

## COVID-19 Side Letter to the 2019-2022 Integrated Media Agreement for the 2020-2021 Season

This agreement is entered into on a non-precedent setting basis between the American Federation of Musicians of the United States and Canada, AFL-CIO, CLC (“AFM”) and the Electronic Media Association (“EMA”) on behalf of each of its member Symphony, Opera or Ballet Orchestra Institutions (each of which is referred to herein as the “Employer”) this \_\_\_ day of August, 2020, and is intended to enhance flexibility for streaming of content when live performance has been adversely affected by the COVID-19 (Coronavirus) Pandemic.

1. *Conditions Due to COVID-19.* Government action has made it impossible for the Employer to hold regularly scheduled live performances with a full-capacity audience physically present. In this context the Employer plans to stream certain media content in order to maintain connection with patrons, donors and the community.
2. *Compensation Tiers.* Rights accorded to the Employer pursuant to this agreement are contingent on and will be determined by the Employer’s commitment to maintain compensation and benefits to musicians for the 2020-2021 season expressed as a percentage of compensation paid to musicians prior to the COVID-19 Pandemic, as set forth in the Media Tier Chart below. Percentage of pre-COVID wages will in each case be determined by reference to the following:
  - a. Where some or all of the orchestra’s rostered musicians were guaranteed compensation on a season basis (whether paid on a salary or per service basis) pursuant to the Collective Bargaining Agreement in effect on March 1, 2020, compensation paid to every such musician for the 2020-2021 season must be equal to or greater than the applicable percentage of base scale wages (salary or per service) that would have been paid in the 2019-2020 season to that musician, but for any modification or interruption in compensation due to the COVID-19 pandemic.
  - b. In addition, where some or all of the orchestra’s rostered musicians had no guarantee of compensation on a season basis pursuant to the CBA in effect on March 1, 2020, each of those rostered musicians must be guaranteed compensation for the 2020-2021 season equal to or greater than the applicable percentage of the wages actually paid to that musician (or the musician who held that musician’s position, where there was a change in personnel) during the 2019-2020, 2018-2019 or 2017-2018 season, whichever was greatest.
  - c. Where health insurance coverage and/or payments to a health and welfare fund were provided by the Employer to or on behalf of any rostered musician prior to the COVID-19 pandemic, such coverage and/or payments must be continued on the same or more favorable terms for the employee in order for Employer to qualify for any media distribution pursuant to this agreement.

### Media Tier Chart of Compensation and Corresponding 30-day Distribution Rights

	Where annual pre-COVID compensation to each rostered musician was greater than \$30k and employer-provided health insurance (or H&W payment) was made available to all rostered musicians	Where annual pre-COVID compensation to each rostered musician was \$30k or less and/or employer-provided health insurance (or H&W payment) was <u>not</u> made available to all rostered musicians
<b>Tier 1</b>		
% of pre-COVID-19 compensation guaranteed for 20-21	0-25% + health insurance	33-49% + health insurance where applicable
Archival content	60 minutes (symphonic); 90 minutes (opera/ballet)	60 minutes (symphonic); 90 minutes (opera/ballet)
Newly created content	none	none
Expanded VPRs	none	none
<b>Tier 2</b>		
% of pre-COVID-19 compensation guaranteed for 20-21	26-49% + health insurance	50-59% + health insurance where applicable
Archival content	120 minutes (symphonic); 180 minutes (opera/ballet)	120 minutes (symphonic); 180 minutes (opera/ballet)
Newly created content	educational content <b>only</b> as per paragraph 5	educational content <b>only</b> as per paragraph 5
Pre-K through 12 educational content	60 minutes newly created or archival	60 minutes newly created or archival
Expanded VPRs	None	None
<b>Tier 3</b>		
% of pre-COVID-19 compensation guaranteed for 20-21	50-74% + health insurance	60-84% + health insurance where applicable
Archival content	240 minutes (symphonic); 360 minutes (opera/ballet)	240 minutes (symphonic); 360 minutes (opera/ballet)
Newly created content	120 minutes (symphonic); 180 minutes (opera/ballet)	120 minutes (symphonic); 180 minutes (opera/ballet)
Pre-K through 12 educational content	120 minutes newly created or archival	120 minutes newly created or archival
Expanded VPRs	6 per month	6 per month
<b>Tier 4</b>		
% of pre-COVID-19 compensation guaranteed for 20-21	>/=75% + health insurance	>/=85% + health insurance where applicable
Archival content	360 minutes (symphonic); 540 min. (opera/ballet)	360 minutes (symphonic); 540 min. (opera/ballet)
Newly created content	480 minutes (symphonic); 720 min. (opera/ballet)	480 minutes (symphonic); 720 min. (opera/ballet)
Pre-K through 12 educational content	120 minutes newly created or archival	120 minutes newly created or archival
Expanded VPRs	12 per month	12 per month

Note: The use of the term “symphonic” throughout this chart denotes minutes available to a symphony orchestra institution, in contrast to an opera/ballet institution. Minutes streamed may include traditional symphonic content as well as chamber or solo works.

