

**This agreement is dated: 1<sup>st</sup> May 2021**

**Between:**

- (1) **ENGLISH NATIONAL OPERA of London Coliseum, St Martin’s Lane, London WC2N 4ES (“ENO” or “the Company”); and**
- (2) **THE MUSICIANS’ UNION of 60-62 Clapham Road, London SW9 0JJ (“Musicians’ Union” or “the MU”) on behalf of the freelance musicians engaged to work in the orchestra of ENO (“the Musician”)**

**IT IS AGREED AS FOLLOWS:**

## **1 Definitions**

For the purposes of this agreement the following definitions apply:

- “Chamber Opera” means music written for the whole work by the composer for only 1 player to each and every part and for a group of 13 players or fewer. For the avoidance of doubt, keyboard players are included.
- “Chamber Music” means music written for the whole work by the composer for only 1 player to each and every part and for a group of 13 players or fewer and not conducted. For the avoidance of doubt, keyboard players are counted as players.
- “Final S&O” means the final stage and orchestra rehearsal of a production that are intended to be a pre-dress rehearsal run;
- “Orchestra Manager” means the person designated, from time to time, by ENO as Orchestra Manager;
- “Concert Day” means work tied to a concert performance on the same day
- "Moving base" A moving base is defined as a place of temporary stay on tour which becomes, by payment of overnight subsistence or provision of accommodation, the Musician’s temporary base location for the following 24 hours.
- “Outside work” Outside work means UK work outside of the M25.

## **2 Preamble**

No previous benefit, agreement or working practice between ENO and the MU will be regarded as precedent to be applied to this agreement or future working practices.

## **3 Duration of agreement**

The general terms and conditions of this agreement shall govern the freelance engagement of Musicians to perform with the Orchestra of ENO. The general terms and conditions will come into operation on 1<sup>st</sup> May 2021 and the provisions of Schedule 1 shall be effective from 1<sup>st</sup> May 2021 and shall continue in force until terminated in accordance with clause 19, or until revised by agreement in writing between ENO and the MU.

## **4 Financial provisions**

The financial provisions of this agreement, including freelance fees, doublings and premium payments for stage performances, are outlined in Schedule 1.

## **5 Hours of work**

5.1 All hours shall be scheduled as sessions.

5.2 Work on a statutory holiday or a Sunday shall be included within the normal work of a freelance musician playing for ENO Orchestra.

5.3 Hours worked on a statutory holiday or a Sunday shall be paid at single time.

5.4 The Musician shall attend in good time to be seated, tuned and ready to play at the stated call time as indicated by the Orchestra Manager and/or the stage manager.

### **5.5 Length of rehearsal sessions (excluding Final S&O and Dress Rehearsals)**

(a) Rehearsals other than Final S&O and Dress Rehearsals shall normally be scheduled for 3 hours.

(b) The Company can also schedule a 1 hour minimum call for sound balance / seating call, paid at a one hour rate. There will be no more than a 2 hour break between the end of the scheduled 1 hour call and the start of the next session.

### **5.6 Length of sessions for Final S&O, dress rehearsal and performances**

(a) Final S&O, dress rehearsals and performances can be scheduled in the following lengths of time:

(i) 3 hours; or

(ii) in excess of 3 hours in 15 minute blocks.

provided that the period between 3 and 4.5 hours shall be paid at single time, in 15 minute blocks, and the period scheduled in excess of 4.5 hours shall be paid at 1.5 times, in 15 minute blocks.

5.7 In the event that the actual length of a call runs for longer than scheduled, the Musician shall be paid overtime at single time in 15 minute blocks and 1.5 times for calls in excess of 4.5 hours, in 15 minute blocks.

5.8 Where reasonable the Company will schedule rehearsals excluding final stage and orchestra and dress rehearsals within the following times:

- (a) morning rehearsals: starting no earlier than 10.00 and finishing no later than 14.00;
- (b) afternoon rehearsals: starting no earlier than 14.00 and finishing no later than 18.00;
- (c) evening rehearsals: starting no earlier than 18.00 and finishing no later than 22.00

provided that the Company will use reasonable endeavours to start morning rehearsals no earlier than 10.30 unless the earlier time is necessary to meet the Company's production and/or technical requirements.

5.9 The Company will use reasonable endeavours to schedule rehearsals within zones 1 to 3 on the transport system of London unless the rehearsals relate to Outside Work where clause 9 shall apply.

