

The American Federation of Musicians of the United States and Canada



Canadian Symphonic Media Agreement
(for use in Canada only)

2018-2021

GENERAL TERMS

1. PARTIES

- 1.1 This Agreement is made and entered into by and between the American Federation of Musicians of the United States and Canada (“AFM”), doing business in Canada, as the Canadian Federation of Musicians (“CFM”), hereinafter referred to as the (“FEDERATION”) and the _____ (“ORCHESTRA”), in the production and release of audio or audio-visual recordings from live performances of symphony, opera or ballet repertoire where, in all cases, the live performance is subject to terms and conditions of a Collective Agreement (“Local CA”). The parties hereby agree to the following terms and conditions for the creation and distribution of audio and audio-visual content (“Agreement”).
- 1.2 For the purpose of this Agreement, “content” is defined as an audio or audio-visual recording of a live performance.

2. APPLICATION AND SCOPE OF AGREEMENT

- 2.1. This Agreement shall cover the services of all Musicians, including the conductor (leader), contractor, librarian, copyist, orchestrator, arranger and instrumentalists when they are covered by a Local CA, and that are contracted by the ORCHESTRA in the recording of content under the conditions provided in this Agreement.
- 2.2 The parties hereto agree that this Agreement shall establish minimum fees and conditions for Musicians engaged in the creation of content from live performances. Nothing in this Agreement shall prevent Musicians from negotiating a higher fee for their services than as provided herein.
- 2.3 The ORCHESTRA accepts full responsibility for the distribution and use of any content produced under the terms of this Agreement.
- 2.4 Should the content produced under this Agreement ever be utilized for any purpose not expressly provided for in this agreement, by either the ORCHESTRA or a third party, the ORCHESTRA shall enter into and fulfill all terms and conditions of the FEDERATION agreement(s) applicable to that other purpose as determined by the FEDERATION.
- 2.5 This Agreement shall be governed by the laws of the Province of Ontario, or the laws of Canada as may be applicable.
- 2.6 The current version of the FEDERATION Bylaws is incorporated by reference as part of the agreement.
- 2.7 Excluding promotional use, the Local CA may not include any provision that is less favorable to Musicians than any provision of this Agreement, and any such less favorable provision shall be deemed null and void.

3. RECOGNITION AND UNION SECURITY

- 3.1 The ORCHESTRA recognizes the FEDERATION as the sole and exclusive bargaining representative for the purpose of establishing fees, terms and conditions of Musicians engaged by the ORCHESTRA in the creation of content covered by this Agreement.
- 3.2 All Musicians engaged hereunder and covered by the Local CA shall be members in good standing of the FEDERATION.

3.3 Representatives of the FEDERATION and the Local Union shall have access to the place of recording for the purpose of conferring with Musicians.

4. OWNERSHIP, LICENSING AND GRANTING OF RIGHTS

4.1 The ownership of the master recordings and all rights under copyright in the recording shall be retained by the ORCHESTRA, and shall not be sold or transferred to any third party without the written permission of the FEDERATION.

4.2 Licensing arrangements are permissible, but the specifics of the license must be disclosed to and approved by the FEDERATION, in writing, in advance of finalizing any license agreement. Entities such as a producer or broadcaster who are normally subject to other FEDERATION agreements, are required to enter into and fulfill all the terms and conditions of the appropriate agreement including, but not limited to, the payment of fees and pension contributions on behalf of all Musicians involved in the recording, as if that entity produced the recording themselves. The duration of any license will be limited to no more than five (5) years except by written permission of the FEDERATION.

4.3 In the case of third-party licensing provided for in Paragraph 4.1 and 4.2, the FEDERATION will provide the ORCHESTRA with licensing language to ensure compliance with FEDERATION conditions and the ORCHESTRA will file such agreement with the FEDERATION office.

