The Copyright Tribunal

IN THE COPYRIGHT TRIBUNAL **CT 121/13**

IN THE MATTER OF A REFERENCE TO THE COPYRIGHT TRIBUNAL UNDER SECTION 125 OF THE COPYRIGHT DESIGNS AND PATENTS ACT 1988

Date: 17 February 2015

Before:

Ms Colleen Keck, Mr Manny Lewis and Ms Sam Madden

Between:

THE BRITISH BROADCASTING CORPORATION (the BBC)

Applicant

- and –

EOS-YR ASIANTAETH HAWLIAU DARLLEDU CYFYNGEDIG (Eos)

Respondent

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- -

Lindsay Lane (instructed by the BBC Intellectual Property Legal Dept.) for the Applicant

Gwion Lewis (instructed by Morgan Cole) for the Respondent

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FINAL DECISION

The Tribunal:

1. On 16th December 2013 we gave our decision on this reference. This was an interim decision because although it addressed the major areas of controversy we left it to the parties to resolve the remaining terms of the licence themselves if they could, in light of the decision. We indicated that either party could apply back to the Tribunal to resolve any issues they were unable to resolve between them.

2. The parties were able to agree the remaining terms of the licence.

3. The licence which the parties have agreed contains the usual terms of a licence most of which do not call for comment. The major points agreed upon (in addition to those determined by the Tribunal) are:

   (i) The effective date has been agreed to be 1st January 2013. Although this varies slightly from the Tribunal decision, which determined the effective date to be the date of the application, namely 1st February 2013, this change is acceptable to the Tribunal. The Tribunal does not have the power to set an effective date prior to the date of the application. The BBC had been without a licence of the Eos repertoire from 1st January 2013 until the parties signed an interim licence dated 11th February 2013. By backdating the licence to 1st January 2013, this effectively resolves any issues that may exist in relation to the period between 1st January 2013 and the date of the application, namely 1st February 2013, which is a sensible thing to do.

   (ii) To take account of any increased usage of the Eos repertoire on BBC services other than Radio Cymru the parties have agreed that Eos will receive an additional 'Headroom Payment' of £7,129.54 in year one, of £12,000 in year two and of £12,000 plus an inflationary increase in year three, of the licence. The licence also includes mechanisms to agree or determine a potential change to the licence fee if the Eos repertoire or the BBC's use of the Eos repertoire materially changes (including in relation to a new service or if an existing BBC service is closed). The Tribunal recognised in its interim decision that the licence would require some methodology to deal with potential changes in the repertoire and/or the BBC's use of the repertoire, and the Headroom Payment and these other mechanisms agreed by the parties is a methodology that is acceptable to the Tribunal.

   (iii) The parties have agreed to apply an inflationary increase to the licence fee in each year calculated by reference to the UK Retail Price Index, any such increase to be capped at 2.5%. This preserves the value of the licence fee over the term and is acceptable to the Tribunal.

   (iv) The parties have agreed that the BBC will report to Eos on its usage of the Eos repertoire via a single report to PRS, which report will cover use of both the PRS and the Eos repertoires. The BBC will then reimburse to Eos the costs Eos incurs to PRS, subject to a cap of £2,500, together with a mechanism to review this cap if Eos' actual costs are higher. This appears to be an efficient and cost effective way of dealing with usage reporting and as such is acceptable to the Tribunal.

   (v) The licence also addresses the distribution of the fees paid by BBC to the Eos members, and limits the amount Eos can utilise to defray its administration expenses to 30% of the licence fee and headroom payments. The BBC has an interest in

ensuring that the Eos members receive a reasonable proportion of the fees the BBC pays under the licence and as such these terms are acceptable to the Tribunal.

(vi) Consistent with the Tribunal decision that the licence fee would cover any works included in the disputed 'Flow of Rights' works, the parties have agreed the Flow of Rights works shall be deemed to be controlled by PRS, thereby avoiding any double payment by the BBC for these works.

Conclusion

4. We consider that the licence agreement in the form proposed by the parties is reasonable. Accordingly we will order that the terms of the licence agreement between the BBC and Eos be those terms set out in the licence agreement attached to this decision.

Colleen Keck
Chairman

The Copyright Tribunal
The UK Intellectual Property Office
Newport NP10 8QQ

Tribiwnlys Hawlfraint
Swyddfa Eiddo Deallusol y DG
Casnewydd NP10 8QQ

DATED 2015

EOS – YR ASIANTAETH HAWLIAU DARLLEDU CYF

and

THE BRITISH BROADCASTING CORPORATION

BLANKET LICENCE AGREEMENT

THIS AGREEMENT is made this day of 2015

PARTIES

EOS	**EOS – YR ASIANTAETH HAWLIAU DARLLEDU CYF** whose registered office is at 32 Y Maes, Caernarfon, Gwynedd LL55 2NN (Company Number 08269418) contracting for and on behalf of itself and for and on behalf of and as agent of its various Members;
BBC	**THE BRITISH BROADCASTING CORPORATION** whose principal office is at Broadcasting House London W1A 1AA.

BACKGROUND

A By an Order dated 16 December 2013 the Copyright Tribunal (the "Tribunal") ordered that the BBC would be licensed by EOS to use all works controlled by EOS for a period commencing on 1 February 2013 and expiring on 31 December 2015 subject to payment of a licence fee of £100,000 per year (exclusive of VAT) payable in equal monthly instalments in advance, the other terms of the blanket licence to be agreed between the parties and referred to the Tribunal for review and approval.

B The parties have agreed terms for the new blanket licence and the terms of that licence are set out in this Agreement. The terms agreed include provision for the new blanket licence to be deemed to have commenced on 1 January 2013.

C The BBC has a public service mandate granted to it by an agreement dated 30 June 2006 between the Secretary of State for Culture, Media and Sport and the BBC (the "BBC Agreement"). In this Agreement EOS licenses the BBC the right to use its Repertoire Works (as hereinafter defined) for the BBC's non-commercial public services, these being the UK Public Services and the World Service as defined in clauses 100 and 64 respectively of the BBC Agreement at the date of this Agreement.

