



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Melbourne Symphony Orchestra Pty Ltd T/A Melbourne Symphony Orchestra
(AG2020/3042)

MELBOURNE SYMPHONY ORCHESTRA MUSICIANS AGREEMENT 2020

Live performance industry

COMMISSIONER LEE

MELBOURNE, 30 OCTOBER 2020

Application for approval of the Melbourne Symphony Orchestra Musicians Agreement 2020.

[1] An application has been made for approval of an enterprise agreement known as the *Melbourne Symphony Orchestra Musicians Agreement 2020* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Melbourne Symphony Orchestra Pty Ltd T/A Melbourne Symphony Orchestra. The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the agreement.

[3] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] The Media, Entertainment and Arts Alliance being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 6 November 2020. The nominal expiry date of the Agreement is 31 December 2021.



COMMISSIONER

Printed by authority of the Commonwealth Government Printer
<AE509409 PR724140>

Annexure A

Melbourne Symphony Orchestra

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2020/3042

Applicant: Melbourne Symphony Orchestra Pty Ltd (ACN 078 925 658)

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Guy Ross, Chief Operating Officer, have the authority given to me by Melbourne Symphony Orchestra Pty Ltd to give the following undertaking with respect to the *Melbourne Symphony Orchestra Musicians Agreement 2020* (the **Agreement**):

- 1 The Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

This undertaking is provided on the basis of issues raised by the Fair Work Commission in the Application before the Fair Work Commission.



Signature

Guy Ross
Chief Operating Officer
Melbourne Symphony Orchestra Pty Ltd

28 October 2020

Melbourne Symphony Orchestra Pty Ltd
ABC Southbank Centre, 120 – 130 Southbank Boulevard, Southbank VIC 3006 Australia
GPO Box 9994, Melbourne VIC 3001 Australia
Tel: 03 8646 1110 | mso.com.au
ABN 47 078 925 658



Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

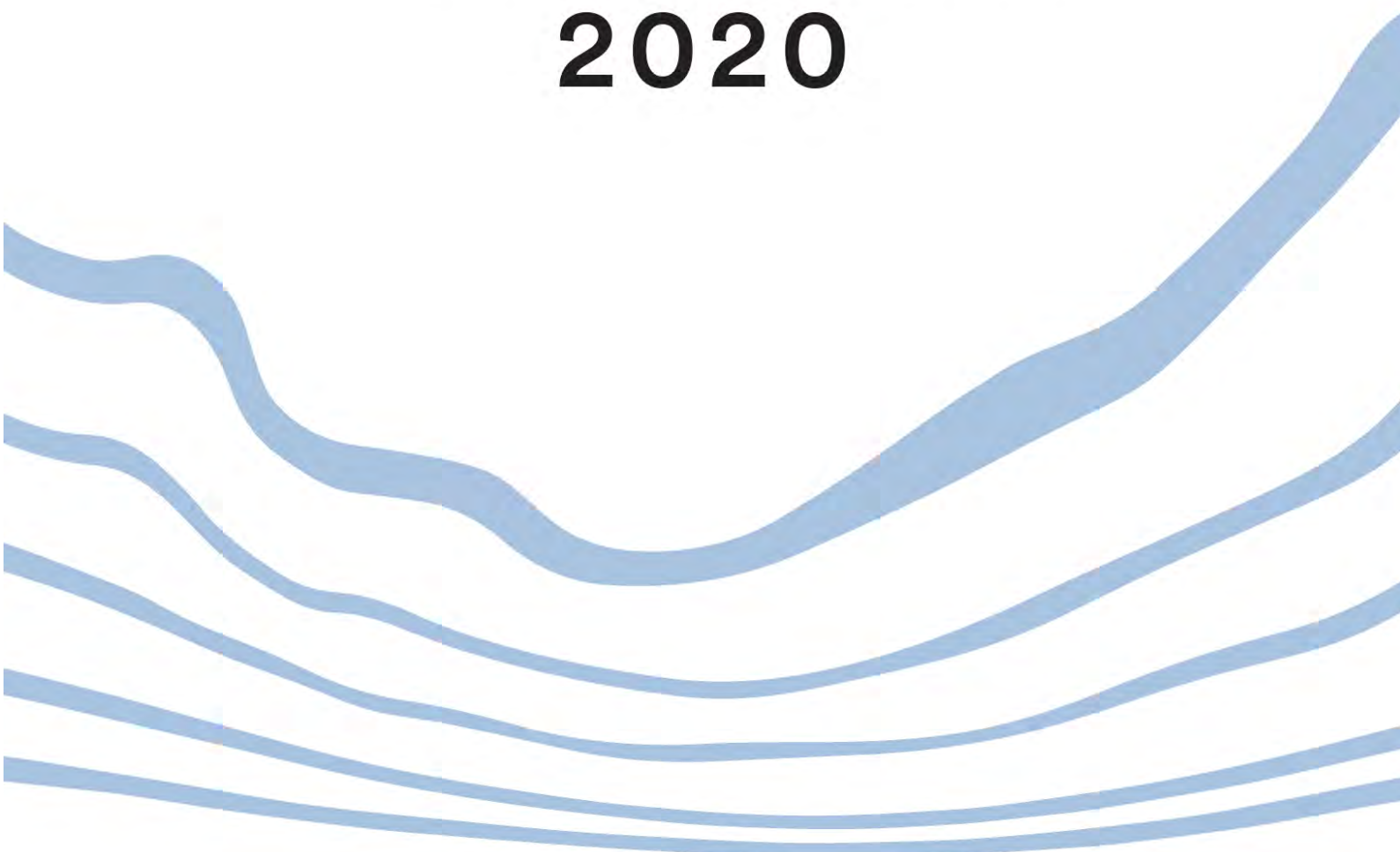
MSO



A MEAA Member

Melbourne Symphony Orchestra

**MUSICIANS
AGREEMENT
2020**



1 TITLE

This Agreement shall be known as the Melbourne Symphony Orchestra Musicians Agreement 2020.

2 OBJECTIVES

This Agreement provides the basis for the Melbourne Symphony Orchestra to perform and compete as a major Australian orchestra. The players and management are committed to striving to maintain a constructive, harmonious and positive employment relationship allowing for the Orchestra to present high quality orchestral performances and build upon its reputation.

3 ARRANGEMENT

MELBOURNE SYMPHONY ORCHESTRA	1
1 TITLE.....	2
2 OBJECTIVES	2
3 ARRANGEMENT	2
4 PARTIES BOUND AND DURATION	4
5 APPLICATION OF THE AGREEMENT	4
6 DEFINITIONS	4
6.1 GENERAL TERMS	4
6.2 COMMITTEES & CONSULTATION.....	5
6.3 FAMILY	5
6.4 MUSICIANS	6
6.5 TRAVEL	6
6.6 WORKING CONDITIONS	6
7 CONSULTATION.....	7
7.1 FULL ORCHESTRA CONSULTATION	7
7.2 CONSULTATIVE COMMITTEE	7
7.3 ARTISTIC COMMITTEE	8
7.4 CONSULTATION REGARDING MAJOR WORKPLACE CHANGE	8
7.5 CONSULTATION WITH MUSICIANS IF DEFINITE DECISION MADE REGARDING MAJOR WORKPLACE CHANGE.....	9
7.6 CONSULTATION ABOUT CHANGES TO THE ORDINARY PATTERNS OF WORK ..	9
8 EMPLOYMENT CONDITIONS	10
8.1 GENERAL CONDITIONS OF EMPLOYMENT.....	10
8.2 ROSTERS	10
8.3 HOURS OF EMPLOYMENT AND CALL CONDITIONS	10
8.4 SUNDAYS	12
8.5 PUBLIC HOLIDAYS.....	12
8.6 MID-YEAR BREAK	12
8.7 MAXIMUM ANNUAL WORKLOAD	13
8.8 OVERTIME	13
8.9 TRANSPORT IF NO PUBLIC MEANS AVAILABLE	14
8.10 TOURING.....	14
8.11 PLAYING IN COMBINATIONS.....	14
8.12 SUPPLY OF SPECIAL DRESS	14
8.13 ABSENCE FROM DUTY	15
8.14 INSURANCE OF INSTRUMENTS	15
8.15 FLEXIBLE WORK ARRANGEMENTS FOR MUSICIANS WITH FAMILY RESPONSIBILITIES.....	15
8.16 PARKING	17

8.17	CASUAL MUSICIANS	17
8.18	REDUNDANCY	21
8.19	PROVISION OF INSTRUMENTS	22
8.20	MUSICIANS INVOLVED IN AUDIENCE AND COMMUNITY ENGAGEMENT ACTIVITIES.....	22
8.21	EDUCATION ACTIVITIES.....	22
9	CONTRACT EMPLOYMENT	23
10	SELECTION AND APPOINTMENT	23
10.1	JOB DESCRIPTIONS.....	24
10.2	SELECTION CRITERIA	28
10.3	AUDITIONS.....	28
10.4	AUDITION PANEL MEMBERSHIP	29
10.5	PRE-TRIALS	30
10.6	TRIAL PERIODS.....	31
11	PERFORMANCE MANAGEMENT	31
12	LOSS OF PROFICIENCY	32
13	STEPPING DOWN	34
14	DISCIPLINARY AND CONDUCT MATTERS	35
15	GRIEVANCE AND DISPUTE SETTLING PROCEDURE	35
16	OCCUPATIONAL HEALTH & SAFETY	37
16.1	CONSULTATIVE MECHANISMS.....	37
16.2	NOISE HEALTH AND SAFETY	37
16.3	ACCOMMODATION.....	38
16.4	AIR CONDITIONING	38
17	LEAVE	38
17.1	ANNUAL LEAVE	38
17.2	ATTEND FWC PROCEEDINGS	39
17.3	MUSICIANS CALLED AS WITNESSES	39
17.4	MUSICIANS SUMMONED AS JURORS	39
17.5	PERSONAL LEAVE	39
17.6	COMPASSIONATE AND SPECIAL LEAVE.....	41
17.7	PARENTAL LEAVE	41
17.8	LONG SERVICE LEAVE	43
17.9	LEAVE WITHOUT PAY.....	44
17.10	FAMILY AND DOMESTIC VIOLENCE LEAVE	44
18	SALARY & ALLOWANCES	46
18.1	RATES OF PAY	46
18.2	TIME OF PAYMENT.....	47
18.3	SALARY INFORMATION ADVICE	47
18.4	PAYMENT FOR WORK ON PUBLIC HOLIDAYS	47
18.5	OVERTIME PAY	47
18.6	EXTRA INSTRUMENTS (DOUBLING).....	48
18.7	INSTRUMENT ALLOWANCE	48
18.8	HIGHER DUTIES	49
18.9	TOUR LOADING	49
18.10	TRAVEL ALLOWANCE	49
18.11	SUPERANNUATION	49
18.12	TIME & SALARIES RECORDS	50
18.13	DRESS ALLOWANCE.....	50
18.14	WORKERS COMPENSATION	51
19	ARRANGEMENTS	51
19.1	RIGHT OF ENTRY	51
19.2	TRAINING FOR MUSICIAN REPRESENTATIVES	51

19.3	MEETINGS	51
20	TRAINING AND DEVELOPMENT	51
21	SPECIAL ARRANGEMENTS	52
22	RECORDINGS.....	52
23	WEBCASTING AND STREAMING	53
24	SALARY PACKAGING	53
25	FLEXIBILITY CLAUSE.....	54
26	MATTERS TO BE PURSUED.....	55
27	RETIREMENT	55
	APPENDIX A	57
	APPENDIX B.....	52
	APPENDIX C.....	55
	APPENDIX D.....	56
	APPENDIX E	57
	APPENDIX F.....	64
	APPENDIX G	65
	APPENDIX H.....	66

4 PARTIES BOUND AND DURATION

This Agreement shall be binding on the Media Entertainment and Arts Alliance, orchestral musicians and the Melbourne Symphony Orchestra Pty Limited. It shall be operative from seven days after this Agreement is approved by the FWC until 31 December 2021.

5 APPLICATION OF THE AGREEMENT

- (a) This Agreement applies to musicians in the Melbourne Symphony Orchestra (MSO). This Agreement supersedes and replaces in its entirety the Melbourne Symphony Orchestra Musicians Agreement 2017.
- (b) This Agreement overrides in its entirety the *Live Performance Award 2010*.

6 DEFINITIONS

6.1 GENERAL TERMS

ABC means the Australian Broadcasting Corporation.

Agreement means this *Melbourne Symphony Orchestra Musicians Agreement 2020*.

Company means Melbourne Symphony Orchestra Pty Limited.

Conductor means the person who is responsible for musical direction of the call.

Week means the period starting midnight Sunday and concluding at midnight the following Sunday.

Weekday means any day other than a Saturday or a Sunday.

Default Fund means the superannuation fund chosen by the MSO as the Company's default superannuation fund.

Media Super is the industry superannuation fund for print, media, entertainment and arts professionals administered by the trustee Media Super Ltd.

Director of Operations is the staff member responsible for all aspects of day to day orchestral administration and musician management/support, including rostering, scheduling, touring, production and audition management. From time to time, the Director of Operations may delegate tasks or decision making to a suitable delegate within his/her team, whilst retaining overall accountability for the resultant outcome.

FWC means Fair Work Commission.

FW Act means the *Fair Work Act 2009* (Cth) as amended from time to time.

6.2 COMMITTEES & CONSULTATION

Artistic Committee: The Artistic Committee means a committee comprised of the Chief Conductor, the Concertmaster and/or Associate Concertmaster, 6 elected musicians, the President and Secretary of the Players' Committee, the Managing Director, the Director of Artistic Planning, and the Director of Operations.

Consultative Committee: The Consultative Committee consists of the members of The Players' Committee, the Managing Director, Director of Operations and other staff as directed by the Managing Director.

Players' Committee: "Players' Committee" or "MSO Players' Committee" means a committee elected to discuss issues related to the activities, functions and employment environment of the MSO, and shall form part of the MSO Consultative Committee. The MSO Players' Committee shall abide by the MSO Players' Committee Standing Orders (APPENDIX C).

The Players' Committee assists in maintaining a good, co-operative relationship between the musicians of the MSO, the Company and its administration, and the Chief Conductor/Artistic Director, and a healthy non-confrontational work environment. In this role, the Committee commits to a willingness and availability to consult with management, provides proactive assistance in resolution of orchestral issues as required; and takes a lead role in communication of Company issues to/from players and to/from management.

Players' Committee Executive: The Players' Committee Executive shall consist of any three of: President, Vice-President, Secretary, and Industrial representative, as elected per the MSO Players' Committee Standing Orders.

OH&S Committee: The OH&S Committee consists of the Chief Financial Officer (or delegate), Director of Human Resources, Director of Operations, Production/Operations Manager, Musician OH&S representative, Musician Deputy OH&S representative plus others as required.

Mutual Agreement means an agreement reached between the Company and a simple majority of those musicians directly affected by the circumstances in which a condition of this Agreement may be varied by mutual agreement. The Company shall give due consideration to the circumstances where an individual must attend an essential commitment that conflicts with the variation.

Union means the Media, Entertainment and Arts Alliance (MEAA). The Symphony Orchestra Musicians Association (SOMA) forms a sub-section of the Alliance.

6.3 FAMILY

Immediate Family Member is

- (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

Primary Care-giver is the person who assumes the principal role of providing care and attention to a child.

Partner includes for the purpose of paternity leave, a de facto or a former spouse.

6.4 MUSICIANS

Casual Musician means a musician who is neither a permanent musician nor a contract musician, but has been engaged on a per call basis.

Contract Musician means a musician who is not a permanent musician, but has been engaged for some fixed period on a full time basis.

Musician means any orchestral musician employed under this Agreement including casual, permanent and contract.

Permanent Musician means a musician who has been appointed to a position in the Melbourne Symphony Orchestra.

Ensemble shall mean a combination of musicians which uses less than the full complement of the orchestra.

Establishment Strength of the Melbourne Symphony Orchestra is 88 musicians.

6.5 TRAVEL

Tour means the circumstances in which musicians are required to be absent from their usual place of residence for one or more nights.

Day Trip means any duty on a single day that involves travel in excess of 50 kilometres from the Terminal Depot but does not involve an overnight stay. A day trip shall end no later than midnight.

Travelling time means the period of time, while on a tour or day trip, spent in travel by transport arranged by the Company on any journey from the time specified by the Company for departure, to the time of arrival at the specified destination. Travel time will include comfort stops as prescribed by this Agreement but excludes any additional stoppage arranged by the musicians such as meal breaks.

Terminal Depot is the ABC Southbank Centre, Southbank.

6.6 WORKING CONDITIONS

Duty means the time of starting as notified by the Company until the musician is released by the Company and shall include:

- (a) Calls;
- (b) Travel;
- (c) training sessions.

Call means an attendance for a duty other than travel at the direction of the Company and shall include:

- (a) rehearsals;
- (b) recordings;
- (c) performances;
- (d) company meetings, Consultative Committee meetings and Artistic Committee meetings;
- (e) auditions;
- (f) educational activities.

Educational Activities include any schools performance, lecture, demonstration, masterclass or workshop by one or more musicians performed during rostered hours.

Playing Call means any call at which the musician is required to play a musical instrument.

Cycle means a roster period of four weeks. The maximum number of calls for each musician in any cycle is forty calls, of which only thirty-two calls may be playing calls.

Free Day means a period of 24 hours during which a musician is not required to attend for duty or be available for duty and such period shall not be deemed to have commenced until the expiration of eleven hours from when the musician last performed duty.

7 CONSULTATION

Commitments

The parties agree to maintain an open consultative process. In this regard the parties are committed to the mutual exchange of information and communication on matters affecting, or having the potential to affect, the activities or the functioning of the Orchestra or the working environment. The parties recognise that for the consultative process to be successful, the process needs to enjoy the confidence of all major stakeholders. Consistent with commitments made under this Agreement the consultative process provides for participation by musicians and the Union in decision making affecting the working lives of musicians.

7.1 FULL ORCHESTRA CONSULTATION

- (a) Four meetings of the full Company will be held each year, part of which will address the financial situation of the Company.
- (b) The Company's planning processes will incorporate strategies for wage increases for musicians.

7.2 CONSULTATIVE COMMITTEE

- (a) The Consultative Committee will facilitate open consultation and information exchange between the Administration and the musicians. It will address matters including the following:
 - (i) Overseeing the day to day operation of this Agreement
 - (ii) Negotiating any matters to be considered under clause 21 of this Agreement
 - (iii) Ensuring that musicians' views are taken into consideration in staff selection panels where appropriate
 - (iv) Endorsing forward work schedules and amendments
 - (v) Ensuring that musicians voices are heard in the development and setting of policy and direction for the Company
- (b) There shall be at least four Consultative committee meetings in each calendar year. These shall be chaired alternately by a Players Committee representative and a management representative. Joint agendas shall be distributed prior to each meeting. The functioning, including chairing and timing of meetings, setting and distribution of agendas etc, of the Consultative Committee will be determined by the Consultative Committee.
- (c) Members of the consultative committee will have access to all relevant information in order to facilitate the effective operation of this Agreement and a harmonious and constructive working environment. Players Committee representatives will have access to a meeting venue and administrative facilities to prepare for meetings and to disseminate information arising from such meetings. No relevant information will be unreasonably withheld.

7.3 ARTISTIC COMMITTEE

- (a) The Artistic Committee will address the following matters:
 - (i) specific programs being planned for the following year;
 - (ii) the general shape of programming for the year following the next year;
 - (iii) the draft roster for the following year during its planning stages;
 - (iv) work flow and scheduling for the current year and following year;
 - (v) assessment of conductors and soloists;
 - (vi) proposed artists and repertoire in relation to conductors and soloists;
 - (vii) artists, repertoire and composers with a view to making recommendations for future programming and commissions;
 - (viii) performance standard.
- (b) An election by secret ballot of all permanent musicians will be conducted by the Players' Committee Executive to elect musician representatives to the Artistic Committee.
- (c) The term of each Artistic Committee shall be eighteen months.
- (d) The Artistic Committee shall include a maximum of nine permanent musicians of whom:
 - (i) three will roll-over from the previous term to provide continuity;
 - (ii) three will be elected by the Orchestra to hold office for a period of three years;
 - (iii) three will be the Concertmaster/s and/or Associate Concertmaster, The President and Secretary of the Players' Committee;
- (e) A minimum of six Artistic Committee meetings will be scheduled in the course of any calendar year.
- (f) It is agreed that the musicians must feel free to discuss issues with confidentiality, and that the Orchestra must be informed about the Artistic Committee's activities. A bulletin of outcomes of each meeting will be made available to all permanent musicians in the Orchestra.

7.4 CONSULTATION REGARDING MAJOR WORKPLACE CHANGE

- (a) Where the Company is seriously considering Major Workplace Changes that are likely to have a significant effect on musicians, the Company shall notify the Players' Committee and the Union. Such notification shall be in writing and provide all relevant information about the changes including the reasons for the changes, financial and artistic justification for the decision and any expected effects of the changes on musicians' employment and working conditions including any measures to avoid or minimise the termination of employment.
- (b) The company shall commence discussions with the Players' Committee and SOMA/MEAA as soon as practicable after notifying the parties in order to avert or mitigate any adverse effects on musicians which might ensue from the proposed changes. Such discussions shall address the possibility of redeployment and retraining and whether or not redeployment can be affected.
- (c) The Company must give prompt and genuine consideration to matters raised about the Major Change by the Players' Committee and the Union.
- (d) The parties agree to act in good faith in relation to the consultation process.
- (e) While consultation is occurring, the parties will abide by the status quo that existed immediately before the subject matter arose.

7.5 CONSULTATION WITH MUSICIANS IF DEFINITE DECISION MADE REGARDING MAJOR WORKPLACE CHANGE

- (a) If following consultation with the Players' Committee and the Union, as set out above, the Company has made a definite decision to introduce Major Change, the Company must notify the relevant musicians who may be affected by the definite decision to introduce the change.
- (b) As soon as practicable after making its decision, the Company must discuss with the Musicians:
 - (i) the introduction of the change;
 - (ii) the effect the change is likely to have on the musician or musicians; and
 - (iii) measures the Company is taking to avert or mitigate the adverse effect of the change on the musicians.
- (c) For the purposes of the discussion the Company will provide in writing, to the Musician or Musicians:
 - (i) all relevant information about the change including the nature of the change proposed;
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees
- (d) The Company must give prompt and genuine consideration to matters raised about the major change by the musicians.
- (e) For the purposes of sub clauses 'Good faith' includes obligations to meet, disclose relevant information, genuinely consider proposals and respond with reasons and to refrain from unfair conduct that undermines consultation.
- (f) Major change is likely to have a significant effect on musicians' if it results in:
 - (i) The termination of the employment of employee/s;
 - (ii) Change to the composition, operation or size of the orchestra or to the skills required of musicians;
 - (iii) The elimination or diminution of job opportunities, or job security (including opportunities for promotion or tenure);
 - (iv) The alteration of hours of work (whether calculated over 4 weekly or annual cycles);
 - (v) The need to retrain employees;
 - (vi) The need to relocate employees to another workplace;
 - (vii) The restructuring of jobs;
 - (viii) Changes to the legal or operational structure of the employer or business.

