

# **ARTICLES of AGREEMENT**

between

**LINCOLN MUSICIANS' ASSOCIATION**  
**Local No. 463**  
**AMERICAN FEDERATION of MUSICIANS**

and

**LINCOLN ORCHESTRA ASSOCIATION**

This agreement is effective as of the 1<sup>st</sup> day of July, 2011 by and between the Lincoln Orchestra Association (hereinafter LOA) and the Lincoln Musicians' Association, Local 463 (hereinafter UNION) of the American Federation of Musicians (hereinafter AFM), for the purpose of setting forth the rights and responsibilities of the respective parties and to set forth the minimum wage scales and working conditions of all persons who are engaged as orchestra players by the LOA. This agreement shall be known as the Master Agreement.

## **WITNESSETH:**

**WHEREAS**, it is the intent of the parties that the patrons of the LOA enjoy musical performances of the highest possible quality; and

**WHEREAS**, it is the intent of the parties to cooperate in maintaining amicable labor relations; and

**WHEREAS**, it is the intent of the parties to promote fair practices in the employment of musicians; and

**WHEREAS**, it is the intent of the parties to establish wages and terms and conditions of employment of said musicians:

**NOW, THEREFORE**, in consideration of the covenants and mutual agreements herein contained, the parties agree as follows:

## **ARTICLE I - RECOGNITION**

The LOA recognizes the UNION as the sole and exclusive bargaining agent for all musicians employed by the LOA for the purpose of establishing and maintaining wages and terms and conditions of employment. This Agreement does not extend to the Conductor, office personnel, guest artists, "supervisors" and "managerial employees" employed by the LOA.

## **ARTICLE II - TERM**

This agreement shall be in full force and effect from July 1, 2011 until June 30, 2014.

### **ARTICLE III - UNION**

- A.** Pursuant to a Dues Check-Off Authorization Form (provided by UNION), the LOA agrees to deduct from the wages of each musician, work dues, in such amounts as are uniformly required by the UNION and/or the AFM of its members. The Dues Check-Off Authorization Form shall be irrevocable for a period of one (1) year or until the expiration of the then current agreement, whichever occurs sooner and the authorization shall be renewable automatically for successive periods of one (1) year or for the period of each succeeding applicable Agreement, whichever is shorter. The LOA shall remit to the UNION all monies deducted along with an itemization, by name and amount, of those musicians for whom deductions have been made, on the same day that FICA payments are made following each concert cycle, but no later than fifteen (15) days following each pay period.
- B.** A representative of the UNION shall have access to rehearsal and performance venues for the purpose of conferring with the musicians, so long as such conferences shall take place before, after or during the breaks of rehearsals or performances and shall not disrupt any rehearsal or performance.
- C.** The LOA recognizes a committee of musicians (hereinafter Orchestra Committee) to assist the UNION in the negotiation of, compliance with, and administration of this Agreement.

### **ARTICLE IV - MANAGEMENT RESPONSIBILITIES**

- A.** It is understood and agreed that the LOA shall be regarded as the employer of any and all musicians covered by this agreement and shall assume responsibility for any withholding and processing of FICA, Local, State and Federal taxes and any and all other deductions required by law or agreed to herein.
- B.** Included with the music, the LOA agrees to provide each musician a printed rehearsal order for each rehearsal including tempo markings, as known, for all works, and an instrumentation list for the works to be performed with the understanding that some flexibility will be allowed in revising the order of the rehearsals following the first rehearsal as determined by the conductor. It shall be the responsibility of the LOA to inform all musicians of changes in rehearsal order, following the first rehearsal.
- C.** The LOA agrees to provide, at the LOA's expense, all large or unusual equipment or instruments, including, but not limited to, timpani, chimes, xylophone, marimba, bass drum, harp, piano, and celesta, for use at all services. All such instruments shall be of professional quality and in good repair.

### **ARTICLE V - ENGAGEMENT OF MUSICIANS**

- A.** Musicians shall be engaged by Personal Service Agreement (hereinafter PSA) for each season. Each PSA shall contain the musician's position(s) with the LOA, title, the instrument(s) on which the musician shall perform, the number of guaranteed services, and compensation to be paid. All PSAs shall specify which category said musician occupies (i.e. Group A, Group B, Group C, or Group D).
- B.** PSAs shall not contain less favorable wages, terms and conditions than those stipulated in this Agreement.

- C. PSAs, along with a tentative schedule of all LOA services with instrumentation and repertoire lists, shall be issued to all musicians no later than May 1 prior to the commencement of each season. Each musician shall sign and return one copy of the PSA no later than May 30. Should a musician not return a signed PSA by May 30, the musician's position may be declared open ten (10) days after notice to the UNION. A copy of each PSA shall be provided to the UNION.
- D. The musician's PSA may be canceled by the musician because of serious disability or incapacity which is certified by a licensed physician as sufficient to prevent the continuance of services, emergencies beyond the musician's control or military conscription.
- E. A final season schedule will be provided to each musician in writing no later than forty-five (45) days before the first service of each regular performance season. Written notification of the venue, dates and times of additional services not previously announced or any modification or deletion of services previously announced shall be provided to each affected musician, in writing at least thirty (30) days in advance of the affected service. Any such additional services or modifications shall be binding on all affected musicians unless a musician requests of the LOA and is entitled to an excused absence.

If additions or modifications are made with less than thirty (30) days' advance notice, an affected musician may at her/his option refuse such additional service(s) without compensation or penalty. If a rehearsal time is changed, with notice of such change given less than forty-eight (48) hours from the time that rehearsal was originally scheduled to begin, musicians shall make every reasonable effort to accommodate such schedule change. However, no musician shall be required to be present before or beyond the originally scheduled start and/or end time, and each musician will be compensated in full for one complete service.

If a service is deleted with less than thirty (30) days' notice, musicians will be compensated for that service.

## **ARTICLE VI - SERVICES**

- A. A service shall be defined as a unit of work upon which wages are based. Each rehearsal, each concert, and each performance shall be considered one (1) service, except Back-to-Back non-commercial educational/outreach/fundraising (which solely and directly benefits LOA), which shall count as a single service if the total time is not over two and one-half (2-1/2) hours with a minimum of fifteen (15) minutes between services.
- B. A service shall not exceed two and one-half (2-1/2) hours in length without the payment of Overtime as provided herein. Rehearsals shall include a fifteen (15) minute break to be taken no sooner than fifty (50) minutes and no later than seventy-five (75) minutes after the beginning of the rehearsal. At dress rehearsals, the break may start no sooner than fifty (50) minutes and no later than ninety (90) minutes after the beginning of the rehearsal.

A concert service is a performance of the orchestra at which an audience is present, excluding dress rehearsals. There shall be one intermission of fifteen (15) minutes or longer duration, at the usual and customary time but no later than ninety (90) minutes from the beginning of the performance, except in cases when other configurations are necessary to maintain the musical integrity of a single work being performed, but in no event shall any part of any performance exceed one hundred (100) minutes without an intermission.