D Any services provided by the BBC that are commercial in nature and/or which are outside the BBC's public service mandate as set out in the BBC Agreement and this Agreement will be governed by separate agreements.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 The following terms will have the following meanings:

Agreement	the terms and conditions set out in this document including the Schedules to the terms and conditions.
Audio Material	any audio-only material or any part of audio-only material.
Audio-Visual Material	any audio-visual material or any part of audio-visual material.
Ballet	a choreographic work having a story, plot or abstract

	idea, devised or used for the purpose of interpretation by dancing and/or miming, but does not include country, folk or tap dancing or precision dance sequences.
Broadcasting and Televising Rights	in respect of a Musical Work, the meaning ascribed to the "broadcasting right" and the "televising right" in the definition of the term "Broadcast" in Article 1.1 of the Articles of Association of EOS, the wording of which definition is set out in Schedule 1.
CDPA	the Copyright, Designs and Patents Act 1988, as amended from time to time.
Confidential Information	all information relating to the trade secrets, operations, processes, plans, intentions, product information, know-how, designs, market opportunities, transactions, affairs and/or business of the other party/ies and/or their customers, clients, suppliers, holding companies and/or subsidiaries, the terms or subject matter of this Agreement and the negotiations relating to this Agreement and where the Freedom of Information Act 2000 ("FOIA") is applicable, all information and documentation that EOS designate that they wish to be treated as exempt from disclosure under the FOIA by notice in writing to the BBC.
Content	Audio-Visual Material and/or Audio Material.
Dramatic Form	a performance in which there is a distinct plot depicted by actors and where the story of the Dramatico-Musical Work and/or its associated words is woven into and carries forward the plot and its accompanying action. A dramatic form shall not, for example, be deemed to be created by the use of costume, scenery, and/or any dance routine merely to provide an acceptable presentation of the work. For the purposes of this definition, the word "actors" shall include actors, singers, mimics and/or puppets.
Dramatico-Musical Work	any Ballet, opera, operetta, musical, musical play or work of a similar nature insofar as it consists of words and music written expressly therefor.
Headroom Payment	a sum payable by the BBC to take account of potential increased usage of Repertoire Works on Licensed Services other than BBC Radio Cymru.
Licence	the licence granted by EOS in clause 2.
Licence Fees	the "all inclusive" blanket licence fees, including without limitation royalties, administrative costs and commissions payable by the BBC to Eos as set out in clause 3, but excluding any Headroom Payment.

Licensed Services — the non-commercial, public service activities provided or procured by the BBC that are, where necessary, approved by the BBC Trust after having passed the public value test and following a market impact assessment by OFCOM pursuant to the BBC Agreement. The principal current linear services are set out in Schedule 2.

Material Change — Either

(a) EOS Music Hours as a proportion of Total Music Hours becoming less than 39.6% or greater than 64.7%. For the purpose of this Agreement, "EOS Music Hours" means the aggregate number of hours of broadcasting by BBC Radio Cymru of Repertoire Works in any Quarter, and "Total Music Hours" means the aggregate number of hours of broadcasting by BBC Radio Cymru of Musical Works in any Quarter or

(b) an increase of 10% or more in the RAJAR Index for any Year as compared to the immediately preceding Year.

Member — any person, firm or company who or which, from time to time, during the Term has granted to EOS ownership and/or control of the Broadcasting and Televising Rights in Musical Works owned and/or controlled by that person, firm or company or has appointed EOS to act as agent in respect of the licensing of the Broadcasting and Televising Rights in Musical Works owned and/or controlled by that person, firm or company.

Musical Work — any work consisting of music and any lyrics or words created to be used with the music (if applicable), including any part of such a work and all such other works as are defined as Musical Works in Article 1.1 of the Articles of Association of EOS, the wording of which definition is set out in Schedule 1.

Permitted Excerpts — an excerpt of a Dramatico-Musical Work where the use of such excerpt in any Audio-Visual Material complies with all the following limitations:

(a) the excerpt (excluding Ballet) is not presented in Dramatic Form;

(b) the total duration of the excerpts of the Dramatico-Musical Work in the same Programme does not exceed 20 minutes;

(c) the use is not a "potted version" of the Dramatico-Musical Work;

(d) the use is not or does not cover a complete act of the Dramatico-Musical Work; and

(e) as regards Ballets specifically devised for television or excerpts from existing Ballets, the total duration does not exceed 5 minutes.

PRS	the Performing Right Society Limited.
Quarter	any period of 3 months commencing on a Quarter Date during the Term.
Quarter Date	1 January, 1 April, 1 July or 1 October.
RAJAR	Radio Joint Audience Research Limited.
RAJAR Index	the average of the 'Total Hours (000's)' figures for BBC Radio Cymru for the two 6-month periods ending in any Year as published by RAJAR.
Repertoire Works	each Musical Work the Broadcasting and Televising Rights in which are owned or controlled, from time to time, by EOS (or a Member) or any part thereof. If one or more of those who own or control the said rights in a relevant Repertoire Work is not EOS (or a Member), the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by EOS or the Member, as applicable.
RPI	the general index of retail prices, all items index compiled by the UK Office for National Statistics and published in the United Kingdom in the Monthly Digest of Statistics (or any other relevant government department or executive agency which may be responsible for its compilation and/or publication) or any other official cost of living index published in the place of or in substitution for that index.
Term	1 January 2013 to 31 December 2015.
United Kingdom	the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.
VAT	value added tax.
World Service	the service described as such in the BBC Agreement.
Year	each period of 1 January to 31 December during the Term.

1.2 In this Agreement, unless otherwise specified, any reference to:

1.2.1 a statute or statutory provision includes a reference to the statute or statutory provision as modified or re-enacted or both from time to time, and to any subordinate legislation made under it;

1.2.2 *broadcast*, *broadcasting* and *communicate to the public* used throughout this Agreement shall be construed as having the meaning set out in sections 6 and 20 of the CDPA as in effect on the date this Agreement is entered into; and

1.2.3 the singular includes the plural and vice versa and the masculine includes the feminine and the neuter genders and vice versa.

1.3 The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against a party by reason of such party or its advisers having drafted this Agreement or any part of it.

