

Agreement between Birmingham Contemporary Music Group & the Musicians' Union for the freelance engagement of musicians effective from 1 January 2021

1. Preamble

These Terms and Conditions have been agreed between Birmingham Contemporary Music Group ('BCMG') and the Musicians' Union ('the MU'), each recognising the other to be the appropriate body to negotiate on behalf of its members. They shall be regarded as having come into force on 1 January 2021 and shall govern the freelance engagement of musicians ('a/the musician') to rehearse and perform for concerts and media work with BCMG.

2. Rates of Pay

The following shall be the minimum rates to be paid to a musician engaged to play for concerts, rehearsals and associated media work as specified in Clause 10 of this Agreement:

Concert Fee:

For a single session concert performance (which may be livestreamed) or two sessions of either a concert performance (which may be livestreamed) with associated rehearsal or two rehearsals on one day:

£170.00

An additional rehearsal session on the same day will be paid at 50% of the concert fee.

Single Extra Rehearsal:

For a single rehearsal session where no other work is offered on the same day and the work does not include a concert:

£100.00

These rates of pay are inclusive of:

- a holiday pay contribution of 12.1%.
- media performance rights as defined in Clause 10 of this Agreement

Livestreaming

For the purpose of this agreement 'Livestreamed' shall mean a performance lasting no more than 3 hours that is streamed on YouTube for a period of 24 hours only. The 24-hour period shall commence at the advertised start time of the live performance and the livestream may be ticketed by BCMG or free to view.

The 'live streamed' concert allowance is agreed on the basis of a trial period of 24 months, effective from 1 January 2021. The trial period is subject to a review and break clause at 12 months and can only continue to run for the full 24 months should the Musicians' Union and BCMG agree as such. If there is disagreement at the 12-month review point, the Musicians' Union has the right to terminate the streaming trial but will not do so unreasonably.

BCMG agrees to provide the Musicians' Union with quarterly reporting, which will include the ticket prices and number of tickets sold per concert that is 'livestreamed'.

3. Hours of Work

(a) Sessions

The basic unit of playing work will be a 'session'. The maximum scheduled length of a session will be 3 hours. A session may include concerts, rehearsals, media work or any reasonable combination of these. The length of rehearsal sessions and studio media work will be predetermined. The finishing time of a concert is defined as the time at which the leader (or equivalent) finally leaves the concert platform after the final item.

(b) Intervals

When a concert with a duration in excess of 1½ hours is performed without an interval, 20 minutes will be added to the performance time for the calculation of hours of work and if this brings the performance time to more than three hours, overtime payments shall be made in accordance with Clause 4.

(c) Rehearsal Repertoire

There shall be no restrictions on the music that a musician may be asked to play at a rehearsal, providing that the music to be rehearsed is already scheduled for inclusion in a session governed by the Terms and Conditions of this Agreement.

4. Overtime

Overtime shall be paid if:

- (a) playing work exceeds 3 hours in any one session
- (b) a rehearsal, or studio media session continues beyond its scheduled time regardless of the number of hours worked in a day

Where it is incurred, overtime shall be paid at **£25.00** for each 30 minutes or part thereof up to a maximum of one hour.

5. Doubling

Where a musician is required to play more than one instrument, or is specifically requested to bring to a rehearsal or concert more than one instrument, an additional payment of 10% of the musician's fee (with a minimum of **£17.00** where a full concert fee is being paid, or **£10.00** for a single extra rehearsal) shall be made in respect of each additional instrument.

Doubling fees shall be calculated with reference to the musician's actual performing fee, plus overtime if applicable. Doubling fees are not payable on any other ancillary payment.

Keyboard instruments are regarded as divided into the following sub-groups, and doubling fees will not be payable for playing more than one instrument within the same sub-group:

- (i) Piano
- (ii) Celeste, dulcitone
- (iii) Organ, harmonium, multitone, mustel organ
- (iv) Harpsichord, spinet, clavichord, virginals

6. Travelling Allowances

- (a) If the engagement is for a concert or rehearsal at a venue which is over fifteen miles from the recognised central point of the musician's normal centre of employment, and alternative transport is not provided and paid for by BCMG, a travelling allowance of **36p per mile** shall be

paid for all miles necessarily travelled on land in reaching, fulfilling and returning from the engagement. 'Alternative transport' shall not include the shared use of another musician's car.

