



# **BBC/ISM AGREEMENT**

**2019**

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**This Agreement is between:**

- (1) THE BRITISH BROADCASTING CORPORATION, of Broadcasting House, Portland Place, London W1A 1AA ("the BBC"), and**
- (2) THE INCORPORATED SOCIETY OF MUSICIANS of 4-5 Inverness Mews, London, W2 3JQ ("the ISM")**

**(A) SCOPE OF AGREEMENT**

**This Agreement sets out the minimum terms and conditions for:**

- (i) the engagement of professional musicians (who perform music for part or whole of their livelihood) to give Performance(s) for inclusion in BBC Content as a:**
  - Soloist (instrumentalist and vocalist) or as a Conductor in a concert performance or a Recording Session of classical music
  - Choral Musician, organist or Conductor engaged by a church or cathedral to perform in a Church Service that is to be broadcast and otherwise communicated to the public by the BBC ("Musician(s)")

whether produced by the BBC, a BBC Subsidiary (e.g. BBC Studios) or by an Independent third party producer
- (ii) the use of BBC Content containing Performance(s) given under the terms of this Agreement;**
- (iii) the Secondary Use of BBC Content containing Performances given in accordance with any and all previous agreements between the BBC and the ISM ("Previous Agreements"); and**

**(B) PURPOSE AND EFFECT OF AGREEMENT**

**This Agreement shall:**

- (i) come into effect on 1<sup>st</sup> April 2019 (“the Commencement Date”);
- (ii) replace all Previous Agreements with the ISM concerning the subject matter of this Agreement; and
- (iii) continue to have effect unless or until terminated by either party giving six months’ written notice to the other. Neither party may give such notice before 1<sup>st</sup> April 2022. Any proposed revisions to this Agreement by either party shall be subject to written notice, and any agreed revision shall remain in force for at least 12 months before any further revision to the same provision can be proposed.

**Furthermore:**

- (iv) It is agreed that the fees specified in Parts One to Four will increase by:
  - 1<sup>st</sup> April 2020: 2%
  - 1<sup>st</sup> April 2021: 2%(as calculated and indicated in the Agreement)  
unless the average rate of the Consumer Prices Index (CPI) over the 12 months from 1<sup>st</sup> April 2020 and 31<sup>st</sup> March 2021 is greater than 2% in which case that rate shall apply from 1<sup>st</sup> April 2021 and the rates will be recirculated and included in this Agreement for clarity.

(C) **PARTS**

**PART ONE: PUBLIC CONCERTS AND RECORDING SESSIONS OF CLASSICAL MUSIC**

**1 BBC Public Concert with a paying audience**

1.1 Musicians shall be paid an engagement fee comprising **Public Concert Fee** and a **Relay Fee**.

1.2 **Public Concert Fee:** negotiable, but not less than

<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21. – 31.3.2022</b>
£176	£180	£184

1.3 **Relay Fee:** a percentage of the agreed Public Concert Fee, at the following rates, as applicable:

**Audio Content**

<b>Public Concert Fee</b>	<b>%</b>	<b>Minimum Relay Fees</b>		
		<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21 – 31.3.22</b>
<b>Up to £750</b>	50%	n/a	n/a	n/a
<b>£751-£2000</b>	40%	£416	£424	£432
<b>£2001-£5000</b>	35%	£888	£906	£924
<b>£5000-£16,666</b>	30%	£1943	£1982	£2022

**Audio-Visual Content**

<b>Public Concert Fee</b>	<b>%</b>	<b>Minimum Relay Fees</b>		
		<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21 – 31.3.22</b>
<b>Up to £750</b>	75%	£291	£297	£303
<b>£751-£2000</b>	75%	£291	£297	£303
<b>£2001-£5000</b>	75%	£291	£297	£303
<b>£5000-£16,666</b>	75%	£291	£297	£303

## 2 Non-BBC Public Concert with a paying audience

2.1 Musicians shall be paid an engagement fee comprising a **Relay Fee** only.

2.2 **Relay Fee:** a percentage of the Musician's Public Concert Fee paid by the concert promoter, subject to a minimum payment as set out below:

