

# **TERMS & CONDITIONS FOR DISTRIBUTING MUSIC RECORDINGS ON THE INTERNET (FOR LABELS)**

(Rev: 2009-6-12)

## **1. PREAMBLE**

- 1.1. SONGRILA.COM, a service of BAW Consulting (referred to hereinafter as "SONGRILA.COM") has available the technical infrastructure (hard- and software) for digitally distributing music recordings in the Internet (referred to hereinafter as "SONGRILA.COM Service"). The main element of the SONGRILA.COM Service is a Web-based application (referred to hereinafter as "SONGRILA.COM Player"), which can be integrated in any website using the right HTML code, provided the operator of the respective website so permits. With the SONGRILA.COM Player, end consumers visiting the respective website can either (a) use individual streaming to play and listen free of charge to the music recordings (excerpts or full-track), which are connected to and displayed on the respective SONGRILA.COM Player and which are stored on a server operated by SONGRILA.COM (the "SONGRILA.COM Server") ("streaming-on-demand"), and/or (b) buy a digital copy of said recordings in MP3 format and download them permanently on to their terminal (e.g. PC) ("download-on-demand"). In addition, the end consumers can see on the SONGRILA.COM Player artwork pertaining to the music recordings and connected to the SONGRILA.COM Player.
- 1.2. SONGRILA.COM permits license (referred to hereinafter as "CONTRACTUAL PARTNER") who dispose over the relevant rights therein to integrate the SONGRILA.COM Player in the websites selected by the contractual partners. The contractual partner decides how many SONGRILA.COM Players to install (thus for instance, a contractual partner can install a separate SONGRILA.COM Player for all the music recordings contained in a single published album) and in which websites it wishes to integrate the SONGRILA.COM Player(s) (provided the respective operator consents), and which of its music recordings are to be offered to the end consumers on the respective website(s) for sale or for listening in using a SONGRILA.COM Player.
- 1.3. The music recordings provided via the SONGRILA.COM Player in the manner described above are uploaded by the contractual partners on to a server operated by SONGRILA.COM, and so they are made accessible to end consumers on the websites selected by the contractual partners via the SONGRILA.COM Player integrated there. Additionally SONGRILA.COM will made available music recordings on websites operated or mediated by SONGRILA.COM's distributors.
- 1.4. Apart from distribution by distributors as mentioned above, the distribution of music recordings by the SONGRILA.COM Service is also designed such that end consumers may effect re-distribution. Re-distribution by end consumers means that a SONGRILA.COM Player to which access is provided on a website can be integrated in any other website at any time by end consumers using the HTML code thus made publicly accessible. The SONGRILA.COM Player includes relevant functions in order to simplify this for end consumers. Further distribution by end consumers also means: Every user/end consumer is able to create a personal SONGRILA.COM-Player. Therefore user/end consumer is able to select songs from all at the SONGRILA.COM-Service implemented and uploaded music recordings to load the personal

SONGRILA.COM-Player. Every user/end consumer is able to include songs from all implemented music recordings of contractual partner in his personal player. End consumers can distribute their personal players on all accessible websites to sell the implemented music recordings and make them available for listening to others.

- 1.5. Furthermore, all implemented and uploaded music recordings from contractual partner can be made available by SONGRILA.COM on their own websites (e.g. [www.songrila.com](http://www.songrila.com)) for purchasing and listening.
- 1.6. The Contractual Partner disposes over music recordings and over the rights to use said recordings in the manner described in Items 1.1 – 1.5 above. Contractual Partner is a Label and has the rights of other Labels, Producers and Artists for using them with SONGRILA.COM. In his account the Contractual Partner can create so-called subaccounts for his partners, and artists. With a subaccount every partner or artist of the Contractual Partner can create their individual SONGRILA.COM-Players and place them in the internet. The Contractual Partner wishes to make its music recordings publicly accessible to end consumers (or have them made accessible to the public) using the SONGRILA.COM Service.
- 1.7. This having been said, the parties now agree as follows:

## **2. CONTRACTUAL PARTNER'S AUTHORISATION**

### **2.1. Installing SONGRILA.COM Players**

For the contractual term, the CONTRACTUAL PARTNER is authorised to install SONGRILA.COM Players for the music recordings and artwork which it is wanting to make accessible to end consumers using the SONGRILA.COM Service.

### **2.2. Integrating SONGRILA.COM Players on Websites**

For the contractual term, the CONTRACTUAL PARTNER is authorised to integrate the SONGRILA.COM Player in the websites it selects in accordance with the provisions of this Agreement, in particular those laid down in Items 3 and 4.

