

## **MEAA – LPA Template Recording Agreement (COVID-19) 2020**

The Media, Entertainment and Arts Alliance and Live Performance Australia have agreed to the following governing principles and template provisions in regard to the recording, streaming, broadcast and transmission of live theatre and archival footage in the circumstances created by the COVID-19 pandemic. These principles are agreed as below between the following parties:

1.1. Australian Entertainment Industry Association trading as “Live Performance Australia” (“**LPA**”);

**AND**

1.2. The Media, Entertainment and Arts Alliance (“**MEAA**”)

These principles and template provisions are designed to be adopted, adapted and tailored by producers and performers to take into account the terms agreed in their individual circumstances.

### **PRINCIPLES OF AGREEMENT**

MEAA, LPA and all Parties to this **Recording Agreement (COVID-19) 2020** (“**Agreement**”) agree to the following Principles relevant to the recording and streaming of live theatre or streaming/transmission/broadcasting of archival footage:

1. The right to record and stream a live theatre production or stream/transmit/broadcast archival footage already recorded is, and always will be, subject to agreement between the producer/theatre company and the cast. For the avoidance of doubt, unless expressly stated, nothing in this Agreement shall derogate from or replace existing agreements between producers, organisations and performers in regard to recordings or relevant performances.
2. All cast members appearing in a relevant recording must agree to the streaming or broadcast of any recording – be it an archival recording or a live theatre recording made for this purpose (herein collectively referred to as “the Recording”).
3. All cast have the right to view any recording prior to agreeing to its use for streaming or for any agreed broadcast and Producers will employ their best efforts to provide cast that opportunity. Producers will provide MEAA with a cast list prior to release of the recording.
4. It is accepted by all parties that this Agreement is only to be used during the COVID-19 crisis which has forced the widespread closure of live theatre, and that this, or any similar, agreement is made on a non-precedential basis.
5. All employee/performer entitlements arising from their contracts for the live production being recorded or streamed/broadcast must be paid prior to the exercising of this Agreement.

6. A recording will only be used by the Parties for its intended use. It is the intention of the Parties to do their best to limit the use of any recorded material (or any related still images) to only that which is intended by the Agreement. This includes limiting the viewer's ability to record, download or share the footage and being responsible for removing it from all websites.
7. Any royalties or payments due to be made to any crew, musicians and designers involved in the recording should be paid pursuant to the appropriate rate for a live recording as per the employees relevant Enterprise Bargaining Agreement or the Live Performance Award 2010.
8. The footage used in a Recording is not intended to be used for promotion during or after the COVID-19 crisis. Any material to be used for promotion would need to be outlined and agreed by the relevant parties in a separate agreement.
9. Any recording or any footage used in a recording is not intended to be used for broadcasting on Television, Pay-TV, On-Demand, subscription video on-demand (SVOD), DVD or for theatrical/cinema release. Any such usage must be agreed separately as per MEAA screen Agreements.
10. MEAA and the National Performers Committee have concerns about the use of archival recordings to be made available to the public, particularly if not filmed on multi cameras with professional quality sound. Therefore, it is imperative that the producers receive consent from the relevant Performers for its use beyond the initial intention of providing an archive.

## **INTRODUCTION**

11. [insert name of Theatre Company] Theatre Company/[insert name of Production Company] Production Company ("the Company"), the Media, Entertainment and Arts Alliance ("MEAA") and the Performers listed at Annexure A to this Agreement ("the Performers") agree to the provisions set out in this Agreement with regard to:
  - a. the recording of a performance of "[insert name of the show]" ("the Performance") for the purposes of reaching audiences that would otherwise be unable to attend the Performance ("the Production") due to the Covid-19 Crisis; and/or
  - b. the use of an archival recording of "[insert name of the show]" ("the Performance") for the purposes of reaching audiences that would otherwise be unable to attend any performances of the Company due to the Covid-19 Crisis.
12. The Performers and the Company acknowledge acceptance of the terms of the Agreement by signing this Agreement below.
13. The Agreement will commence from the date it is agreed by all the Performers and signed by all parties to the Agreement.

## **AGREEMENT**

It is agreed that the following provisions will govern the recording of the Performance for audience sharing purposes only:

14. The recording of the Performance will take place/took place on [insert date]
15. The Company will not receive any other income for the recording of the Performance other than as set out in this Agreement.
  - a. The broadcast or transmission of the Performance will be password protected, geo-blocked (or, in the event that geo-blocking is not available on the relevant platform, geo-targeted) to Australia, and not available for download, and will be only available through a dedicated Company branded website created and/or hosted through Vimeo or other similar third party Streaming Service.
  - b. Performers will be engaged pursuant to the Performers' Collective Agreement 2017 (as amended from time to time).
  - c. Any disputes arising under this Agreement will be dealt with under the applicable modern award or enterprise agreement, being either clause 15, Dispute Resolution of the Performers' Collective Agreement 2017 (as amended from time to time) or clause 9, Dispute resolution of the Live Performance Award 2010.
  - d. Any use by any party of the Recording of the Performance, other than as expressed in this Agreement must be negotiated with the MEAA and the Performers and approved by the Performers in writing.
  - e. Unless otherwise agreed in writing between the Performers and the Company, the Recording of the Performance will only be available to current or future ticket holders of the production which would not otherwise be able to attend the Performance because of the COVID-19 Crisis.
  - f. The Company will provide the Performers with a copy of the recording of the Performance (if a recording is made) for their personal and private archival viewing. The Performers and the Company agree that the copy of the recording, or any part thereof, will not be used for copying, broadcast, streaming, transmission or non-personal viewing by any means of reproduction in any medium at any time in any territory other than as set out in this Agreement.

