exercises its rights under Clause 3.9 such liquidated damages as are paid or deducted shall constitute a complete remedy in respect of such loss of management time and administrative costs but shall not prevent the exercise by S4C of its rights and remedies (whether under the Licence or otherwise) in respect of other losses.
- 3.11 As an alternative to its rights under Clause 3.9 in the event that any Programme Information has not been supplied to S4C within 28 days of Delivery of the S4C Programme or the Episode to which it relates then S4C may take whatever steps it deems necessary to obtain such information and the reasonable cost of doing so shall (subject to a maximum of £500 per Programme/Episode thereof) be deducted from any money otherwise payable to the Producer or (if the reasonable cost of doing so is greater) shall be charged to the Producer and be payable forthwith on demand as a contract debt.

#### **Clause 4 - Financial Provisions**

- 4.1 Subject always to and conditional on the Producer complying with and performing in a full and timely manner its obligations and warranties under the Licence and having, if required by S4C, entered into the Charge and having obtained all approvals specified in the Licence, S4C shall pay the Licence Fee to the Producer in accordance with the Cashflow and the other provisions of the Licence. Where S4C and TAC have (prior to the date of the Licence) agreed arrangements under which producers will contribute to the fund managed by the DUK on behalf of its members, such arrangements will be deemed incorporated into the Licence in such manner as TAC and S4C have agreed. *Payments to the Producer*

- 4.2 VAT invoices shall be submitted by the Producer to coincide with the dates in the Cashflow and S4C shall have ten (10) Working Days from receipt of each invoice or upon the attainment of any Milestone which is noted against each Instalment or elsewhere in the Appendix (whichever is later) to settle such invoice.
- 4.3 Without prejudice to its rights and remedies elsewhere in the Licence or generally S4C shall be entitled to withhold all or any part of any Instalment due to the Producer under the Licence if:-
- 4.3.1 S4C has notified the Producer of changes required under Clause 2.5; or
- 4.3.2 the Producer has not Delivered the S4C Programme by the Delivery Date; or
- 4.3.3 all approvals required by the Licence have not been obtained or the Producer is otherwise in breach of the Licence.
- 4.4 Payment by S4C of the whole or any part of an invoice shall not amount to an admission of the correctness or validity of it.
- 4.5 All amounts stated in the Licence are exclusive of Value Added Tax which shall be paid where appropriate upon receipt of a proper VAT invoice. *VAT*
- 4.6 The Producer will keep financial records sufficient to enable S4C to create an audit trail of production costs. *Cost Reports and Statements*
- 4.7 S4C and the Producer shall agree the form and the frequency of any cost reports when discussing the cashflow for the production.
- 4.8 Cost reports should be delivered on the dates agreed in the Cashflow comparing the expenditure against the agreed budget and noting any variations in the expenditure that could lead to an underspend or overspend later in the production. Any reports will be expected to reflect the same level of detail as the budgetary discussions, e.g. if the budgetary discussions concentrated on key costs only, then the reports should concentrate on those costs, whilst confirming that the remaining costs in the budget are still on target.
- 4.9 The Producer will deliver a final cost report as soon as possible following the end of the production period and within 4 months of Delivering the transmission copies (being Delivery of the final Episode in the case of a series). The final cost report will be expected to reflect the same level of detail as the budgetary discussions, e.g. if the budgetary discussions concentrated on key costs only, then the report should concentrate on those costs, whilst reporting on the final total aggregate costs of each remaining section of the budget. The final instalment will be paid (subject to compliance with the Delivery Requirements) when a satisfactory final cost report has been received from the Producer and (where S4C exercises the right) following an audit of the production costs. Where the cost of any MCPS music licence has not been received at this stage, the parties will need to discuss a realistic allowance for this cost and to retain the sum in a separate account pending receipt of the invoice. *Final Cost Report*

- 4.10 The Producer warrants that all Reports will be completed fully accurately and faithfully.
- 4.11 Generally, S4C will operate a random auditing procedure across all commissions. This corresponds to the guidelines in place with its auditors in order to ensure best value and S4C's accountability for public funds. *Audit of Costs*
- 4.12 S4C retains the right to audit the accounts and records occasionally during the production period and to audit the full costs. In particular S4C may audit the Programme where:
- 4.12.1 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
- 4.12.2 there are substantial variations (above or below) the Licence Fee; or
- 4.12.3 the S4C Programme as Delivered is different to the Editorial and Business Brief/the terms of the Licence.
- 4.13 Upon receipt of the final cost report the Unit Manager will confirm whether there will be an audit. Generally, the audit will occur within 3 months of receiving this report. The final instalment of the Licence Fee will not be due until S4C has had the opportunity to conduct an audit of the final cost report. If no audit is held, S4C will release the final instalment but will retain the right to see the accounts and records.
- 4.14 The Producer shall render all reasonable assistance and shall cooperate fully with regard to all inspections checks and audits carried out by S4C.
- 4.15 The Producer warrants agrees and undertakes to expend such amounts on the Key Elements as are agreed in Section 5 of the Editorial and Business Brief. *Key Elements*
- 4.16 Where required by the Appendix the Producer shall as a pre-condition to S4C's payment obligations open a separate trust bank account in its own name in respect of the S4C Programme and shall notify S4C in writing of all details of such account as S4C require. The Instalments shall be paid into the Bank Account. *Bank Account*
- 4.17 The Producer shall deliver to S4C as a pre-condition to receiving any payment a trust letter executed by the Bank. The Producer shall make no payment out of the Bank Account other than for the purposes of the Licence. It is intended that the Bank Account shall represent a full record of all receipts and payments relating to the S4C Programme only, and the Producer shall under no circumstances use the Bank Account as its own business account.
- 4.18 With S4C's agreement, the Producer may pay any surplus monies not needed in the short term and kept in the Bank Account into an interest-bearing deposit account, although S4C may request that the surplus monies are returned to S4C until required by the production.

It will be necessary to obtain an additional trust letter from the Bank for any type of interest-bearing deposit account.

- 4.19 The Producer declares that it shall hold all funds received pursuant to the Licence as trustee upon trust for the purposes of the Agreement only until Delivery of the S4C Programme. S4C agrees and acknowledges that the Producer may use the Instalments or the appropriate share or part of them to reimburse the Producer for any valid costs actually incurred by the Producer in the production of the S4C Programme together with an appropriate element of profit and overheads without breaching the terms of such trust.
- 4.20 The Producer will pay any overspend. *Overspends*
- 4.21 The only exceptions to this are where:
- 4.21.1 the additional expenditure is the result of changes in the Editorial and Business Brief made at the request of the Commissioning Editor and agreed in writing by S4C. Where this happens, the additional net costs should have been discussed and agreed beforehand and confirmed in a supplemental agreement arranged by the Unit Manager. The supplemental agreement will increase the Licence Fee; or
- 4.21.2 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 either on the basis of a loan to the Producer, or on the basis that S4C's additional contribution is recouped from the Net Proceeds in first position.
- 4.22 Where noted in the Appendix that the Producer wishes to use the services of the Training Scheme and to contribute 0.25% (a quarter of one per cent) of the Licence Fee to the Training Scheme. S4C will deduct the contribution from the last instalment of the Licence Fee, and will pay it directly to the Training Scheme fund on the Producer's behalf. *Training*
- 4.23 Where the Producer does not contribute to the Training Scheme, it will be asked to confirm this in writing, giving reasons why not. Where the producer is a member of TAC, S4C will provide TAC with a copy.