### **2.3. Using SONGRILA.COM's Distribution Potential**

Apart from the possibility given in Item 2.2 above of integrating the SONGRILA.COM Player(s) itself in the websites it has selected, thus creating distribution channels itself, the CONTRACTUAL PARTNER also has the possibility of using SONGRILA.COM's distribution potential. In this respect, SONGRILA.COM cooperates as follows with "Distributors":

Distributors are individuals, legal entities or companies, who by concluding a corresponding distributor's agreement with SONGRILA.COM meet the technical requirements for SONGRILA.COM to implement the normal (optional) SONGRILA.COM Players specially created for the respective Distributor (referred to hereinafter as "Distributors' Players") on the Internet platforms operated by the Distributor or on Internet platforms operated by third parties to which the latter have access accordingly (jointly referred to hereinafter as "Distributors' Websites"), in order to give end consumers access there to the extent stipulated in Item 7 below to all the music recordings included in the SONGRILA.COM repertoire (i.e. the CONTRACTUAL PARTNER's music recordings and third-party music recordings, referred to hereinafter as the "Overall SONGRILA.COM Repertoire"). For each sale of music recordings

initiated on any Distributors' Website(s), Distributors receive from SONGRILA.COM a percentage share in the sales proceeds, which SONGRILA.COM shall pay out of the end consumer price that it attains.

SONGRILA.COM is entitled to integrate the Distributors' Players in all the Distributors' Websites registered with SONGRILA.COM and to make the Overall SONGRILA.COM Repertoire accessible to end consumers via these websites in accordance with Item 7 below.

For clarity's sake, the parties record the fact that end consumers – including ones not registered with SONGRILA.COM – can place the SONGRILA.COM Players on any websites, irrespective of whether they are Distributors' Websites run by Distributors registered with SONGRILA.COM.

#### 2.4. Using the SONGRILA.COM Server

For the contractual term, the CONTRACTUAL PARTNER is entitled to upload music recordings and relevant artwork in accordance with the terms laid down in Item 3 below, using the interface on the SONGRILA.COM Server provided by SONGRILA.COM for the purpose, and to thus make them available for public access by end consumers via the SONGRILA.COM Player(s). The music recordings uploaded on to the SONGRILA.COM Server by the CONTRACTUAL PARTNER during the contractual term are referred to hereinafter as the "Music Recordings", and the pictures of covers uploaded by the CONTRACTUAL PARTNER on to the SONGRILA.COM Server are referred to hereinafter as "Artwork". The Music Recordings and Artwork uploaded by the CONTRACTUAL PARTNER on to the SONGRILA.COM Server are jointly referred to hereinafter as the "Content".

The CONTRACTUAL PARTNER determines itself which Content it uploads on to the SONGRILA.COM Server and how long to leave it there. Any Content can be blocked on the SONGRILA.COM Server or deleted from the SONGRILA.COM Server by the CONTRACTUAL PARTNER at any time.

#### 2.5. Consequences of Uploading and of Integrating SONGRILA.COM Players in Websites:

When the Content is uploaded on to the SONGRILA.COM Server and a relevant SONGRILA.COM Player is integrated on a website, the Content becomes publicly accessible and can thus be used by end consumers in the manner specified in Item 1 above and Item 7 below. Apart from this, the CONTRACTUAL PARTNER acknowledges and accepts the fact that distribution of the uploaded Content by the SONGRILA.COM Service (as described in Item 1.4 above) is designed for re-distribution by end consumers. For clarity's sake it is stated that end consumers do not receive any remuneration for re-distribution.

### **3. UPLOADING MUSIC RECORDINGS & ARTWORK: TECHNICAL TERMS & CONTENT REQUIREMENTS**

Music Recordings and Artwork may only be uploaded on to the SONGRILA.COM Server by the CONTRACTUAL PARTNER on the following conditions:

#### 3.1. The Music Recordings can only be uploaded on to the SONGRILA.COM Server in MP3 format (192 kbps, CBR and 112 - 192 kbps, VBR). Converting the Music Recordings into MP3 format is the CONTRACTUAL PARTNER's task. The Music

Recordings are thus made accessible to end consumers without DRM and have no protection against copying in this respect. The CONTRACTUAL PARTNER acknowledges that converting recordings into MP3 format lead to some deterioration in quality. Asserting guarantee claims on SONGRILA.COM in this respect is excluded.

Artwork can only be uploaded on to the SONGRILA.COM Server in JPG format, 72 dpi, 1200 x 1200 pixel. It does not have any copy protection either.

