

NON-DISCLOSURE AGREEMENT

Effective Date: 7th September 2017

BETWEEN:

The British Broadcasting Corporation whose principal place of business in Wales at the date of this signing this Agreement is at Broadcasting House, Llandaff, Cardiff, CF5 2YQ (the "**BBC**")

and

Sianel Pedwar Cymru whose principal office at the date of signing this Agreement is at Parc Ty Glas, Llanishen, Cardiff, CF14 5DU (the "**Recipient**")

BBC and the Recipient are currently working together to finalise the contractual terms and arrangements in respect of a proposed Technology Services Agreement (the "**TSA**") for the BBC to provide the Recipient with playout, transmission, office technology and media asset management services, primarily from the BBC's new headquarters at Central Square, but with some office technology and telephony services/systems being provided for the Recipient's new headquarters at Yr Egin and the Recipient's office in Caernarfon (the "**Project**"). As part of the discussions and negotiations currently taking place between the parties relating to the Project, the BBC has agreed to provide the Recipient with certain confidential information.

The BBC and the Recipient are entering into this Agreement ("**Agreement**") in order to define their respective rights and obligations in relation to the disclosure of Confidential Information by the BBC to the Recipient in connection with the Project.

1 Definitions

In this Agreement:

1.1 "Confidential Information" means information whether in written or any other form whatsoever which:

1.1.1 by its nature is confidential, is designated by the BBC as confidential; or the Recipient knows or ought to know is confidential; and

1.1.2 is disclosed by or on behalf of the BBC to the Recipient, or otherwise is in the possession of the Recipient, in connection with the Project and whether disclosed before, on or after the Effective Date at the top of this Agreement.

1.2 Notwithstanding Clause 1.1 above, Confidential Information shall not include information which:

1.2.1 entered or subsequently enters the public domain without breach of this Agreement or any other obligation of confidentiality by the Recipient;

1.2.2 the Recipient can demonstrate was already in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the BBC and was not previously acquired from the BBC under any obligation of confidentiality;

- 1.2.3 is disclosed to the Recipient by a third party without breach by the Recipient or such third party of any obligation of confidentiality owed to the BBC;
 - 1.2.4 the Recipient can demonstrate is independently developed or discovered by or for it not as a result of any activities relating to the Project;
 - 1.2.5 is hereafter disclosed by the BBC to a third party without restriction on disclosure or use, including, by way of the publication of a patent specification;
 - 1.2.6 is disclosed by the Recipient with the prior written permission of the BBC; and
 - 1.2.7 is required to be disclosed in accordance with the FOIA, if applicable, or otherwise is required to be disclosed by law, order of court, the requirements of any regulatory or taxation authority or the rules of any stock exchange.
- 1.3 "FOIA" means the Freedom of Information Act 2000 or any replacement legislation.
- 1.4 "Purpose" means any discussions and negotiations between or within the parties concerning or in connection with the Project.
- 1.5 Headings are for reference only and shall have no effect on the interpretation of this Agreement.
- 1.6 References to "includes", "including", "for example" or "such as" shall not imply any form of limitation.

2 Restrictions on Disclosure and Use

In consideration of the BBC's disclosure of Confidential Information, and subject always to the requirements of Clause 3, the Recipient undertakes to the BBC:

- 2.1 to keep the Confidential Information confidential at all times;
- 2.2 to use it only for the Purpose and not for any other purpose including not to make any commercial use of it and not to use the same for the benefit of itself or any third party other than pursuant to a further agreement with the BBC. For the avoidance of any doubt, the disclosure of the Confidential Information by the BBC does not in itself constitute an offer by the other nor form the basis of any future contract unless the parties specifically agree otherwise.
- 2.3 not to disclose, without the BBC's prior written consent:
 - 2.3.1 the fact that the Confidential Information has been made available to the Recipient or any other person or
 - 2.3.2 the fact of discussions or negotiations between the Recipient and the BBC in relation to the Project; or
 - 2.3.3 any proposed or possible terms or conditions which are applicable in relation to the Project;

- 2.4 to take reasonable security precautions (at least as comprehensive as the precautions the Recipient takes to protect its own confidential information which the Recipient warrants are adequate to prevent unauthorised disclosure, copying or use) to keep confidential the Confidential Information;
- 2.5 not to disclose Confidential Information to any person except in confidence to such of its directors, trustees, employees and professional advisers who reasonably need access to the Confidential Information for the Purpose and provided that all such persons to whom Confidential Information is so disclosed are informed of the terms of this Agreement and prior to disclosure to them either:
 - 2.5.1 are obliged by their contracts of employment or service not to disclose the same; or
 - 2.5.2 where no existing contractual obligation exists, have entered into legally binding confidentiality agreements on equivalent terms to this Agreement;
- 2.6 to be responsible for the performance of Clauses 2.1, 2.2, 2.3 and 2.4 above on the part of its directors, trustees, employees and professional advisers to whom Confidential Information is disclosed pursuant to Clause 2.5 above;
- 2.7 not to copy, reproduce, summarise or reduce to writing any part of any Confidential Information except as may be reasonably necessary for the Purpose and that any copies, reproductions, summaries or reductions so made shall be the property of the BBC; and
- 2.8 not to reverse engineer, decompile or disassemble any software disclosed by the BBC.