- C. Sound checks are allowed to occur within a concert service, for the purpose of testing new acoustical venues and/or electronic amplification, provided that the total time is not over two and one-half (2-1/2) hours with a minimum of fifteen (15) minutes between sound check and performance.
- D. A combined rehearsal and concert performance (in that order) of not more than two and one-half (2-1/2) hours total duration is allowed for family concerts. No rehearsal will be scheduled after any concert performance in the same two and one-half (2-1/2) hour period. The rehearsal will be limited for forty-five (45) minutes maximum, with a one-half (1/2) hour break before the concert. Notice of the music to be rehearsed will be given at least forty-eight (48) hours in advance of the rehearsal.
- E. Time in excess of two and one-half (2-1/2) hours for any one service including proper rest breaks shall be considered overtime and compensated in fifteen (15) minute increments. For each thirty (30) minutes of overtime there shall be a five (5) minute break to be taken at the beginning or end of the overtime period.
- F. Notice of overtime shall be given to the musicians by the beginning of the regularly scheduled break in a service. If notice of overtime is not given by the beginning of the regularly scheduled break in a service, any musician who is unable to remain for the overtime shall be excused, without being paid for the overtime.
- G. With the exception of educational/community outreach services, no service shall be scheduled for:
  - 1. Monday, Tuesday, Wednesday, Thursday, or Friday before 7:00pm
  - 2. Saturday before 9:00am
  - 3. Sunday before 2:00pm
  - 4. No rehearsal shall be scheduled to extend beyond 10:00pm.
- H. A rehearsal may extend to ninety (90) minutes without a break and without payment of overtime if the rehearsal ends ninety (90) minutes from the start of the service.
- I. There shall be no more than two (2) services (double service) scheduled for any day. No more than one double service shall be scheduled per concert cycle. Double services must have at least one and one-half (1-1/2) hours between services.
- J. No services shall be scheduled on Thanksgiving Day; between December 23 and January 6; on Easter Sunday; on the evenings and days of Rosh Hashanah and Yom Kippur (from sundown on the evening prior to Yom Kippur until sundown on Yom Kippur); and on the first two evenings of Passover, unless approved by the Orchestra Committee.
- K. Dress rehearsals for classical series performances shall not be scheduled for the day of the concert unless approved by the Orchestra Committee. Notwithstanding the foregoing, the LOA shall have the right to schedule a dress rehearsal for the day of a Saturday performance on two occasions during each season during the term of this Agreement, to be scheduled at the LOA's sole discretion.
- L. Once per year, LOA may request individual contract musicians to donate their time for one (1) fundraising service. The musicians will be offered this service in accordance with the right of first refusal manner outlined in ARTICLE XV.B. No musician shall be penalized because of her/his refusal to participate in the fundraising service, and no musician shall be compensated for the fundraising service. This service may not be applied to fulfill guaranteed service requirements (ARTICLE IX.A).

- M. SMALL ENSEMBLE PERFORMANCES:** Any ensemble less than twelve (12) musicians performing as representatives of the LOA is defined as a small ensemble. The LOA may select any contract musicians from the orchestra to perform in small ensembles for non-commercial education, fundraising (which solely and directly benefits the LOA) and outreach services. Educational services are not part of the normal duties expected of musicians; therefore no musician shall be required to perform such a service.
- N.** The regular performance season will begin no sooner than September 1 and will end no later than May 31. Services occurring between June 1 and August 31 shall be considered as part of a Summer Season and offered to contract musicians on a right of first refusal basis.

## **ARTICLE VII - COMPENSATION**

### **A. 1. MINIMUM RATES PER SERVICE**

	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
1. Section Player	\$81.98	\$83.62	\$85.29
2. Asst. Principal	\$92.22	\$94.07	\$95.95
3. Principal	\$102.47	\$104.52	\$106.61
4. Concertmaster	\$163.96	\$167.23	\$170.58

- 2.** The Concertmaster shall be paid no less than two (2) times the rate paid to section musicians and the Assistant Concertmaster shall be paid no less than the rate paid to Principal musicians.
- 3.** Overtime shall be paid at the rate of one and one-half (1-1/2) times individual scale paid in fifteen (15) minute increments.
- 4.** Doubling shall be defined as performing more than one instrument during a service as directed by the conductor in consultation with the section principal, to be paid at 25% of individual scale for the first double and 5% for subsequent doubles. Exceptions shall be B-flat and A clarinet, trumpets except for Bugle, Piccolo Trumpet, and Fluegelhorn. Percussion shall be grouped as separate instruments as follows: Percussion, Drum Set, Mallets and Timpani.
- 5.** A musician has the right to refuse to be a soloist without penalty. Any musician(s) performing as a soloist(s) shall receive, in addition to any other compensation due her or him as a contract musician:
- |   |               |
|---|---------------|
| <b>a.</b> One Soloist                                       | \$500.00      |
| <b>b.</b> Two Soloists                                      | \$500.00 each |
| <b>c.</b> Three Soloists                                    | \$333.33 each |
| <b>d.</b> Four Soloists                                     | \$250.00 each |
| <b>e.</b> Five or more Soloists                             | \$200.00 each |
| <b>f.</b> Repeat performance of solo within a concert cycle | \$150.00 each |
- 6.** Any musician asked to play in front of the orchestra, other than as a soloist, shall receive no additional compensation, but has the right to refuse such request.
- 7.** Musicians shall be paid at the rate of \$25.00 per hour for their service as members of an Audition Committee.

8. Musicians shall be paid at the rate of \$15.00 per hour for their service as members of a Peer Review Committee.
9. Musicians performing in small ensemble performances as defined in ARTICLE VI.M will be paid at principal rate. The leader for such educational programs shall be paid double principal rate.

**B. TRAVEL REIMBURSEMENT AND PER DIEM:**

1. Musicians who reside outside of Lancaster County, Nebraska, and live less than seventy-five (75) miles away from Lincoln, Nebraska, shall be entitled to travel reimbursement for each round trip made from their place of residence to the service in Lincoln, Nebraska at the rate of \$.23 per mile.
2. Mileage will be as follows:
  - a. Bellevue: 108 miles for each round-trip
  - b. Blair: 140 miles for each round-trip
  - c. Omaha: 112 miles for each round-trip
  - d. Papillion: 90 miles for each round-trip
  - e. Mileage from cities within the 75-mile radius to LOA services in Lincoln, Nebraska, other than those listed above will be calculated using mapquest.com.
3. Musicians who reside outside of Lancaster County, Nebraska, and live more than seventy-five (75) miles away from Lincoln, Nebraska, shall be entitled to a flat payment per trip, to be negotiated on an individual basis, not to exceed \$250.00 per concert series.
4. A musician who resides outside of Lancaster County shall be paid a per diem of twelve dollars (\$12.00) for each day s/he is required to perform two services in one day, except as those defined as Back-to-Back Services in ARTICLE VI.A.

**C.** Each musician shall receive two (2) complimentary tickets for each LOA concert, subject to availability. A ticket request form for each concert must be returned to the Personnel Manager no later than the end of the dress rehearsal of the concert for which the tickets are requested. Musicians ordering complimentary tickets shall be liable for the handling fee charged by the LOA for each ticket requested.

**D.** **Parking:** The LOA will reimburse musicians for parking expenses incurred (excluding tickets, fines, and/or towing) by the musicians to attend a service. No documentation will be required for parking expenses of less than one dollar (\$1.00). A receipt will be required for parking expenses of one dollar (\$1.00) or more. Musicians will not be reimbursed if they use parking for which they contract on a regular basis, such as University Parking or monthly contract parking.

**E.** **LARGE INSTRUMENTS:** If the LOA requests a musician to provide her/his own instrument(s) as listed in ARTICLE IV.C, s/he will be paid a cartage fee of thirty dollars (\$30) per round trip move of the instrument(s).

**F.** **PAYMENT:** Payment for services rendered shall be processed and postmarked within ten (10) business days of the completion of the concert cycle. The only exception is when the Music Performance Trust Fund is involved. In the event that checks will not be processed and postmarked within ten (10) business days, musicians shall be notified via e-mail.