- 3.2. As regards the Music Recordings and Artwork uploaded on to the SONGRILA.COM Server, the CONTRACTUAL PARTNER must dispose without restriction over all the rights required for usage in the manner described in Item 7. At SONGRILA.COM's request, the CONTRACTUAL PARTNER is under obligation to furnish proof of its rights by presenting relevant contracts.
- 3.3. The music works on which the Music Recordings are based (composition and text) must either belong to the repertoire of a collecting society (e.g. GEMA Repertoire), i.e. the rights required for usage hereunder must be obtainable from a collecting society (e.g. GEMA), or the CONTRACTUAL PARTNER itself must dispose over the rights concerned. Music Recordings which are based on music works for which the CONTRACTUAL PARTNER does not own the rights required for usage hereunder or for which said rights are not safeguarded by a collecting society (e. g. GEMA) may not be uploaded on to the SONGRILA.COM Server.
- 3.4. The CONTRACTUAL PARTNER is not entitled to upload any content other than Music Recordings and the appurtenant Artwork on to the SONGRILA.COM Server. In particular, the CONTRACTUAL PARTNER is not entitled to upload advertisements for its own and/or for third-party products on to the SONGRILA.COM Server.

#### **4. TERMS FOR THE WEBSITES SELECTED BY THE CONTRACTUAL PARTNER**

The CONTRACTUAL PARTNER may not integrate the SONGRILA.COM Player in websites containing any illegal content or material, and/or containing content or material originating from providers suited to damage SONGRILA.COM's image, name and/or reputation. In particular, the SONGRILA.COM Player may not be integrated on websites containing pornographic or fascist material or any content harmful to young people. Notwithstanding any further statutory and contractual rights, SONGRILA.COM is entitled at any time to demand that the CONTRACTUAL PARTNER immediately remove a SONGRILA.COM Player from websites conflicting with the above terms. Moreover, SONGRILA.COM is entitled in any such case to immediately block the entire Content on the SONGRILA.COM Server that is connected to the SONGRILA.COM Player integrated on the website concerned. If the CONTRACTUAL PARTNER fails to comply with a written demand from SONGRILA.COM to remove a SONGRILA.COM Player from a website within 2 working days, then SONGRILA.COM shall be entitled to approach the provider of the website concerned and demand the removal of the SONGRILA.COM Player, and in the event of its refusing to do so to take legal action to assert the claim for its removal.

#### **5. SELLING & SUPPLYING MUSIC RECORDINGS, HANDLING END CONSUMERS' PURCHASES & PAYMENTS**

- 5.1. The Music Recordings made publicly accessible via the SONGRILA.COM Player are offered and sold by SONGRILA.COM in its own name and for its own account. The contract concluded is between SONGRILA.COM and the respective end consumer. As regards the purchase contract, the terms of use laid down on [www.songrila.com](http://www.songrila.com) apply to the end consumer.
- 5.2. SONGRILA.COM shall assume (either itself or through service providers assigned the task) the technical and administrative aspects of downloading (i.e. supplying the Music Recordings to the end consumer on the latter's individual demand).
- 5.3. Handling end consumers' purchase price payments shall be done by payment providers commissioned by SONGRILA.COM (currently Click&Buy) using the online payment systems which they provide. SONGRILA.COM may call in more or other payment providers.

## **6. ROYALTIES**

- 6.1. By way of remuneration for all the services rendered and rights granted by the CONTRACTUAL PARTNER under this Agreement, the CONTRACTUAL PARTNER shall receive a royalty for each of the CONTRACTUAL PARTNER's Music Recordings (individual title) or for each compilation of the CONTRACTUAL PARTNER's Music Recordings (album) bought from SONGRILA.COM and paid for by an end consumer. The CONTRACTUAL PARTNER can select the royalty applying to each of its Music Recordings from the terms given at [www.songrila.com](http://www.songrila.com), entering it there as desired. The respective royalty selected by the CONTRACTUAL PARTNER is given in the terms on [www.songrila.com](http://www.songrila.com) alongside the final price which SONGRILA.COM then charges to the end consumer. The final price paid by the end consumer in each case entitles the latter to download up to two times the Music Recording or the compilation of Music Recordings bought. Thus each individual royalty fee covers up to two downloads.
- 6.2. SONGRILA.COM shall assume the transaction costs involved for the Music Recordings sold in the context of the SONGRILA.COM Service, i.e. the costs of handling payments (payment service provider, settling credit card payments, DRM costs (where applicable) and/or digital formats). The costs for any collecting society (e.g. GEMA) fees incurred and/or any fees due to foreign collecting societies when sales are made abroad shall be assumed by the CONTRACTUAL PARTNER (whereby SONGRILA.COM shall be responsible for handling the payments). The GEMA fees incurred and/or any fees due to foreign collecting societies shall be deducted each time from the royalty to which the CONTRACTUAL PARTNER is entitled. To limit the costs of payment administration and to cover the expenses of system operations, the first € 0.99 monthly turnover of the CONTRACTUAL PARTNER remain by SONGRILA.COM. Further revenues over € 0.99 will be divided according to the price scale. With a monthly turnover under € 0.99 the CONTRACTUAL PARTNER has no additional costs. Test period: The first 3 month we don't charge the € 0,99.
- 6.3. Using its user login for the SONGRILA.COM Service, the CONTRACTUAL PARTNER can each month download at [www.SONGRILA.COM.com](http://www.SONGRILA.COM.com) a statement of the Music Recordings sold in the preceding month, which is deemed a qualified signed PDF-file. Using its user login, the CONTRACTUAL PARTNER can also download by way of an attachment to the statement a CSV-file listing the sales used for drawing up the