3 FOIA and other Compulsory Disclosure

- 3.1 The Recipient recognises that, if FOIA is applicable, the BBC may be required to release information under FOIA whether the information is held by the BBC, by the Recipient or another person on behalf of the BBC. If the BBC receives a FOIA request for information and requires assistance in obtaining such information, the Recipient (or any agent or sub-contractor of the Recipient) shall at its own cost ensure (and procure that any of its agents and sub-contractors so ensure) that the BBC's request for assistance is responded to promptly and in any event within [REDACTED] of receipt.
- 3.2 In the event that the Recipient is required by law to disclose Confidential Information the Recipient will provide the BBC with prompt written notice thereof and shall use reasonable endeavours to consult with the BBC with a view, as far as practicable, to taking into account the BBC's views in determining whether to disclose the information and/or the timing, manner and content of disclosure.

4 Notification of Unauthorised Disclosure

The Recipient shall notify the BBC immediately upon discovery of any unauthorised use or disclosure of Confidential Information by the Recipient or any person to whom it discloses pursuant to this Agreement, or any other breach of this Agreement by the Recipient or such other person, and shall co-operate with the BBC in every reasonable way to help the BBC regain possession of the Confidential Information and prevent its further unauthorised use.

5 Return of Confidential Information

- 5.1 Upon receipt of the BBC's request in writing the Recipient shall, and shall procure that any persons to whom it discloses Confidential Information pursuant to this Agreement shall to the extent technically possible, return to the BBC all documents and materials containing Confidential Information, (including any copies, reproductions, summaries and reductions to writing thereof) or, at the BBC's option, certify destruction of the same.
- 5.2 Notwithstanding the completion of the Purpose or the return of documents as contemplated in Clause 5.1 above, the Recipient shall continue to be bound by the undertakings set out in Clause 2.

6 Termination of Obligations

- 6.1 Subject to Clause 6.2 below, the obligations of the Recipient under Clause 2 of this Agreement shall expire five years from the date of this Agreement.
- 6.2 Once the TSA is agreed and fully executed by duly authorised signatories of each of the parties, then the confidentiality provisions set out in the TSA will apply to any Confidential Information that is supplied to the Recipient rather than the terms of this Agreement.

7 Property in Confidential Information

All Confidential Information is and shall remain the property of the BBC notwithstanding anything added thereto by the Recipient. By disclosing information to the Recipient, the BBC does not grant any express or implied right to the Recipient to or under any of the BBC's patents, copyrights, trademarks, or trade secret information. No warranty or representation, express or implied, is given as to the accuracy, efficiency, completeness, capabilities or safety of any materials or information provided under this Agreement.

8 Non Assignment

This Agreement is personal to the parties and shall not be assigned or otherwise transferred in whole or in part by either party without the prior written consent of the other party.

9 Miscellaneous

- 9.1 Any notice required to be given pursuant to this Agreement shall be in writing and sent either by hand, by prepaid recorded delivery or registered post or by prepaid first class post, by fax confirmed by first class post, or by e-mail which has been received, as evidenced by receipt by the sender of a read receipt or acknowledgement by return email, to the relevant party at the address specified under its name below, and any such notice shall be deemed to have been received by the addressee at the time of delivery or in the case of prepaid first class post, two days after posting.
- 9.2 Any amendment or variation to this Agreement shall only be made by prior written agreement between the BBC and the Recipient.

- 9.3 The failure of either party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time(s) thereafter, as a waiver of another or constitute a continuing waiver.
- 9.4 Without prejudice to the rights of either party in respect of actions relating to fraudulent misrepresentation, this Agreement and any appendices and any documents referred to in this Agreement constitute the entire understanding between the parties with respect to the subject matter thereof and supersedes all prior agreements, negotiations and discussions between the parties relating thereto.
- 9.5 The Recipient acknowledges that monetary damages may not be a sufficient remedy for unauthorised disclosure of Confidential Information and that the BBC shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
- 9.6 The unenforceability of any single provision of this Agreement shall not affect any other provision hereof. Where such a provision is held to be unenforceable, the parties shall use their best endeavours to negotiate and agree upon an enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the unenforceable provision.
- 9.7 This Agreement shall be governed by English law. It is irrevocably agreed for the benefit of the BBC that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding arising out of or in connection with this Agreement (in this Clause referred to as "Proceedings") may be brought in such courts. Nothing in this Clause shall limit the right of the BBC to take Proceedings against the Recipient in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking by the BBC of Proceedings in any other jurisdiction, whether concurrently or not.
- 9.8 This Agreement may be executed in any number of counterparts, each of which when executed (and delivered or transmitted by electronic means) shall constitute a duplicate original, and all the counterparts shall together constitute the one agreement.

Signed for and on behalf of**BRITISH BROADCASTING CORPORATION****Signature:** **Name:** **Title:** **Date:** 7th September 2017**Signed for and on behalf of****SIANEL PEDWAR CYMRU****Signature:** **Name:** **Title:** **Date:** 8.9.2017