

An Agreement
between
ESO (2006) Limited
Also trading as English Symphony Orchestra
&
the Musicians' Union



1. Preamble

The terms and conditions of this Agreement shall be regarded as having come into force on 1st September 2021 and shall govern freelance engagement of musicians by the English String Orchestra/English Symphony Orchestra (ESO). The fees shown in clauses 2 to 7 below are inclusive of a holiday pay contribution of 12.1%.

2. Concerts, Sessions and Rates

2.1 Concert Days

Concert Days (i.e. a day where a concert takes place) will always consist of a Concert as defined in 2.3 below, and may include one rehearsal of up to 3 hours' duration with a break of not less than 20 minutes, i.e. a Standard Session as defined in 2.2 below. The rates for a Concert Day shall be as follows:

	Sep-21	Mar-22	Sep-22	Mar-23
Tutti	£118.40	£121.40	£124.50	£127.70
Sub Principal	£122.70	£125.80	£129.00	£132.30
Principal	£140.00	£143.50	£147.10	£150.80

Where more than 3 hours rehearsal on a Concert Day is required, the individual session rates as shown below at 2.2 will be applied to the rehearsal subject to conditions as per 2.3.

2.2 Session Rates

Minimum rates for individual sessions as defined by duration at 2.4 below shall be paid as follows:

<u>Standard Session</u>	Sep-21	Mar-22	Sep-22	Mar-23
Tutti	£59.20	£60.70	£62.25	£63.85
Sub Principal	£61.35	£62.90	£64.50	£66.15
Principal	£70.00	£71.75	£73.55	£75.40
<u>Long Session</u>				
Tutti	£89.35	£91.60	£93.90	£96.25
Sub Principal	£92.60	£94.95	£97.35	£99.80
Principal	£105.50	£108.15	£110.90	£113.70
<u>Short Session</u>				
Tutti	£47.40	£48.60	£49.85	£51.10
Sub Principal	£49.55	£50.80	£52.10	£53.45
Principal	£56.00	£57.40	£58.85	£60.35

2.3 Concerts

A Concert will always be defined as being 3 hours in length and will be treated as a Standard Session as in 2.1 above as per a concert day. Any concert lasting over 3 hours will be subject to overtime as per clause 4, and will not be subject to the Long Session rate, except in the case of concerts with an extended interval which shall be treated as a Long Session. Such concerts lasting over 4.5 hours will be subject to overtime.

Contracted days in which a concert takes place will always be paid as consisting of no less than 6 hours (2 Standard Sessions). It is understood that scheduling more than 7.5 hours' session time on a concert day (except where the concert contains an extended interval) is to be avoided where possible; if further session time is required this must be discussed and agreed with the Musicians' Union well in advance.

2.4 Sessions

- **Standard Session** - A Standard Session is defined as a rehearsal or recording session of up to 3 hours' duration with a break of not less than 20 minutes.
- **Long Session** - A Long Session is defined as a rehearsal or recording session of up to 4.5 hours' duration with 2 breaks totaling not less than 30 minutes.
- **Short Session** - A Short Session is defined as a rehearsal or recording session of up to 2 hours' duration with a break of not less than 10 minutes.

Where 2 long sessions are called in one day there shall be a break of at least 90 minutes between sessions.

A Short Session may only be called on days which contain a minimum of two Standard sessions.

2.5 Maximum Call Time/Rest

There shall not be more than a total of 9 hours' session time scheduled in any one day. Days which contain 3 sessions will have a minimum 1.5 hour rest period scheduled between two of the sessions designated as a meal break.

2.6 Single Call Days

Where only one of the above sessions is offered on any given day, the following minimum rates apply:

<u>Single Call Days (Standard Session)</u>	Sep-21	Mar-22	Sep-22	Mar-23
Tutti	£89.35	£91.60	£93.90	£96.25
Sub Principal	£92.60	£94.95	£97.35	£99.80
Principal	£105.50	£108.15	£110.90	£113.70

<u>Single Call Days (Long Session)</u>	Sep-21	Mar-22	Sep-22	Mar-23
Tutti	£94.75	£97.15	£99.60	£102.10
Sub Principal	£97.95	£100.40	£102.95	£105.55
Principal	£111.95	£114.75	£117.65	£120.60

Single Call rates shall not be applied to concerts; the full rate for a Concert Day as defined at 2.1 is always payable even if the concert is the only scheduled session on any given day.