## **REMUNERATION**

16. Subject to the provisions of this Agreement, the Company will as consideration for all permissions and rights granted by the Performer under this Agreement, pay the Performer,

within seven days of the recording, (or, in regard to the use of an archival recording, within seven days of the parties entering this Agreement in regard to the use of that archival recording), a total advance fee of one of the payment options below, as relevant:

- a. In regard to use of **archival recordings**, when the use of those recordings is for **educational purposes** only, AUD\$329.41 (being the Australian Feature Film Collective Agreement 2012 current daily rate (the “**AFFCA Daily Rate**”)) + 10% superannuation;
  - b. In regard to use of **archival recordings** where the use of those recordings is for **non-educational purposes**:
    - i. AUD\$329.41 (being the Australian Feature Film Collective Agreement 2012 current daily rate (the “**AFFCA Daily Rate**”)) + 10% superannuation; and
    - ii. Ancillary usage of 57.5% of the AFFCA Daily Rate; and
    - iii. Any amounts that may be payable to the Performer under clause 19 below.
  - c. In regard to use of **non-archival recordings** of live theatre productions, where the use of those recordings is for **educational purposes**:
    - i. The applicable weekly, casual or rehearsal rate (as relevant) payable to the Performer under the Performer’s Collective Agreement for the rehearsal and performance of the Performance that is to be recorded; and
    - ii. AUD\$329.41 (being the Australian Feature Film Collective Agreement 2012 current daily rate (the “**AFFCA Daily Rate**”)) + 10% superannuation.
  - d. In regard to use of **non-archival recordings** of live theatre productions, where the use of those recordings is for **non-educational purposes**:
    - i. The applicable weekly, casual or rehearsal rate (as relevant) payable to the Performer under the Performer’s Collective Agreement for the rehearsal and performance of the Performance is to be recorded; and
    - ii. AUD\$329.41 (being the Australian Feature Film Collective Agreement 2012 current daily rate (the “**AFFCA Daily Rate**”)) + 10% superannuation; and
    - iii. Ancillary usage of 57.5% of the AFFCA Daily Rate; and
    - iv. Any amounts that may be payable to the Performer under clause 19 below.
17. For the purposes of this Agreement only, The Company may require the Performers to undertake camera rehearsals, extra rehearsals and/or microphone checks on the day of the recording within the Performers’ ordinary hours of work, provided that if the total number of hours worked

on that day exceed eight, then all time worked in excess of eight hours on that day will be paid for as overtime pursuant to the Performers Collective Agreement 2017.

18. If any of the time undertaken for the Recording, or rehearsal of the Recording is not within the ordinary hours of the contract, then the Company will be required to pay the Performers the correct hourly rate pursuant to the PCA for their time – including any casual loadings, annual leave and allowances.
19. For any recording released where payment is required, or where the purpose of the release is a commercial one, the Company will pay the Performers an equal share of 8.333% of the net receipts recovered by the Company (excluding relevant tax payable by the Company) from the release of the Recording. Once the advance fee detailed under clause 16 is recouped, any share of gross receipts payable to the Performers shall be payable by the Company on a yearly basis in regard to any year that the Company receives income in regard to the commercial use of the Recordings under this Agreement.
20. Payment of any remuneration to the Performers will be the sole responsibility of the Company.

#### **USE RIGHTS AND FEES**

21. The Licence Period will be the period after Payment to the Performers of the fees determined in accordance with this Agreement and up to the end of the current seasons of the production or any other agreed period of time no longer than 6 months. (**"The Licence Period"**)
22. The recording of the Performance will only be available to ticket holders on the Company website or via a link to the Vimeo site. For the avoidance of doubt, the Company shall be entitled to engage in reasonable promotional and marketing activity in regard to the use of the Recording of the Performance on social media and relevant promotional platforms.
23. Each link must be a free site (that is, available for viewing without the payment of any additional fees beyond the initial ticket cost) and may not generate any revenue, including from the sale of advertising space or sponsorships. For the avoidance of doubt, the parties acknowledge that where the Recording is hosted or communicated on the Company's website, the Company's website may generate revenue as per usual, including, without limitation, by way of merchandise sales, ticket and subscription sales, educational tools and other commercial revenue streams.
24. Any paid link or pay wall used by the Company for access to the Recording must be agreed by all parties prior to its release. With the appropriate share of profits provided to the Performers as set out in clause 19.
25. The Recording of the Performance will not be made available for use in any other medium and will not be sold or used in any form whatsoever without the prior consent of the Performers.
26. Any additional use of the Recording of the Performance other than as set out in this Agreement must be negotiated in good faith with the Performers.