## ARTICLE VIII - WORKING CONDITIONS

- A.** The LOA agrees not to require the musicians to rehearse or perform any concert when direct sunlight, extreme temperature or moisture threatens the destruction or unusual deterioration of musical instruments.
- B.** Temperature/Weather Conditions: The LOA shall comply with the following provisions regarding each service:
- 1.** No indoor services shall be conducted unless the stage temperature of the hall is between sixty-five (65) and eighty-five (85) degrees Fahrenheit.
  - 2.** Adequate shelter shall be provided at each outdoor service for all musicians and instruments. No instruments shall be stored in the direct sun. Musicians shall not be required to perform in the direct rain or directly in any other kind of inclement weather or in unsafe, unhealthful or noxious conditions.
  - 3.** Outdoor services will not be conducted with the stage temperature less than sixty-three (63) or more than ninety (90) degrees Fahrenheit.
  - 4.** For out-of-range temperature conditions for all indoor or outdoor services, the LOA shall be allowed forty-five (45) minutes to correct the variation, and if a correction of the temperature cannot be achieved within that time, the service will be cancelled.
  - 5.** The LOA will make every effort to provide a site with acceptable climate conditions for the musicians during the period of adjustment. If in-range conditions cannot be achieved during the period of adjustment, the musicians will be dismissed and will be paid for the service. All procedures regarding overtime will apply from the scheduled beginning service time.
  - 6.** If the service is cancelled because of out-of-range conditions, the musicians shall be paid. If the remainder of the rehearsal is rescheduled, the musicians shall be required to attend unless prevented by prior commitment.
  - 7.** A thermometer will be placed in front of the Music Director/Conductor's podium at least one-half (1/2) hour before a service by the Personnel Manager. At the request of the Chair of the Orchestra Committee, or her/his designee, the temperature can be checked fifteen (15) minutes before a service.
  - 8.** No musician shall suffer reduction in pay or disciplinary action for refusal to play in conditions which do not comply with the above provisions.
- C.** Lighting: For each service, the LOA shall:
- 1.** Provide for each service sufficient and adequate lighting as judged by the Chair of the Orchestra Committee, or her/his designee, in consultation with the Personnel Manager.
  - 2.** In the event that proper lighting is not available, the Chair of the Orchestra Committee, her/his designee, or the Personnel Manager shall notify the designated LOA representative, at which time stand lights with a minimum of forty (40) watts per light shall be provided by the LOA.
  - 3.** If a correction of the lighting is not achieved within forty-five (45) minutes from the scheduled beginning service time or from the time the lighting variation is noted, and stand lights are not available, that service shall be cancelled.

4. If a service is cancelled because of inadequate lighting, the musicians shall be paid. If the remainder of the service is rescheduled, the musicians shall be required to attend unless prevented by prior commitment.
  5. No musician shall suffer reduction in pay or disciplinary action for refusal to play when there is not sufficient and adequate lighting, as set forth above.
- D. Physical Facilities:** For each service, the LOA shall provide facilities that meet the following requirements:
1. Adequate coat racks, tables and chairs in the backstage area to accommodate the needs of all musicians;
  2. Adequate backstage light;
  3. A secure place available to the musicians to store instruments, cases, and handbags when such items are not in sight;
  4. Backstage security for the musicians;
  5. Adequate and sanitary areas for dressing and rest rooms with adequate and safe lighting;
  6. Adequate space on stage or in the area where a service is to occur to accommodate all musicians scheduled to attend the service; and
  7. Plexiglas shields and earplugs shall be on site at all services and available at any musicians' request.
- E.** The LOA agrees to make every effort to provide access to the rehearsal or concert space at least forty-five (45) minutes prior to the scheduled beginning of services. Chairs, stands, stand lights and other standard properties for rehearsals or concerts shall be in place no later than thirty (30) minutes prior to the beginning of the service and shall provide such access at least thirty (30) minutes prior to the scheduled beginning of services.

### **ARTICLE IX - ORCHESTRA PERSONNEL**

For the purposes of auditioning and offering PSAs, the personnel of the LOA will be:

1-Concertmaster	1-Third Clarinet/Bass Clarinet/Eb Clarinet
1-Assistant Concertmaster	1-Principal Bassoon
1-Principal Second Violin	1-Second Bassoon/Contrabassoon
1-Assistant Principal Second Violin	1-Contrabassoon/Third Bassoon
18-Section Violins	1-Principal Trumpet
1-Principal Viola	1-Second Trumpet
6-Section Violas	1-Third Trumpet
1-Principal Cello	1-Principal Horn
1-Assistant Principal Cello	1-Second Horn
5-Section Cellos	1-Third Horn
1-Principal Double Bass	1-Fourth Horn
4-Section Double Basses	1-Principal Trombone
1-Principal Flute	1-Second Trombone
1-Second Flute/Piccolo	1-Third Trombone
1-Piccolo/Third Flute	1-Principal Tuba
1-Principal Oboe	1-Principal Timpani
1-Second Oboe/English Horn	1-Principal Percussion
1-English Horn/Third Oboe	1-Section Percussion
1-Principal Clarinet	1-Principal Harp
1-Second Clarinet/Eb Clarinet/Bass Clarinet	1-Principal Keyboard

- A. The LOA shall offer PSAs containing guaranteed services in accordance with the following schedule: A musicians-37; B musicians-27; C musicians-15; D musicians-6.

<b>Group</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Violins	10	9	3		Trumpets	2	0	1	
Violas	4	2	1		Trombones	0	3	0	
Cellos	4	2	1		Tuba	0	0	1	
Basses	2	2	1		Timpani	1	0	0	
Flutes	2	0	1		Percussion	0	1	1	
Oboes	2	0	1		Harp	0	0	1	
Clarinets	2	0	0	1	Keyboard	0	0	0	1
Bassoons	2	0	0	1					
Horns	2	2	0		<b>Group total</b>	<b>33</b>	<b>21</b>	<b>12</b>	<b>3</b>

- B. Any service offered to fill temporary vacancies, any extra services, and any small ensemble performances as defined in ARTICLE VI.M may be applied to fulfill guaranteed service requirements (ARTICLE IX.A) provided notice is given as outlined in ARTICLE V.E.
- C. Any service offered at a lower pay scale as outlined in ARTICLE XV.A.2 may not be applied to fulfill guaranteed service requirements (ARTICLE IX.A).
- D. The LOA retains the right to select the appropriate instrumentation for each concert cycle. Instrumentation selected by the LOA will be assigned to musicians holding contracts by descending group order (A,B,C,D), such that musicians in Group A shall be given preference over Groups B through D, and Group B shall be given preference over Groups C and D.

## ARTICLE X - VACANCIES

### A. PERMANENT VACANCIES

1. A vacancy shall exist in the following cases, provided that the vacancy is in a position required to be filled under the terms of this Agreement:
  - a. Upon written resignation to the LOA by a musician.
  - b. Upon disabling illness of more than one year's duration, or the death of a musician.
  - c. When non-renewal of a non-probationary musician's PSA becomes final and s/he ceases to render services to the LOA.
  - d. Non-renewal of a probationary musician.
  - e. Designation by the LOA of a new position in the orchestra.
2. Vacancies shall be filled by holding auditions as specified in ARTICLE XI of this Agreement. However, when a contract musician leaves the orchestra during the course of the performance season creating an emergency vacancy, the Music Director shall have the right to fill such vacancy with a substitute until such time said vacancy can be filled in accordance with the audition procedures in this Agreement, but in no case longer than the remainder of the season.
3. If a contract position remains unfilled after auditions, the Music Director may make a one-year appointment for that position.

4. Any Group A Section String position remaining unfilled after auditions (ARTICLE XI) and appointment (ARTICLE X.A.3) may be offered to Section String musicians with PSAs in Group B. Any non-probationary Group B Section String musicians accepting promotion to Group A will be issued new PSAs for Group A on a probationary basis, but will retain non-probationary status for Group B.
- B. TEMPORARY VACANCIES:** A temporary vacancy shall be defined as any absence from a service by a musician holding a PSA during a contract season.
1. Temporary vacancies for principal positions shall be offered first to designated assistant principals, then according to the Substitute List required in ARTICLE XII.A.
  2. With the exception of principal positions, placements for temporary vacancies will be offered first to musicians holding PSAs by descending group order (A, B, C, D) who have not been otherwise engaged for the concert cycle. Seating will be determined by the principal in consultation with the Music Director. After offering vacancies to musicians holding PSAs, placement for temporary vacancies will be filled according to the Substitute List required in ARTICLE XII.A.
  3. The Music Director will appoint a substitute to replace a contract musician during an extended leave period of four (4) months or greater. The substitute will be issued a PSA for the term of the leave period in accordance with ARTICLE V.A and V.B of this Agreement.