3. Schools, Educational and Outreach Concerts

	One concert with or without rehearsal within a spreadover of 3 hours			
	Sep-21	Mar-22	Sep-22	Mar-23
Tutti	£71.05	£72.85	£74.70	£76.60
Sub-Principal	£73.20	£75.05	£76.95	£78.90
Principal	£83.95	£86.05	£88.25	£90.50

	Two concerts with or without rehearsal within a spreadover of 6 hours			
	Sep-21	Mar-22	Sep-22	Mar-23
Tutti	£118.40	£121.40	£124.45	£127.60
Sub-Principal	£122.70	£125.80	£128.95	£132.20
Principal	£139.95	£143.45	£147.05	£150.75

4. Overtime

Time in excess of the length of any Session as defined above shall be paid at 1½ times of the Standard session rate (time-and-a-half) pro rata for each half hour or part thereof up to a maximum of 1 hour. For the avoidance of doubt, time-and-a-half is defined as one quarter of the Standard session rate for each half-hour unit.

5. Doubling

Where a musician is required to play more than one instrument an additional payment of 10% of the musician's fee will be made (including any overtime) in respect of each additional instrument.

Keyboard and percussion instruments are divided into the following sub-groups and doubling fees will not be payable for playing more than one instrument with the same sub-group.

Keyboard Instruments

- a) piano
- b) celeste, dulcitone
- c) organ, harmonium, multitone, mustel organ
- d) harpsichord, spinet, clavichord, virginals

Percussion Instruments

- a) tuned (mallet) instruments (vibraphone, xylophone, marimba, glockenspiel, tubular bells)
- b) Latin American rhythm instruments
- c) drums (bass drum, snare drum, tom-toms cymbals and the usual small accessories)
- d) timpani (up to 4 drums)

6. Portage

Portage payments shall be due for each rehearsal or concert day except when a musician chooses to leave his/her instrument overnight at a venue (when that venue is the final call of the day and the first call of the next day). Portage payments shall not be due when the Orchestra management makes arrangements to transport the instrument, unless the musician is required to bring the instruments to a pick-up point.

	Sep-21	Mar-22	Sep-22	Mar-23
Cello, Contra Bassoon, Tuba Bass Clarinet + 1 other instrument Trombone + 1 other instrument French Horn + 1 other instrument	£16.15	£16.60	£17.05	£17.50
Double Bass	£19.40	£19.90	£20.40	£20.95
Harp	£48.45	£49.70	£50.95	£52.25

Harpsichord, Timpani and other large percussion instruments are subject to individual negotiation.

7. Travel

Payments will be made in accordance with the following rates:

- a. If the round trip for an engagement is at a venue which is over thirty miles from the recognised central point of the musician's normal centre of employment (usually home) and alternative transport is not provided and paid for by the engager, a travelling allowance of **30p per mile (rising to 33p per mile from 1 September 2022)** 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 the engager, a reduced travelling allowance of **15p per mile (rising to 17p per mile from 1 September 2022)** shall be paid.
- c. When air travel within the UK is provided and paid for by ESO, the travelling allowance shall be limited to a one-off payment of **£22.40** for those parts of the journey travelled in order to fulfil the engagement.

- d. Where the engagement necessarily involves a sea journey, and the relevant fare has not been paid by ESO, the actual cost of the sea journey shall be reimbursed to the musician. For all engagements necessarily involving a sea journey, the musicians shall also be paid an allowance of **£9.30 per hour** or part thereof (up to a maximum of **£37.35**) based on the scheduled length of time of the sea journey. These payments are in addition to the payments due for miles necessarily travelled on land.
- e. In cases of dispute, the shortest recommended Google mileage shall be taken as the authority for distances.

Where appropriate, travel allowances are inclusive of an 'early start' or a 'late return' supplement.

8. Broadcasting & Recording

The musician, on acceptance of a live engagement under the Terms and Conditions of this Agreement, accepts and recognises that the concert performance and all associated rehearsal/patching sessions may be recorded or broadcast by audio and/or visual means subject to limitations and uses outlined in Appendix 1 of this Agreement, without further payment over and above that due under Clauses 2 to 7 inclusive of this Agreement.

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 engagements carried out under this Agreement where conventional instrumentalists may be reasonable or traditionally expected to be used.

10. Cancellation and Schedule Changes

At least 28 days notice is required to cancel any sessions on which musicians have been engaged under this Agreement unless consent is given by a supermajority (two thirds) of the members of the orchestra to a cancellation caused by extraordinary circumstances (eg the bankruptcy of an engaging venue or hirer). After this time the full fee plus appropriate doubling payments must be paid, in addition to any travel expenses already incurred by the musician at the time of cancellation, on production of receipts.