27. If the Company wishes to continue to use the Recording of the Performance after the expiration of the Licence Period, the Performers and the Company and MEAA shall negotiate in good faith an appropriate fee to extend the term of the Licence Period.
28. Any use of the Recording by any party other than as expressed in the Agreement must be negotiated with the Performer and MEAA and approved by the Performer and MEAA in writing. For the avoidance of doubt, the Producer's uploading, transmission, and streaming, and use of the Recording through third party platforms and services is contemplated by this Agreement (within the bounds set out in clauses 15-16, 21 -28 above, and 40-46 below) , and nothing in this clause shall restrict producers from using the Performances as so contemplated.
29. The Performer shall receive an on-screen credit in any broadcast of the Recording in the following manner:

“[insert on screen credit]”

#### **WORK IN ONE PRODUCTION ONLY**

30. All work performed for the Company in the Recording of the Performance, shall only be used for work which the Performers have agreed pursuant to this Agreement. No footage featuring the Performers may be used in any other production without the written consent of the Performer.

#### **NO DUBBING**

31. The voice of a Performer will not be dubbed in the English language without the written consent of the Performer and consent will not be unreasonably withheld. Consent may not be sought as a condition of engagement, unless the written consent of the MEAA has been obtained prior to the engagement of the Performer.

#### **NO COMMERCIAL TIE-UPS**

32. The Performers' names or images shall not be used under this Agreement in commercial tie-ups for commercial goods or services or in connection with commercial advertising without her/his written consent and the payment of appropriate remuneration.

#### **FILMING PROTOCOLS**

33. Filming will not occur in the wings during performances nor during the warm-up for the Performance, without prior express approval from Performer/s.
34. The Production personnel will not enter into change areas, or film any costume changes without prior approval of the Performer/s then present in the costume change area.
35. Where nudity is part of the production, the Performance will be recorded for viewing as it was intended by the Director.

36. Filming will only occur during the prescribed working hours of Performers and not during breaks on or after or before such prescribed working hours, except with the express approval of the Performer/s.
37. Filming will not occur behind the scenes on the opening night of the Performance after 6 pm until before the final curtain call.
38. Each Performer will receive reasonable advance notice of not less than two (2) days of any request to film an interview of the Performer (unless the Performer genuinely consents to a lesser period of notice) and a Performer may refuse any such request.
39. A Performer may approach the Company regarding reasonably held concerns about the use of any filmed material under this Agreement and the Company will not unreasonably refuse to comply with a Performer's request in regard to that concern.

#### **ARCHIVAL RECORDING**

40. The use of an 'Archival Recording' as defined in the Performers Collective Agreement (PCA), is bound by s 41 of the PCA, which will continue in force to the date this Agreement is agreed by all Performers. At which point, where there is a discrepancy, this Agreement would take precedence. Archival Recording can only be used for streaming or other broadcast with express agreement between the Performers and the Company, outlining the intended usage, including limits to the time, place and period for which the Recording will be released.
41. The Producer shall employ its best efforts to ensure that all Performers have the right to view the Archival Recording prior to its use for streaming or for any agreed broadcast. In the event that the Producer or its representatives contact a Performer or their representative and provide them the right to view the Archival Recording, and the Performer does not view the Archival Recording within fourteen days of such notice, the Archival Recording shall be deemed to have been viewed by that Performer. Any edits of the Archival Recording must be agreed by the Performers and The Company. In all cases outlined above, the Producer will provide a cast list to MEAA and advise if they have been unable to contact or get approval from any of their Performers.
42. Producers will not use undue influence on Performers when seeking their permission for use of the recording, and will accept if any Performer denies the request for use of the recording.
43. The Company and the Performers will limit the use of the archival recording or any related material (footage or stills) to only that which what is intended by this Agreement. This includes limiting the viewer ability to record, download or share the footage and being responsible for removing it from all websites.
44. The Performers' image will be limited to the usage ascribed in this agreement, including any limits to the time, place and period for which it can be used.

## **SCREEN AGREEMENTS**

45. The footage used in the Recording is not intended to be used for TV or SVOD broadcast, or theatrical/cinema release. Any such usage would need to be agreed separately as per MEAA screen agreements – Australian Feature Film Collective Agreement (AFFCA), Australian Television Production Agreement (ATPA), and Australian Television Repeats and Residuals Agreement (ATRRRA) – with any agreement negotiated in good faith with appropriate Equity contracts.
46. Work that was not originally intended to be performed in front of an audience or is being developed for an online audience only will be covered by MEAA screen agreements - AFFCA, ATPA and ATRRA – with any agreement negotiated in good faith with appropriate Equity contracts.

## **GOVERNING LAW**

47. This Agreement shall be construed according to the laws of the State in which the Recording was filmed.

## **ACCEPTED AND AGREED TO:**

On behalf of the Company:

.....

[Insert name]

[insert position]

[insert date]

.....

[insert witness name]



**ACCEPTED AND AGREED TO BY THE PERFORMERS (AS LISTED BELOW):**

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[insert name]  
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## Annexure A

[INSERT NAMES OF CAST]