#### **Clause 5 – Licence, Holdback, Underlying Rights and Exploitation**

- 5.1 The Producer irrevocably grants the S4C Rights to S4C and its Group Companies to be exercised throughout the Territory for the Licence Period and any Extended Licence Period. The Producer warrants undertakes and agrees that in licences of the S4C Programme concluded with third parties outside the Territory and in agreements with contributors and underlying rights holders it shall procure that satellite overspill of the S4C Services and/or the exercise by S4C of the Simultaneous Retransmission Rights, the Online and the New *Licence*

Media Rights shall not be an infringement of the rights of such third parties.

- 5.2 In the event that at any time after the date of the Licence the Terms of Trade are amended following agreement between S4C and TAC (or any other organisation which may at any time supersede or replace TAC, and which represents the interests of production companies producing programmes for S4C) so as to grant wider rights to S4C then the Producer as the copyright owner of the Programme hereby agrees that S4C shall be entitled to exercise such wider rights in relation to the Programme without charge and without the need for S4C to obtain from the Producer a written amendment to the Licence. Such authorisation extends only to the copyright in the Programme itself and to such third party contributions and underlying rights material which the Producer is contractually obliged by the Licence to clear. It shall be S4C's responsibility to make and pay for any additional clearances which were not originally the responsibility of the Producer under the Licence and which are required to enable the exercise of such wider rights. *Wider Rights*
- 5.3 S4C may activate the Extended Licence Period upon giving the Producer no less than six (6) calendar months' written notice prior to the expiry of the Licence Period. Extension shall be subject to payment by S4C to the Producer of a fee as set out in Table 1 of the fees tables. *Extended Licence Period*
- 5.4 The S4C Programme has been commissioned as a children's or educational programme for Transmission during the hours normally set aside for such programmes without limit as to the number or timing of such Transmissions. If S4C subsequently schedules the S4C Programme for Transmission outside those hours and as part of S4C's general schedule S4C will enter into an additional separate licence with the Producer and will make a bonus payment to the Producer in accordance with Table 3 of the fees tables in order to acquire the right to Transmit the S4C Programme as part of S4C's general schedule by means of three (3) Packages (as defined in the additional licence). *Packages*
- 5.5 S4C shall have the sole and exclusive right to exercise the Online Rights, the Mobile Rights and the New Media Rights for a period of 35 days (maximum) on two occasions only during any year when the S4C Programme is Transmitted (except where S4C has acquired the right to Transmit the S4C Programme as part of S4C's general schedule by means of three packages under Clause 5.4, when S4C will also have the right to exercise the Online Rights, the Mobile Rights and the New Media Rights in the S4C Programme as part of S4C's general schedule in accordance with the additional licence) *Online, Mobile and New Media Rights*  
For the avoidance of doubt the exercise of the Website Rights shall not be restricted to such 35 day period but, save as permitted above, S4C (but subject to Clause 5.7 below) shall not exercise the New Online Rights, the Mobile Rights nor the Media Rights outside the sole and exclusive periods specified in this Clause 5.5.
- 5.6 S4C will not authorise the downloading of the 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 35 day period referred to above.

- 5.7 If S4C decides that S4C would like to exercise the Online Rights, the Mobile Rights and on New Media Rights more extensively than the licence granted above or in any manner which is different to the licence granted above, S4C will discuss its plans with the Producer who will endeavour to agree terms to enable S4C to do so.
- 5.8 Where S4C and the Producer recognise that the S4C Programme is of educational value or interest e.g. if the subject matter of the Programme becomes part of the field of study of any subject under the National Curriculum, then S4C and the Producer will discuss in good faith whether the Producer has any plans to exploit the S4C Programme by the exercise of the Online Rights, Mobile Rights and New Media Rights and in particular to make the S4C Programme available to those wishing to watch it/use it for educational purposes. The parties (acting reasonably and with the intention of making the S4C Programme available for this purpose) shall endeavour to agree on how the S4C Programme and any ancillary material will be made available, by whom and on what terms, but S4C acknowledges that the Producer will have the first option to do so.
- 5.9 If the Producer does not intend to make the S4C Programme available in a way which would enable it to be used to this end within a reasonable period (not being more than 2 months) of identifying the opportunity and the Producer has not notified S4C of any valid reasons for not releasing it (and S4C will act reasonably when considering the validity of the reasons given), S4C may make the S4C Programme available by such means during such period as the material is of educational interest.
- 5.10 The Producer warrants undertakes and agrees that it shall not: -
- 5.10.1 during the Holdback Period relating to Transmissions licence authorise or permit the Transmission of the Programme nor of any associated television access services materials (as described in clauses 2.44 to 2.46 above) for reception in the Territory nor allow any overspill of Transmission into the Territory. For the avoidance of doubt, where the S4C Programme is a Returning Series the Holdback 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; nor
- 5.10.2 at any time prior to the first Transmission of the S4C Programme (and all Episodes of it) by S4C nor during the sole and exclusive windows for S4C noted in Clause 5.5 exploit or authorise or permit the exploitation of the Programme, the S4C Content, the Format, the Underlying Rights Material or of any clips or excerpts from them or of any associated television access materials (as described in Clauses 2.44 to 2.46) via the Internet or any other technology now known or hereafter invented which enables reception of material transmitted via such technology within the Territory nor do so outside the Territory except in the circumstances set out in Clause 5.12 save that to such extent as S4C has not notified the Producer of the relevant dates of any such sole and exclusive window to enable the Producer to know what the relevant periods are under Clause 5.5, then the Producer shall not be in breach of