## **6 Breaks**

### **6.1 Rehearsals**

The following minimum breaks will be given in rehearsals other than Final S&O and dress rehearsals:

- (a) 3 hour call – 20 minute break
- (b) 2.5 hour call – 15 minute break
- (c) 2 hour call – 10 minute break
- (d) 1 hour sound balance / seating call – no break.

### **6.2 Final S&O, Dress Rehearsals and Performances**

The following minimum breaks will be given in the Final S&O, Dress Rehearsals and Performances:

- (i) 3 hours, 20 minutes subject to clause 6.2(b);
- (ii) for calls between 3 hours and up to and including 3.5 hours, 20 minutes provided that the Company will use reasonable endeavours to schedule a break of up to 25 minutes;
- (iii) for calls between 3.5 hours and up to and including 4 hours, 25 minutes;

- (iv) for calls between 4 hours and up to and including 5 hours: two intervals, totalling 45 minutes; and
  - (v) for calls in excess of 5 hours: two intervals, totalling 50 minutes;
- (a) Such breaks will occur in accordance with the placement of breaks for the relevant performances and dress rehearsals only.
  - (b) In the event that a performance of up to 3 hours is played without an interval, the break in accordance with clause 6.2 (i) shall be deemed to occur at the end of the performance and will form part of the scheduled call.

## **7 Media**

### **7.1 Rights**

In exchange for the media payment, which for the avoidance of doubt is included within the session rates as detailed in Schedule 1, each Musician hereby:

- (a) grants and assigns to ENO the Copyright and all Performers' Rights arising in each case from all media related work made under the terms of this Agreement for the full duration of such rights, worldwide across all media whether now known or hereafter invented, and whether such rights vest under UK legislation (such as the Copyright Designs and Patent Act, 1988) or any other applicable legislation in any other country for the full period of such Copyright and Performer Rights and all renewals and extensions and thereafter as far as permissible in perpetuity, and
- (b) agrees that this is inclusive of any and all payments due or becoming due from ENO to each individual Musician and that this payment encompasses the parties to this Agreement's present assessment of equitable remuneration in respect of the rental and lending right. Notwithstanding the foregoing, nothing herein shall preclude any member of staff from receiving any payment due to them via any collecting society or similar organisation.

7.2 The Musician shall play for any media-related work in any format as part of their normal duties and the Musician shall assign to ENO all relevant assignable intellectual property rights in respect of this clause 7.

### **7.3 Audio and/or Visual**

- (a) ENO and any authorised outside party may record in sound and/or vision at any location, the performance of any programme. (hereafter referred to as a "Recording")
- (b) In the specific course of recording a staged production (hereafter referred to as a "Staged Production Recording"), up to three Performances but no rehearsals may be recorded with the exception of the Dress Rehearsal which will not be used as the live broadcast but only to correct mistakes or extraneous incidents

which do not genuinely form part of the rehearsal. Staged Production Recordings may comprise only recordings, or excerpts from recordings edited as appropriate, taken from one or more of the three recorded Performances.

- (c) Recordings (as defined by 7.3a and 7.3 b) may be:
  - (i) Released in any format on any label, as licensed by ENO
  - (ii) Made available for downloading from the ENO website, or any other website as approved by ENO
  - (i) Streamed on the ENO website or any other website as approved by ENO
  - (ii) Broadcast worldwide on TV without limit including catch up after each broadcast
  - (iii) Shown as a 'Big Screen' Relay outside the London Coliseum.
  - (iv) Shown theatrically on cinema screens in the UK and/or overseas
  - (v) Shown non-theatrically in the UK and/ or overseas
  - (vi) Released via any existing or new delivery format as they arise
- (d) For the avoidance of doubt permitted exploitation may take place at any time, regardless of the Season in which the Recording was made or released. All historic recordings are also included in this provision.
- (e) In addition, Recordings may take place in locations other than at the London Coliseum. The complete audio track of any Recording may be de-synchronised and used for all audio only distribution purposes.
- (f) ENO may use excerpts from any Recording including de-synchronised audio and visuals).
- (g) ENO may use or license excerpts from any of its Recordings for inclusion in compilation products in any of the media formats permitted. Material from compilation products may be used for promotional purposes to enhance the public presentation of any streaming of ENO productions and performances, and Big Screen transmissions.
- (h) will work to a minimum notice period of fourteen days, where possible, prior to the first recording but following such notice may vary the three performances to be recorded within the production. Any media activity remains unconfirmed until recording actually takes place.
- (i) If a third party approaches ENO to use any part of a Recording or any recorded rehearsal footage for any commercial use not covered by this Agreement, ENO shall consult with the Musicians' Union prior to such use being permitted.

