

## MASTER CONTRACT

### **Dutch Association of Theatres and Concert Halls (VSCD) and the Association of Independent Theatre Producers (VVTP)**

**Final version**

**November 2004, amended on 1 July 2006**

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The undersigned:

1. The incorporated **Association of Independent Theatre Producers (VVTP)**, registered Amsterdam, formed by notarial deed executed on 1 September 2000, as lawfully represented for the purposes of this contract by its Negotiating Committee, I. van der Werf (managing director), M. Bongertman (managing director), G. Visser and K. van Liempt, hereinafter referred to as '**VVTP**',

and

2. The incorporated **Dutch Association of Theatres and Concert Halls (VSCD)**, registered Amsterdam, formed by notarial deed executed on 9 March 1979, as lawfully represented for the purposes of this contract by its Negotiating Committee, B. Koolstra (managing director), B. Schoonderwoerd (member) and Hans Onno van den Berg (director), hereinafter referred to as '**VSCD**',

#### **WHEREAS**

The VVTP and the VSCD consider it desirable to jointly regulate a number of matters in the relationship between the theatre and the performer. It is explicitly not the intention that this will limit the negotiating freedom of the theatre and the performer. The principle of this Master Contract is that its content will apply to negotiations between the theatre and the performer and to the booking agreement contracted between the theatre and the performer, unless and to the extent that the agreement explicitly differs from this contract. The content of the Master Contract is also the outcome of detailed talks between VVTP and VSCD. The various provisions are formulated on the basis of experience gained in practice.

**In view of the foregoing,**

**HEREBY DECLARE THAT THEY HAVE AGREED AS FOLLOWS:**

#### Article 1 – Definitions

The following definitions shall apply in this contract:

#### **Offer**

The offer to a theatre by a performer of a production that the latter intends to release in the next season.

**Settlement price**

The theatre's gross receipts, less any service charges explicitly agreed in advance.

**Performer**

Each member of the VVTP, as registered on 1 August of the current season in which a final booking agreement is contracted.

**Fair**

The Publicity Fair organised annually in March. If the Publicity Fair is not organised in any one year, or is not organised in March, any reference to the Fair as a date should be read as 20 March.

**Booking**

An agreement between a performer and a theatre to reserve the theatre premises for the run of the show.

**Statement**

A written statement, drawn up by the theatre, of all income and any costs relating to the show. A model statement is attached to the master contract as Annex 4.

**Gross receipts**

All amounts that the theatre receives for ticket sales.

**Contract**

A detailed written and signed final booking agreement between the performer and the theatre, in accordance with the model contract (Annex 2).

**Final booking agreement**

The contract between the performer and the theatre, on the basis of the written confirmation of the booking, at least containing agreement on the show, the running period, the financial conditions and the minimum and maximum entrance prices, which are developed in more detail and recorded in the contract.

**Final checklist**

A detailed written list with final details of the show, in accordance with a model checklist (Annex 3).

**Try-out**

A show performed in the period prior to the premiere date given by a performer, or date on which the show is regarded as a regular show.

**Master contract**

The master contract hereby contracted by VSCD and VVTP.

**Net receipts**

Settlement price less VAT and copyrights.

**Option**

The explicit agreement contracted, subject to reservations, between a performer and a theatre to reserve the theatre for the run of the show.

**Alternative regulation**

A departure, agreed by the employer and employees, from the standard working hours regulation in compliance with the legal framework of the Working Hours Act and the Working Hours Decree, in particular the regulation for performing arts in this Decree.

**Parties**

The performer and the theatre, unless the context of the master contract clearly shows that this refers to the VVTP and the VSCD.

**Production**

An integrated expression of one or more forms of performing arts, intended for one or more performances or shows on a stage.

**Receipts**

The theatre's gross receipts, less any service charges explicitly agreed in advance (is equivalent to the settlement price).

**Risk Inventory and Evaluation (RI&E)**

A written inventory of the working conditions and safety aspects of the show and/or the theatre premises, based on statutory regulations.

**Season**

The period from 1 August to 31 July.

**Service charges**

The costs charged to the public by the theatre for e.g. cloakroom services, free refreshments, box office costs and/or credit card commissions, including theatre surcharges. Service charges may be deducted from the settlement price only if this is explicitly agreed by the parties in advance.

**Theatre ready for performance**

The availability of the necessary premises, in clean and empty condition, from the date of the preparation of the show. The availability of the stage, dressing rooms, auditorium and technical areas in clean and empty condition from a time to be specified by the performer on the date of the show. The vestibules and public foyers shall be available in clean and empty condition from the time at which they are opened to the public.

**Run**

The date(s) or period in which the show will be performed in the theatre, including set assembly, disassembly and rehearsal dates.

**Starring role**

A starring role is a leading role that represents an exceptional commercial value. A leading role can only be qualified as a starring role if:

- The leading role is performed by an artist that draws audiences on the basis of his/her name, and
- There is a justifiable expectation that, in the specific context of the show, the name of the relevant artist will draw audiences to a significant degree.

A show can involve more than one starring role.

**Theatre**

Each member of the VSCD, as registered on 1 August of the current season in which a final booking agreement is contracted.

**Theatre premises**

The constructed premises operated by the theatre, in which the show is performed, including the box office, cloakroom, foyers, dressing rooms, technical areas, loading and unloading bays, etc.

**Auditorium**

The area in which the public watches the show.

**Ticket price**

The price charged to the public for entrance to the show, including service charges.

**Provisional checklist**

A written outline of details of the show, in accordance with a model checklist, to the extent known by the performer on the date on which it sends the contract to the theatre.

**Show**

The theatre performance produced by the performer or represented by an impresario/promoter designated by the performer, or regarding which the performer holds the performance rights.

**Article 2 – Content**

- 2.1 In the final booking agreement, the theatre undertakes to make the theatre premises available to the performer, ready for the performance, in order to enable the performer to perform the show in those premises. The performer undertakes to present the show in the theatre premises with due care, as befits a good provider.
- 2.2 The contents of the master contract apply to the final booking agreement in full, except and to the extent that the parties explicitly depart from this in writing in the final booking agreement and have both confirmed this.

