

## MSO.LIVE

### Terms of Use

#### 1. Introduction

PLEASE READ THESE TERMS OF USE CAREFULLY.

BY USING THE PLATFORM (AS DEFINED BELOW), OR BY CLICKING TO "ACCEPT" OR "AGREE" TO THE TERMS OF USE WHEN THAT OPTION IS MADE AVAILABLE TO YOU, YOU ACCEPT THE TERMS OF "THIS AGREEMENT" AS DEFINED IN SECTION 3(b) BELOW.

IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST NOT ACCESS OR USE ANY OF THE PLATFORM OR THE CONTENT.

#### 2. The Platform

- (a) MSO.LIVE is an on demand classical music subscription service that provides its customers with access to audio and audio-visual classical music content ("Content") for streaming over the internet to internet connected devices ("Platform"). Currently, the Platform can be accessed from internet connected smart phones, tablets, computers and televisions ("Supported Device"). We may change the list of Supported Devices from time to time.
- (b) The Platform and the Content are made available to you by Melbourne Symphony Orchestra Pty Ltd (ACN 078 925 658) ("MSO", "we", "us" or "our").

#### 3. This Agreement

- (a) This Agreement governs your use of the Platform and your use of the Software (as defined in clause 7(a) below). By creating an account to access the Platform ("Account") you agree to be bound by the terms of this Agreement.
- (b) This Agreement consists of:
  - (i) your Account details;
  - (ii) these terms of use;
  - (iii) our Privacy Policy;
  - (iv) the end-user Terms & Conditions of our service provider InPlayer at <https://inplayer.com/terms/> including the InPlayer Privacy Policy at <https://inplayer.com/privacy-policy/>; and
  - (v) the other terms accessible at URLs referred to in these terms of use.
- (c) If there is any inconsistency between the terms of the documents referred to in paragraph (b) the document listed higher in that paragraph will prevail to the extent of the inconsistency.
- (d) We may change the terms of this Agreement at any time. We will notify you of any material change before the date on which the change takes effect. If any such change has a materially detrimental effect on you, you may cancel your subscription in accordance with this Agreement.
- (e) Unless you cancel or we terminate this Agreement in accordance with its terms, this Agreement continues month to month.

#### 4. Accessing the Platform and Account Security

- (a) We reserve the right to withdraw or amend the Platform, and any service or material we make available on the Platform, in our sole discretion and without notice to You.
- (b) Unless we have otherwise specifically agreed, we will not be liable if for any reason all, or any part of, the Platform is unavailable at any time or for any period. From time to time, we

## **MSO.LIVE**

### **Terms of Use**

may restrict access to some parts of the Platform, or the entire Platform, to users, including registered users.

- (c) You are responsible for making all arrangements necessary for You to have access to the Platform, and ensuring that all persons who access the Platform through Your internet connection are aware of these Terms of Use and comply with them.
- (d) It is a condition of Your use of the Platform that the Account details that You provide are correct, current and complete. You agree that all information You provide to register with this Platform or otherwise, including but not limited to through the use of any interactive features on the Platform, is governed by our Privacy Policy and You consent to all actions we take with respect to Your information that are consistent with our Privacy Policy.
- (e) You agree that your Account details are personal to You and you agree to take full responsibility for all acts and omissions of any other person who accesses the Platform or any part of it while your Account is open or by using any of Your Account details.

#### **5. Eligibility and Access**

5.1 To create an Account which will allow you to subscribe to the Platform, you must:

- (a) be at least 18 years of age;
- (b) provide us with your first and last names and email address; and
- (c) provide us with the details of your valid credit/debit card ("Authorised Card") or PayPal account for transaction processing by Stripe ("Payment Processor")

5.2 To access the Platform, you must:

- (a) set up an Account;
- (b) have a Supported Device that is connected to the internet; and
- (c) pay the monthly Subscription Fee, or one-off pay-per-view fee (as defined below) (together, the "Fees") in accordance with clause 6 below.