#### 7.4 Audio Only Recording Session (Studio Conditions, CD/download)

Paid as per the relevant MU/BPI Agreement with a maximum of 20 minutes usable material from each 3 hour session. 30 minutes of material may be used from a 4 hour session (Long Session)

7.5 Audio/Visual recording session

Considered as part of the musician's duties with a maximum of 20 minutes usable material from each 3 hour session. 30 minutes of material may be used from a 4 hour session (Long Session)

7.6 With regard to additional footage: Such as, filming for promotional/ news / social / documentary/ L&P / advertising/ development purposes.

The ENO and/ or any ENO authorised party may record audio and/or visual at any number of rehearsals (including stage and piano rehearsals) or performances, subject to the following:

- (a) Maximum of 2 hours in total may be recorded at each of the rehearsals exclusive of any breaks. Up to 30 minutes of edited material may be used in any of the media formats permitted by clause 7.

7.7 For the purpose of clause 7, "promotional/marketing purposes" shall be defined as any activity or use that markets the Company's productions and/or is designed to increase the profile of the Company and/or its productions and/or is used to sell tickets for the Company's productions and/or any Baylis Learning Projects or the Company's other products.

7.8 Backing Track Recordings

- (a) Audio and/or Visual of a live backing track recording of up to 20 minutes' per 3 hour session of finally edited duration, for use by ENO in one of its productions, used as a last resort. ENO shall consult with the MU and Orchestra Committee on the nature (usually extraordinary circumstances or for a specific production request) and intended usage of such recordings.
- (b) Audio recording of backing Material of up to 20 minutes per 3 hour session of finally edited duration may be used for "live" Development, L&P or Promotional events such as West End Live.

7.9 New Technology

The Company shall be entitled to make, within the Musician's sessions, media recordings on a speculative basis for the purpose of testing new technology, which may be used at a later date if successful. Such future use shall be subject to the prevailing MU Collective Bargaining agreements and rates where appropriate.

7.10 Academic research and development

No additional payments will be made for the use in perpetuity by ENO and its successors in title, licensees and assigns of any recording allowed under this agreement in any and all media and/or format now known or hereafter devised throughout the world for research and development purposes. ENO confirms that any recording made pursuant to this clause may not be used to promote the business of

any of ENO's research and development partners, save for the product the subject of the research and development.

7.11 ENO will also be able to record other work-related in contract activities which might fall outside the categories of Performances or Rehearsals including (but not limited to) front of house, Development events, Baylis events and other activities that take place both at the London Coliseum and in other locations. Such material may be used by ENO at its discretion.

7.12 Chamber Music will only be recorded if mutually agreed.

7.13 Patch Sessions  
Shall only take place by mutual consent with the relevant performer group(s) involved.

7.14 Recording of soundtracks/jingles for commercial purposes within contracted hours.

Any recordings of sound tracks and/or jingles for commercial purposes will be paid as per the prevailing MU Collective Bargaining Agreement rate.

7.15 Recordings for archive and reference  
Notwithstanding any other provision of this Agreement, ENO reserves the right to make an Archive recording of any work at any session. Such recordings are intended strictly for archive purposes including but not limited to use as reference materials, as an aid for ENO and any artist, production staff or creative for the purpose of preparation for reviving productions at a later date, as research and/or study record of the activities of ENO and for use in archival exhibitions. For the avoidance of doubt, it will be possible to send archive recordings to potential co-producers or those wishing to hire productions. No Archive recording will be used commercially or for broadcast.

7.16 Learning and Participation (L&P)  
ENO may set up and record other work-related in contract activities for the specific purpose of recording material for L&P, not necessarily part of the repertoire being performed in the current season. It may be used in any media format and as such attract no additional payment.

7.17 Capability  
The recordings/output produced as a result of this clause 7 shall not be used for the evaluation of the performance of the Musician.

7.18 ENO shall make all reasonable efforts to prevent unauthorised use of any recording. In the case of unauthorised use of recordings ENO will promptly, on becoming aware notify the third party of the infringement and will take all reasonable steps to ensure such infringement is rectified. This may include reporting the unauthorised use to a webhost such as YouTube, for example, under its take-down procedure.

7.19 Music Director / Head of Music liaising with the Orchestra Leader (Or another appropriate person) on all approval processes needed for digital content.

7.20 A running log for media will be kept by ENO to monitor the use of the different media types over time.

## **8 Stage Bands**

Musicians may be required to perform in stage bands, either on or off stage, as the work demands and payment for such work shall be in accordance with Schedule 1.