1.4 In this Agreement, any phrase introduced by the words *include*, *including*, *includes* and *such as* and any examples provided in a given context are to be construed as illustrative only and will not limit the sense of the words preceding those words or the examples given to the exclusion of other possibilities not expressly stated.

1.5 References to clauses are to the clauses of this Agreement and references to paragraphs are references to the paragraphs of the Schedules to this Agreement.

2 GRANT OF LICENCE

2.1 Subject to the terms of this Agreement and in particular Schedule 3 EOS grants the BBC a non-exclusive licence for the Term to communicate to the public content containing Repertoire Works as part of the Licensed Services to the extent of the Broadcasting and Televising Rights.

2.2 For the duration of the Term and without prejudice to EOS's belief that it or a Member owns and/or controls the Broadcasting and Televising Rights in such works EOS agrees on behalf of itself and its respective Members that the Broadcasting and Televising Rights in any so-called 'Flow of Rights Works' shall be deemed to be controlled by PRS for the purposes of administration and not by EOS. EOS agrees to this in order to allow effective administration of such works and to avoid double-licensing and/or double-payment in respect of the same during the Term. 'Flow of Rights Works' for this purpose are Musical Works in respect of which PRS believes that the Broadcasting and Televising Rights remain in its ownership and/or control as a result of such rights having vested in another of its members on withdrawal of such rights from PRS by a Member. The Flow of Rights works are listed in the Excel spreadsheet contained in the CD ROM marked "Eos Flow of Rights" initialled on behalf of the parties, dated as at the date of this Agreement and attached to this Agreement as Schedule 4.

3 LICENCE FEES, HEADROOM PAYMENTS AND PAYMENT TERMS

3.1 In consideration for EOS granting the Licence, the BBC shall pay Eos the Licence Fees and the Headroom Payments set out in this clause 3.

3.2 The BBC shall pay EOS:

3.2.1 in respect of the Year commencing 1 January 2013: a Licence Fee of £100,000 (one hundred thousand pounds) together with a Headroom Payment of £7,129.54 (seven thousand one hundred and twenty nine pounds and fifty four pence);

3.2.2 in respect of the Year commencing 1 January 2014: a Licence Fee of £100,000 (one hundred thousand pounds) increased by the percentage change between the RPI figure published in October 2013 for the month of September 2013 and the RPI

figure published for the month of September 2012, measured to two decimal places and ignoring any increase to the extent that it exceeds 2.5%, together with a Headroom Payment of £12,000 (twelve thousand pounds);

3.2.3 in respect of the Year commencing 1 January 2015: a Licence Fee of the amount payable in respect of the Year commencing 1 January 2014 increased by the percentage change between the RPI figure published in October 2014 for the month of September 2014 and the RPI figure published for the month of September 2013, measured to two decimal places and ignoring any increase to the extent that it exceeds 2.5%, together with a Headroom Payment of the amount payable in respect of the Year commencing 1 January 2014 increased by the percentage change between the RPI figure published in October 2014 for the month of September 2014 and the RPI figure published for the month of September 2013, measured to two decimal places and ignoring any increase to the extent that it exceeds 2.5%.

3.3 The Licence Fees and Headroom Payments paid by the BBC shall be held by EOS on trust for its Members until distribution to them as provided for in clause 5, save that EOS may utilise up to a maximum of 30% of the Licence Fees and Headroom Payments to defray actual administration costs ("the Administration Cost Cap"). EOS hereby declares such trust. Eos shall have the right for business efficacy to utilise more than 30% of the Licence Fees and Headroom Payments to defray actual administration costs if Eos has prior consent from its Members and the BBC to increase the amount of the Administration Cost Cap, BBC consent shall not be unreasonably withheld or delayed and in the event of an irreconcilable disagreement between the parties regarding the level of the Administration Cost Cap, either party may refer the issue for expert determination in accordance with the clause 10.1.

3.4 The Licence Fees shall be payable by the BBC in equal monthly instalments in advance on whichever is the later of the first day of the month and 30 days following the BBC's receipt of appropriate and valid VAT invoice(s) from EOS detailing BBC's purchase order number(s) and other details as may be reasonably required. The Licence Fees exclude VAT which shall be payable, where applicable, at the rate prevailing on the date of EOS's invoice.

3.5 EOS acknowledges that instead of receiving equal monthly instalments of the Licence Fees for the period commencing on 11 February 2013 and ending on 11 January 2014 EOS received interim licence fee payments from the BBC of £10,000 per month (a total of £110,000) plus VAT for that period, resulting in an overpayment by the BBC for that period. In line with the Tribunal's recommendation, the BBC hereby waives its right to recover such overpayment.

3.6 The Headroom Payments referred to in clause 3.2 shall be payable by the BBC as follows:

3.6.1 The Headroom Payments in respect of the Years commencing 1 January 2013 and 1 January 2014 shall be payable within 30 days following the BBC's receipt of appropriate and valid VAT invoice(s) from EOS detailing the BBC's purchase order number(s) and other details as may be reasonably required;

3.6.2 The Headroom Payment in respect of the Year commencing 1 January 2015 shall be payable on whichever is the later of 31st January 2015 and 30 days following the BBC's receipt of an appropriate and valid VAT invoice from EOS detailing the BBC's

purchase order number and other details as may be reasonably required.

The Headroom Payments exclude VAT which shall be payable, where applicable, at the rate prevailing on the date of EOS's invoice.

3.7 If EOS considers that actual increased usage of Repertoire Works on Licensed Services other than BBC Radio Cymru is not adequately compensated for by the Headroom Payments provided for in clause 3.2 it may request the BBC in writing to increase the amount of any such payment. If requested to do so by the BBC EOS shall provide evidence to the BBC in support of its request. The BBC undertakes to give good faith consideration to the reasons given by EOS in making any such request and to any such evidence provided by EOS and may, exercising reasonable discretion agree to increase the amount of any such Headroom Payment on such basis as, acting reasonably, it considers to be fair and equitable. If EOS does not agree with the BBC's decision it shall notify the BBC in writing and if after two months from the date of EOS' written notice the parties have not reached agreement on the issue, then either party may refer the issue to expert determination in accordance with clause 10.1 below.