*Holdbacks*

this Clause; nor

- 5.10.3 at any time prior to the first Transmission of the S4C Programme and all episodes of it by S4C nor for a period of seven (7) clear days thereafter Exploit or authorise or permit the Exploitation of the Programme in the Territory;
- 5.11 The Producer shall be entitled to exploit the Programme via the Internet or via other point to multipoint technology (excluding Transmission) from within the Territory other than during the periods during which S4C has exclusivity as referred to Clause 5.5.
- 5.12 The Producer shall not during the exclusive periods referred to above exercise or permit the exploitation of the Programme or any material part or element of it by via the Internet or via other point to multipoint technology (excluding Transmission) outside the Territory unless S4C (acting reasonably) is satisfied that the necessary technology is in place to ensure that there is no possibility that such exercise will impact on the United Kingdom whether by overspill or otherwise.
- 5.13 If not already specified in the Editorial and Business Brief S4C and the Producer will discuss whether a programme-related website or pages on S4C's website should be created and maintained for the S4C Programme and if so by whom and at whose cost. If in agreement that a website, or web pages, should be created for the programme, the parties will discuss and will endeavour to agree on the nature, content (including what material belonging to the Producer and what new material will be used in the website), standard of the website, timing of its display, for how long the website will be exhibited and the credit in favour of the Producer. *Website Rights*
- 5.14 Where S4C commissions a website rather than producing it in house such commission shall be independent of the Licence and S4C's Code of Practice will not be applicable. The terms will be negotiated individually between the parties and S4C will generally expect to own the copyright in the website and in any materials (whether text, graphics, other art work, data, information or any other content) arising from the commission.
- 5.15 S4C will have the right to create or to commission new material(s) for the website (including interactive materials or elements) which include or are based on any characters, locations, themes, stories or other items in the Programme. S4C will acknowledge the copyright owner of the Programme and will for nil consideration assign the copyright in any new artwork based on the owner's artwork (but subject to a licence in S4C's favour to use it on the website) to the owner of the Programme.
- 5.16 For the avoidance of doubt:
- 5.16.1 S4C will have the right (but no obligation) to display any programme-related website at any time and from time to time during the Licence Period and any Extended Licence Period, unless S4C has agreed otherwise with the Producer;

- 5.16.2 S4C will have the right to adapt, update and develop any programme-related website at any time and from time to time during the Licence Period and any Extended Licence Period or such shorter period as may be agreed;
- 5.16.3 any programme-related website established by S4C may be in the Welsh language only or be bilingual (Welsh and English) at S4C's discretion, although the purpose of the website is to promote and publicise S4C's transmissions of the S4C Programme;
- 5.16.4 notwithstanding S4C's sole and exclusive rights the above does not prevent the Producer from creating or displaying another website(s) (including commercial website(s)) based on the Programme or any element of it on condition that the Producer will obtain S4C's approval of any such website(s) beforehand. S4C will not refuse its approval unreasonably but it will be reasonable for S4C to refuse its approval if:
  - 5.16.4.1 a website does not meet with S4C's technical standards; or
  - 5.16.4.2 a website is inconsistent with the nature, feel and content of the programme or otherwise undermines or reflects badly on the Programme; or
  - 5.16.4.3 a website gives the impression of being S4C's official website.
- 5.17 Where the Producer creates and maintains its own website(s), the Producer will not display or authorise or allow any third party to display any clip or extract from the Programme or any version of it via the Internet or via other point to multipoint technology (excluding Transmission) during the holdbacks referred to in Clause 5.10.2. The Producer may however 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 5 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 transmission(s) of the S4C Programme before S4C's first transmission of the S4C Programme. Such promotion shall be subject to written approval by S4C's Communications Directorate.
- 5.18 S4C will also have the right to use Clips and Rushes from the S4C Programme during the Licence Period and (if relevant) any Extended Licence Period:
  - 5.18.1 on any programme-related website(s) for the S4C Programme; and/or
  - 5.18.2 on any corporate website(s) established by S4C or its Group Companies from time to time (instead of or in addition to any separate website or web pages set aside for the S4C Programme); and/or
  - 5.18.3 on any generic website(s) established and displayed by S4C

from time to time (i.e. where S4C creates pages within its corporate website to promote and publicise a specific category or categories of programmes, e.g. Drama on S4C or S4C Sports Programmes, instead of or in addition to any separate website or web pages assigned to the S4C Programme).

- 5.19 If S4C wishes to exercise the Sequel Rights it shall notify the Producer which shall have seven (7) days from the date of the notification to provide S4C with a written expression of interest in producing the Sequel. A twenty eight (28) day negotiation period (calculated from the date of S4C's receipt of the Producer's notification) shall follow. In the event that S4C and the Producer have not agreed all of the terms of the proposed commission within such twenty eight (28) day period or S4C does not receive notification from the Producer within the required seven (7) days S4C shall be free to award the commission to a third party or parties but on the pre-condition that (1) S4C and the Producer (acting reasonably) have agreed on the terms of a licence to enable S4C to exploit the Format and the Producer's other rights and materials in the Programme in order to make the Sequel; and (2) S4C has paid any format fee which is payable as part of such terms, and if the parties (acting reasonably) are unable to agree on the terms of such licence, the matter shall be resolved in accordance with the procedure set out in Clause 2.47. *Sequel Rights*
- 5.20 The Producer shall not produce nor authorise any third party to produce a Sequel for broadcast within the Territory during the Holdback Period relating to the production and/or exploitation of a Sequel in a language other than the Welsh language within the Territory. After expiry of such Holdback Period the Producer shall notify S4C in writing of its intention to do so in sufficient detail as to enable S4C to decide if it wishes to be involved with such Sequel. The Producer shall provide such additional detail as S4C may reasonably request.
- 5.21 Following receipt of notification under Clause 5.20 S4C shall have a period of fourteen (14) Working Days to notify the Producer in writing whether it has an interest in co-funding the Sequel or in re-versioning the Sequel into Welsh on its completion.
- 5.22 If following the expiry of such period of fourteen days (14) Working Days the Producer has not received such notification it shall (subject to Clause 5.23) be entitled to proceed with the Sequel without S4C's involvement.
- 5.23 Where S4C notifies the Producer that it does not wish to participate in the funding or re-versioning of the Sequel (or is deemed under Clause 5.22 not to wish to do so) the Producer shall be entitled to proceed with a Sequel but shall use its reasonable endeavours to secure a credit for S4C on such Sequel which acknowledges S4C's funding of the S4C Programme.
- 5.24 If during such period of fourteen (14) days S4C does serve such notification upon the Producer there shall follow an exclusive negotiation period of twenty eight (28) days during which the parties shall use their reasonable endeavours to agree terms as to funding, editorial content, key personnel, holdbacks and all other relevant

factors. The Producer shall not during such period negotiate with any third parties based in the UK in respect of a Sequel without S4C's prior consent. In the event of a failure to agree within the twenty eight (28) day period, the Producer may negotiate with third parties but shall not conclude any arrangements for a version of the Sequel intended to be Transmitted in Welsh or with a Welsh language commentary or dialogue track without giving S4C the opportunity to match the terms agreed with the third party. The Producer shall notify S4C in writing of such terms and S4C shall have a period of ten (10) Working Days in which to confirm in writing whether it will match such terms. If S4C confirms its intention to match such terms the Producer will not proceed with the third party to make that version of the Sequel but it shall be free to proceed with any other language versions.