### **Article 3 – Offer, Option, Booking and Final Booking Agreement**

- 3.1 Where applicable and possible, the offer must at least cover the following points:
- The name of the author and/or composer of the show and the (original) title
  - A description and characteristics of the show
  - The planned date of the premiere, if applicable, and the envisage period in which the show is expected to be performed
  - The names of the director(s), conductor and/or choreographer(s) and the members of the artistic/creative team
  - The cast for the leading roles, to the extent known
  - Definition of any starring role(s)
  - Name(s) of any translator(s)
  - Estimated duration of the show and/or any intervals to be held in the performance
  - Financial conditions (allocation, buy-out or hire)
- 3.2 The offer serves as the basis for the option and the booking. A booking commits the parties to consult each other with the aim of reaching a final booking agreement. The foregoing does not apply if one of the parties makes an explicit reservation on a booking that the booking must be regarded as an option.
- 3.3 With an option, the party concerned must notify the other party in writing, within two months, or one month prior to the fair if earlier, whether the option should be regarded as a booking. In the absence of such notification, the option shall become a booking after two months or one month prior to the fair, respectively.
- 3.4 Within four weeks of the booking, the performer is required to confirm the offer and the agreed run to the theatre in writing. This confirmation must at least contain the following elements:
- Characteristics of the show
  - Agreed run
  - Nature of the show, i.e. try-out, premiere or show (a show can also be performed prior to the premiere)
  - Cast for the leading roles, wherever possible
  - Designation of starring roles
  - Name of the person bearing artistic responsibility for the show (director, conductor, choreographer)
  - The financial conditions (allocation, buy-out or hire) of the offer.
- The theatre signs and returns the confirmation within two weeks of its receipt.
- 3.5 If confirmed in compliance with Article 3.4, a booking becomes a final booking agreement on the date on which agreement is reached on the show, the final run, the financial conditions, the minimum and maximum ticket prices and any other provisions essential for the booking agreement.
- 3.6 If a booking has not previously become a final booking agreement, the booking remains in effect until one week before the fair or the season to which the show relates. If the confirmation required in accordance with Article 3.4 has been provided, the booking is regarded as a final booking agreement after that date, unless the parties explicitly agree otherwise or if one of the parties gives notice in writing before that date that there is no agreement on the financial conditions and/or the minimum and maximum ticket prices to be charged.

- 3.7 In the event, as referred to in the final sentence of Article 3.6, that one of the parties states that no agreement has been reached on the financial conditions and/or the minimum and maximum ticket prices to be charged, the booking stands until agreement is reached or one of the parties cancels the booking in writing, on the grounds that agreement has not been reached.
- 3.8 If and to the extent that a party acting as an impresario or representative of a performer is involved in an offer and/or booking and/or final booking agreement, the latter is deemed to lawfully represent the performer unless the impresario and/or representative concerned makes a written reservation with the booking that the booking must be endorsed by the performer.

#### Article 4 – Contract, Checklist

- 4.1 Both parties undertake to develop a final booking agreement and record this in a contract, including an accompanying provisional checklist. Annex 2 of the Master Contract contains a model contract, including a model provisional checklist. The performer undertakes to send the contract to the theatre before 15 August of the season to which the show relates, or 12 weeks before the show, if earlier. The theatre is required to return the lawfully signed contract, following its acceptance, before 1 October or six weeks prior to the show, if earlier.
- 4.2 The theatre is required to provide information on the total capacity of the theatre, the number of seats available and their ranking.
- 4.3 The performer required to provide the theatre with a final statement of the facilities and staff required at least four (4) weeks prior to the performance of the show, via the model final checklist presented in Annex 3 of this master contract.
- 4.4 The absence of a (lawfully signed) contract does not prejudice the validity of the final booking agreement.
- 4.5 Contracts are contracted on the basis of one of the following financial alternatives:
- Buy-out
  - Allocation, with or without a guarantee or supplementary guarantee (the allocation may be graded)
  - Hire.
- The financial alternatives are developed in the model contract annexed to the master contract (Annex 2) and regulated in more detail in Article 13. In all cases, the performer bears the travel and accommodation expenses, taxes and social insurance premiums for its staff and these are included in the agreed amounts.
- 4.6 Both the allocation and the calculation of copyrights are based on the settlement price. In all cases where service charges are included in the gross receipts, these charges can be deducted from the gross receipts for the settlement price only if the parties explicitly agree this in advance and the service charges are shown in publications giving the ticket prices. If service charges are calculated for the provision of free refreshments in the interval of the show, this must also be stated on the ticket.

- 4.7 The performer and the theatre each have the right to at least four free seats of the top category for each performance of the show. If the show is performed in an auditorium with less than 250 seats, each party has the right to at least two free seats of the top category. For try-out performances, the performer has the right to six extra free seats for the artistic/creative team. Both parties can issue free tickets to the press, in addition to the aforementioned free seats for the theatre and the performer, but in all cases only after consulting the other party in advance. On settlement for a show performed on an allocation basis, the number of free seats must always be clearly shown in the relevant statement. Other seats that the theatre and/or the performer wish to use will be settled at the ticket price in effect at that time.
- 4.8 The performer must notify the theatre in writing of all reservations of free seats. If the theatre has not been notified by or on behalf of the performer at least four hours before the start of the performance on the date of the show that the performer wishes to make use of the reserved free seats, the theatre has the right to sell these seats to the public. The performer's consent is required if the theatre wishes to sell these seats to the public before the aforementioned time.
- 4.9 The number of free seats described in Article 4.7 above for musicians, technicians and the artistic/creative team for the production must always be fixed by agreement between the parties and recorded in the final checklist.
- 4.10 The Production Risk Inventory and Evaluation (PRI&E) must be completed by both parties in good time, no later than four (4) weeks prior to the show. A party that fails to notify the data to be provided in the PRI&E in good time bears the risk thereof. A PRI&E may be delivered in Dutch, English, German or French.
- 4.11 At least four weeks prior to the performance date, the performer will send the theatre the PRI&E for the production, in compliance with the manual of the Arbopodium Foundation, or the 'Digirie van Arbopodium', showing that the production complies with the statutory safety requirements. If no final PRI&E is yet available, due to the amount of time between the premiere and the show, the provisional PRI&E produced for the premiere will suffice. As soon as an adjusted PRI&E becomes available, it will be made available to the theatre.