4 UNDERTAKINGS, WARRANTIES AND INDEMNITY

4.1 EOS warrants and represents to the BBC that:

4.1.1 it has the right and authority to enter into this Agreement and to grant the Licence to the BBC hereunder;

4.1.2 in granting the Licence hereunder, EOS will not be breaching any third party rights.

4.2 EOS undertakes to the BBC that it shall deliver to the BBC within seven days of the date of this Agreement a list of all its Members as of the date of such delivery.

4.3 EOS shall use all reasonable endeavours to deliver to the BBC at annual intervals commencing with the date of this Agreement a list of the Repertoire Works identifying in respect of each Repertoire Work the Member which has granted to EOS ownership or control of the Broadcasting and Televising Rights in the same or which has appointed EOS to act as agent in respect of the licensing of such rights therein. The BBC accepts that the lists which EOS has delivered prior to the date of this Agreement fulfil EOS's obligation in this regard as of such date.

4.4 EOS shall at annual intervals hereafter provide to the BBC and to PRS a revised version of each of the lists identifying all additions and deletions made to them.

4.5 EOS will promptly notify the BBC in writing of each person, firm or company which becomes a Member after the date of this Agreement. Such notification must include (a) a list of the Repertoire Works in respect of which the Member has granted to EOS ownership or control of the Broadcasting and Televising Rights in the same or in respect of which the Member has appointed EOS to act as agent in respect of the licensing of such rights therein, and (b) confirmation by EOS that it has required the Member to become a member of PRS. EOS will provide such notifications as soon as possible and in any event within seven (7) days of such person, firm or company becoming a Member.

4.6 EOS will promptly notify the BBC in writing of any Member who has given notice of termination of their contractual relationship with EOS or notice to withdraw any rights in that Members' Musical Works from EOS' ownership and/or control if EOS is aware that in consequence any Musical Works will cease to be Repertoire Works. EOS will provide such notifications to the BBC as soon as possible and in any event not less than two months in

advance of each relevant Member's notice of termination to EOS becoming effective.

4.7 EOS shall keep the BBC harmless and indemnified in respect of any bona fide valid claim made by any third party against the BBC in respect of the exercise by the BBC of the rights granted by this Agreement in accordance with this Agreement in relation to any work which EOS claims or represents is at the time of such exercise a Repertoire Work, other than Flow of Rights Works. The BBC shall give written notice to EOS of any such claim as soon as practicable after such claim is made and EOS shall, if it requires, be entitled to take over the defence of or conduct of any negotiations for the settlement of such claims at its own expense PROVIDED always that the BBC shall, at EOS's request and expense, give EOS all such assistance as it may require and shall not prejudice by any act or omission the defence or any claim and shall not settle or compromise any claim without the prior written consent of EOS.

5 MUSIC USAGE REPORTING AND EOS DISTRIBUTIONS

5.1 Provided that the BBC provides music usage information to PRS in respect of its usage of Repertoire Works in a substantially similar manner as it provides such information in respect of its usage of other Musical Works, the BBC shall not be under obligation to provide such information to EOS. The BBC shall grant consent to PRS for PRS to share the music usage information in respect of Repertoire Works with EOS. The BBC shall reimburse to EOS the actual cost charged by PRS to EOS for the provision of music usage data to a maximum amount of £2,500 (two thousand five hundred pounds) per annum plus VAT, subject (a) to EOS providing valid VAT invoices to the BBC (such invoices detailing the BBC's purchase order numbers and other details as may be reasonably required) recharging the said costs and (b) to EOS supplying copies to the BBC of the invoices issued to EOS by PRS. If the actual cost charged by PRS to EOS for the provision of music usage data exceeds £2,500 (two thousand five hundred pounds) per annum plus VAT the parties shall discuss the matter in good faith and the BBC may agree to reimburse the higher amount. In the event that the BBC ceases to provide music usage information to PRS in respect of its usage of Repertoire Works, or if PRS gives notice to the BBC and EOS that it will cease to share such information with EOS, the BBC shall thereafter provide music usage information to EOS in respect of the BBC's usage of those Repertoire Works notified to it by EOS under the provisions of clause 4 of this Agreement with the same frequency and in substantially similar detail as the information previously provided to PRS.

5.2 EOS shall utilise the music usage information supplied to it by PRS or the BBC (as the case may be) to distribute the Licence Fees and (where applicable) the Headroom Payments paid to it by the BBC on an equitable basis to its Members. EOS shall make such distributions to its Members at least half-yearly during the Term.

5.3 Until such time as EOS has adopted a code of practice that complies with criteria specified in regulations of the kind referred to in paragraph 1(1) of Schedule A1 of the CDPA or that has been approved for the purposes of EOS as described in paragraph 1(2) of that Schedule and has published to Members the basis on which EOS will distribute licence fees collected by EOS to Members, the basis on which EOS shall hold and distribute the Licence Fees and Headroom Payments to Members shall be as set out in its Memorandum and Articles of Association.

5.4 EOS shall provide to the BBC in writing a full description of the basis on which EOS will distribute the Licence Fees and Headroom Payments paid to it by the BBC to Members within 30 days of deciding upon such basis and shall notify the BBC in writing of any changes to such basis within 30 days of deciding upon any such change.

5.5 EOS shall within 10 days after 1 January in each Year and 10 days after 1 January 2016 notify the BBC in writing of the aggregate amounts of Licence Fees and Headroom Payments distributed by EOS to Members in respect of each separate Licensed Service

during the twelve (12) month period immediately preceding each such date. Such notifications shall show separately the respective amounts of Licence Fees and Headroom Payments distributed in respect of each separate Licensed Service, as well as any undistributed balance of Headroom Payments.

5.6 Subject to EOS being supplied by PRS or the BBC with music usage information as provided for in clause 5.1 EOS shall within 10 days after I January in each Year and 10 days after 1 January 2016 notify the BBC in writing (a) of the aggregate amount of minutes of usage of Repertoire Works on each of the Licensed Services that EOS has used as the basis for determining the amounts it has distributed to members during the twelve month period immediately preceding each such date, and (b) the rates per unit of usage on each Licensed Service that EOS has used for the purpose of making such distribution.