7.6 CONSULTATION ABOUT CHANGES TO THE ORDINARY PATTERNS OF WORK

- (a) Where the Company proposes changes to the ordinary pattern of work the Company will:
 - (i) provide information to musicians about the change; and
 - (ii) invite musicians to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
 - (iii) consider any views given by the employees about the impact of the changes, provided that the terms and conditions as otherwise set out in in this Agreement will continue to regulate the ordinary hours of work and roster changes.

- (b) For the avoidance of doubt, an affected employee/s is entitled to be represented by a representative of their choice for the purposes of this clause.

8 EMPLOYMENT CONDITIONS

All permanent musicians will have the Melbourne Symphony as their primary work commitment. Musicians undertaking other activities shall do so without compromising the quality of their work with the Melbourne Symphony Orchestra.

8.1 GENERAL CONDITIONS OF EMPLOYMENT

- (a) The salary prescribed by this Agreement shall be paid to each permanent and contract musician who, during any week, is ready and willing to perform the work provided for by the Agreement irrespective of whether or not the musician is required to perform that work.
- (b) Unless mutually agreed to the contrary, the employment of a musician is to be terminated, in the case of principals, only by twelve weeks' notice given in writing by the musician or the Company and, in the case of other musicians, six weeks' notice in writing. Notice may be given on any day.
- (c) Nothing in this Agreement shall be deemed to restrict the right of the Company to summarily dismiss a musician without notice for proven misconduct or negligence, and in the case of such a dismissal, wages shall be payable for the employment up to, but not after, the time of dismissal.
- (d) Notwithstanding anything elsewhere contained in this Agreement the Company, if satisfied that the musician cannot be usefully employed in rehearsal or performance, may deduct payment of wages for any day on which that musician cannot be so employed because of:
 - (i) any strike;
 - (ii) any breakdown of machinery; or
 - (iii) any stoppage of work unavoidable by the Company, other than a stoppage due to weather.

8.2 ROSTERS

- (a) Subject to 8.3(a) the Company will provide all musicians with an annual draft roster, which outlines the hours to be worked in each cycle of the following year.
- (b) Any change to the rostered call times for any day within a cycle shall be advised to all musicians in writing and shall not be made with less than 7 days' notice prior to the day concerned.

8.3 HOURS OF EMPLOYMENT AND CALL CONDITIONS

Objectives

All work in any week will be contained within five days and free days shall be consecutive. Notwithstanding this objective, the Melbourne Symphony Orchestra will require flexibility of working conditions in order that a wide range of performance projects may be undertaken.

- (a) The draft roster shall be subject to the agreement of the Consultative Committee and any subsequent amendment shall be subject to the agreement of the Players' Committee Executive.
- (b) The standard working four-week cycle shall be 40 calls for each permanent musician. Of these, a maximum of 32 calls shall be playing calls for any individual musician,

provided that no more than ten calls may be worked by a musician in a single week without incurring overtime. This shall constitute full time employment.

- (c) Subject to 8.3(f), rehearsals and recordings shall be rostered in calls of two and one half hours. Performances shall be rostered in calls of three hours.
- (d) Non-playing calls may be of up to three hours duration, with the exception of auditions, which may be up to four hours duration.
- (e) Unless otherwise agreed by the Consultative Committee, all seating or balance calls shall be of one-hour duration.
- (f) A three-hour call may be rostered for:
 - (i) a call which combines rehearsal and performance(s) of a school program or lunch hour concert;
 - (ii) one final rehearsal prior to a tour or run out when it is to be followed by a balance or seating call of a maximum of 30 minutes;
 - (iii) one rehearsal for any ballet;
 - (iv) one rehearsal for orchestral works or programs of works longer than 2 hours 15 minutes;
 - (v) one rehearsal where the Orchestra has been hired by an external body;
 - (vi) up to four rehearsals of an opera (staged or in concert);
 - (vii) programs with substantial chorus involvement, for a maximum of two rehearsals occurring on separate days only;
 - (viii) two consecutive education concerts, each of which is of 75 minutes or less duration;
 - (ix) a rehearsal or recording call where this is the only call on the day;
 - (x) in other circumstances as agreed with the Players' Committee.
- (g) In any call no musician will be required to work for a period in excess of 90 minutes without a fifteen-minute rest break. A rest break may be delayed beyond 90 minutes in any live performance or run through of a single work intended by the composer to be performed uninterrupted. For calls other than a general rehearsal or a concert, the Orchestra shall be informed prior to such a run through.
- (h) Calls of two hours without a break may occur with no additional remuneration in lieu of calls scheduled for two and one half hours in the following circumstances:
 - (i) At the discretion of the Conductor and subject to mutual agreement; or
 - (ii) For Education, Pops and Commercial projects, excepting where a second rehearsal of longer than two and a half hours occurs on that day; or
 - (iii) With advance notice in the roster and as agreed by the Players' Committee, with the primary aim of creating greater efficiency in rehearsals.
- (i) No more than two calls will be worked in any day.
- (j) No more than eight days shall be worked consecutively.
- (k) The first call on any day shall not commence within 11 hours of the employee concerned last having performed duty, except where the orchestra returns from a country tour, after which the first call shall not commence within 12 hours of arrival at the terminal depot.
- (l) No playing duty shall be required for 2 hours before an evening performance call, except in the following circumstances:
 - (i) In case of a balance call when on a regional tour or day trip as agreed by the Players' Committee; or
 - (ii) In case of a balance call for a Commercial or Pops concert as agreed by the Players' Committee.

- (iii) Where a 'mixed' call is agreed by the Players' Committee comprising a rehearsal and performance element, including but not limited to Ears Wide Open; or
- (iv) In other circumstances as agreed by the Players' Committee.
- (m) Where an evening call is scheduled for a major subscription concert or for a concert performance involving similar symphonic repertoire, to be performed in the city centre, any prior call other than a balance call during that day shall end not later than 1.00 p.m., and shall not involve a performance.
- (n) When at any call musicians are engaged in a public performance they shall not be required at such call to perform any duty other than one such public performance.
- (o) No call will be rostered in any day when the period of actual travel exceeds 6 1/2 hours. No more than one call will be rostered in any day when the period of actual travel exceeds four hours, but is less than 6 1/2 hours. Provided that nothing in this paragraph shall operate so as to prevent a scheduled performance from taking place where the period of actual travel is exceeded due to circumstances which are"
 - (i) reasonably beyond the control of the Company;
 - (ii) reasonably within the control of the Company subject to payment as for an additional call.

8.4 SUNDAYS

- (a) Permanent musicians may undertake up to two calls per Sunday to a maximum of six Sundays per year for no additional remuneration. These may be any of the usual combination of recording calls, balance and performance calls. A full rehearsal in addition to a concert shall be subject to approval by the Consultative Committee. Such approval will not be unreasonably withheld.
- (b) On one additional Sunday, for no additional remuneration, musicians may undertake a maximum of one balance call and one performance call, provided that
 - (i) The additional activity does not consist of a major subscription concert
 - (ii) The activity is based within 50km of the terminal depot
 - (iii) The following Monday is a Free day
 - (iv) Scheduling of these activities is subject to approval by the Players' Executive. Such approval will not be unreasonably withheld.
- (c) For the Chamber music series only, an additional payment of \$300 per permanent musician will be made on each occasion where the series includes rostered work on a Sunday. This payment is made in lieu of that Sunday counting towards the maximum specified above.

8.5 PUBLIC HOLIDAYS

- (a) A public holiday that is not worked shall attract a credit of two calls towards the cyclic total for the relevant period during which the public holiday falls.
- (b) Where any of the days specified as a holiday falls on a Sunday and that holiday is generally observed on an ordinary week-day which would not otherwise be observed as a holiday, work done on that ordinary week-day shall be deemed to be done on the holiday and shall be paid for accordingly.

8.6 MID-YEAR BREAK

During the concert season a period of not less than six consecutive weekdays will be rostered as free of any work. This will be rostered in, or as near as practicable to, the month of July. If the workload so dictates, the mid year break may consist of two such periods, with approximately

half the Orchestra rostered in each period. In this case each permanent musician will be advised by the 1st February as to which week will apply to him or her. Any subsequent changes may only be made with the approval of management and the agreement of the players involved.

8.7 MAXIMUM ANNUAL WORKLOAD

(a) The maximum annual workload shall be 340 calls for each musician. As far as possible this workload shall be spread evenly across the playing year. The Company will determine the distribution of workload for individual musicians.

(b) -

(i) The maximum annual workload will include all rostered playing calls, balance and seating calls.

(ii) In addition the following attendances shall also be deemed to contribute to annual workload.

Auditions	4 hours or part thereof = 1 call
Consultative Committee	3 hours or part thereof = 1 call
Artistic Committee	3 hours or part thereof = 1 call
Orchestra Meetings	3 hours or part thereof = 1 call
Travel within Victoria or to Albury, NSW	3 hours or part thereof accumulated in any one day= 1 call
Players' Committee President	25 calls per annum
Players' Committee Vice President	15 calls per annum
Players' Committee Secretary	20 calls per annum
Players' Committee Industrial Rep.	10 calls per annum, in a non EBA year 15 call per annum in an EBA year
OH&S Representative	15 calls per annum
Deputy OH&S Representative	5 calls per annum

If a player holds more than one of the positions as listed above, only the higher call count for an individual position will be recognised

(c) All approved leave shall cause an adjustment to be made to the total annual maximum workload. Where a musician is absent that musician's annual maximum workload shall be reduced on a proportionate basis by the amount calculated (to the nearest full call) using the following formula:

period of absence (in calls) multiplied by 0.7

An adjustment to the annual maximum workload for a musician commencing part way through a year shall also be made using this formula.

8.8 OVERTIME

(a) Overtime up to 30 minutes may be called at the conclusion of any call without consultation. Additional overtime may be worked only with mutual agreement.

(b) Overtime shall not be payable, if the extra duty worked on any call is 5 minutes or less in excess of the scheduled call time to a maximum of eight (8) calls in each cycle.

(c) Where overtime provisions are exercised, and any subsequent call commences late, the second call may be extended to allow the full length of the call without further overtime payment.

8.9 TRANSPORT IF NO PUBLIC MEANS AVAILABLE

If at the conclusion of any engagement no public transport is available, and a musician is unable to return home by public conveyance, the Company shall be responsible for the transport home of that musician.

8.10 TOURING

- (a) The MSO is committed to occasional overseas touring as part of its orchestral activities. Accordingly, international touring with the Orchestra is a normal work requirement for orchestral musicians. The terms and conditions of employment applying to International tours shall be negotiated in accordance with Clause 21.
- (b) Musicians who do not wish to be involved in the tour or trip for family or other reasons may seek leave. In considering a leave application in accordance with subclause 8.10(b) the Company shall have regard for the individual musician's circumstances, whether there are other similar applications received, the instrument group(s) affected and the financial and other implications for the tour.
- (c) Where work is to be done by a musician at a place which is outside a 50 kilometre radius of the terminal depot, the employee shall, wherever practicable be provided with an appropriate standard of transportation. When travelling by air, the time of departure and arrival of the employee shall be deemed to be the time of departure from or arrival at (as the case may be) the Terminal Depot.
- (d) The Company shall transport (or pay the reasonable cost of transporting) double bass, harp, percussion, contra bassoon, bass clarinet, 'cello, tuba and other bulky instruments when they are to be used for the purpose of the employment.
- (e) Rest Breaks - In the case of travel by road the orchestra shall be allowed a rest break to a maximum of 15 minutes in each period of as near as practicable to two hours.
- (f) Except where mutually agreed, actual travel on any day shall not commence before 8.30 a.m. whilst the orchestra is on tour. This prohibition does not apply to the first day commencing a tour
- (g) Subject to this clause, where on any day by a requirement of the Company a musician undertakes an engagement away from home and time actually worked plus travelling time exceeds seven hours, all time of travel in the excess shall be paid for at half the entry level hourly base rate for Section Musicians, provided that this subclause shall not apply to travel on tours.
- (h) Where an employee is on tour and time actually worked plus travelling time in any week exceeds 40 hours, all time of travel in the excess shall be paid for at half the entry level hourly base rate for Section musicians.

8.11 PLAYING IN COMBINATIONS

A musician may be required to play:

- (a) with the full complement of any orchestra;
- (b) in any ensemble;

provided that no musician shall be required to perform in a combination of fewer than eight players independent of an orchestra performance, other than voluntarily.

8.12 SUPPLY OF SPECIAL DRESS

Where a musician is required to wear special dress other than evening dress the Company shall supply that special dress. Such special dress shall be clean and in good condition

and the cost involved shall be borne by the Company. Other dress arrangements may apply subject to the agreement of the Consultative Committee.

8.13 ABSENCE FROM DUTY

- (a) A musician who is absent from duty without prior approval shall lose pay proportionate to the time of the absence. The amount of pay to be deducted for the absence shall be such amount as bears to the rate prescribed for that call the same proportion as the period of absence bears to the period of the call. Provided that a permanent or contract musician who produces or forwards to the Company, within twenty four hours of the commencement of such absence, evidence satisfactory to the Company that the absence was reasonable because of either:
 - (i) personal illness not due to the employee's own fault nor to accident arising otherwise than in connection with the member's employment; or
 - (ii) personal injury caused by accident arising out of and in the course of the member's employment.
- (b) If any dispute shall arise as to the deduction of pay on the ground that satisfactory evidence has not been produced, the question as to whether the evidence should have been accepted by the Company as satisfactory, may be determined by an authorised representative of the Union and the Company or its representative, and if they do not agree, shall be determined by the FWC and shall not be subject to appeal.
- (c) Nothing in this clause shall affect any right of the Company to terminate employment in accordance with the provisions prescribed elsewhere in this Agreement.

8.14 INSURANCE OF INSTRUMENTS

- (a) The Company will insure against loss or damage for all instruments used by all musicians while engaged in work for the Company or travelling between their place of residence and rostered duty and when on tour for the Company. In these cases only, the Company will meet all excesses and other costs which their insurer may stipulate.
- (b) The Company shall insure against loss and damage for all instruments which may be:
 - (i) Owned by any permanent musician and used while carrying out his/her duties;
 - (ii) On loan to any permanent musician and used while carrying out his/her duties on the basis of a 24 hour, seven day a week coverage, provided that these instruments are registered with the Company for the purposes of the Company instrument insurance listing.
- (c) The insurance coverage is worldwide with the exception of a limited number of countries where coverage does not apply. Permanent musicians intending to take their instruments overseas should ascertain through the Company in advance of whether the insurance coverage applies in the country(s) they are intending to visit.
- (d) Excluding cases specified in Clause 8.14(a) if an instrument is lost or damaged Permanent musicians shall be responsible for all excesses and other costs which the Company's insurer may stipulate.
- (e) The Company will provide written and timely advice to each permanent musician in the event of any material changes to the Company's insurance policy, including but not limited to any changes in excesses or other costs.

8.15 FLEXIBLE WORK ARRANGEMENTS FOR MUSICIANS WITH FAMILY RESPONSIBILITIES

Objectives

- *The parties to this Agreement are supportive of assisting musicians of the MSO to balance their work and family commitments and to this end agree to the limited introduction of flexible work arrangements in accordance with this clause.*
- *In so doing the parties recognise that the operations of the MSO, reflecting the particular requirements of a professional orchestra, require special provisions to meet the conflicting employees to fulfil their family responsibilities.*
- *The parties to this Agreement believe that if implemented appropriately this clause will benefit the Company by increasing its ability to retain skilled musicians, demonstrate its commitment to the principles of equal employment opportunity, maintain the highest artistic standards and strengthen the commitment of musicians to the MSO.*

Commitments

- *The Company commits to responding positively to requests for flexible work arrangements under these provisions, and to ensure these musicians are fully integrated into all of the orchestra's activities.*
 - *The musician commits to maintaining full professional standards of performance, musicianship and commitment to the orchestra.*
- (a) The Company will adhere to the National Employment Standards in regard to requests for flexible working arrangements in regard to family responsibilities.
- (b) In addition, part-time work will be made available for the purposes of family responsibilities up to the 2nd birthday of any child in accordance with the following:
- (i) Part-time work is only available at the request of permanent musicians who have successfully auditioned for positions in the orchestra.
 - (ii) Part-time work is offered on the basis of an annual workload of 170 calls representing 50% of the maximum workload for full-time musicians. As far as possible, workload will be distributed evenly across the year, with the exact distribution of the workload being agreed between the musician and the Director of Operations and subject to approval by the Consultative Committee.
 - (iii) Part-time employees will be entitled to all employment conditions available to full-time employees on a pro-rata basis.
 - (iv) Given the competing requirement to maintain the highest level of artistic standards and the objective of facilitating the ability of employees to better balance work and family commitments the parties to this Agreement believe only a set number of positions in the orchestra may be made available to employees wishing to work part-time. Accordingly, no more than 3 members of the Orchestra, and no more than 2 members of any string section or 1 member of any other section, shall access these specific part-time provisions at any time.
 - (v) Part-time musicians will be paid fortnightly at 50% of the full-time salary for the classification for which the Musician is employed.
 - (vi) Except in extreme circumstances, applications to access these part-time provisions will only be considered with three months written notice. The musician may return to full-time employment after giving six months written notice of intention to do so.
- (c) Musicians taking up part-time work or other flexible work arrangements will not undertake other professional paid employment.
- (d) Applications to access or to continue part-time employment or other flexible work arrangements will be considered by the Consultative Committee and dealt with according to the following criteria:
- (i) the availability of suitable casual players;
 - (ii) the age of children/frailty of elderly relatives or other family considerations;
 - (iii) the degree to which part-time provisions have already been accessed;

- (iv) length of service in the Melbourne Symphony Orchestra.
- (e) Agreements entered into under these provisions shall be reviewed every two years or earlier at the player's request.
- (f) The Consultative Committee shall monitor the operation of these provisions.
- (g) Any request for flexible work arrangements must be made in writing.

8.16 **PARKING**

- (a) The Company will provide access to all hours parking for 52 weeks of the year at an agreed car park for any permanent musician contributing \$18.67 per week to the cost of that parking. Where a musician avails themselves of this provision, the musician will comply with the conditions as required by the operator of that car parking facility. This provision covers venues within 1.5km walking distance of the terminal depot.
- (b) Where suspension of parking is available this will be passed on to the musician.
- (c) The contribution will increase in the first pay period following the 1st May in subsequent years, with the increase based on the adjustment in the ABS All Groups Weighted Average Capital City CPI for the four (4) quarters of the previous calendar year.
- (d) The Company will provide parking for all venues outside 1.5km walking distance of the terminal depot, or at its discretion, will provide transport to those venues from the Terminal Depot or musician's accommodation when on tour.
- (e) The Company shall provide parking, or transport double bass, harp, percussion, contra bassoon, bass clarinet, 'cello, tuba and other bulky instruments when they are to be used for the purpose of the employment.

8.17 **CASUAL MUSICIANS**

- (a) General employment conditions for casual employment
 - (i) A casual musician is engaged on a per call basis, rather than a contract or ongoing employment contract (these are defined separately, with separate employment conditions as specified elsewhere within this Agreement).
 - (ii) A casual musician shall be engaged on an "as required" basis with no guarantee as to expected employment.
 - (iii) Casual employment is offered at the discretion of the MSO, depending upon the needs of the Company at particular times. Conversely, it is not expected that casual musicians will have the Melbourne Symphony Orchestra as their primary work commitment, and therefore there is no obligation on a Casual Musician to accept an employment assignment each time it is offered.
 - (iv) This type of employment does not include any leave, allowances or other entitlements unless specified within this clause. As such, the call rate is calculated to include a specific loading which takes this into account.
 - (v) Each casual musician employed by the orchestra will be provided with an information sheet detailing the terms and conditions under which they are to be employed, on the following occasions:
 - (A) on passing a casual audition or prior to their first engagement with the orchestra; or,
 - (B) following any substantial revision of such terms; or,
 - (C) on request of the musician.
 - (vi) The terms and conditions applicable to all casual musicians engaged/employed by MSO are outlined below in clauses (b) – (x).
- (b) Conduct expectations

- (i) It is expected that casual musicians will at all times during their engagement by MSO, behave in a manner which reflects the values and professionalism, as well as the orchestral performance standards of the Company. This includes compliance with all MSO policy and procedures, including but not limited to:

- (A) Respect for Others
- (B) Confidentiality
- (C) Social Media and Public Commentary
- (D) Occupational Health and Safety
- (E) Orchestral dress code

All policies are available from the Director of Human Resources.

- (c) Disciplinary and conduct matters

See clause 14 of this Agreement.

- (d) Doubling allowances

See clause 18.6 of this Agreement.

- (e) Grievance and dispute settling procedure

See clause 15 of this Agreement.

- (f) Insurance of instruments

The Company will insure against loss or damage for all instruments used by musicians while engaged in work for the Company or travelling between their place of residence and rostered duty and when on tour for the Company. In these cases only, the Company will meet all excesses and other costs which their insurer may stipulate.

Job descriptions

See clause 10.1 of this Agreement.

- (g) Long Service Leave

Long service leave accrues on a pro-rata basis for part-time and casual service.

- (h) Notice periods

- (i) Casual musicians who are employed on a call by call basis will be notified in writing of the calls for which they are contracted, and the call rate. The weekly roster will be issued to each such musician 7 days prior to the first contracted call.

- (ii) Unless at least seven days prior notice of cancellation of the agreement is given, casual engagements with the Melbourne Symphony shall be paid for whether held or not.

- (iii) If a casual musician's engagement is terminated all moneys due under this Agreement shall be paid by the first payday immediately following the pay period in which the weekly or casual musician is terminated.

- (i) Occupational health and safety

- (i) See clause 16 of this Agreement.