At least 14 days notice is required for changes to the schedule, including additional sessions (on the same day as already booked sessions) or alteration of start/finish times.

11. Force Majeure

If, due to exceptional circumstances, a concert engagement is cancelled at short notice and the musician has been informed of the cancellation prior to commencing his/her journey to the engagement, no fee shall be payable to the musician provided the Orchestral management offers an alternative engagement to the musician in place of the cancelled concert. In the event of the musician having commenced his/her journey when the cancellation is advised, a full travel payment will be made but no concert fee shall be payable providing an alternative date is offered. In the context of this clause, 'exceptional circumstances' shall be defined as any circumstances beyond the reasonable control of

the Orchestra management which prevent the due performance of a concert engagement including but not limited to war or hostilities; riot or civil commotion; epidemic; earthquake, flood, snow or other natural disaster; national mourning; fire; strikes; lockouts; or by order of any Public Authority.

12. Disputes

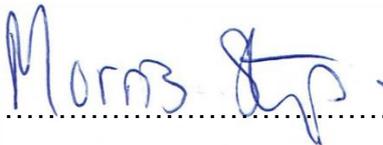
Should any dispute arise in the interpretation of this Agreement which cannot be settled at local level, it shall be referred to ACAS for arbitration.

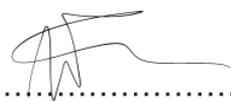
13. Union Membership

The Management recognises the Musicians' Union as the sole representative organisation for musicians and strongly recommends all musicians to become or remain members of the Union.

14. Duration

These terms and conditions shall remain in force until 31st August 2023, with a review of Media Clauses at the end of August 2022

Signed for the Musicians' Union

Signed for ESO (2006) Ltd

Date 23 November 2021

Appendix 1: Media Broadcasting & Recording Consent

All musicians rehearsing and performing for English Symphony Orchestra agree to give consent to have their performances recorded, without additional payment above what is due under Clauses 2-9 inclusive of the main Agreement, subject to the following conditions.

Notice of agreement to consent must be informed to all musicians prior to engagement, ideally this should be done at the time the musician is engaged (especially in case of extras and deputies). Use of any such recording is subject to either:

- Clause (1) “ESO Live Concert Streaming” or
- Clause (2) “ESO In-house / Partner / Third-Party Partner Recording” or
- Clause (3) “Commercial Recording”, and/or
- Promotional / EPK / Archive / News Access uses (as below)

List of Participating Musicians

The ESO shall make and maintain an accurate list of all the members of the orchestra who perform on each recording made under this agreement so as to assist collecting societies in identifying those members of the orchestra whose performances are on a particular Recording.

Equitable Remuneration from Collecting Societies

This agreement is without prejudice to the musicians’ rights to receive a share of equitable remuneration from domestic or foreign collecting societies for the broadcast or public performance of their recorded performance(s) pursuant to national legislation.

Promotional / EPK

ESO recognises the need to embrace existing and emerging technologies and making the most of promotional opportunities, whilst at the same time protecting the rights of musicians and copyright holders of musical works.

Use of in-house recording is allowed, without further payment, to promote the orchestra or the recording itself. However, duration of such use shall be limited to a maximum of 20 minutes aggregate length. No single musical piece, however short, may be used in its entirety.

Promotional / EPK recordings may be used by ESO for its own publicity material including its own website, artist profiles, arts and culture themed programming where the orchestra is featured and may include free and non-commercial presentation by ESO to promote ticket sales for the concert(s) for which the Musician has been engaged under this Agreement.

Promotional / EPK recordings shall not be used for the evaluation of the performance of any musician.

For sake of clarity, where a Commercial Recording (Clause (3) below) is made for or by a third party, promotional use will be as defined within the appropriate MU collective bargaining agreement.

Archive

ESO may make an archive recording of a performance, without payment to musicians, which will be retained by the orchestra. This recording will not be shared externally with the exception of (i) research purposes, (ii) “featured artists” to include composers, soloists and conductors for their own study, (iii) for purposes of reporting to funders (where required), (iv) for purposes of education. Archive recordings should not be made available online. Recordings will, where possible, be watermarked throughout their duration to deter unauthorised uses.

News Access Code of Practice

ESO will adhere to the latest MU News Access Code of Practice when a request is made by a news organisation to record material from a current rehearsal or performance in connection with a topical news story. A maximum of ONE minute featured performance and/or ONE minute non-featured (eg under a voice-over) performance usage is allowed from a maximum camera recording time of ONE hour. There is no payment for News Access.