6 NEW SERVICES AND CLOSURE OF EXISTING SERVICES

6.1 New services may be added to the Licensed Services where the new services are non-commercial, public service activities provided or procured by the BBC that are approved by the BBC Trust after having passed the public value test and following a market impact assessment by OFCOM where necessary.

6.2 The BBC shall as soon as reasonably possible:

6.2.1 notify EOS of its decision to refer a new service (including trials) to the BBC Trust for approval, as set out in clause 6.1 above; and

6.2.2 provide EOS upon request with a written copy of information relating to the proposal made publicly available by the BBC.

6.3 Where the new service which becomes a Licensed Service is a service which is likely to make substantial use of Repertoire Works EOS and the BBC will negotiate an additional licence fee for such new service and if agreement is reached on the licence fee payable by the BBC such new licence fee shall be incorporated into the Licence Fees. In the event that the parties cannot agree on the amount (if any) that should be payable as a licence fee for such new service the parties may elect to resolve such disagreement by mediation in accordance with clause 10.2 or EOS or the BBC may refer the issue for expert determination in accordance with clause 10.1.

6.4 In the event that the BBC closes BBC Radio Cymru during the Term, the BBC shall notify EOS as soon as reasonably possible in writing of such closure. Closure shall be deemed to include the transfer or disposal of such Licensed Service so that it is not owned or controlled by the BBC or is no longer part of the BBC's so called *non-commercial public service activities*. Closure shall not be deemed to have taken place where the BBC rebrands BBC Radio Cymru or replaces it with another Welsh-language or primarily Welsh-language radio station with similar service licence obligations to broadcast Welsh language music (unless any such rebranded or replacement station is itself closed during the Term). The BBC and EOS will negotiate an adjustment to the Licence Fees to reflect such closure and such alternative arrangements as the BBC puts in place (for example increased broadcasting of Welsh-language music on BBC Radio Wales) in order to comply with its obligations in relation to Welsh-language broadcasting and if agreement is reached on such adjustment the Licence Fees shall be adjusted by such amount with effect from the date of the closure. In the event that the parties cannot agree on the amount (if any) by which from the Licence Fee should be adjusted in respect of such closed service, the parties may elect to resolve such disagreement by mediation in accordance with clause 10.2 or EOS or the BBC may refer the issue for expert determination in accordance with clause 10.1.

6.5 In the event that the BBC decides to increase the amount of time per day for which it broadcasts BBC Radio Cymru above the current level of 130.5 hours per week the BBC shall notify EOS of such decision. EOS shall in such circumstance have the right to request an increase in the amount of the Licence Fees, and on receipt of such request the BBC will negotiate such an increase with EOS. In the event that the parties cannot agree on the amount of such an increase the parties may elect to resolve such disagreement by mediation in accordance with clause 10.2 or EOS or the BBC may refer the issue for expert determination in accordance with clause 10.1.

7 MATERIAL CHANGE

7.1 Eos and the BBC enter into this agreement on the mutual understanding that at the date of this Agreement:

7.1.1 EOS owns or controls all rights as are granted to the BBC in this Agreement in all those Repertoire Works included or referred to in the list delivered to the BBC in accordance with the first sentence of clause 4.3;

7.1.2 EOS Music Hours comprise between 39.6% and 64.7% of Total Music Hours.

7.2 Where in either party's opinion there has been a Material Change, that party may by service of written notice ("First Written Notice") on the other party request that the other party should discuss and agree such pro-rated increase or decrease to the Licence Fees as would be reasonable in the circumstances, such notice to include an explanation of the grounds of that party's opinion that there has been a Material Change.

7.3 If the party who receives such First Written Notice disagrees that there has been a Material Change, it shall notify the other party of this by notice in writing ("Second Written Notice") within 30 days of receipt of that notice. If within 30 days of receipt of this Second Written Notice the parties have failed to agree whether there has been a Material Change, the issue of whether there has been a Material Change and, if so, what licence fees would be reasonable in the circumstances for the BBC to pay to EOS in place of the Licence Fees may be referred by either party to expert determination in accordance with clause 10.1 below.

7.4 If the party who receives such First Written Notice does not serve a Second Written Notice but within 45 days of receipt of such notice the parties have failed to reach agreement on the issue of what licence fees would be reasonable in the circumstances for the BBC to pay to EOS in place of the Licence Fees either party may refer that issue to expert determination in accordance with clause 10.1 below.

7.5 The parties shall act reasonably and in good faith in their application of the provisions of this clause 7.

8 DIGITAL RIGHTS MANAGEMENT

8.1 Where appropriate the BBC will utilise an industry security standard for the protection of Content, and in addition the BBC will not authorise and will use reasonable endeavours to prevent unauthorised issuing to the public of copies of Repertoire Works.

8.2 Save as may be permitted by law, or unless necessary to exercise the rights granted by EOS, the BBC shall not:

8.2.1 remove or alter any rights management or identifier information that may be associated with any Repertoire Works; or

8.2.2 circumvent any technical measures associated with any Repertoire Work which are designed to prevent or restrict the unauthorised use of any Repertoire Work.

9 CONFIDENTIALITY

9.1 The parties shall keep each other's Confidential Information confidential and shall only use such Confidential Information for the purposes of performing their obligations under this Agreement.

9.2 The obligations in clause 9.1 above will not apply where:

9.2.1 the Confidential Information was already lawfully known, or became lawfully known to that party independently;

9.2.2 the Confidential Information is in, or comes into, the public domain other than due to wrongful use or disclosure by EOS or the BBC;

9.2.3 disclosure or use of the Confidential Information is necessary to carry out this Agreement;

9.2.4 the Confidential Information is disclosed to a professional adviser acting in a fiduciary capacity or otherwise under an obligation of confidence;

9.2.5 disclosure is required in accordance with the FOIA if applicable or otherwise is required by law to any court, government, government department, agency, regulatory or fiscal body or authority.

9.3 EOS recognises that, if the FOIA is applicable to this Agreement, the BBC may be required to release information whether it is held by the BBC or by both the BBC and EOS. The BBC shall promptly notify EOS of any FOIA request which relates in any way to this Agreement. If the BBC receives a valid FOIA request for information and where such information is not Confidential Information and such information is in the control of EOS, EOS shall provide reasonable and prompt assistance to the BBC in dealing with such a request.