#### **6. Payment**

- (a) By creating your Account and providing us with the details of your Payment Method, you authorise us to charge your Payment Method the Fees in accordance with this clause 6.
- (b) The Subscription Fee for your Subscription Plan will be charged to your Payment Method in advance of each monthly subscription period.
- (c) Your first monthly subscription period starts when you
  - (i) create your Account and
  - (ii) pay your first monthly Subscription Fee from your Payment Method.
- (d) At the end of the first monthly subscription period and each monthly subscription period thereafter, we will automatically renew your monthly subscription and charge your Payment Method the monthly Subscription Fee unless and until you cancel your Account. If you created your Account on the 29th or 30th of the month, your Payment Method will be charged the monthly Subscription Fee on the anniversary of such date in each month except for February, where your Payment Method will be charged the monthly Subscription Fee on the last day of the month. If you created your Account on the 31st of the month, your Payment Method will be charged the monthly Subscription Fee on the last day of each month.
- (e) Unless expressly stated otherwise, all Subscription Fees are GST inclusive. If your chosen Payment Method is your Authorised Card, to ensure your Authorised Card is not being used fraudulently, we may validate your Authorised Card with a small pre-authorisation. This will result in the funds available on your Payment Method account being reduced by this amount. These funds are held by your card issuer. It may take some days for the validation amount to be re-adjusted on your Payment Method account.

## MSO.LIVE

### Terms of Use

- (f) You must ensure that the details of your Payment Method remain accurate and up to date. You can change your Payment Method details at the payments and subscriptions page here: <https://support.inplayer.com>.
- (g) We may increase the Subscription Fee for the Subscription Plan you are currently subscribed to at any time by giving you at least one calendar month's notice except where such increase is required by law or any regulatory authority (in which case we will try to give you reasonable notice).
- (h) If we are unable to collect the Subscription Fee from your Payment Method for any reason, including, without limitation, expiration or insufficient funds, you remain responsible for any uncollected amounts and we may suspend or cancel your access to the Platform (including to any pay-per-view Content) without giving you notice.
- (i) If we are able to collect the Subscription Fee from your Payment Method during a period of suspension under clause 6(h) (including without limitation where you provide us with new or updated details of your Payment Method) we will reinstate your access to the Platform and your new monthly subscription period will commence on the date we successfully charge your Payment Method.
- (j) If you choose to view Content that is listed on the Platform as accessible on a pay-per-view basis, and the fee for that Content is not included in your Subscription Fee, you authorise us to charge the applicable pay-per-view fee to your Payment Method when you select that Content for viewing.

### 7. Account Rules

- (a) The Platform, the Software (as defined below) and any Content that you view via the Platform are for your personal and non-commercial use only. We grant you a limited, non-exclusive, personal and non-transferable license to:
  - (i) access the Platform and view Content through the Platform on a streaming or Temporary Download basis (as defined below); and
  - (ii) install and use any software and/or applications provided to you by or on behalf of us in connection with your use of the Platform ("Software") in object code form only solely for the purpose of accessing the Platform and viewing Content through the Platform, subject to the terms and conditions set out in this Agreement.
- (b) You must not download Content except where this occurs during normal operation of a Supported Device as part of a temporary buffer required to overcome variations in stream bandwidth (Temporary Download).
- (c) Except as expressly authorised under the terms of this Agreement or otherwise by us in writing, you must not download, modify, copy, distribute, transmit, re-transmit, reproduce, display, perform, publish, license, decompile, reverse engineer, create derivative works from or offer for sale or use (except as expressly authorised under the terms of this Agreement) any Content, Software or any works, subject matter, data, information or other material contained on, comprising, or obtained from or through the Platform.
- (d) You must only use the Platform (and view any Content on the Platform) in accordance with our reasonable instructions and all applicable laws, rules, regulations and other applicable restrictions.
- (e) Except for the limited licence granted under clause 7(a) above, all rights in the Content are reserved by us or the licensors of our Content and all rights in the Software are reserved by us or the third-party licensors of software contained within the Software.
- (f) You must not attempt to circumvent, remove or alter the digital rights management and anti-piracy measures employed by the Platform. You can view and change your Account details, including information about billing, by visiting MSO.LIVE.
- (g) You are responsible for all access, data and other costs associated with your internet and mobile usage in accessing and using the Platform (including your internet and mobile usage