### Audio Content

		Minimum Relay Fees		
<b>A</b>				
Public Concert Fee	%	1.4.19 – 31.3.20	1.4.20 – 31.3.21	1.4.21 – 31.3.22
£0-£367	n/a	£116	£118	£120
£368-£500	n/a	£121	£123	£125
£501-£2000	15%	£137	£140	£143
£2,001-£10,000	10%	£315	£321	£327
		Fixed Rate		
<b>U</b> £10,000 +	n/a	£1050	£1071	£1092

### Audio-Visual Content

Public Concert Fee	%	Minimum Relay Fees		
	<b>75%</b>	<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21 – 31.3.22</b>
<b>Minimum</b>		£275	£281	£287
<b>Maximum</b>		£4200	£4284	£4370

### **3 Short Music Items performed at Public Concerts**

- 3.1 If the BBC wishes to record only Short Music items performed in a Public Concert, Musician(s) shall be paid a Short Music Item Relay Fee, at the following rates as applicable, which will entitle the BBC to record up to a maximum of 10' of Performance in a period of 2 hours or less.

#### **Short Item Relay Fee**

	<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21 – 31.3.22</b>
<b>Audio Content</b>	£87	£89	£91
<b>Audio-Visual Content</b>	£174	£177	£181

### **4 BBC Public Concerts (with a non-paying audience), and Recording Sessions**

Musician(s) shall be paid a negotiated engagement fee, subject to the following minimum rates, as applicable:

#### **Audio Content**

	<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.20 – 31.3.22</b>
<b>Engagement Fee (per 3 hrs)</b>	£176	£180	£184
<b>Each additional hour</b>	£59	£60	£61
<b>Rehearsal Fee (per 3 hrs)</b>	£89	£91	£93

#### **Audio-Visual Content**

	<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21 – 31.3.22</b>
<b>Engagement Fee (per 3 hrs)</b>	£387	£395	£403
<b>Each additional hour</b>	£130	£133	£136
<b>Rehearsal Fee (per 3 hrs)</b>	£89	£91	£93

## PART TWO: CHURCH SERVICES

- 5.1 For any Church Service to be broadcast by the BBC, the BBC will pay engagement fees for a maximum of 12 Choral Musicians, 1 Organist and 1 Conductor, unless otherwise agreed in advance, at the following rates

### Audio Content

	<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21 – 31.3.22</b>
<b>Choral Musicians</b>	£89	£91	£93
<b>Organist</b>	£120	£122	£124
<b>Conductor</b>	£201	£205	£209

### Audio-Visual Content

	<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21 – 31.3.20</b>
<b>Choral Musicians</b>	£158	£161	£164
<b>Organist</b>	£236	£241	£246
<b>Conductor</b>	£387	£395	£403

Such fees shall be deemed to include all time on call to the BBC on the day of the Church Service, including rehearsal(s) on the same day, or on the previous day for any Church Services taking place in the morning.

- 5.2 For any other rehearsal called for the BBC's purposes that is not covered by the engagement fees specified in 5.1, the BBC shall pay make payment of a supplementary rehearsal fee at the following rates, as applicable:

### Audio Content

	<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21 – 31.3.22</b>
<b>Choral Musicians</b>	£38	£39	£40
<b>Organist</b>	£52	£53	£54
<b>Conductor</b>	£88	£90	£92

### Audio-Visual Content

	<b>1.4.19 – 31.3.20</b>	<b>1.4.20 – 31.3.21</b>	<b>1.4.21 – 31.3.22</b>
<b>Choral Musicians</b>	£60	£61	£62
<b>Organist</b>	£85	£87	£89
<b>Conductor</b>	£128	£131	£134

Such fees shall entitle the BBC to call on the services of the Musicians for up to 3 hours



### **PART THREE: CONSENTS AND GRANT OF RIGHTS**

6.1 In consideration of payment of the applicable engagement fee, Musician(s):

6.1.1 give consent to the BBC to:

- a. record, broadcast or otherwise communicate their Performance(s) to the public;
- b. conduct all technical tests required including but not limited to sound balance tests and camera rehearsals; and
- c. make additional recordings (including both audio and audio-visual) of Performance(s), as required, for the purpose of producing BBC Content for promotional and publicity purposes;

6.1.2 assign to the BBC all rights in the Performance(s) or otherwise created in the provision of the Services for all purposes (including use in all media now known or which may hereafter become known) throughout the Universe for the full period of protection for such rights and any extensions, revivals or renewals thereof ("the Rights") subject to 6.2 below; and

6.1.3 grant the BBC the unlimited right to edit the Performance(s) and waive irrevocably any 'moral rights' in the Performance(s).

