

BBC/ISM TELEVISION AGREEMENT 2008

This Agreement dated 1st April 2008 sets out the terms and conditions agreed between the BBC and the Incorporated Society of Musicians for:

A the engagement of ISM Musicians:

- instrumental and vocal solo musicians (except solo singers in staged performances of opera or in light entertainment productions)
- conductors of symphony, chamber, opera and ballet orchestras, chamber ensembles and choirs
- piano accompanists (but not rehearsal pianists)
- church musicians

for the purposes of production of audio-visual content for television transmission and for other use in the BBC's Public Services

B the commercial distribution of audio-visual content containing recordings of performances given by ISM Musicians made in accordance with this Agreement and with previous television agreements between the BBC and the ISM.

This Agreement cancels and replaces all previous television agreements between the BBC and the Incorporated Society of Musicians.

SECTION	1. Engagements: all ISM Musicians except Church Musicians
	2. Transmission of Public Concerts
	3. Church Musicians
	4. Signature Tunes, etc.
	5. Incidental and Featured Music - Multi-Episodic
	6. Education Programmes - Special Fees
	7. Further use in BBC Public Services – repeats and other uses
	8. Extracts, etc. Cross Media Usage, News Access, Trailers etc.
	9. Commercial Distribution
	10. E.B.U. and O.I.R.T. Fees
	11. Allowances
	12. Duration, Enforceability

SECTION 1

100 Engagements: all ISM Musicians except Church Musicians

101 Work entitlement for the Fee

The performance fee covers the broadcast, or pre-recording for a deferred broadcast, and rehearsal on the day of performance, or rehearsal on the day prior to the day of performance when the performance starts not later than 1.00pm provided that any such performance ends by not later than 2.00pm. If the performance starts after 1.00pm then a rehearsal(s) on a prior day must be paid for. The performance fee also covers voluntary rehearsals held mainly for coaching purposes which are arranged to suit the convenience of the artist and not required by the BBC. Recording and rehearsal may be alternated as required.

102 Hours of Work for the Fee

10 hours in 12 on the performance day. When the performance takes place before 1.00pm work may start at 9.00am on that day, preceded by not more than an aggregate of 4 hours work on the previous day.

Alternatively work may start at 8.00 am on the performance day but either the rehearsal time on the previous day must be reduced by one hour or the performance time end one hour earlier than detailed above and in 101.

103 Minimum Fees

Network: £349

Opt-out: £213

104 Short Session

One Day's Work in Certain Programme Categories

Minimum fee

- (i) A fee of not less than £213 Network, £158 Opt-Out, shall apply to one day's work in programmes of the following categories: Education, Religious, Documentary, Instructional, Drama (out of vision), Critical and Magazine.

Note: In relation to the category "Drama (out of vision)" this paragraph is restricted to music which the drama requires to be performed as opposed to incidental background music.

- (ii) In the case of Documentary and Religious programmes, the transmitted item(s) may not altogether exceed 25% of the transmitted time of the whole programme.

- (iii) Hours of Work: The fee covers 5 hours work in an overall period of 6 hours during which rehearsal and performance may be alternated as required to provide for transmission of a maximum aggregate of 10 minutes material.
- (iv) For these purposes, a Documentary programme is defined as "A documentary in the accepted sense of the term including programmes about current life or people or objects or about a particular person but excluding programmes in which the dramatised element is more than 25% of the total transmitted programme time."

Overtime

Is only permitted in cases of emergency, and is then payable at £33 for each 10 minutes or part thereof by which the 5 or 6 hour overall period is exceeded. Payment of overtime does not permit the extension of the aggregate amount of material transmitted.

105 Additional Attendance Days for the Same Programme

Artists whose performance fees exceed £1,834 in television do not qualify for Additional Attendance Day fees, as the negotiated performance fee will cover any additional attendance days which may be required. Other artists are eligible for payment for Additional Attendance Days on a daily basis of not more than an aggregate of 6 hours work in 8 hours. Rehearsal and pre-recording alternating as necessary may take place on Additional Attendance Days as required. Any requirement for recording on additional attendance day(s) shall be taken into account in light of all the circumstances when assessing the overall fee.