9.4 This clause 9 shall continue in force after the expiry or termination of this Agreement, whatever the reason for termination.

10 ESCALATION AND DISPUTE RESOLUTION

10.1 Expert determination

Where either party has exercised its right under clause 3.3, 3.7, 6.3, 6.4, 6.5, 7.3 or 7.4 to refer a matter for determination to an independent adjudicator acting as an expert:

10.1.1 the parties shall use their reasonable endeavours to agree the identity of such expert but, in the absence of such agreement within 30 days of the written notice of referral, the identity of the expert shall be determined by the President for the time being of the Institute of Chartered Accountants, and shall be an independent chartered accountant, unless EOS and the BBC agree that another type of expert would be more suitable to determine such dispute;

10.1.2 EOS and the BBC will seek to agree the procedure for the conduct of any expert determination. If such agreement is not reached within 14 days of the appointment of the expert, the expert shall have power to set the procedure for the expert determination;

10.1.3 the expert shall make his/her determination as soon as reasonably practicable;

10.1.4 the expert shall have power to award costs in the expert's determination, unless EOS and the BBC agree otherwise;

10.1.5 the decision of the expert is final and binds the parties to the dispute unless there is manifest error, wilful default or fraud;

10.1.6 the Licence Fees or Headroom Payment determined by the expert to be reasonable in the circumstances in relation to a reference made to the expert under the provisions of clauses 7.3, 7.4 or 3.7 (as applicable) shall become the Licence Fees or Headroom Payment payable for the period determined by the expert;

10.1.7 for the avoidance of doubt, it is hereby confirmed that the expert shall have no jurisdiction to amend any term of the Agreement;

10.1.8 the expert shall deliver his/her binding decision within 60 days of the matter being referred to the expert.

10.2 Mediation

Where the parties cannot agree the matters set out in clause 6 above, the parties shall (but without prejudice to their rights under clauses 3.3, 3.7, 6.3, 6.4 and 6.5 to refer such matters to expert determination pursuant to clause 10.1) have the option of referring the matters to non-binding mediation for determination and if they agree to do so, the mediator shall be appointed by agreement between the parties. Failing such agreement on the identity of the mediator, the mediator shall be appointed by the Academy of Experts. If either of the parties proposes mediation in writing to the other party, that party must respond in writing to that proposal within 30 days, either agreeing to mediation or refusing to participate. If no response to that proposal is received by the deadline it will be deemed that the party has refused the offer of mediation.

11 TERMINATION

11.1 Either party (whichever is the innocent party) may terminate this Agreement immediately by notice in writing if the other party :

11.1.1 commits a material breach of any of the terms of this Agreement (and, if such breach is capable of remedy within 30 days, fails to remedy the breach within 30 days of receiving written notice from the innocent party specifying the breach and requiring the breach to be remedied);

11.1.2 commits a material breach of any of the terms of this Agreement (and, if such breach is capable of remedy but not within 30 days, fails to commence remediation of the breach to the reasonable satisfaction of the innocent party within 30 days of receiving written notice from the innocent party specifying the breach and requiring the breach to be remedied);

11.1.3 commits a material breach of this Agreement which is not capable of remedy.

11.2 EOS may terminate this Agreement immediately by notice in writing if the BBC fails to pay any sum due under this Agreement within 30 days after the end of the month in which such payment became due, provided always that EOS has invoiced the BBC in accordance with the provisions of clause 3.

11.3 Either party may terminate this Agreement immediately by notice in writing with immediate effect from the date of service on the other party of written notice if:

11.3.1 the other party stops trading or it becomes apparent that it will stop trading;

11.3.2 a receiver, administrator or similar officer is appointed over any of the assets or business of the other party ;

11.3.3 the other party becomes insolvent within the meaning of section 123 of the Insolvency Act 1986 or makes or attempts to make an arrangement for the benefit of its creditors;

11.3.4 the other party goes into liquidation except for the purposes of a genuine solvent amalgamation or reconstruction;

11.3.5 the equivalent of any of the events described at clauses 11.3.1 to 11.3.4 inclusive occurs in relation to the other party under the laws of any jurisdiction; or

11.3.6 an event of Force Majeure occurs which is continuing at the date of the notice and has prior to that date continued for a period of 28 days or more. For the purposes of this Agreement an event of 'Force Majeure' shall mean any event reasonably outside the control of EOS or the BBC which causes an interruption to or materially hampers or materially interferes with the exercise by the BBC of the Licences or the performance by either EOS or the BBC of their obligations hereunder.

11.4 Notwithstanding any other provision of this Agreement, neither EOS nor the BBC shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in the performance or the non-performance of any of their obligations under this Agreement to the extent that the delay or non-performance is due to Force Majeure and the time for performance of that obligation or the taking of any action hereunder shall be extended accordingly.

11.5 The expiry or termination of this Agreement for any reason will not affect:

11.5.1 any rights, obligations and/or liabilities accrued before the date of termination or expiry; or

11.5.2 any rights, obligations and/or liabilities expressed to continue in force after and despite expiry or termination and the reporting obligations contained in clauses 5.5 and 5.6.

12 NOTICES

12.1 Notices between the parties relating to this Agreement must be in writing and must be delivered personally or sent by prepaid first class post to the address set out in clause

12.2. Alternative details may be notified by a party for the purposes of this clause.

12.2 Notices will be treated as received as follows: if delivered by hand, when delivered; if sent by first class post, 48 hours after posting.

EOS
Address: 32 Y Maes, Caernarfon, Gwynedd, LL55 2NN
For the attention of: Chairman

BBC
Address: BBC Cymru Wales, Room E2106, Broadcasting House, Llantristant Road, Llandaff, Cardiff CF5 2YQ
For the attention of: Head of Rights, Legal & Business Affairs, Wales

13 GENERAL

13.1 The BBC will not assign, transfer, charge, create a trust over or otherwise deal in its rights and/or obligations under this Agreement (or purport to do so) without EOS's prior written consent.