6.2 Exercise of the Rights and use of Performance(s) shall be subject to any further payments required by the following Parts, and in respect of Commercial Audio Exploitation of Performances of classical music given by Soloists or Conductors, be subject to agreement.

## **PART FOUR: PRIMARY USES**

### **7 PRIMARY USES OF BBC CONTENT**

- 7.1 The following uses are permitted by payment of an engagement fee (save where only Restricted Primary Uses are permitted under clause 8 below):

#### **7.1.1 BBC Public Service uses:**

##### **BBC Network Broadcast**

A single broadcast simultaneously in any or all BBC Public Services

##### **Deferred BBC Network Broadcast**

A broadcast within 30 days of a BBC Network Broadcast in any or all Public Services that did not participate in the BBC Network Broadcast

**Radio 1 & 2** repeat broadcasts of Short Music Items during 1 year from first broadcast

##### **Educational Content**

An additional BBC Network Broadcast

##### **BBC World Service Radio**

One BBC World Service Radio Broadcast Cycle

##### **Radio 3 Nighttime Broadcasts**

Three broadcasts in Radio 3's Nighttime Service

##### **Access Repeats**

Unlimited use in any BBC Public Service for the purpose of access for blind or deaf people.

#### **7.1.2 Other BBC Public Service Uses**

Any other uses of the whole or any part of the BBC Content except for repeat broadcasts as specified in PART SIX except that for Performances of classical music given by Soloists or Conductors such other uses shall be limited to a period of 1 year from the first BBC Network Broadcast, provided that nothing in this Agreement shall prevent the BBC from negotiating a longer period with musicians subject always to the minimum terms of this agreement.

#### **7.2 Publicity and Promotion:**

Use by the BBC and its licensees and assignees of extracts of recordings of the Performance(s) for the purpose of promotion or publicity in any media throughout the world, including but not limited to, in programme trailers, general campaigns for

BBC Public Services, for BBC Joint Venture Services and any other services in which the BBC has an interest, provided however that no such use itself constitutes Commercial Exploitation.

**7.3 EBU uses (Audio Content Only):**

The BBC may authorise each and any EBU Member to make a single broadcast; to use in their audio on-demand services; and to make 3 further broadcasts in their Nighttime Services within the following periods:

**Full Members:** 1 year of the BBC Network Broadcast

**Associate Members:** 30 days of the BBC Network Broadcast

**7.4 Non-Theatric Use**

**7.5 Non-Commercial Educational Use by The Open University in any media**

## 8. RESTRICTED PRIMARY USES

### 8.1 CONCESSIONARY RATES (applicable to Call Fees, Performance Fees & Overtime Fees)

Services	Primary Use Restrictions	% of all Fees
<b>BBC Nations, BBC English Regions</b>	BBC broadcasts are restricted to those made by BBC Nations & BBC English Regions	75
<b>Audio-Visual Content</b>	Use in all BBC Public Services (except broadcasts in BBC One or BBC Two)	75
<b>Conductor</b>	Unlimited broadcasts on up to 9 days (whether consecutively or otherwise)	75

### 8.2 SUPPLEMENTARY FILMING FEES (applicable to Audio Content only and payable in addition to Performance Fees and/or Call Fees)

	Rate per 30' Performance		
	1.4.19 – 31.3.20	1.4.20 – 31.3.21	1.4.21 – 31.3.22
<b>For consent to film and for use in all BBC Public Services</b> (including BBC Red Button but excluding broadcasts in all other Television Services)	£33	£34	£35
<b>For consent to film and for use in all BBC Public Services</b> (excluding broadcasts in any Television Services)	£22	£23	£24

## **PART FIVE: RE-USE OF PERFORMANCES IN NEW CONTENT**

### **9 RE-USE OF EXTRACTS**

- 9.1 (Without further payment) the BBC shall be entitled to re-use extracts of existing BBC Content, that contain no more than 4 minutes of Performance(s) each, in new BBC Content whether given under this Agreement or under Previous Agreements.
- 9.2 No payments shall be due for any Secondary Use of BBC Content containing extracts re-used under this provision.

## **PART SIX: SECONDARY USES**

### **10 SECONDARY USE FEES**

- 10.1 Payment for Secondary Uses may be made as a Repeat Fee, Residual Buy Out Fee or as Royalties, as provided in this Agreement;
- 10.2 The Residual Basic specified in the Contracts of Engagement shall be calculated as 100% of the following fees, as applicable:
- Public Concerts with a paying audience: the Relay Fee, or Short Item Relay Fee
  - Public Concerts with a non-paying audience or Recording Sessions: the engagement fee excluding any fees for rehearsals
  - Church Services: the engagement fees, excluding any fee for rehearsal;
- 10.3 For any Repeat Fees or Residual Buy-Out Fees payable following 3 years after the first broadcast of the relevant BBC Content, the Residual Basic shall be increased by the following percentages:
- following 3 years: 10%
  - following 10 years: 35%
  - following 25 years: 70%.
- 10.4 **Repeat Fees** and **Residual Fees** are expressed in this Agreement as a percentage of a **Residual Basic**.
- 10.5 **Royalties** are shared pro-rata according to the **Residual Basic**.

## 11 SECONDARY USE OF AUDIO CONTENT

### 11.1 Repeat Broadcasts

A repeat fee shall be payable for the first or any subsequent BBC Network Broadcast repeat or BBC World Service Broadcast Cycle repeat which may be made either as originally broadcast or in separate parts (as separate Performances or otherwise).

#### Other BBC Public Service Uses

For Soloists or Conductors of classical music Performance(s), payment of a repeat fee additionally entitles the BBC to make any other uses of the whole or any part of the BBC Content (except further repeats specified in this PART SIX) for a period of 1 year from the repeat broadcast.

#### Public Concerts with paying audience

##### Non-BBC Promoted Public Concerts

	With engagement fee	On repeat broadcast
<b>Radio 1,2,3,4 &amp; 5Live, BBC Nations and BBC English Regions</b>	35%	100%
<b>World Service Radio</b>	35%	50%

##### BBC Promoted Public Concerts

	1 <sup>st</sup> Repeat	2 <sup>nd</sup> and Subsequent Repeats
<b>Radio 1,2,3,4 &amp; 5Live, BBC Nations and BBC English Regions</b>	100%	75%
<b>World Service Radio</b>	50%	50%

#### Public Concerts with a non-paying audience, Recording Sessions and Church Services\*

\* For Church Services, when 2 repeats are bought together on repeat broadcast: 50% + 35%

	With engagement fee	On repeat broadcast
<b>Radio 1,2,3,4 &amp; 5Live, BBC Nations and BBC English Regions</b>	35%	50%
<b>World Service Radio</b>	15%	10.5%

## 11.2 Residual Buy-Out Fees

All BBC Public Service uses (excluding broadcasts in Radio 1,2,3,4 , 5live, BBC Nations, BBC English Regions, BBC World Service Radio, and Television 10% Services): applicable only to Performances contracted under Previous Agreements where such uses have not already been paid for.	10%
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## 12 SECONDARY USE OF AUDIO-VISUAL CONTENT

### 12.1 Repeat Broadcasts on BBC One & BBC Two

A repeat fee shall be payable for the first or any subsequent BBC Network Broadcast repeat which may be made either as originally broadcast or in separate parts (as separate Performances or otherwise).

#### Other BBC Public Service Uses

For Soloists or Conductors of classical music Performance(s), payment of a repeat fee additionally entitles the BBC to make any other uses of the whole or any part of the BBC Content (except further repeats specified in this PART SIX) for a period of 1 year from the repeat broadcast.

	With engagement fee	On repeat broadcast
Repeat Fee	35%	100%

## 12.2 Residual Buy-Out Fees

### All

All Commercial Exploitation except for Theatric Exhibition, Home Video Exploitation and Commercial Audio Exploitation	World excluding UK & Eire	30%
All uses except for BBC Public Service uses, broadcasts on ITV, C4, S4C and C5, Theatric Exhibition, Home Video Exploitation and Commercial Audio Exploitation	UK & Eire	20%
Theatric Exhibition	World	40%
Home Video Exploitation	Europe	10%
	World (excluding Europe)	10%
	World (excluding UK)	2.5%
Short Music Items: all uses of BBC Content (except for Commercial Audio Exploitation)	65%	
All BBC Public Service uses (excluding broadcasts in BBC One, BBC Two and BBC Radio)	10%	

## 13 Royalties – General

13.1 The BBC can choose to make royalty payments for any and all Secondary Uses(except Repeat Broadcasts or for Commercial Audio Exploitation) as an alternative to Residual Buy-Out Fees.