4.4 In consideration of its agreement to pay the fees and pension contributions, and to comply with the working conditions provided herein, the ORCHESTRA is hereby granted the right to create content from live performances subject to the terms of this Agreement.

4.5 The ORCHESTRA may not use content produced pursuant to this Agreement (or sell, lease, license or assign to any other party the right to use such recordings) for any purpose not expressly set forth in this Agreement (such as motion picture soundtracks, commercial announcements [jingles], videogames, etc.). The ORCHESTRA may not use the recording(s) for these or any other purposes unless the ORCHESTRA enters into and fulfills the terms of the appropriate FEDERATION agreement applicable to the specific use.

5. PENSION CONTRIBUTIONS, WORK DUES AND REPORTING

5.1 The ORCHESTRA agrees to make contributions to the *Musicians' Pension Fund of Canada*, and further agrees to contribute to that Fund on behalf of the musicians engaged, an amount equal to twelve percent (12%) of the fee earned by Musicians.

5.2 The ORCHESTRA agrees to deduct Local Union work dues of _____%, based on the fee of each Musician paid pursuant to this Agreement and to remit such work dues to the Local Union within fifteen (15) days after the recording. The FEDERATION will provide updates of all Local Union work dues percentages.

5.3 Payments to Musicians, to the Local Union and to the Musicians' Pension Fund of Canada, and the appropriate B-form are due within fifteen (15) days of final date of recording.

6. GENERAL WORKING CONDITIONS

6.1 Musicians to be paid

6.1.1 All current members of the orchestra, if not called to the engagement, shall be paid a fee equal to two thirds (2/3) of the applicable fee. Members of the orchestra or Musicians on the roster who are on sabbatical or disability leave, or who opt out after receiving reasonable advance notice of the recording project, shall not be paid.

6.1.2 In the case of works scored for no more than 32 musicians, only the musicians who perform on the recording will receive payments. Such recordings require prior Orchestra Committee approval. This provision shall not be used to allow a reduction in instrumentation of a work originally created for more than 32 musicians.

6.1.3 Any Musician, whether or not a regular member of the orchestra, whose services are recorded or used in the final content shall be entitled to the same media payments for recordings created or distributed pursuant to this Agreement as a regular Musician

6.2 Non-permitted uses of recordings

6.2.1 Content created and/or released pursuant to this Agreement shall not be used to replace Musicians who are engaged in a strike or subject to a lockout, or as a substitute for musicians in connection with live performances.

6.2.2 Content created and/or released pursuant to this Agreement shall not be used by the ORCHESTRA as evidence in any disciplinary proceeding that affects the employment status of any Musician covered by this Agreement.

6.3 Music preparation

In the event that a Musician performs music preparation work (arranging, orchestrating or copying services) for content released under the terms of this Agreement, that Musician shall receive music preparation payment if applicable under the terms and conditions of the CBC General Production Agreement.

6.4 Consultation

6.4.1 The ORCHESTRA must comprehensively discuss the project with the Local and the orchestra committee or other committee designated in the Local CA in advance. The consultation must be held no less than thirty days prior to the proposed project unless there is a compelling case for a shorter consultation window. Project approval is determined by the Orchestra Committee.

6.4.2 Projects in which the recording is to be broadcast following the performance and/or remain available on-demand are subject to post-performance approval by an orchestra's Artistic Review Committee or, in the absence of one, the Orchestra Committee.

6.5 Patch Sessions

6.5.1 A patch session of up to one (1) hour may be held after a live performance of the program being recorded and will be paid in 15-minute increments. For the first thirty (30) minutes, a patch session will be paid at the lesser of the performance overtime fee or the then current AFM's Sound Recording Labor Agreement (SRLA) patch fee (for fifteen minutes: Feb. 1, 2018 – Feb. 1, 2019: \$55.86; Feb. 1, 2019: \$57.53), assuming that the patch session is announced within 10 minutes and begins within 45 minutes of the concertmaster leaving the stage. After thirty (30) minutes of patch session, the payment fee will be the Sound Recording Labor Agreement patch fee (for thirty minutes: Feb. 1, 2018 – Feb. 1, 2019: \$111.72; Feb. 1, 2019: \$115.06) in fifteen-minute increments (Feb. 1, 2018 – Feb. 1, 2019: \$55.86; Feb. 1, 2019: \$57.53).

