

## **GENERAL TERMS AND CONDITIONS CONTRACT FOR SERVICES PUBLIC MEDIA INSTITUTIONS 2016**

### **Definitions**

*Contract:* the contract between a media institution and a provider, including the accompanying General Terms and Conditions, for the provision of certain services outside an employment relationship.

*Performance:* the work that the provider is to perform for the media institution under the contract for services, including the provision or processing of contributions, separable from the production or otherwise, such as portraits, concepts, characters, software, programme titles, implementations, works and physical carriers of these.

*The Client:* the media institution

*Provider:* the party with which the media institution concludes the Contract.

### **Article 1 Publicity and activities for third parties**

Publicity and contacts with the media by the Provider in connection with the Performance and cooperation between parties shall take place only after consultation and with the consent of the Client. The Provider shall make no mention of the award of the contract and shall not use the Client's name as a reference in publications and advertising expressions without the consent of the Client.

### **Article 2 Laws and regulations**

The Provider shall observe the applicable laws and regulations, such as the Personal Data Protection Act and in particular, the statutory provisions of the Media Act and policy rules and decrees based on the Media Act, in particular those concerning advertising, sponsoring, provision of services to third parties relating to profit-making by third parties, and the prohibition on (providing for) profit by Provider and/or third parties. Without the written consent of the Client, the Provider is not permitted to require or accept any valuable benefit from third parties, for itself or for other parties, which relates directly or indirectly to the collaboration with the Client. The Provider shall provide all assistance necessary for compliance with the statutory tasks of the Commissariat for the Media. The Provider shall also observe the principles of the integrity policy applying for public broadcasting. This integrity policy is available on the website of the Netherlands Public Broadcasting Foundation (NPO).

### **Article 3 Third party claims and indemnification**

The Provider indemnifies the Client against all costs and third party claims relating to the Contract (such as breaches of intellectual property rights or media law rules).

### **Article 4 Surrender of documents, information carriers, equipment, etc.**

At the Client's earliest request, and in any event on termination of the Contract, the Provider shall immediately hand over to the Client all documents, correspondence, tapes, equipment and other materials relating to the Contract that are in the Provider's possession.

The Provider has no retention rights or other suspension rights.

### **Article 5 Insurance**

The Provider shall contract all relevant insurance relating to the Performance (such as third party liability and disability insurance), unless these costs are explicitly borne by the Client. At the Client's request, the Provider shall assign claims against its insurer in relation to the Performance to the Client.

### **Article 6 Rights**

On behalf of employees and/or third parties that the Provider deploys, the Provider hereby transfers – if possible, in advance - all rights and claims (for compensation) relating to the Performance and the physical carriers of this to the Client (including copyrights, neighbouring rights and trademark rights). The Client therefore holds the exclusive, transferable and all-encompassing rights to the Performance or parts thereof, world-wide and permanently, simultaneous and/or on demand and/or interactive or otherwise and in processed form or otherwise, via all current and future technical means, to be used by itself or third parties, in any event including reproduction, recording, processing, publication, provision and distribution rights in the broadest sense and funds receivable as a result of such use. The transfer also includes parts of the Performance that are not included in the final programme but that were realised in relation to the Contract (residual material).

If and in as far as such rights cannot be transferred (in advance), the Provider hereby grants the Client, to the exclusion of all others and the Provider itself, the irrevocable mandate and power of attorney to exercise those rights. The Provider shall provide full assistance for all future actions for the transfer and exercise of rights and claims for compensation.

The above granting of rights includes, but is not limited to:

- The encoded or non-encoded publication or (on demand) provision for a general or special audience or for individual persons, via ether transmitters, satellite, telephone connections, cable and internet to landline or mobile appliances such as televisions, computers, telephones etc. and all other transmission of signals or recording via landline or mobile broadcasting, telecommunications or other communications networks and services;
- Use for cultural, charitable, educational and scientific purposes, such as presentation at festivals and for educational institutions, museums and archives (including the Netherlands Audio-Visual Institute);
- Use for informative, promotional and publicity purposes, including (electronic) programme guides, trailers, (broadcasting channel) promotions, pre-screenings and presentation by the Dutch Radio and Television Advertising Foundation (STER) for advertisers;
- Re-use of (parts of) the Performance in other (broadcasting channel) productions;

- Use via subscriptions, pay-per-view or conditional access systems; closed circuits; room presentations; group presentations; sale or licensing of (broadcasting) rights; marketing, sale, rental or other offers of recordings (audio and/or visual carriers, downloads, books, photographs etc.), and of all types of products or services that contain titles, characters, figures, scripts, texts, scenes or situations from the Performance;
- The right to operate music compositions and/or song texts and/or recordings, including via a music publication contract;
- The right to record, reproduce and process the Performance, including through digitisation, making interactive, shortening, translating, sub-titling and post-synchronisation, and to save the Performance (in archives or otherwise).