#### Article 5 – Copyrights

- 5.1 This refers to all copyrights, such as overall rights (direct to the author/maker) and performing rights (via BUMA).
- 5.2 The performer undertakes to the theatre to pay all overall rights and other copyrights relating to the show to the holder(s) of the rights, and indemnifies the theatre against any third party claims arising from these. The performer will state the copyright percentage in the contract.

- 5.3 [N.B.: As yet, the parties have not reached agreement on this Article]. The VVTP wishes to calculate overall copyrights as a percentage of the receipts/settlement price, without further details of who makes which copyright claims. The VSCD does not wish overall copyrights to be stated as a separate cost item, but as part of the overall financial agreement in which the producer covers its agreements with copyright holders itself or, if settlement based on receipts must be upheld, in any event wishes to be able to request inspection of the agreements contracted. The VVTP rejects both the VSCD alternatives. As a provisional interim solution, the following standards will apply, including BUMA rights:
- Music only: 3 – 5 or 7% (BUMA percentages)
  - Cabaret: maximum of 10%
  - Musicals: maximum of 12%
- If these standards are exceeded, the theatre can request an explanation from the performer regarding the cause of these variations, and the performer is required to provide such an explanation.
- 5.4 In the event of allocation, this percentage is determined for the purpose of allocation on the basis of the settlement price less VAT or on the basis of the agreed allocation + the guarantee or supplementary guarantee, if the settlement price is lower than these. In the event of a buy-out payment, the percentage is calculated on the basis of the buy-out amount and in the event of hiring, on the basis of the hirer's total receipts.
- 5.5 The amount of the musical performing rights (BUMA) is determined on the basis of the share of protected musical repertoire within the overall duration of the show.
- 5.6 Changes in the percentage copyrights after the ticket prices are fixed are borne by the performer.

#### Article 6 – Publicity and promotion

- 6.1 Publicity is a shared responsibility of the performer and the theatre. Both will make efforts to attract the biggest possible audiences to the show.
- 6.2 The performer will ensure that the theatre receives posters relating to the show, for payment of the actual costs or otherwise, printed with specific theatre details if required. The theatre has the right to at least the basic package, consisting of 2 A-0 posters, 5 photographs and 50 flyers free of charge (including dispatch). The theatre will refund the performer for the actual costs of additional posters, unless otherwise agreed. The performer will also provide the theatre with at least a press release and five photographs for which the performer holds or pays for the copyrights, six (6) weeks prior to the show. The theatre may not produce posters for the show unless the performer does not provide any itself. If the performer, despite an explicit request to that effect from the theatre, fails to provide the theatre with the aforementioned material within the said term, the theatre has the right, depending on the agreed financial alternative, to withhold 10% of the buy-out sum or 10% of the guarantee or supplementary amount.

- 6.3 The theatre is required to perform at least the following publicity activities for the show at its own expense:
- Circulating a seasonal brochure, leaflets and the posters referred to in Article 6.2 in and around the theatre, well in advance
  - Announcing the show on its website, well in advance
  - Announcing the show in ladder advertisements or, if these are not available, the local press
  - Texts produced by the theatre must be edited in the spirit of the texts supplied by the performer. Without the performer's consent, the theatre may not use information supplied by the performer other than for the purpose of the show. The parties must always reach supplementary agreements for the purpose of other publicity: these can be recorded in the final checklist (see Annex).
- 6.4 Registration of the show by any person in any form is permitted only on the basis of the prior written consent of both the performer and the theatre, with the exception of the provisions of Article 6.5. The parties can withhold consent only on reasonable grounds.
- 6.5 The performer has the right to record the show, partially or in full, for promotional purposes during its run, without any charge from the theatre. These recordings may not obstruct the audience experience of the show. In the event of full recording that can be used for purposes other than purely promotional ones, the parties will open talks on a potential payment (of costs) for the theatre.
- 6.6 Reprinting or reproduction of (parts of) the programme booklet by the theatre and/or third parties is prohibited.
- 6.7 The theatre undertakes to ensure that third parties do not contravene the provisions of Articles 6.4 and 6.6.

#### Article 7 – Sponsoring

- 7.1 The parties recognise that the performer has the right to contract sponsoring agreements relating to the show, and that the theatre has such rights, to the extent that these relate to the theatre premises. Neither party can dispose of rights to which the other is entitled. The 'show' refers here to the activities taking place onstage and in the auditorium from the time at which the auditorium is opened to the public until the time when the audience leaves the auditorium again.
- 7.2 If and to the extent that the performer wishes to arrange for sponsoring activities to take place in the auditorium during the show, it is free to do so provided that these activities do not breach the theatre's rights, as referred to in Article 7.1 or such sponsoring activities could foreseeably be disturbing to the public. Partly to avoid any conflicts in this regard, the performer will always notify the theatre of such activities in good time.
- 7.3 Sponsors of the performer may not hand out food or drink to the audience.
- 7.4 If the performer and/or the theatre wish to avail themselves of the services of one or more sponsors prior to the show, in the interval or after the show, the party concerned must notify the other party at the earliest opportunity, and at least six (6) weeks before the show. The theatre will make all reasonable efforts to facilitate the sponsoring activities required by the performer.
- 7.5 If the combined sponsoring claims conflict, restrictions will be imposed on these, at the theatre's discretion. Within reason, the theatre must take the interests of the performer into account in this case.

#### Article 8 – Merchandising

- 8.1 If merchandising takes place in the form of displays, a stand or musical accompaniment in one of the theatre areas, the theatre will provide sufficient opportunity to set this up prior to the show.
- 8.2 If the performer supplies programmes and/or text booklets, these will be sold by the theatre staff unless explicitly agreed otherwise in writing. The parties should reach additional agreements on sales of other articles. The theatre has the right to a maximum of three free programmes.
- 8.3 On the sale of the articles, including programmes and/or text booklets, by the theatre staff, the theatre has a right to a maximum fee of 20% inclusive of VAT, calculated on a maximum of the number of articles sold times the sale price, exclusive of VAT, fixed by the performer, or to another fixed amount to be agreed. If the performer sells the said articles, the theatre has the right to a fee of 10%, to a maximum of € 90 per show.
- 8.4 The theatre may not produce programmes and/or text booklets without the performer's explicit consent in writing.
- 8.5 The theatre's commission, as described in Article 8.2, shall be settled via the statement, or the theatre will invoice the performer for this separately or the will settle the amount in cash with a representative of the company immediately after the show. In the event of a cash settlement, the theatre is required to issue a receipt.