6.5.2 Only those playing the patch session shall be paid for those sessions.

6.5.3 There shall be no discipline of any Musician who is unable to attend a patch session.

6.6 Rehearsals

6.6.1 Recording at Rehearsals

There shall be no recording at rehearsals, other than an audio and video technical check, unless there is to be only one (1) performance in which case there may be recording only at the last dress rehearsal before the performance. In this case, content captured in the dress rehearsal shall be only for purposes of editing and patching the performance being captured. Should a dress rehearsal be recorded, musicians shall be notified in advance.

6.6.2 Rehearsal Character

Any rehearsal recorded under 6.6.1 above must retain its character as a dress rehearsal for the live performance and shall not be subject to the direction of the recording producer or sound engineer. Should such direction occur, the dress rehearsal shall be paid as per MODULE 1.

6.6.3 Concert Dress

Should musicians be required to wear concert dress for a rehearsal captured pursuant to article 6.6.1 above, each Musician shall receive notice and any necessary remuneration as set forth in the Local Agreement in existence at the time of execution of this Agreement. If no such provision exists, each Musician shall receive additional compensation in the amount of fifty dollars (\$50.00).

7. GRIEVANCE AND ARBITRATION

7.1 Scope of Grievances

Any dispute or controversy of any kind between any Musician(s) or the FEDERATION and the ORCHESTRA arising out of or in connection with this Agreement (including but not limited to disputes concerning the meaning, interpretation, application or enforcement of any provision set forth in this Agreement) shall be resolved exclusively through the procedure set forth herein.

7.2 Initiation of Grievances

Within sixty (60) calendar days after the occurrence of the event that gave rise to the grievance or after the date that the aggrieved party reasonably could have learned of that event (whichever occurs later), a grievance shall be submitted in writing to the ORCHESTRA by the FEDERATION on their own or on behalf of the individual Musician(s) or to the FEDERATION by the ORCHESTRA.

7.3 Informal Meeting

Within fifteen (15) calendar days from receipt of the grievance, a representative designated by the FEDERATION and a representative designated by the ORCHESTRA shall meet to discuss the matter and attempt to resolve the dispute informally.

Written Answer: If the parties are unable to resolve the dispute at the informal meeting, the party against whom the grievance is filed shall submit a written answer to the grievance within fifteen (15) calendar days after such meeting.

7.4 Demand for Arbitration

If a party to this agreement is not satisfied with the answer, or if an answer is not submitted within the time set forth in 7.3 above, that party may elect to submit the dispute to arbitration by notifying both the applicable arbitration service and the other party simultaneously, in writing, within thirty (30) calendar days after the date the answer was due. The written demand for arbitration shall include a copy of the grievance that was filed and the answer, if any.

7.5 Choice of Arbitrator

Upon receipt of the demand for arbitration, the applicable provincial labour arbitration service shall promptly provide the parties a list of arbitrators experienced in Labour cases and the parties then shall select an arbitrator using the alternate strike method.

7.6 Hearing

The hearing shall be held on thirty (30) working days notice. The hearing and pre-hearing proceedings shall be conducted pursuant to the applicable arbitration service Labour Arbitration Rules. The hearing shall be conducted in the city where the dispute arose unless the parties mutually agree to another location. The arbitrator's award shall be rendered within thirty (30) calendar days of the close of the hearing or thirty (30) calendar days after the submission of post-hearing briefs, where applicable. The award of the arbitrator shall constitute a final binding resolution of the dispute with respect to all parties.

