**SUBLICENSING AGREEMENT**

dated …….

**I.**

**Parties**

**Národní Filmový archiv**, příspěvková organizace (National Film Archive)

with its registered office at Praha 3, Malešická 12, Praha 3

Business ID No.: 000 57 266,

Tax ID No.: CZ 000 57 266

Bank details: Česká národní banka, Na Příkopě 28, 115 03 Praha 1

Account No. 10006-83337011/0710

xxxxxxxxxx

(hereinafter the “**NFA**”)

**and**

**Kino Polska TV S.A.** with its registered office at: Pulawska 435a, 02-801, Warsaw, Poland

Business ID No.: Registration data: KRS number 0000363674

Tax ID No.: EU VAT no. PL5213248560

represented by

xxxxxxxxxx

(hereinafter the “**Sublicensee**”)

NFA and Sublicensee hereinafter are jointly referred to as the “Parties” and separately as the “Party”.

Pursuant to the relevant provisions of Act No. 89/2012 Coll., the Civil Code, and Act No. 121/2000 Coll., on copyright, rights associated with copyright and the amendment of certain acts, as amended (the Copyright Act),

The Parties agree the following:

**Sublicensing Agreement**

**II.**

**Parties; Subject Matter of the Agreement; Film**

1. NFA is a legal entity in the form of a semi-budgetary organization, with full capacity to make legal acts, exercise rights and perform obligations, fulfilling the role of specialized archive for audiovisual archived materials and focusing, among other things, on building, protecting, restoring, scientifically processing and giving access to the national film heritage, i.e. the audiovisual archived materials, as well as universal dissemination of film culture in collaboration with Czech and foreign film and cultural institutions. Under xxxxxxxx, NFA is entitled to grant sublicenses (consent) to use the Film specified herein, from the standpoint of legal authorizations and in the scope as set forth herein below. NFA wishes to grant its consent to the Sublicensee to use the Film defined herein under the conditions stated herein.
2. The Sublicensee wishes to acquire the NFA’s consent to use the Film defined herein under the conditions stated herein.
3. The subject matter of this Agreement is NFA’s obligation to provide the Sublicensee with authorization to use the Film in the scope hereunder and the Sublicensee’s obligation to pay the remuneration to NFA for due performance of its obligations established hereunder.
4. For the purposes of this Agreement, the Film shall mean the following audiovisual works:

* all titles are mentioned in Appendix 1.

(herein jointly referred to as the “**Films**”).

1. The consent to use the Film provided hereunder includes the following types of consents:

xxxxxxxxxxxx

in accordance with specific conditions indicated in this Agreement (all types of consents pursuant to this provision for the purposes of this Agreement hereinafter jointly referred to as the “**Sublicense**”).

**III.**

**Sublicense**

1. NFA hereby provides the Sublicensee with authorization to use the Film (the Sublicense) in the scope set forth below:

1. for the following methods of use - sharing the Film in non-physical form with the public, in the following ways:

xxxxxxxxxxx

1. The Sublicensee is entitled to conduct the promotional activities (in any media and in any form), especially to exploit support materials / publicity assets received from NFA or to create and use new promotional materials of the Films, to use the titles of Films and to use fragments of the Films, especially to include part of the Film into other audio-visual works and use them in such works for the purpose of promotion of the Films in connection with use of licenses and consents granted under this Agreement. However, the Sublicensee acknowledges that the use of the Film must not impact the value of the Film, whether real or potential. The Sublicensee thus cannot use the Film in particular as a free “gift” packaged with another product and clips from the Film used in other audio-visual works according to the first sentence of this provision must not exceed a total of xxxxxxx (in aggregate for each individual audiovisual work) or be included in audiovisual or audio advertising, messages from sponsors or other forms of commercial communication, in video clips, etc.

Sublicensee is authorized to start with the promotion activities of the Films 30 days before the License Period (license time frame) start date, but must end the promotion activities no later than by the last day of the License Period (agreed time frame).

1. For each use of the Film hereunder, the Sublicensee is obliged to indicate in a suitable manner (considering the given type of use) the xxxxxxxx as the holder or exerciser of copyright to the Film, e.g. xxxxxxxxx.
2. On NFA request the Sublicensee is obliged to announce all broadcasts of the Film (premieres and repeats) in writing ; such announcement shall also include the dates and times of broadcasting and identification of the television broadcasters, including the names of particular TV Channels .
3. The Sublicensee is not entitled to perform any changes, modifications, additions, combinations or other interference with the Film unless NFA grants its express written consent.
4. The Sublicensee xxxxxx entitled to transfer all or some of the rights acquired hereunder or to grant sublicenses to third parties xxxxxxxxxx.
5. The Sublicensee is obliged to notify NFA without delay of any breach of the rights of NFA or the xxxxxxxx to the Film of which the Sublicensee learns.
6. While using the Film, the Sublicensee is fundamentally obliged to pay heed to the good name and reputation of NFA and the xxxxxxx and to contribute to their protection.
7. NFA undertakes to hand over the physical container (media) holding the Film defined herein (hereinafter referred to only as the “**Media**”) to the Sublicensee for the purpose of due use of the license granted under the following terms and conditions:

Specification of the Media:

- HD master (QT Apple ProRes 422HQ)

- all support materials / publicity assets available to NFA, i.e. for instance: music cue sheets, copyrights metrics , script, credit block, photos (ideally no less than 5 colour stills for Film), posters and artwork, teasers, trailers, bonus materials, or tv spots (textless as available / applicable);

Term of borrowing of the Media: The Sublicensee shall be obliged to return the Media to NFA no later than 14 days following the end of the License Period, as specified in Section 1 of this article hereof.

Conditions of acceptance and returning of the Media: The Media shall be sent to the Sublicensee by NFA (with no additional costs for Sublicensee than the License Fee) as digital delivery via FTP or ASPERA, within twenty (20) business days from signature hereof.

Sublicensee will have 30 days after receipt of the Media within which to notify NFA if the materials do not comply with the technical specifications agreed according to this Agreement. After the expiry of such period, the Media will be deemed accepted by Sublicensee.

If the Sublicensee considers that the materials are not technically acceptable (especially in the event of a defect/damage of the Media), then NFA shall have ten (10) days to replace such defective material and all costs connected of such replacement shall be borne by NFA. If such defective material of the Film cannot be corrected, the Agreement shall be terminated with respect to this Film and Sublicensee shall be reimbursed by NFA (to the Sublicensee's bank account) all incurred costs in relation to that Film (especially License Fee) no later than 10 days after the date of receiving by NFA the Sublicensee’s notification of partial termination of the Agreement.

Other conditions of handling the Media: The Sublicensee shall be obliged to take corresponding professional care of the Media and to take all measures required in order to protect the Media from damage, destruction, or loss. The Sublicensee undertakes to ensure at its own liability and expense that only persons having the corresponding training and technical proficiency shall be allowed to handle the Media or any part thereof. The Sublicensee shall not be authorized to lend the Media to another person or to dispose with the same in any manner in excess of the disposal specified in this agreement. Should the Sublicensee enable use of the Media by any third parties, the Sublicensee shall be liable for such use of the Media and for any damage that may be caused thereto exactly as if used or damaged by the Sublicensee proper. The Sublicensee shall not be authorized to modify or to interfere with the Media in any manner. Should the Media be used in conflict with this agreement (including, without limitation, misappropriation of, loss of, or damage to the Media), the Sublicensee shall be obliged to forthwith inform NFA of such fact and to do anything that may be reasonably required therefrom in order to reduce the incurred or pending damage.

**IV.**

**Remuneration**

1. The Sublicensee undertakes to pay NFA for the use of the Film under the conditions set forth herein the License Fee in the following amount, subject to applicable withholding tax rate according to rules stated in point 5. below:

* xxxxxxxxx

The total remuneration for use of all Film under this Agreement thus amounts xxxxxxxx.

The aforementioned total remuneration is the total amount that the Sublicensee shall pay NFA (subject to applicable withholding tax rate) in respect of all rights granted to Sublicensee under this Agreement.

1. The Sublicensee shall pay the remuneration set forth in Article IV(1) hereof to NFA’s bank account number set forth in the header hereof on the basis of a regular invoice with all essential features of a tax document as stipulated by law, with a  thirty (30) day maturity date set by NFA according to the Payment Schedule as set out below.

Payment Schedule:

1. xxxxxxxx

If NFA delivers any of the invoices to the Sublicensee later than thirty (30) days prior to the payment date indicated on the invoice (according to the Payment Schedule(s) as described above), the Sublicensee is obligated to make the payment within xxxxxx from receiving such invoice.

1. In the event that the Sublicensee is in delay with payment of the remuneration pursuant hereto, the Sublicensee undertakes to pay NFA interest on late payment in the amount of xxxxxx for each full day of delay. However, this does not apply to delaysdue toNFA’s failure to provide documents related to withholding tax.
2. In the event that the Sublicensee is in delay with payment of any part of the remuneration in the maturity period, NFA shall summon Sublicensee for payment the outstanding installment within fourteen (14) days. If Sublicensee fails to make payment in the aforementioned time, NFA is entitled to withdraw from this Agreement with immediate effect.
3. Withholding tax settlement clause:
4. If Sublicensee is required, pursuant to any applicable law or regulations or practice of any competent authority, to make deduction in respect of withholding tax, imposed on any amount payable to NFA, Sublicensee shall, if possible, apply the exemption or deduct the withholding tax from the amount due to NFA at the lowest possible withholding tax rate provided by Polish tax law or the relevant Double Tax Treaty (if applicable).
5. Before delivery of the first invoice, NFA shall provide Sublicensee with relevant – pursuant to any applicable law or regulations or practice of any competent authority – documents allowing the application of exemption from or preferential rate of withholding taxation, in any case including but not limited to:

* statement of Beneficial Owner status towards the payment based on this Agreement (constituting Appendix 1 to the Agreement) and
* valid and actual certificate of tax residency of NFA, confirming NFA’s tax residency in the meaning of relevant Double Tax Treaty at the date of payment.

The documents regarding each particular payment should be delivered to the Sublicensee before that payment is due and renewed at least once a year or every 12 months (in case of certificate of tax residency and statement of Beneficial Owner status) or at any change of state of facts covered by such documents.

Certificate of tax residency should be delivered to Sublicensee in (i) paper original, or (ii) hard copy certified by a notary and the authority competent to draw up and certify the documents, if such documents are to be certified in country of NFA tax residence, or (iii) hard copy certified by a notary if such documents are to be certified in the Republic of Poland, or (iv) original digital document, as issued by the relevant tax authorities of NFA’s state of tax residence.

In case NFA fails to deliver the required documents the renumeration due to NFA hereunder may be

* diminished by the amount of withholding tax calculated at the standard rate provided by xxxxxxxx
* deferred by NFA to a date to be nominated by NFA.

1. NFA confirms and acknowledges that is subject to income taxation in the country of NFA’s tax residence and is not exempt from income tax due on the total amount of its income, regardless of the source of this income.
2. NFA confirms and acknowledges that conducts genuine business activity in NFA’s state of tax residency and is a beneficial owner regarding the payments received based upon this Agreement, which means that NFA receives the payments for its own profit and is not an agent, intermediary, trustee or any other entity obliged to transfer all or part of the payment upon another entity.
3. NFA shall immediately inform Sublicensee about any change of circumstances stated in points c) and d) above, as well as about any change of circumstances stated in the statement of Beneficial Owner status towards the payment based on this Agreement (constituting Appendix no 1 to the Agreement)
4. Sublicensee shall provide  NFA , within the time and form defined by Polish tax regulations, information on income derived by NFA on the territory of the Republic of Poland subjected to withholding taxation based on Polish tax law and the amount of tax withheld from such income, issued in the form specified by Polish tax law (one IFT declaration for each calendar year send to NFA till 31st March of the next year).