<u>Fees</u>	<u>First Extra Working Day</u>	<u>Each Other Extra Working Day</u>
Up to £536	50% of performance fee	25% of performance fee
£537 to £1,834	not less than £267	not less than £134

Note: It is the responsibility of the artists to make themselves note and word perfect before attending first rehearsal.

106 General Overtime rate (cover 103 and 105)

£32 per hour or part of an hour.

107 Transmission Rights

The BBC is entitled to transmit the programme by every means once from each transmitter in the United Kingdom, or in the case of an opt-out programme once from each transmitter in the region of opt-out. Any non-simultaneous transmissions must be within 30 days of the relevant broadcast or repeat broadcast.

SECTION 2

200 TRANSMISSION OF PUBLIC CONCERTS (Before a Paying Audience)

201 Fees

- (a) The artist is paid a concert fee for the concert by the promoting organisation.
 - (b) In addition the artist is paid 75% of the concert fee (excluding payment made for rehearsals, expenses, travel, etc) but not less than £262 for the simultaneous broadcast.
 - (c) The BBC may record a live relay without further payment but if the recording is broadcast a payment of 75% of the concert fee (but not less than £262) is payable for the first broadcast of the recording.
 - (d) If the recording of a live relay is transmitted on an 'opt-out' basis the BBC will pay 50% of the concert fee (but not less than £175).
 - (e) Repeat Use: 50% of the television broadcast fee (but not less than £175) per repeat.
- NB
- (i) If the concert is a charity concert for which the artist is waiving the fee, or receiving a greatly diminished fee, the BBC will pay the artist a studio fee.
 - (ii) If the BBC is transmitting the concert on radio live simultaneously with the television transmission, the television fee also covers the radio transmission.

202 Short Items

- (a)
 - (i) Items not exceeding 5 minutes in duration and taken from Productions rehearsed and produced by other organisations may be rehearsed and recorded by the BBC or recorded by the BBC from live public performance (i.e. before a paying audience) in a period not exceeding 1 hour: £121
 - (ii) Items not exceeding 10 minutes in duration and taken from Productions rehearsed and produced by other organisations may be rehearsed and recorded by the BBC or recorded by the BBC from live public performance (i.e. before a paying audience) in a period not exceeding 2 hours: £157.

This clause is also applicable to Church Musicians.

SECTION 3

300 CHURCH MUSICIANS: CATHEDRALS AND CHURCHES OF SIMILAR STATUS

301 The fees for organists and assistant organists are negotiable and the minimum fees are set out below.

Lay Clerks and choir boys/girls taking part in broadcasts, live or recorded from Cathedrals and Churches of similar status are paid fees set out below. These are normal fees and for special occasions higher fees may be paid.

302 It is not possible to define with a precision that would be acceptable generally what is meant by "Church of a similar status" to a Cathedral. In many cases practice has resolved the problem; if discussion cannot do so then reference may be made to this office and the ISM will be consulted.

303 **Fees:** Work Entitlement as in 101 and 102.

	<u>Network Including Network Relay</u>	<u>Network Short Sessions** (Opt-Out & Opt-Out relay)</u>	<u>Opt-Out Short Sessions</u>
Organists/Directors of Music not less than	£349	£213	£158
* Assistant Organist not less than	£213	£158	£101
Lay Clerks	£142	£111	£68

* When an Assistant Organist carries special artistic responsibilities in a broadcast service over and above the norm an enhanced fee may be agreed.

** or Short Additional Recording Day

304 3 hour Rehearsal on Previous Day

Organist/Directors of Music	£115 per 3 hour rehearsal session
Assistant Organist	£77 per 3 hour rehearsal session
Lay Clerks	£54 per 3 hour rehearsal session

Note: The fees set out in 303 and 304 above do not apply to Lay Clerks at Westminster Abbey, Westminster Cathedral and St Paul's Cathedral for whom different rates have been negotiated.