#### Article 9 – Television broadcasts

- 9.1 In principle, any broadcast of the production on television will be aired after the show has been performed in the theatre.
- 9.2 If a substantial part of the production (i.e. at least 30 of its duration) is broadcast on television while the show is still running in the theatre, the performer will notify the theatre of this at the earliest opportunity.
- 9.3 If the broadcast referred to in Article 9.2 takes place at any time before the show is performed in the theatre, the parties will open talks on the consequences of this. The costs of informing members of the public who already hold tickets for the show will be borne by the performer, as will any demonstrable loss of income for the theatre as a result of cancellations of tickets already purchased. If it is agreed that the theatre will inform the public, the fee for this will be based on the cost price, up to a maximum of € 0.50 per letter.
- 9.4 Recordings made during the show must be designed to prevent any obstruction to the audience, as determined by the theatre.

#### Article 10 – Technology

- 10.1 The performer and theatre shall share the contribution of technicians to set up, operate and disassemble equipment for the show on an equal basis, in both quantitative and qualitative terms, unless otherwise agreed. The parties shall agree in advance how many technicians must be available, for how many and for which hours. This will be recorded in the final checklist. If one of the parties fails to provide technicians on an equal basis, the other party may provide for the missing technicians to set up, operate and disassemble equipment for the show. The costs of this will be borne by the party that was in default.

- 10.2 In compliance with the Working and Rest Times Decree for Performing Arts and any alternative regulations applying to the performer and/or theatre, the work will be organised by agreement between the parties in such a way that the employees concerned do not perform any work in breach of the working and rest times regulations applying for them, at the discretion of the theatre. The starting time for setting up equipment will be fixed to allow for a lunch or dinner break of at least 30 minutes.
- 10.3 No less than four (4) weeks prior to the performance of the show, the performer will notify the theatre of the numbers and categories of staff required for the show, and the times at which these should be available, by means of the final checklist. The final checklist may differ from the provisional checklist only to the extent that such variations are reasonable and could not have been foreseen when the provisional statement was submitted.
- 10.4 In principle, the audio equipment will be operated from a point in the centre of the auditorium, preferably not below the balcony. In principle, the lighting will be operated from the control cabin. The performer's technical staff present in or entering the auditorium during the show shall cause as little hindrance to the audience as possible. The use of headphones, intercom or other communication equipment in the auditorium should be limited to what is strictly necessary. The lighting of mixing desks or other technical equipment should also avoid hindrance to the audience. Unless the parties agree otherwise, the performer's technicians will operate the tracking spots.
- 10.5 The theatre's technical facilities will be operated under the responsibility of the theatre's stage manager or his/her deputy.
- 10.6 Responsibility for the level of mechanically reproduced sound, the production of smoke, the use of lasers and matters that have consequences for staging, taking account of the artistic principles of the show and/or any mandatory provisions resulting from the performer's performance licence, is shared by the performer and the theatre, in compliance with the provisions of the Noise Abatement Act, relevant safety measures, the Working Conditions Act, etc., at the theatre's discretion.
- 10.7 For shows for which tickets are sold via written advance reservations ('subscriptions'), the performer will give notice, if possible no later than the Publicity Fair in March prior to the season to which the show relates, of whether the use of an orchestra pit, downstage area, audio facilities and similar facilities are required in the auditorium. For shows for which tickets are not sold via written advance reservations, this will take place at the earliest opportunity, and no later than one month prior to the show. This information will be recorded in the provisional and final checklists. The performer will notify the theatre in writing of any changes as soon as the performer becomes aware of these.

#### Article 11 – Technical security, liability and indemnification

- 11.1 The parties undertake to protect the safety of all persons on the theatre premises as far as possible. The term 'theatre premises' includes any loading and unloading bays on the theatre premises, to the extent that these are used for work to prepare for the show. The theatre guarantees that the theatre premises, in clean and empty condition, comply with the requirements of the Working Conditions Act.
- 11.2 The parties undertake to work with materials and procedures complying with the statutory requirements of the Working Conditions Act and the Working Hours Decree for Performing Arts.

- 11.3 The performer send the theatre a technical list, completed in full, in compliance with the standard model for technical data (lighting, sound and decor) for the show accompanying the master contract, in good time, and no later than four (4) weeks prior to the performance of the show. This technical list applies as the development of the general technical data in the provisional checklist. On the basis of this list, the (provisional) RI&E or Digirie of the production and the RI&E of the Theatre, which will also be available four weeks prior to the show, the parties will conduct talks on any special precautions to be taken in relation to safety.
- 11.4 Without prejudice to the provisions of Clauses 1 to 3 of this Article, the theatre has the right at all times to (arrange to) check the materials and working methods used by the performer.
- 11.5 If the safety of persons and/or property is placed at risk as a result of the materials and/or working methods used by the performer, the theatre has the right to cancel the show. If the aforementioned risk is caused by the actions of the theatre, the performer has the same rights. All damages resulting from a cancellation shall be borne by the party causing the aforementioned risk.
- 11.6 Smoking is permitted only in the legally permissible areas designated by the theatre for that purpose and on the stage during the show.

#### Article 12 – Ticket sales

- 12.1 The theatre holds final responsibility for the ticket sales, including in cases where ticket sales are outsourced, partially or in full, to third parties by agreement between the theatre and the performer.
- 12.2 The theatre is responsible for supervision of prompt returns of allocations (i.e. two weeks before the show) and should make efforts to offer these in independent ticket sales as far as possible.
- 12.3 The theatre must notify the performer of ticket sales at least weekly if required.
- 12.4 Third party reservation charges/arrangement fees will be charged to visitors to the theatre and in no case to the performer, and are not included in the settlement price.