**V.**

**Duty of Confidentiality**

1. NFA informs the Sublicensee and Sublicensee takes note that it is aware that all data learns of under this Agreement is not publicly accessible comprises NFA’s trade secret. Information comprising trade secret is deemed to be, for instance:

* information concerning NFA’s current market position + internal organization,
* information on NFA’s publishing plan, marketing plans and upcoming campaigns,
* information on NFA’s new products and services.

1. The Sublicensee undertakes to maintain complete confidentiality regarding this trade secret and to return - on NFA request - all documents containing the trade secret after terminating the collaboration or at any time upon NFA’s instruction and not to allow the trade secret to be disclosed to any unauthorized person at any time after the date hereof. This obligation shall continue to bind the Sublicensee even after this Agreement is terminated.
2. The Sublicensee undertakes never to use this trade secret in any way, directly or indirectly, in its own favor or otherwise, other than in the interest of NFA and in accordance with its instructions.
3. The Sublicensee undertakes to use any materials (including graphic depictions, logos, trademarks, etc.) acquired from NFA or entrusted by NFA to a third party solely for the purposes hereof.
4. The Parties agree to keep strictly confidential all terms and conditions of and financial matters arising from this Agreement. Neither party shall disclose any term or condition of this Agreement or any financial matter arising from this Agreement to any third party without the written consent of the other Party, unless it is required by legal obligation or limited only to their respective attorneys, accountants, lending banks, or to such third party or parties as may be required to carry out and perform this Agreement and in such event, such disclosure shall be strictly limited only to that information which is required for such performance.

**VI.**

**Additional conditions**

In order to perform this License Agreement and only during the License Period:

1. Sublicensee has the right for internal purposes to record and reproduce/multiply of records of the Films, transfer the recordings of the Films to the memory of computers, servers and internal computer networks and to make necessary archives.
2. NFA will provide Sublicensee the copyright notice, which should be put on the materials prepared and used for the purpose of the marketing/promotional activities.
3. Sublicensee may add the logo of licensed services/Channels while the Film is broadcast, and, if not already provided in the credits, the titles and names of the authors of the language versions. In order to enable Sublicensee to make dubbings, sub-titled or voice-over versions of the Film (language versions) and to add to the Film’s credits the titles and names of the authors of the language versions, NFA shall provide Sublicensee within the License Fee (if available) relevant materials (e.g. dialogue lists).
4. Sublicensee may offer a “virtual pause” function, whereby a subscriber’s viewing of the Film may be interrupted at the subscriber’s request and resumed without any additional payment by the subscriber.
5. Sublicensee is entitled to display graphic/ visual elements such as coming-next, pop-ups, tickers, scrolls etc. on screen while the Film is broadcasted. Sublicensee guarantees that the above mentioned graphic/ visual elements shall not interfere with the Film contents nor shall they impair the Film aesthetic quality.
6. Sublicensee has the right to up-convert or down-convert and exploit any of the content to UHD, SD, HD, 3D and/or any additional video format.
7. Licensee has the right to interrupt broadcasting of the Films with commercial spots appropriately to valid local regulations.

**VII.**

**Contact persons**

**NFA:**

xxxxxxxxx

**VIII.**

**Warranties and liabilities**

* + - 1. Each Party hereby warrants and represents it has the legal right and authority and financial capacity to enter into and perform this Agreement.
      2. NFA warrants that he holds all rights necessary to grant sublicense in the scope specified in this Agreement and warrants that during the term of this Agreement the rights held to the Films shall not be lost or limited, except the situation regulated in art. IX point 1 below.
      3. NFA warrants that Films are free from any legal defects, are not encumbered by third party rights, do not violate any third party rights including personal rights, copyrights, related rights.
      4. NFA shall be liable for damages incurred by the Sublicensee in the full amount as a result of loss or limitation by NFA of the rights covered by this license, as well as, in the case of falsification of any of the NFA's representations and warranties, shall relieve the Sublicensee from liability for third party claims arising from the loss or limitation of these rights and shall undertake to their full satisfaction, as well as pay reasonable costs and expenses incurred in connection with the above by the Sublicensee.

**IX.**

**Final Provisions**

1. xxxxxxxxx
2. The Sublicensee acknowledges and agrees that the original or a counterpart of this Sublicensing Agreement can be handed over to the xxxxxx at any time, during the duration or even after the termination of this Agreement.
3. The Parties may terminate or withdraw from this Agreement only under the conditions stipulated in generally binding regulations or in this Agreement.
4. This Agreement has been executed in two counterparts, each with the validity of an original, one for each of the Parties.
5. The Parties undertake that, in the event of disputes regarding the contents of and performance under this Agreement, they shall make every effort that can be reasonably expected of them to ensure that the disputes are settled amicably, in particular to eliminate the circumstances leading to the right to withdraw from the Agreement or rendering it null and void.
6. If any of the arrangements in this Agreement become invalid or ineffective due to a change in legal regulations or for any other reasons, such provisions shall be brought into compliance with the legal standards. The Parties represent that the remaining provisions of the Agreement shall remain valid, unless their purpose makes it impossible or the provisions are not severable.
7. Amendments to this Agreement must be made in written form (which for the purposes of this provision does not include electronic communication) and the signatures of both Parties’ representatives must be on the same document.
8. Both Parties represent that no obligations to third parties prevent them from concluding this Agreement.
9. This Agreement contains the complete arrangements regarding the subject matter of this Agreement and all matters the Parties should have arranged and wished to arrange in the Agreement and which they consider important for the binding nature of this Agreement. No expression of the Parties made during the negotiations regarding this Agreement or expression made after concluding this Agreement may be interpreted in conflict with the express provisions herein and does not establish any obligation for either of the Parties.
10. The Parties do not wish for any rights and obligations other than those established hereunder to be derived from the current or future practice between the Parties or the usual practices in general or in the industry concerning the subject of performance hereunder, unless expressly stipulated otherwise herein. In addition to the above, the Parties confirm that they are not aware of any business practices or customs established between them.
11. The Parties expressly confirm that the basic conditions hereof are the result of negotiations between the Parties and each Party has had the opportunity to influence the contents of the basic conditions hereof.
12. The Parties represent that they have understood and agree to the contents of this Agreement, both as a whole and in its individual provisions, in witness whereof they hereunto set their hand:

|  |  |
| --- | --- |
| Prague dated ..  **NFA:**  \_\_\_\_\_\_\_\_\_\_\_\_\_  **National Film Archive**  xxxxxx,  General Director | Warsaw dated …..  **Sublicensee:**  **Kino Polska TV S.A.**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_  xxxxxxxx  \_\_\_\_\_\_\_\_\_\_\_\_\_\_  xxxxxx |

**Appendix 1.**

**The list of Films:**

**xxxxxxxx**

**Appendix 2.**

**Definitions:**

**BasicPay TV**shall mean an audio-visual point to multipoint linear broadcast programming service or channel delivered by means of the Authorised Delivery Network for exhibition to subscribers upon their payment of monthly or other regular subscription and/or access fees charged for a non-premium package or packages of services (including a package which is required to be purchased or accessed before access to other television services is permitted) containing such service or channel (excluding, for the avoidance of doubt, Premium television) where such service or channel is not capable of being subscribed for on an individual basis.

**SVOD** means the encrypted transmission for exhibition of an audio-visual content,

without any advertising or commercial interruptions, for personal viewing only by

subscribers within the Licensed Territory by means of a point-to-point

telecommunications system originating from a distance and delivered from a digital

storage device in the Licensed Territory: (A) at a time selected by a subscriber in such

subscriber’s sole discretion, (B) for which such subscriber pays a subscription fee

(which fee is unaffected in any way by the purchase of other programs, products or

services).