13.2 Such royalties shall be:

13.2.1 calculated as the following percentage of the BBC's gross income received by the BBC, or in the case of co-productions with third parties, deemed gross receipts. However, in the case of Home Video Exploitation where BBC Studios Distribution/2Entertain (or other distributor associated with the BBC) or the BBC (including its licensees and assigns) is the distributor certain reasonable deductions as may be agreed with the ISM; and



13.2.2 shared between the relevant Musicians, pro-rata according to their Residual Basic.

13.3 Following a royalty payment for a particular Secondary Use, the BBC may not then pay a Residual Buy-Out Fee to terminate royalty payments for the same Secondary Use without the prior consent of the ISM.

**13.4 Accounting (applicable to all forms of Commercial Exploitation except Home Video Exploitation):**

The BBC shall account to the contracted party in respect of any royalty payments due under this Agreement as follows:

13.4.1 **Television:** royalty payments shall be paid to the contracted party no later than the end of the month following the month in which the BBC receives the gross receipts if the BBC or an associated or subsidiary company is the distributor. If a third party is the distributor, no later than the end of the month following the month in which the BBC is notified of the exploitation;

13.4.2 **Commercial Audio Exploitation:** royalty payments shall be accounted for in respect of the six month periods to 30<sup>th</sup> June and 31<sup>st</sup> December following release and the corresponding payments shall be paid to the contracted party no later than three months from the end of the period to which they refer.

Unless specifically requested no payments shall be made in respect of any period in which the sum due to each Musician is less than £10 in which case the amount shall be carried forward to the next accounting period. The ISM shall have the right to inspect BBC's financial records not more than once in any calendar year in order to verify the BBC's gross receipts, deductions made from such gross receipts and the calculation of royalties under this Agreement.

**13.5 Accounting (applicable to Home Video Exploitation only):**

All royalty payments due shall be paid on a six-monthly basis. For this purpose the BBC shall make payment in respect of Home Video Exploitation during each 6 month period after first making it available to the public, such payment to be made within three months of the end of the relevant six month period. Such payment shall be accompanied by a statement showing the sum(s) due and identifying the contributions incorporated in the video concerned. Unless specifically requested, no statement need be rendered nor payments made in respect of any six month period in any year in which the sum due to the Musician is less than £10 in which case the amount shall be carried forward to the next accounting period.

## 14 Royalties – Payments

Commercial Exploitation		Royalty Rate
All except for Home Video Exploitation	Performances with Musician(s) engaged under the terms of the BBC/MU Agreement	6%
	Performances with Musician(s) engaged only under the terms of this BBC/ISM Agreement	17%
Home Video Exploitation		1.25%

## PART SEVEN: NEWS ACCESS

15.1 The ISM warrants on behalf of its members that for the purposes of news reporting:

15.1.1 the BBC shall be entitled to have access to rehearsals and performances forming part of an existing engagement, for the purpose of making audio and/or audio-visual recordings subject to a maximum duration per news item, as follows:

- a featured performances: 1 minute; and
- b background use (i.e. incidental to the subject of the news item): 1 minute

15.1.2 written consents shall not be required from individual Musicians;

15.1.3 the ISM is authorised by its members to grant these consents and agrees to indemnify the BBC against any liabilities, claims, demands, actions, costs, damages and loss arising from the BBC's use of recordings as permitted under this clause 15.

15.2 A Musician may request that their rehearsal or performance not be recorded and the BBC agrees not to record when so requested.

15.3 The BBC undertakes to complete recording of the rehearsal and/or performance within one hour from commencement of recording, however additional time shall be permitted for filming Cut-Aways and Long Shots.

15.4 The BBC shall not, for any reason, require a Musician to exceed the services for which they are originally engaged, or to alter or repeat their performance.