ESO Digital – Definition

ESO Digital is the ESO’s own in-house online platform for streaming performances and recordings. It is available for free to those who are regular donors to the Orchestra (ESO Digital Supporters), and supporters can access previously limited-time streamed content (subject to license), live streamed concerts, and other ‘behind-the-scenes’ recordings and interviews with artists involved through an archive available to them once they have logged in to their ESO Digital account.

1. ESO Live Concert Streaming

ESO shall be entitled to record and stream their concerts in full, live on the ESO Digital platform only. The live concert recording can then be made available on ESO Digital, for a maximum of 4 days after the original performance. After 4 days availability on ESO Digital, the recording must be removed from the platform.

The live streamed concerts must not be marketed or made available as ‘ticketed’ for online viewing, and are solely accessible to ESO Digital supporters as part of their donation.

Live concert recordings should not be used for Archive purposes

2. ESO In-house / Partner / Third-Party Partner Recording

ESO are entitled to make a total of 12 recordings under Clause 2 (Appendix 1) between 1st September 2021 and 31 August 2022, without media fees due to the musicians, subject to the following:

Each of the individual recording units grant one specific usage. Where more than one use under Clause 2 (Appendix 1) is required, a further recording unit must be allocated.

Example; an ‘ESO In-house Recording’ is to be made available on ESO Digital, but will also be released commercially as a ‘Partner Recording’. This would count as two recordings.

Musicians will be entitled to 'Commercial Recording' fees under Clause 3 (Appendix 1) for any recordings made under Clause 2 (Appendix 1), which are created subsequent to the 12 recordings allocation.

- a) **'ESO In-house Recording'** refers to any recording (audio or audio visual) of a performance or rehearsal featuring the ESO, specifically produced under its own auspices, and retaining copyright in the recording.

'ESO In-house' recordings can be made available on ESO Digital. These recordings can also be made available on a free-to-view digital platform for a maximum of 4 days, subject to a payment of £1 per musician, per recording.

- b) **'Partner Recording'** refers to an audio recording of a performance featuring the ESO, that is commercially released by a third party via licence, but where ESO retain copyright in the recording.

- c) **'Third-Party Partner Recording'** refers to any recording (audio or audio visual) of a performance or rehearsal by a third-party party producer featuring the ESO, where the orchestra has been contracted to record for a commercial release. The third-party producer will retain the copyright in the recording, but must agree to pay the musicians under the 'Commercial Recording' terms in Clause 3 (Appendix 1) if income from the commercial release surpasses breakeven point.

A standard 3 hour recording session under Clause 2 grants a maximum of 20 track minutes.

PERFORMERS RIGHTS

For any recordings made under Clause 2, ESO shall acquire the right to use the recorded performances of musicians embodied in the recording/s in the specific media stated above only, worldwide in perpetuity. Except in the case of option 'c)' where these rights will be granted to the Third-Party.

Musicians will be deemed to have consented to ESO to allow copying of the recording, issuing of copies to the public, rental or lending to the public, and/or making available to the public. Except in the case of option 'c)' where these rights will be granted to the Third-Party.

If further use is made of any such recording for sync or any backing track use, then the Musicians' Union retains the right to negotiate and collect secondary payments from any production company or agency and subsequently distribute royalties to musicians as per the MU Royalties policy.

Any dispute regarding further use or licensing of a recording will be referred to the Musicians' Union.

Musicians' performing rights will not be assigned in any circumstance without prior written agreement with the Musicians' Union.

3. COMMERCIAL RECORDING

'Commercial Recording' refers to any recording of a performance or rehearsal by a third-party producer featuring the ESO, where the orchestra has been contracted to record for:

- Commercial CD / Digital audio or audio-visual release (where the ESO does not retain copyright in the recording and income surpasses breakeven point)
- Film soundtrack
- Television incidental music (including signature tune)
- Music for Advertising / Branding / Idents
- Library purposes
- Any other use from which flows commercial gain

All 'Commercial Recording' shall be subject to MU Collective Bargaining agreements and rates. Any adjustment or variation of rate is subject to negotiation with the Musicians' Union.

MU Collective Bargaining agreements include:

- PACT / MU Agreement Independent Production Film/TV
- BPI / MU Agreement Commercial Audio
- IPA / MU Agreement Advertising
- LPAG / MU Agreement Library
- BBC / MU Agreement BBC TV and Radio
- ITV / MU Agreement ITV

PERFORMERS RIGHTS

Performers rights are dealt with under each separate MU collective bargaining agreement.