- (ii) Casual musicians are not eligible to seek election for these positions; however these positions are responsible for representing the concerns of all musicians appropriately, including those of casual musicians, when brought to their attention.

- (j) Overtime

- (i) Any overtime entitlement shall apply on a once only basis to an individual casual musician who actually performs work in excess of the prescribed time of a call or other rostered work.
- (ii) Any time worked after the prescribed time for a call shall be paid for at the rate of one and a half times the relevant hourly rate for the musician's classification or acting classification; this rate will apply until midnight. After midnight the rate shall become double time.
- (iii) In the case of rehearsals on the day of a public concert, all overtime worked in excess of fifteen minutes shall be paid for at double time, based on the rate for that musician's classification or acting classification.
- (k) Provision of instruments
- With the exception of tuba and bass clarinet, instruments will be supplied by MSO as per clause 8.19(a) of this Agreement.
- (l) Public Holidays
- Any calls worked on a public holiday shall be subject to the following conditions:
- (i) on Good Friday, Christmas Day, Labour Day, payment at the rate of double time shall be made for each call;
- (ii) on New Year's Day, Australia Day, ANZAC Day, Easter Saturday, Easter Monday, Birthday of the Sovereign, Boxing Day, any other day observed as a public holiday in Victoria, payment at the rate of double time shall be made for each call.
- (m) Rates of pay
- A casual shall be paid at the appropriate call rate derived from the rates contained in clause 18 of this Agreement plus a 20% loading, specifically:

From 1 May 2019:

Tutti		Principal	
R&F1	\$176.03	PAP1	\$213.00
R&F2	\$183.07	PAP2	\$218.28
R&F3	\$190.11	PAP3	\$223.56
R&F4	\$197.16	PAP4	\$228.84
R&FS	\$204.19	PAP5	\$234.13
R&F6	\$209.47	PAP6	\$239.40
R&F7	\$214.76	PAP7	\$244.68
R&FS	\$218.29	PAP8	\$249.96
R&F9	\$223.56	PAP9	\$257.00
R&F10	\$228.84	PAP10	\$264.92

From 1 May 2020:

Tutti		Principal	
R&F1	\$177.79	PAP1	\$215.13
R&F2	\$184.90	PAP2	\$220.46
R&F3	\$192.01	PAP3	\$225.80
R&F4	\$199.13	PAP4	\$231.12
R&FS	\$206.23	PAP5	\$236.47

R&F6	\$211.57	PAP6	\$241.79
R&F7	\$216.90	PAP7	\$247.13
R&FS	\$220.47	PAP8	\$252.46
R&F9	\$225.80	PAP9	\$259.57
R&F10	\$231.12	PAP10	\$264.92

From 1 May 2021:

Tutti		Principal	
R&F1	\$179.57	PAP1	\$217.28
R&F2	\$186.75	PAP2	\$222.67
R&F3	\$193.93	PAP3	\$228.06
R&F4	\$201.13	PAP4	\$233.44
R&FS	\$208.30	PAP5	\$238.83
R&F6	\$213.68	PAP6	\$244.21
R&F7	\$219.07	PAP?	\$249.60
R&FS	\$222.68	PAPS	\$254.99
R&F9	\$228.06	PAP9	\$262.17
R&F10	\$233.44	PAP10	\$267.57

- (n) The Company will maintain records of the periods of employment of casuals. A casual's rate of pay will be set having regard to the casual's prior experience with the MSO and other orchestras of similar standing to MSO, as mutually agreed between MSO and the musician.
- (o) A casual's rate of pay may be reviewed on the written request of the musician, or at the request of the relevant Section Principal. The Director of Operations shall undertake such a review based on the provision of relevant information, the Director of Operations shall inform the musician of the outcome of the review.
- (p) A musician engaged on a casual basis to tour with the orchestra will be paid for two calls for each part day or day whilst the orchestra is on tour.
- (q) Recordings
See clause 22 of this Agreement.
- (r) Sundays
Any calls made on Sunday shall be paid at the rate of double time.
- (s) Superannuation
 - (i) The Company shall make a contribution as prescribed by the Superannuation Guarantee Legislation (SGL) for each musician to the Media Superannuation Fund (Media Super) or to another approved superannuation fund selected by the musician. Company contributions to the superannuation fund shall be made within thirty days after the completion of the pay period for which the musician was employed.
 - (ii) The Company will advise all musicians at the commencement of employment about superannuation entitlements and will supply the necessary application forms. Where a musician is already enrolled with the Media Super scheme, the musician will supply their membership number to the Company.

- (t) Supply of special dress
See clause 8.12 of this Agreement for supply of special dress.
 - (i) Normal orchestral dress code items are expected to be supplied by musicians including, but not limited to:
 - (A) Tails, Black suits, black and white shirts, ties, cummerbund and shoes for gentlemen
 - (B) Black evening wear including shoes and stockings for ladies.
- (u) Time and salaries records
See clause 18.12 of this Agreement.
- (v) Touring
 - (i) The terms and conditions of employment applying to International tours shall be negotiated in accordance with Clause 21.
 - (ii) Where work is to be done by a musician at a place which is outside a 50 kilometre radius of the terminal depot, the employee shall, wherever practicable be provided with an appropriate standard of transportation.
 - (iii) A musician engaged on a casual basis to tour with the orchestra will be paid for two calls for each part day or day whilst the orchestra is on tour.
 - (iv) Travel allowances while on tour shall be paid in accordance with clause 18.10.
 - (v) The Company shall transport double bass, harp, percussion, contra bassoon, bass clarinet, cello, tuba and other bulky instruments when they are to be used for the purpose of the employment on tour.
- (w) Webcasting and streaming (23)
See clause 23 of this Agreement.
- (x) Workers compensation
See clause 18.14 of this Agreement.

8.18 REDUNDANCY

- (a) Where the Company no longer wishes to employ any Permanent musician in a particular position, it will where possible attempt to satisfy the redundancy action through the canvassing of volunteers before any involuntary action is contemplated. The Company may accept or reject any volunteer. The Company may, not earlier than four weeks after the written notification to the Union and the Players' Committee of a definite decision of redundancy, advise a permanent musician that they are excess to requirements and terminate employment with due notice or payment in lieu.
- (b) In addition to any payment in lieu of the normal period of notice for termination, and any other accrued entitlements, a permanent musician whose position has been declared redundant will receive a redundancy payment which equates to two weeks salary for each completed year of service with pro-rata calculation to the nearest month, or the minimum redundancy pay entitlement under the National Employment Standards in the FW Act (whichever is higher). The minimum redundancy payment is four weeks and the maximum payment is 77 weeks salary, subject to compliance with the National Employment Standards in the FW Act. In calculating this payment, a 'week's salary' will include any higher duty payments where higher duties have been performed for a continuous period of twelve months prior to the date of separation.
- (c) A musician whose employment has been terminated due to redundancy may request to cease working during the notice period and in that circumstance shall not be entitled to payment in lieu of notice for that time. A musician shall be allowed one day's leave with pay during each week of notice for the purpose of seeking other

employment. The Company may require proof of attendance at an interview or a statutory declaration by the musician to this effect.

8.19 PROVISION OF INSTRUMENTS

- (a) The Company shall provide the following instruments and maintain them for the exclusive use of the permanent musicians of the Melbourne Symphony Orchestra:-
 - (i) Timpani
 - (ii) Percussion
 - (iii) Harp
 - (iv) Piano, organ & keyboards
 - (v) Contrabassoon
 - (vi) Bass Clarinet
 - (vii) Wagner tuba
 - (viii) Tuba
 - (ix) Heckelphone
 - (x) Alto flute
 - (xi) Bass Flute
 - (xii) Oboe d'amore
 - (xiii) Bass Horn
 - (xiv) Bass trumpet
- (b) The Company shall transport (or pay the reasonable cost of transporting) double bass, harp, percussion, contra bassoon, bass clarinet, cello, tuba and other bulky instruments when they are to be used for the purpose of the employment.

8.20 MUSICIANS INVOLVED IN AUDIENCE AND COMMUNITY ENGAGEMENT ACTIVITIES

- (a) Both parties recognise the importance in involving MSO musicians in marketing (promotional), development (philanthropy and sponsorship) and education (schools and community) activities, with aims to build relationships between the MSO, our public and our key supporters.
- (b) Where a permanent musician is involved in non-playing activity in these areas, such work will be on a voluntary basis and will not contribute to the Maximum Annual Workload unless otherwise agreed.

8.21 EDUCATION ACTIVITIES

Commitments:

The Company and musicians are committed to delivering a broad range of community and educational programs as a core part of the Orchestra's activities.

- (a) To facilitate these Educational Activities:
 - (i) The Players' Committee will actively support and encourage permanent musicians to participate in community and educational programs as part of core annual workload;
 - (ii) The Company will develop and implement appropriate professional development opportunities for participating musicians;

- (iii) The call allocations provided by this Agreement may be varied on a project by project basis if agreed by the Company and Players' Committee Executive. Appropriate recognition for non-playing elements of these activities will also be mutually agreed.

9 CONTRACT EMPLOYMENT

- (a) Contracts may be offered in accordance with Australian labour market testing regulations in the following circumstances:
 - (i) for Concertmaster and Associate Concertmaster positions;
 - (ii) to musicians of non-resident status for positions which have been difficult to fill;
 - (iii) in order to attract an exceptional musician to enhance and strengthen the Orchestra for specified programs or periods of time;
 - (iv) other positions from time to time as agreed with the Players' Committee.
- (b) The Company may recruit musicians of any nationality for the position of Concertmaster.
- (c) Contracts for the Associate Concertmaster position shall be limited to musicians who have the legal right to work in Australia.
- (d) Contracts shall not be used to undermine establishment strength.
- (e) All contract musicians will be offered a written contract, which will contain the following minimum information:
 - (i) The Agreement upon which the contract is based.
 - (ii) The date of commencement and expiration of the contract.
 - (iii) The salary and any applicable allowances.
 - (iv) Position and location.
 - (v) The responsibilities of the position.
 - (vi) The rights and obligations of the parties.
- (f) The total terms and conditions package provided under the terms of the contract shall not be less than the total of the terms and conditions of this Agreement.
- (g) If a contract of twelve (12) months or more duration is not to be renewed, the musician shall be advised at least two (2) months prior to the expiration date of the contract.
- (h) The parties shall monitor the application of this clause.
- (i) In making a decision under this clause the Managing Director shall take into account the recommendations of the relevant audition panel or Players' Committee as appropriate.

10 SELECTION AND APPOINTMENT

Objectives

Through the audition and trial processes, the Melbourne Symphony Orchestra seeks to appoint the finest musicians. The successful candidates will meet the selection criteria as prescribed in this Agreement and will demonstrate a commitment to the highest artistic standards and the aspirations of the Company.

Commitments

- *The selection of musicians for appointment to the Melbourne Symphony Orchestra will be in accordance with the merit principle. Appointment to a permanent position will follow completion of a successful audition and trial period.*
- *The principles of equality of opportunity, non-discrimination and natural justice will be observed throughout the selection process.*

10.1 JOB DESCRIPTIONS

(a) SECTION MUSICIANS

General duties and work requirements are to:

- (i) work under the current terms of this Agreement;
- (ii) play the instruments for which the musician was auditioned;
- (iii) play any instrument in the relevant family of instruments (see APPENDIX A) provided:
 - (A) there is a doubling part and the musician was auditioned on the relevant instrument(s); or
 - (B) the musician is willing and has a recognised professional level of competence; or
 - (C) the musician is willing and provided that the musician's artistic standards are not compromised;
- (iv) provided that the artistic standards of the orchestra are not compromised, a Section Musician shall:
 - (A) perform higher duties if willing;
 - (B) play in combinations of seven or less if willing;
 - (C) play off-stage at the conductor's direction;
- (v) undertake preparation of relevant parts in advance of the first rehearsal;
- (vi) rehearse and perform relevant parts as required;
- (vii) mark parts and convey all relevant information consistent with section leader's instructions, in a concise and timely manner;
- (viii) maintain a fully professional appearance, and standard of behaviour, and comply with dress standards whilst on duty;
- (ix) participate in the relevant musical responsibilities of the section;
- (x) follow the directions of the section leader in all matters relating to style, ensemble, intonation, articulation and bowing (as relevant), and seating;
- (xi) participate in auditions, trial assessment meetings, consultative, orchestral and artistic meetings as required;
- (xii) not unreasonably refuse to be available for meetings with management and colleagues to discuss job-related issues;
- (xiii) undertake promotional activities consistent with the player's capacity as a professional musician and as agreed; and
- (xiv) comply and act in accordance with the MSO Vision, Values and Behaviours (as outlined in Appendix F).

(b) PRINCIPAL MUSICIANS

- (i) In addition to the duties of Section Musicians, Principal Musicians shall provide Section Musicians with regular feedback on their performance, and, as necessary, address any related administrative concerns. Persistent or continuing concerns should be drawn to the attention of the Section Leader and/or Director of Operations.
- (ii) The positions of Piccolo, Cor Anglais, Bass Clarinet, Contra Bassoon, 3'd Horn, 3'd Trombone (Bass), Tuba, Harp, Timpani and Principal 1st Violin are Principal positions.
- (iii) In addition to the duties of Section Musicians the Principal Piccolo shall:

- (A) play piccolo;
 - (B) play in any section position where the composer has written a Piccolo doubling part;
 - (C) play third or fourth flute if not otherwise playing Piccolo;
 - (D) subject to consultation and agreement within the section, play 1st or 2nd flute in order to contribute to a balanced workload across the section.
- (iv) In addition to the duties of Section Musicians the Principal Cor Anglais shall:
 - (A) play Cor Anglais;
 - (B) play in any section position where the composer has written a Cor Anglais doubling part;
 - (C) play third or fourth oboe if not otherwise playing Cor Anglais;
 - (D) subject to consultation and agreement within the section, play 1st or 2nd oboe in order to contribute to a balanced workload across the section.
- (v) In addition to the duties of Section Musicians the Principal Bass Clarinet shall:
 - (A) play Bass Clarinet;
 - (B) play in any section position where the composer has written a Bass Clarinet doubling part;
 - (C) play third or fourth clarinet if not otherwise playing Bass Clarinet;
 - (D) subject to consultation and agreement within the section, play 1st or 2nd clarinet in order to contribute to a balanced workload across the section.
- (vi) In addition to the duties of Section Musicians the Principal Contrabassoon shall:
 - (A) play Contrabassoon;
 - (B) play in any section position where the composer has written a Contrabassoon doubling part;
 - (C) play third or fourth bassoon if not otherwise playing Contrabassoon;
 - (D) subject to consultation and agreement within the section, play 1st or 2nd bassoon in order to contribute to a balanced workload across the section.
- (vii) In addition to the duties of Section Musicians the Principal 1st Violin shall:
 - (A) sit on the front desk as required;
 - (B) lead the orchestra as required;
 - (C) prepare and play relevant solos;
 - (D) assist the Concertmaster in managing the section and preparing parts.
- (viii) In addition to the duties of Section Musicians the Principal Bass Trombone shall:
 - (A) play Bass Trombone;
 - (B) play in any section position where the composer has written a Bass Trombone doubling part;
 - (C) play third or fourth trombone if not otherwise playing Bass Trombone;
 - (D) subject to consultation and agreement within the section, play 1st or 2nd trombone in order to contribute to a balanced workload across the section.
- (ix) In addition to the duties of Section Musicians Principal 3rd Horn shall play 1st horn as required.

- (x) In addition to the duties of Section Musicians Principal Tuba shall play on the most suitable instrument available, parts written for Ophecleide, and Cimbasso.

(c) ASSOCIATE PRINCIPAL MUSICIANS

In addition to the duties of Section Musicians, Associate Principal Musicians shall:

- (i) prepare and play relevant solos;
- (ii) assist the Section Principal in managing the section and preparing parts;
- (iii) share the musical responsibilities of the section and lead the section when required;
- (iv) in the absence of the Section Principal, deputise for the Section Principal as required;
- (v) in the case of wind and brass play any part in works requiring the whole section;
- (vi) in the case of the strings sit on the front desk or in another place as required;
- (vii) raise any performance and administrative concerns of musicians within the Section with the Principal and Section Leader;
- (viii) Associate Principal Clarinet shall have the prime responsibility for playing Eb Clarinet.

(d) ASSISTANT (SUB) PRINCIPAL MUSICIANS (strings)

In addition to the duties of Section Musicians, Assistant (Sub) Principal Musicians shall:

- (i) prepare and play relevant solos;
- (ii) assist the Section Principal and Associate Principal in managing the section and preparing parts;
- (iii) share the musical responsibilities of the section and lead the section when required;
- (iv) sit on the front or second desk or in another place as required;
- (v) discuss any performance and administrative concerns of string musicians with the Section Leader.

(e) SECTION LEADER/PRINCIPAL (excepting First violins)

In addition to the duties of a Section Musician, Section Principal Musicians shall:

- (i) prepare and play the first part of the section and relevant solos of the repertoire;
- (ii) lead and direct the section;
- (iii) take responsibility for the style, intonation, balance, ensemble, rhythm and preparation of the section;
- (iv) in the case of string principals, prepare 1st desk part with bowings and other markings from concertmaster's part;
- (v) play other parts from time to time in an emergency or at his/her discretion;
- (vi) take responsibility in the first instance for the general discipline of the section;
- (vii) take responsibility in the first instance for rostering the section, and in string sections for seat allocation ensuring that appropriate input is received from section members and due consideration is given to artistic standards;
- (viii) prepare suitable audition material for auditions and casual assessments relevant to the section and consult with management on the engagement of casual musicians;
- (ix) be responsible for attending to and resolving where possible section musician grievance and disciplinary issues;

- (x) provide regular feedback to members of their Section on their performance, and, as necessary, address any related administrative concerns. Persistent or continuing concerns should be drawn to the attention of the Concertmaster, and to the Director of Operations.

(f) ASSOCIATE CONCERTMASTER

In addition to the duties of a Section Musician and a Section Principal Musician the Associate Concertmaster shall:

- (i) sit next to the Concertmaster or in other positions as agreed with the Concertmaster;
- (ii) lead the orchestra and assume the performing duties of Concertmaster in his/her absence or as required;
- (iii) prepare and play relevant repertoire solos in consultation with the Concertmaster;
- (iv) be available to cover for the Concertmaster in an emergency for all programs when rostered on;
- (v) take responsibility for tuning the orchestra when required by the Concertmaster;
- (vi) discuss any performance and administrative concerns of any string musician with the Concertmaster.

(g) CONCERTMASTER

The Concertmaster shall:

- (i) oversee and participate in all activities of the orchestra as agreed with management;
- (ii) lead the orchestra;
- (iii) prepare bowings for the first violins and liaise with other string Section Principals for appropriate bowings;
- (iv) prepare and play relevant repertoire solos;
- (v) take responsibility for tuning the orchestra;
- (vi) consult with the Conductor on musical and artistic matters;
- (vii) maintain a fully professional appearance and behaviour whilst performing and rehearsing;
- (viii) participate in auditions, trial assessment meetings, consultative, orchestral and artistic meetings as required;
- (ix) not unreasonably refuse to be available for meetings with management and colleagues to discuss job-related issues;
- (x) undertake promotional activities as agreed;
- (xi) meet with management to discuss artistic, program and administrative matters;
- (xii) take responsibility for rostering and allocation of seating for the first violin section;
- (xiii) consult with section members as appropriate;
- (xiv) take responsibility for general orchestral discipline;
- (xv) conduct the orchestra as agreed with orchestral management;
- (xvi) be responsible for providing performance feedback to any musician subject to consultation with the musician's Section Leader, as appropriate. Liaise with the Chief Conductor and/or the Managing Director and Director of Operations in relation to persistent performance issues.

(h) TRAINING

All permanent musicians are to undertake training as required. In particular, Principals, Associate Principals, Section Principals and Associate Concertmaster and Concertmaster may be required to attend supervision and section management training. Training programs shall be subject to prior consultation with the Players' Committee.

10.2 SELECTION CRITERIA

- (a) Attributes that will be assessed by the audition process relate to performance standard and include rhythm, intonation, sound production and the compatibility of the sound with that of the section, stylistic correctness and general musicianship.
- (b) Attributes that will be assessed by the trial process will include those of the audition process and in addition:
 - (i) **Performance Standard** including sight-reading and the ability to learn repertoire quickly, knowledge of the repertoire, the ability to follow a conductor, the ability to adjust intonation so as to conform with the section and the ability to perform under performance conditions, and possession or access to an instrument of appropriate standard;
 - (ii) **Ensemble** including the ability to blend in with the section, demonstrating a flexibility of performance approach and the ability to play in rhythmic ensemble with the Section leader;
 - (iii) **Attitude** including the ability to be a friendly and co-operative member of a team, preparation of work prior to rehearsal, reliability and punctuality, a dedication and commitment to artistic excellence and the aspirations of the Company, the ability to accept direction, a preparedness to participate in non-performing activities, and appropriate standards of personal presentation for rehearsals and performances;
 - (iv) For **Principal** positions, the ability to lead the section and earn the respect of section members, and the ability to organise and direct the section;
 - (v) **Values** including general adherence to MSO Vision, Values and Behaviours.

10.3 AUDITIONS

- (a) All employees will preserve the anonymity of applicants to positions in the Melbourne Symphony Orchestra prior to the audition day and throughout the audition process. All audition rounds will be heard behind screens such that the identity of the candidate cannot be determined by any panel member.
- (b) The first two auditions for any vacancy shall be offered to musicians with the legal right to work in Australia.
- (c) Auditions shall be advertised at least 90 days prior to the scheduled audition dates, unless otherwise agreed with the Players' Committee Executive.
- (d) Each audition will have a fixed and limited repertoire requirement along with a selection of orchestral excerpts. The repertoire required shall be included in all advertisements for the vacancy and the orchestral excerpts will be available to the candidate at least 14 days prior to the audition day.
- (e) All selection decisions will be made by secret ballot. In order to advance to the next round, the candidate will require a supporting vote from at least fifty percent of the panel. In order to be considered for a trial period, the candidate will require a supporting vote from at least two thirds of the panel members.
- (f) The results of each round of auditions will not be made known to the panel until all applicants in the round have been heard. Discussion amongst the panel may occur only after two rounds have been heard.

- (g) Recorded auditions may be accepted and presented to the panel if the recording is supplied at a professional level such that the candidate's playing may be appropriately evaluated. Recordings that are poorly produced may not be presented, or may be cut short.