305 Payments to Professional Organists at Churches of less than Cathedral Status

It is impracticable to lay down hard and fast rules because conditions and practice vary so much but as a general guide the fees to be offered should not be less than £164.

Rehearsals of not more than 3 hours on previous day: £45

SECTION 4

400 SIGNATURE TUNES, OPENING AND/OR CLOSING MUSIC, NATIONAL ANTHEMS AND SPECIAL INSTRUMENTAL EFFECTS: ALL ARTISTS

All artists may be engaged for the production of signature tunes, opening and/or closing music, identifying music, national anthems, tunes of national significance and special instrumental effects at the fees and conditions mentioned in this notice; the BBC takes all broadcasting and non-paying audience rights in the recording.

SECTION 5

500 INCIDENTAL & FEATURED MUSIC RECORDING

501 Single-Episodic Programmes

Conditions and rates of payment as appropriate under Section 1, for solo artists.

502 Multi-Episodic Programmes - Incidental & Featured Music Item Recording

Conditions and rates of payment as appropriate under Sections 1 or 3 for the initial programme. Thereafter:

Programmes 2-5	50% of fee for each episode
Programme 6 onwards	25% of fee for each episode

Where the aggregate of such fees exceeds £1,783 the engagement shall be subject to negotiation.

This provision is applicable to all sections of the agreement.

SECTION 6

600 EDUCATION PROGRAMMES

Two thirds of normal fees are paid for Schools and Continuing Education Programmes, subject to a minimum payment of £233 network, £175 opt-out from network or network short sessions and £155 opt-out short sessions.

SECTION 7

700 FURTHER USE IN BBC PUBLIC SERVICES – repeat transmissions and other further uses

BBC Public Services are those BBC services funded by

- the Licence Revenue (as defined in the Royal Charter for the continuance of the BBC) and
- monies paid to the BBC out of aids appropriated by the United Kingdom Parliament for the BBC World Service (as also defined in such Royal Charter).

The BBC shall be entitled to make further use in the BBC's Public Services in all media now known or hereinafter invented of audio-visual content containing performances given by ISM Musicians made in accordance with this Agreement and with previous television agreements between the BBC and the ISM subject to Residual Payments (unless specified otherwise in

this Agreement) as set out in more detail below, provided however that no such Residual Payment shall be due to an ISM musician in relation to any use of a recording of a performance following expiry of the period(s) during which their rights in such performance are protected by the laws of the United Kingdom.

Residual Payments shall be based on a percentage of the ISM Musician's Original Performance Fee or Television Broadcast Fee - excluding any payments for additional rehearsals, overtime, additional attendance/recording days, expenses, travel etc.

701 BBC 1 & 2 repeat transmissions: repeat fees

- Paid at the point of engagement: 35%
- Paid on repeat transmission: 50%

702 Unlimited use in all other BBC Public Services (except BBC Radio and BBC World Service):

- 1 year: 3%
- 5 years: 5%
- In perpetuity: 10%

703 Residual Payments made following 3 years from first transmission shall be increased as follows:

- After 3 years from 1st transmission: 25%
- After 10 years from 1st transmission: 40%
- After 25 years from 1st transmission: 60%

704 Opt-Out Programmes

If any opt-out programme is shown on network the opt-out fee is made up to the network fee. If the programme is also transmitted in the region/area of origin a repeat fee, based on the opt-out fee, is also paid.

SECTION 8

800 EXTRACTS: GENERAL AND TRAILERS

801 Historic, Reminiscent and Obituary Programmes: Extracts

Brief extracts, normally not exceeding one minute in length, may be broadcast in programmes of an historic or reminiscent nature or within an obituary type programme without payment.

802 News Access

- (1) News items which include recordings of performances by artists under this Agreement may be broadcast in BBC News programmes and news-related programmes without payment.
- (2) The maximum transmission time of performance by artists in such items shall be one minute where the music is featured and/or one minute where the music is not featured.
- (3) The BBC agrees to ensure that all recording of the performances of artists for this purpose shall be completed within a period of one hour from the time at which the artist is first recorded for this purpose.

