**MUSIC PRODUCTION AGREEMENT**

**No. SO-23/609**

**Česká filharmonie** (Czech Philharmonic)

having its seat at Alšovo nábřeží 12, 110 01 Praha 1, Czech Republic

Id. No.: 00023264, VAT No.: CZ0023264

represented by Robert Hanč, general manager

(“**ČF**”)

and

**HOLGER URBACH Musikproduktion**

having its seat at Am Hang 9, 40882 Ratingen, Germany

VAT No.: DE 275175713

registered in Germany

represented by Holger Urbach

(the “**Producer**”)

conclude on the day, month and year set out below the following agreement (the “**Agreement**”):

**Article I**

**Subject Matter of the Agreement**

1. The Producer undertakes to provide to ČF services (the “**Services**”) and create and hand over to ČF outputs (the “**Deliverables**”) specified below no later than on the date(s) set out below. The Services and Deliverables concern the recording of certain performances of musical works by ČF as specified in paragraphs 2, 3 and 4 hereof (the “**Performances**”). In consideration for proper and timely performance of the Services and delivery of the Deliverables ČF undertakes to pay the agreed price to the Producer, the total and final amount of which is also specified below.
2. Repertoire:
* **Gustav Mahler: Symphony No. 3**
1. Date and time:

  **Mon 29 January 2024:** 14:00-17:00 rehearsal (not recorded)

**Tue 30 January 2024:** 10:00-12:00, 13:00-16:00 rehearsals (audio recording)

 **Wed 31 January 2024:** 10:00-12:00 dress rehearsal (audio recording)

 19:30-22:00 concert (audio recording)

**Thu 1 February 2024:** 19:30-22:00 concert (audio recording)

**Fri 2 February 2024:** 19:30-22:00 concert (audio recording)

22:00-22:30 audio patching session (if needed)

 **Sat 3 February 2024:** 10:00-13:00, 14:00-16:00 audio patching sessions

 **XX XX XX XX:**

Post-production (AUDIO: music editing incl. 1st and 2nd edit; mixing; mastering; CD pre-mastering; final master checking and approving; preparing stems)

1. Place: **Rudolfinum, Prague, Czech Republic (recording)**

**Ratingen, Germany (post-production)**

1. The Producer undertakes to make high-quality audio records of the Performances (the “**Recordings**”) in collaboration with **XX XX** acting as sound engineer (the “**Sound Engineer**”). The Producer undertakes to engage the Sound Engineer at the Producer’s own cost to assist the Producer in all Services and Deliverables under this Agreement.
2. The Services shall include:
3. artistic and technical supervision of ČF’s orchestra rehearsals, recording sessions and balance sessions (or, in case of live recording, rehearsals, dress/general rehearsals, concerts and patch sessions);
4. complete editing of the Recordings in 24bit 96kHZ format, including the first and second editing and all necessary subsequent corrections pursuant to relevant artists’ suggestions; if necessary, this includes corrections made together with the relevant artists, using the Producer’s editing studio;
5. artistic and technical supervision of mixdown and corrections of mixdown;
6. carrying out of approval sessions with all relevant artists.
7. The Deliverables shall include:
8. the edited Recordings in the agreed format;
9. masters containing the completely edited and mixed Recordings, created in accordance with Decca’s house production standards for CD and digital releases, in any event in 24bit 96kHZ format; these masters shall be delivered to ČF by the Producer for each recorded musical work no later than within **XX XX XX** after completion of its recording provided that the relevant artists provide comments on the first edit within four weeks after it is provided to them;
10. master audio record in the format of 44k1/16bit WAV files, DDP master for CD and the edited multitrack, bounced stems in the format PCM WAV Mono 24b/96kHz files, all delivered on a suitable hard disk, which is provided to the Producer by ČF, with all relevant accompanying data. The master audio record may be instead delivered by an internet file transfer in accordance with a mutually agreed postproduction schedule. In case of an internet file transfer, a MD5 check is required. The said hard drive with master audio record (unless already delivered), DDP masters, edited multitrack and stems shall be delivered to ČF by the Producer no later than within **XX XX XX** after the agreed time for delivery of masters pursuant to b) hereof, provided that all relevant data (i.e. catalogue numbers, ISRC and EAN) necessary for creating such DDP master have been submitted by ČF to the Producer.
11. The Producer is engaged as an independent contractor and no relationship of employment shall arise between the Producer and/or the Sound Engineer and ČF.
12. The Producer shall be obliged to perform the Services and Deliverables personally or through the Sound Engineer; the Producer shall not use any other subcontractors unless ČF expressly approves them in writing.
13. For the case that during the performance of the Services and/or Deliverables the Producer participates in, or attends, any event organised by ČF, the Producer agrees that ČF and subjects cooperating with ČF shall be entitled to make recordings from any such event (including audio visual), which may also record the Producer, and shall be entitled, at their discretion, to process and exploit any such recordings, hand them over to third persons or publish them through any media. The Producer confirms that the making and exploitation of any such recordings, or any other handling of them, are reflected in the agreed fee and the Producer shall not be entitled to any further remuneration for them.
14. The Producer undertakes to maintain confidentiality of all information obtained in connection with this Agreement or with the Services and Deliverables unless it is publicly available and shall not disclose such information to any third person without consent of ČF. This obligation shall last even after the Services and Deliverables are performed.