7.7 Arbitrator's Authority

The Arbitrator shall have the power and authority to issue an award that he/she may deem appropriate, including but not limited to the authority to remedy any violations. The arbitrator, however, shall not have the power or authority to amend, add to, or subtract from, or alter in any manner the provisions of this Agreement.

7.8 Costs

Fees and expenses of the arbitrator and the proceedings (e.g., witnesses, counsel, court reporter) shall be borne equally by the parties; provided, however, if the arbitrator concludes that the position of either party is frivolous, he/she may award fees and expenses to the prevailing party, including reasonable costs.

7.9 Extension of Time Limits

Any of the time limits set forth in the grievance and arbitration procedure may be extended by mutual agreement in writing.

8. TERM OF AGREEMENT

8.1 This Agreement shall become effective as of _____ and remain in force until August 31st 2021.

8.2 Any other payments due as a result of any material produced during the term of this Agreement shall continue to be due and payable regardless of the termination or non-renewal of this Agreement. Any content produced during this term may be marketed in supplemental markets, regardless of the termination or non-renewal of this Agreement and shall be governed by any applicable FEDERATION agreements for the distribution of content.

ACCEPTED AND AGREED:

**American Federation of Musicians
(the "FEDERATION")**

By: Alan Willaert
AFM Vice President from Canada

Or

By: Bernard LeBlanc
SSD Director- Canada

Signature: _____

Date: _____

ORCHESTRA

Institution: _____

By: _____
Name and Title

Signature: _____

Date: _____

MODULE 1

AUDIO OR AUDIO-VISUAL INTERNET STREAMING

Streaming, as defined in this agreement, is audio or audio-visual content made available to the end-user over the Internet via a streaming media server. No files are transferred to the end user; rather, streaming can be likened to a radio or television program carried over the airwaves, except that in the case of streaming, the program is carried over the Internet. This distinguishes streaming technology from file transfer technologies such as podcasts, iTunes or movie download from Amazon purchases.

1. Free live-stream for orchestras with no previous streaming experience

One time only over the term of this agreement, an ORCHESTRA that has never streamed a full performance is permitted one live-stream of a performance as a capacity-building and audience-building initiative. The ORCHESTRA will not be granted any additional streaming rights other than the live-streaming of the subject performance. The live stream of this performance will not be subject to compensation per MODULE 1 but will be submitted to the approval process as outlined in 6.4.1. Should additional streaming rights be desired for this gratis live-stream performance in the future, all applicable fees in MODULE 1 will apply retroactively.

2.1 Streaming Fees

The following fees entitle the ORCHESTRA to create a full performance audio or audio-visual recording via streaming. The fee shall be a percentage of the per-service performance base fee of the Local CA. It may vary depending on the number of programs being recorded per season or the number of performances being captured. In any case, the fee shall not be lower than the applicable minimum payment below.

Programs being recorded per season	Performance(s) Capture(s)	Streaming Fee per program		Streaming Rights
		% of per-service performance base fee	Minimum payment	
1 st and 2 nd	No more than 2	45%	\$ 56.25	2 years
3 rd and subsequent	No more than 2	30%	\$ 37.50	2 years

2.2 Rights for streaming

The payment of the above fees shall entitle the ORCHESTRA to engage in unlimited streaming for two (2) years. Licensing to stream by third parties that have an agreement with the FEDERATION is subject to Article 4 under General Terms of this agreement.

2.3 Additional year of streaming rights

For each additional one (1) year period of streaming rights each Musician will receive fifty percent (50%) of the initial applicable streaming fee, as provided in article 2.1. In any case, the fee shall not be lower than the applicable minimum payment below.

Programs being recorded per season	Performance(s) Capture(s)	Additional Streaming Rights		Add year
		% of initial streaming fee	Minimum payment	
1 st and 2 nd	No more than 2	50%	\$ 28.13	1 year
3 rd and subsequent	No more than 2	50%	\$ 18.75	1 year