5.25 S4C's aim is to produce and/or to commission and distribute products and materials which are ancillary to the S4C Programme and/or which add to the viewers' experience of watching the S4C Programme, but without cutting across the Producer's definite commercial plans.

5.26 To this end:

*Merchandising Rights*

5.26.1 S4C and the Producer will liaise with each other and ensure that both parties are aware of any plans that either may have to exercise the Merchandising Rights;

5.26.2 S4C will inform the Producer as soon as is reasonably practicable of any plans that S4C may have to exercise the Merchandising Rights and shall give at least 21 days' prior notice before committing in any way to do so;

5.26.3 the Producer will have an exclusive period of 14 days to respond to such notice from S4C;

5.26.4 if the Producer does not respond within such period or if the Producer responds within such period stating that it does not have any objection, then S4C may proceed in the manner outlined in the notice;

5.26.5 if the Producer responds within such period, stating that it does object, then S4C and the Producer will discuss the matter in good faith;

5.26.6 if S4C (acting reasonably) accepts that S4C's plans cut across the Producer's commercial plans and that the Producer's commercial plans are realistic and likely to happen, then S4C shall not exercise this right as outlined in the notice and will notify the Producer of the same;

5.26.7 if S4C (acting reasonably) does not accept that S4C's plans would cut across the Producer's commercial plans or if S4C (acting reasonably) does not accept that the Producer's commercial plans are realistic and likely to happen, then the parties will attempt to resolve the matter in accordance with Clause 2.47.

- 5.27 The Clip Rights shall be exercised in accordance with the Clips and Rushes Policy *Clip Rights*
- 5.28 The Promotional Rights shall be exercised in accordance with Clauses 2.13 to 2.22 inclusive. *Promotional Rights*
- 5.29 The Producer and S4C shall maintain contact regarding proposed exercise of the Theatric Rights many of which shall be free of charge to the viewer or in exchange for a small administrative charge by the organiser. *Theatric Rights*
- 5.30 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 Welsh version of it for exhibition or for judging at any film or television festival or awards ceremony. *Film and Television Festivals*
- 5.31 S4C shall have the right to take such steps as S4C in its discretion may deem necessary or appropriate in order to secure, perfect or exploit the S4C Rights or to curtail any actual or proposed infringements of such rights. This right shall be sole and exclusive in respect of these of the S4C Rights which are sole and exclusive. *Rights of Action*
- 5.32 S4C shall have the right to initiate and maintain any and all actions or proceedings which S4C in its sole discretion deems necessary in order to protect any of the S4C Rights without prejudice to the right of S4C to join the Producer as a claimant in any such action and the Producer confirms that it shall have no right title or interest in respect of any monies recovered by S4C in respect of such actions or proceedings. This right shall be sole and exclusive in respect of those of the S4C Rights which are sole and exclusive. S4C shall indemnify the Producer in respect of pre agreed costs fees and expenses incurred by the Producer as a result of the Producer being joined into any action as a claimant PROVIDED THAT this indemnity shall not apply and the Producer shall bear its own costs where S4C has exercised its rights under this Clause due to some breach or negligence on the part of the Producer.
- 5.33 The Producer undertakes to do any and all acts and execute any and all documents in such manner and (upon reasonable notice) at such locations as may be required by S4C in its reasonable discretion in order to protect perfect or enforce any of the S4C Rights PROVIDED THAT S4C shall reimburse to the Producer the pre agreed costs of so doing, and if such costs are not agreed, there shall be no obligation on the Producer to act in accordance with this Clause. *Covenant for further Assurance*
- 5.34 As a condition precedent to S4C's payment and other obligations under the Licence, the Producer irrevocably and unconditionally warrants and undertakes that the Producer shall by Delivery secure in favour of S4C all rights licences clearances waivers consents and releases in respect of the S4C Programme necessary for exercise of the S4C Rights free from all limitations, encumbrances and Repeats and Residual Payments except as expressly agreed otherwise in the Appendix and that all such rights licences clearances waivers consents and releases (including licences in respect of Third Party Material) shall be in writing in respect of all material used in the making of the S4C Programme. *Underlying Rights and Clearances*

- 5.35 S4C will pay any Repeats and Residual Payments due to any contributor to the S4C Programme or rights owner for any use of their contributions to the S4C Programme over and above what has been cleared beforehand within the Licence Fee as required by the Appendix. Subject to the following Clause it will be the Producer's responsibility to ensure that additional uses are clearable and that the cost of additional clearances (broken down by media and term) and relevant contact details are provided as part of the Programme Information.
- 5.36 S4C acknowledges that terms have been agreed to allow actors', musicians' and script authors' contributions to be exploited on some but not all New Media. S4C will not expect the Producer to clear these contributions for those New Media for which the necessary arrangements have not yet been made.
- 5.37 Without prejudice to the generality of Clause 5.34 the Producer irrevocably and unconditionally grants and confirms to S4C its successors assigns and licensees: -
- 5.37.1 the assignment and grant by all Personnel of 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 exercise of the S4C Rights including all performers' proprietary rights including the making available right and the rental and lending rights, the rights of communication to the public by satellite and cable retransmission rights and the licence by such persons that the presumptions contained in Sections 93A and 191F of the Act shall apply to their contributions and the confirmation by such persons that the remuneration paid to them by the Producer constitutes "equitable remuneration" for the purposes of any legislation implemented in any state of the European Economic Area implementing European Directive 92/100 of 19<sup>th</sup> November 1992;
- 5.37.2 the irrevocable and unconditional waiver by all Personnel of all rights in respect of the S4C Programme and the Delivery Materials to which such persons 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 persons may be entitled under any legislation now existing or in future enacted in any part of the world;
- 5.37.3 the right to use the name likeness and biography of all persons contributing to the S4C Programme in publicity for the S4C Programme and in corporate publicity.
- 5.38 S4C shall have the right immediately on request to pre-approve any and all documents and contracts and to receive copies of any and all completed contracts relating to the S4C Programme. The Producer may blank out financial or commercially sensitive information from such completed contracts which is confidential provided that the rights to be granted to S4C by the Producer and which are granted to the Producer remain clear. *Chain of Title*
- 5.39 The Producer having obtained the approval of S4C to any agreement

in respect of the S4C Programme shall not thereafter amend or vary such agreement without the further approval of S4C. The approval by or involvement of S4C in preparing any agreement or checking underlying rights or programme content on S4C's behalf shall not amount to a waiver by S4C of or be deemed to put S4C on notice of any breach or non-observance by the Producer of its obligations under the Licence. S4C's legal department represents S4C's interests. In order to avoid any conflict of interests the Producer should seek independent legal advice where appropriate.

