

# **Media Agreement for Ds & Es with the Orchestra of the Royal Opera House (Updated 1 September 2018)**

Deputy and extra players (Ds & Es) playing with the Orchestra of the Royal Opera House will be paid a media fee for every hour, or part thereof in 15 minute increments, they work with the OROH. This hourly fee buys the rights in this Agreement. The fee is payable by the ROH irrespective of whether media exploitation takes place on any production on which any deputy or extra player performs.

This Agreement will run from 1 September 2018 until 31 August 2019 and on a continuing basis thereafter. If either party wishes to withdraw, notice to withdraw must be submitted before 1 March 2019 and will take effect from 31 August 2019, or from any subsequent 1 March date, to take effect from the following 31 August.

## **1 Audio –Visual Capture and Use – Performances**

The ROH and/or authorised third parties may record any performance subject to the following:

- 1.1 For any one production, up to 3 performances but no rehearsals may be recorded. The final AV Recorded Production may include edited extracts from each of the 3 recorded performances.
- 1.2 AV Recorded Productions may be:
  - Broadcast worldwide on TV without limit including catch up after each broadcast
  - Relayed to Cinemas worldwide
  - Relayed to Big Screens worldwide
  - Released in any format (including but not limited to DVD, downloading and streaming)
  - distributed for non-theatrical use worldwide
- 1.3 Excerpts of featured music of up to 10 minutes duration from an AV Recorded Production can be incorporated into any of the media formats permitted under this Agreement or publicity/promotional material.

## **2 Audio-Only Capture and Use - Performances**

- 2.1 The ROH and/or authorised third parties may record any performance for unlimited radio broadcast including catch up after each broadcast and for streaming on the BBC website, or any other ROH authorised website other than third party commercial streaming services, subject to the following:
- 2.2 Up to 3 performances but no rehearsals may be recorded. The final AO Recorded Production may include edited extracts from each of the 3 recorded performances.

- 2.3 Excerpts of featured music of up to 10 minutes duration from an AO Recorded Production can be used in any of the media formats permitted under this Agreement for documentary, bonus and/or publicity/ promotional material.
- 2.4 The complete audio track of any AV Recorded Production recorded under 1.1 may be de-synchronised and used for all AO distribution purposes under Clause 2.
- 2.5 The broadcast recording may later be released for download and/or as a CD in accordance with the terms and conditions of the Media Agreement for the Orchestra of the Royal Opera House as of 1 September 2015.
- 3 **Previously Recorded Productions**  
Further exploitation of any existing recording made prior to 1 September 2007, for example DVD release of productions previously broadcast by the BBC, will attract further use payments in accordance with the agreement under which the original recording took place.
- 4 **Notice of Recording**  
Provisional notice of any planned recording will be issued at the time of booking or as soon after that as the necessary information is available to the Orchestra Manager.
- 5 **Compilations**  
The ROH may use or license extracts from any of the AV or AO Recorded Productions above to be re-packaged for inclusion in compilation products in any of the media formats covered by this Media Agreement and for publicity/promotional purposes to enhance the public presentation of ROH cinema and Big Screen transmissions.
- 6 **Exclusions**  
If a third party approaches the ROH to use any part of an AV or AO Recorded Production for any commercial use not covered by this agreement, for example TV advertisements and jingles, the ROH will negotiate an appropriate rate with the MU.
- 7 **Patch Sessions**  
Patch Sessions will not take place.
- 8 **Capture and Use – Additional Rehearsal Footage**  
The ROH may occasionally record at a rehearsal (excluding Orchestra Alone rehearsals save where agreed in advance by the Orchestra Committee) for use in any of the media formats permitted by this Agreement. A maximum of 2 hours in total may be recorded at each of these rehearsals and excerpts of up to a maximum of 10 minutes duration may be used.
- 9 **Publicity / Promotional Use**  
The ROH may use any AV or AO recorded material, without restriction and without further payment, for publicity/promotional purposes where that purpose is in the interests of the ROH and/or its artists.
- 10 **News Access**

This Agreement recognises the MU News Access Code of Practice as governing the arrangements for news access.

## **11 Learning & Participation**

- 11.1 The ROH may use, with no additional payments, the AV or AO Recorded Productions including interactively and/or in non-linear form or excerpts as above for the purposes of furthering its learning & participation programme.
- 11.2 Recorded music will not be used in substitution for live music where musicians may reasonably expect to earn a live fee, nor for any commercial gain.

## **12 Scratch Recording**

- 12.1 AV and AO scratch recordings including but not limited to camera rehearsals, radio rehearsals and sound balances may be made of any production. This is to assist creative teams to finalise production details and to prepare for the recording of performances for further exploitation.
- 12.2 Scratch recordings can be recorded at any rehearsal except Orchestra Alones, and during public performances.
- 12.3 All scratch recordings must be destroyed within 24 hours after the final performance of the production to which they relate.
- 12.4 No material from any Scratch Recording may be edited into a final recorded product.