#### Article 13 – Financial and payment conditions

- 13.1 Ticket prices and any discount schemes for allocation shows will be fixed by agreement between the theatre and the performer. The theatre will fix ticket prices and any discount schemes for buy-out shows. The performer will fix ticket prices and any discount schemes for hire shows.
- 13.2 In all cases, ticket prices and any discount schemes will be recorded in writing before a start is made on production of the seasonal brochures. The theatre must contact the performer in this regard in good time and is responsible for ensuring that the correct ticket prices and any discount schemes are shown in the seasonal brochures. The theatre bears the risk and expense of inaccurate reports. For hire shows, the performer has the right, after consulting the theatre, to grant additional discounts after the seasonal brochures appear. For buy-out shows, the theatre has the right, after consulting the performer, to grant additional discounts after the seasonal brochures appear.
- 13.3 If the parties contract an allocation agreement, they shall settle their accounts with each other on the basis of a prearranged distribution of the net receipts.

- 13.4 In the case of an allocation agreement with a guarantee, the theatre is required to pay the performer the agreed share of the net receipts, within the meaning of Article 13.3, plus an additional amount, up to the agreed guaranteed sum. The aforementioned additional amount is not due if the share of the net receipts referred to in Article 13.3 exceeds the agreed guaranteed sum. In that case, the allocation agreement applies in other respects.
- 13.5 In the case of an allocation agreement with a guaranteed additional amount, the theatre is required to pay the performer the agreed share of the net receipts referred to in Article 13.3, plus the additional amount, to a maximum of the agreed buy-out sum. The additional amount for this is not due if the share of the net receipts, as referred to in Article 13.3, exceeds the agreed buy-out sum. In that case, the allocation agreement applies in other respects.
- 13.6 The theatre undertakes to provide the performer with a statement, within five working days of the performance, showing the gross receipts and the number of seats sold, broken down by the various ticket prices used. For each working day that the statement is delivered late, the theatre owes the performer a penalty of €250 (two hundred and fifty euros), up to a maximum of €1,000.
- 13.7 On the basis of the statement, the performer will send the theatre an invoice. The performer is required to enclose a valid declaration of independence or a declaration of withholding liability with this invoice. Until the aforementioned declaration(s) is/are received, the theatre is not required to make any payment to the performer. Within 14 days of receipt of the invoice and the said declarations, the theatre must pay the performer the entire invoiced amount, with no settlement of other costs relating to the show, through a transfer to an account number specified by the performer.
- 13.8 If the run period is longer than one week, the performer has a right to a weekly advance after the show has run for one week. Depending on the financial alternative chosen, the advance or the total advances always amounts to at least 65% of the income to which the performer would be entitled if a final settlement were made at that time.
- 13.9 If the theatre remains in default on compliance with any payment obligation to the performer, interest is due at the legal rate on the amount in arrears, with no prior summons or notice of default required.
- 13.10 All claims for discounts or settlement against amounts owed by the theatre to the performer with receivables that the theatre believes are or will be due to it from the performer are hereby ruled out.

#### Article 14 – Tasks and responsibilities

- 14.1 The theatre and the performer will each provide for their own business liability insurance. Each party is required to report exceptional risks relating to a show to the other party in good time. Each party has the right to inspect the other party's policy on request.
- 14.2 Immediately after taking a booking option, the theatre is required to provide the performer with an accurate and up-to-date description and drawing of the standard equipment of the theatre. If, during construction, it is found that the decor does not fit because the said drawings are inaccurate, the theatre will be charged the resulting additional costs. Conversely, if the decor does not fit despite the fact that the drawings are accurate, the performer will be charged the resulting additional costs.
- 14.3 The theatre is also required to keep the information and the description of its standard equipment accurate and up to date, and to make this available to the performer.

- 14.4 The costs resulting from provisions required in order to stage the show, and that cannot be provided by the performer or the theatre's own staff and/or standard equipment (e.g. hiring and tuning grand pianos, hiring and operating special audio and lighting units, specific technical facilities, specific technical personnel, fire safety services etc.) and payment of these costs must be agreed by the parties, stipulating which of them will bear these additional costs. Agreements on this must be recorded in the final checklist. If and to the extent that the theatre possesses a piano/grand piano, it will make this available to the performer free of charge and, where necessary, will also have it tuned in accordance with the performer's requirements at no additional charge.
- 14.5 Agreements on the positioning of mixing and lighting desks must be reached in good time and recorded in the final checklist.
- 14.6 The performer is in any event required to:
- Provide for all necessary licences and permits relating to the show
  - Provide for timely payment of copyrights, without prejudice to the provisions of Article 5
  - Notify the theatre on booking whether a try-out show will be performed
  - Clearly state, on contracting of the final booking agreement, whether or not the show will have an interval, subject to interim changes for urgent artistic reasons.
- 14.7 The theatre is in any event required to:
- Ensure that the theatre is clean and empty. For serial shows, the theatre must be made available for preparation of the show in good time, by agreement between the theatre and the performer. Talks will be conducted on the use of the theatre premises for any rehearsals (including during a try-out period)
  - Clearly inform the public if a try-out show is involved
  - Provide adequate organisational, technical, publicity and financial assistance for the show and its preparation
  - Acquire all the necessary licences and/or permits relating to the use of the theatre premises
  - Provide for careful supervision for the admission of groups. If possible, groups should not be placed together. For some shows, the performer can impose further conditions for the admission of groups in the final checklist. The theatre will conduct talks with the performer if bookings are received for groups exceeding 5% of the auditorium capacity or of more than 20 persons
  - Provide for the availability of coffee, tea and soft drinks for the performer's employees at no more than staff prices during the construction of sets and from one hour prior to the start to at least half an hour after the end of the show.

#### Article 15 – Changes

- 15.1 If a final booking agreement has been contracted, replacement of the designated starring role(s) requires the consent of both parties. The parties may not withhold such consent without good reason and shall take account of each other's interests.
- 15.2 If a show cannot be performed, the parties will open talks at the earliest opportunity on a replacement show or replacement run period. If no agreement can be reached on this, the parties must regulate the logistical and financial consequences by agreement, in compliance with the provisions of this Article.