(b) In the event that a Musician is required to play an instrument on stage, in view of the audience the Company may ask the Musician to agree to: (i) remove facial hair (beards, moustaches etc) for a particular production; or (ii) have his/her hair cut or styled.

(c) In the event that a Musician appears in costume for a production the Musician may be required to have his/her photograph taken in costume/wig/makeup for wardrobe/production record purposes. This may occur during a costume rehearsal or a performance.

## **9 Dress code**

a) Dress code for performances and on occasion dress rehearsals will normally be smart "all black" (black shirts and trousers for men, black top and trousers or skirt, or black dress, for women). Jeans or faded black do not constitute acceptable dress.

b) If requested by the Company other dress codes may be required including but not limited to dinner suits, tails, long black. For the avoidance of doubt a dress code differs from a costume, as a costume is for stage band when it is designated as so in the score.

## **10 Touring and performance work outside of the M25.**

10.1 The arrangements in respect of travel and subsistence for UK touring and for performance work by the Orchestra outside of the M25 shall be in accordance with Schedule 4.

10.2 A UK tour is defined as an engagement which involves the Musician in two or more consecutive nights working for ENO outside of the Home Counties in the United Kingdom.

10.3 Subsistence rates for UK as per Schedule 4. Subsistence rates for International touring will be negotiated and agreed with the Musicians' Union in consultation with ENO.

## **11 Notice of calls/ cancellations**

11.1 If any call is cancelled by the Company at less than 28 days' notice, the Musician shall be entitled to be paid in full for such cancelled call(s).



11.2 In the event that a call(s) is(are) cancelled at less than 28 days' notice, the Musician shall remain available to the Company. If the Musician chooses not to remain available, no payment shall be made.

## **12 ENO Learning and Participation (L&P) work**

This agreement does not apply to work offered to the Musician by ENO L&P department. The rates of pay for ENO L&P work will be given at the time of booking.

## **13 Porterage**

13.1 Porterage rates are set out in Schedule 1.

13.2 A full porterage payment shall be due for the instruments listed in paragraph 6 of Schedule 1 for each day of engagement to work at the London Coliseum. If the instrument is stored at the Coliseum then porterage is only due once removed from the building.

13.3 Where the Company does not arrange to transport, the listed instruments (as per paragraph 6 of Schedule 1) from London Coliseum to places of Outside Work the Musician shall be paid porterage payments for transporting each listed instrument per Schedule 4:

13.4 A full porterage payment shall be due for each day of Outside Work except where the Musician chooses to leave his/her instruments in situ overnight at an Outside Work 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. The venue concerned must be secure.

13.5 The payments under paragraphs 12.1 and 12.2 of this Schedule do not apply when the Company makes arrangements to transport the instruments, unless the Musician is required to bring the instruments to a pick-up point nominated by the Company, in which latter case porterage payments shall be due in full.

13.6 In cases where air travel within the UK is provided by the Company and it is agreed between the Company and the Musician that special arrangements are necessary for the safe transportation of instruments listed Schedule 1, any additional costs in respect of transportation of these instruments will be covered by the Company.

## **14 Deputies**

No Musician may engage a deputy unless permission is obtained from the Orchestra Manager in advance.

**15 ENO Rules**

The Musician is obliged to abide by the rules and policies of ENO. The rules and policies of ENO may be amended from time to time and are available upon request from the Orchestra Manager and/or the People Department.

**16 Health and Safety**

ENO, the MU and the Musician shall at all times cooperate with the implementation of ENO’s Health and Safety policies in accordance with the prevailing Health and Safety legislation including the Health and Safety at Work etc Act 1974 (as amended) and the Control of Noise at Work Regulations 2005.

**17 Employment Status**

Nothing in this agreement shall be construed as giving rise to a contract of employment between the Musician and the Company. The Musician shall not be entitled to Company benefits, including but not limited to sick pay, pension contributions or loans.

**18 Date of Payment**

Extra Musician payments run on a four weekly basis, more information is available upon request from the Orchestra Manager. The Company will use its best endeavours to credit the Musician’s bank account no later than 30 days after the engagement or at the next regular date of scheduled payment runs.

**19 Insurance**

Musicians shall be responsible for providing and paying their own instrument insurance.

**20 Termination of agreement**

This agreement may be terminated by either party giving to the other thirteen weeks’ notice in writing.



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Richard Meads  
Director, Music Department  
English National Opera  
Signed 25/02/22

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Jo Laverty  
National Organiser Orchestras  
Musicians’ Union  
Signed 25/02/22