- (b) If alternative transport is provided and paid for by BCMG, a reduced travelling allowance of **17p per mile** shall be paid.
- (c) BCMG shall pay for or reimburse all rail, sea and air journeys travelled in order to fulfil the engagement.
- (d) Coach travel by musicians engaged under these Terms and Conditions shall not exceed 250 miles during any period of twenty-four hours.
- (e) In cases of dispute, the shortest recommended Google Maps mileage shall be taken as the authority for distances.

Travel will be paid as above, except for travel on a day when a musician is working for another organisation in Birmingham and receiving a travel payment, in which case the BCMG rate will be 50% of the current ABO/MU rate. This will be a self-certifying arrangement, payable on submission of a completed Travel Claim Form.

7. Subsistence

(a) *Overnight Stay*

If the engagement involves an overnight stay and suitable accommodation is not provided by BCMG, or if the time of return to the musician's normal centre of employment as defined in Clause 7(b) below is after 2am, a payment of **£70.00** for bed and breakfast shall be made, plus a supplement of **£25.00** when the engagement is within the area bounded by the M25 motorway. For the purposes of this clause, 'suitable accommodation' shall be defined as three-star or equivalent grade hotel, as available, with full breakfast, and single room accommodation as available and if required by the musician.

Where a musician is able to prove that s/he has travelled to an engagement by rail and has been unable to return to his/her normal centre of employment by 2am, and where that musician is also able to prove that s/he has paid for overnight accommodation, then the overnight stay payment, as defined above, shall be made.

(b) *Payment for Late Return*

When the musician's time of return to his/her normal centre of employment is between midnight and 2am, an additional payment of **£10.00** shall be made by BCMG.

'Time of return' is defined with reference to the musician's time of departure from the rehearsal or concert venue, the distance to be travelled to the recognised central point of the musician's normal centre of employment, and an average speed of travel of 50mph. The time of departure is deemed to be fifteen minutes after the finishing time of the concert or rehearsal, as defined in Clause 2(a) above.

c) *Payment for Early Call*

When a musician is required to depart from his/her normal centre of employment before 8.30am, and/or to be present at a concert or rehearsal before 8.30am, an early call payment of **£10.00** shall be made for all necessary travelling or working time prior to 8.30am. The time of departure

from the musician's normal centre of employment is defined with reference to the contracted commencement time of the concert or rehearsal, the distance to be travelled from the recognised central point of the musician's normal centre of employment, and an average speed of travel of 50mph.

If a musician's departure time is defined as being before 6.00am, the early call payment shall be replaced by an overnight stay payment, calculated at the rate applicable to the musician's destination.

8. Porterage

Porterage payments are subject to individual negotiation. Minimum porterage payments for engagements under this Agreement shall be as follows:

Group A Payment £18.45 (£23.00*)

Double Bass
Electric Guitar
Electric Bass Guitar

* London Weighting is payable for engagements within the London Congestion Charge Zone

Group B Payment £15.25

Bass Saxophone
Contra Bassoon
Tuba

Group C Payment £11.00

Baritone Saxophone
Trombone plus one other brass instrument
French horn plus one other brass instrument
2 Saxophones
'Cello

Any instrument not covered in these categories is by individual negotiation.

- (a) Porterage is defined as a contribution towards the extra time, effort and additional costs associated with the transportation of large or heavy instruments in order to fulfill an engagement.
- (b) Porterage groups are determined by whether a large or heavy instrument can reasonably be carried on public transport (Groups B, C), or whether it requires transportation by a standard-sized car or larger vehicle eg van. On this basis, Group A reflects the contribution towards the additional cost involved in running the car, and the time/effort involved in loading and unloading.
- (c) A full porterage payment shall be due for each day of an engagement, except where BCMG has made safe provision for a musician to leave his/her instruments in situ overnight at a rehearsal or concert venue which has been used for the final call of the day, and which is also to be used for the first call of the following day. In this latter case, one porterage payment shall not be paid for each night during which the instrument is left at the venue. BCMG must guarantee the security of the storage area and ensure that adequate insurance cover in case of loss or damage is in place. Porterage payments will be self-certified by the musician and payable on submission of a completed Porterage Claim Form.