- (4) Nothing in these arrangements shall prevent any artist requesting the BBC not to record his or her performance for this purpose and the artist shall not be required to exceed the duties for which he or she has been contracted not to alter nor repeat his or her performance for the purposes of retakes.

803 Use in Programmes

On payment of the fees shown below, extracts from programmes (not exceeding 4 minutes or 5 minutes in the case of Schools) may be used in all categories of programmes.

804 Extract Fees per ISM Musician

- Not exceeding one minute: £32
- Each Extract not exceeding 4 minutes (5 minutes schools): £66

These extract fees do not apply to material bought in by the BBC from third parties.

805 Repeat Use of Extracts - Domestic

For a repeat fee of 100% of the original Extract Fee, the BBC may obtain the right over an unrestricted period to all domestic uses of the extract integrated in both media. This fee is payable on first domestic use.

806 Repeat Use of Extracts - Sales

In consideration of a payment equal to 100% of the original extract fee the BBC, its licensees and assigns shall be entitled to exploit or to authorise others to exploit the extract in all media throughout the world without limitation. Such fee to be payable on first exploitation thereof.

807 Cross Media Use of Extracts

Cross Media Use of extracts of artists' performances is permitted. The fee due is that of the Service, Radio or Television, in which the extract is being used.

808 Trailers

Without further payment the BBC may show a trailer of up to 2 minutes from an already recorded programme, or record a trailer of a programme in rehearsal.

SECTION 9

900 COMMERCIAL DISTRIBUTION

The BBC shall be entitled to distribute or license the distribution of audio-visual content (except by sale to the public of audio-only recordings) containing performances given by ISM Musicians made in accordance with this Agreement and with previous television agreements with the ISM for unlimited use throughout the world in perpetuity in all media now known or hereinafter invented, subject to payment of either:

- Royalties, or
- Residual Buy-out Fee(s) - for ISM contributions in non-music content only – for example dramatic productions, documentaries, features - and other content that is not essentially a recording of musical performance(s)

as set out in more detail below, provided however that no such royalty or residual payment shall be due to a ISM musician in relation to any use of a recording of a performance following expiry of the period(s) during which their rights in such performance are protected by the laws of the United Kingdom.

901 Royalties shall be:

- based on the gross receipts of either the BBC, its subsidiaries, its licensees or its assignees (whichever is applicable), accruing from distribution of audio-visual content, and
- shared between ISM musician(s) in proportion to their Original Performance Fee for the performance in question - excluding any payments for additional rehearsals, overtime, additional attendance/recording days, expenses, travel etc.

Royalty Rates

(a) All distribution - except Home Video:

- audio-visual content containing performance(s) given by ISM musician(s) only: **17%**
- audio-visual content containing performance(s) in which one or more musicians taking part has been engaged in accordance with the terms of the BBC/Musicians' Union Agreement or any other agreement: **6%**

(b) Home Video distribution:

- by BBC Worldwide: **1.25%** of BBC Worldwide's gross receipts, less origination, duplication, packaging and distribution costs
- licensed by BBC or BBC Worldwide to a third-party: **1.25%** of BBC or BBC Worldwide's gross receipts

Home Video Royalty Accounting – see schedule A.

902 **Residual Buy-out Fees – ISM contributions in non-music content only** – for example dramatic productions, documentaries, features - and other content that is not essentially a recording of musical performance(s).

Residual Buy-out Fees are based on a percentage of the ISM Musician's Original Performance Fee - excluding any payments for additional rehearsals, overtime, additional attendance/recording days, expenses, travel etc.