### **ARTICLE XI – AUDITIONS**

- A.** The Audition Committee shall consist of the Music Director (or her/his designee) and the following members of the orchestra:
1. Principal vacancy - All related Principals and one person from the section, if possible.
  2. Section vacancy - Principal of section, one principal of a related section, two (2) musicians. Except for the Principal of the section being auditioned, the remaining members shall be selected by the Orchestra Committee.
  3. Appointed or Probationary musicians shall not be allowed to serve on the Audition Committee, unless the opening is for a musician in that section or family.
  4. In the event the Audition Committee does not total at least five (5) members, the Orchestra Committee, in consultation with the Music Director, will designate additional members to total at least five (5). If any musician on the Audition Committee is unable to serve because of illness or other conflict, the Orchestra Committee, in consultation with the Music Director, shall appoint another musician to serve in her/his place. The musician appointed to fill the vacancy shall be from the same section (when possible) as the person who is unable to serve on the Audition Committee.
- B.** The Secretary of the UNION or her/his designee and the Executive Director of the LOA or her/his designee may be present at the auditions only as observers and shall not vote.

- C. The musician creating the vacancy, or a person auditioning for the vacancy, may not serve on the Audition Committee. A musician who is a relative, spouse, or significant other of a person auditioning for the vacancy may not serve on the Audition Committee.
- D. Notice of auditions shall be given to the UNION, the Omaha Musicians' Association (Local 70-558 of the AFM), the Orchestra Committee, and submitted for publication to the Lincoln Journal Star, the Omaha World Herald and online audition sites (e.g. myauditions.com and musicalchairs.info) at least eight (8) weeks prior to the audition date.
- E. Auditions for all vacancies listed in ARTICLE X.A and X.B shall be held no later than September 15 of the current performance season. Auditions shall not be held on the same day as a concert.
- F. The Music Director, in consultation with the other members of the Audition Committee, shall determine the audition music based on orchestral excerpts of the standard repertoire. A copy of the audition music list shall be sent to the UNION and copies of the list shall be made available to all interested persons no later than four (4) weeks prior to the auditions, unless the Orchestra Committee agrees to a shorter period of time.
- G. Preliminary auditions shall be held behind a screen. The screen may be removed for subsequent rounds including the final round. Musicians who hold current PSAs will automatically advance to the second round.
- H. The Music Director (or her/his designee) or a majority vote of the other members of the Audition Committee may advance a candidate to the finals.
- I. The Music Director (or her/his designee) after consultation with the Committee shall select the winning candidate.

## **ARTICLE XII - EXTRA AND SUBSTITUTE MUSICIANS**

- A. It is the responsibility of the principal of each section to provide the Personnel Manager with a list of qualified extra and substitute musicians by September 1 and February 15 of each season. Musicians on this list (the Substitute List) shall be ranked in order of preference by the section principal in consultation with the Music Director. A musician may be placed on the extra and/or substitute list at the discretion of the Principal because of previous successful performance with the LOA, the Principal's knowledge of the musician's abilities, or by an audition for a contract position or an extra/substitute audition. Preference shall be given to Local 463 members when hiring extra and substitute musicians if the musicians are comparably ranked.
- B. Auditions for extra or substitute musicians must be held by September 15 of each season. The purpose of these auditions is to allow musicians the opportunity for their abilities to be evaluated by section principals and the Music Director. Auditioning for the extra or substitute list does not guarantee a musician placement on any list, nor does it guarantee a higher rank than a musician who did not audition.
- C. Any contract musician will be apprised of her/his individual ranking on the Substitute List for her/his Section upon request of the Personnel Manager.

## ARTICLE XIII - MUSICIANS' RESPONSIBILITIES

- A. Musicians are expected to be in their seats five (5) minutes prior to the scheduled starting time of each service, having prepared the appropriate music. This time may be used for any announcements and tuning. Excused tardiness may result in a fine for each fifteen (15) minutes of tardiness, or fraction thereof, based on the pro-rated amount of the individual musician's per service fee. Unexcused tardiness may result in a fine for each fifteen (15) minutes of tardiness, or fraction thereof, based on the pro-rated amount of one and one-half (1-1/2) times the individual musician's per service fee. The five (5) minute period prior to the scheduled starting time of each service shall not be considered for the purpose of imposing any fine hereunder.
- B. See ARTICLE XIV for musician's responsibility regarding library policies.
- C. See ARTICLE XVIII for musician's responsibility regarding leaves of absence.
- D. It is the responsibility of each musician to keep the LOA advised of current mailing address, email address, current home and business phone numbers.
- E. Orchestra players shall provide at their own expense and wear such afternoon and evening dress for concerts as shall be prescribed herein. Musicians will appear at all performances in the mode of dress officially designated by the LOA in the call sheet for each concert cycle. As a general guideline:

- 1. Formal dress will be worn for all classical series concerts in Lincoln, Nebraska.

**Women - Formal:** Long black dress with wrist-length sleeves; or long black skirt and black blouse with wrist-length sleeves; or black dress pants and black blouse with wrist-length sleeves; and black dress shoes (not boots). "Long" will be defined as ankle length or longer when sitting, with black hose or knee-highs. All accessories such as scarves, ribbons, belts, etc., must be black. If handbags are necessary on stage, they must be very small and black.

**Men - Formal (white tie):** Black tails jacket; white bow tie; white vest or cummerbund; white shirt without ruffles; black tuxedo pants; black dress shoes; and long all-black socks.

- 2. Semi-formal dress will be worn for all pops concerts.

**Women - Semi-formal:** Same as formal with the addition of: White blouse if covered by a wrist-length black jacket, sweater, or blazer.

**Men - Semi-formal (black tie):** Black tuxedo jacket; black bow tie; white shirt without ruffles; black vest or cummerbund; black tuxedo pants; black dress shoes; and long all-black socks.

- 3. Informal dress will be worn for all morning and afternoon concerts.

**Women - Informal:** Same as semi-formal with the addition of: Black or a very dark skirt or dress (below the knee to ankle-length while seated); black or very dark pants.

**Men - Informal (long tie):** Black, charcoal-black, or very dark navy blue suit (two or three pieces); white shirt; long dark tie; black shoes; and long all-black socks.

4. Summer dress will be worn for all outdoor concerts which take place from May through August.

**Women - Summer:** Short-sleeved white blouse with black skirt or pants and black shoes.

**Men - Summer:** Short-sleeved white shirt with black bow tie, black pants, black shoes and socks.

5. Pit dress will be worn for all opera, ballet and musical theater performances when the orchestra is located in the orchestra pit.

**Women - Pit Dress:** Long black skirt or black pants with long-sleeved black blouse or turtleneck, black shoes, black stockings or socks.

**Men - Pit Dress:** Black long-sleeve turtleneck shirt; black trousers; black shoes; and long all-black socks. Pit dress may also consist of semi-formal dress.

6. **Other:** Denim or corduroy material is not allowed. No clothing will be of metallic fabric. No tight pants or leotards as outer garments may be worn. Only unobtrusive jewelry may be worn. No open-toed shoes may be worn unless accompanied by opaque black hose. No flip-flops may be worn. All hosiery must be black. Musicians shall not wear perfume or cologne at any rehearsal or performance.

A minimum of twenty-four (24) hours notice will be given to musicians if the designated dress for a concert is to be changed to another designated dress. If any non-designated dress is to be worn at a service, a minimum of forty-eight (48) hours notice will be given, with at least one (1) week's advance notice preferred.

If a musician is found to be consistently or flagrantly in violation of the dress code as outlined below, the Personnel Manager may ask the musician to leave the service location until the violation is corrected. If the violation is not corrected, the musician shall not be paid for the service, and the service shall count toward the minimum number of services required for the contract musician under this Agreement.

#### **ARTICLE XIV - LIBRARY POLICY**

A. The Librarian will provide musicians with legible and complete parts at least ten (10) days prior to the first rehearsal for which the parts are needed. For musicians who reside outside of Lancaster County, Nebraska, LOA will hand-deliver parts or mail parts to their home address and postmarked no later than ten (10) business days prior to the first rehearsal. Musicians who reside outside of Lancaster County, Nebraska, shall also have the option of receiving their parts via email. All parts provided to the musicians shall have:

1. All bowings marked as determined by a collaboration between the string principals and the Concertmaster. If a conductor desires additional editings to be copied into the parts, they should be given to the Librarian at least thirty (30) days before the first rehearsal.