- 5.40 The Producer warrants and undertakes that it has disclosed in the Appendix all Third Party Material and the cost assumptions on which such Third Party Material is to be used.
- 5.41 All rights in and to the Programme, the S4C programme, the Format, the Rushes, the Underlying Rights Material and any ancillary material not granted to S4C under the Licence are the absolute property of the Producer. Subject to the S4C Rights and the Holdback Periods, the Producer shall have the sole right to Exploit the Programme. *Exploitation*
- 5.42 S4C shall be paid a share of the Net Proceeds received by the Producer from Exploitation as specified in the Editorial and Business Brief. The Producer shall be paid 50% of the income received by S4C from the exercise of the Online Rights and the New Media Rights and such share of income as may be agreed (and, failing agreement, such share as may be determined in accordance with Clause 2.47) in respect of the exercise of the Merchandising Rights and the Theatric Rights after deduction of all costs associated with the exercise of such S4C Rights. Otherwise any income received by S4C from exercising the S4C Rights will be the absolute property of S4C and S4C shall not be expected to account for it. *Net Proceeds*
- 5.43 Any money payable to either party in accordance with Clause 5.42 shall be paid within sixty (60) days of the end of the Quarter in which it was received by the recipient. *Payment*
- 5.44 Within sixty (60) days of the end of each Quarter each party shall provide the other with a statement of Net Proceeds (if any) payable to the other in respect of that Quarter. Statements shall include a breakdown of all sources of Gross Income together with deductions and all details required by the other to enable it to account to the DUK. In the event that no sums are due to either party in respect of any Quarter, each party shall notify the other that no further statements shall be sent until following the next Quarter (if any) in which monies are generated. In the event that in any period of four continuous Quarters no monies have been paid, the relevant party need thereafter only report to the other in respect of Quarters when money has been generated. Each party and its representatives and/or accountants appointed by it shall have the right to inspect all relevant books of account of the other or any sub-distributor agent appointed by the other and shall have full rights of audit (at its own cost) in respect thereof during usual business hours upon reasonable notice. In the event that any such inspection or audit reveals an underpayment of more than ten (10) percent then the defaulting party shall pay the reasonable professional expenses incurred by the other in carrying out such inspection or audit. *Statements*

## **Clause 6 – Warranties and Indemnities**

- 6.1 The Producer represents warrants guarantees and undertakes with S4C so that such representations warranties guarantees and undertakings (whether under this Clause or elsewhere in the Licence) shall continue to remain in full force and effect after Delivery of the S4C Programme that: -
- 6.1.1 the S4C Programme and all Delivery Materials shall be made and produced to first class dramatic and artistic quality as to content, and to a standard of technical and pictorial quality suitable without further expenditure or process for Transmission and in accordance with the Guidelines and Policies and all applicable laws rules and regulations and all of the elements of the Appendix which shall not be varied by the Producer without the written consent of S4C, the details of which are agreed as being fundamental to the making of the S4C Programme;
  - 6.1.2 the Producer accepts sole responsibility for the entire cost over and above the Licence Fee of making the S4C Programme and the acquisition of the S4C Rights;
  - 6.1.3 nothing contained in the S4C Programme nor the exercise of the S4C Rights shall infringe any of the convention rights as defined in the Human Rights Act 1998 (“the Convention Rights”) of any person any right of copyright right of trademark right of privacy right of publicity or any other right of any other nature of any person or be obscene or libellous or blasphemous or defamatory or contravene the provisions of any statutes (including those relating to the promotion of equal opportunities and fair treatment) regulations or orders;
  - 6.1.4 in complying with its obligations hereunder the Producer shall at all times have regard for the Convention Rights of any third parties and shall not act in any way which is incompatible with any of the Convention Rights;
  - 6.1.5 it is or shall be the sole person by whom the arrangements necessary for the making of the S4C Programme were undertaken and that each of the Producer and the principal director of the S4C Programme shall at all material times during the production of the S4C Programme be a “qualifying person” within the meaning of Section 154 of the Act and the principal director has assigned to the Producer free from all encumbrances the principal director’s entire interest in the copyright in the S4C Programme;
  - 6.1.6 there are no liens claims actions or proceedings pending or threatening affecting or relating to the S4C Programme or the S4C Rights nor the actual or working title of the S4C

Programme;

- 6.1.7 the Producer will not charge or otherwise encumber the S4C Programme or create any lien over the S4C Programme otherwise than in the ordinary course of business. The Producer warrants that it is or will by Delivery be the sole exclusive unencumbered legal and beneficial owner of the S4C Rights unless otherwise agreed in writing by S4C's legal department;
- 6.1.8 the Producer shall proceed with the making of the S4C Programme expeditiously and without unreasonable delay, having regard to the Delivery Date, the Milestones and the standard of work required by and all of the provisions of the Licence;
- 6.1.9 in complying with its obligations hereunder the Producer will, in its dealings with the public, respect the principles of the Welsh Language Scheme of S4C's equal opportunities policy and of S4C's policy on racial equality as expressed in Sections 11.2 and 11.3 of the Terms of Trade;
- 6.1.10 where members of the public have requested a copy of the Programme the Producer will deal with all such requests in accordance with the reasonable requirements of S4C;
- 6.1.11 it shall comply with all of its obligations under the Licence.
- 6.2.1 The Producer warrants that the S4C Programme shall not constitute a Contempt of Court under the Contempt of Court Act 1981 (hereinafter in this Clause and the two following Clauses referred to as "the 1981 Act"). *Contempt of Court*
- 6.2.2 In the event of proceedings for Contempt of Court being brought against S4C under the 1981 Act its officers servant or agents or the members of S4C the Producer shall make available to S4C forthwith for the purpose of dealing with such proceedings all relevant information which it may possess or which shall be within its power and control provided that the Producer shall not be obliged to require any of its employees to reveal sources of information except and to the extent provided for under the 1981 Act and pursuant to an order made thereunder.
- 6.3 Both parties agree and undertake to indemnify and at all times keep one another fully indemnified from and against all losses (including without limitation any loss of revenue or other economic loss) expenses claims demands actions proceedings costs damages or payments suffered, incurred or awarded, compensation agreed or liability whatsoever or howsoever arising in consequence of any breach or non-observance by them of all or any of agreements undertakings obligations or warranties herein contained or arising in any way out of the oral or visual content of the S4C Programme or as a result of any negligent or wrongful act or omission by them or their employee agent freelance sub-contractor or invitee including (but not by way of limitation) claims by rights owners or contributors to the S4C Programme or Personnel. *Indemnity*