(a) Residual Buy-out Fees paid at the point of engagement or on first relevant distribution:

- Worldwide (excluding UK & Eire) distribution (except theatric and home video): 30%
- UK & Eire distribution (except to ITV, C4, S4C and *five*, and theatric and home video distribution): 20%
- Home Video distribution: Europe: 10%
- Home Video distribution: World (excluding Europe): 10%

Or

(b) Residual Buy-out Fees paid following previous payment of residual fee(s) or royalties made in accordance with previous BBC/ISM television agreements:

- Worldwide (excluding UK & Eire) distribution (except theatric and home video): 15%
- UK & Eire distribution (except to ITV, C4, S4C and *five*, theatric and home video distribution): 10%
- Home Video distribution: Europe: 5%
- Home Video distribution: World (excluding Europe): 5%

Residual Buy-out Fees paid following 3 years from first transmission shall be increased as follows:

- 3 years after 1st transmission: 25%
- 10 years after 1st transmission: 40%
- 25 years after 1st transmission: 60%

SECTION 10

1000 **INTERNATIONAL TELEVISION RELAYS: EUROVISION EBU AND INTERVISION O.I.R.T SUPPLEMENTARY FEES**

1001 Supplementary fees are payable at the fixed percentage of the total fees paid to the artists for performance and rehearsal as set out in Schedule B.

1002 One relay either live or deferred is permitted from each of the transmitters in each foreign country within a period of 30 days from a transmission in the UK. The UK transmission from which the live or deferred relay originates may be the original BBC transmission or the BBC repeat, and in the latter case as in the former the supplementary fees are based on the fees, described in 1001 above for the initial transmission.

1003 Performers are eligible for payment whether or not they are seen on the screen.

- 1004** If prior recording is not bound up with the broadcast or has not been made specially for it, the fact of using it will not entitle the performers to the payments hereunder. This applies to performers in a commercial recording (commercial record,), cinematograph film, irrespective of the producer thereof, acquired in the way of trade, i.e. by purchase, hire, etc that is inserted in the broadcast.
- 1005** After the 30 day period set out in 1002 above, use by a foreign country can be made only under the terms set out for Overseas Distribution.

SECTION 11

1100 ALLOWANCES

1101 Travelling and Subsistence Allowances

The rates payable for travelling and subsistence will be notified by the BBC from time to time and will be the rates that apply to artists generally.

1102 Evening Dress Allowances: Concert Before an Invited Audience

An evening dress allowance of £18 is payable to an artist who is required to wear an evening dress at a concert given before an invited audience.

1103 Harps

Porterage for harps is negotiable.

SECTION 12 - Quit Clause

- 1201** Notwithstanding anything to the contrary elsewhere in this Agreement when an ISM Musician is, in respect of any contribution contracted in accordance with this Agreement, 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 (including but not limited to income deriving from exercise of any cable retransmission right, blank tape levies or machine levies, the lending right, the rental right and any Certified Educational Licensing Scheme”), nothing in this Agreement shall prevent the ISM Musician from laying claim thereto. An ISM Musician shall not be obliged to account to the BBC for any such income to which the ISM Musician is entitled.
- 1202** Unless specified elsewhere in this Agreement, an ISM Musician shall not be entitled to any equitable remuneration or other forms of income which the BBC is exclusively entitled to receive whether as a producer and/or broadcaster or otherwise from domestic or foreign collecting societies, and the BBC shall not be obliged to account to ISM Musicians for any such income save to the extent that the income includes identifiable sums in respect of performer's rights.
- 1203** This Agreement shall not prevent an ISM Musician from authorising the ISM or other third parties to participate in a “Certified Educational Licensing Scheme” on his behalf whereby off-air recording rights are licensed for fees. Participation in a Certified Educational Licensing Scheme shall cover operating and applying to operate a licensing scheme certified by the

Secretary of State under the Copyright, Designs and Patents Act 1988 (as amended from time to time) whereby the educational off-air recording rights referred to in section 35 and Schedule 2 section 6 would be regarded as available for use without consent in the absence of a certified licence scheme. The parties recognise that the ISM is a member of the Educational Recording Agency which is a collecting society operating a Certified Educational Licensing Scheme for the above purpose.

1300 Duration and Termination

This Agreement shall be terminable by either party giving not less than four months notice in writing, which notice to be viable must be accompanied by details of the claim.