2. All required cuts known at the time of processing marked clearly.

3. Rehearsal letters or bar numbers in parts shall conform to those in the conductor's score and be marked in sufficient quantity to facilitate finding specific passages during rehearsal.

4. Uniformity of edition among all orchestral parts and conductor's scores so that phrasings and dynamic markings are in agreement.
- B. Local Fee Engagements/Guest Conductors:** Music provided by guest conductors or outside organizations contracting the services of the LOA shall be processed and edited to meet the above standards provided the music is delivered to the Librarian along with all desired editings and cuts at least thirty (30) days before the first rehearsal.
- C. Timeframe:** The Concertmaster and section Principals are responsible for working in a timely and professional manner to assist the Librarian in meeting the above objectives. To facilitate this collaboration, the following timeframe is suggested:
1. The Concertmaster will hand-deliver or postmark marked and bowed music to the LOA within ten (10) days of the LOA's postmarked mailing date or within five (5) days of receipt if hand-delivered. If the Conductor wishes to consult with the Concertmaster about bowings, he should do so before or during this time period.
  2. The other string Principals will hand-deliver or postmark their section's parts within seven (7) days of the LOA's postmarked mailing date or within five (5) days of receipt if hand-delivered. It is the responsibility of these string Principals to edit their section's parts to bring them in accord with the Concertmaster's markings and to ensure uniformity of bowing and phrasing among the sections. A copy of the Concertmaster's bowings shall be given to each string Principal to facilitate this process. If principals wish to consult with the Concertmaster about bowings, they should do so before or during this time period.
  3. Bowings will not be altered during a final dress rehearsal, unless the dress rehearsal is the only rehearsal for the concert, or in the case of minor bowing changes deemed necessary by the Conductor, Concertmaster or string Principals.

If, for any reason, the above time frame cannot be allowed for, the Librarian, the Concertmaster and the string Principals shall make their best effort under the circumstances to achieve uniformity of bowing and editing.

- D. Lost Music:** Musicians are required to return all music distributed by the LOA at the end of each concert cycle. Musicians will be charged for the replacement cost of any music that they fail to return and the amount of such costs may be deducted from the musician's pay.
- E. Late Return or Damage of Music:** If, due to the negligence of a musician, LOA is assessed a fine or fee by the publisher for the late return or damage of rental music, the musician responsible shall reimburse the LOA for any such charges.

## **ARTICLE XV - EXTRA SERVICES**

- A.** If the LOA contracts to provide any extra services, the following provisions shall apply:
- 1.** All of the terms of this Agreement shall apply to any extra services;
  - 2.** Each musician performing an extra service shall be compensated at the individual rate established by his or her individual contract; however, the LOA shall have the flexibility to negotiate a base salary with a presenting organization, provided that the base salary shall be at least 5% above the current UNION scale.
  - 3.** All time constraints for services as outlined in ARTICLE VI.B and VI.C shall apply. The foregoing notwithstanding, if a concert does not have an intermission, the performance may last for up to one hundred (100) minutes without intermission.
- B.** The musicians to be offered employment for each extra service shall be determined in the following manner:
- 1.** Except for small ensemble performances as defined in ARTICLE VI.M, the LOA shall give the right of first refusal for the extra service(s) to the musicians holding PSAs in Group A, Group B, Group C and Group D respectively, based on the instrumentation required for the extra service(s). For musicians holding Group A contracts, section Principals shall be given the right of first refusal, followed by other A contract musicians. Musicians who occupy the same positions in the orchestra will be offered the opportunity to perform extra services on an alternating basis.
  - 2.** If there are not enough musicians holding PSAs in Group A, B, C and D who agree to perform the extra service(s), the LOA may employ extra musicians according to the Substitute List required in ARTICLE XII.A.
- C.** No musician shall be penalized because of her/his refusal to accept employment for any extra service.

## **ARTICLE XVI - TOURING**

The terms and conditions of Tours and Run-Outs shall be negotiated by the LOA and the Orchestra Committee on a case-by-case basis. If no agreement is reached the Tour or Run-Out in question shall not take place.

## ARTICLE XVII - ELECTRONIC MEDIA

- A.** Except as provided herein, no service or any part thereof, shall be recorded, reproduced, or transmitted in any manner or by any means by the LOA or by any agent or employee of the LOA in the absence of a specific written agreement with the UNION and/or AFM relating to and permitting such recording, reproduction or transmission. In the event any service is recorded, reproduced or transmitted, the LOA agrees to enter into and fulfill all conditions required by the appropriate agreement of the UNION and/or AFM including but not limited to the payment of prevailing wages and allied fringe benefits. Musicians of the orchestra shall not proceed with a live performance that is to be taped, televised or broadcast, unless a properly executed UNION and/or AFM contract for said playback or broadcast has been filed with the UNION.
- B.** The LOA may, with prior notification to the musicians of the LOA who will be performing, record up to fifteen (15) minutes of any LOA service of which no more than three (3) minutes may be used only for the promotion of the orchestra via radio, TV, internet and/or promotional materials without additional compensation.
- C.** Audio recording(s) shall be permitted without additional compensation for the following purposes:
- 1.** The LOA may designate a qualified person to make archival study audio recordings of LSO performances. No LSO performances may be taped by anyone other than a person designated by the LOA. Archival study audio recordings will be available upon request by the musicians, and playback will be arranged at the convenience of the musicians and the LOA administrative staff, with reasonable and appropriate security.
  - 2.** Copies of audio recordings may be made available to Guest Artists and Composers of works performed for non-commercial study and personal use, provided that Guest Artists and Composers agree to become signatory to an appropriate AFM Personal Use Tape Agreement.
  - 3.** If the Music Director determines that specific archival audio recordings are of sufficient quality, those archival audio recordings may be used for the specific purpose of grant applications.
  - 4.** Audio recordings of LOA concerts may be aired in their entirety on Nebraska Public Radio for a total of four (4) broadcasts per performance without compensation to the musicians provided that the Nebraska Public Radio provides no compensation to management in any form for broadcast rights. However, if such recordings or broadcasts are picked up for national distribution, musicians will be compensated at the national AFM scale.
  - 5.** Once per season, LOA has the option to create one master compilation compact disc of works selected by the Music Director from various performances for the purpose of donor cultivation and recognition. A maximum of one hundred (100) copies may be duplicated, and these recordings will be distributed at no charge to donors and not permitted to be sold.
- D.** Rehearsals may recorded for a study tape (audio and/or video) for a Conductor, soloist, composer/arranger after consultation with the Orchestra Committee without compensation to the musicians. This tape may not be duplicated and must be erased or destroyed within seventy-two (72) hours after its creation.
- E.** Archival study recordings will at all times be considered the responsibility and in the custody of LOA, which will no permit duplication or use other than specified in ARTICLES C and D above.

- F.** No recorded material shall be used as evidence in non-reengagement or disciplinary proceedings.
- G.** Each year that the LSO participates in the July 4 concert with the City of Lincoln, the concert may be recorded and broadcast in its entirety on all local stations owned and operated by the concert broadcaster. This broadcast shall be compensated at the rate for one single broadcast at the UNION rate.
- H.** Recordings intended for sale require the payment of a recording fee to Orchestra members involved, such fee to be negotiated between the LOA and the UNION at least thirty (30) days prior to the service to be recorded.
- I.** For local non-commercial television, all services performed will be paid to musicians as follows:
- 1.** For the first taping (which will be used as a rehearsal for the television crew), a “scratch tape” rate of twenty-five dollars (\$25.00) per musician will be paid for two and one-half (2-1/2) hours or less. Overtime beyond these two and one-half (2-1/2) hours will be paid at ten dollars (\$10.00) per half (1/2) hour per musician. Scratch tapes shall not be edited into a final product and shall be destroyed prior to the final recording.
  - 2.** A broadcast (up to two and one half (2-1/2) hours in length) shall be compensated at the rate of thirty dollars (\$30.00) per musician for the first one (1) hour and ten dollars (\$10.00) for each additional one half (1/2) hour of program time.
  - 3.** There will be no additional compensation to musicians for services at which there are cameras in place but no recording takes place.
  - 4.** The television station involved may broadcast each program two (2) times over its network of stations within a one (1) year period without additional compensation to the musicians.
  - 5.** If such performances are picked up for national broadcast, musicians shall be compensated at the national AFM rate.
- J.** Notwithstanding this agreement to obtain written agreement from the AFM for electronic media transmission beyond that provided in ARTICLES A through I above, the LOA and the UNION agree to negotiate terms and conditions for such use on a local basis, in all electronic media for which such local negotiation is permitted by the AFM.