- (d) A portage payment shall not be paid when BCMG makes arrangements to transport the instruments, unless the Musician is required to bring the instruments to a pick-up point nominated by the engager, in which latter case portage payments shall be due in full.
- (e) BCMG will use its best endeavours to ensure that the venue will provide parking facilities for those transporting large or heavy instruments by car.
- (f) In cases where air travel within the UK is provided by BCMG under Clause 6(c) of these Terms and Conditions, and it is agreed between BCMG and the musician that where special arrangements are necessary for the safe transportation of instruments listed in Groups A, B, C and D above, any additional costs in respect of transportation of these instruments may be subject to negotiation.
- (g) Any additional cost of hiring instruments or hiring transportation for large or heavy instruments shall be the subject of individual negotiation.

9. Electronic Instruments

Instruments and devices incorporating pre-recorded sounds or producing sounds by electronic means are not to be used to replace or reduce the employment of conventional instrumentalists on BCMG engagements where conventional instrumentalists may be reasonably or traditionally expected to be used.

10. Media Work

- (a) The Musician, on acceptance of a live engagement under the terms and conditions of this Agreement, may be required to perform or rehearse for audio or video recording, sound broadcasting, television or any other form of audio and/or visual media subject to the limitations and uses outlined in this clause of the Agreement.
- (b) All performers' rights under this agreement are vested in BCMG.
- (c) The Musician shall receive an appropriate proportion of the BCMG Media Payment where due, as detailed in clause 10 (g) (h) and (i) below.
- (d) New recordings whose primary purpose is as a soundtrack for cinema release, short items for advertising jingles or signature tunes/soundtracks for programmes not featuring BCMG, shall be paid at the current appropriate MU rate. Any fee paid to BCMG for this work shall not form part of the Net Media Income calculated in clause 10 (g) below.
- (e) The secondary use of partial extracts from existing BCMG-owned material for wholly commercial purposes such as television advertisement, feature film soundtrack or signature tunes/soundtracks for programmes not featuring BCMG shall not be deemed to be included under the terms of this Clause 10. In these instances a further fee shall be payable to those musicians who took part in the original recording.
- (f) A Media Committee shall be formed and shall consist of the 2 elected musician representatives on BCMG's Board, and up to 2 representatives of the Company. The Media Committee shall be convened at least twice a year and shall consider all media opportunities involving new and non-traditional media (webcasting etc), as and when they arise.

- (g) The Media Committee shall agree the parameters for Net Media Income from media projects and consider individual cases which fall outside those parameters as necessary. The Net Media Income shall be the total amount of money earned by BCMG from a media project after the subtraction of the costs specifically incurred by BCMG in earning that income.
- (h) A BCMG Media Payment shall be payable to those musicians involved in each media project, equal to 85% of the agreed Net Media Income from that project with the remaining 15% being retained by BCMG as a management charge.
- (i) Each BCMG Media Payment shall be divided amongst the musicians involved in that media project in proportion to the actual contribution made by each musician to the project.
- (j) Archive & Promotional

Musicians engaged under this Agreement permit the engager to record rehearsals, performances and other activity (e.g. workshops) in whole or in part (sound and vision or in sound only) for no additional fee, for the limited Archive or Promotional purposes described below. An engager making any recording under this Archive & Promotional clause shall retain copyright in the resulting recording, and will not give away, sell, license or otherwise transfer ownership of the recording to another party without the Union's agreement. The engager will take all reasonable steps to keep the recording secure and avoid any contravening distribution by third parties.

