

## NON-DISCLOSURE AGREEMENT

Dated: 2<sup>nd</sup> December 2013

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### BETWEEN:

**The British Broadcasting Corporation** a corporation incorporated under Royal Charter, whose principal office is at Broadcasting House, Portland Place, London W1A 1AA (the "**Recipient**")

and

**S4C** a statutory corporation, whose principal office is at Parc Tŷ Glas, Llanishen, Cardiff, CF14 5DU ("**S4C**")

S4C has agreed to provide to the Recipient information relating to its proposed co-location with the BBC at a site to be acquired/developed for a new headquarters in Cardiff for BBC Wales (the "**Project**"). S4C and the Recipient are entering into this Agreement ("**Agreement**") in order to define their respective rights and obligations in relation to the disclosure of Designated Information by S4C to the Recipient in connection with the Project.

### 1 Definitions

In this Agreement:

1.1 "**Designated Information**" means information which:

1.1.1 by its nature is confidential to S4C;

1.1.2 is designated by S4C as confidential; or

1.1.3 the Recipient knows or ought to know is confidential to S4C;

and, in each case, which is disclosed by or on behalf of S4C to the Recipient, or otherwise is in the possession of the Recipient, in connection with the Project and whether disclosed before, on or after this Agreement including information which is disclosed orally, in writing, or by any other means including (without limitation) printed, other graphic or documentary form, on computer disks or tapes (whether machine or user readable), visually by way of model or demonstration and, in each case, any copy thereof.

1.2 Notwithstanding Clause 1.1 above, Designated 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 S4C and was not previously acquired from S4C 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 S4C;
  - 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 S4C to a third party without restriction on disclosure or use, including, without limitation, by way of the publication of a patent specification;
  - 1.2.6 is disclosed by the Recipient with the prior written permission of S4C and (subject to Clauses 2.5 and 2.6) S4C hereby confirms it consents to the disclosure of its proposed co-location with the BBC at a site to be acquired/developed for a new headquarters in Cardiff for BBC Wales;
  - 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.
- 1.4 **"Permitted Third Parties"** means the Recipient's professional team, the Welsh Assembly Government, the local authority, third party design team, landowners, developers, technology integration partners/suppliers, property fit out suppliers and/or technology fit out suppliers and/or their professional advisers and funders working on the Project.
- 1.5 **"Purpose"** means any discussions and negotiations between or within the parties concerning or in connection with the Project and any discussions and/or negotiations between or with Permitted Third Parties in connection with the planning, design, development, procurement and/or fit out of any proposed new headquarters in Cardiff.

## 2 Restrictions on Disclosure and Use

In consideration of S4C's disclosure of Designated Information, and subject always to the requirements of Clause 3, the Recipient undertakes to S4C:

- 2.1 to keep the Designated Information confidential at all times;
- 2.2 to use it only for the Purpose and not for any other purpose including (without limitation) 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 S4C;

- 2.3 not to disclose, without S4C's prior written consent:
  - 2.3.1 the fact that the Designated Information has been made available to the Recipient or any other person; or
  - 2.3.2 the detail of discussions or negotiations between the Recipient and S4C 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 designed to prevent unauthorised disclosure, copying or use) to keep confidential the Designated Information;
- 2.5 not to disclose Designated Information to any person except in confidence to such of its directors, employees, freelancers on the BBC's Project team, professional advisers and BBC Trust employees and professional advisers and Permitted Third Parties who reasonably need access to the Designated Information for the Purpose and provided that all such persons to whom Designated Information is so disclosed are informed of the nature of this Agreement and are informed that Designated Information is disclosed to them under an obligation of confidentiality solely for the Purpose and that they are not permitted to disclose Designated Information to any other parties without the BBC's and S4C's prior written consent;
- 2.6 to be responsible for the performance of Clauses 2.1, 2.2 and 2.3 above on the part of its directors, employees, freelancers on the BBC's Project team professional advisers and BBC Trust employees and professional advisers, to whom Designated Information is disclosed pursuant to Clause 2.5 above, and if requested to do so by S4C and at the cost of S4C to take all reasonable steps to enforce the confidentiality obligations of Permitted Third Parties to whom Designated Information is disclosed pursuant to Clause 2.5 above;
- 2.7 not to copy, reproduce, summarise or reduce to writing any part of any Designated Information except as may be reasonably necessary for the Purpose and that any copies so made will be the property of S4C; and
- 2.8 not to reverse engineer, decompile or disassemble any software disclosed by S4C.



### **3 FOIA and other Compulsory Disclosure**

- 3.1 Recipient recognises that, if FOIA is applicable, S4C may be required to release information under FOIA whether the information is held by S4C, by the Recipient or another person on behalf of S4C. If S4C receives a FOIA request for Designated 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 S4C's request for assistance is responded to promptly and in any event within [REDACTED] working days of receipt.
- 3.2 In the event that the Recipient is required by law to disclose Designated Information the Recipient will provide S4C with prompt written notice thereof and shall use reasonable endeavours to consult with S4C with a view, as far as practicable, to taking into account S4C'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 S4C immediately upon discovery of any unauthorised use or disclosure of Designated 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 will co-operate with S4C in every reasonable way to help S4C regain possession of the Designated Information and prevent its further unauthorised use.

### **5 Return of Designated Information**

- 5.1 Upon receipt of S4C's request in writing the Recipient shall, and shall procure that any persons to whom it discloses Designated Information pursuant to this Agreement shall, return to S4C all documents and materials containing Designated Information which S4C provided to the Recipient [REDACTED] or, at S4C's option, certify destruction of the same, [REDACTED]
- 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**

The obligations of the Recipient under Clause 2 of this Agreement shall expire five (5) years from the date of this Agreement.

### **7 Property in Designated Information**

All Designated Information is and shall remain the property of S4C notwithstanding anything added thereto by the Recipient. By disclosing information to the Recipient, S4C does not grant any express or implied right to the Recipient to or under any of S4C'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, 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 parties.
- 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 Designated Information and that S4C 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 S4C 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 S4C 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 S4C of Proceedings in any other jurisdiction, whether concurrently or not.

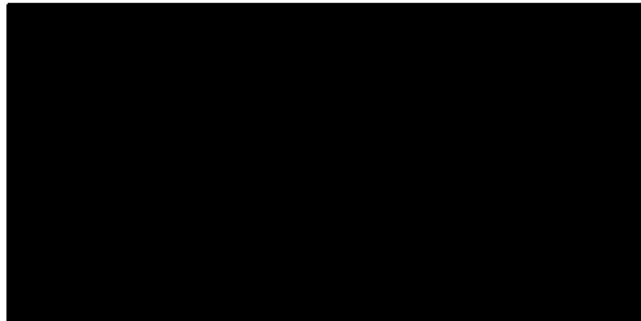
**BRITISH BROADCASTING CORPORATION**

Address: Broadcasting House, Portland Place, London W1A 1AA

Signed for and on behalf of the **British Broadcasting Corporation** by a duly authorised signatory:

Name of signatory:

Title of signatory:



**S4C**

Address: Parc Tŷ Glas, Llanishen, Cardiff, CF14 5DU

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

Name of signatory:

Title of signatory:

