

AGREEMENT
Background music on
websites
Commercial exploitation
- sound recordings -

GVL customer no. _____

between

Gesellschaft zur Verwertung von Leistungschutzrechten mbH (GVL),
Podbielskiallee 64, 14195 Berlin, Germany,
represented by its Managing Directors, Dr. Tilo Gerlach and Guido Evers,

- hereinafter referred to as "GVL" -

and

- hereinafter referred to as the "contracting party" -

Whereas

The contracting party intends to use commercially published sound recordings as background music for their website, operated for commercial or representative purposes. The contracting party's website is intended for users in Germany. Neither the design of its contents, nor the language versions available shall be specifically designed for foreign users. The rights granted under this licence agreement are limited to the parameters as specified. Any additional rights for access requests from abroad must be obtained from GVL and/or its foreign sister societies subject to their respective terms and conditions.

ARTICLE 1

GVL administers rights and claims arising from copyright law for performing artists and sound recording producers in the making available of commercially published sound recordings as background music on internet websites vis-à-vis the contracting party. The exploitation of background music on websites for the purposes of this agreement is the making available to the public of sound recordings as background music via publicly accessible internet sites (world wide web) as long as it takes place - not intended for permanent storage, as an access-triggered non-interactive, unaltered transmission of sound recordings ("streaming") to or by the computer of a user, without any copies of the transmitted sound recordings being made by the user and - subject to adhering to the "operating conditions for background music on websites" (see Annex 1).

GVL shall also grant the contracting party a non-exclusive licence above and beyond section 55 of the German Copyright Act (UrhG) for copies of sound recordings made by the contracting party or third parties for usages mentioned in paragraph 1.

The use of commercially published sound recordings for advertising purposes shall not be subject matter of this agreement.

ARTICLE 2

The licence granted under Article 1 shall only be valid in line with the terms of use ("operating conditions background music on websites") as per Annex 1, which shall form a substantial part of this agreement and must be adhered to by the contracting party.

Without prejudice to other provisions in this agreement, the contracting party shall be entitled to provide data feeds and offer services exceeding the terms of use, as long as the required rights for providing such services have been obtained from third parties.

ARTICLE 3

Upon request, GVL shall provide the contracting party with information on all trading names ("labels") under which the companies that have entered into a rights administration agreement with GVL publicly release and distribute sound recordings in Germany. The criterion for the existence of rights administered by GVL in each case shall be the directory of companies and labels published by GVL. All sound recordings published in the past and to be published in the future on these labels including the performances recorded onto them shall be subject to the provisions of this agreement, unless individual companies have excluded all or some of its labels from the rights administration by GVL for certain uses. Existence and scope of rights administered by GVL can be accessed online via <http://labelcode.gvl.de>. Without prejudice to other provisions in this agreement, the contracting party shall be entitled to provide data feeds and offer services exceeding the terms of use, as long as the required rights for providing such services have been obtained from third parties.

ARTICLE 4

The licence granted under Article 1 shall only comprise the rights held by performing artists and record producers that GVL is entitled to collect.

GVL shall indemnify the contracting party from all third party claims of a neighbouring rights nature from usages subject to this agreement.

Moral rights pursuant to section 83 German Copyright Act (UrhG) shall remain unaffected.

ARTICLE 5

The licence granted under Article 1 shall be restricted to usage in line with the terms and conditions and the parameters relevant for remuneration as set out in the registration form. It shall only apply to the exploitation of the registered website and the registered titles. Changes to the website subject to the exploitation, to the titles used or any other parameters indicated during registration must be communicated to GVL in writing without any delay. Should any of the changes affect the parameters related to the licence fee, the amended parameters will be included in the agreement subject to an adjustment of the licence fee by GVL (Article 8). This shall apply in particular to the number of access requests to the website. Should the number of access requests exceed the licence scope set in advance (120,000 per year), GVL must be informed without any delay and an additional licence must be obtained.

In cases where the contracting party has failed to inform GVL accordingly, GVL shall reserve the right to claim damages.

ARTICLE 6

The contracting party is obliged to inform GVL on the sound recordings used on its website, indicating playtime, labelcode number or label, title and artist. The contracting party must also provide GVL with information on all parameters relevant for the calculation of the licence fees as well as the application criteria determined in the "operating conditions for background music on websites". The requested details must be sent to GVL electronically and be supported by suitable evidence. If GVL offers a suitable interface for such reports, the contracting party must use such an interface. The contracting party must inform GVL of any changes without any delay.

In cases where GVL presents a substantiated challenge to the licence fee parameters indicated by the contracting party, the contracting parties shall endeavour to find a mutually acceptable solution. GVL shall be entitled to have a sworn auditor verify the correctness of these parameters. The contracting party shall bear the costs of the audit in cases where the audit results in a difference of more than 10 % in total.

ARTICLE 7

The contracting party shall pay GVL a fee for the exploitation rights granted at the level of the respective tariff for the commercial exploitation of commercially published sound recording as background music on websites. The current tariff is attached as Annex 2 and forms an integral part of this agreement.

The reports as per Articles 6 and 8 shall form the basis for the calculation of the fee.

All amounts shall be increased by the statutory Value-Added Tax (currently 7%).

In cases where the contracting party is a member of a professional association of music users with whom GVL has entered into a general agreement, the licence fees shall be reduced by 20%.

ARTICLE 8

The duty to pay the licence fee shall commence with the launch of the relevant exploitation. The licence fee is payable in advance on an annual basis. Once the exploitation has been registered by the contracting party, the annual licence fee payable in advance is invoiced to the contracting party. A contractual year shall begin on the day specified by the contracting party as the day their services were launched. It is not possible to pay the licence fee in instalments. In cases where any changes of the parameters relevant for the calculation of the licence fees are communicated in line with Art. 5, and particularly in cases where the access requests for the website exceed the already licensed scope within a contractual year, GVL shall invoice an additional licence fee for the contractual year in question.

In cases where the contracting party has not made a payment on grounds for which it is responsible, GVL shall be entitled to charge interest for late payments of 8% on top of the base rate in force and to invoice any further additional costs.

ARTICLE 9

This agreement shall commence on the day the contracting party registered as the launch of its exploitation services and shall be in force for an unlimited period. Three months' prior notice may be given to terminate this agreement on the end of a contractual year.

Should GVL publish a new tariff during the period of this agreement, leading to an increase of the previously agreed licence fees for the contracting party, the latter shall have the right to terminate this agreement extraordinarily. Notice must be given within a period of 4 weeks after the respective information issued by GVL about the tariff change has been received. The 5th calendar day after the dispatch of such a notification by GVL shall be assumed to be the point in time where the delivery has been made. The termination shall come into effect at the end of the contractual year during which notice is delivered to GVL. Until the termination takes effect the previous tariff shall continue to be in force.

ARTICLE 10

The contracting parties shall endeavour to settle any disputes relating to the application or interpretation of this agreement amicably in the first instance.

This agreement is subject to the laws of the Federal Republic of Germany. Court of jurisdiction and place of fulfilment is Berlin.

Berlin, _____

_____, _____
Place Date

**GESELLSCHAFT ZUR VERWERTUNG VON
LEISTUNGSSCHUTZRECHTEN mbH (GVL)**

Contracting Party
(in the case of minors, their legal representative)

Dr. Tilo Gerlach

Guido Evers

Annex 1: Operating conditions for background music on websites

Annex 2: Tariff background music on websites

Annex 1

OPERATING CONDITIONS FOR BACKGROUND MUSIC ON WEBSITES

The following operating conditions must be complied with in the licensing procedure relating to the communication to the public of sound recordings in the form of background music on websites:

1. Programme restrictions

The total length of all the tracks used as Background Music may not exceed 15 minutes.

The Streams may not include more than one track per artist and must have a minimum of 2 tracks.

2. Technical requirements

The Streaming shall be done using non-downloadable formats. For Streaming, only audio transmission formats must be used. The streamed content must be legally purchased.

The Streams shall commence automatically on visiting the website or once a visitor to the website scrolls over a specific area of the website.

Visitors of the website may not have the ability to select, pause, rewind, replay certain tracks or, through whatever technical means, advance or retreat to a point in the Streaming programme ("skip" function).

So as to prevent the background music titles coming up in internet music search results or being detected by web-crawling services or so-called stream rippers, the titles of the tracks or the albums incorporating the tracks or the featured artists must not be used in the website metadata which facilitates a search for the tracks or the albums incorporating the tracks or the featured artists.

Linking to tracks is not allowed. The website must not allow, authorise or promote access to the tracks through other websites or services operated by third parties or the licensee itself.