The applicant will be advised that if his/her recording wins the audition, he/she will be required to play audition repertoire live to the panel prior to working with the Orchestra or before any trial commences.

- (h) Audition panels shall be formulated as per clause 10.4 "Audition Panel Membership". Panels for all auditions will be determined well in advance and the lists made available to all orchestra members.

10.4 AUDITION PANEL MEMBERSHIP

Objectives

In determining the makeup of audition panels, the Artistic Committee will endeavour to identify:

- *Most appropriate people/positions to make the choice on the day*
- *Most appropriate people/positions to decide about the trial*
- *A practical and efficient panel enabling an effective process with best aims to have a panel size divisible by three.*

- (a) Subject to the approval of the Artistic Committee,
- (i) **for all Principal string positions**, the audition panel will consist of the Chief Conductor, the Concertmaster, all available members of the section, the Section Principal from each of the other string sections plus up to three other appropriate players;
 - (ii) **for section string positions**, the audition panel will consist of the Chief Conductor, the Concertmaster, all available members of the section and one Principal from each of the other string sections;
 - (iii) **for Section Principal wind positions** the audition panel will consist of the Chief Conductor, the Concertmaster, all Section Principals, all other available musicians from the section, and up to three other appropriate players;
 - (iv) **for Associate and Auxiliary principal wind positions** the audition panel will consist of the Chief Conductor, the Concertmaster, all woodwind Section Principals, all other available musicians from the section, and up to three other appropriate players;
 - (v) **for section wind positions** the audition panel will consist of the Chief Conductor, the Concertmaster, all woodwind Section Principals, all other available musicians from the section, and up to four other appropriate players;
 - (vi) **for Section Principal brass positions** the audition panel will consist of the Chief Conductor, the Concertmaster, all Section Principals, all other available musicians from the section, and up to three other appropriate players;
 - (vii) **for Associate Principal trumpet and trombone and Principal bass trombone positions** the audition panel will consist of the Chief Conductor, the Concertmaster, all brass Section Principals, Principal Tuba, all other available musicians from the section, and up to three other appropriate players;
 - (viii) **for the Principal Tuba position** the audition panel will consist of the Chief Conductor, the Concertmaster, brass Section Principals, brass Associate Principals, all other available musicians from the trombone section, and up three other appropriate players;

- (ix) **for horn positions other than Section Principal** the audition panel will consist of the Chief Conductor, the Concertmaster, Section Principal Trumpet and Trombone, Principal Tuba and all other available musicians from the section, two woodwind players, and up to three other appropriate players;
- (x) **for section trumpet and trombone positions** the audition panel will consist of the Chief Conductor, the Concertmaster, all brass Section Principals, Principal Tuba, all other available musicians from the section, and up to four other appropriate players;
- (xi) **for the Section Principal Percussion position** the audition panel will consist of the Chief Conductor, the Concertmaster, all Section Principals, all other available musicians from the section, and up to three other appropriate players;
- (xii) **for Principal Timpani** the audition panel will consist of the Chief Conductor, the Concertmaster, four appropriate Section Principals, all available musicians from the percussion section, and up to three other appropriate players;
- (xiii) **for section percussion** the audition panel will consist of the Chief Conductor, the Concertmaster, three appropriate Section Principals, all other available musicians from the section, and up to three other appropriate players;
- (xiv) **for Principal Harp** the audition panel will consist of the Chief Conductor, the Concertmaster, all Section Principals, and up to three other appropriate players.
- (b) In the absence of an appointed Concertmaster this position may be occupied by another string Principal.
- (c) In the absence of an appointed Chief Conductor, no replacement will be made (ie the panel will be smaller).
- (d) An external specialist may be engaged where the panel feel this will assist in assessing any instrument specific questions, if the panel make up does not include the necessary expertise. Any external specialists may not be previous holders of the position, will not be voting members of the panel and will not participate in the trial process.
- (e) If a member of the orchestra states or is clearly known to hold a vested interest in the outcome of an applicant's audition, then he/she may be excluded from the audition panel.
 - (i) A musician should not be a member of an audition panel if a member of his/her immediate family is a candidate. For this purpose "immediate family" includes spouses, siblings, offspring, parents, and partners in a de-facto relationship.
 - (ii) A vested interest is not constituted by a teacher/pupil relationship.

10.5 PRE-TRIALS

- (a) A trial may be offered to more candidates than positions available, if each receives the required number of votes to appoint to trial. In this case, each candidate would be offered an initial one month "pre-trial". Pre-trial dates would be set to give candidates a balanced selection of repertoire (including solos, if appropriate), as much as possible.
- (b) Following the conclusion of all pre-trials the panel will reconvene to decide which of the candidates should continue in the trial process. A preferential vote will take place at this point. In the event that the panel vote produces a tied outcome, the designated Panel Leader will have the casting vote.
- (c) The preferred candidate would be offered a full six-month trial (of which one month will already have been completed), with a possible extension to nine months as per normal processes. The trial will be conducted in the same manner as described in clause (10.6) with regard to feedback, extension and appointment.
- (d) If the preferred candidate completes and passes a trial, the trial process shall be considered concluded for both candidates.

- (e) Should the preferred candidate not complete or pass their trial, any remaining pre-trial candidates may then be offered the opportunity to complete a full trial.
- (f) Should further vacancies of the same position (i.e. tutti positions) arise during the pre-trial process additional full trials may be offered at the discretion of the Managing Director.

10.6 TRIAL PERIODS

- (a) Trial periods will be of six working months duration, with an option to reduce or extend at the discretion of the Company. The maximum extension will be one period of three working months.
- (b) The Trial Assessment Panel will consist of the same musicians as the Audition Panel.

In the event that a member of the audition panel will not have the opportunity to perform with the candidate on trial for a significant amount of the trial, either due to illness or other leave, that panel member may be removed from the panel and (where possible) replaced with another player.
- (c) The panel leader and/or relevant principals may offer regular informal feedback to the candidate either with or without the presence of the Director of Operations. Formal feedback will be provided to the candidate following these milestone points in the trial:
 - (i) **six weeks,**
 - (ii) **three months,**
 - (iii) **eighteen weeks,**

At each feedback meeting a written progress report summarising audition panel members' feedback will be provided to the candidate. The candidate will have opportunity to discuss the report at a meeting with the panel leader and the Director of Operations and will be required to sign a copy of the report.

If the trial is extended to nine months, formal feedback will also be provided at the six month point, and half way between six and nine months.
- (d) The trial process shall be observed by the same delegated representative of the Players' Committee that attended the audition. If that person is unable for any reason to fulfil this function, then a new representative will be delegated by Players' Committee. The representative will ensure that the conduct of the trial process complies with these procedures and that the candidate is given appropriate levels of feedback and receives a fair hearing.
- (e) Consideration by the panel to extend a trial period must be made prior to any ballot to appoint. Where at least two panel members express the view that an extension is necessary, the panel is obliged to vote on an extension. A secret ballot will not be required. The extension will be granted on a simple majority. An extension should only be considered where it is the view of the panel that the candidate has responded well to feedback and is likely to meet all the selection criteria in an extended trial.
- (f) At the conclusion of the trial period or any extension of the trial period the candidate will either be appointed to the position, or employment with the orchestra will be terminated. In order to successfully complete a trial period, the candidate will require a supporting vote from at least two thirds of the panel members.

11 PERFORMANCE MANAGEMENT

Commitments:

- *The Company and the musicians are committed to a process of maintenance and development of the highest possible performance standards. The Company is committed to providing professional development opportunities where appropriate.*

- *The Company commits to the provision of training for all permanent musicians in supervisory positions to ensure that their supervision is fair, reasonable and non-discriminatory.*
- *All Company employees are committed to ensure that performance standard issues regarding any individual musician shall be handled sensitively and confidentially.*
- (a) It is the responsibility of all musicians to participate in the MSO Performance Feedback process, as outlined in the MSO Policies and Procedures Manual. Any changes to this process must be made in agreement with the Players' Committee.
- (b) Performance standard issues of an individual musician of the Melbourne Symphony Orchestra may be identified by the Chief Conductor, the Concertmaster or the relevant Section Leader. Management of these issues is to be facilitated by the Director of Operations, who shall seek advice, as appropriate, from Chief Conductor, Concertmaster(s), Principal(s) and the Artistic Committee.
- (c) The Director of Operations will be responsible for managing minor and temporary performance problems by using any of the following mechanisms:
 - (i) consulting with the Chief Conductor, Concertmaster(s), the Principal(s) of the relevant section and Artistic Committee as appropriate;
 - (ii) providing performance feedback in a sensitive and confidential manner;
 - (iii) encouraging regular performance feedback through the accepted channels of practical musical responsibility including the Chief Conductor, Concertmaster and/or Principal(s) as appropriate;
 - (iv) ensuring that performance feedback is substantiated, specific, encouraging and containing specific suggestions and possibilities for rectifying perceived problems;
 - (v) assessing the need for counselling, such counselling to be provided at no cost to the musician;
 - (vi) balancing nature of performance feedback with adequate accountability and documentation of the process.
- (d) Performance review and feedback facilitated by the Director of Operations does not substitute for but must complement where necessary the practical responsibility of the Chief Conductor, Concertmaster and Principal(s) to provide regular and clear indications of expected performance standards and individual performance feedback within or outside the context of rehearsal.
- (e) In the event that performance does not improve after an agreed period of time, an employee may be provided with support. This may include training, mentoring, coaching or other appropriate measure to improve performance.

12 LOSS OF PROFICIENCY

- (a) A Loss of Proficiency shall be defined as:
 - (i) an unacceptable decline in the playing ability and overall performance standard by a permanent musician over an extended period of time (generally not less than six months) or;
 - (ii) a consistently unacceptable musical or technical contribution in rehearsal and performance of any permanent musician over an extended period of time (generally not less than six months).
- (b) A Loss of Proficiency by any permanent musician needs to be determined jointly by the Artistic Committee (after consultation with the Principal(s) of the relevant section, where appropriate) and the Chief Conductor, or in his or her absence, Managing Director.

- (c) It is the responsibility of the Managing Director to initiate a Loss of Proficiency procedure after consultation with the Chief Conductor and/or the Director of Artistic Planning provided that:
 - (i) the musician in question has been subject to informal performance feedback for a minimum of six months;
 - (ii) the musician in question does not suffer from a chronic medical condition in which case retirement because of physical disability-invalidity shall be pursued;
 - (iii) the musician has not indicated an intention for voluntary retirement within one year;
 - (iv) There is no agreement for the musician to step down to a vacant lower position pursuant to clause 13 of this Agreement.
- (d) Nothing in these procedures is intended to preclude:
 - (i) the Company from offering (and the musician accepting) redeployment to and/or retraining for another position commensurate with the skills and experience of the musician concerned;
 - (ii) the musician consenting in writing to termination of employment or reduction in classification of position due to Loss of Proficiency prior to the conclusion of the assessment period.
- (e) If a Loss of Proficiency process is initiated the following provisions shall apply:
 - (i) the Artistic Committee shall hear the grounds for initiating a Loss of Proficiency procedure. At the discretion of the Artistic Committee, relevant principals may also be in attendance. The musicians of the Artistic Committee shall then determine by secret ballot whether the musician in question displays a Loss of Proficiency. For this purpose, only formal votes cast by Committee members in attendance shall be considered. If the committee finds a Loss of Proficiency by 66 percent or more formal votes, the management will advise the musician in writing within seven working days that:
 - (A) the musician is displaying Loss of Proficiency and the reasons why;
 - (B) the musician will be subject to further performance assessment with respect to the identified problems over a period of six months by the Chief Conductor/Artistic Committee, and the date from which this assessment will commence;
 - (C) the musician is liable to have his/her employment terminated or reduced in classification due to Loss of Proficiency should their performance continue to be unsatisfactory at the conclusion of the assessment period;
 - (ii) Following the issue of formal advice to the musician, the Chief Conductor when available, and the Artistic Committee will assess the musician's performance over a period of six months;
 - (iii) the Company shall advise the President of the Players' Committee immediately after each stage of the process;
 - (iv) the musician may respond to the reasons for Loss of Proficiency in writing and if he or she so wishes, also in person to the Artistic Committee;
 - (v) the musician has the right to be accompanied by a Players' Committee representative/colleague at any meetings with the Chief Conductor/Artistic Committee during the assessment period;
 - (vi) the musician may request appropriate professional and independent counselling at the Company's expense prior to the conclusion of the assessment period;
 - (vii) as part of the assessment process, the musician may request an audition based on standard audition repertoire before the Artistic Committee/Chief Conductor.

At this audition, the Artistic Committee may agree to invite other specialists (e.g. Principals) to provide comment and advice;

- (viii) delegated members of the Artistic Committee and Section Principals as appropriate will provide performance feedback to the musician during the assessment period ensuring adequate accountability and documentation.
- (ix) At the conclusion of the assessment period, the Artistic Committee will reconvene and the musicians of the Committee will confirm by secret ballot whether the musician in question displays a Loss of Proficiency. For this purpose, only formal votes cast by Committee members in attendance shall be considered. If the Committee confirms a Loss of Proficiency by 66 percent or more votes, it shall recommend the musician's termination of employment or reduction in classification to the Managing Director. If the committee does not confirm a loss of proficiency then the Loss of Proficiency process will be deemed to have concluded. In this event a further Loss of Proficiency process may not be initiated with respect to the musician in question within a period of eighteen months.
- (f) Normal periods of notice for termination of employment shall apply, except that where the Managing Director so directs or the musician so requests, the musician shall be retired at any time within the period of notice and shall thereupon be entitled to receive payment in lieu of salary for the unexpired portion of the period of notice.
- (g) A severance pay of four weeks salary for each completed year of continuous service is payable to the musician. The maximum severance payment shall be 48 weeks.
- (h)
 - (i) A musician for whom Loss of Proficiency has been initiated may elect to leave the employment of the Company within the assessment period, in which case the musician shall be entitled to payment in lieu of the unexpired balance of the assessment period in addition to the severance benefit provided by clause 12(g) above. This entitlement shall not be cumulative with any other payment in lieu of notice period or severance entitlement provided for under this clause or any other award or agreement.
 - (ii) A musician for whom loss of proficiency has been confirmed by the Committee shall be entitled to the notice period and severance benefit provided by subclause 12(f) and 12(g).
- (i) A musician for whom Loss of Proficiency has been initiated may, with the approval of the Company, step down to a lower classification, within the assessment period. In such circumstances the musician will continue to be paid their substantive salary, but will not (unless otherwise agreed) receive the increases in salary applicable to their former classification. The musician's salary shall remain fixed until such time as the salary level of the lower classification, as varied from time to time, exceeds that of the fixed salary level.
- (j) Notwithstanding the other provisions of this Agreement, management and musician may mutually agree that the musician be terminated on the basis of Loss of Proficiency.
- (k) In the event of any dispute over the invoking of the performance standard procedures, including circumstances where a musicians is dissatisfied with a decision made in accordance with this clause, (on the basis that the procedure outlined by this clause was not observed with consequent disadvantage to the musician), the matter will be arbitrated by the FWC, or if agreed, by another independent arbitrator. The parties agree to accept the arbitrator's determination or recommendation.

13 STEPPING DOWN

- (a) A permanent principal musician who has served more than 10 years at that level may request to step down to a lower classification when a suitable position becomes vacant in their section. The Managing Director, in considering such a request, shall have

regard for a range of factors including the artistic, financial and structural impact on the Orchestra.

- (b) Where approval is granted for a musician to step down, at the time of stepping down the musician will continue to be paid their substantive salary, but will not (unless otherwise agreed) receive the increases in salary applicable to their former classification. The musician's salary shall remain fixed until such time as the salary level of the lower classification, as varied from time to time, exceeds that of the fixed salary level.

14 DISCIPLINARY AND CONDUCT MATTERS

Any reference to Director of Operations in this clause also means a delegate of the Director of Operations.

- (a) The following procedures shall apply where a problem of a disciplinary or conduct nature arises:
 - (i) The Director of Operations shall discuss the problem with the musician concerned and depending upon the seriousness of the problem may make a written record of the problem. If the Director of Operations decides that the matter is to be recorded the musician shall be given an opportunity to comment on, and sign the record of disciplinary/conduct discussion, and the record shall then be placed on the musician's personnel file.
 - (ii) If there is a recurrence of the problem the musician shall be counselled by the Director of Operations and the matter will be recorded and placed on the musician's personnel file with the opportunity for the musician to comment and sign the record. The musician shall be advised that any further incidence of the problem may lead to disciplinary action, including dismissal.
 - (iii) The musician shall have an opportunity to have a support person or representative of their choice present at the disciplinary or conduct discussion.
 - (iv) Notwithstanding the foregoing provisions, where there is an alleged misconduct by a musician, the Company may undertake an investigation and the musician may be suspended with or without pay during the period of the investigation. Investigations into alleged misconduct may occur irrespective whether the musician has been counselled previously in relation to the particular issue.
 - (v) The musician or representative involved in an investigation process is required to keep any information obtained confidential.
 - (vi) The musician or their representative will be informed of the outcomes of the investigation as relevant to them.
- (b) Disciplinary action means any of the following:
 - (i) Informal disciplinary/conduct discussion
 - (ii) Disciplinary/conduct discussion with a written warning to the musician's personnel file
 - (iii) Other appropriate support (including: counselling, training, mentoring)
 - (iv) Dismissal
- (c) Disciplinary action specified in paragraph 14(b)(iii) and (b)(iv) shall only be invoked following approval by the Managing Director.

15 GRIEVANCE AND DISPUTE SETTLING PROCEDURE

Agreement on Procedures

- (a) The parties agree to observe the following procedures to avoid and resolve employment-related grievances and disputes and to avoid and resolve any grievances and disputes concerning the implementation of this Agreement or the National

Employment Standards (NES). The parties acknowledge that observance of the procedure would avoid the need to resort to industrial action.

Individual Grievance

- (b) Where a musician has a problem or a grievance, in the first instance that matter shall be discussed with the Director of Operations or Human Resources.
- (c) If the matter is not resolved at this stage it may be brought to the attention of the Managing Director. The musician may choose to have a support person or representative of their choice present at any meetings.

Issues on behalf of more than one player

- (d) If an issue is taken up on behalf of more than one player, by player representatives, or the Union, the matter shall first be discussed with management in a similar manner to that outlined for individual issues above, before referral to FWC by any party.

Referral to FWC

- (e) If any matter raised in accordance with the provisions of this clause remains unresolved, any party may refer the matter to FWC for conciliation, and if necessary, arbitration.
- (f) The parties agree to be subject to conciliation, and if necessary arbitration, by any person appointed by, or under the auspices of, FWC.
- (g) In respect to the matters integral to, or associated with, arbitration or the arbitration process, the arbitrator shall have the power to:
 - (i) make directions in relation to procedural matters;
 - (ii) take evidence on oath or affirmation;
 - (iii) summon witnesses to appear before the arbitrator;
 - (iv) compel production of documents;
 - (v) arbitrate and determine the dispute;
 - (vi) make a written determination (which may include directions for one or more of the parties) with accompanying reasons about the matters in dispute.
- (h) The parties agree to be bound by the decision of the Arbitrator.

Appeal process

- (i) Either party, who is dissatisfied with a determination made by an arbitrator in accordance with the powers conferred under subclause 15(g), may apply to the President of FWC to appeal a decision or direction of FWC in relation to that dispute within 21 days of FWC making that determination.
- (j) Where a party to a dispute has applied to appeal a decision or direction of FWC pursuant to subclause 15(i), a Full Bench or Presidential Member may, on application, on such terms and conditions as the Full Bench or the Presidential Member considers appropriate, order that the operation of the whole or a part of the decision or direction concerned be stayed pending the determination of the appeal or until further order of the Full Bench or Presidential Member.
- (k) On hearing the appeal, the Full Bench may do one or more of the following:
 - (i) confirm, quash or vary the decision or direction concerned; or
 - (ii) direct the member of FWC whose decision or direction is under appeal, or another member of FWC, to take further action to deal with the subject matter of the decision or direction in accordance with the directions of the Full Bench.
- (l) The parties agree to be bound by the outcome of the appeal process.

General

- (m) Attendance at any meeting or discussions provided for in accordance with this clause may be extended to other persons whom the parties agree may be able to provide information or assist in the resolution of the issue.
- (n) The period of time from when the grievance/industrial issue is first raised with management until the time of its resolution, or if unresolved, referred to FWC, should not exceed fourteen days in which time no industrial action in furtherance of the issue shall occur.
- (o) A musician who is party or subject to a dispute must, whilst the dispute is being resolved, continue with normal duties and comply with any reasonable direction given by the employer, unless the employee has a reasonable concern about an imminent risk to his or her health or safety.
- (p) Nothing in this clause may be construed as bestowing a right on either party to take industrial action other than in accordance with the provisions of the FW Act.

Note: A reference to FWC includes any successor organisation established by Federal legislature performing the same or similar functions as FWC.

16 OCCUPATIONAL HEALTH & SAFETY

16.1 CONSULTATIVE MECHANISMS

- (a) The parties recognise that it is a major productivity objective to have the highest standards of workplace health and safety. The parties agree that over the life of this Agreement there shall be a serious examination of the issues that impact upon the occupational health and safety of musicians including the following:
 - (i) Training for management and musicians.
 - (A) Employee OH&S representatives will be given paid leave and all reasonable expenses to attend agreed OH&S training courses annually.
 - (B) During the life of this Agreement, workplace training programs will be designed and agreed, including induction and on-the-job training, and will outline MSO OH&S policy and procedures, particular hazards associated with the job, control measures applicable to each hazard, and how to utilise OH&S systems to identify hazards and instigate preventative actions.
 - (ii) Those factors, which comprise altogether the physical environment, for example, noise, lighting, air condition and temperature, and any other component, which the parties agree, should be investigated.
 - (iii) The impact of the changes provided for in this Agreement on the work load and respite requirements.
- (b) The OH&S Committee will meet at least four times a year to examine relevant health and safety issues in a consultative fashion.
- (c) The Consultative Committee will oversee regular elections of permanent musicians for the positions of Musician OH&S representative and Musician Deputy OH&S representative. The term of office for elected musicians will be two years.

16.2 NOISE HEALTH AND SAFETY

To support the aim of reducing the exposure of musicians to excessive noise levels, the provisions of the Noise Health and Safety Agreement (APPENDIX B) between the Symphony Orchestra Musicians Association and the Melbourne Symphony Orchestra shall be observed during the life of the Agreement.