- 15.3 If the parties agree to stage a show at other theatre premises, or to cancel a show, each party shall bear its own costs in that respect, unless otherwise agreed in writing.
- 15.4 The parties shall agree which announcements concerning the relocation and/or cancellation of the show shall be made by the theatre and/or the performer to the public and the press. Depending on the time at which the need for relocation or cancellation becomes known, the public will be informed in writing or by telephone.
- 15.5 If the date of a show is changed, members of the public who have already bought tickets will be informed by the theatre regarding the continued validity of the tickets for the new date. Who bears the costs of this will be determined by agreement.
- 15.6 If a show booked or contracted as a full show proves, after the event, to be a try-out show, the performer will bear the resulting costs, including those for informing the public.

#### Article 16 – Cancellations and compensation for damages

- 16.1 An option can be cancelled free of charge.
- 16.2 A booking can be cancelled free of charge
- By both parties, if no agreement is reached on the financial conditions for the minimum and maximum ticket prices to be applied
  - By the performer, if not enough tickets are sold for the shows and the performer decides to withdraw the show.
- On cancellation of a booking for other reasons, the party making the cancellation is required to pay 25% of the buy-out sum or guarantee stated in the offer. If no buy-out sum or guarantee is stated in the offer, the compensation amounts to €1,250.
- 16.3 The performer may cancel the final booking agreement free of charge up to one week after the fair, if not enough tickets are sold for the shows and the performer decides to withdraw the show.
- 16.4 If no agreement is reached on the replacement of one or more starring roles, the final booking agreement can be cancelled with each party bearing its own costs, unless otherwise agreed in writing.
- 16.5 If the difference between the provisional checklist submitted by the performer and the final checklist results in a cost increase of more than 15% for the theatre, the extra costs in excess of the said 15% shall be borne by the performer. If the difference between the provisional checklist submitted and the final checklist is so great that the show cannot reasonably be performed at the theatre, the performer can cancel the final booking agreement. The parties will open talks on the logistical consequences of this. The costs of informing members of the public who have already bought tickets for the show, as well as any demonstrable losses on the part of the theatre as a result of the cancellation, will be borne by the performer. If it is agreed that the theatre will inform the public, the fee for this will be based on the actual cost.
- 16.6 In all cases, cancellations pursuant to Clauses 1, 2, 3, 4 or 5 of this Article must be made in writing, stating the reasons.
- 16.7 In the event of cancellations due to circumstances beyond one of the party's control, both parties are required to make a maximum effort to regulate the adverse consequences of the cancellation as effectively as possible, including limitation of the damages and a reasonable allocation of these.

Force majeure (will become a separate Article)

- 16.8 Force majeure on the part of both parties in any event applies in the following cases:
- Government measures that make the show impossible, with the exception of regulations relating to the safety of persons and/or property
  - Strikes by theatre staff or transport companies/personnel, as well as legal amendments taking effect after the final booking agreement has been contracted, of such a nature that compliance with the (unchanged) final booking agreement cannot reasonably be required.
- 16.9 Force majeure on the part of the performer in any event applies in the following cases:
- Illness or disability of one or more leading or starring players
  - Illness or disability of one of the other employees, who cannot be replaced adequately and in time
  - A foreign artist contracted by the performer who fails to meet his/her obligations and the recourse to the performer cannot reasonably or fairly be taken in this regard
  - Fire and/or theft or loss and/or destruction of part of the decor and/or technical installations and/or costumes to the extent that the show cannot be performed, or cannot reasonably be performed at the envisaged artistic level
  - Deaths or births in the direct line
  - Cancellation of the entire production for serious artistic reasons.
- 16.10 Force majeure on the part of the theatre, which cannot be solved within a reasonable term, in any event applies in the following cases:
- Fire, water damage and flooding, as a result of which the theatre premises are entirely or largely unusable
  - Requisition of the building by a government body
  - Outages of power and/or gas and/or telecommunication connections necessary for the show, which cannot be solved within a reasonable period of a maximum of 30 minutes.
- 16.11 The parties must notify each other immediately if force majeure arises.
- 16.12 The parties are required to claim for the damages or force majeure from the perpetrator wherever possible.
- 16.13 If the force majeure situation persists for more than one month and the parties cannot reach agreement on a replacement show or run period, either party has the right to invoke dissolution of the final booking agreement, without prejudice to the effort obligations as described in Article 16.7.
- 16.14 If a show cannot be performed due to the actions of one of the parties, with no question of force majeure or cancellation on the grounds of Clauses 3, 4 of 5 of this Article, and in other cases in which either party attributably fails to meet its obligations pursuant to the final booking agreement and is consequently liable for damages to the other party, the resulting liability shall be limited to a maximum of compensation for the damages demonstrably suffered, including any loss of equity, within the meaning of Article 6:92(2) of the Netherlands Civil Code. The aforementioned limitation of liability does not apply if the relevant failure to meet obligations involves malicious intent or gross negligence.

#### Article 17 – Disputes regulation

- 17.1 All disputes arising as a result of or in connection with a performance contract between the parties or their successors, both legal and actual, shall be submitted to five arbiters, to the exclusion of the ordinary courts. To this end, the VSCD and VVTP will each appoint to arbiters and two deputy arbiters for the season each year, no later than 15 May. No later than 1 June, both the arbiters appointed in this manner will appoint a fifth independent arbiter (and deputy). The latter must hold the title of Master of Law. The fifth arbiter is also the chairperson of the arbitration tribunal. The arbitration tribunal itself shall determine regulations for its activities. In order to avoid arbitration, the parties may also first submit the dispute to a ‘preliminary arbiter’. If one of the parties cannot accept the latter’s recommendations, arbitration proceedings can still be instituted. The costs of arbitrage amount to €750 and those of preliminary mediation €250, payable by the party found to be in the wrong, or to be shared if joint responsibility is found.
- 17.2 If either the VSCD or the VVTP fails to appoint the arbiters in good time, or if the appointed arbiters cannot reach agreement on the fifth independent arbiter and deputy, either party may request the Sub-District Court in Amsterdam to make such an appointment.
- 17.3 The secretariat of the arbiters shall be housed alternately at the offices of the VSCD and the VVTP for periods of two years. The arbiters appointed on the first occasion are listed in Annex 5 to the contract. The secretariat shall be housed for the first time at the offices of the VSCD at Johannes Vermeerstraat 55, 1071 DM Amsterdam.
- 17.4 The party considering that a dispute exists, within the meaning of this arbitration regulation, should immediately present this to the secretariat of the arbiters, after which the arbiters shall meet at the earliest opportunity and in any event within thirty (30) days. The arbiters are free to determine their own procedure, but shall in any event allow both parties an opportunity to present their views, both in writing and orally, and shall issue a decision with at least three arbiters, one representing each of the parties, plus the independent chairperson. Their decision shall be handed down according to the standards of fairness. Arbiters are authorised to issue their decisions in the form of binding recommendations. Arbiters shall ensure that the parties hold a copy of their decision within four (days) of its issue.
- 17.5 In urgent cases, arbiters shall consider the relevant case at the earliest opportunity after receipt of the report of the dispute in question, and shall issue a decision after hearing the parties. At the request of either party, arbiters can issue a decision by way of a provisional ruling.
- 17.6 In issuing their decision, arbiters shall determine which party shall bear the costs incurred by the arbiters and parties.
- 17.7 No appeal is possible against a decision of the arbiters.