The Provider guarantees, including on behalf of the employees and/or third parties that it deploys, that it has and will retain free disposal of all rights that it must grant to the Client pursuant to the Contract and indemnifies the Client against all third party claims in that regard. The Provider waives reproductive rights that would be payable by the Client.

#### **Article 7 Termination**

Without prejudice to what is agreed elsewhere, the parties in any event have the right to dissolve the Contract (partially or fully) in writing, with immediate effect and without liability for compensation for damage, if:

- Compliance with the Contract is temporarily or permanently impossible, due to force majeure or otherwise, in which cases no notice of default is required;
- The parties fail to comply with their contractual obligations in other ways, in as far as is reasonable following notice of default;
- A suspension of payment, a bankruptcy or a debt rescheduling arrangement is applied or filed for or awarded;
- One of the parties goes into liquidation or control over its business is acquired by a third party;
- A change of circumstances arises that no longer warrants maintaining the Contract.

The Client may cancel the Contract at any time pursuant to the contract for services provisions laid down in the Dutch Civil Code, in observance of a reasonable notice period, without liability for compensation for damage. If the Client cancels the Contract on grounds that are not attributable to the Provider, the parties shall conduct reasonable talks on a potential different date for the execution of the Performance or a replacement, similar order. If the execution of this (replacement) Performance entails extra work for the Provider, the Client shall pay an extra fee for this, amounting to a maximum of 25% of the original fee.

In the event of early termination, the Provider has the right to payment in proportion to the work already performed and the quality provided. In all cases, the Client acquires and retains the rights to the Performance provided up to that time and its carriers, as described in Article 6. The Client is therefore explicitly free to (arrange to) further develop, adjust and to (arrange to) use the Performance in compliance with the granting of rights described in Article 6.

The Client may exercise all other statutory rights in the event of non-compliance by the Provider, such as dissolution, claims for compensation for damage, suspension and settlement of amounts owed.

#### **Article 8 Transfer of rights and/or obligations**

Rights and/or obligations may be transferred, following notification of the Provider, within the national public media system. No further consent of the Provider is required for the exercise of the rights referred to in Article 6.

#### **Article 9 Derogations from the Contract**

Additions to or derogations from the Contract are binding only if recorded in writing by the parties.

#### **Article 10 Confidentiality**

The Provider shall use business data of the Client, data concerning the Performance and other confidential information solely for the execution of this Contract, shall maintain strict confidentiality of this information in relation to third parties and shall not make it publicly accessible in any way.

#### **Article 11 Certificate of Good Conduct**

At the Client's request, the Provider must submit a Certificate of Good Conduct (VOG). If the Provider is a legal entity, it must submit a Certificate of Good Conduct for a Legal Entity (VOG RP) and the natural person who executes the order must submit a Certificate of Good Conduct for a natural person (VOG NP). The submitted VOG may not be more than two months old.

#### **Article 12 Partial nullity and conversion**

If any part of the Contract is null and void, qualifies for nullification or is otherwise invalid, this is without prejudice to the validity of the remainder of the Contract. The invalid part will then be replaced by a new part agreed by the parties, which most closely reflects their intentions.

#### **Article 13 Applicable law and settlement of disputes**

The Contract is governed by Dutch law. Disputes relating to the Contract shall be filed with the competent court in Amsterdam.

#### **Article 14 Application of General Terms and Conditions**

The provisions of the Contract are decisive in the event of any derogation from these General Terms and Conditions. The General Terms and Conditions shall be handed to the Provider or, if this is not reasonably possible, shall be made available for inspection at the Client's offices and shall be sent to the Provider immediately on request, free of charge. The General Terms and Conditions are available on the website of the NPO. General Terms and Conditions of the Provider are explicitly excluded from the Contract.