13.2 This Agreement represents the entire terms agreed between the parties in relation to its subject matter and supersedes and extinguishes any prior drafts, and all previous contracts, arrangements (including any usage or custom and any terms arising through any course of dealing), representations, warranties of any nature whether or not in writing between the parties relating to its subject matter save that nothing in this clause shall limit or exclude any liability for fraudulent misrepresentation or concealment or any resulting rights to rescind this Agreement. No amendment or variation to this Agreement shall be effective unless signed by all parties.

13.3 Nothing in this Agreement and no action taken by the parties pursuant to this Agreement will be construed as creating a partnership or joint venture of any kind between the parties or as constituting one party as the agent of the other party for any purpose whatsoever.

13.4 No failure or delay by a party to exercise any right or remedy under this Agreement will be construed as a waiver of that right or remedy nor will any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by a party of any breach of this Agreement will be considered as a waiver of a preceding or subsequent breach. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

13.5 Unless the right of enforcement is expressly granted, it is not intended that any provision of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

13.6 If a court or administrative organisation with competent jurisdiction decides that a clause in this Agreement is not valid this will not affect the rest of this Agreement. The parties will try to agree on a suitable clause to replace the one which is not valid. The new clause should, as far as possible, achieve the same economic, legal and commercial aims of the invalid one.

13.7 This Agreement may be executed in any number of counterparts but will not be effective until each party has executed at least one counterpart. Each counterpart when executed will be an original, but all the counterparts together will constitute one document.

13.8 This Agreement will be governed by the laws of England and Wales and (subject to clause 10 above) the parties submit to the exclusive jurisdiction of the English and Welsh Courts.

Signed by the parties on the date of this Agreement.

Signed for and on behalf of	)	
EOS – YR ASIANTAETH HAWLIAU	)	DAFYDD ROBERTS
DARLLEDU CYF	)	DIRECTOR

Signed for and on behalf of	)	
THE BRITISH BROADCASTING	)	DONNA SPENCER
CORPORATION	)	HEAD OF RIGHTS, LEGAL & BUSINESS AFFAIRS, WALES

SCHEDULE 1

DEFINITIONS FROM ARTICLE 1.1 OF EOS ARTICLES OF ASSOCIATION

"Broadcast" has the meaning ascribed to that term in section 6(1) of the Copyright Act; and, in respect of any Musical Work, the "broadcasting right" and the "televising right" shall be construed as follows:-

a) the right to Broadcast the Work;

b) all rights in the nature of such right including any modification of that right which by virtue of any present or future enactment exists or may exist.

"Musical Work" without prejudice to the generality of the expression has the meaning:

a) any part of a Musical Work

b) any vocal or instrumental music recorded on the soundtrack of a film

c) any musical accompaniment to non-musical plays

d) any words or music of monologues having a musical introduction or accompaniment.

Note: EOS and the BBC agree that the reference in the definition of the term "Broadcast" to the Copyright Act is to be construed for the purposes of this Agreement as a reference to the CDPA.

SCHEDULE 2

CURRENT BBC PUBLIC SERVICE TELEVISION AND RADIO SERVICES

Television

National networks:

BBC1 and BBC1 HD, BBC2, BBC THREE, BBC FOUR, CBBC, CBeebies, BBC News Channel, BBC Parliament, BBC HD, BBC Alba (10)

Regional variations:

Regional versions of BBC1 and BBC2 in: Birmingham, Bristol, Channel Islands, Hull, Leeds, Manchester, Northern Ireland, Newcastle, Norwich, Nottingham, Plymouth, Scotland, Southampton, Tunbridge Wells, Wales (15)

RADIO

National Networks:

Radio1, Radio2, Radio3, Radio4, Radio5 Live, 1Xtra, 6Music, Radio4 Extra, Asian Network, Radio5 Live Sports Extra (10)

Regional variations:

Regional versions of R1 in Scotland, Northern Ireland and Wales (3)

Regional Stations:

BBC Radio Cymru, Foyle, Highland and Islands (Inverness), Nan Gaidheal, Orkney, Scotland Borders (Selkirk), Scotland South West (Dumfries), Shetland, BBC Radio Ulster, BBC Radio Wales, BBC Radio Scotland (11)

Local Stations:

BBC Radio: Berkshire, Bristol, Cambridgeshire, Cleveland, Cornwall, Coventry, Cumbria, Derby, Devon, Essex, Gloucestershire, GMR, Guernsey, Hereford and Worcester, Humberside, Jersey, Kent, Lancashire, Leeds, Leicester, Lincolnshire, London Live, Merseyside, Newcastle, Norfolk, Northampton, Nottingham, Oxford, Sheffield, Shropshire, Solent, Stoke, Suffolk, Wiltshire, WM, York, and BBC Somerset Sound, BBC Southern Counties Radio, BBC Three Counties Radio (39)

BBC WORLD SERVICE

RADIO

World Service Radio in English and World Service Regions consisting of 4 regions broadcasting on 25 services (in 26 languages) as follows:

AFRICA: Arabic, French (Africa), Hausa, Kinyarwanda-Kirundi, Somali, Swahili

AMERICAS & EUROPE: Spanish (Latin America), Russian, Turkish, Ukrainian

ASIA-PACIFIC: Burmese, Chinese (Cantonese, Mandarin), Indonesian, Vietnamese, Azeri, Kyrgyz, Afghan, Uzbek, Bengali, Hindi, Nepali, Sinhala, Tamil, Urdu

MIDDLE-EAST: Arabic, Persian

TELEVISION

BBC Arabic TV

BBC Persian TV

SCHEDULE 3

PERMISSIONS, EXCLUSIONS AND LIMITATIONS

1 **WORLD SERVICE**

1.1 The rights granted by this Agreement in respect of World Service are granted in respect of the entire world.

1.2 If EOS enters into a reciprocal representation agreement with a performing right society in any country outside the United Kingdom it shall forthwith:

1.2.1 notify the BBC of that fact;

1.2.2 notify the performing right society of the licence it has granted to the BBC in respect of that country and shall communicate with such society regarding the appropriate value of any additional licences required by the BBC to transmit World Service in such country.