## **13 Technical and Reference Archive**

- 13.1 The ROH may make an archive recording of any production. The recording may be made at a General rehearsal or a performance.
- 13.2 No archive recording will be used commercially. They are intended strictly for archive purposes and/or as an aid to reviving a production at a later date.

## **14 Private Distribution**

- 14.1 The ROH agrees that the terms of this Clause shall govern the use of audio-visual and/or audio recordings made under the terms of this Agreement for private distribution. Nothing in this Clause 14 shall restrict the rights of the ROH in respect of the public release of recordings (in whole or part) under the terms of this Agreement.
- 14.2 Copies of recordings made available under this Clause must be clearly marked with the following (i) “Not for Distribution” and (ii) “For return to [the relevant ROH Manager] [insert date]”
- 14.3 Copies of recordings made available under this Clause must include an appropriate spoiler.
- 14.4 Recordings for Release

The ROH may make available upon request by a relevant creative and/or artist a copy of any audio-visual and/or audio recording featuring their work intended for incorporation into a recording for public release under the terms of this Agreement. The ROH must use its best endeavours to ensure that any such copy is returned to the appropriate ROH Manager by the later of (i) the final performance of the run of performances to be featured in the relevant recording and (ii) completion of post-production for release of the relevant recording.

#### **14.5 Scratch Recordings**

The ROH must ensure that scratch recordings created under Clause 12 are only used by relevant (i) film production staff and (ii) artists and creatives featured in such scratch recordings for purposes preparatory to the creation of a production, or a recording for public release under the terms of this Agreement.

#### **14.6 Archive Recordings**

Notwithstanding any other provision of this Agreement, the ROH may make archive recordings available to (i) production staff, artists and creatives for the purpose of preparation for revivals and/or tours (ii) for business to business purposes including for the promotion of ROH tours, hires and co-productions and (iii) as a reference for hirers and co-producers of ROH productions.

### **15 Capability**

The ROH may not use any of its recordings for the purposes of assessing the performance or the capability of any musician.

### **16 Exclusions**

If a third party approaches the ROH to use any part of any A-V or A-O Recorded Production or any recorded rehearsal footage for any commercial use not covered by this Agreement, the ROH shall make such payment to each player as the MU and Orchestra Committee shall have agreed in writing prior to such use being permitted.

### **17 Rights - Media Fee**

**17.1** In exchange for the Media Fee payable under the terms of this Agreement, each individual deputy and/or extra engaged to play with the Orchestra of the Royal Opera House hereby:

**17.2** Grants and assigns to the ROH the Copyright and all Performer Rights arising in each case from all recordings made under the terms of this Agreement for the full duration of such rights, worldwide, 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, and

**17.3** Agrees that the Media Fee is fully inclusive of any and all payments due or becoming due from the ROH to each individual deputy and/or extra, 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 deputy and/or extra from receiving any payment due to them via any collecting society or similar organisation.

17.4 In respect of AV capture, the Media Fee will be payable for the 14 productions scheduled for capture in any one season under the media agreement for the OROH, after which the terms of s.18 below will apply.

**18. Audio Visual Rights beyond the 14th production in a season - PACT fee**

18.1 From 1<sup>st</sup> September 2018, where a production is confirmed as a 15<sup>th</sup> (or subsequent) title (as defined under s.3.1 OROH media agreement, dated 1st September 2018), the following terms will apply to Extra and Deputy (E&D) players engaged to work on that production.

18.2 The E&D player will be paid the appropriate PACT fee for each AV recording on which they work, less the total value of the media uplift fees which they have, or will receive, for working on that production.

18.3 Where the player is engaged to work on 2 AV recordings for the same production, 50% of the total value of the media uplift will be applied to each AV PACT fee.

18.4 Where the player is engaged to work on 3 AV recordings for the same production, 33.3% of the total value of the media uplift will be applied to each AV PACT fee.

18.5 The residual PACT fee owed will be noted on the PACT form, which will be handed to the relevant E&D player to sign at the end of the production (once it is known what the full value of their media uplift is for that production), with a brief covering note explaining how the fee has been calculated.

18.6 The ROH will acquire the rights specified on the PACT form in exchange for payment of the residual PACT fee.

18.7 Any additional rights purchased under PACT at a later date would be bought at the relevant percentage of the original full PACT rate.

Signed:

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**Jane Crowther**  
Human Resource Director,  
Royal Opera House

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**Morris Stemp**  
Orchestras Official  
Musicians' Union

Date:

Date: