

LICENSING AGREEMENT

LZb č. 3/2024

concluded pursuant to § 65 et seq. of Act No. 185/2015 Coll., the Copyright Act

Acquirer:

National Theatre Košice
Seat: Hlavná 58, 042 77 Košice
Performing: Mgr. art. Andrej Šoth, ArtD. – General Director
Legal form: state subsidized organization
Founder: Ministry of Culture of the SR, Founding Charter No: MK-3905/2023-110/7836
Bank contact: State Treasury
Account number/IBAN: SK85 8180 0000 0070 0007 0481, SK35 8180 0000 0070 0024 0452
Identification number: 312 99 512
VAT identification number: SK2021469758
Tax identification number: 2021469758
Contact person: Ing. Katarína Turčík, PhD.
Telephone: 055 – 2452 222
Website: www.sdke.sk
E-mail: katarina.turcik@sdke.sk (hereinafter also referred to as „**Acquirer**“ or „**Client**“)

and

Author: Nitin Sawhney, The Dairy, 43-45 Tunstall Road, London SW9 8BZ, ID number: N/A (hereinafter referred to as „**Author**“) represented by

Agency:

Positiv LLP

Seat: 8 Hampstead Gate, 1a Frognal, Hampstead, London, NW3 6AL
Performing: Nitin Sawhney
Legal form: Limited liability partnership
Bank contact: Kit Hart @ Weatherbys Private Bank
Account number: 00307363
IBAN: GB81 WBYS 6093 0300 3073 63
SWIFT: WBYSGB22XXX
Identification number: OC340314
VAT identification number: 942 1276 36
Tax identification number: 8071091039
Contact person: Tina Arena
Telephone: +447909693263
E-mail: tina@positiv-id.co.uk

Article I

Introductory provision

1. Positiv LLP declares that it has entered into an agreement with the Author (Nitin Sawhney) represented by Positiv LLP under which it is authorised to represent the Author to third parties and to enter into contracts with third parties in its name and on its behalf to the extent necessary for the fulfilment of the purpose of this Agreement.

Article II

Subject of the Agreement

1. The subject of this Agreement is the granting of a licence to the Acquirer to use a previously created work of the Author, further specified in this Agreement, for the production "**KAASH**", which premiered on 28.03.2002 at the Maison des Arts, Créteil, for the purpose of its use in the ballet production of the same name, which will be performed together with the production of **DUST**. The licence is granted by Positiv LLP representing the Author, on the terms and conditions agreed later in this Agreement.

2. The work of the Author licensed under this Agreement by Positiv LLP is the composed music (hereinafter referred to as the "Work") for the production of "KAASH" (hereinafter referred to as the "Production" or "Performance").
3. For the purposes of this Agreement, a license shall mean Acquirer's authorization to use the Work to the extent and subject to the terms and conditions further set forth in this Agreement.

Article III

Method of use of the work

1. Positiv LLP hereby grants permission to use the Work in all ways known to date within the meaning of the Copyright Act, in particular in the form of a theatrical performance of the Work in public in accordance with the provisions of Section 26(1) of the Copyright Act.
2. The music will be used as part of the performance "KAASH", in a public performance - a theatrical performance, which will be performed simultaneously with the production "DUST" in the ballet performance. The Parties agree that Acquirer is entitled to perform "KAASH" together with the Author's Work also separately.
3. Positiv LLP hereby grants consent to use the Work (composed music), as well as all its parts and derivatives in all known ways within the meaning of the Copyright Act (§ 19 (4) and § 109 (3) of the Copyright Act), but especially for public performance, processing of the Work, inclusion of the Work in the database, public distribution of the original Work, while broadcasting and publication of the audiovisual recording (in which the Work will be used) in all media ways (via the Internet, television, etc.) is possible for promotional purposes within the scope of 5 minutes maximum.
4. Positiv LLP hereby grants to the Client the consent to record the Work (or a reproduction of the Work) on a sound recording and a licence to use such recording (in whole or in part) for the purposes of studying the Works, for the purposes of promoting the Performance by all media means in a maximum duration of 5 minutes and for the purposes of archiving it and for making such recordings of the Performances (in which the Work will be used) available to the public online.
5. Positiv LLP furthermore grants the Customer the consent to use the Work, or copies of Work, in particular within the framework of the broadcast of a television programme for promotional purposes for a maximum of 5 minutes, i.e. in particular the Customer grants the Customer the consent to record the Work, or copies of the Work, on an audio-visual recording with subsequent production of the recording /AVD. In addition, Positiv LLP grants the Customer a licence to use the work or a reproduction of the work in the following ways:
 - a) making a reproduction of the work and making an original and a reproduction of the recording of the work, or a reproduction of the work for the purpose of making a recording/AVD without quantitative and territorial limitation,
 - b) the combination of the work or a reproduction of the work with another work in the performance and the recording/AVD as well as its subtitling in the recording/AVD,
 - c) the public transmission of the recording/AVD (of which the work or a reproduction of the work is part), in particular by terrestrial, cable, satellite and/or simulcast or other broadcasting, cable retransmission and internet dissemination, without quantitative or territorial limitation, for a maximum of 5 minutes for promotional purposes,
 - d) making the recording of the Works or a reproduction of the Works available to the public within the framework of making the recording/AVD available to the public without quantitative and territorial limitation, including making the recording of the Performance (in which the Works will be used) available to the public online, within a maximum scope of 5 min. for promotional purposes - in particular online on the YouTube channel of the National Theatre Košice and on the official Facebook profile of the National Theatre Košice,
 - e) public performance of the Work within the framework of public performance of the recording/AVD without quantitative and territorial limitation,
 - f) inclusion of a part of the recording in another television programme and/or in programme trailers and subsequent use of the part of the recording so used in the ways pursuant to letters a), c), e) of this paragraph of the Agreement.
6. Positiv LLP further grants to the Customer by this Agreement a licence to use such recording/AVD, in particular for the purposes of: presentation-promotional activities, study, news, documentary and/or programme trailers, archiving, for other purposes related to the operational needs of the Customer and for these purposes the Author is entitled to process/edit the recording/AVD (part thereof), combine it with another work and/or include it in an ensemble work (database), without quantitative, territorial or other material limitation.

7. In accordance with § 12 of the Civil Code, as amended, Positiv LLP further grants the Client consent to the making and use image recordings, name and surname and other expressions of a personal nature of the Author for the purposes of the promotion of the theatre, in particular for the purposes of use in the theatre yearbooks and in the subtitles of the broadcast recordings.

Article IV

Scope of the licence

1. Positiv LLP grants the Customer a licence under the preceding provision as non-exclusive, without any material, territorial or quantitative limitation. Positiv LLP grants Acquirer a license for two years from the first public performance of the production, i.e. from the date of the prepremiere of the production KAASH and DUST.
2. The license granted by Positiv LLP under this Article of the Contract is a non-exclusive license, i.e. Positiv LLP may grant a license to a third party to use the Work in the manner granted by this Contract and shall not be obliged to refrain from using the Work in the manner licensed to the Client by this Contract.
3. The Customer is entitled, if necessary, to grant a third-party consent to use the Work or a part thereof within the scope of the granted licence (sub-licence), or to assign the rights acquired by the Customer by this Agreement to a third party.
4. The scope and duration of the licence granted under this Article of the Contract shall also apply mutatis mutandis to any sub-recordings of the Work or copies thereof, if they are made under or pursuant to the exercise of any of the rights of this Article of the Contract.