16.3 ACCOMMODATION

The Company shall provide reasonable accommodation including lavatories and, where practicable, wash basins (with hot and cold water), rest rooms and lockers for the safe keeping of instruments.

16.4 AIR CONDITIONING

- (a) In order to assist the monitoring of, and/or improving on, issues going to thermal comfort and air quality, the provisions of PROCEDURES FOR AIR-CONDITIONED WORKPLACES (APPENDIX D) will be observed during the life of the Agreement. It is acknowledged that while health and safety representatives need not be trained to be experts in the field, they should have sufficient knowledge to be in position to be able to consider their responsibilities under this Agreement and relevant occupational health and safety legislation.
- (b) It should be noted that it is the employer's responsibility to act in accordance with this Agreement and the appropriate legislation and therefore respond to requests from HSRs. It is expected that in addressing issues or problems relating to air-conditioning the parties will do so co-operatively and sensibly.
- (c) The HSR can access any information under the employer's control about the OH&S aspects of the operation and maintenance of air-conditioning systems regulating the air quality of Commonwealth workplaces.
- (d) Further information and advice is available in the booklet entitled Air-conditioning and Thermal Comfort in Australian Public Service Offices.

17 LEAVE

17.1 ANNUAL LEAVE

- (a) For each year of service, a Permanent or Contract Musician is entitled to five weeks of paid annual leave. A Musician's entitlement to paid annual leave accrues progressively during a year of service according to the Musician's ordinary hours of work, and accumulates from year to year.
- (b) Each Permanent or Contract Musician shall be entitled to take five consecutive weeks annual leave, this period to count as 50 calls of duty.
- (c) In the event of the employment of a musician being terminated by reason of any matter or cause whatsoever prior to the expiration of the twelve month period, the Musician shall be entitled to receive a proportionate amount by way of payment for annual leave calculated on the basis of five weeks annual leave in respect of each period of twelve months' service.
- (d) Each Permanent or Contract Musician who has been employed for less than one year and who, consequently, has not been credited with the full five weeks' leave at the time leave is taken in accordance with clause 17.1(b) shall be granted leave with pay in anticipation, in accordance with the provisions of paragraph 17.1(b) hereof. Provided that the Musician will be required, on leaving employment, to refund to the Company an amount equal to the salary applicable to the amount of uncredited leave taken at the time of leaving the employment of the Company.
- (e) Any public holiday occurring during the period of annual leave shall be in addition to the five weeks above prescribed and each such holiday shall count as two calls of duty.
- (f) In years wherein a major International tour has been rostered, one week of annual leave may be rostered immediately following the tour, the remaining four weeks to be rostered as a continuous period.
- (g) A Permanent or Contract Musician while on annual leave shall for each week of such leave be paid an annual leave loading of 17.5% of their current weekly rate up to a maximum. The maximum is the weekly rate determined by the Australian Bureau of

Statistics average weekly earnings for the September quarter in the year preceding the year in which the leave accrues.

17.2 ATTEND FWC PROCEEDINGS

- (a) The Managing Director, or an officer authorised by the Managing Director, may grant leave of absence with full pay to any musician who attends as a witness in proceedings under the FW Act, but only for such period as is necessary to enable evidence to be given.
- (b) The Managing Director, or an officer authorised by the Managing Director, may grant leave of absence with pay to not more than 2 representatives of an organisation at any time required to attend any proceedings under the FW Act.
- (c) Any period during which a musician is absent on leave granted under this clause shall be included for all purposes as part of the period of service.

17.3 MUSICIANS CALLED AS WITNESSES

- (a) A permanent musician subpoenaed or called as a witness shall promptly notify the Director of Operations.
- (b) A musician required as a witness on behalf of the Company shall not be entitled to receive any witness fee but shall be granted leave with pay for the period of necessary absence and, where the musician is required to travel, shall be paid travelling allowance.
- (c) Unless the Managing Director otherwise determines, a musician subpoenaed or called as a witness in any other circumstances shall be granted leave without pay and any fees received as a witness may be retained by the musician.

17.4 MUSICIANS SUMMONED AS JURORS

- (a) A permanent musician summoned as a juror shall promptly notify the Director or Operations.
- (b) A musician so summoned shall be granted leave of absence for the period necessary for attendance at the court and the leave shall be granted with full pay less any amount received as compensation for the attendance.

17.5 PERSONAL LEAVE

Objective

The parties agree that the method for accruing and accessing sick leave entitlements needs to reflect the developments that have been made with the rostering of musicians in this Agreement. Without limiting the operation of the National Employment Standards in the FW Act, it is agreed that sick leave should be accessed in calls rather than days.

- (a) Without limiting the operation of the National Employment Standards in the FW Act, personal leave will accrue at the rate which equates to 27 calls on full pay for each year of completed service for appointed musicians. On commencement on trial a musician shall be credited with 13 calls on full pay and upon appointment be credited with 27 calls on full pay, subject to a maximum cumulative credit in any 12 month period of 27 calls on full pay. A further 4 calls unpaid carer's leave will be available in any year.

Personal leave refers to:

- (i) leave taken due to personal illness or injury (sick leave); or
- (ii) leave taken to provide care or support for a member of the employee's immediate family or household who requires care or support due to personal illness or injury, or an unexpected emergency (carer's leave).

- (b) A musician who is on personal leave shall have leave deducted proportionate to the time of the absence. If the absence is less than 4 consecutive weeks the leave shall be deducted proportionate to the number of calls of the absence. If the absence is greater than 4 consecutive weeks the leave shall be deducted proportionate to the number of weeks of the absence. 1 week's work shall count as 7 calls.
- (c) Personal Leave is cumulative.
- (d) It shall not be necessary for a medical certificate to be produced in respect of a sick leave absence not exceeding 3 consecutive days to a total of 5 days annually. Where the period of absence exceeds three consecutive working days, such period in excess shall be without pay unless supported by satisfactory evidence of the absence, such as a medical certificate. The Company may request reasonable evidence for any carer's leave sought.
- (e) If a musician is unable to return to work after all available personal leave is exhausted, the remaining period of leave shall be without pay.
- (f) Where an employee has been absent through illness for 13 weeks continuously the grant of further leave shall be subject to medical examination by a legally qualified medical practitioner selected by or approved by the Managing Director, or an alternatively agreed process to independently establish reasonable evidence.
- (g) An employee who falls sick while on annual leave and produces satisfactory medical evidence at the time, may be granted additional leave equivalent to the period of sickness falling within the scheduled period of annual leave, provided that sick leave for not less than one day is needed. Such absence will be recorded as sick leave subject to available credits. Annual leave re-credited under this clause will be taken at a time convenient to the operational requirements of the Company in the ensuing year.
- (h) The range of health providers whose certificates will be accepted for these sick leave purposes includes certificates from non-medical health practitioners under the following conditions:
 - (i) certificate issued by an osteopath registered to practice under State or Territorial legislation for grants of sick leave of up to five days in any sick leave year; and
 - (ii) a certificate issued by an acupuncturist, naturopath, herbalist, chiropractor, physiotherapist or homoeopath for grants of sick leave up to three days in any sick leave year, of which no more than two days will be consecutive.

The acceptance of the certificates from these practitioners is for sick leave purposes as outlined in this clause only, is subject to available sick leave credits, and does not provide an authority for the acceptance of these certificates in compensation claims except where specifically provided by the relevant legislation.

- (i) The Managing Director may grant additional personal leave to a permanent musician who during the first five years of service exhausts personal leave credits accrued on the basis of the foregoing provisions, to the extent of a year's credit in anticipation of personal leave next accruing. Where, in the case of a musician with long service, who has exhausted all personal leave on full pay, and the Company considers that such treatment is justified; the Company may grant additional personal leave.
- (j) If the Director of Operations has reason to believe that a musician is in such a state of health as to represent a danger to other employees or to the public the musician may be required to submit to medical examination by medical practitioner selected by or approved by the Company. Upon the receipt of the medical report, the Director of Operations may direct the musician to remain absent from duties for a specified period or, if already on leave of absence, direct the musician to continue on leave for a specified period and the absence shall be regarded as sick leave.
- (k) If, consequent upon a report by a legally qualified medical practitioner that, by reason of contact with a person suffering from an infectious disease and through an operation or restriction imposed by law, a musician is unable to attend for duty the Director of Operations may grant leave of absence. Leave of absence so granted shall be regarded

as sick leave, but the musician may elect that the whole or any portion thereof shall be deducted from the annual leave, which is due instead of being regarded as sick leave.

- (l) The retirement of an employee on the ground of invalidity shall not, except with the consent of the musician, be effected earlier than the date on which credits of leave on full pay would be exhausted provided that:
 - (i) the continuous period for which an employee may be granted sick leave on full pay immediately prior to retirement shall not exceed 52 weeks;
 - (ii) a further credit of sick leave shall not accrue to an employee subsequent to the date of the decision to effect the retirement.

17.6 COMPASSIONATE AND SPECIAL LEAVE

- (a) The Company shall, upon sufficient cause being shown grant a permanent or contract musician paid leave of absence without deduction from other paid leave. Such leave may be accessed for the purpose of:
 - (i) Compassionate purposes (including death or serious illness that is a risk to death) in relation to a member of the musician's immediate family or household, up to two days per permissible occasion;
 - (ii) On occasions of an immediate family member's death, up to a further three days bereavement leave;
 - (iii) the wedding of immediate family members, one day on any occasion;
 - (iv) moving residence, one day in any year;
 - (v) observance of religious holidays, one day on any occasion;
 - (vi) ceremonial occasions for indigenous employees for a maximum of three days in any year;
- (b) Where special circumstances arise and the Managing Director considers that the circumstances warrant the grant of additional leave, the Managing Director may grant to a musician leave with or without pay under such conditions as may be determined.
- (c) At the discretion of the Managing Director a musician may be granted leave without pay such that:
 - (i) where the period of leave is less than a week and up to eight calls are rostered, the musician may apply for leave for the rostered number of calls. Where eight or more calls are rostered, the musician may apply for leave of one week's salary;
 - (ii) where the period of leave is a week or more, the musician may apply for leave in periods of whole weeks, with the remaining day(s) taken in accordance with clause 17.6(c)(i).

17.7 PARENTAL LEAVE

Maternity leave

- (a) Parental leave is available to permanent musicians who have completed 12 months service immediately preceding the date from which the leave is to begin.
- (b) Female musicians shall be entitled to maternity leave provided that:
 - (i) employees are eligible for a maximum of 52 weeks of maternity leave if they are employed full time or part time.
 - (ii) Maternity Leave normally commences six weeks prior to the expected date of birth and continues until six weeks after the date of birth. Unless otherwise approved these 12 weeks are compulsory. If the birth occurs no more than 20

weeks before the expected date, Maternity Leave commences on the date of birth.

- (c) Employees may continue to work within the six-week period before the expected date of birth if a doctor's certificate is produced declaring that the employee is fit for work until a specified date.
- (d) Unless the employee has completed the 12 months qualifying period she is not entitled to pay for the first 12 weeks of Maternity Leave provided that:
 - (i) if the employee has at least 12 months qualifying period the employee is entitled to full pay for the first 12 weeks of leave, whether the leave is continuous or taken in broken periods. The remainder of the absence may be covered by recreation leave, long service leave or leave without pay.
 - (ii) if the employee completes 12 months service during the first 12-week period of Maternity Leave she will be entitled to be paid Maternity Leave for the remainder of the period according to the sub clause above.
 - (iii) These entitlements are in addition to the Australian Government Paid Parental Leave Scheme.
- (e) Employees may have access to paid personal leave during the period of Maternity Leave (other than the 12 week required absence) but only if a medical certificate is supplied and the delegate is satisfied that the nature of the illness is such it makes the employee unfit for work.
- (f) Periods of paid leave and the 12 weeks required absence (paid or unpaid) count as service. All other periods of unpaid leave do not count for service for any purpose, but do not break the employee's period of continuous service.
- (g) It is unlawful for management to discriminate against an employee because of pregnancy.
- (h) Any salary/allowance payments that normally would be paid during the period of leave may be paid in advance if the employee so wishes.
- (i) If an employee is receiving higher duties allowance before going on Maternity Leave she may be entitled to continued payment, subject to the approving delegate certifying that she would have continued to receive the higher duties but for the period of leave.
- (j) Superannuation contributions are payable during all periods of paid leave and the 12 week required absence, whether paid or unpaid.
- (k) On return to work the employee will be placed in the same position that she vacated if available. If the position is not available then she will be placed in a similar position.
- (l) If an employee becomes pregnant while on Maternity Leave she would be entitled to a second period of Maternity Leave. Whether it is necessary for the employee to resume duty before proceeding on the second period of Maternity Leave depends on the expected date of the second birth.

Partner leave

- (m) A permanent musician shall, upon production of reasonable evidence be entitled to unpaid partner leave, the total of which shall not exceed 52 weeks and be available in one or two periods:
 - (i) an unbroken period of up to one week at the time of confinement of the partner;
 - (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child. If the musician's partner is a permanent musician of the Melbourne Symphony Orchestra the entitlement shall be reduced by any period of maternity leave taken by the musician's partner in relation to the same child and shall not be taken concurrently with that maternity leave.
- (n) A musician shall, upon production of appropriate documentation from an adoption agency or government authority confirming the placement of an adopted child, be

entitled to a maximum of 52 weeks unpaid adoption leave not to extend beyond one year after the placement of the child. Such leave shall be available in one or two periods:

- (i) an unbroken period of up to three weeks at the placement of a child;
 - (ii) a further unbroken period of 49 weeks in order to be the primary care-giver of the child. This entitlement shall be reduced by any period of adoption leave taken by the musician's partner in relation to the same child and shall not be taken concurrently with that adoption leave.
- (o) The musician shall, not less than ten weeks prior to any proposed period of parental leave give the Company notice in writing of the proposed start and finish dates of the leave. The leave may be shortened with the consent of the Company only after 14 days notice given in writing by the musician.
 - (p) Absence on parental leave shall not break the continuity of service but shall not be taken into account in calculating the period of service for any purpose.
 - (q) Instrument allowances shall continue during the full period of parental leave.
 - (r) By mutual agreement a musician may work part-time for the Company for one or more periods at any time during the period of parental leave, or request other flexible work arrangements in accordance with Clause 8.15 of this Agreement. Working conditions will be subject to a written agreement between the musician and the Company.

17.8 LONG SERVICE LEAVE

- (a) Employees accrue 3 months long service leave after ten (10) years continuous service with the Company. The accrual rate per year of service thereafter, is three tenths (3/10) of a month or nine (9) calendar days. A pro rata accrual applies for a part year of service.
- (b) The minimum period of long service leave that shall be approved is one (1) calendar day. However, the Employee must take leave for an entire program. The parties agree that this requirement is reasonable, given the operations of the MSO.
- (c) Long service leave is available to be utilised at a time mutually convenient to the employee and the Company. The Company will not unreasonably refuse to grant the employee long service leave.
- (d) Long service leave will be paid at rates required by the *Long Service Leave Act 2018* (Vic) unless otherwise specified in this Agreement (for instance, in clause 17.8(o) below.
- (e) An employee can request to take a period of long service leave for twice as long as the period to which they are entitled, at half the rate of pay.
- (f) Long service leave may be taken contiguously with other forms of leave but cannot be broken down and interspersed with other forms of leave.
- (g) Applications for Long Service Leave are to be submitted with reasonable notice (ideally require two months' notice), unless otherwise agreed by the Director of Operations.
- (h) Unutilised long service leave on cessation shall be paid to the employee as follows:
 - (i) Accrued long service leave shall be payable to an employee with at least 7 years' continuous service on resignation, termination by the Company, redundancy or death;
 - (ii) Pro rata accrued long service leave shall be payable to an employee with less than 7 years' continuous service in the case of age retirement, redundancy and invalidity retirement only. An employee needs to have served a period of not less than 1 year to be eligible for this pro rata entitlement.
- (i) An employee who has been certified as medically unfit during a period of absence on long service leave will have the relevant period re-credited to his/her long service leave balance and the sick leave balance debited accordingly.

- (j) The Company shall recognise prior service in another Company, providing a reciprocal agreement is in place covering the transfer of funds between entities.
- (k) Employees employed as at 31 December 2006 who have had prior service with another organisation recognised for LSL purposes or who have had eligible service with another organisation prior to that date will continue to have that service recognised.

Note: Eligible service refers to service recognised under the Commonwealth (Long Service Leave) Act 1976 and regulations made under that Act.
- (l) Prior service shall not count for any purpose where there has been a break in service of more than 12 months.
- (m) Long service leave does not accrue during periods of leave without pay.
- (n) In the event of the death (or disability) of an employee a payment in recognition of the long service leave credit (including pro-rata) may be authorised to the dependants, legal representative or trustees (in the case of disability) upon receipt of a lawful authority, otherwise payment will be made to the estate of the deceased employee.
- (o) Salary on long service leave includes instrument allowance and higher duties allowance (HDA) where the employee was on HDA at the commencement of the leave and provided that the Company certifies that the employee would have continued on HDA for a total period (including the period immediately prior to the leave) of not less than twelve months but for the absence on long service leave. Instrument allowance is not included in calculating payments in lieu of LSL.

17.9 LEAVE WITHOUT PAY

A permanent or contract musician may apply for Leave Without Pay from MSO duties. All applications must be in writing on the designated form. Such leave will be granted at the sole discretion of the Director of Operations or delegate, taking into account the reason for the leave, and the artistic and operational requirements of the Company. All applications will be dealt with in a timely manner.

17.10 FAMILY AND DOMESTIC VIOLENCE LEAVE

The Company recognises that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, the Company is committed to providing support to staff that experience family and domestic violence.

Family Violence is defined as stipulated in the Family Violence Protection Act 2008 (Vic). The definition includes physical, sexual, financial, verbal or emotional abuse by a family member.

- (a) General Principles
 - (i) All personal information concerning an employee's experience of family and domestic violence will be kept confidential. Information will not be kept on an employee's personnel file without their express written permission.
 - (ii) No adverse action will be taken against an employee if their attendance or performance at work suffers as a result of experiencing family and domestic violence.
 - (iii) An employee will not be discriminated against or have adverse action taken against them because of their disclosure of, experience of, or perceived experience of, family violence.
- (b) Contact person
 - (i) Human Resources to provide support for employees experiencing family and domestic violence and notify employees of the name of the nominated contact person. The nominated contact person will have appropriate skills and interpersonal style to provide support to the individual.

- (ii) An employee experiencing family and domestic violence may raise the issue with the nominated contact person or their immediate supervisor. The supervisor may seek advice from Human Resources if the employee chooses not to see the Human Resources contact.
 - (iii) Where requested by an employee, the contact person will liaise with the employee's supervisor on the employee's behalf, and will make a recommendation on the most appropriate form of support.
 - (iv) The Company will develop guidelines to supplement this clause which detail the appropriate action to be taken in the event that an employee reports family and domestic violence.
- (c) Notice and Evidentiary Requirements
 - (i) The employee shall give his or her employer notice as soon as reasonably practicable of their request to take leave under this clause.
 - (ii) Proof of family violence may be required in the form of an agreed document issued by the police service, a court, a health professional, a family violence support service or a lawyer.
- (d) Leave entitlements
 - (i) An employee experiencing family violence may utilise existing leave entitlements for medical appointments, legal proceedings and other activities in relation to family violence. If the employee does not have access to sufficient leave up to a further 20 days per year (non-cumulative) of paid special leave may be granted upon request with approval from the Director of Human Resources. This leave may be taken as consecutive or single dates or as a fraction of a day and can be taken without prior approval, although supporting documentation will be respectfully requested/required to substantiate the leave provision.
 - (ii) An employee who supports a person experiencing family violence may take carer's leave to accompany them to legal proceedings, counselling, medical appointments or to care for children, although supporting documentation will be respectfully requested/required to substantiate the leave provision.
 - (iii) A casual employee who has been engaged and who is then absent from work for reasons related to family violence shall not suffer a loss of pay, up to an annual absence of 10 calls.
 - (iv) Leave taken under these provisions shall count as service for all purposes.
 - (v) Nothing in this clause 17.10 removes a musician's entitlement to take unpaid domestic violence leave as set out in the National Employment Standards in the FW Act.
- (e) Individual Support
 - (i) In order to provide support to an employee experiencing family and domestic violence and to provide a safe work environment to all employees, The Company will endeavour to accommodate any reasonable request from an employee experiencing family and domestic violence for:
 - (A) changes to their span of hours or pattern or hours and/or shift patterns;
 - (B) job redesign or changes to duties;
 - (C) relocation to suitable employment within The Company;
 - (D) a change to their telephone number or email address to avoid harassing contact; or
 - (E) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.

- (ii) An employee that discloses to the nominated contact person or their supervisor that they are experiencing family and domestic violence will be offered:
 - (A) access to professionals trained specifically in family and domestic violence through the Employee Assistance Program (EAP); and
 - (B) access to support from Human Resources.
- (f) Workplace Safety

The Company will implement a workplace safety plan with specific measures to minimise the risk that employees will be subject to violent or abusive behavior at work and protocols for dealing with a crisis situation.

18 SALARY & ALLOWANCES

18.1 RATES OF PAY

The total minimum rate payable to permanent musicians effective for the period of this Agreement shall be the rates as prescribed in the following table.