1301 Enforceability

The parties intend that this Agreement should be binding in honour but not that it shall give rise to any legal obligation between the parties.

SCHEDULE A
(referred to in sub-section 901)

Home Video Royalty Accounting

- (a) BBC Worldwide shall prepare or cause to be prepared separate statements of account in respect of the video covering on 6 (six) monthly anniversary of release of the video.
- (b) No statement shall be prepared in respect of any period in which no revenue has been received by BBC Worldwide and if the sums due to the Artist in any 6 (six) month period are less than £10 (ten pounds sterling) such sums shall be carried forward to the next accounting period.
- (c) Each such statement of account shall be delivered to the Artist within 3 (three) months of the date to which it is made up and shall be accompanied by a remittance in favour of the Artist of the amount shown in it as being due to the Artist.
- (d) The Artist or their authorised representative or agent shall upon giving BBC Worldwide prior written notice thereof but not more than once in any calendar year and during business hours only be entitled to examine the records of account relating to exploitation of the video rights which examination shall be at the expense of the Artist unless errors to the disadvantage of the Artist exceeding 10% (ten per cent) shall be disclosed in which case the cost of such examination shall be paid by Worldwide and if no notice requiring such examination has been given to BBC Worldwide within 12 (twelve) months of receipt of any statement of account and if at the end of that period there is no other dispute relating to such statement the Artist shall be deemed to have agreed such statement and to have waived any claim in relation to it. The Artist shall keep any information regarding the affairs of the BBC, BBC Worldwide or any third parties which come to his attention as a result of the examination, strictly confidential provided that the Artist may disclose such information to the Artist's professional advisers and the BBC/BBC Worldwide reserves the right to require any professional representative of the Artist who examines the records of account to sign an undertaking of confidentiality in similar terms to that given by the Artist herein.
- (e) If currency restrictions in any country prevent the remittance of the whole or part of any payment due to the Artist then such payment shall subject to the laws of the relevant country and if the Artist so requests be paid into an interest-bearing or other account designated by the Artist in the relevant country.
- (f) All sums payable hereunder are exclusive of value added tax.
- (g) The provisions of this clause shall apply to the exercise of all the video rights subject to any variations or additional provisions which may be specified in the schedules hereto or any of them.
- (h) In the event that BBC Worldwide fails to make payment in accordance with sub-clause (c) above the Artist shall be entitled to charge BBC Worldwide interest from the date that a payment is due upon the unpaid amount at the rate of 4% per annum above the Bank of England base rate in force from time to time until due payment is made in full PROVIDED THAT written notice shall be given by the Artist that the amount due has not been paid and specifying the amount of interest that is due owed at the date of the notice and the daily rate at which interest will continue to accrue.

BBC Worldwide will provide information relating to sales and payments on an annual basis to the ISM.

SCHEDULE B
(referred to in Section 1000)

E.B.U. AND O.I.R.T. SUPPLEMENTARY PAYMENTS

(a) Organisations members of the E.B.U in:

Algeria	2%	Ireland	2%	Netherlands	7%
Austria	5%	Israel	2%	Norway	4%
Belgium	6%	Italy	27.5%	Portugal	3%
Cyprus	1%	Jordan	2%	Spain	11%
Denmark	5%	Lebanon	1%	Sweden	7%
Finland	4%	Libya	1%	Switzerland	4%
France	30%	Luxembourg	4%	Tunisia	1%
Federal Republic of Germany	40%	Malta	1%	Turkey	4%
Greece	3%	Monaco	2%	United Kingdom	40%
Iceland	1%	Morocco	2%	Yugoslavia	6%

(b) Organisations not members of E.B.U. in:

Bulgaria	4%	East Germany	9%	Poland	10%
Czechoslovakia	7%	Hungary	5%	Romania	6%
				U.S.S.R	40%

If the total of the supplements proceeding from the above percentages is less than 12.5% the amount payable in respect of these supplements shall nevertheless be 12.5% (unless all the relaying organisations belong to developing countries situated in the European Broadcasting Area).