- 6.4 Each party shall be under an obligation to take reasonable steps to reduce or mitigate any loss which it may suffer. *Obligation to Mitigate Loss*

**Clause 7 - Takeover and Consequences of Takeover**

- 7.1 Without prejudice to the rights of S4C to terminate the Licence in accordance with clause 8.2 below, S4C shall have the right to take over the production of the Programme upon giving written notice to the Producer of its election to do so (but shall not be obliged to) if:
- 7.1.1 the total of the expenditure and liabilities incurred in connection with the production of the Programme at any time in S4C's opinion exceeds an amount which is reasonable for the stage of production at which the Programme then is or the production of the Programme has in the opinion of S4C fallen materially behind the production schedule approved by S4C ;
  - 7.1.2 the Producer fails to carry out any instructions which S4C is entitled to give under the Licence and does not remedy such failure within the period of time stipulated in writing by S4C which time period shall be reasonable having regard to the time allocated for the carrying out of such instructions in this Licence and/or in the production schedule and taking into consideration the delivery requirements of S4C;
  - 7.1.3 any of the Key Personnel or the director for any reason becomes unavailable or refuses or is unable to perform his or her functions in relation to the Programme or some other key element becomes unavailable and the Producer has not within 10 working days of becoming aware of the occurrence of any of the above eventualities been able to agree with S4C in writing a replacement for any such person comprised within the Key Personnel or the director or any key element;
  - 7.1.4 the Producer undergoes a change of control which in S4C's opinion is prejudicial to S4C; and/or
  - 7.1.5 an event or circumstance has occurred which would entitle S4C to terminate this Licence pursuant to clause 8 ("Event of Default") or shall in the reasonable opinion of S4C be likely to occur.
- 7.2 If S4C elects to take over the production of the Programme:
- 7.2.1 following deduction of any sum due to the Producer in accordance with Clause 7.2.2 below, any sums held by the Producer for the purposes of the Licence as at termination shall be repaid by the Producer to S4C on demand and the Producer shall supply to S4C forthwith a detailed statement of income and expenditure up to the date of termination, with full details of all unpaid debts, and all outstanding commitments for which no invoices have been received;
  - 7.2.2 S4C shall pay the Producer for all the work actually and properly done by the Producer to the reasonable satisfaction of S4C in accordance with the terms of the Licence up to the

Takeover Date (as defined in clause 7.2.11 below). (This will include reasonable amounts in respect of overheads and profit (to be agreed between the parties or, failing agreement, to be resolved in accordance with the procedure set out in Clause 2.47);

- 7.2.3 the Producer shall provide full details to S4C immediately on request of all licenses or any other rights agreements entered into with third parties in connection with the Exploitation of the Programme;
- 7.2.4 S4C shall have the right to assume supervision and control of making of the Programme and/or to appoint and contract with any third party to complete the production of the Programme and the Producer shall cease to have any rights or interest in the continued production of the Programme;
- 7.2.5 the Producer irrevocably constitutes and appoints S4C as its attorney in fact with full power of substitution and revocation in the name of the Producer (which appointment is coupled with an interest in accordance with the provisions of the Power of Attorney Act 1971) and with absolute discretion and with power and on behalf of the Producer to exercise or assign any right of the Producer (whether under any contract or otherwise) which is relevant to the making of the Programme (including for the avoidance of doubt the benefit of any contract relating to the provisions of third party production funding) and all acts and things necessary to give full or further effect to the provisions of this Licence and to execute all such further deeds, documents and instruments in the name of and on behalf of the Producer in the event that the Producer fails to do so within a period of fourteen (14) days after receipt of a relevant request from S4C.
- 7.2.6 the Producer shall assign to S4C with full title guarantee the entire copyright in all languages in all media (whether now known or hereafter devised) throughout the Universe (including all rights to renewals and extensions of copyrights) in the Programme and any Underlying Rights Material
- 7.2.7 the Producer shall transfer to S4C legal title in all assets purchased by the Producer using the monies advanced by S4C to the Producer in connection with the Programme including but not limited to any and all sets, costumes, equipment, props, mikes, scenery and sound stages;
- 7.2.8 the Producer shall place at S4C's disposal and under its control the Bank Account (and for the avoidance of doubt the Producer shall not be entitled to draw cheques on the Bank Account) and all persons and equipment employed or used by the Producer in connection with the Programme;
- 7.2.9 the Producer shall forthwith at its sole cost and expense turn over to S4C the Programme at whatever stage of completion it may be together with all physical properties, facilities, supplies, equipment and documents relating to the Programme;

7.2.10 the Producer will perform and observe all of its agreements and obligations relating to the Programme and/or any underlying or constituent parts of the Programme for the benefit of S4C or any company nominated by S4C;

7.2.11 upon S4C's request the Producer shall execute a formal assignment in favour of S4C in respect of the benefit of any agreements made by the Producer and relevant to the making of the Programme; the Producer shall fully indemnify S4C against liability to any other party arising from any breach of such contracts by the Producer or any act or omission of the Producer prior to the Takeover Date. For the purpose of clause 7.2.2 and 7.2.11, "Takeover Date" means the date of physical takeover of the Production by S4C or its nominee and not the date of notification of any intention to take over;

7.2.12 if the total reasonable cost to S4C of completing the S4C Programme in accordance with the Licence exceeds the Licence Fee the additional reasonable cost shall be paid by the Producer to S4C either by deduction from any money payable by S4C to the Producer or as an ordinary debt payable on demand; and

7.3 nothing in this Clause 7 shall be construed so as to limit or impair any other rights or remedies which S4C may have under this Licence at law or in equity by reason of any breach by the Producer of any of its warranties, undertakings or obligations under this Licence

**Clause 8 – Term & Termination Provisions**

8.1 Unless terminated earlier in accordance with its terms the Licence shall continue for the duration of the Licence Period and any Extended Licence Period. *Licence Period*

8.2 Without prejudice to any other rights or remedies which the relevant party may have including without limitation its rights under Clause 6.3 and any rights of termination elsewhere in the Licence: *Termination*

8.2.1 The Licence may be terminated in whole or in part:

(a) by either party if the other is in breach of any of its obligations (and it is acknowledged that any failure to pay by S4C either because S4C is contractually entitled to withhold payment or because of a bona fide dispute between S4C and the Producer in connection with the Programme shall not constitute a breach by S4C of its obligations for the purpose of this Clause) under the Licence which is incapable of remedy or if capable of remedy is not remedied within 7 days (or such longer period as the parties may agree) of receipt of notice in writing from the other requiring such breach to be remedied; or

(b) by S4C if there is a change of control of the Producer (as 'control' is defined in Section 1124 of the Corporation Tax Act 2010) which in S4C's reasonable

opinion jeopardises the Producer's status as an independent producer; or

- (c) by S4C if for any reason whatever any element specified in the Appendix shall be unavailable or cannot reasonably be used and the Producer is unable to secure a substitute acceptable to S4C.

8.2.2 Subject to Clause 8.2.3 either party may terminate the Licence if the other is Insolvent, and for the purposes of this Clause 8.2.2 Insolvent" shall mean any of the following:

- (a) except in relation to a solvent re-organisation of the other's business which was pre-approved by the solvent party (acting reasonably) the presentation of a petition or the convening of a meeting for the purpose of considering a resolution for the winding up or dissolution of the other, the passing of any resolution for the winding up of the other, or the making of a winding up order against the other or order for the other's dissolution;
- (b) the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of a notice of intention to appoint an administrator by the other, or by its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- (c) the appointment of a receiver, administrative receiver, receiver and manager, sequestrator or similar officer over all or any key part of the assets or undertaking of the other or the presentation of a petition by the other or by its directors, shareholders or its creditors for an administration order, or the making of an administration order, in relation to the other;
- (d) the proposal by the other or by its creditors or shareholders or by its liquidator of, application for or entry into a compromise or arrangement or voluntary arrangement, or any other scheme, composition or arrangement in satisfaction or composition of a material share of the other's debts or other arrangement for the benefit of the other's creditors generally or a substantial class of its creditors or members;
- (e) the taking by any creditor secured or otherwise of possession of, or the levying of distress or enforcement of some other process upon, all or a key part of the property, assets or undertaking of the other;
- (f) the deemed inability of the other to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (g) the other ceasing to carry on the whole or a substantial part of its business;
- (h) the suspension of payment of a material share or number of

its debts by the other or the inability or omission of the other to pay a material share or number of its debts as they fall due; or

- (i) the occurrence of an event or circumstance in relation to the other similar to any of those referred to in (a) to (h) above in any jurisdiction other than England and Wales;

8.2.3 The Producer shall not be entitled to terminate the Licence under Clause 8.2.2 if there is a successor to S4C or if the Government makes an official announcement that there will be a successor to S4C whose remit or powers include the transmission of Welsh language programming. Subject to the pre-conditions that (i) the Producer has received all sums properly due to it under the Licence up until termination and (ii) that the Producer is reasonably satisfied as to the financial arrangements for the payment of any outstanding amounts due to the Producer under the Licence, the Producer shall on request by S4C or relevant government body or regulator do such things and execute such documents as are necessary to vest the S4C Rights in such successor;

8.2.4 S4C may terminate the Licence pursuant to clause 9.6.

8.3 Without prejudice to the legal rights of the parties the consequences of termination of the Licence shall be as set out below. *Consequences of Termination*

8.4 If this Licence is terminated by the Producer following a breach by S4C of its obligations in accordance with clause 8.2.1(a) S4C shall pay the Producer for all the work actually and properly done by the Producer to the reasonable satisfaction of S4C in accordance with the terms of the Licence up to the date of termination. This will include reasonable amounts in respect of overheads and profit (to be agreed between the parties or, failing agreement, to be resolved in accordance with the procedure set out in Clause 2.47).

8.5 If S4C elects in its absolute discretion not to take over production of the Programme in accordance with its rights in clause 7 and to terminate this Licence in accordance with clauses 8.2.4 and 9.6 then the Producer shall, on demand, repay to S4C all sums advanced by S4C to the Producer in connection with the Programme together with interest at a rate of 3% above LIBOR to be accrued from the date of the advance to the date of repayment UNLESS the Producer and S4C agree that S4C shall pay the Producer for all the work actually and properly done by the Producer to the reasonable satisfaction of S4C in accordance with the terms of the Licence up to the date of termination. This will include reasonable amounts in respect of overheads and profit (to be agreed between the parties or, failing agreement, to be resolved in accordance with the procedure set out in Clause 2.47) and in consideration of such payment the Producer shall:

8.5.1 assign to S4C with full title guarantee the entire copyright in all languages in all media (whether now known or hereafter devised) throughout the Universe (including all rights to renewals and extensions of copyrights) in the Programme and

any Underlying Rights Material; and

8.5.2 transfer legal title in all assets purchased by the Producer using the monies advanced by S4C to the Producer in connection with the Programme including but not limited to any and all sets, costumes, equipment, props, mikes, scenery and sound stages.

8.6 All clauses necessary for the interpretation and enforcement of the Licence together with all Clauses relating to confidentiality, indemnity and the FOIA shall survive termination or expiry.

### **Clause 9 - General Provisions**

9.1 The Licence is personal to the Producer which shall not until Delivery assign the benefit or burden of it without the written consent of S4C which shall be entitled to refuse consent in its reasonable discretion (except in the case of an assignment to another Group Company of the Producer when S4C shall not refuse its consent unreasonably). Following any assignment the Producer shall remain liable for any breach of the Licence by its assignee. *Assignment*

9.2 The Producer shall not grant to any other party any right licence consent or permission which could or might infringe upon or derogate from any of the S4C Rights or benefits granted to S4C. S4C shall not grant to any other party any right licence consent or permission which could or might infringe upon or derogate from any of the Producer's rights.

9.3 S4C shall be entitled to licence or assign the benefit of the S4C Rights and shall where S4C considers it appropriate notify the Producer of any such sub-licence or assignment. Following any such assignment, S4C shall remain liable for any breach of the Licence by its assignee.

9.4 "Force Majeure" shall mean any of the following events outside the reasonable control of either party which prevents the observance or performance by that party of its obligations hereunder fire, flood, national calamity, riot, act of God, act of terrorism or its consequences, the enactment of any Act of Parliament or a direction by Ofcom or any other regulator or any event arising out of or attributable to war or armed conflict (including but not by way of limitation any restriction imposed by Government on national, regional or local television services or the financing of the same). *Force Majeure*

9.5 If an event of Force Majeure occurs the party affected shall notify the other in writing without delay and, provided any inability to observe or perform any obligation under the Licence results solely from that event of Force Majeure, performance of the obligations so affected shall be deemed to be suspended from the date of such notice until such inability is removed or until termination or take over. Both parties undertake to use all reasonable endeavours to minimise and reduce any period of delay and all costs and expenses occasioned by an event of Force Majeure. During any such period of delay S4C shall be under no obligation to pay any money to the Producer.

9.6 If the making or Delivery of the S4C Programme is materially delayed by

reason of an event of Force Majeure having regard to the intended time of transmission, S4C may take and require the Producer (at S4C's cost) to take any reasonable steps that S4C may consider appropriate to complete the S4C Programme and/or reduce the period of delay and/or the financial loss resulting from it, including (but not by way of limitation) the termination of the Licence (either in relation to the S4C Programme as a whole or in relation to the affected Episode or Episodes) and the exercise of S4C's right of take-over.