Classification	Year	Existing scale from 1/5/2019 \$PA	Scale from 1/5/2020 \$PA	Plus 1% From 1/5/2021 \$PA
Section musician	First year	\$76,282	\$77,045	\$77,816
	Second year	\$79,332	\$80,126	\$80,927
	Third year	\$82,381	\$83,204	\$84,037
	Fourth year	\$85,436	\$86,290	\$87,153
	Fifth year	\$88,483	\$89,368	\$90,262
	Sixth year	\$90,774	\$91,681	\$92,598
	Seventh year	\$93,062	\$93,993	\$94,933
	Eighth year	\$94,592	\$95,537	\$96,493
	Ninth year	\$96,877	\$97,846	\$98,824
	Tenth & over	\$99,163	\$100,154	\$101,156
Assistant (Sub) Principal musician	First year	\$88,483	\$89,368	\$90,262
	Second year	\$90,774	\$91,681	\$92,598
	Third year	\$93,062	\$93,993	\$94,933
	Fourth year	\$95,350	\$96,304	\$97,267
	Fifth year	\$97,640	\$98,616	\$99,602
	Sixth year	\$99,927	\$100,927	\$101,936
	Seventh year	\$102,218	\$103,240	\$104,273
	Eighth year	\$104,503	\$105,548	\$106,603
	Ninth year	\$106,793	\$107,861	\$108,940
	Tenth & over	\$109,083	\$110,174	\$111,276
Principal & Associate Principal	First year	\$92,300	\$93,223	\$94,155
	Second year	\$94,588	\$95,533	\$96,489
	Third year	\$96,879	\$97,848	\$98,826
	Fourth year	\$99,163	\$100,154	\$101,156

Section Principal/Associate Concertmaster	Fifth year	\$101,457	\$102,471	\$103,496
	Sixth year	\$103,740	\$104,778	\$105,825
	Seventh year	\$106,029	\$107,089	\$108,160
	Eighth year	\$108,317	\$109,401	\$110,495
	Ninth year	\$111,371	\$112,484	\$113,609
	Tenth & over	\$113,661	\$114,798	\$115,946
	First year	\$96,877	\$97,846	\$98,824
	Second year	\$99,163	\$100,154	\$101,156
	Third year	\$101,457	\$102,471	\$103,496
	Fourth year	\$103,740	\$104,778	\$105,825
	Fifth year	\$106,029	\$107,089	\$108,160
	Sixth year	\$108,317	\$109,401	\$110,495
	Seventh year	\$110,606	\$111,712	\$112,829
	Eighth year	\$112,896	\$114,025	\$115,165
	Ninth year	\$115,182	\$116,334	\$117,498
	Tenth & over	\$117,472	\$118,647	\$119,833

18.2 TIME OF PAYMENT

All monies due under this Agreement to a musician shall be paid, each fortnight, no later than 5.00 p.m. on the Friday after each fortnightly pay period.

18.3 SALARY INFORMATION ADVICE

Each musician will be provided with a payslip or other pay statement at the time a salary payment is made. The information on the payslip or pay statement will be in accordance with the Fair Work Regulations.

18.4 PAYMENT FOR WORK ON PUBLIC HOLIDAYS

Any calls made on a public holiday where the hours to be worked are included in the standard working hours shall be subject to the following conditions:

- (a) on Good Friday, Christmas Day, Labour Day, payment at the rate of double time shall be made for each call;
- (b) on New Years Day, Australia Day, ANZAC Day, Easter Saturday, Easter Monday, Birthday of the Sovereign, Boxing Day, any other day observed as a public holiday in Victoria, payment at the rate of time and a half shall be made for each call;
- (c) on Melbourne Cup Day, the rate of pay shall be single time for such call or calls worked, and in addition, one (1) day shall be added to the end of year break adjoining the recreation leave period.

18.5 OVERTIME PAY

- (a) Any overtime entitlement shall apply on a once only basis to an individual musician who actually performs work in excess of the prescribed time of a call or other rostered work, or the maximum number of weekly or cyclic hours.
- (b) Any time worked after the prescribed time for a call shall be paid for at the rate of one and a half times the relevant hourly rate for the musician's classification or acting

classification; this rate will apply until midnight. After midnight the rate shall become double time.

- (c) In the case of rehearsals on the day of a public concert, all overtime worked in excess of fifteen minutes shall be paid for at double time, based on the rate for that musician's classification or acting classification.
- (d) Weekly and cyclic overtime, that is time worked in excess of the hours prescribed in this Agreement, shall attract payment of one and a half times the relevant rate for the musician's classification or acting classification except on public holidays and on Sundays, when the payment will be at double time.

18.6 EXTRA INSTRUMENTS (DOUBLING)

- (a) When in any call a musician is required to play one or more additional instruments, a payment of \$17.23 per additional instrument will be made for that call, provided that a percussionist will be paid a Doubling Allowance for a call only when required to play tuned instruments and untuned instruments, irrespective of the number of each type played during that call.

Provided that

- (i) the allowance will increase in the first pay period following the 1st May in subsequent years, with the increase based on the adjustment in the ABS All Groups Weighted Average Capital City CPI for the four (4) quarters of the previous calendar year;
 - (ii) the allowance will be paid at the rate prevailing when the call occurred;
 - (iii) the claim is made within three months of the call occurring, and by the final working day prior to recreational leave in any calendar year.
- (b) Where applicable, Higher Duties allowances shall be paid in addition to Doubling Allowances.
- (c) Where a musician plays Contrabass Clarinet, Contrabass Trombone, Cimbalom, Bass Horn or C Bass Flute the Doubling Allowance will be equivalent to 25% of the relevant call rate.

18.7 INSTRUMENT ALLOWANCE

- (a) With respect to the upkeep of instruments each permanent and contract musician shall receive a weekly allowance of:
 - (i) \$15.72 for brass musicians,
 - (ii) \$31.45 for woodwind musicians,
 - (iii) \$31.45 for timpanist and percussionists,
 - (iv) \$39.30 for string musicians
 - (v) \$62.89 for harpist

The allowance will increase in the first pay period following the 1st May in subsequent years, with the increase based on the adjustment in the ABS All Groups Weighted Average Capital City CPI for the four (4) quarters of the previous calendar year.

- (b) Musicians in the doubling positions of Piccolo, Cor Anglais, Bass Clarinet, Eb Clarinet and Contrabassoon shall receive an additional allowance for the upkeep of the doubling instrument.
 - (c) The Company may determine that a musician shall receive a further amount of allowance for purchase and upkeep of additional instruments.

18.8 HIGHER DUTIES

- (a) The number of String Principals in each section required for each work in each programme is agreed in advance by the Artistic Committee.
- (b) If the correct number of Principals are not available (for whatever reason) for a particular programme then any section musician who takes the place of a Principal is entitled to Higher Duties Allowance for that position.
- (c) A Principal musician will only be entitled to payment for Higher Duties Allowance for programmes for which they move up to play in a higher Principal position due to a vacancy in the section or to cover a Principal Player on extended leave.
- (d) A musician who performs Higher Duties shall be paid at the higher rate where applicable for a minimum of one call on each occasion. Higher duties are not applicable to string players on trial solely as a consequence of a requirement to change desks.

18.9 TOUR LOADING

A permanent or contract musician when on tour shall, for each complete week spent on tour, be credited with ten percent of the weekly rate prescribed in this Agreement, and in respect of any incomplete week one sixth of ten percent of that rate for each day so spent, and one twelfth of ten percent of that rate for each half day so spent. In computing the allowance under this subclause a period of absence not exceeding twelve hours shall be regarded as a half day's absence and exceeding twelve hours but not exceeding 24 hours shall be regarded as one day's absence.

18.10 TRAVEL ALLOWANCE

- (a) Subject to 18.10(b) and 18.10(c), when musicians are required to be absent overnight from their usual place of residence they shall be paid a travel allowance in accordance with the rates and conditions prescribed in the most recent determination of the Australian Taxation Office for reasonable travel and meal allowance expense amounts ("ATO Rate").
- (b) The travel allowance to be paid to Casual Musicians not residing in the greater Melbourne area (or normally treated as a local player) when engaged to perform in metropolitan Melbourne and Geelong where the stay is 7 days or more shall be at the rate of \$60 a day to cover reasonable travel related expenses directly related to such engagement (meals and incidentals). Travel and accommodation will be paid directly by MSO. For engagement of less than 7 days the provisions of clause 18.10(a) shall apply.
- (c) Casual Musicians shall be paid the same travel allowance as Permanent Musicians when on tour with Permanent Musicians.
- (d) For the purpose of this clause, the salary of a first year section musician will be used.

18.11 SUPERANNUATION

- (a) The Company shall make a contribution as prescribed by the Superannuation Guarantee Legislation (SGL) for each musician to the Media Superannuation Fund (Media Super) or to another approved superannuation fund selected by the musician. Company contributions to the superannuation fund shall be made within thirty days after the completion of the pay period for which the musician was employed
- (b) In addition to the SGL minimum contribution, for those ongoing musicians employed as of 31 December 2006 the Company shall make a supplementary contribution to equal the level of total employer superannuation contribution set down in the correspondence to individual employees from the Company dated 16/10/2006. These payments will continue for the duration of the musician's employment with the Melbourne Symphony Orchestra.

- (c) In addition to the SGL minimum contribution of 9.5%, for any ongoing employee engaged on or after 1 January 2007, The Company will contribute a further amount of up to 4.5% of salary to match an equal employee contribution of up to 4.5%. Should the SGL percentage increase beyond its current 9.5%, the employer will only be required to match the employee's contributions up to a maximum employer contribution of 14%. Should the SGL increase beyond 14%, the employer will contribute the required SGL percentage.
- (d) The Company will advise all musicians at the commencement of employment about superannuation entitlements and will supply the necessary application forms. Where a musician is already enrolled with the Media Super scheme, the musician will supply their membership number to the Company.

18.12 TIME & SALARIES RECORDS

- (a) The Company shall keep a record from which can be readily ascertained the following:
 - (i) name and classification of each musician;
 - (ii) hours worked each day;
 - (iii) gross amount of wages and allowances paid;
 - (iv) amount of each deduction made and the nature thereof;
 - (v) net amount of wages and allowances paid; and
 - (vi) amount of any superannuation payment made by the Company on behalf of the musician to an approved occupational superannuation fund and the fund membership number of the musician.
- (b) All records and documentation, or copies thereof, shall be available for inspection by a duly accredited official of the Union during the usual office hours at the Company's relevant office or other convenient place provided that:
 - (i) such inspection shall not unduly interfere with the Company's business and such inspection is not unreasonably refused by the Company.
 - (ii) an inspection shall not be demanded unless the Chief Executive Officer of the Union, or of a branch of the Union, reasonably suspects that a breach of this Agreement has been committed. The Company shall within 48 hours supply a copy of the records required arising out of the inspection.

18.13 DRESS ALLOWANCE

- (a) In order to ensure that the Musicians appear suitably attired when on stage, an annual dress allowance of \$270 shall be paid to all permanent musicians. The Consultative Committee shall select from its members a subcommittee, who together with the Director of Operations shall be responsible for monitoring dress standards on stage. This allowance shall be included in the first salary payment on return from annual vacation.
- (b) In addition;
 - (i) all permanent musicians adhering to the male dress code are able to claim an additional \$130 in any one year upon presentation of receipt(s) for the purchase of a permissible item of performance dress. Only one claim is permissible per year.
 - (ii) all permanent musicians adhering to the female dress code are able to claim an additional \$230 in any one year upon presentation of receipt(s) for the purchase of a permissible item of performance dress. Only one claim is permissible per year.

18.14 WORKERS COMPENSATION

- (a) A musician entitled to compensation in accordance with the Victorian State workers compensation legislation will have the amount of compensation payable increased by the Company up to the level of the musician's normal weekly earnings. This additional payment by the Company will be known as make-up pay. The musician shall be entitled to 45 weeks of make-up pay for each compensable injury.
- (b) A musician injured in the course of travelling to or from work shall, to the extent not covered by the provisions of the Victorian State workers compensation legislation, be entitled to have their normal weekly earnings maintained for 45 weeks of payment. The Company may take out insurance to cover this risk.

19 ARRANGEMENTS

19.1 RIGHT OF ENTRY

An officer of the Union authorised in writing by the Chief Executive Officer of the Union or a branch of the Union may enter any premises where employees are working and inspect relevant documents in accordance with the provisions of the FW Act.

19.2 TRAINING FOR MUSICIAN REPRESENTATIVES

- (a) Musicians who are to participate in the Consultative Committee or in other representative positions shall be entitled to attend appropriate training courses to assist them to prepare for this purpose. The parties recognise that such training to assist musicians to participate effectively within the consultative mechanisms within the Company will make a positive contribution to attainment of the intentions of this Agreement.
- (b) For this purpose permanent musician representatives may be granted up to five days leave on full pay in any calendar year, provided that the operations of the Company are not unduly affected by the musician's absence.
- (c) The scope, content and level of the course, for which leave is sought to be granted, shall be such as to contribute to a better understanding of industrial relations.

19.3 MEETINGS

The Company will facilitate the holding of meetings for the purpose of selecting musician representatives and enabling consultation with all musicians on matters pertaining to this Agreement and working conditions and arrangements as required in order to promote a harmonious and constructive working environment.

20 TRAINING AND DEVELOPMENT

- (a) The Company will continue to support personal development and training programs for permanent musicians on a case by case basis. Such support would ordinarily be by way of providing time off from normal duties with or without pay and/or providing financial assistance to undertake the studies or training.
- (b) In considering the extent of support for a training program, management shall take into consideration, the nature and duration of the training to be undertaken, the implications for MSO activities, previous studies assistance provided to the musician, any competing requests for assistance, the cost of the assistance sought and any other relevant matters.

21 SPECIAL ARRANGEMENTS

- (a) In exceptional circumstances, and subject to the conditions outlined below, the MSO musicians and management may agree to vary the conditions that are prescribed by this Agreement.
- (b) Any such variation shall take place where all of the following conditions have been met:
 - (i) The Players' Committee and Management shall reach mutual agreement on alternative rates and/or conditions;
 - (ii) At least 80% of the players directly affected by the proposed variation must vote in favour of the variation; and
 - (iii) Any such variation shall apply only to the specific instance for which such agreement has been reached (e.g. a specific touring arrangement).
 - (iv) The terms of any such variation to the conditions of this Agreement will be set out in writing between the parties.
- (c) Any such variation may include provision for a flexibility payment.
- (d) This clause shall not apply to those matters already listed in this Agreement which may be varied by mutual agreement.
- (e) Please refer to undertaking in Appendix G for further clarification as to parameters for these arrangements.

22 RECORDINGS

The parties have committed to review this clause relating to recordings and royalties outside the negotiations and then operate under the new clause in the future as agreed. In the interim recordings will be provided by the terms of this Agreement unless otherwise agreed with the Players' Committee. The parties would like to work towards a new clause completion date of 30 April 2021.

The parties acknowledge:

- *that it is desirable that the community has access to performances by the Melbourne Symphony Orchestra beyond the medium of live performances;*
- *that such access will primarily occur through broadcasts by the Australian Broadcasting Corporation (ABC);*
- *that the special relationship between the orchestra and the ABC means that the ABC has the right to broadcast performances by the orchestra;*
- *that recording and broadcast of performances is an integral part of enhancing the profile, standing and financial stability of the orchestra;*
- *that elected musician representatives are entitled to determine the manner in which recordings of performances by the orchestra will be used;*
- *that musicians are entitled to a reasonable and equitable share in the financial returns from recordings of their performances.*

- (a) Accordingly it is agreed:
 - (i) that live performance broadcasts by radio or television by the ABC within Australia shall occur without the need for a separate agreement or for additional payment to the musicians involved;
 - (ii) that the Company is entitled to arrange to record performances of the orchestra for purposes other than for broadcast by the ABC provided that such recordings will be subject to prior written agreement between the Company and SOMA;

- (iii) that performances will not be used in a manner that is prejudicial to the integrity of the performers, is likely to harm the reputation of the performers, or infringe the performers right of attribution;
 - (iv) that where the Company is the producer of the recording and consent is granted for a particular recording project to proceed, the standard recording contract set out in Appendix E of this Agreement shall be used as the template agreement for each recording project;
 - (v) that where the Company has been contracted by another producer to provide recorded material other than a film soundtrack and consent is granted for the project to proceed, the standard recording contract set out in Appendix E of this Agreement shall be used as the template agreement for each recording project;
 - (vi) that where the Company has been contracted by another producer to provide recorded material for a film sound track or any other project as agreed between the Company and the musicians elected representatives and SOMA, specific agreements will be made for those projects;
 - (vii) that where royalty or residual payments may become due to musicians, the Company will provide the MEAA trustees acting as a collecting agency the necessary contact details of all musicians who may have an entitlement as a result of the project.
- (b) The parties acknowledge the need to keep archival recordings and video footage by the orchestra. Any recording or film kept for archival purposes shall not be used for re-broadcast, or re-recording or in any way for commercial purposes without written agreement of musician representatives. Recordings of the orchestra shall not be made available for purposes of rehearsal by artists without written agreement of musician representatives.
- (c) The parties acknowledge the need to promote the orchestra. Where film and news footage is to be recorded, the Company will advise the musicians at the start of the affected call. Where such footage is taken, the Company undertakes to:
- (i) limit its use to broadcast segments of no longer than ninety seconds;
 - (ii) prohibit its use for any commercial purpose; and to
 - (iii) prohibit its use to promote any product or organisation other than the Melbourne Symphony.
- (d) Where recordings are made of live concerts for the purposes of CD release, such recordings will not be used in isolation to assess the performance standard of any employee.

23 WEBCASTING AND STREAMING

- (a) In accordance with subclause 22(a)(ii) the Parties agree that until 31 December 2021, the Company shall be entitled to arrange for the transmission, simultaneously with any radio and television broadcast, live performances on-line, provided that each participating employee shall be paid a minimum of \$1 per annum.
- (b) Any such usage for on-line purposes beyond 31 December 2021 shall be subject to a further separate agreement between the Parties.

24 SALARY PACKAGING

The Company will provide the opportunity for musicians to enter into salary packaging arrangements in accordance with the Company Policy on Salary Packaging.

25 FLEXIBILITY CLAUSE

- (a) An employer and employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
 - (i) the agreement deals with one or more of the following matters:
 - (A) Combination of leave and rostering to assist a musician in circumstances of a:
 - (I) Personal or family crisis;
 - (II) the birth of a child to an employee's spouse or de factor partner;
 - (III) study tours;
 - (B) Allocation of additional calls to a musician's annual workload in recognition of additional non-playing activities undertaken in support of the MSO;
 - (C) Advancement of leave entitlements;
 - (D) Prepayment of leave loading; and
 - (ii) the arrangement meets the genuine needs of the employer and employee in relation to one or more of the matters mentioned in paragraph (a); and
 - (iii) the arrangement is genuinely agreed to by the employer and employee.
- (b) The employer must ensure that the terms of the individual flexibility arrangement:
 - (i) are about permitted matters under section 172 of the FW Act; and
 - (ii) are not unlawful terms under section 194 of the FW Act; and
 - (iii) result in the employee being better off overall than the employee would be if no arrangement was made.
- (c) The employer must ensure that the individual flexibility arrangement:
 - (i) is in writing; and
 - (ii) includes the name of the employer and employee; and
 - (iii) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (iv) includes details of:
 - (A) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (B) how the arrangement will vary the effect of the terms; and
 - (C) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (v) states the day on which the arrangement commences.
- (d) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (e) The employer or employee may terminate the individual flexibility arrangement:
 - (i) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (ii) if the employer and employee agree in writing at any time.

26 MATTERS TO BE PURSUED

The following matters are to be pursued/investigated during the life of the Agreement;

- (a) Development of an agreement to cover broadcasts involving digital media;
- (b) Development and refinement of the MSO Performance Feedback process;
- (c) Continued discussion between Players' Committee and Management regarding safe and sustainable work practices including rostering patterns and call counts;
- (d) Broadcast and MSO online platform.

27 RETIREMENT

- (a) Permanent musicians approaching the retirement age are encouraged to enter into discussions with management about their future retirement plans. The objective being to afford the Company an opportunity to refine its replacement planning strategies. Either the musician or management may initiate such discussions and various employment options may be canvassed.
- (b) Transition to Retirement Arrangement
 - (i) The objective of a Transition to Retirement Arrangement is to allow for:
 - (A) continued access to the considerable skills & expertise of valued MSO players as they transition to their retirement
 - (B) a musician to transition into retirement with a more flexible and individual approach to retirement and to be better prepared for life beyond the MSO.
 - (ii) This arrangement may only be entered into with mutual agreement of the musician and the Director of Operations.
 - (iii) Applications to access a Transition to Retirement arrangement will be considered by the Director of Operations, Director of HR and the Players Committee and will be dealt with according to the following criteria:
 - (A) the degree to which part-time provisions have already been accessed
 - (B) length of service in the Melbourne Symphony Orchestra
 - (C) the availability of suitable casual players if required
 - (D) operational feasibility of the arrangement
 - (E) medical and physical conditions that could potentially impact capacity
 - (iv) Any arrangements made will include a Transition Plan that will be made in agreement between the musician and the Director of Operations, outlining the following fundamental points:
 - (A) confirmed and fixed full retirement date as agreed individually - generally less than 12 months
 - (B) an agreed reduced workload across the year
 - (C) workload to be distributed evenly across the year
 - (D) rostering to be agreed between the musician & the Director of Operations, in consultation with Section Principals as required
 - (E) company support for retraining if required.
 - (v) Players entering a Transition to Retirement Arrangement will be entitled to all employment conditions available to full-time employees on a pro-rata basis.
 - (vi) Given the requirement to maintain the highest level of artistic standards, and to do so within operational and financial constraints, the number of positions in the orchestra to be made available under these arrangements will be limited.

This will be defined on a case by case basis, to be considered by the Director of Operations, Director of HR and the Players Committee. Arrangements will also consider resourcing requirements such that the workload of remaining section members is managed within existing provisions.

- (vii) Musicians taking up a Transition to Retirement Arrangement will not undertake other professional paid employment without consultation with the Director of Operations.
- (viii) The Director of Operations, Director of HR and the Players Committee shall monitor the operation of these provisions.

APPENDIX A

Instrument families

Flute

Piccolo

Alto flute

Oboe

Cor Anglais

Heckelphone

Oboe d'amore

Clarinet

A Clarinet

Bb Clarinet

C Clarinet

Eb Clarinet

Basset Horn

Bass Clarinet

Contra Bass Clarinet

Saxophone

Bassoon

Contrabassoon

Horn

Wagner tuba

French Horn

Trumpet

Bb trumpet

C trumpet

D trumpet

Piccolo trumpet

Rotary valve trumpet

Flugel horn

Cornet

Bass trumpet

Trombone

Bass trombone

Alto trambone

Bass trumpet

Euphonium

Tuba

Ophicleide

Cimbasso

Percussion

Drumkit

Timpani

APPENDIX B

Noise health and safety agreement between Symphony Orchestra Musicians Association and the Melbourne Symphony Orchestra.

This Agreement covers all work involving the performance of music by musicians employed by the Melbourne Symphony Orchestra wherever it may be performed, and is aimed at reducing the exposure of musicians to excessive noise levels.

1 Minimal requirements

All aspects of performance of music will meet, as a minimum, the provisions of the Australian Standard 1269 (2005) *Occupational Noise Management*, the *National Standard for Occupational Noise [NOHSC:1007(2000)]*, and *Managing Noise and Preventing Hearing Loss at Work Code of Practice* [Safe Work Australia:2011].