The website shall use effective technologies, insofar as such technologies are commercially widely available and can be implemented without imposing unreasonable costs, which aim to prevent the visitors of the website from retransmitting or scanning the sound recordings to such an extent, that they can be filtered and copied.

3. Prohibition of use in advertising or synchronisation

The website shall not advertise, announce or feature in any manner the titles of the specific tracks or the names of albums incorporating such tracks or the names of the featured recording artists.

The licensed website shall not carry third party advertising or suggest by implication or otherwise any endorsement by the artists of any product or service.

The website shall not synchronise the tracks with any particular visual materials.

The rights holders shall have the right to withhold any specific tracks or all tracks of an artist from the licence.

In the event that a performing artist should retroactively object to use of their recordings in the licensed website or in the event that the producer concerned has specific reasons to believe that such continued use will subject them to legal liability or negatively affect their relationship with the recording artist concerned then upon notice to the licensee hereunder the licensee shall immediately remove such recordings from its website and/or substitute recordings by an alternative recording artist.

The operator of a website shall not re-mix, edit or otherwise modify sound recordings.

4. Licensees

Only one license can be granted to a single individual, association or business.

The licensed website pertains to a private individual or to an association or business that neither employs more than 10 full-time employees or consultants nor has a yearly gross revenue of no more than € 500,000. Where such association or business is part of a group of associations or businesses, or is part of or operates under a group of companies, then the aggregate staffing level and the aggregate gross revenue of all members of such group shall be taken into account for assessing the criteria for the purposes of this Agreement.

Website and/or entities offering digital music services are not eligible for the licence.

The licensee shall be responsible for clearing the rights required for the use of the underlying musical works.

5. Prohibited contents

The licensed websites may not contain or encourage, gambling, alcohol, tobacco, pornography, illegal drugs, music piracy, violence, profanity, vulgarity, offensive (including abusive or inappropriate) content as well as any illegal or unlawful content/activities. The foregoing includes, but is not limited to, copyright infringement (including file sharing), racism, homophobia, hatred, fraud, or infringement of the rights of others.

Annex 2

PUBLICATION IN THE FEDERAL GAZETTE OF 02/04/2015

Pursuant to section 13 of the German Copyright Administration Act, published in the German Federal Gazette dated 02/04/2015, GVL, Podbielskiallee 64, D-14195 Berlin, herewith publishes the following tariff for the exploitation of sound recordings as background music on websites:

A. Tariffs

The following tariffs shall apply to the non-interactive, unaltered transmission of sound recordings - upon being accessed on internet websites - not intended for permanent storage, of up to 15 minutes total playtime by natural or legal persons.

1. Non-commercial exploitation

For non-commercial exploitations by natural or legal persons, the licence fee for the usage as website background music and potential reproductions for this purpose shall be €37.40 per 120,000 access cases per year.

2. Commercial exploitation

- a) For commercial exploitations by natural or legal persons, a company or a corporation with no more than 10 full-time permanent or free-lance staff and less than €500,000 annual gross turnover, the licence fee shall be €75.10 per 120,000 access cases per year.
- b) Instead of calculating the licence fee in accordance with item 2.a), an annual rate of 6.25% of the total annual turnover or any other pecuniary advantages the company realises by running the website shall be applicable, if this results in a higher amount.

B. General Provisions

1. The tariffs mentioned above shall apply for offers intended for German users. There is an additional option to obtain a licence for multi-territory rights. In the event of obtaining a multi-territory licence, the local tariffs of the rights administration societies responsible in countries with whom GVL has entered into reciprocal agreements, shall apply for service requests from those countries. In the event of obtaining multi-territory rights, the licence fee shall be increased by a flat-rate fee of €250.00 for administrative purposes.
2. The operator of the website is obliged to observe GVL's "operating conditions background music on websites". Exploitation rights above and beyond those must be obtained directly from the rights holders.

3. The respective licence fee shall only cover those rights of performing artists and sound recording producers within GVL's administrative scope. The exploitation of sound recordings in commercials shall not be covered; the relevant licence must be obtained from the rights owners.
4. The licence fees shall be increased by the respective VAT rate in force. For members of a professional association of music users with whom GVL has entered into a general agreement, the licence fees for domestic exploitation shall be reduced by 20%.

Berlin, 26/03/2015

Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (GVL)
Podbielskiallee 64, 14195 Berlin

The Managing Directors
Dr. Gerlach Evers