3. *Archival Streaming.* Content drawn from the Employer's concert archives may be streamed on the Employer's website or on social media sites within the Employer's control. The total amount of archival media content that may be streamed in a given 30-day period is subject to the minute limitations of the Media Tier for which the Employer is qualified. Content may be streamed for additional 30-day periods, subject to the Tier limitations on minutes available.
4. *Newly Created Performance Content.* In addition to the distribution of archival content as set forth above and pursuant to the terms of the IMA, where compensation guaranteed to musicians for the 2020-2021 season qualifies the Employer for Tier 3 or 4 rights, it will be permitted to stream newly created performance content captured on or after the effective date of this agreement pursuant to the following terms:
  - a. For purposes of this paragraph, a "performance" shall be a designated service at which capture may occur, whether or not an audience is in attendance in the physical space where the capture occurs. Performance capture must occur in a single performance take; multiple takes are not permitted.
  - b. In addition to the designated performance service, capture may also occur at a dress rehearsal of the same program, consistent with the provisions of Article XV of the IMA; provided, however, that the musicians of the orchestra may vote to waive payment of the \$50.00 concert dress fee required pursuant to Article XV.D of the IMA. Audio-only capture may occur at one additional rehearsal, with the prior approval of the Orchestra Committee and, where there are fifteen (15) or fewer musicians and/or the music is performed without conductor, the approval of those musicians. The total number of services at which capture may occur shall not exceed three (3).
  - c. In lieu of capture for a given performance occurring at separate services as provided in 4.a and 4.b above, performance capture may occur in a single continuous performance take repeated no more than two times during a single performance service. If this option is elected, capture may not occur at any other service where the same content is rehearsed or performed.
  - d. In the event additional takes are required, they may occur pursuant to the following terms:
    - i. One patch session of up to thirty 30 minutes may be called and compensated at the lesser of the regular concert overtime rate or the SRLA patch rate, whether the patch session occurs during the confines of the regularly scheduled performance service or immediately thereafter. Article X.B or XVIII.B terms apply to patch sessions.
    - ii. In lieu of performance capture as set forth above, capture may be scheduled to occur at a Special Call, to be held and compensated in accordance with the provisions of Article XVIII of the IMA.
  - e. Performance content captured pursuant to this paragraph may be streamed on the Employer's website or social media sites within the Employer's control. The total amount of newly created media content that may be streamed in a given 30-day period is subject to the minute limitations of the Media Tier for which the

Employer is qualified. An Employer streaming newly created content pursuant to this paragraph is strongly urged to monetize its distribution through use of password protection and/or private link distribution of content to individuals who have purchased a ticket or subscription to the stream. At the expiration of the initial 30-day streaming period, content captured pursuant to this paragraph may be streamed for additional periods as archival content, subject to the Tier limitations on minutes available.

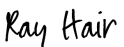
- f. If the Employer qualifies for Tier 2 (but not Tier 3 or 4) rights, it may capture new content pursuant to these provisions solely for pre-K through 12 Audio-Visual Educational Release (see paragraph 5 below).
        - g. Where the performance to be captured involves vocalist(s) or narration and safety concerns limit the ability of all performers to capture new content simultaneously, instrumental content captured pursuant to these terms may be used as play back during separately occurring vocal/narration capture and edited into final product for distribution.
        - h. Content distributed pursuant to this paragraph shall be reported to the Federation on a form provided by the Federation.
5. *Audio-Visual Educational Releases.* In addition to the rights afforded in Article XVI of the IMA, the Employer may create and release educational programming for Pre-K through 12 classroom-based uses as contemplated by Article XVI in the amounts provided in the Media Tier Chart above. Such educational content may be distributed for a period of 30 days via closed circuit, private link, internet with password protected entry, internet2 or other technologies designed to protect the work for classroom use; provided, however, that for the term of this agreement access to content may be shared by the educational institution with families where instruction is occurring remotely and may be provided by the Employer to families engaged in a recognized program of home schooling.
6. *Payments to Musicians for Content Distributed Pursuant to Provisions of the IMA.* During the term of this agreement, payments due to musicians for content distributed pursuant to the IMA (other than content distributed pursuant to this agreement) will be calculated on the higher of the wage rates in effect on the date of distribution or those in effect as of March 1, 2020.
7. *Expanded Volunteer Promotional Recordings.* In addition to the rights afforded in the above paragraphs and ordinary Volunteer Promotional Recording rights pursuant to Article VIII.D of the IMA, Expanded Volunteer Promotional Recordings may be released for on-demand streaming pursuant to the following terms:
  - a. An Expanded Volunteer Promotional Recording created pursuant to this Side Letter may feature individual musicians (including where individual recordings are combined to form a composite/collage recording featuring any number of musicians) and/or small groups (10 or fewer) of musicians in the same physical space; provided, however, that groups of up to 15 musicians with no conductor may be utilized where not inconsistent with public health directives and with approval of the Orchestra Committee;