**(D) GENERAL PROVISIONS**

**16. Equal Opportunities**

- 16.1 The Parties are committed to fair and non-discriminatory employment practices and will not unlawfully discriminate in the engagement of Musicians on grounds of their 'protected characteristics'. See here for full details:

<https://www.gov.uk/discrimination-your-rights/>

- 16.2 In order to promote and ensure fair and non-discriminatory employment practices the BBC recognises the value of, and is committed to, equality monitoring, including of on-screen talent and to publishing monitoring data as it becomes available as part of the project known as 'Diamond' (Diversity and Monitoring Data – project monitoring diversity in UK Production).

**17. Anti-bullying and Harassment**

The BBC and the ISM recognise that bullying, discrimination and harassment have no place in our sector and we acknowledge that everyone is responsible for creating and maintaining an inclusive workplace which is positive and supportive. The BBC will not tolerate any form of bullying and/or harassment and is committed to providing a workplace in which the dignity of individuals is respected. Contributors engaged by the BBC will be required to agree that, whilst providing their services, they will not act in a way that could be regarded as bullying and/or harassment under the BBC's Bullying and Harassment Policy:

<https://intranet.gateway.bbc.co.uk/policy/Documents/BBC%20Bullying%20and%20Harassment%20Policy.pdf>

(or any replacement policy). Acts of bullying and/or harassment are regarded as a serious breach of contract and could place the continuation of engagements with the BBC at risk.

**18 Undertakings**

- 18.1 The ISM hereby confirms and agrees that it has the full right and authority to enter into this Agreement and it has not and shall not enter into any contract and/or arrangement with its members or with any third party that shall prevent the ISM from fulfilling its obligations under this Agreement;
- 18.2 The BBC hereby confirms and agrees that has the full right and authority to enter into this Agreement and it has not and shall not enter into any contract and/or arrangement with any third party that shall prevent it from fulfilling its obligations under this Agreement.

## **19 Disputes Procedure**

In the event of an unresolved dispute between an individual Musician and the BBC relating to this Agreement or between the ISM and the BBC the matter will in the first instance be dealt with by representatives of the parties. If there is any failure to agree a solution the parties shall decide on and submit to a suitable forum for formal mediation.

## **20 Quit Claim**

20.1 Where in respect of performances contracted in accordance with this Agreement the Musician is exclusively entitled by law to receive from domestic or foreign collecting societies equitable remuneration or other forms of income additional to that arising under this Agreement nothing in this Agreement shall prevent the Musician from claiming such remuneration. The Musician shall not be obliged to account to the BBC for any such income to which the Musician is solely entitled.

20.2 (Without limitation to 18.1 above) it is acknowledged that the fees payable under this Agreement represent full, sufficient, reasonable and equitable remuneration for any and all rental and lending rights in respect of recordings of Performance(s) given in accordance with this Agreement.

20.3 The Musician shall make no claim against the BBC that shall arise from any failure by the Musician or any organisation that may represent the Musician to enter into any agreements with collecting societies or any failure on the part of such a society to make any payment to the Musician.

20.4 The BBC is authorised to disclose all necessary information about the Musician to a relevant collecting society so as to assist such collecting society to identify those entitled to receive the money it collects.

## **21 Miscellaneous**

21.1 All fees and payments due in this Agreement are expressed exclusive of VAT. Where applicable (and subject to compliance with the BBC's procedural requirements for payment of VAT) the BBC shall make payment of VAT to the Musician.

21.2 It is acknowledged that the BBC's editorial control of BBC Content is final.

21.3 This Agreement is not intended to and does not create a legally-binding agreement between the parties and is binding upon them only in honour.

21.4 Nothing in this Agreement shall be deemed to constitute either party as the agent of the other party or create a partnership or joint venture between the parties.