## ARTICLE XVIII - LEAVES OF ABSENCE

- A.** Musicians are expected to attend and participate fully in all services for which they have been contracted. A player who is unable to attend a scheduled service must request in writing an excused absence from the Personnel Manager no less than twenty-one (21) calendar days prior to the service. Musicians will be granted an excused absence, under this paragraph, for up to 50% of all services in a regular performance Season. Any changes to the total number of services or to the final season schedule less than forty-five (45) days before the first service and any absences granted under this Article will not be considered in the enforcement of this provision.
- B.** All absences, other than excused absences provided under this Article, are considered unexcused absences. An unexcused absence, depending upon severity, will be grounds for discipline, up to and including discharge. A musician who misses a service due to an excused absence, unexcused absence, personal absence, or leave of absence will not be paid for that service.
- C.** A contract musician shall be allowed two (2) personal days within a contract season. Personal days are excused absences, without pay. Musicians must notify the LOA seven (7) days prior to the absence. Personal days may not be taken on specified dress rehearsals or concert dates, or during any three (3) service concert cycle. No more than one personal day may be taken per concert cycle. Personal days shall not be accumulative from one season to the next. Leave under this paragraph shall be considered for the purpose of the 50% limitation in this Article.
- D.** A musician who misses a service due to personal illness or personal emergency and who notifies the Personnel Manager within twenty-four (24) hours of the missed service shall be deemed excused from the service, without pay. Upon request, the Musician shall submit a doctor's certificate or other proof of illness. Leave under this paragraph shall not be considered for the purpose of the 50% limitation in this Article.
- E.** Emergency Leave: In the event of death or critical illness of a family member or other emergency situation, a contract musician will be granted, by the LOA, unpaid emergency leave as the situation warrants, and such leave will be considered an excused absence. Such requests shall not be unreasonably denied. Upon return from an emergency leave, a musician shall be returned to the position formerly occupied. Leave under this paragraph shall not be considered for the purpose of the 50% limitation in this Article.
- F.** Any contract musician shall be granted a parental leave from his or her duties, without pay, for up to four (4) months, if he or she so requests. Extensions for cause may be granted in extenuating circumstances. Upon return from a parental leave, a musician shall be returned to the position formerly occupied. Leave under this paragraph shall not be considered for the purpose of the 50% limitation in this Article.
- G.** Musicians who have been non-probationary for at least one (1) year may be granted up to one (1) year leave of absence. Such requests shall not be unreasonably denied. Musicians are limited to one such leave of absence during any seven (7) year period. Upon return from a leave of absence under the subparagraph, a musician shall be returned to the position formerly occupied. Leave under this paragraph shall not be considered for the purpose of the 50% limitation in this Article.

## **ARTICLE XIX - PROBATION/NON-PROBATION/TERMINATION**

- A.** The first two (2) seasons of a musician's contractual employment shall be considered probationary. A probationary musician may be given notice, no later than March 15 of either probationary season, that he/she will not be re-engaged for the next season. A probationary musician not receiving notice of non-reengagement, by March 15 of his/her second season, shall be considered a non-probationary member of the orchestra and issued a non-probationary individual contract for the next season. If a musician holds a one-year appointment and wins an audition immediately after or during the appointment, this one year in appointment counts as a probationary year to be used towards obtaining non-probationary status.
- B.** A non-probationary musician cannot have his/her position with the orchestra changed or terminated except for demonstrated, consistent and unremedied failure of musical performance, or for just cause.
- C.** A non-probationary musician whose musical performance is considered by the Music Director to be deficient enough to warrant termination or change of position shall be dealt with in the following manner:
- 1.** The Music Director shall provide written warning by no later than December 1 of the current season, notifying the musician that non-renewal for musical reasons is being contemplated and identifying the alleged musical deficiencies.
  - 2.** If requested by the musician, the Music Director shall meet with the musician to discuss the notice within fourteen (14) days, either in person or by conference call. The musician shall have the right to bring a representative from the Orchestra Committee or the UNION to this meeting.
  - 3.** If the Music Director still believes that termination or change of position is warranted, s/he shall send a notice no earlier than May 1 and no later than May 15 of the current season, with copies simultaneously submitted to the UNION, Orchestra Committee, and LOA.
  - 4.** If a musician disputes the action of the Music Director as set forth in ARTICLE XIX.C above, the musician shall have the right to appeal such decision to the Peer Review Committee through the procedure outlined in ARTICLE XX. Appeals to the Peer Review Committee must be made to the Chairperson of the Peer Review Committee no later than fourteen (14) days from the date of the postmark of the notice to terminate or reseat.
  - 5.** The musician must notify the LOA and the UNION of her/his intention to appeal the notice of non-reengagement within fifteen (15) days after receipt of said notice. Said notice shall be in writing and sent to the Personnel Manager.
- D.** Except as provided for above, no musician shall be discharged except for just cause.
- E.** The LOA agrees not to issue more than five notices of non-reengagement during any season, excepting termination for violation of the Leave of Absence provision or other just cause.

## **ARTICLE XX - PEER REVIEW COMMITTEE**

- A.** The Peer Review Committee shall consist of nine (9) Non-Probationary musicians from different sections of the orchestra elected by the Non-Probationary musicians of the orchestra.
- 1.** Elections for the Peer Review Committee shall take place at the beginning of each season. The ballots will be sealed uncounted, then stored in a secure location at the office of the UNION. The ballots will be unsealed and counted only if a player chooses to appeal non-renewal or change in position.
  - 2.** If the Principal of the section representing the member being reviewed is not already a member of the Peer Review Committee, s/he must be consulted but will not be a voting member of the Peer Review Committee, except in the case when a Principal is reviewed.
  - 3.** Should a member of the Peer Review Committee be unable to serve, s/he will be replaced with another Non-Probationary musician selected by the other members of the committee.
- B.** The Peer Review Committee shall meet no later than fifteen (15) days following the Appeal in ARTICLE XIX.C.4. The purpose of this meeting shall be to re-audition or otherwise review the musician and take a secret ballot.
- 1.** The Secretary of the UNION or her/his designee and the Executive Director of the LOA or her/his designee may be present at the Peer Review Committee meeting only as observers and shall not vote.
  - 2.** The Music Director may make a verbal presentation to the Peer Review Committee immediately before the review procedure, but will not be present at the review.
  - 3.** The appeal will be dismissed if five (5) or more members of the Peer Review Committee agree to the LOA's refusal to reengage the musician. If the musician is not reengaged, the musician's contract will be terminated at the end of the season, and the musician shall not be reengaged unless s/he is selected for a position by the audition procedure set forth in ARTICLE XI of this Agreement.
  - 4.** If five (5) or more members of the Peer Review Committee vote to sustain the appeal, the musician shall be reengaged.
  - 5.** Decisions of the Peer Review Committee are final and binding.

## **ARTICLE XXI-LOCKOUT/STRIKE**

During the term of this Agreement, there shall be no lockouts and no strikes, work stoppages, slowdowns, interruptions or delays of any nature.