2 Hierarchy of Control

The preferred order of hazard control is:

- (a) eliminate the hazard
- (b) substitute or modify the hazard
- (c) isolate the hazard
- (d) engineering methods
- (e) administrative controls
- (f) Personal Protective Equipment (**PPE**).

The parties agree that where possible noise will be eliminated, substituted, and/or isolated (having regard to the need to reduce the noise dose received by the musicians who are isolated with their instruments). Engineering noise control measures will be used to reduce the sound level at source or in transmission where that is possible.

3 Administrative measures

The Company will endeavour to reduce the length of exposure to loud music by, for example, removing noisy rehearsals from small spaces to large ones (Hamer Hall instead of Studio 355 for instance). The parties shall consult with a view to reducing the length of rehearsal of loud works in Studio 355, or in other small spaces, by restricting rehearsal of loud works to one call per day.

4 Personal Protective Equipment (PPE), Issue of

Earplugs adequate for the industry will be issued as reasonably required at the expense of the Melbourne Symphony Orchestra.

5 Personal Protective Equipment (PPE), Wearing of

Where loud works are to be rehearsed and certain players use hearing protection, it is recognised that the wearing of such devices may compromise the player's best performance standard. It is also recognised that hearing protectors make playing in tune and with correct attention to balance more difficult, and therefore criticism of a player on these grounds alone during a period when any musician is required to wear hearing protection adequate for the industry, shall not, of itself, provide evidence of an unacceptable decline in playing ability and overall performance.

6 Conductor complains when a musician is wearing hearing protection

It is expected that some musicians will use hearing protection in Studio 355 some or all of the time, and in other venues at times when individual musicians judge that noise levels are such that hearing protection is required to reduce personally apprehended noise dose levels to those stipulated in the standards specified in paragraph 1 Minimal Requirements.

When a conductor complains that intonation is faulty or attention to balance is lacking or otherwise insufficient from a musician who judges it necessary to use earplugs, that conductor must be informed by the Operations staff on duty that noise levels appear to be such that hearing protection should be worn and therefore good intonation and attention to proper balance may be difficult to achieve. The Health and Safety Representative (or in the absence of the HSR, the Deputy Health and Safety Representative) must be informed when this advice is given to the Conductor, and may be present and take part in such discussions, or any that arise.

7 Complaints about excessive noise levels

When noise levels seem to be excessive, musicians in the first instance will request the Operations staff on duty to assist in reducing noise levels, or if that is not possible, to introduce measures which will effectively attenuate noise levels.

The Operations staff on duty shall consult with the Health and Safety Representative, or in the absence of the HSR the Deputy Health and Safety Representative.

In the event that a dispute occurs, the principles laid out in the grievance and dispute resolution clause of this Agreement shall be applied.

8 Review

This agreement is subject to review by either party.

APPENDIX C

Standing Orders - Melbourne Symphony Orchestra Players' Committee

- 1 These Standing Orders shall be applicable to all General Meetings and Committee Meetings.
- 2 The Melbourne Symphony Orchestra Players' Committee shall aim:
 - (a) to maintain and protect the rights and privileges of members of the Melbourne Symphony Orchestra;
 - (b) to support, protect and advance the character, status and interests of professional orchestral musicians generally and particularly of persons permanently employed by the Melbourne Symphony Orchestra;
 - (c) to cooperate with similar Associations throughout Australia;
 - (c) to seek cooperation and support of and from the Symphony Orchestra Musicians Association (SOMA), and through SOMA of the Media Entertainment and Arts Alliance (MEAA).
- 3 Committee Meetings shall be held monthly if appropriate and shall be called by order of the President or on the receipt of written requisitions from Committee Members.
- 4 General Meetings shall be called as appropriate and shall be called by order of the President or on the receipt of written requisitions from Members, and at least one General Meeting will be called during a year.
- 5 The President shall, within 7 working days of the receipt of written requisitions to that effect from 5 members, call a General Meeting to be held within 15 working days of such receipt. The President shall, within 4 working days of the receipt of written requisitions to that effect from 2 Committee Members, call a Committee meeting to be held within 8 working days of such receipt. If the President has not within the stipulated time called a duly-requisitioned meeting, the requisitionists may themselves call it. The petition and the notice of meeting shall set out the business it is desired to transact.
- 6 The quorum at Committee Meetings shall be five committee members.
- 7 The quorum at General Meetings shall be thirty permanently employed members of the Melbourne Symphony Orchestra, which number may, but need not, include the Concertmaster. A musician who is employed by the Melbourne Symphony Orchestra on a full time basis or under a contract of at least five calendar months duration, or who has worked on a week to week basis for a period continuously of the previous five calendar months, shall be deemed for the purposes of these rules to be a permanently employed member of the Melbourne Symphony Orchestra.
- 8 Meetings shall, subject to the presence of a quorum, start at the time set out on the notice, and shall continue until all business on the Agenda is disposed of, or until the time limit is arrived at, whichever occurs first.
- 9 If no quorum is present within 15 minutes of the starting time set out on the notice, the meeting shall lapse, and, subject to any resolution previously passed, the Chair shall fix the time of the next meeting. All business on the Agenda of the lapsed meeting shall be included on the Agenda of the next meeting and shall take precedence over new business.
- 10 Any member desiring to speak at General Meetings or in the Committee of the Whole shall attract the attention of the Chair.
- 11 When the Chair rises to speak any member on his or her feet shall resume his or her seat.
- 12 Except in Committee, no member other than the proposer of a motion or an amendment shall speak to it until it has been seconded. A motion or amendment lapsing for want of a seconder shall not be recorded in the Minutes.
- 13 A motion or amendment before the Chair shall not be withdrawn except by its mover and by leave of the meeting. No motion shall be withdrawn while any amendment is under discussion or after any amendment has been adopted.

- 14 If required to do so by the Chair, the proposer of any motion or amendment shall submit it in writing.
- 15 A motion or amendment before the Chair may be reworded by the mover subject to leave of the meeting.
- 16 Except in Committee, no member shall speak more than once to any question, except that the mover of a motion (but not of an amendment) shall have a right of reply, which reply shall close the debate. An amendment shall constitute a separate question from the original motion and from any other amendment.
- 17 A member moving a motion or amendment shall be deemed to have spoken to it. A member seconding a motion or amendment without speaking to it may reserve his or her right to speak to it subsequently.
- 18 When an amendment is before the Chair discussion shall be confined to that amendment. No further amendment shall be proposed until the amendment before the Chair has been disposed of.
- 19 The Chair shall, as far as practicable, call on speakers for and against a motion or amendment alternately, subject to the right of the seconder to speak immediately after the mover. If two consecutive speakers have both argued for or against a motion or an amendment, and there is no member wishing to argue the opposite view or, in the case of a motion, to move an amendment, the motion or the amendment shall (subject, in the case of a motion, to the mover's right of reply) be put without further debate.
- 20 Any member may raise a point of order, which shall take precedence over all other business, and which shall be open to discussion. The point must be raised at the time the alleged irregularity occurred. An explanation or contradiction shall not constitute a point of order.
- 21 Any member disagreeing with a ruling from the Chair on a point of order may move dissent. The Chair shall then be vacated and such motion shall be put forthwith without debate.
- 22 On an equality of voting, the Chair shall declare the question resolved so as to maintain the status quo.
- 23 A member who has not already participated in the debate may at any time, whether another speaker has the floor or not, move, "That the question be now put", which motion, if accepted by the Chair, shall be put without amendment or debate. The Chair shall have absolute discretion to accept or refuse the motion. The Chair may also of his or her own volition put the question if he or she feels that adequate discussion has taken place. In either case the mover of a motion shall retain his or her right of reply. If an amendment is before the Chair, the closure motion shall be deemed to close the debate on the amendment only.
- 24 A member may at any time move, "That the speaker be no longer heard" or, "That the speaker be heard for a further limited period only". Such motions shall be put without amendment or debate. No other motion, except the closure motion or a motion dealing with the speakers time, shall be moved while a speaker has the floor.
- 25 During discussion of a motion (but not of an amendment), a member who has not already participated in the debate on the motion may move, "That the question be not now put". This motion shall be open to debate, and shall be debated together with the original motion. If carried, the original motion shall not be dealt with further. If lost, the original motion shall be put forthwith, subject to the mover's right of reply. The motion may be foreshadowed while an amendment is before the Chair, but in no case shall it be put till all amendments have been disposed of.
- 26 A member may move, "That the debate be now adjourned". Discussion shall be in order, but only amendments as to time and/or place shall be permitted. The motion shall take precedence over other business before the Chair except points of order.
- 27 A General Meeting may at any time during the discussion of a motion or an amendment resolve itself into a Committee of the Whole.
- 28 Standing Orders 1-27 (exclusive of Standing Order 2) or any of them may be suspended by a majority of those present. A motion to this effect shall be open to debate.

- 29** No member shall reflect on the vote of a meeting, except on a motion for the rescission of any resolution previously adopted. No member shall reflect on a Standing Order, except on a motion (of which due notice was given) to amend or repeal such Order.
- 30** Notwithstanding anything herein before contained, any decision made by a validly constituted meeting shall not be void by reason only of a departure from these Standing Orders which was not detected till after the decision had been made.
- 31** Alterations to the Standing Orders shall only be made by a General Meeting after 14 days' notice has been given.
- 32** Any matters not dealt with in the above Standing Orders shall be governed by the principles set out in "Guide for Meetings and Organisations" by N E Renton (The Law Book Co Ltd. - 0 455 166404).

APPENDIX D

Procedures For Air-Conditioned Workplaces

Upon request the employer shall provide advice to the HSR regarding the maintenance of the air-conditioning system relevant to the HSR's designated work group, including access to maintenance records and operational manuals.

APPENDIX E

Agreement To Record Performance

Agreement dated *xx/xx/2xxx*

Between *Melbourne Symphony Orchestra Pty Ltd ('Company')*
120 Southbank Blvd
Southbank VIC 3006

And *Melbourne Symphony Orchestra Musicians*
as listed in Attachment C

And *Symphony Orchestra Musician's Association (SOMA)*

BACKGROUND

- A. The Company has employed the Performer to give the Performance.
- B. The Company wishes to produce and release to the public recordings of the Performance on the terms and conditions of this Agreement.
- C. The Company wishes to record the Performer's Performance for inclusion in the Products.
- D. The Performer has agreed to authorise the recording and use by the Company of his/her Performance subject to the terms of this Agreement.

AGREEMENT

This Agreement is made up of the Agreement Details, the Standard Terms and any Attachments incorporated by reference.

AGREEMENT DETAILS

Performance *[insert Performance details]* e.g.:

On 4th, 5th and 6th August 1998, the Company Staff recorded Performances or assisted in the recording of:

- a) the entirety of 90 Minutes Around the World by Stuart Greenbaum*
- b) excerpts thereof of each instrumental part,*
- c) interviews with individual Company Staff members.*

Project The project described in Attachment A

Products The products, including recordings of the Performance and their means of fixation as described in Attachment A

Term In relation to each Product, the term specified for that Product in Attachment A, commencing on the date of this Agreement.

Territory In relation to each Product, the territory specified for that Product in Attachment A

Media In relation to each Product, the media specified for that Product in Attachment A

Fees The fees described in Attachment B.

STANDARD TERMS

1 Performer's Consent and Obligations

- 1.1 Subject to any restrictions and limitations set out in this Agreement, the Performer irrevocably consents to the recording, broadcasting, transmission and any other use or commercialisation of the Performance and the copying, adaptation, broadcasting, transmission and any other use or commercialisation of the recorded performance, including use as a sound track.
- 1.2 The Performer must:
- (a) give the Performance at times and places reasonably requested by the Company; and
 - (b) reasonably assist with publicising the Project, provided that the Company gives the Performer reasonable notice of that publicity.
- 1.3 All publicity work referred to in **clause 1.2(b)** which is the subject of a separate call and for which the Performer is not otherwise paid will attract a minimum payment for **[2.5]** hours calculated on the Performer's hourly rate (as applied when the Performer gave the live Performance).

2 Restrictions on Use of the Performance

- 2.1 Unless otherwise agreed in writing with the Performer, the Company must not use or authorise the use of the Performance:
- (a) in any territories/media other than the Territory/Media;
 - (b) in any product other than the Products; or
 - (c) to produce or release a Product once the Term for that Product has expired.
- 2.2 In making the Products, the Company must not allow the recorded Performance to be combined with any third party material not related to the Project unless that third party material **[and the manner in which it will be incorporated into a Product]** is referred to in Attachment A (Project Description).
- 2.3 Unless otherwise agreed in writing with the Performer, the Company must not use or authorise the use of the Performance to advertise or promote a third party or the commercial products or services of any third party. However, this clause does not prevent the Company from:
- (a) giving credits to the Company's sponsors or funding bodies (with or without the use of the logos or trade marks of those sponsors or funding bodies); and/or
 - (b) authorising the sponsors and/or funding bodies to use the name of the Project and/or still photographs and/or extracts from the recorded Performance (not exceeding one minute) in any promotional material (such as an annual report) relating to the relationship of the funding body or sponsor with Company and/or Project.
- 2.4 In making the Products, the Company must not edit the Performance in a manner that is prejudicial to the integrity of the Performance or that is likely to harm the reputation of the Performer. The Company may, however, edit the Performance in accordance with a written script approved in advance by the Performer. The Company must, in accordance with the Project Plan, provide the Performer with a reasonable opportunity to review the final edited version of each Product prior to the commencement of commercial production for that Product. If the Performer does not notify the Company of any objections to the final edited version within 7 days after the opportunity to review a Product, the Performer's right to object to the use of the Performance in that Product no longer applies.

3 Payment

- 3.1 The Company must pay the Performer Royalties Fees (as defined in Attachment B) in accordance with this clause.
- 3.2 Within 30 days after 30 June and 31 December each year during the term of this Agreement, the Company must:
- (a) provide to the Performer and SOMA or some other agent nominated by the musician a statement of Royalties setting out in clear terms the Royalties payable for the previous 6 month period and the basis on which those Royalties were calculated; and
 - (b) pay the Performer any Royalties set out in the statement referred to in paragraph (a), unless those Royalties do not exceed \$10 (in which case they will be rolled over to the next 6 month period).
- 3.3 During the term of this Agreement, the Company must keep records and accounts in sufficient detail to enable Royalties to be calculated. The Company must within 7 days after reasonable written request from SOMA or another agent nominated by the performer, make its records and accounts relevant to the calculation of Royalties available for inspection and audit by the Performer or a reputable auditor nominated by SOMA or another agent nominated by the musician.

4 Integrity and Attribution

- 4.1 Subject to this clause, the Company agrees not to use the Performance in a manner that would infringe the Performer's rights of attribution and integrity.
- 4.2 The Performer consents to the use of the Performance:
- (a) in accordance with the Project Description; and
 - (b) in any other manner agreed with the Performer in writing.
- 4.3 The Performer acknowledges and agrees that any failure to object within 7 days of being notified of a particular treatment of the Performance will be deemed to be consent to that treatment.

5 Company Warranty

- 5.1 The Company warrants that it will not (and will not authorise any other person to) record and/or release the recording of the Performance other than on the terms of this Agreement.

6 Dispute resolution

- 6.1 A party must not start court or arbitration proceedings in relation to a dispute arising under this Agreement unless it has first attempted to resolve the dispute by negotiation in good faith for a period of 30 days (or longer period agreed by the parties). Each party must involve its chief executive officer (or that person's nominee) in those negotiations.
- 6.2 Subject to clause 6.1, if a dispute arising under this Agreement is not resolved by negotiation, either party may by notice to the other party refer the dispute to conciliation or, where conciliation fails, arbitration before the Fair Work Commission.

7 General

- 7.1 This Agreement is governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that State.
- 7.2 This is the entire agreement of the parties in relation to its subject matter.
- 7.3 Any notice given under this agreement must be given in writing, sent by pre-paid post or facsimile to the address of the intended recipient set out in this Agreement (or otherwise notified in accordance with this Agreement).

Attachment A (Project Description)

1 Title **[e.g. MSO Web Site & Music Documentary Video]**

2 Short description of the Programs.

[e.g. It is proposed that the Melbourne Symphony Orchestra build a web site composed of two components as well as produce a music documentary video. A three day shoot/recording is scheduled to create the visual footage for the website and the documentary. The documentary will be lodged with SWIFT.]

2.1 **Product A. – Video Documentary**

The Performing Arts Company will create a 20 - 25 minute documentary including the full recording of the 6 minute composition 90 Minutes Circling the Earth composed by Stuart Greenbaum and interviews with key people. The documentary will be shot on 16mm Film and SP digital Betacam or SP Betacam. This will be lodged on SWIFT.

2.2 **Product B. – Online Music Education Course Material**

Aimed at school-age students this component will be an extension of the teaching materials currently produced by the Performing Arts Company's education program and will include short audio and video clips of the selected works.

Composer Stuart Greenbaum has been commissioned to write 90 Minutes Circling the Earth an approximately 6 minute piece that demonstrates the instruments of the orchestra. This work will be recorded on both audio and video with segments encoded for inclusion in the site. Interviews with the composer will illustrate the composition process, and show how the textures are built up by isolating different instrument groups and families.

The experience needs to be as interactive as possible. The sectional instrument writing of the work allows for audio of particular excerpts to be recorded separately.

The site will include an interview with the composer, background information on the work, score excerpts and, if possible the ability for students to send back their musical choices/variations of the original excerpts.

A page will also be established to provide users with the opportunity to communicate to the composer and players and may have the opportunity for their compositions to be performed by the orchestra at a schools concert. This may be incorporated with the main web site.

2.3 **Product C. - MSO Online**

This component will provide information about the Performing Arts Company's activities. The core information will consist of up-to-date schedules, artist information etc and a link to purchase tickets through TicketMaster Online. There will also be email links to staff and musicians, and a discussion forum called The Foyer - a chat-board for concert audiences to discuss concerts they have attended and other issues of interest to audiences.

- 3 The recording will be used to create, commercialise and promote products set out below.

Products

Product	Description	Territory	Media	Term
Product A	<i>30 minute documentary of the Project</i>	<i>Worldwide</i>	<i>Direct Sales Online (WWW) Broadcast</i>	<i>10 years</i>
Product B	<i>Educational Web site</i>	<i>Worldwide</i>	<i>Online (WWW)</i>	<i>10 years</i>
Product C	<i>Corporate web site</i>	<i>Worldwide</i>	<i>Online (WWW)</i>	<i>10 years</i>

- 4 **Third party materials**

The **Product A** will also incorporate the following materials
NASA public access footage.

The **Product B** will include sponsor acknowledgement and logos and may link to other Company sites.

The **Product C** will include sponsor acknowledgement and logos and may link to other Company sites.

- 5 **Review of Final Products**

The Company will make the final version of the Products available for review by Performers in accordance with the following timetable:

[Product A] [23/4/99]

[Product A] [23/4/99]

[Product A] [23/4/99]

Attachment B (Fees and Royalties)

2 Royalties

The Performer will be paid a royalty of 33% shared between the performers listed in Attachment C of the Gross Receipts of the Company from commercialisation of Product A.

For the purposes of this Agreement, unless otherwise agreed in writing between the parties, '**Gross Receipts**' means the total gross receipts (excluding any amounts collected by way of taxes or duties) from the Company's net sales of and/or licensing of the right to exploit the Products in the Territory, including any advance payments received from the sale of and/or licensing of the right to exploit the Products whether or not those payments are invested in the Product, and where the right, title and interest in respect of the use of a Product is irrevocably assigned to a bona fide assignee for value, the gross amount realised by the Company but not any amount realised by the assignee.

In respect of an assignment of the kind referred to in this definition (2.2) the Company must advise SOMA in writing of the assignment specifying the name and address of the assignee.

If SOMA considers on reasonable grounds that the assignment is not a bona fide assignment for value it must notify the Company in writing specifying reasons for its view; on receipt of such a notice from SOMA, the Company and SOMA must promptly confer for the purpose of reaching agreement; and if the Company and SOMA do not reach agreement within 14 days, the question whether the assignment is a bona fide assignment for value may be referred by either party for arbitration in accordance with clause 6 of this Agreement.

Attachment C

[Attachment C to be a list of all musicians eligible to access royalties for this contract.

This would include all permanent musicians available for the recording calls, whether rostered on or not, and all casual musicians who actually performed the work.

Permanent musicians on leave other than sick leave would not be eligible]

APPENDIX F

Vision, Mission, Values and Behaviours

The MSO's Vision, Mission and Values provide the foundation for the way in which we operate across all areas of the Company- from the development and implementation of our strategic plan, to our artistic programming, and our interactions with our employees, customers, patrons and stakeholders.

Accordingly, and as representatives of the Company, employees need to ensure that their conduct is at all times consistent with the Vision, Mission and Values and Behaviours as outlined below (current July 2017, and subject to change by authority of the MSO Board of Directors).

Vision

The MSO works together with our partners and communities to enrich people's lives through meaningful musical experiences.

Mission

A cornerstone of Melbourne's rich cultural heritage and leading orchestra on the world stage, the MSO evolves to inspire and engage audiences across Victoria, Australia and internationally.

Values and behaviours

Excellence	We will deliver the highest standards of performance at all times, artistically and organizationally.
Leadership	We will demonstrate the highest levels of professionalism and be passionate advocates for our company, our artists and the art form.
Innovation	We are creative and seek new ways to engage our stakeholders.
Collaboration	We are one orchestra and work cohesively with our partners and our people to achieve our goals.
Respect	We respect all those with whom we interact. We are ethical, honest, and transparent.
Integrity	We will be open and honest, reliable and respectful, and ethical at all times.
Accountability	We are responsible and accountable in our pursuit of sustainability.
Diversity	We reflect the diversity of our stakeholders to remain relevant, vibrant and inclusive and engage all aspects of the Victorian community we represent.

APPENDIX G

Better Off Overall Test

Clause 21. SPECIAL ARRANGEMENTS meets the Better Off Overall Test under the Agreement, as it provides agreed flexibility for Management and Musicians in exceptional circumstances, (e.g. international touring), when strict Rosters, Hours of Employment and Call Counts and Overtime parameters (Clause 8, Subclauses 8.2, 8.3 and 8.8 respectively) cannot be met whilst travelling. As specified within Clause 21, such variations are subject to consultation with the musicians and subject to a vote of all those to which the arrangement applies. Furthermore, the arrangement is in place for a short time period (up to 21 days) and sufficient respite is usually built in to the schedule to accommodate for lengthy travel days.