- i) *Archive:* An archive recording may be made and retained by BCMG. Such recordings will be held by BCMG and not shared externally, excepting with a) featured composers, for their own private study purposes, and promotional use by the composer on their website; b) funders, for the purposes of reporting (e.g. where a funder requests to view an archive recording as evidence of a sponsored project); c) BCMG's Sound Investors, in respect of works they have helped to commission on the proviso that they are for private use only. d) educational project participants, as a private record of their participation BCMG may elect to make use of an archive recording made under this agreement for promotional purposes, provided that such usage is in accordance with ii) below. Any subsequent commercial exploitation of archive recordings shall be subject either to the terms of prevailing Collective Agreements, or to separate negotiation with the Union.
- ii) *Promotional:* An engager may make and distribute a recording through any media (including but not limited to social media channels), providing that such usage is for its own promotional purposes and strictly non-commercial, i.e. no financial profit is generated for the engager or any third party by the distribution or other exploitation of the recording. Such promotional recordings must be limited to a maximum of 20 minutes' aggregate length, and no single musical piece, however short, may be used in its entirety. The engager may share recording excerpts with external partners that have a direct connection with the promotion (e.g. festivals, venues, collaborating artists, composers) for such partners' own non-commercial promotional purposes, provided the engager retains copyright in the recording.

Third-Party Commissions: Where a third party other than the engaging orchestra (e.g. a festival or venue engaging the orchestra for a performance, or a guest conductor or soloist)

wishes to commission and retain the copyright in an archive or promotional recording, the engager shall ensure that musicians are remunerated with an appropriate additional fee, either through negotiation with the union or based on the provisions of an existing and appropriate Collective Agreement (e.g. the Live Recording Session Fee currently set out at clause 8.1 of the BPI/MU Agreement). For the avoidance of doubt, where a recording is made by a third party in partnership with the engaging orchestra and the third party agrees that the copyright in the recording will be held by the engaging orchestra, the recording may take place under the Archive & Promotional clauses above.

- (k) The engager will inform the musician of the intention to record under the Media Work clause (including for Archive & Promotional) at the time of offering the engagement, and before it is accepted, if it is intended to record or broadcast any part of the work offered. Where this has not been feasible (for instance, in cases where an opportunity to create a promotional recording only presents itself after personnel for the project have been fixed) the engager must give reasonable advance notice of such recording to musicians. The engager must also ensure that a record of all participating musicians is kept, such that this can be used as the basis for the future distribution of payment to musicians in the event of subsequent or further commercial usage. Recordings made under the terms of the Media Work clause shall not be used by the engager to evaluate the capabilities of any musician engaged under this Agreement, except at the request of the musician.

11. Health & Safety

BCMG shall use its best endeavours to safeguard the health, safety and welfare of musicians engaged under this Agreement. Musicians engaged under this Agreement will take all reasonable care to ensure that they do not endanger themselves or anyone else who may be affected by any activity undertaken in the performance of their engagement and will co-operate with the engager in meeting health and safety requirements.

Musicians engaged under this agreement will take all reasonable care to ensure that they do not endanger themselves whilst travelling to and from engagements. Long journeys should be planned in advance to allow sufficient time for regular breaks and sufficient time should be allowed to take account of unforeseeable weather and traffic conditions and to navigate unfamiliar routes. Organisations such as the AA, MU and ROSPA recommend a 15 minute break should be taken in every 2 hours of driving.

All long journeys will incorporate access to a working toilet, either aboard the mode of transport provided or by means of reasonably scheduled comfort breaks at proper rest facilities.

12. Learning/Education and Professional Development

This agreement recognises the importance of lifelong learning and encourages and supports the development and introduction of any learning/education and professional development initiatives within BCMG, ensuring equality of opportunity and access to training regardless of position or status.

13. Delayed Payment

BCMG will inform musicians at the time of the engagement of the intended date of payment of all fees and ancillary payments properly due. BCMG will use its best endeavours to make payment to the musician, or credited to the musicians' bank account, no later than 30 days after the engagement or at the next regular scheduled date for payment runs.