**Article II**

**Fee**

1. In consideration of the complete and proper Services and Deliverables and of rights and licence granted in accordance with this Agreement the Producer shall be entitled to fee calculated from the sum of the following items:

Recording in XX XX XX XX (X days): **EUR XX**

Audio postproduction in XX XX XX XX: **EUR XX**

**The total fee is EUR 12,500**

VAT 0% (reverse charge)

1. The fee shall be paid on the basis of an invoice issued by the Producer to the bank account of the Producer set out in the invoice. The fee shall be paid in the following instalments:

**EUR XX** after completion of all recording **(audio)**

**EUR XX** after performance of all Services and Deliverables **(audio/CD)**

The Producer shall issue an invoice for each instalment after the relevant milestone is reached. The invoice shall provide for a payment period of at least X days.

1. Unless explicitly agreed otherwise, the agreed fee comprises any and all costs of the Producer expended in connection with this Agreement, including also any costs of the Sound Engineer.
2. ČF undertakes to pay the Producer’s expenses on travel to and from the recording sessions in Prague and on accommodation in Prague during the recording sessions, in respect of the Sound Engineer and of one other person on behalf of the Producer. The compensation of these expenses is payable together with the fee, unless agreed otherwise.

**Article III**

**Rights and Licence**

1. The Parties have agreed that ČF shall have the rights set out below, in addition to any other rights granted by this Agreement or by a separate agreement, in respect of any Recordings and the Producer hereby grants such consent, rights and licence to ČF to:
2. broadcast and/or communicate the Recordings to the public by any means, (i) including but not limited to television, radio, internet and any other forms of media or devices now known or hereafter devised and (ii) including but not limited to broadcasting as a broadcaster (s. 21 of the Czech Copyright Act), transmission provider (s. 22 of the Czech Copyright Act) or broadcast presenter (s. 23 of the Czech Copyright Act), presenting and/or transmitting a Recording (s. 20 of the Czech Copyright Act) and communicating by computer or similar network [s. 18(2) of the Czech Copyright Act; this shall include, but not be limited to, live webcasts and non-interactive streaming and downloading]; Broadcasting and/or communicating to the public may but need not be live;
3. insert a logo or other designation of a broadcaster and other text, images and/or other information into the broadcast; interrupt the broadcast Recording and insert advertisements or other material; present the broadcast Recording via split-screen or by another form of modified visual which in a separate section contains advertisement, sponsoring, self-promotion or other text or images (this provision shall be understood to also extend to situations in which a part of the screen is occluded by superimposed information of the aforementioned kind); provide the Recording with subtitles, dubbing or voice-over; promote the broadcast and the broadcaster worldwide in all usual ways (such as press coverage, trailers or other publicity on TV, radio or other channels, using photographs, still images or excerpts on the internet, in particular the website of the broadcaster etc.);
4. make and edit the Recordings for any purposes; reproduce (in particular create copies of) the Recordings; distribute, lease and/or lend copies of the Recordings; communicate the Recordings to the public and exploit the Recordings in any other way or manner of use.
5. Unless explicitly agreed otherwise, any rights and/or licence granted under this Article shall be exclusive, without limitation by time (i.e. shall last for the whole period of duration of rights of the Producer), quantity (e.g. number of broadcasts, copies etc.) or territory (i.e. shall be worldwide) and independent of whether the use is commercial or non-commercial.
6. Remuneration for the grant of rights pursuant to this Article shall be deemed included in the fee agreed in Article II hereof.
7. ČF is not obliged to make use of the Recordings. ČF shall be entitled to use at its discretion only a part of any Recordings. ČF shall be entitled to edit and adapt the Recordings for the purpose of their use allowed by this Article and to combine them with other works, performances and recordings for these purposes.
8. The Producer hereby warrants to not have granted an exclusive or non-exclusive license in respect of the same Recordings to any third person.
9. Any tangible assets delivered to ČF by the Producer during performance of Services and Deliverables (e.g. any data storage devices) become property of ČF upon delivery and their price shall be deemed included in the fee agreed in Article II hereof.
10. The Producer hereby warrants that the Sound Engineer has granted the Producer all rights of the Sound Engineer and licence to exercise them in respect of the Recordings so that the Producer may in turn grant all rights and licence in accordance with this Agreement to ČF, and the Producer explicitly grants all rights and licence as set out in this Article on behalf of both the Producer and the Sound Engineer.

