

Tender procedure: 10040388
Annex Audio / Video production

1 Implementation

- 1.1 The Contractor shall handle the organisational, artistic and practical implementation of the production. This includes, among other things:

Drawing up the shooting schedule, obtaining a commitment from everyone involved in production, procuring all items of equipment required for production (e.g. props, etc.) and carrying out administrative tasks such as accounting, correct payment of tax, reporting on the production schedule.

- 1.2 Responsibility for obtaining permission to film lies with: the Contractor.

The Contractor is responsible for complying with local filming permits and for meeting all other conditions.

- 1.3 The Contractor shall keep GIZ continuously informed about the course and status of production without being asked. For this purpose, GIZ shall receive reports on the production status and an overview of expenditures on a regular basis, at agreed intervals. GIZ shall have unrestricted access to all shooting and production locations including the facilities where post-production is handled.

- 1.4 GIZ reserves the right to exert a determining influence on the production at any stage of implementation, especially, with regard to its form and content. If a measure determined by GIZ leads to additional costs and if the Contractor pointed this out in writing in advance, GIZ shall bear the costs of this measure.

- 1.5 The Contractor is not entitled to transfer its rights and obligations under the present contract to third parties or to assign exercise of these rights and obligations to third parties. Subcontracting of third parties by the Contractor for production purposes is subject to GIZ's written approval.

- 1.6 The invoicing is based on a time record sheet or, in the case of subcontracted services, the contractors' invoice after delivery of the respective product(s).

The remuneration shall in particular cover the performance and delivery by the Contractor of the production, the settlement of all contractual transfers by the Contractor of rights of use under copyright and ancillary copyright law, contractual transfers of other

rights and settlement of the additional services required in order to utilise those rights; it shall also cover all other expenses that may arise in connection with this contract.

Any costs in excess of the above that are not to be borne by GIZ in accordance with this contract, shall be borne by the Contractor.

2 Copyright and rights of use

- 2.1 The Contractor shall transfer to GIZ in irrevocable, transferable and exclusive form all rights of ownership, rights of use under copyright and ancillary copyright law and other rights to which it is entitled or may become entitled or that it has acquired or may acquire in connection with the provision of services in accordance with the contract; this shall apply without restrictions on time, place or content. The Contractor is obliged to provide information about the scope of these rights at GIZ's request by submitting the corresponding contracts.
- 2.2 The Contractor shall, in particular, transfer to GIZ the following exclusive rights exempt from restrictions on time or place:
- a) Broadcasting right, i.e. the right to make the production publicly available as often as required in its complete form including all the corresponding recorded material (images and audio) using any broadcasting method or format (transmission or re-transmission by radio or television) including cable, wireless, internet, satellite and other technical broadcasting methods, wholly or in part, including as part of another production. This applies to any number and all possible types of broadcast or similar technical equipment, whether using analogue or digital technology, linear or interactive use, irrespective of the technical design of the broadcast and including its use in online services. Transmission may also take place via video text signals to provide subtitles for video text.
 - b) On-demand right, i.e. the right to provide the production to a large number of users by means of digital and other storage media and transmission technology so that these users can receive the production on individual demand using a television and/or other device, including for interactive use.
 - c) Database and telecommunication right, i.e. the right to feed the production, or segments or elements thereof, into electronic databases and data networks and to transmit it/them on demand to users, either at a charge or free of charge, by means of digital or analogue memories or transmission technology via cable, satellite, electronic data telephone services, online services or other transmission

channels, for the purposes of acoustic and/or visual reproduction, copying, further transmission and/or storage and interactive use on computers, TVs or other reception devices. This includes the right to redesign the production, in as far as this is required for technical reasons, for the above purposes.

- d) Video programming right, i.e. the right to utilise the production, wholly or in part, by means of duplication and distribution (sale, rental, leasing, etc.) on all technical, digital and analogue audiovisual systems for commercial or non-commercial purposes. This includes the right to provide the “production on demand” to a restricted group of recipients or an undetermined group of individuals.
- e) The right to duplication and distribution, i.e. the right to duplicate and distribute the production within the scope of the conceded types of use, also on other audio/visual storage media than those originally used.
- f) The right of voice synchronisation (dubbing), i.e. the right to synchronise or post-synchronise the production in all languages, including the original language (also by third parties) or to create subtitles and voice-over versions.
- g) Ancillary printing rights, i.e. the right to produce, duplicate and distribute representations of content from the scripts.