statement. SONGRILA.COM undertakes to draw up the statement and make it available to the CONTRACTUAL PARTNER 30 days after the end of each accounting period at the latest.

For the purpose of settling its royalties, the CONTRACTUAL PARTNER undertakes to open an account with one of the payment providers used by SONGRILA.COM (referred to hereinafter as "PP Account"). The royalties shall be paid by SONGRILA.COM into the PP Account as a credit balance in line with tax regulations. In order to simplify administrative aspects, amounts less than EUR 20 shall not be credited to the CONTRACTUAL PARTNER's PP Account until the end of the calendar year. In this context, the CONTRACTUAL PARTNER is under obligation to immediately provide SONGRILA.COM with its value-added tax identification number (VAT ID), or to disclose same without delay later on if it only acquires it after commencement of the contractual term. The CONTRACTUAL PARTNER is responsible for paying tax on the amounts itself.

- 6.4. The CONTRACTUAL PARTNER is responsible for paying tax on the amounts itself. The CONTRACTUAL PARTNER undertakes to immediately inform SONGRILA.COM unsolicited if its turnover tax status alters. SONGRILA.COM shall not pay any income tax, corporation tax or comparable taxes for the CONTRACTUAL PARTNER which are levied in connection with the conclusion and performance of this Agreement.

## **7. USUFRUCTUARY RIGHTS**

- 7.1. For the contractual term, the CONTRACTUAL PARTNER grants SONGRILA.COM on a non-exclusive basis the usufructuary rights in the Music Recordings which are required for using them in the SONGRILA.COM Service in accordance with Item 1 above. These include in particular the non-exclusive right to store the Music Recordings for this purpose on the SONGRILA.COM Server, to transmit them (as a whole or in excerpts) to end consumers on demand and free of charge for listening in ("streaming-on-demand"), and/or to transmit them on demand for downloading in return for a fee ("download-on-demand"), at the same time allowing end consumers to permanently store the Music Recordings and copy them privately to the extent specified in Sect. 53 of the German Copyright Act [UrhG].

With reference to the sale of the Music Recordings, the above usufructuary rights shall only be granted for the territory selected by the CONTRACTUAL PARTNER on the input mask displayed. By making appropriate checking of the payment dates (e. g. credit card checks), SONGRILA.COM (or its payment provider) shall ensure that the Music Recordings are only sold to end consumers who are resident in the relevant territory. The parties agree that the check of the payment dates (e.g. credit card check) mentioned above is sufficient for complying with any restrictions in terms of territory laid down by the CONTRACTUAL PARTNER. Moreover the CONTRACTUAL PARTNER is aware and accepts that streaming of the Music Recordings as described above can be done from anywhere in the world.

- 7.2. Moreover, the CONTRACTUAL PARTNER grants SONGRILA.COM the right to make the Artwork accessible to end consumers, subject to the proviso that it can only be viewed by end consumers but not downloaded. The CONTRACTUAL PARTNER is also aware and accepts in this context that viewing Artwork can be done from anywhere in the world. The CONTRACTUAL PARTNER agrees furthermore to SONGRILA.COM using

the SONGRILA.COM Players for advertising third-party products (e.g. banners, audio-advertisings, video-advertisings, links).