## **ARTICLE XXII - GRIEVANCE AND ARBITRATION**

- A.** A grievance is defined as any and all disputes between the parties.
- B.** Upon presentation of a written description of the grievance and the facts on which it is based, the provisions of this Agreement claimed to have been violated, and a possible remedy of the dispute, by one party to the other, the aggrieved musician (if any) and a representative of the UNION shall convene with a designee of the LOA within seven (7) days of the postmarked letter to adjust the grievance. If no written resolution is achieved within seven (7) days of this meeting, the party initiating the grievance may submit the grievance to arbitration.
- C.** Within ten (10) days of the meeting in ARTICLE XXII.B, the party desiring arbitration shall notify the other party, in writing, of such desire. The parties shall convene as soon as possible to mutually agree upon an Arbitrator. The selection of an Arbitrator shall be concluded within twenty-one (21) days of the written notice seeking arbitration. If the choice of an Arbitrator cannot be mutually agreed upon, the party initiating the grievance may submit the grievance to arbitration before the American Arbitration Association (AAA).
- D.** If the grievance is advanced to the AAA, the rules of AAA shall apply.
- E.** The Arbitrator's decision shall be final and binding.
- F.** The administrative costs (i.e., arbitrator's fee and expenses) of the arbitration shall be equally split between the parties.

## **ARTICLE XXIII - ORCHESTRA COMMITTEE**

- A.** The Chair of the Orchestra Committee, or her/his designee, shall be a non-voting member of the Board of Directors of the LOA and shall attend meetings of the Executive Committee of the Board of Directors, unless personnel matters are being discussed.
- B.** At least one contract musician, appointed by the Orchestra Committee, shall be a non-voting member of each standing Committee of the LOA, the Search Committee for an Executive Director, the Search Committee for a Music Director, and any Ad-Hoc committee, unless personnel matters are being discussed.
- C.** Musician representation shall constitute more than thirty-three (33) percent of the voting membership of any Search Committee for a Music Director/Conductor, with contract musicians appointed by the Orchestra Committee. It is agreed that a two-thirds (2/3) majority of the Search Committee's membership will be needed for the appointment of a Music Director/Conductor.

## **ARTICLE XXIV- MANAGEMENT RIGHTS**

- A.** It is not the purpose of this Agreement to infringe upon or impair the normal right of the LOA to make and place in effect its decisions concerning the operation of its business. Any of the rights, powers or authority the LOA had prior to the signing of this Agreement is retained by the LOA, except those rights, power or authority specifically abridged, delegated or modified by this Agreement. The LOA has the inherent management right to cease its operations and discontinue business. In that event, the LOA agrees to meet with the UNION to discuss the consequences of such a decision.
- B.** The foregoing rights reserved to the LOA shall not be deemed to preclude exercise by the LOA management of other rights exercised by it prior to the execution of this Agreement, which are not inconsistent with any express provision thereof.
- C.** The LOA shall have the right to make such reasonable rules and regulations, not in conflict with any provisions of the Agreement, as it may from time to time deem best, and to require compliance therewith by the musicians, after seven (7) days advance notice of the promulgation of any new or modified rule has been given to the UNION and to the musicians. Such notice shall be given by written communication addressed to both the UNION at its principal office, and by mailing a copy to each contract musician. The UNION reserves the right to question the reasonableness of the rules and regulations promulgated by the LOA, through the grievance and arbitration procedure established by this Agreement.

## **ARTICLE XXV - FORCE MAJEURE**

The LOA may cancel or reduce the number of services called for by this Agreement and the musicians' individual contracts in the event of: material damage by fire or otherwise to the hall or halls where the LOA presents its concerts, prevention of the continuance of concerts by legal authority, acts of God, or force majeure not within the power of the parties to avoid, war, riot, insurrection, epidemic, or national or local calamity to the extent that such cancellations or reduction of services is necessary as a result of the reasons above.

## **ARTICLE XXVI - NOTICES**

Unless provided otherwise in this Agreement, all notices or other communications required to be delivered upon one of the parties to this Agreement or to a musician shall be in writing, and will be considered valid if delivered personally or sent by United States first-class mail, postage prepaid to:

- A.** The Executive Director of LOA, or if there is not an Executive Director, to the President of the LOA Board of Directors;
- B.** The Secretary of the UNION; or

- C. The individual musician. If a notice is sent to an individual musician, it shall be sent to the musician's last known address as reflected in the records of LOA. The date as stated on the notice, the date of postmark, or the email sent date is to be considered the first date of notice. Notice will not include day of service(s) affected by such notice. Official notices regarding schedule changes and/or other musician communication may be communicated via email or regular mail. Email notification must include verification of receipt. In the event verification of receipt is not received by the LOA in a timely fashion, LOA shall attempt contact by telephone. Email notification shall not be used when pertaining to issues under ARTICLE XIX or ARTICLE XII.

### **ARTICLE XXVII- BINDING AGREEMENT**

- A. This agreement shall be binding upon the parties to this agreement and any successor, assignee or transferee.
- B. Effective upon execution, this agreement embodies the entire agreement between the parties and supersedes all prior agreements between the parties. This agreement may not be modified or amended by the parties except by written agreement or as otherwise expressly provided herein. This paragraph is not intended to preclude any party from asserting rights and responsibilities under any prior agreement, or past practice, which rights and responsibilities arose as a result of the actions of either party prior to the effective date of this agreement.

### **ARTICLE XXVIII - SEPARABILITY**

Notwithstanding any provision(s) herein contained, regardless of how specific such provision(s) may be, nothing in this agreement is intended to violate any state or federal statute, rule or regulation. Should any provision herein be illegal, such illegality shall not render this agreement void as a whole, and all remaining provisions shall remain in full force and effect.

### **ARTICLE XXIX - EMPLOYMENT PRACTICES**

- A. Equal Opportunity
1. LOA is an equal opportunity employer, and shall not discriminate on the basis of race, color, religion, gender, sexual orientation, marital status, disability, national origin, age, union or union related activities, or any other prohibited basis.
  2. In order to provide equal employment opportunities to all individuals, employment decisions at LOA will be based on merit, qualifications, and abilities, and in accordance with the other provisions of this agreement.

## **B. Employment Eligibility**

LOA is committed to employing only United States citizens and aliens who are authorized to work in the United States and does not unlawfully discriminate on the basis of citizenship or national origin. In compliance with the Immigration Reform and Control Act of 1986, each new musician employee, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility. Former musician employees who are rehired must also complete the form if they have not completed an I-9 with LOA within the last three (3) years, or if their previous I-9 is no longer retained or valid.

## **C. Reasonable Accommodation**

- 1.** LOA will make reasonable accommodations for qualified musicians with known disabilities unless doing so would result in an undue hardship. This policy governs all aspects of employment, including selection, job assignment, compensation, discipline and termination.
- 2.** LOA is committed to complying fully with the Americans with Disabilities Act (ADA) and the Nebraska Fair Employment Practice Act and ensuring equal opportunity in employment for qualified persons with disabilities. All employment practices and activities are conducted on a non-discriminatory basis.
- 3.** Reasonable accommodation is available to all disabled musicians where their disability affects the performance of job functions. All employment decisions are based on the merits of the situation in accordance with defined criteria, not the disability of the individual.
- 4.** Qualified musicians with disabilities are entitled to equal pay and other forms of compensation (or changes in compensation) as well as in job assignments and classification in accordance with the terms of this contract.
- 5.** LOA is committed to not discriminate against any qualified musicians or applicants because they are related to or associated with a person with a disability. LOA will follow any state or local law of the State of Nebraska which provides individuals with disabilities greater protection than the ADA.
- 6.** This policy is neither exhaustive nor exclusive. LOA is committed to taking all other actions necessary to ensure equal opportunity to musicians with disabilities in accordance with the ADA and all other applicable federal, state and local laws.

- D.** Any employees with questions or concerns about any type of discrimination in the workplace are encouraged to bring these issues to the attention of the management. Employees can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action, up to and including termination of employment.