- 21.5 No amendment to the terms of this Agreement shall be valid or binding unless made by prior written agreement between the parties and signed by their authorised representatives in accordance with (B) (iii) of this Agreement.
- 21.6 The unenforceability of any particular provision(s) of this Agreement shall not affect any other provisions of this Agreement.
- 21.7 This Agreement sets out the entire understanding of the parties in relation to its subject matter and supersedes all prior arrangements negotiations and discussions between the parties relating thereto.
- 21.8 The headings of the clauses of this Agreement are provided for reference only and shall not limit or affect the meaning or interpretation of the said clauses.
- 21.9 Any notice required to be given pursuant to this Agreement shall be in writing delivered, or posted to the address of the relevant party set out in this Agreement or such other address as may be notified in writing to the other party from time to time. Any such notice given as aforesaid shall be deemed given or received at the time of delivery (if delivered by hand) or 2 working days after sending (if sent by post or e-mail) subject to any evidence to the contrary.
- 21.10 Any reference to any legislation in this Agreement shall include any subsequent amendment or replacement of such legislation.
- 21.11 Nothing in this Agreement shall oblige the BBC to make payment for any uses that are acts permitted in relation to copyright works or performers rights under the Copyright, Designs and Patents Act 1988 (as amended) or any superseding legislation.
- 21.12 Neither party shall be liable for any failure to fulfil its obligations hereunder caused by Acts of God, strikes, lockouts, war, riot, civil commotion, Order or Act of Parliament or any other event beyond its reasonable control.
- 21.13 This Agreement shall be interpreted in accordance with English Law.

**(E) DEFINITIONS**

In this Agreement, capitalised terms will bear the meanings given to them in this Section (F), or as given to them elsewhere in this Agreement.

**Audio Content** Content with an audio component only (and no visual component).

**Audio-Visual Content** Content with both an audio and a visual component.

**BBC** The BBC as defined by Royal Charter and BBC Subsidiaries

**BBC Content** Content that is produced by the BBC or by an independent producer (including without limitation BBC Studios) commissioned by the BBC and intended for communication to the public primarily in the BBC's Public Service(s).

**BBC English Regions** East, East Midlands, East Yorkshire & Lincolnshire, London, North-East & Cumbria, North-West, South, South-East, South-West, West, West Midlands, Yorkshire.

**BBC Joint-Venture Services** Commercial services wholly or partly owned and editorially controlled by the BBC and/or its subsidiaries (such as BBC Studios Distribution). For clarity this currently includes the UK TV services: Gold, Dave, Alibi, Watch, Home, Good Food, Eden, Blighty, Yesterday, and Ready.

**BBC Nations** BBC Northern Ireland, BBC Scotland, BBC Wales.

**BBC Network Broadcast** A single broadcast simultaneously in any or all BBC Public Services

**BBC Public Service(s)** Any service or activity now existing or developed in the future which is provided or carried out in the delivery of the BBC's obligations and responsibilities as set out under the BBC's Royal Charter and the BBC Agreement with the Secretary of State for Culture, Media and Sport (and any successor to or variations of such Charter & Agreement) by any means now existing or developed in the future and in accordance with the BBC's Operating Framework and Operating Licences (as may be updated or replaced by the BBC's regulator(s) from time to time).

#### **Television Services**

BBC One, BBC Two, BBC Four, BBC HD, CBBC, Cbeebies, BBC News, BBC Parliament, BBC Red Button and BBC Alba

#### **Radio Services**

BBC Radio 1, BBC Radio 2, BBC Radio 3, BBC Radio 4, BBC Radio 4 Extra, BBC Radio 5 Live, BBC Radio 5 Live Sports Extra, 1Xtra, BBC 6 Music, BBC Asian Network, BBC Local Radio, BBC Radio Scotland, BBC Radio nan Gaidheal, BBC Radio Wales, BBC Radio Cymru, and BBC Radio Ulster/BBC Radio Foyle

#### **BBC World Service Radio**

#### **On-line Services**

#### **BBC Online including Red Button and BBC Three**

<b>BBC Studios</b>	BBC Studios Limited a production company and wholly owned BBC Subsidiary
<b>BBC Studios Distribution</b>	The commercial arm and a wholly-owned subsidiary of the BBC
<b>BBC Subsidiaries</b>	A company which is controlled by the BBC (or a holding company as defined in section 119 of the Companies Act 2006) of the BBC, or by another subsidiary which is controlled by the BBC including BBC Studios Distribution and Special Purpose Vehicles ("SPV's")
<b>BBC World Service Radio Broadcast Cycle</b>	A cycle of unlimited broadcasts on BBC World Service within an 8-day period