**Article IV**

**Credit**

1. ČF shall give the Producer and the Sound Engineer an appropriate production credit on all CDs, DVDs or other similar devices holding copies of the Recordings, so far as technically reasonably possible and substantially in the following form:

On CDs: Producer: **XX**

Sound Engineer: **XX**

Editing and Mastering: **XX, XX**

1. ČF shall provide the Producer and the Sound Engineer each with four gratuitous CDs, DVDs or other similar devices holding copies of the Recordings without undue delay after their manufacturing.

**Article V**

**Termination**

1. ČF shall be entitled to terminate this Agreement by notice delivered to the Producer at any time. However, in such case ČF shall be obliged to pay to the Producer a fee corresponding to the already performed Services and Deliverables.
2. The Parties acknowledge that this Agreement is made during a period of SARS-COV-2 coronavirus epidemic in the Czech Republic and abroad, and various extraordinary restrictions of activities of the Parties or third persons may ensue therefrom. If, as a result of such situation, it is not possible to carry out the recording and other activities envisaged hereby (their realisation being legally or factually impossible, or possible only with undue effort or costs) and ČF utilizes its right to terminate this Agreement by notice delivered to the Producer, the Producer shall not be entitled to any damages or any other compensation or any fee.

**Article VI**

**Validity and Effectiveness**

This Agreement becomes valid upon its conclusion and effective upon its publication in the Register of Contracts pursuant to Act No. 340/2015 Coll., as amended. Publication of this Agreement in the Register of Contract pursuant to Act No. 340/2015 Coll., as amended, shall be procured by ČF. The Parties acknowledge that this Agreement does not contain any provisions which should not be published in the Register of Contracts pursuant to Act No. 340/2015 Coll., as amended. Any Party which provided any personal data in this Agreement consents that they may be contained in the text of the Agreement published in the Register of Contracts pursuant to Act No. 340/2015 Coll., as amended; if the Party provided any personal data concerning a third person, the Party declares and is responsible that it has such consent from the concerned third person if such consent of the third person is necessary under the applicable law.

**Article VII**

**Final Provisions**

* 1. This Agreement shall be governed by the laws of the Czech Republic, in particular by relevant provisions of the Act No. 89/2012 Coll., the Civil Code, as amended, to the exclusion of any of its conflict of laws rules. Any difference, controversy, or dispute arising between the Parties shall be discussed in a friendly manner and settled in good faith by the Parties. Failing that, any disputes arising between the parties out of this Agreement or in connection herewith shall by heard and determined exclusively by ordinary courts of the Czech Republic; the locally competent court shall be that for the legal seat of ČF.
	2. Should any provision of this Agreement be found invalid, ineffective or unenforceable, the Parties undertake to replace such provision by a provision valid, effective and enforceable, whose purpose and meaning shall be identical, or as similar as possible, to the purpose and meaning of the invalid, ineffective or unenforceable provision.
	3. This Agreement is executed in two counterparts, of which each Party shall receive one.
	4. Any changes or supplements to this Agreement shall be carried out in writing by means of numbered amendments executed by both Parties.
	5. ČF shall be entitled to assign this Agreement or any rights arising under this Agreement to any third party and the Producer hereby grants consent to any such assignment.

Drafted by: XX XX, XX XX

Approved by: XX XX, XX XX

Given in Prague on December 12 2023

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 ČF Producer