## **E. Workplace Environment**

### **1. Sexual Harassment/Hostile Environment**

- a.** LOA is committed to providing a work environment that is free from discrimination, unlawful harassment and workplace hostility. Actions, abusive language, words, jokes or comments based on an individual's sex, race, ethnicity, age, religion, or any other legally protected characteristic or which have the effect of creating a hostile or offensive work environment or which may affect the safety of those in the workplace will not be tolerated.
- b.** Any musician who wants to report an incident of sexual or other unlawful harassment should promptly report the matter to the Executive Director of LOA or an officer of the UNION. If the Executive Director of LOA or an officer of the UNION is unavailable or the employee believes it would be inappropriate to communicate the complaint to such individuals, the employee should immediately report the complaint to the President of the Board of Directors of LOA. Musicians may raise concerns and make reports without fear of reprisal.
- c.** Investigation of a complaint will include interviews with all relevant persons including the complainant, the accused and other potential witnesses. Musicians are assured the privacy of the complainant and the person accused of sexual harassment will be kept as confidential as possible.
- d.** Anyone engaging in sexual or other unlawful harassment or who creates a hostile or offensive work environment will be subject to disciplinary action, up to and including termination of employment.
- e.** The complaint investigator will review his/her findings with the complainant at the conclusion of the investigation. If the investigation reveals that the complaint appears to be valid, immediate and appropriate corrective action, up to and including discharge, will be taken to stop the harassment and prevent its recurrence. If the validity of the complaint cannot be determined, immediate and appropriate action will be taken to assure that all parties are reacquainted with the policies herein set forth and specifically those which formed the basis the basis of the complaint and to avoid such actions in the future as well as any actions any actions contrary to the policies herein set forth.

### **2. Drug and Alcohol Policy**

- a.** It is LOA's desire to provide a drug-free, healthful and safe workplace. To promote this goal, musicians are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory manner.
- b.** While on LOA's premises or at an LOA workplace no musician may use, possess, distribute, sell or be under the influence of alcohol or controlled substances and may not manufacture any controlled substance. The legal use of prescribed drugs is permitted on the job only if it does not impair a musician's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals in the workplace.

- c. Violations of this policy may lead to disciplinary action, up to and including termination of employment, and/or requiring participation in and satisfactory completion of a substance abuse rehabilitation or treatment program approved for such purposes by a Federal, State or local health, law enforcement or other appropriate agency. Such violations may also have other legal consequences.
- d. As a condition of employment each musician will abide by the terms of this policy and will notify LOA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such a conviction. LSOA will notify its Federal granting and contracting agencies within ten days after receiving notice of a conviction under this paragraph from a musician or otherwise receiving notice of such conviction. Disciplinary action under sub-paragraph "c" shall take place within thirty (30) days of LOA receiving notice.
- e. LOA reserves the right to make changes in this policy in order to remain in compliance with all requirements of grant and funding agencies. Any change in policy shall within five days of adoption of the policy be furnished to UNION and all contract musicians.

### 3. Safe Environment/Rules of Conduct

To ensure the best possible work environment and the safety of all personnel and their instruments, rules of conduct shall be observed by all musicians and any actions which may have the effect of threatening the safety of any musicians or other personnel or their instruments or equipment is expressly prohibited and will be dealt with immediately which may include instructions to leave the workplace or even including suspension or termination. Such violations shall include:

- a. Negligence or improper conduct or actions which could or do lead to damage of LOA-owned or musician-owned property or property for which LOA or a musician has responsibility.
- b. Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace.
- c. Words, threats, or actions which threaten the health and safety of other musicians or personnel in the workplace.
- d. Improper use of equipment which could or does threaten the health or safety of other musicians or personnel in the workplace.

### 4. Workplace/Enforcement

- a. The workplace shall include any premises of LOA and any other place where the business of LOA may be conducted including but not limited to rehearsal halls and concert halls.

- b.** Any actions of a prohibited nature shall be considered prohibited whether directed at other musicians or other personnel of LOA and whether occurring at the workplace or by telephone or other means of communication when such telephone or other means of communication is being utilized for the purposes of carrying out the business of LOA or the business of musicians with LOA.
  - c.** In addition to the review and enforcement provisions provided above, when the Music Director or Executive Director are aware of actions in violation of any of these provisions which they reasonably deem to require immediate action, such action may include instructions to leave the workplace, public or private reprimand, and immediate suspension without pay.
  - d.** Any actions taken pursuant to subparagraph “c” shall be reviewed as soon as reasonably possibly after the action is taken with such review to be by the Music Director, the Executive Director, and the President of the Board of Directors of LOA who may together determine if any additional investigation is required and whether additional action is appropriate which additional action may include suspension without pay, probation, or termination. If for any reason one of the designated individuals is not able to participate in the review process, the two remaining individuals shall designate a member of the LOA Board of Directors as a third person to participate in the review process.
- 5.** LOA shall adopt and maintain rules and standards of conduct consistent with those provided herein for all other employees of LOA and which rules and standard of conduct specifically apply to the relationship of such other employees with musicians.
- 6.** Any dispute of a disciplinary action taken by LOA under these provisions shall be subject to resolution under the grievance and arbitration provision.

IN WITNESS THEREOF, the parties have hereunto set their hands this \_\_\_\_ day  
of \_\_\_\_\_, 2011.

For the LOA

For the UNION

\_\_\_\_\_  
Andy Pollock, President

\_\_\_\_\_  
Jim Williamson, President

\_\_\_\_\_  
Barbara Zach, Executive Director

\_\_\_\_\_  
Karen Sandene, Negotiating Committee

## GLOSSARY/DEFINITION OF TERMS

The following definitions shall be used in construing and interpreting this Agreement:

**Change of position:** Change in title and/or change in group category for guaranteed services.

**Concert cycle:** A series of services that culminates in a final performance.

**Contract musician:** Any musician signing a Personal Service Agreement committing that musician to LOA services for a given season who is not an extra musician or a substitute musician.

**Double Service Day:** Two services scheduled for any day.

**Dress Rehearsal:** The final rehearsal before a performance, or any of the final two (2) rehearsals attended by a guest artist.

**Extra Musician:** A musician who is employed for an individual service or concert cycle to expand the size of the orchestra.

**Extra Services:** Services scheduled after issuance of PSAs on May 1 for the following performance season.

**Individual Rate:** Any musician's personal rate of compensation.

**Librarian:** Person hired by the LOA to secure, process, distribute and collect orchestra parts.

**Musician Rate "Scale":** Minimum payment per service for musicians as set forth in this Agreement.

**National Broadcast:** Any LOA performance which is broadcast via a national media network.

**Non-probationary Musician:** Any musician employed for services with the Orchestra, during the previous two seasons, as a probationary contract musician.

**Out-of-Town Services:** Any service outside the city limits of Lincoln, Nebraska.

**Overtime:** Time in excess of two and one-half (2-1/2) hours at any service.

**Personal Service Agreement:** A document signed by a musician and the LOA specifying the musician's position, pay and contract service dates.

**Performance season:** September 1 through May 31.

**Personal Days:** Excused absences from LOA services without pay, subject to seven (7) day notification by the musician to the LOA, and other requirements set forth in this Agreement.

**Personnel Manager:** Person(s) hired by the LOA to engage musicians for services, to act as the first point of contact for musicians with management, and to insure adherence to this Agreement at services.

**Principal:** The leader of the following sections shall be deemed principals: 1st violin, 2nd violin, viola, cello, double bass, flute, oboe, clarinet, bassoon, horn, trumpet, trombone, tuba, timpani, percussion, harp, and keyboard. PSAs signed by principals shall designate the musician as a principal.

**Probationary Musician:** Any contract musician in the first two (2) consecutive years of employment following a successful audition will be considered a probationary musician. The term probation or probationary shall not be used to connote any form of disciplinary action.

**Schedule of Services:** The schedule of rehearsals and performances of the Orchestra issued by the LOA.

**Service:** The unit of work upon which wages are based.

**Soloist:** Musician(s) who plays a featured instrument(s) in a musical composition written for solo instrument(s) that is/are not incidental to the composition. The Music Director shall make the final determination as to when a musical composition requires a soloist(s).

**Substitute Musician:** A musician employed on a temporary basis to replace an absent contract member of the orchestra. Substitutes shall receive at least the musician rate for the position that they are temporarily filling.