<b>Chamber Music</b>	Classical music composed for a small number of Musicians to be performed with one Musician to a part and without a conductor.
<b>Choral Musician(s)</b>	Vocal Musicians performing in a professional choir engaged by the BBC.
<b>Church Service</b>	A religious service with a congregation organised by a Church or Cathedral
<b>Commercial Audio Exploitation</b>	Commercial exploitation of Audio Content by distributing or otherwise making available copies for consumers to own.
<b>Commercial Exploitation</b>	Exploitation, with an aim of securing profit, for a commercial as opposed to a public service purpose.
<b>Conductor</b>	A Musician (including a musical director in a cathedral or church) who directs rehearsals and performances
<b>Cut-Aways</b>	Close-ups of Musician(s) playing.
<b>EBU</b>	The European Broadcasting Union.
<b>Educational Content</b>	Content produced for education and learning purposes.
<b>Home Video Exploitation</b>	Commercial exploitation of Audio-Visual Content by distributing or otherwise making available copies for consumers to own (including but not limited to DVD copies and digital copies made available as so-called download-to-own (DTO)).
<b>Live Performance</b>	A performance in real time when no retakes are possible.
<b>Long Shots</b>	Recorded content featuring the Musician from a distance (such as part of final part/curtain call of a public performance).
<b>Music Product</b>	Commercial product predominantly comprising performance(s) of music.
<b>Musician(s)</b>	Musicians who perform music for a livelihood, including instrumentalists, vocalists and Conductors.
<b>Non-Theatrical Use</b>	Non-commercial exhibition to audiences (including but not limited to those in educational establishments, and trapped audiences).
<b>Other Public Service Uses</b>	As referred to in clause 7.1.2.



<b>Relay Fee(s)</b>	Payments due under this Agreement which permit the BBC to produce, record, broadcast and otherwise communicate recordings of the Performance(s) and use them in the BBC Content in accordance with the terms of this Agreement.
<b>Performance(s)</b>	Performance(s) of music whether in whole or in part, and any attendant and agreed contributions forming part of the engagement.
<b>Previous Agreements</b>	Any and all previous agreements between the BBC and the ISM.
<b>Primary Uses</b>	Uses permitted by payment of an engagement fee as set out in Part 6.
<b>Public Concert</b>	A programme of Live Performance(s) given for an audience.
<b>Public Concert Fee</b>	Payment to a Musician for rehearsals and Performance(s) given in a Public Concert
<b>Recording Session</b>	A session arranged to produce sound and/or visual recordings by rehearsing and performing as required (including for any necessary retakes).
<b>Residual Basic</b>	A notional figure used to calculate Repeat Fees, Residual Buy Out Fees and Royalties (as described in clause 10.2).
<b>Residual Buy-Out Fee</b>	A payment for Secondary Use(s) that permits the specified use in perpetuity for no further payment.
<b>S4C</b>	A statutory corporation for the provision of Welsh language television services established under the Broadcast Act 1981 and operating under the remit set out in the Communications Act 2003.
<b>Secondary Uses</b>	Uses of Content containing Performance(s) as set out in Part 8 and as licensed by further payments(s).
<b>Services</b>	The services of Musician(s) being made available on a first call basis and to include being present and available at such dates, call times and locations specified by the BBC to rehearse and perform and carry out such other agreed contributions and ancillary activities as may be reasonably required by the BBC.
<b>Short Music Item</b>	A Performance of a whole work (e.g. a song) of up to 5 minutes in duration.
<b>Soloist</b>	A Musician who performs a solo part of a musical work including, for example, the piano accompaniment to a solo performance.
<b>Supplementary</b>	Payment for consent to film and use Performance(s) given for Audio

<b>Filming Fee</b>	Productions
<b>The Open University</b>	A distance learning and research university founded by Royal Charter in the United Kingdom and funded in part by the United Kingdom Government.
<b>Theatric Exhibition</b>	Exhibition of BBC Content in commercial cinemas or theatres before paying members of the public.
<b>VAT</b>	Value Added Tax.

(F) SIGNATORIES

As authorised signatories on behalf of the parties we hereby confirm the agreement of the parties to these terms:

SIGNED BY:



SIMON BROWN

FOR BRITISH BROADCASTING CORPORATION

DATE

30th July 2019

SIGNED BY:



DEBORAH ANNETTS

FOR INCORPORATED SOCIETY OF MUSICIANS

DATE

16<sup>th</sup> October 2019