14. Force Majeure

The obligations of BCMG and the musician under this agreement shall be suspended and unenforceable for so long as any of the circumstances specified as Force Majeure make it impossible or impractical. Force Majeure shall be deemed as an act or event beyond the reasonable control of BCMG or the musician, against which it is impossible or commercially unfeasible to insure or to claim compensation from a third party for, caused by:

- a) lightning, flood, storm, earthquake or any other unpredictable freak of nature,
- b) fire, explosion, accident, epidemic,
- c) strike, lockout or other industrial dispute on the part of persons employed by any person who is not a party to this agreement
- d) riot, war or acts of terrorism
- e) any act of government or other competent authority
- f) any other circumstance beyond the reasonable control of the engager or the musician and which are not caused by either the management or the musician

15. Disputes

Should any dispute arise in the interpretation of the Agreement, which cannot be settled at local level, it shall at once be referred to the Director of the Association of British Orchestras and the Assistant General Secretary of the Musicians' Union, who shall meet as soon as possible and in any case within ten days of the referral. If they are unable to agree, the matter shall be referred to a single arbitrator, being a person of standing acceptable to both parties. If agreement of an arbitrator cannot be reached within seven days the procedures shall be regarded as exhausted.

16. Duration

These Terms and Conditions shall remain in force until 31 December 2022.

Signed for the Birmingham Contemporary Music Group

Signed Jo Laverty, National Organiser Orchestras, Musicians' Union

Dated 10 March 2021

APPENDIX – Orchestra Tours in the United Kingdom

1. Definition of a Tour

A tour is an engagement which involves a musician in two or more consecutive nights away from his/her normal centre of employment.

2. Travelling Allowances

- (a) If alternative transport is not provided by BCMG, the travelling allowances set out in Clauses 6(a) and 6(d) of these Terms and Conditions shall be paid only in respect of the first and last days of the tour, that is, the days on which the musician leaves and returns to his/her normal centre of employment. For all other days of the tour, a reduced travelling allowance of **19p** per mile shall be paid for all miles necessarily travelled on land, together with reimbursement of the cost of any necessary sea or air journeys, and together with the Touring Supplement, as set out in Clause 3 of this Appendix.
- (b) Where a musician has travelled by rail, and where the relevant fare has exceeded a nominal rail allowance of **20p** per mile, an additional payment shall be made to the musician, equal to the difference between the nominal rail allowance and the actual rail fare, for that part of the journey travelled by rail.
- (c) If transport is provided and paid for by BCMG, a reduced travelling allowance of **17p** per mile shall be paid only in respect of the first and last days of the tour. For all other days of the tour, the travelling allowance is replaced by the Touring Supplement, as set out in Clause 3 of this Appendix.

3. Touring Supplement

A payment of **£21.80** per day shall be made, in addition to all other fees, and in addition to overnight subsistence where applicable, on each day of the tour, excepting the first and last days.

4. Hotels and Subsistence

Any hotel provided by BCMG shall be three-star or equivalent grade, as available, with full breakfast, and single room accommodation as available and if required by the musician. If hotel accommodation is not provided by the engager, a payment of **£70.00** per night for bed and breakfast shall be made, together with a supplement of **£25.00** when the engagement is within the area bounded by the M25 motorway.

5. Free Days

- (a) For non-working days, one-half of the musician's actual performing fee shall be paid, in addition to all other payments.
- (b) If the opening day of a tour is a non-working day, a half fee shall be payable in addition to all other payments.
- (c) If the final day of a tour is a non-working day, a half fee shall be payable only when the return time to the musician's normal centre of employment is after 1pm. 'Return time' is defined with reference to the distance to be travelled by the musician from his/her overnight accommodation to his/her normal centre of employment, a nominal departure time of 8.30am, and an average speed of travel of 50mph.

6. Morning Calls

There shall be not less than eight hours free time before the first call of any day. When a musician is required to depart from his/her overnight accommodation before 8.30am, and/or to be present at a concert or rehearsal before 8.30am, an additional payment shall be made, calculated at the rate of **£3.20** per half hour or part thereof, subject to a minimum of **£6.40**, for all necessary travelling or working time prior to 8.30am. The time of departure from overnight accommodation is defined with reference to the contracted commencement time of the concert or rehearsal, the distance to be travelled from the musician's overnight accommodation, and an average speed of travel of 50mph.