MSO Management provide an undertaking that any variations to the MSO Musicians' Agreement 2020, either material or structural, would be referred to the FWC for approval as per Section 207(3) of the Act.

APPENDIX H

Agreement on Covid-19 Emergency Measures

1 OBJECTIVES

This Appendix H provides for the implementation of emergency measures for the MSO to sustain operations through the coronavirus (**COVID-19**) crisis which was declared a pandemic by the World Health Organisation on 11 March 2020. The impacts of this crisis on MSO are extensive, and this Appendix H outlines the measures agreed to between Musicians and the Company, who are committed to striving to maintain a constructive, harmonious and positive employment relationship whilst also taking a series of practical, but temporary, measures to Musicians' salary, duties and work arrangements as set out in this Appendix H.

2 OPERATION OF THIS APPENDIX

- (a) The Appendix H shall operate from the time that the *Melbourne Symphony Orchestra Musicians Agreement 2020 (Agreement)* commences operation in accordance with the *Fair Work Act 2009* (Cth), and shall cease to operate in accordance with clause 11 of this Appendix H below except in relation to clause 8.2 of this Appendix H.
- (b) While this Appendix H is in operation, a provision of this Appendix H will override any other provision of the Agreement, including its other appendices, to the extent of inconsistency.
- (c) Where this Appendix H is silent on a matter, the parties agree to defer to and apply the Agreement.
- (d) The National Employment Standards continue to apply (and will prevail over this Appendix H) to the extent any term of this Appendix H is detrimental to Musicians covered by it.
- (e) Any dispute about the application or operation of this Appendix H shall be managed in accordance with clause 15 (*Grievance and Dispute Settling Procedure*) of the Agreement.

3 KEEP THE MUSIC GOING

- (a) The Musicians will maintain their skills.
- (b) The Musicians acknowledge the need for major workplace change during the current COVID-19 crisis. As at the time the Agreement was made, official government restrictions directly impact the number of people who can assemble in one place.
- (c) The Musicians have an obligation to support the Company through this time and will commit to performing duties outside of their normal position description as an orchestral musician in those areas they are competent. These obligations extend to positive and meaningful engagement with MSO subscribers and donors.
- (d) The Management and Players Committee will meet on a monthly basis to review the financial position of the MSO and the working arrangements for Musicians as described in this Appendix H.

4 FEDERAL GOVERNMENT JOBKEEPER PAYMENTS

- (a) On 21 July 2020 the Federal Government announced it is extending the JobKeeper scheme (**JKS**) until 28 March 2021 and is targeting support to those businesses and not-for-profits which continue to be significantly impacted by COVID-19.
- (b) For the period(s) in which the Company remains eligible to participate in the Federal Government's JKS, the Company and Musicians agree that the Company shall fulfil its obligations under the legislation establishing the JKS, as amended from time to time (including the *Coronavirus Economic Response Package (Payment and Benefits Rules 2020)*), to eligible Musicians who have nominated to receive JobKeeper payments from

MSO and in respect of whom the Company has registered with the Commissioner of Taxation to receive JobKeeper payments.

- (c) This includes a commitment by the Company to provide continuous payment of the JobKeeper payment whilst Musicians are on Annual Leave.
- (d) For the avoidance of doubt:
 - (i) Nothing in this clause 4 or any other provision of this Appendix H entitles an eligible Musician to receive from the Company the prescribed JobKeeper payment per JobKeeper fortnight in addition to their wages for ordinary hours of work, except to the extent that such payment is required to 'top up' the Musician's wages to the minimum prescribed JobKeeper payment level per fortnight;
 - (ii) Nothing in this Appendix H limits the Company's rights to stand Musicians down from their employment with or without pay. However, in the event that a Musician is stood down, the Company will continue to comply with any obligation to that Musician imposed under clause 4(b) of this Appendix H above; and
 - (iii) Nothing in this Appendix H operates to guarantee the continued employment of Musicians until this Appendix H ceases to operate.

5 WAGES AND HOURS OF WORK

5.1 Hours of work and wage arrangements from the commencement of the Agreement until 31 December 2020 (inclusive): Casual Musicians

From the commencement of the Agreement until 31 December 2020 (inclusive), the following provisions will apply to Casual Musicians who are eligible to receive JobKeeper payments from the Company as set out in clause 4 of this Appendix H:

- (a) Will be paid a pre-tax income of \$1,500 per fortnight.
- (b) Without limiting clause 4(a) of this Appendix H, in accordance with the nature of their employment, Casual Musicians will not be guaranteed hours of work. However, Casual Musicians will be required to work any hours in a relevant JobKeeper fortnight requested by the Company, determined on a pro-rata basis at the Casual Employee's applicable hourly rate under clauses 18 and 8.17(m) of the Agreement, up to a fortnightly salary payment of \$1,500.
- (c) Hours of work will be rostered in 3.0 hour calls with all calls counting as 3.0 hours work.
- (d) Employees will not refuse a reasonable request to work.
- (e) Superannuation Guarantee Legislation minimum contribution of 9.50% would apply.
- (f) On and from 1 January 2021, the hours of work and wage arrangements for Casual Musicians will be governed by the Agreement.

5.2 Hours of work and wage arrangements from the commencement of the Agreement until 27 September 2020 (inclusive): Permanent Musicians

From the commencement of the Agreement until 27 September 2020 (inclusive), the following provisions will apply to Permanent Musicians:

- (a) Permanent Musicians who are eligible to receive JobKeeper payments from the Company as set out in clause 4 of this Appendix H, will be paid a pre-tax income of \$1,500 per fortnight.
- (b) Fortnightly hours of work will be determined on a pro-rata basis at the permanent employees' applicable hourly rate under clause 18.1 of the Agreement up to a fortnightly salary payment of \$1,500. Accordingly, individual work load is as follows:

Permanent musicians:

		Calls per fortnight
Section musician	First year	10.2
	Second year	9.8
	Third year	9.5
	Fourth year	9.1
	Fifth year	8.8
	Sixth year	8.6
	Seventh year	8.4
	Eighth year	8.2
	Ninth year	8.1
	Tenth & over	7.9
Assistant (Sub) Principal musician	First year	8.8
	Second year	8.6
	Third year	8.4
	Fourth year	8.2
	Fifth year	8.0
	Sixth year	7.8
	Seventh year	7.6
	Eighth year	7.5
	Ninth year	7.3
	Tenth & over	7.2
Principal & Associate Principal	First year	8.5
	Second year	8.2
	Third year	8.1
	Fourth year	7.9
	Fifth year	7.7
	Sixth year	7.5
	Seventh year	7.4
	Eighth year	7.2
	Ninth year	7.0
	Tenth & over	6.9
Section Principal/ Associate Concertmaster	First year	8.1
	Second year	7.9
	Third year	7.7
	Fourth year	7.5

	Fifth year	7.4
	Sixth year	7.2
	Seventh year	7.1
	Eighth year	6.9
	Ninth year	6.8
	Tenth & over	6.6

(For the avoidance of doubt, the above workloads shall override the full time employment provisions in clause 8.3(b) of the Agreement).

- (c) Hours of work will be rostered in 3.0 hour calls with all calls counting as 3.0 hours' work.
- (d) Hours for other work will be by mutual agreement. Employees will not refuse a reasonable request to work.
- (e) Superannuation Guarantee Legislation minimum contribution of 9.50% would apply.

5.3 Hours of work and wage arrangements from 28 September 2020 until 31 December 2020 (inclusive): Permanent Musicians

From 28 September 2020 until 31 December 2020 (inclusive), the following provisions will apply to Permanent Musicians:

- (a) Without limiting clause 4 of this Appendix H, Permanent Musicians:
 - (i) agree to a reduction in their ordinary hours of work by **20%**; and
 - (ii) accordingly, will be paid at the rate of **80%** of their ordinary rate of pay as of 28 September 2020 set out in clause 18.1 of the Agreement.
- (b) Accordingly individual pre-tax salary for full-time Permanent Musicians during this period is as follows:

		Annual, pre-tax salary for the period 28 September 2020 – 31 December 2020 (inclusive)
Section musician	First year	\$61,636
	Second year	\$64,101
	Third year	\$66,564
	Fourth year	\$69,032
	Fifth year	\$71,494
	Sixth year	\$73,345
	Seventh year	\$75,194
	Eighth year	\$76,430
	Ninth year	\$78,277
	Tenth & over	\$80,124
Assistant (Sub) Principal musician	First year	\$71,494
	Second year	\$73,345
	Third year	\$75,194
	Fourth year	\$77,043

	Fifth year	\$78,893
	Sixth year	\$80,741
	Seventh year	\$82,592
	Eighth year	\$84,438
	Ninth year	\$86,289
	Tenth & over	\$88,139
Principal & Associate Principal	First year	\$74,578
	Second year	\$76,427
	Third year	\$78,278
	Fourth year	\$80,124
	Fifth year	\$81,977
	Sixth year	\$83,822
	Seventh year	\$85,671
	Eighth year	\$87,520
	Ninth year	\$89,988
	Tenth & over	\$91,838
Section Principal/Associate Concertmaster	First year	\$78,277
	Second year	\$80,124
	Third year	\$81,977
	Fourth year	\$83,822
	Fifth year	\$85,671
	Sixth year	\$87,520
	Seventh year	\$89,370
	Eighth year	\$91,220
	Ninth year	\$93,067
	Tenth & over	\$94,917

- (c) Despite the reduction in ordinary hours referred to in clause 5.3(a)(i) of this Appendix H above, Permanent Musicians will continue to accrue leave entitlements at 100% of the ordinary accrual rate as applied based on the Musicians' usual contracted ordinary hours, as if their ordinary hours had not been reduced under clause 5.3(a)(i) of this Appendix H above.
- (d) Work will not exceed 32 calls per cycle, comprising up to 25.6 playing calls per cycle, 16 playing calls per fortnight to a maximum of 10 playing calls within a week.
- (e) Superannuation Guarantee Legislation minimum contribution of 9.50% would apply.

5.4 Hours of work and wage arrangements from 1 January 2021 until 31 December 2021 (inclusive): Permanent Musicians

From 1 January 2021 until 31 December 2021 (inclusive), the following provisions will apply to Permanent Musicians:

- (a) Without limiting clause 4 of this Appendix H, Permanent Musicians:
 - (i) agree to a reduction in their ordinary hours of work by **20%**; and

Melbourne Symphony Orchestra Musicians Agreement 2020

- (ii) accordingly, will be paid at the rate of **80%** of the rate of pay as of 1 January 2021 set out in clause 18.1 of the Agreement.
- (b) Accordingly individual pre-tax salary for full-time Permanent Musicians during this period is as follows:

		Annual, pre-tax salary for the period 1 January 2021 – 30 April 2021 (inclusive)	Annual, pre-tax salary for the period 1 May 2021 – 31 December 2021 (inclusive)
Section musician	First year	\$61,636	\$62,252
	Second year	\$64,101	\$64,742
	Third year	\$66,564	\$67,229
	Fourth year	\$69,032	\$69,723
	Fifth year	\$71,494	\$72,209
	Sixth year	\$73,345	\$74,079
	Seventh year	\$75,194	\$75,946
	Eighth year	\$76,430	\$77,194
	Ninth year	\$78,277	\$79,060
	Tenth & over	\$80,124	\$80,925
Assistant (Sub) Principal musician	First year	\$71,494	\$72,209
	Second year	\$73,345	\$74,079
	Third year	\$75,194	\$75,946
	Fourth year	\$77,043	\$77,813
	Fifth year	\$78,893	\$79,682
	Sixth year	\$80,741	\$81,549
	Seventh year	\$82,592	\$83,418
	Eighth year	\$84,438	\$85,283
	Ninth year	\$86,289	\$87,152
	Tenth & over	\$88,139	\$89,020
Principal & Associate Principal	First year	\$74,578	\$75,324
	Second year	\$76,427	\$77,191
	Third year	\$78,278	\$79,061
	Fourth year	\$80,124	\$80,925
	Fifth year	\$81,977	\$82,797
	Sixth year	\$83,822	\$84,660
	Seventh year	\$85,671	\$86,528
	Eighth year	\$87,520	\$88,396
	Ninth year	\$89,988	\$90,887
	Tenth & over	\$91,838	\$92,757

Section Principal/Associate Concertmaster	First year	\$78,277	\$79,060
	Second year	\$80,124	\$80,925
	Third year	\$81,977	\$82,797
	Fourth year	\$83,822	\$84,660
	Fifth year	\$85,671	\$86,528
	Sixth year	\$87,520	\$88,396
	Seventh year	\$89,370	\$90,263
	Eighth year	\$91,220	\$92,132
	Ninth year	\$93,067	\$93,998
	Tenth & over	\$94,917	\$95,867

- (c) Permanent Musicians will accrue leave as follows:
- (i) In accordance with the 20% reduction in ordinary hours of work specified in clause 5.4(a)(i) of this Appendix H, Personal Leave and Annual Leave entitlements will accrue at a rate equivalent to 80% of the ordinary accrual rate set out in clause 17.1(a) of the Agreement (for Annual Leave) and clause 17.5(a) of the Agreement (for Personal Leave); and
 - (ii) Long Service Leave will accrue in accordance with the requirements of the *Long Service Leave Act 2018* (Vic).
- (d) The maximum annual work load shall be 272 calls for each musician. Work will not exceed 32 total calls per cycle, comprising up to 25.6 playing calls per cycle and 16 playing calls per fortnight, to a maximum of 10 playing calls within a week.
- (e) Superannuation Guarantee Legislation minimum contribution of 9.50% would apply.

6 Call conditions

- (a) The Company and Musicians recognise that presenting COVID-safe performances during the recovery period will be challenging and may require a variation to the custom and practice of presenting one single concert per performance call.
- (b) The scheduling of the following Call Conditions which are set out below will be implemented upon agreement of the Players Committee, Artistic Players Committee and Concertmasters during Draft Roster discussions, and will take into account repertoire and OH&S concerns of Musicians. The Company will be sure to inform Musicians of these variations when distributing the Cyclic Roster and the Annual Draft Roster.
- (c) During the period in which this Appendix H operates, the Musicians acknowledge and agree to perform two concerts in a single performance call on a single day, if required within the discretion of the Company. Two concerts in a single performance call will be deemed a "Double Concert Call". The duration of this performance call will be no greater than 3.5 hours and the maximum duration of time of works programmed being 120 minutes (2 x 60 minute programs). Double Concert Calls will be counted as a single call for the purposes of call accrual.
- (d) There cannot be more than one Double Concert Call scheduled in any one day. Double Concert Calls cannot be scheduled on any day where another playing call is scheduled.
- (e) Overtime shall not be payable if the extra duty worked on a double call is 15 minutes or less in excess of the scheduled call time due to issues which extend the duration of a Double Call that are beyond the Company's control such as an extended applause period or delays with sanitising.
- (f) Double Concert Calls cannot be used for any other purpose than described in this clause.

7 Meetings

Meetings held virtually will be counted as half calls.

8 Leave

8.1 Leave without Pay

- (a) Nothing in this Appendix H operates to limit a Permanent Musician's entitlement to take Leave Without Pay from MSO duties in accordance with clause 17.9 of the Agreement. However, the Company will continue to comply with any obligation it has pursuant to clause (b) of this Appendix H above to make JobKeeper payment(s) to the Musician during any period of Leave Without Pay.
- (b) However, Musicians and the Company agree that in the event that a Permanent Musician:
 - (i) is unavailable for rostered work due to substantial personal reasons; and
 - (ii) does not have any relevant paid leave accruals to draw upon,then insofar as it is appropriate in the circumstances the Musician will be re-allocated to other duties within that fortnight as an alternative to taking Leave Without Pay in accordance with clause 8.1(a) of this Appendix H above.

8.2 Banked Annual Leave

- (a) The Company and Musicians recognise that it is optimal to commence the 2021 MSO Season of rehearsals and performances in early January and will reasonably require a variation to the custom and practice of providing five consecutive weeks of annual leave over the Christmas/New Year season break to Permanent Musicians.
- (b) The Company and Musicians agree that the 2021 season will commence on Thursday 14 January 2021 and that as a result, Permanent Musicians will be required to return to work one week earlier from leave over the Christmas/New Year break (**Missed AL Week**) than they would ordinarily be asked by the Company.
- (c) The Missed AL Week will become Banked Annual Leave (**BAL**).
- (d) The circumstances under which the BAL must be taken are as follows:
 - (i) The BAL may be taken at a time which is mutually convenient to the Musician and Company, provided that the BAL must be taken prior to 31 December 2021;
 - (ii) The BAL will be taken as a period of consecutive days over the course of one week;
 - (iii) The BAL will be taken at the applicable rate of pay under clause 5.4 of this Appendix H; and
 - (iv) The Company will not unreasonably refuse to grant the Musician BAL.
- (e) For the avoidance of doubt:
 - (i) A Permanent Musician, while on Annual Leave including BAL, shall receive an Annual Leave Loading as per clause 17.1(g) of the Agreement based on the applicable rates of pay set out in this Appendix H;
 - (ii) Nothing in this clause 8.2 gives statutory effect to any custom and practice of Permanent Musicians taking annual leave at particular times of the year; and
 - (iii) In the event that a Permanent Musician becomes entitled to BAL under this clause 8.2 and this Appendix H terminates in accordance with clause 11 of this Appendix H before any individual Permanent Musician has used their BAL, the Company and Musicians agree that the clauses 8.2(c) and 8.2(d) of this Appendix H will continue to apply in respect of that individual Permanent Musician.

9 Additional pay

Permanent Musicians may opt to supplement their income under clauses 5.2, 5.3 or 5.4 of this Appendix H (as relevant) up to a maximum rate of **100%** of the ordinary rate (set out in clause 18.1 of the Agreement) based on their original ordinary hours of work, using the following methods in any combination:

- (a) To the extent it is permissible under the *Long Service Leave Act 2018* (Vic) as amended from time to time, accrued long service leave entitlements may be cashed out to be drawn down on in as little as one day per fortnight. Superannuation will be paid as per existing provisions under clause 18.11 of the Agreement.
- (b) Accrued annual leave entitlements may be cashed out to be drawn down on, to a minimum of 4 weeks' annual leave balance, provided that each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the Company and the Musician. Superannuation will be paid as per existing provisions under clause 18.11 of the Agreement. Annual Leave Loading will be paid as per existing provisions under clause 17.1 of the Agreement.
- (c) Any Musician with low (less than 10 working days) or nil Long Service Leave balances may be advanced 4 weeks' (30 hours per week) of Annual Leave, on the basis that the Musician:
 - (i) makes a request to be advanced the Annual Leave;
 - (ii) understands and accepts that the 4 week minimum balance after cashing out under clause 9(b) of this Appendix H above will apply, should the Musician cash out any proportion of that Annual Leave;
 - (iii) understands and accepts that they must maintain a minimum of 2 weeks' annual leave balance in respect of any annual leave actually taken by the Musician; and
 - (iv) agrees in writing to the following terms:

I accept this advance will be provided on the basis that I will be required, on leaving employment, to refund to MSO an amount equal to the advance leave that remains payable to MSO. Subject to the Fair Work Act 2009 (Cth), I authorise MSO to deduct any amounts owing from my employee entitlements and that it will be a debt owing by me to the MSO.

10 Allowances

- (a) Car parking entitlements under clause 8.16 of the Agreement will be suspended until the first orchestra rehearsal in preparation for a public performance.
- (b) For those Musicians participating in voluntary or rostered activities at ABC or any other venue, the Company will reimburse the cost of car parking on a case-by-case basis.
- (c) Without limitation to other allowances, Dress Allowance under clause 18.13 of the Agreement and instrument allowance under clause 18.7 of the Agreement will continue.

11 Termination of the changes made to the Agreement under this Appendix H

- (a) The Company and the Musicians are committed to a return of their performance schedule once this crisis has passed.
- (b) The parties agree that at the time of negotiation of this Agreement, the duration of the COVID-19 pandemic crisis remains unknown. The parties to the Agreement agree that the terms and conditions set out in this Appendix H shall only operate for the duration of this crisis and will automatically cease to operate and shall never again operate upon the happening of one of the following events (whichever occurs first):
 - (i) The Australian Government and Victorian Government deem that it is safe for live performance venues to re-open to allow MSO performances to take place without restrictions which impact the MSO's ability to sell tickets at comparable levels prior to March 2020; or

- (ii) Should the funding/financial situation significantly improve by way of additional Government Funding or Donors investments to the point where the Company is forecasting an operating surplus greater than \$500,000 for the 2021 financial year, excluding endowment funding dedicated to specific, non-operating purposes. In the event MSO would forecast for a surplus operating result greater than \$500,000, this would be assessed by an independent professional body; or
 - (iii) 31 December 2021 is reached without Appendix H having been terminated in accordance with clause 11(b)(ii) of this Appendix H above.
- (c) Nothing in this Appendix H prevents the parties from seeking to vary the terms of this Appendix H in accordance with the *Fair Work Act 2009* (Cth).
- (d) Once this Appendix H ceases to operate in accordance with this clause 11 of this Appendix H, the Agreement will resume operation unaffected by this Appendix H.

SIGNATORIES



Sophie Galaise

Managing Director
Melbourne Symphony Orchestra Pty Ltd
123-130 Southbank Boulevard
SOUTHBANK VIC 3006



Paul Murphy

Chief Executive Officer
Media, Entertainment & Arts Alliance
245 Chalmers Street
REDFERN NSW 2016



Guy Ross

Chief Operating Officer
Melbourne Symphony Orchestra Pty Ltd
123-130 Southbank Boulevard
SOUTHBANK VIC 3006



Paul Davies

Director, Musicians
Media, Entertainment & Arts Alliance
245 Chalmers Street
REDFERN NSW 2016

Melbourne Symphony Orchestra

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2020/3042

Applicant: Melbourne Symphony Orchestra Pty Ltd (ACN 078 925 658)

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Guy Ross, Chief Operating Officer, have the authority given to me by Melbourne Symphony Orchestra Pty Ltd to give the following undertaking with respect to the *Melbourne Symphony Orchestra Musicians Agreement 2020* (the Agreement):

- 1 The Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

This undertaking is provided on the basis of issues raised by the Fair Work Commission in the Application before the Fair Work Commission.



Signature

Guy Ross
Chief Operating Officer
Melbourne Symphony Orchestra Pty Ltd

28 October 2020