## MSO.LIVE

### Terms of Use

for any Temporary Download). Please contact your internet service provider or mobile telecommunications provider for details of your account access fees, data charges and other costs.

- (h) The quality of the display of Content, and the time it may take to commence or resume watching Content, may vary from time to time and between Supported Devices, based on factors including (but not only) your location, internet speed or bandwidth and the type of Supported Device. Not all Content is available in HD. We make no warranties or representations about the quality of your viewing experience or the time it may take to commence or resume viewing, nor that your viewing experience will be seamless or uninterrupted.
- (i) You may stream Content through the Platform only where internet or mobile data access to the required standard is available. We will use technology to verify your geographic location and we reserve the right to prevent streaming or Temporarily Downloading of specific Content in any territory where we do not have rights to communicate it outside Australia.
- (j) The Content on the Platform will change from time to time without notice to you. We make no warranty or representation in relation to Content availability and no refunds will be given in relation to Content unavailability.
- (k) As a web based service, we may undertake maintenance or upgrades to the Platform from time to time, and there may be unplanned outages to the Platform. Such maintenance, upgrades or outages may affect your ability to access the Platform. We will use our reasonable endeavours to limit such incidents.
- (l) From time to time, you may be required to upgrade the Software to continue using the Platform. If you decline an upgrade, you may not be able to use or access the Platform.
- (m) You must not remove any proprietary notice of ours or of any of our licensors from the Content or the Platform.
- (n) The Platform contains software that may track and capture information about your activity (including information about your viewing habits, information about Supported Devices registered to your Account, including unique device numbers, internet protocol addresses, your operating system and other information derived from the hardware configuration of such devices) and will send this information to us. We use this information for purposes including identifying the Supported Devices registered to your Account, to confirm your right to use the Platform and to otherwise enhance and improve the Software and the Platform. By installing the Software and using the Platform, you consent to the transmission of this information.
- (o) You consent to MSO sending you direct emails containing marketing material for MSO's products and services to the email address that you provided when you registered for your MSO.LIVE account.

### 8. Suspension and Cancellation

- (a) You may cancel your Account at any time by visiting the Platform, logging into your account, selecting "My Details" from the account menu, and then selecting "My Subscriptions". Select the subscription you want to cancel and click Cancel subscription. Confirm the cancellation by clicking YES, CANCEL.
- (b) If your Account commenced with a free trial and you cancel your Account during the free trial period, cancellation is effective immediately and your Account will be closed and your access to the Platform will be disconnected from the date you cancel. If your Account did not commence with a free trial or you cancel your Account at any time after the end of your free trial, cancellation is effective at the end of the current monthly subscription period and your Account will be closed and your access to the Platform will be disconnected from this

## MSO.LIVE

### Terms of Use

date. You will not receive a refund of any fees or other amounts already paid to us when you cancel, except in the circumstances described in clause 9(b) below.