#### Article 18 – Duration, amendment and cancellation

- 6 The text of this Master Contract is the outcome of negotiations between the delegations of the VVTP and VSCD and was used by both parties from 15 March 2004. Comments could be passed on to the members of the negotiating delegations until 15 July. The final text was then presented to the General Meeting of Members of both associations for approval before the end of 2004, and was then be adopted for a period of 18 months, therefore ending on 31 July 2006. On 22 May 2006, the amended Master Contract was renewed for a period of two years ending on 31 July 2008.

- 7 At least four (4) months prior to the end of the contract year, the parties will evaluate the Master Contract and determine whether and if so, to what extent the content requires amendment. Changes shall be effective only if agreed by both parties and recorded in writing.
- 8 If neither party has issued written notice that it wishes to cancel or amend the Master Contract at least three (3) months prior to its expiry, the Master Contract will be tacitly renewed, for one year on each occasion.

As agreed, drawn up in duplicate and signed in Amsterdam on 12 March 2004 and amended on 22 May 2006 by the negotiating delegations of both associations:

Association of Independent Theatre  
Producers (VVTP)

Association of Theatre and Concert Hall  
Managers (VSCD)

Inge van der Werf	Bas Schoonderwoerd
Matthijs Bongertman (Secretaries)	Benjamin Koolstra
George Visser	Hans Onno van den Berg
Kees van Liempt	

List of Annexes:

- 9 Model written confirmation of the offer after booking
- 10 Model contract between members of VSCD and VVTP
- 11 Model final checklist
- 12 Model statement
- 13 List of arbiters
- 14 VSCD members as at 1 April 2004
- 15 VVTP members as at 1 April 2003

## Annex 1 of the VVTP – VSCD Master Contract

### Model written confirmation of the offer after booking

The performer is required to confirm the elements of the offer printed in bold type to the theatre in writing within four weeks of the booking. The information on the show printed in italics should be confirmed as far as possible.

Performer:

Street name and number:

Postal code:

Town:

Telephone:

Fax:

E-mail:

Title of show:

Author and/or composer:

(Original) title:

Translator(s):

Characteristics of the show and description if possible:

Agreed run:

(Envisaged) date of premiere:

Nature of the show

Try-out/premiere/regular show

Name of person with artistic responsibility for the show:

Position:

Director/conductor/choreographer

Other members of artistic/creative team:

Cast for leading roles(s) (where possible):

Starring role(s):

Estimated duration of show:

minutes

Interval <sup>1</sup> :

Yes/No

Financial conditions of the offer:

Buy-out/allocation/hire

Buy-out sum

€

<sup>1</sup> When the booking is finalised (usually 1 week before the fair), a final decision must be given on whether the show will include an interval.

## **Annex 2 of the VVTP – VSCD Master Contract**

### **Model contract between members of VSCD and VVTP**

The undersigned,

A (hereinafter referred to as ‘the performer’)

Street name and number:

Postal code:

Town:

Telephone:

Fax:

E-mail:

as lawfully represented by:

and

B (hereinafter referred to as ‘the theatre’)

Street name and number:

Postal code:

Town:

Telephone:

Fax:

E-mail:

as lawfully represented by:

Hereby declare that they have contracted a final booking agreement for the following show, in compliance with the Master Contract of the Association of Independent Theatre Producers and the Association of Theatre and Concert Hall Managers:

Name of show:

Group/artist:

This contract records the further provisions and agreements reached by the parties. The aforementioned Master Contract of the VVTP and the VSCD applies to the parties, unless and to the extent that this contract explicitly differs from this.

#### Article 1 – More detailed description of show and run time

Author and/or composer:

(Original) title:

Translator(s):

Description and characteristics of the show:

Name of person with artistic responsibility for the show:

Position:

Director/conductor/choreographer

Other members of artistic/creative team:

Leading role(l):

Starring role():

To be performed in theatre:

Room:

On (date(s)):

Show commences: hrs.

Interval: hrs,

Show ends: hrs.

Show is a try-out: (Yes/No)

### Article 2 – Financial agreements

The show is booked on a buy-out/allocation/hire<sup>2</sup> basis.

Buy-out (if applicable)

The theatre buys out the performer for the show in question.

The buy-out sum, exclusive of copyrights and VAT, amounts to: €

The copyright amounts to: % of the buy-out sum.

Allocation (if applicable)

The theatre and performer share the net receipts (settlement price less VAT and copyright) in accordance with the following allocation:

A Allocation with no guaranteed amount:  
Performer: % Theatre: %

B Allocation with guaranteed amount of: €

Allocation up to the guaranteed amount:

Performer: % Theatre: %

Allocation in excess of the guaranteed amount:

Performer: % Theatre: %

C Allocation with additional amount of: €

To a maximum of the buy-out sum of: €

Allocation up to the buy-out sum:

Performer: % Theatre: %

Allocation in excess of buy-out sum:

Performer: % Theatre: %

The copyright amounts to % of the settlement price less VAT<sup>3</sup>

Hire (if applicable)

The performer hires the following area(s) from the theatre:

For a fee of: € (exclusive of VAT)

This hire price includes:

The theatre's standard rates apply for facilities/services that are not included in the hire price. The performer has received a price list in this regard.