- 9.7 Without limiting either party's rights of set-off at common law both parties shall have the right to offset all monies due or to which they are otherwise entitled (whether under the Licence or as a result of any settlement or judgement under which damages or indemnity in connection with the Licence are due) from the other from time to time against and deduct them from all monies due from them to the other under the Licence or any other agreement or arrangement. *Set-off*
- 9.8 The address of each party given in the Licence shall be the relevant address for the service of notices until such party notifies the other of a new address in the United Kingdom. *Notices*
- 9.9 A notice shall be deemed served on the next following Working Day if delivered by hand or if handed in at a Post Office properly addressed and prepaid for transmission by first class post. Any period of notice specified herein shall commence on the day of presumed service and shall be inclusive of Saturdays Sundays and Public Holidays.
- 9.10 No waiver by a party of any breach of any of the provisions in the Licence shall be effective unless given in writing. *Waiver*
- 9.11 Failure or delay by any party to the Licence in exercising any right, power or remedy of that party under the Licence shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by any party to the Licence of any right, power or remedy under the Licence shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 9.12 The rights powers and remedies provided in the Licence are cumulative and not exclusive of any rights, powers, remedies provided by law.
- 9.13 Any waiver of any breach of or default under any terms of the Licence shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Licence.
- 9.14 Each party acknowledges that it has been or will be in a position to receive, have access to or discover Confidential Information. *Confidentiality*
- 9.15 Both parties shall during the Licence Period and at all times thereafter keep private and confidential all of the Confidential Information of the other party and shall not and shall procure that their personnel do not disclose reveal, make public or communicate to any person or persons whether before, during or after the Licence the Confidential Information or any part thereof or any other information which comes to its attention during and as a result of the Licence provided that a disclosure by S4C under the FOIA and in accordance with the FOIA and/or any appropriate regulations or supplemental codes or to Ofcom or to the DUK or as

otherwise required by law shall not be a breach of this nor the following Clause. The Producer shall only use the Confidential Information for the purpose of making and Delivering the S4C Programme.

- 9.16 Both parties shall take all necessary precautions to ensure that all Confidential Information obtained from the other party or any of its Group Companies under or in connection with the Licence:-
- 9.16.1 is given only to such of the personnel and professional advisors or consultants engaged to advise it in connection with the Licence as is strictly necessary for the performance of the Licence and only to the extent necessary for the performance of the Licence;
- 9.16.2 is treated as confidential and not disclosed (without prior written approval) or used by any personnel or such professional advisors or consultants otherwise than for the purposes of the Licence.
- 9.17 The provisions of the Licence shall apply to every part of the making of the S4C Programme including work done prior to the signing of it. *Construction*
- 9.18 It is agreed that the Producer enters into the Licence and undertakes its obligations as an independent contractor and nothing in the Licence shall imply any form of partnership or joint venture as between S4C and the Producer and neither party shall hold itself out as the agent for the other except as expressly provided herein.
- 9.19 The Producer undertakes and agrees that all contracts relating to the making of the S4C Programme shall be entered into by the Producer as a principal and that S4C shall not have any liability as an undisclosed principal of the Producer and that the Producer shall not pledge the credit of S4C or enter into any contractual arrangement on its behalf. The Producer acknowledges that the Producer shall have no claim in respect of loss of opportunity to enhance reputation or otherwise howsoever if S4C terminates the Licence or abandons production of or fails to Exploit the S4C Programme.
- 9.20 If any provision of the Licence 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 the Licence and rendered ineffective, as far as possible without modifying the remaining provisions of the Licence and shall not in any way affect any other circumstances or the validity or enforcement of the Licence.
- 9.21 With the exception of statements made fraudulently the Licence sets out the entire agreement between the parties hereto in connection with the subject matter hereof and supersedes all prior agreements and undertakings relating to the production of the S4C Programme and no party has relied upon any representation save for a representation expressly set out in the Licence.
- 9.22 The Licence shall be construed as an agreement made in Wales and subject to the Laws of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales.
- 9.23 The Licence 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 the Licence other than S4C Group Companies and any successor in title or sublicense of S4C or its Group Companies who shall be entitled to enforce the Licence and any successor in title or assignee of the Producer in accordance with Clause 9.1 above.

#### **Clause 10 – Freedom of Information**

- 10.1 The Producer acknowledges that S4C is a public body subject to the requirements of the Code of Practice on Access to Government Information (2nd edition) the FOIA and the Environmental Information Regulations and (subject to the provisions below) shall assist and co-operate with S4C to enable S4C to comply with these Information disclosure requirements. *Freedom of Information*
- 10.2 S4C shall be responsible for determining whether the Information:
- 10.2.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information (2nd edition), the FOIA or the Environmental Information Regulations;
  - 10.2.2 is to be disclosed in response to a request for Information, and in no event shall the Producer respond directly to a request for Information unless expressly authorised to do so by S4C on behalf of S4C.
- 10.3 The Producer acknowledges that S4C may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the FOIA, be obliged under the Code of Practice on Access to Government Information (2nd edition), the FOIA, or the Environmental Information 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 Producer where practicable and take its views into account. Where the Producer's views conflict with S4C's legal advice, S4C's legal advice shall prevail.
- 10.4 The Producer acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that S4C or its Group Companies may nevertheless be obliged to disclose Confidential Information in accordance with Clause 10.3.

#### **Clause 11 – Prevention of Corruption**

- 11.1 The Producer 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 Licence 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 Licence or any such contract. *Prevention of Corruption*

- 11.2 The Producer 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 Licence.
- 11.3 If the Producer, its staff or anyone acting on the Producer's behalf, engages in conduct prohibited by clauses 11.1 or 11.2, S4C may:
- 11.3.1 give written notice to the Producer to either terminate the Licence immediately or to take over production of the Programme in accordance with clause 7.2; and/or
  - 11.3.2 recover in full from the Producer any loss sustained by S4C in consequence of any breach of those clauses and any loss suffered by S4C resulting from termination of the Licence and/or take over of production of the Programme.

**Clause 12 – Prevention of Fraud**

- 12.1 The Producer shall take all reasonable steps to prevent Fraud by the Producer and/or its staff (including its shareholders, members, directors) in connection with the receipt of monies from S4C. *Prevention of Fraud*
- 12.2 The Producer shall notify S4C immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 12.3 If the Producer or its staff commits Fraud in relation to this, or any other contract with S4C, S4C may:
- 12.3.1 give written notice to the Producer to either terminate the Licence immediately or to take over production of the Programme in accordance with clause 7.2; and/or
  - 12.3.2 recover in full from the Producer any loss sustained by S4C in consequence of any breach of this clause and any loss suffered by S4C resulting from termination of the Licence and/or take over of production of the Programme.