Article V

Licensing fee

1. The Parties agree that the licensing fee under this Agreement shall consist of a flat-rate royalty, whereby the flat-rate royalty for the grant of a license shall be in the amount of **12.500, - EUR** excluding VAT (in words **twelve thousand five hundred EUR**).
2. The remuneration according to paragraph 1 of this Article of the Agreement shall be paid cashless by sending it to the Positiv LLP's account specified in the header of this Agreement no later than 60 days after the conclusion of this Agreement.
3. The remuneration under the preceding provisions shall be paid in the amount determined by the following procedure:
 - Positiv LLP has not, at the time of the formation of this Agreement, provided the Theatre with Positiv LLP's tax residency certificate and the tax residency certificate of the person represented by Positiv LLP, therefore, the Licensing fee under this clause of the Agreement will be paid after taxation at the rate of income tax in accordance with the Income Tax Act (whereby the rate of tax shall be 19%. In this case, the invoiced amount will be reduced by the amount of tax.
 - In the event that Positiv LLP and the person represented by Positiv LLP provide confirmation of their tax residency prior to payment of the Consideration under this Article of the Agreement, the Licensing fee will be taxed in accordance with the relevant double taxation treaty (at a 0% tax rate for the royalty).

Article VI

Special provisions

1. Positiv LLP undertakes that the Work which is the subject of this Agreement is free from defects which would prevent its proper use within the scope of the licence granted and warrants that the Work is genuine. Positiv LLP shall be liable for any damages incurred by the Acquirer in connection with the falsity of any representation made pursuant to the preceding sentence.
2. Positiv LLP declares that:
 - a) is the producer of the original sound recording (within the meaning of Section 107(3) of the Copyright Act) and has arranged for the production of the original sound recording, i.e. Positiv LLP declares that he/she is the person who has arranged for the creation (final production) of the sound recording, as its producer, if any
 - b) is authorised by the producer of the sound recording to license the sound recording.

3. Positiv LLP declares that the author's and performer's rights used in the sound recording have been duly settled within the meaning of Section 109 of the Copyright Act for the use of the sound recording or any part thereof, including the possibility of sub-licensing or assignment of the licence, without limitation as to time, subject matter, quantity and territory, to the extent and in the manner necessary for the fulfilment of the subject matter of this Agreement, i.e. In particular for the purpose of publicising the Work, including by means of online streaming, for promotional and archival purposes; otherwise, the Contractor shall be liable for the consequences of the falsity of its declaration.
4. Positiv LLP shall submit the sound recording with the composed music for the KAASH production to the Acquirer no later than 14.10.2024 by sending the recording or a link to download the sound recording to the following email addresses: balet@sdke.sk and andrej.petrovic@sdke.sk.

Article VII

The protection of personal data provision

Pursuant to Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), Positiv LLP acknowledges that it will provide the personal data of the Author necessary for the fulfilment of the purpose of this Agreement to the extent specified in this Agreement. The provision of personal data is necessary for the fulfilment of the Theatre's legal obligations arising from generally binding legislation as well as for the fulfilment of the purposes defined in this Agreement.

Article VIII

Final provisions

1. This Contract shall enter into force and effect on the date of signature by both Parties. Pursuant to Section 5a(5)(r) of Act No. 211/2000 Coll. on Free Access to Information, as amended, this Contract is not a compulsorily published contract.
2. The Parties agree that the contents of this Contract shall be considered confidential, as well as all information that the Parties learn during the negotiation of this Contract and during the performance of this Contract.
3. The Contract is concluded in Slovak and English languages, in four copies, one copy of each language version for each Party.
4. The Parties undertake that any disputes which may arise in the performance of this Contract shall be settled in the first instance by agreement. In the absence of agreement, any disputes shall be settled by the ordinary courts.
5. The Parties agree that the law applicable to this Contract and the relations arising therefrom shall be the law of the Slovak Republic.
6. Unless expressly stated otherwise in this Agreement, the relations of the Parties shall be governed by the provisions of the Civil Code as amended and Act No. 185/2015 Coll., the Copyright Act.
7. All amendments to this Contract shall be subject to mutual agreement of the Parties and shall be valid and effective only if made in the form of written amendments to the Contract.
8. The Parties undisputedly agree that the licence granted under this Contract shall extend from 17.10.2024 until the date of entry into force of this Contract, if the Contract is published in the Central Register of Contracts after that date.
9. The Parties declare that they have familiarised themselves with the contents of this Agreement and have signed it as a sign of their agreement with its wording.

Košice,

London

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Mgr. art. Andrej ŠOTH, ArtD.
General director
National Theatre Košice

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Nitin SAWHNEY
Partner
Positiv LLP