The list of rights to be acquired by the Contractor shall not include the rights managed by the German Society for Musical Performing and Mechanical Reproduction Rights (GEMA) and the rights to music managed by Gesellschaft für Leistungsschutzrechte (GVL, German Collecting Society for Performance Rights). However, the Contractor shall obtain the unpaid consent of the rightsholder (originator, music publisher or music publishing firm) in cases involving the use of classical or pop songs or passages from dramatico-musical works in other dramatico-musical or dramatic works or in television productions or for other audiovisual storage media, where a number of pieces of music are brought together with an overarching concept and narrative thread.

- 2.3 The Contractor shall advise GIZ immediately if it emerges during realisation of the production that the rights specified in sections 2.1 and 2.2 cannot be acquired to the full extent required.
- 2.4 The rights cited in sections 2.1 and 2.2 shall be transferred to GIZ upon payment of the amount due after acceptance of the rough cut.

- 2.5 The Contractor shall not be entitled to make commercial use of the production or parts thereof, including the title, material, in particular the script, composition, arrangement and the characters in the production on the basis of rights that it is not obliged to transfer to GIZ, unless GIZ explicitly agrees to this.
- 2.6 GIZ is entitled to transfer to third parties wholly or in part the rights and authorisations assigned to it by the Contractor, or to grant those third parties rights of use.

3 Assignment of ownership

- 3.1 Ownership of the entire body of recorded material (video and audio) used by the Contractor to realise the production shall, insofar as that material is not already owned by GIZ, pass to GIZ upon payment of the amount due under section 6.2 after acceptance of the rough cut.
- 3.2 The Contractor shall ensure that the recorded material referred to in section 3.1 above is not subject to any third-party rights (rights of ownership, liens, rights of retention and other security rights). If requested by GIZ or its agent, the Contractor shall provide confirmation from the suppliers or processors of the material that evidences freedom from such rights.
- 3.3 From the point at which ownership is transferred to GIZ in accordance with 3.1, the Contractor shall store the entire body of recorded material used for the production marked clearly with the name of GIZ and for sole access of GIZ. Until the material is handed over, the Contractor shall be entitled to process the recorded material in order to complete the production.
- 3.4 In order to enable GIZ to utilise the rights of use under copyright and ancillary copyright law and any other rights that are to be transferred under this contract, the Contractor shall upon formal acceptance of the end product hand over the entire body of recorded material (video and audio on an external hard disk) together with the other results of the work.

4 Guarantees

- 4.1 The Contractor hereby guarantees the effective acquisition of the rights and authorisations specified in sections 2.1 and 2.2 with regard to both their type and scope; the Contractor also guarantees the entitlement to retransfer these rights to the extent stipulated above.

- 4.2 The Contractor further guarantees that all rights and authorisations transferred under this contract have not been transferred either partially or wholly to third parties, and are not subject to third-party rights, and that no third-party rights, in particular personality and/or moral rights, were infringed, either in the making or subsequent utilisation of the production, that might lead to claims against GIZ. The Contractor indemnifies GIZ against all third-party claims and shall reimburse GIZ for all costs incurred in connection with corresponding legal defence. Further claims on the part of GIZ shall not be prejudiced by this.

5 Defence against third party rights

In the event that the rights specified in sections 2, 3 and 4 of this contract are impaired by third parties or a threat of such impairment exists, the Contractor shall:

- a) notify GIZ thereof immediately,
- b) take or arrange for every possible action that may be required to prevent such impairment and to hold GIZ harmless from third-party claims.

GIZ is entitled to instruct the Contractor accordingly and to request and obtain information from the Contractor on the corresponding preventive measures taken by the latter. Without prejudice to the above, GIZ is entitled but not obliged to take appropriate action itself to prevent any such impairment. In this event, it will notify the Contractor.

6 Quality standard

The Contractor guarantees that the audiovisual quality of the production will be excellent in accordance with recognised standards of audiovisual technology in HD quality.

7 Acceptance of the rough cut

- 7.1 For the purpose of this agreement, the term rough cut refers to the working copy after editing to approximately the correct broadcasting length together with the original soundtrack required for understanding of the overall idea.

- 7.2 Acceptance of the rough cut shall not replace formal acceptance of the end product; warranty rights shall remain unaffected. Formal acceptance of the rough cut shall be carried out by GIZ.

8 Formal acceptance of the end product

- 8.1 The formal acceptance process shall involve playback of the end product in its broadcast-ready form. The end product shall only be deemed to be accepted on written confirmation by GIZ.
- 8.2 At GIZ's request, the Contractor shall provide evidence that the recorded material is no longer subject to third-party security rights or other rights; formal acceptance of the end product shall remain pending until such evidence is provided.
- 8.3 Formal acceptance does not imply approval of the production from a legal perspective. The Contractor remains liable even after formal acceptance for all infringements of rights, in particular the infringement of personality and/or moral rights, in accordance with sections 4 and 5.