The copyright amounts to % of the gross receipts less VAT

2 Delete whichever does not apply

3 The guarantee amount representing the minimum in the case of allocation with a guarantee (B) and plus any additional amount due in the case of allocation with an additional amount (C).

### Article 3 – Other financial agreements

On the contract date, the parties had already contracted the following sponsoring obligations:

Performer Theatre

Nature of the sponsoring obligations

The parties have also agreed the following:

Concerning sponsoring

Concerning merchandising:

### Article 4 – Ticket prices for the show

The ticket prices for the contracted show(s) amount to:

Normal price Discount price Subscription price

Block 1

Block 2

Block 3

The ticket price is inclusive of service charges of: € per ticket

The service charges are analysed as follows:

Buy-out of cloakroom €

Buy-out of refreshments in the interval €

Other, i.e. €

### Article 5 – Provisional checklist

The list below forms the provisional review of relevant technical and production details for the show, to the extent known on the contract date.

Size of company

Starting time for construction

Construction time

Duration of show

Duration of disassembly/loading

Interval (Yes/No)

Artists foyer required (Yes/No)

Performer's own catering (Yes/No)

Provision of meals required (Yes/No)

To be supplied by Theatre Performer

Sound: grand piano/piano

To be supplied by 1.

Sound:

Tuning of grand piano/piano

Amplification

Number of microphones

Operation of sound

Lighting: number of spots

Operation of lighting

Number of sequential spots

Operation of sequential spots

Decor:

Personnel: Technicians

Other personnel

Other agreements:

Fire security

Parking

Catering

Ballet floor

Use of orchestra pit

Use of downstage area

Location of mixing desk

Location of lighting desk

Number of places for light and sound

Availability of technical drawings

Variations

Rehearsal times:

#### Article 6 - Invoicing

Where applicable, the performer must provide the following information with invoices:

11 Bank account number, in the name of .....

12 SOFI number

13 Declaration of Independent Contractor Status (VAR) or Declaration of Withholding Liability

14 Trade Register number

15 VAT number

16 Cost refund provision.

#### Article 7 - Playlist

A provisional playlist for the show is included as an Annex to this contract, covering all options and (final) bookings of the show known on the contract date.

#### Article 8 – Other agreements

The parties have also agreed the following:

Concerning publicity/promotion:

Concerning registration:

Concerning ticket sales:

Concerning free tickets:

Concerning exclusiveness:

Article 9 – Agreements differing from the Master Contract

Without prejudice to the provisions of the preceding Articles, the parties have agreed, by way of departure from the Master Contract of the VVTP and the VSCD, as follows:

Concerning Article ..... of the Master Contract:

Concerning Article ..... of the Master Contract:

Concerning Article..... of the Master Contract:

As drawn up in duplicate and signed:

For the theatre:    For the performer:

Name:                      Name:

Date:                      Date:

Place:                      Place:

## Annex 3 of the VVTP – VSCD Master Contract

### Model final checklist

To be supplied to the theatre by the performer four weeks before the show

Size of company  
Time at which theatre technicians must be available hrs.  
Total time for which theatre technicians must be available hrs.  
Starting time for construction hrs.  
Construction time minutes  
Duration of show minutes  
Duration of disassembly/loading minutes  
Interval (Yes/No)  
Artists foyer required (Yes/No)  
Performer's own catering (Yes/No)  
Provision of meals required (Yes/No) If so, persons

To be supplied by Theatre Performer

Sound: grand piano/piano

Tuning of grand piano/piano

Amplification

Number of microphones

Operation of sound

Lighting: Number of spots

Operation of lighting

Number of sequential spots

Operation of sequential spots

Decor:

Personnel: Technology

Other personnel

Other agreements:

Fire security

Parking

Catering

Ballet floor

Use of orchestra pit

Use of downstage area

Location of mixing desk

Location of lighting desk

Number of places for light and sound

Availability of technical drawings

Variations

Rehearsal times: 1.

2.

3.

Specific measures on the basis of the PRIE&E

Additional agreements relating to publicity

Efforts to be made by the performer

Efforts to be made by the theatre

Additional agreements/information

Number of free seats for musicians, technicians and artistic/creative team

Additional facilities to be hired/procured

Additional facilities to be borne by

Special risks of materials and/or working methods to be used

## Annex 4 of the VVTP – VSCD Master Contract

### Model statement

To be issued by the theatre to the performer within five working days of the performance.

Theatre

Performer

Show

Date

Auditorium capacity

Number of free seats

Gross receipts €

Number of seats sold   Normal price   Discount price   Subscription price

Block 1

Block 2

Block 3

Buy-out (if applicable)

The buy-out amount, excluding copyrights and VAT: €

Copyrights (for the buy-out amount) amount to: €

Allocation (if applicable)

Gross receipts €

Less: theatre surcharge (if agreed) €

Less: VAT €

Less: copyright €

Copyright to be paid by: performer/theatre

Net receipts €

A Allocation without guaranteed sum:

Theatre: % €

Performer: % €

B Allocation with guaranteed sum of: €

Allocation up to the guaranteed sum:

Theatre: % €

Performer: % €

Allocation in excess of the guaranteed sum:

Theatre: % €

Performer: % €

C Allocation with additional sum of: €

To a maximum of the buy-out amount of: €

Allocation up to the buy-out amount:

Theatre: % €

Performer: % €

Allocation in excess of the buy-out amount:

Theatre: % €  
Performer: % €

Hire (if applicable)  
Hire exclusive of VAT: €  
Fee for other facilities/services €  
Copyright (on the receipts) amounts to: €  
Other settlements approved by the performer €  
Theatre's commission for merchandising sales €  
Balance €  
Receivable by theatre from/payable to performer €

## **Annex 5 of the VVTP – VSCD Master Contract**

### **List of arbiters**

Independently appointed preliminary arbiter Deputy  
1. Hans van Westreenen

Arbiters appointed by VSCD Deputy  
1. Bas Schoonderwoerd  
2. Benjamin Koolstra

Arbiters appointed by VVTP Deputy  
1. George Visser  
2. Marijke ??

Independently appointed arbiter/chairperson Deputy  
1. Faas Zwart

The secretariat of the arbiters shall be located at:  
VSCD  
Funenpark 1  
1018 AK Amsterdam  
020 6647211