2 **DRAMATICO-MUSICAL WORKS**

2.1 The licence and authority granted to the BBC in clause 2 of this Agreement shall not extend to or authorise the communication to the public of Audio-Visual Material by means of a wireless broadcast consisting of -

2.1.1 a Dramatico-Musical Work staged or otherwise, unless such Audio-Visual Material consists of -

(a) a Dramatico-Musical Work or an excerpt or excerpts from a Dramatico-Musical Work communicated to the public by means of a film made primarily for the purpose of public exhibition in cinemas or similar premises;

(b) a non-dramatic excerpt or excerpts from a Dramatico-Musical Work the total duration of which in the course of the same programme does not exceed 20 minutes and which excerpt or excerpts –

(i) are not a "potted" version of the work; or

(ii) are not or do not cover a complete act of the work;

NOTE: At the option of the Member who is the owner of the copyright in a Dramatico-Musical Work EOS may administer the communication to the public right in a dramatic excerpt or excerpts from the Dramatico-Musical Work communicated to the public in a Programme where the total duration of all the excerpts in the course of the Programme does not exceed 20 minutes;

2.1.2 the whole or any part of any music and of any words associated therewith composed or used for a Ballet if accompanied by a visual representation of such Ballet or part thereof unless the same consists of –

(a) a Ballet or part or parts thereof performed by means of a film made primarily for the purposes of public exhibition in cinemas or similar premises; or

(b) a Ballet or part or parts thereof, having been devised for the purpose of communication to the public on television, which have a total duration in the course of the same Programme not exceeding five minutes; or

(c) a part or parts (being less than the whole) of a Ballet, not having been so devised, which have a total duration in the course of the same Programme not exceeding five minutes;

NOTE: At the option of the Member who is the owner of the copyrights in a Ballet EOS may administer the communication to the public right in a part or parts (being less than the whole) of the Ballet communicated to the public in a Programme where the total duration of all the parts in the course of the Programme does not exceed 20 minutes;

2.2 The licence and authority granted to the BBC in clause 2 of this Agreement shall further not extend to or authorise the communication to the public of Audio Material by means of a wireless broadcast consisting of –

2.2.1 a Dramatico-Musical Work whether staged or otherwise unless such Audio Material consists of an excerpt or excerpts of a Dramatico-Musical Work the total duration of which in the course of the same Programme does not exceed 25 minutes or 25% of the total length of the work whichever shall be the shorter and which excerpt or excerpts –

(a) are not a "potted" version of the work; or

(b) are not or do not cover a complete act of the work;

2.3 The licence and authority granted to the BBC in clause 2 of this Agreement shall further not extend to nor authorise the communication to the public on any of the Licensed Services of -

2.3.1 any Musical Work, with or without associated words, in a Dramatic Form;

2.3.2 any words written to be used with the music of a Musical Work or a Ballet if unaccompanied by the music thereof.

3 COMMERCIAL EXPLOITATION

3.1 The rights granted by this Agreement are granted exclusively for the non-commercial public services provided or procured by the BBC. Any commercial exploitation by the BBC, or any third party for or on behalf of the BBC, of Content containing Repertoire Works must be licensed separately.

3.2 By way of example only, this exclusion includes:

3.2.1 non-retail sales of Content to third parties for communication to the public by such third parties;

3.2.2 retail sales of Content in physical formats; and

3.2.3 communication to the public by the BBC in circumstances where the BBC receives payment or consideration (whether in cash or otherwise) by way of, without limitation, advertising revenue, one off payment, subscription payment, barter or contra.

4 THEATRIC EXHIBITION

4.1 Where Content is made available for any cinema or other theatric exhibition to fee-paying audiences, this Agreement licenses and permits the communication to the public of such Content through the Licensed Services. The Agreement, however, shall not apply to the theatric exhibition itself.

5 ADAPTATIONS

5.1 This Agreement does not confer upon the BBC any rights to communicate to the public arrangements or adaptations of any Repertoire Work unless such arrangements or adaptations have been authorised in writing by the copyright owner or EOS or are themselves Repertoire Works or, in the case of a Repertoire Work commissioned by the BBC, where the commissioning agreement validly provides such authorisation.

5.2 "Adaptation" of a Repertoire Work for the purposes of this paragraph means:

5.2.1 an arrangement of the music;

5.2.2 any alteration to the lyrics, save for any minor change which does not alter the meaning; for example, amending "She" to "He" provided any such change is compliant with paragraph 6 below;

5.2.3 any use with music of lyrics other than those written to be used with the music or authorised for use with the music; or

5.2.4 any use with lyrics of music other than that written to be used with the lyrics or authorised for use with the lyrics.

6 CONTEXT OF USE

6.1 Unless the prior written consent of the copyright owner is obtained, this Agreement does not license or permit the communication to the public of any Repertoire Work:

6.1.1 in the form of a parody, or burlesque of any Repertoire Work except a Repertoire Work commissioned by the BBC;

6.1.2 in any manner which is likely to or causes the public to believe that the Repertoire Work (or the composer(s) thereof) is endorsing or promoting any product or service.

6.2 The BBC undertakes not to use any Repertoire Work in any context which a reasonable person ought reasonably to consider as being likely to be prejudicial to the public standing of the composer.

For the avoidance of doubt, nothing in paragraphs 5 or 6 of this Schedule involves the BBC contracting out of the fair dealing provisions of section 30 or any other provisions of the CDPA which provide for exceptions or limitations to the rights of authors, copyright owners or performers or any other analogous legislation applicable in other territories.

For the further avoidance of doubt, the restrictions set out in paragraphs 5 or 6 of this Schedule will not apply where the communication to the public of the Repertoire Work was not undertaken by the BBC and/or where the communication to the public was outside of the control of the BBC: For example, the communication to the public of crowd singing at a televised football match.

7 GENERAL

7.1 All rights not specifically and expressly granted under this Agreement are hereby reserved.

7.2 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), rights in sound recordings, films, dramatic works, performers' rights or rights in performances.

7.3 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the United Kingdom or in any other territory.

SCHEDULE 4

FLOW OF RIGHTS WORKS

Flow of Rights
Repertoire (05.09.14

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