- b. Musicians shall not be required to record Expanded Volunteer Promotional Recordings but may provide them on a voluntary basis. Musicians may accept or decline to volunteer without prejudice to their status with the Employer, and Expanded Volunteer Promotional Recordings shall not be used in discipline or tenure decisions;
  - c. Capture of content shall be made at a time and place agreed upon by the volunteer Musician(s) and the Employer. The maximum length of recording shall not exceed forty-five (45) minutes. The maximum amount of musical content contained in the resulting Expanded Volunteer Promotional Recording pursuant to this Side Letter shall not exceed thirty (30) minutes;
  - d. Content for such recording may include performances of complete works, partial works and/or interviews;
  - e. Approval of the volunteer Musician(s) shall be required for the repertoire to be performed and for the release of the final Expanded Volunteer Promotional Recording. Composite recordings must be reviewed and approved by the Orchestra Committee prior to posting;
  - f. Expanded Volunteer Promotional Recordings are for the purpose of news and promotion and are not intended as a replacement for performance. They may be distributed on the Employer's own website or on social media outlets under the Employer's control (e.g., the Employer's Facebook Page, the Employer's YouTube Channel, etc.);
  - g. The number of Expanded Volunteer Promotional Recordings an Employer may stream per month is set forth in the Tier Chart above.
8. *Opera and Ballet Subcontractors.* Where the Employer has a pre-existing subcontractor relationship with a ballet and/or opera company (in existence for the 2019-2020 season and prior to pandemic was projected to continue in 2020-2021), the Employer may designate a portion or all of its minutes of archival streaming in a given month to be utilized by the opera or ballet company to showcase archival content created in partnership with the opera or ballet company and utilizing the performance of musicians employed by Employer. A multiplier of 1.5 will be applied to any minutes so designated (e.g., Employer designates 60 minutes for use by opera/ballet company which allows opera/ballet company to stream up to 90 minutes of content). In addition, if the Employer's compensation to musicians qualifies it for Tier 4 rights, it may provide an additional 60 minutes (non-multiplier minutes) per month to the opera or ballet company with which it has a pre-existing subcontractor relationship for the opera/ballet company's use without deduction from its total available minutes. Content distributed pursuant to this provision may only be streamed on the website of the opera or ballet company or on social media sites within the opera or ballet company's control for a period of thirty (30) days.
9. *Employer Ownership and Control.* Employer will retain ownership and control of all content distributed pursuant to this agreement.
10. *Duration of Availability of Content.* Each stream released pursuant to this agreement may remain available for a period of thirty (30) days.

11. *End of Term and Withdrawal of Content.* Electronic media materials distributed pursuant to this agreement may be made available only until 30 days after such time as the relevant governmental authorities permit resumption of public performance without restriction on audience capacity or the start of the 2021-2022 season, whichever comes first. At that time, any and all electronic media materials made available pursuant to this agreement must be withdrawn from distribution, absent prior written agreement between the parties. Any such materials not withdrawn at that time shall be subject to payment to musicians pursuant to the terms and conditions of the appropriate AFM agreement.
12. *Employer Commitment to Maintenance of Compensation.* Rights granted pursuant to each Media Tier of this agreement are contingent on the Employer's maintenance of wages, benefits and all other terms and conditions of employment contained within the Collective Bargaining Agreement between the Employer and the AFM Local at the percentages required by that Media Tier. If compensation to musicians falls below the threshold necessary to access the rights of a given Media Tier, Employer must immediately bring its streamed media content into compliance with the limitations of the Media Tier corresponding to the then-current level of compensation to musicians.
13. *Musician and Orchestra Committee Approvals.* This agreement must be ratified by the musicians of the orchestra. Any content distributed pursuant to this Side Letter is subject to approval by the Orchestra Committee.
14. *Unauthorized Use.* Should any recording created under the terms of this Agreement ever be utilized for any purpose not explicitly set forth herein, such infringing use shall be remedied consistent with the terms of Article VI of the IMA.
15. *Revenue.* Any revenue generated by a stream under the conditions set forth herein will not be included for purposes of revenue participation pursuant to the applicable revenue participation article of the IMA; provided, however, that in the event the employer makes any other use of the content captured and streamed pursuant to this agreement, the provisions of the applicable revenue participation article of the IMA shall apply to revenue generated by such other use.
16. *Superseded Agreements.* This Agreement supersedes and replaces the March 12, 2020 IMA Side Letter and March 18, 2020 MOU entered into between the AFM and the EMA as well as any IMA side letter entered into between an EMA member Employer and the AFM between March 12, 2020 and the date of execution of this Agreement.

For the AFM:

For the EMA:

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