- (c) If you wish to cancel as a result of us changing this Agreement in a way that has a materially detrimental effect on you, you must notify us within 14 days of our notice to you about that change. Your cancellation will be effective as of the date of the change to this Agreement, and you will receive a pro-rata refund for any amount already paid to us in respect of any period after that date.
- (d) We may cancel this Agreement or your Account at any time. Except as set out in clause 9.4 below, if we cancel this Agreement or your Account, you will be able to access the Platform for the remainder of the current monthly subscription period unless we cancel this Agreement or your Account during the free trial period (if any), in which case, we will cancel your Account and your access to the Platform immediately.
- (e) We may immediately suspend, restrict or cancel your Account or access to the Platform:
  - (i) where reasonably necessary for security, technical, copyright, anti-piracy or operational reasons;
  - (ii) if you use the Content or the Platform other than for private, non-commercial use, or in a way that is inconsistent with this Agreement or the requirements of our content partners or licensors;
  - (iii) if you breach any term of this Agreement; or
  - (iv) if we have reasonable grounds to suspect that your Account details are incorrect, there has been unauthorised access to your Account, or that you have committed or may be committing any illegal or fraudulent activity in connection with your Account.
- (f) All content on or available through the Platform (including the Content, and all other works, subject matter and other material comprising or available on the MSO.LIVE Platform) and the Software is our property or, as applicable, the property of our content partners or licensors. That property is protected by, and your use of the Platform and Software is subject to, all relevant intellectual property laws.
- (g) MSO.LIVE and Melbourne Symphony Orchestra Live are trade marks of Melbourne Symphony Orchestra Pty Ltd. Inplayer is a trade mark of InPlayer Ltd.
- (h) We may permit you to post or upload content, information or other material to your Account or in connection with the Platform\*. You may not post or upload anything which is illegal, obscene, threatening, defamatory, which infringes any person's rights (including without limitation intellectual property rights) or is otherwise objectionable to us. By posting any such material, you grant us a nonexclusive, perpetual, irrevocable, royalty-free licence to use, copy, display, sublicense, modify, adapt and communicate that material to the public.  
\*[Not currently available]

### 9. Liability

- (a) To the maximum extent permitted by law (but subject to clause 9(b)):
- (b) the Platform and all Content and Software and any other features or functions associated with the Platform, are provided "as is" and "as available" with all faults and without warranty;
  - (i) we do not make any promises or assurances to you about the Platform, the Content or the Software, including without limitation that your use of the Platform or the Software will be uninterrupted or error-free;
  - (ii) we make no representations or warranties in relation to the accuracy or completeness of the information, advice or other content available on or via the Platform, the MSO.LIVE Platform and we do not accept any liability in relation to your reliance on such information, advice or other content;

## **MSO.LIVE**

### **Terms of Use**

- (iii) all other terms, conditions and warranties, whether express or implied by legislation or the common law or otherwise relating to the provision by us of the Platform or otherwise in connection with this Agreement are expressly excluded;
  - (iv) we will not be liable for any loss or damage (including indirect or consequential loss or damage, loss of profit, loss of revenue, loss of data or loss of opportunity) however caused which may be suffered or incurred or which may arise directly or indirectly in respect of the use by you of the Platform.
- (c) If you are a consumer under the Australian Consumer Law (ACL), the goods and services we provide under this Agreement come with guarantees under the ACL that cannot be excluded. Nothing in this Agreement excludes, restricts or modifies any rights and remedies that You have under the Australian Consumer Law ("ACL"). The promises we give in this Agreement and the benefits of those promises are in addition to any legal rights you have under the ACL.
- (d) 11.3 You are responsible for all acts and omissions of any person who uses your Account.

### **10. Privacy**

We collect, store, use and disclose personal information in accordance with our Privacy Policy. By creating an Account, you consent to us collecting, storing, using and disclosing your personal information in accordance with our Privacy Policy, accessible at <https://www.mso.com.au/privacy>.

### **11. General**

- (a) We may transfer any or all of our rights and/or obligations under this Agreement to any person, firm or company provided such transfer does not detrimentally affect your rights under this Agreement.
- (b) You must not transfer any or all of your rights and/or obligations under this Agreement to any other person.
- (c) This Agreement is governed by the laws of Victoria, Australia and the parties submit to the nonexclusive jurisdiction of the courts of Victoria.