- 7.3. The music works contained in the Music Recordings which the CONTRACTUAL PARTNER has marked in the SONGRILA.COM Service's input mask as "GEMA Repertoire" by clicking on the appropriate space are excluded from the assignment of rights pursuant to Item 7.1. For all Music Recordings in respect of which the CONTRACTUAL PARTNER has not marked the underlying music works as "GEMA Repertoire" by clicking on the relevant space, the granting of rights pursuant to Item 7.1 shall also apply to the music works underlying the respective Music Recordings.
- 7.4. The CONTRACTUAL PARTNER warrants and guarantees that it is the proprietor of all the usufructuary rights granted hereunder. In particular, it warrants that it may dispose over all the rights in the achievements and subject-matter incorporated in the Content, i.e. the rights of authors, ancillary copyright holders and other proprietors of rights (e.g. producers, performing artists, graphic artists, photographers, text writers, etc.) such as are required for usage pursuant to Items 7.1 and 7.2. Excluded here, on the condition laid down in Item 7.3, are the rights in the music works incorporated in the Music Recordings that are safeguarded by GEMA.
- 7.5. The CONTRACTUAL PARTNER warrants and guarantees further that the Content and its exploitation under this Agreement does not breach any statutory provisions (e.g. anti-trust law, regulations on protection of minors) or government rules or orders, and that usage of the Content hereunder does not infringe any third-party rights (e.g. copyrights, ancillary copyrights, droit moral, trademark rights, and other intellectual property rights).
- 7.6. The CONTRACTUAL PARTNER shall release and discharge SONGRILA.COM on first demand from all and any claims asserted by third parties in connection with usage of the Content hereunder. The CONTRACTUAL PARTNER shall refund to SONGRILA.COM all and any reasonable costs incurred in connection with warding off such claims, in particular the costs for legal defence (e.g. lawyers' fees and court costs).
- 7.7. If any rights or claims are asserted by third parties with reference to the exploitation of the Content hereunder, SONGRILA.COM shall be entitled to block the Content thus affected or remove it from the SONGRILA.COM Service until the legal position has been finally clarified.

## **8. RIGHTS CLEARANCE WITH REGARD TO THE MUSIC WORKS**

For all the music works underlying the Music Recordings which the CONTRACTUAL PARTNER has marked "Collecting Society" (e.g. "GEMA Repertoire") in accordance with Item 7.3 above, SONGRILA.COM shall assume the task of clearing the rights with the collecting society (e.g. GEMA). Before uploading the Music Recordings concerned, the CONTRACTUAL PARTNER is under obligation to send to SONGRILA.COM all the data required for registering with the collecting society (e.g. GEMA) the music works involved (in particular length of the music works, names of composers, text-writers, adapters, publishers) by entering said data in the SONGRILA.COM Service's input mask provided for the purpose. The CONTRACTUAL PARTNER guarantees the accuracy and completeness of this data. If the collecting society (e.g. GEMA) makes

any claims on SONGRILA.COM due to incomplete or wrong particulars, the CONTRACTUAL PARTNER shall release and discharge SONGRILA.COM from all such claims on first demand.

## **9. LIABILITY**

9.1. SONGRILA.COM shall only be liable to the CONTRACTUAL PARTNER for compensation under this Agreement or otherwise if and insofar as:

(a) the losses or damage are due to intent or gross negligence on SONGRILA.COM's part, or

(b) SONGRILA.COM has inflicted injury to life or limb or health damage on the CONTRACTUAL PARTNER due to slight negligence, or breached a cardinal duty.

9.2. The limitation of liability pursuant to Item 9.1 shall not apply to liability under mandatory product liability law, nor shall it apply insofar as SONGRILA.COM has assumed a guarantee for the quality of a contractual product or service, or if the contractually agreed quality is meant to safeguard the CONTRACTUAL PARTNER against specific consequential damage.

9.3. If SONGRILA.COM is liable for slight negligence under the above provisions, then its liability shall be limited to the pecuniary losses perceptible to SONGRILA.COM on taking the circumstances into account when it concluded the contract, or which typically occur in cases of this kind of breach of contract.

9.4. The limitations of liability pursuant to Item 9.3 apply accordingly to losses sustained due to intent or gross negligence on the part of SONGRILA.COM's vicarious agents.

## **10. DATA PROTECTION**

The contracting parties undertake to comply with statutory provisions on data protection.

## **11. CONTRACTUAL TERM**

This contract can be terminated by either party at any time by giving written notice. In case of termination of the contract on the part of CONTRACTUAL PARTNER, CONTRACTUAL PARTNER is responsible for the complete removal of his content from the SONGRILA.COM service. This can be achieved within CONTRACTUAL PARTNER'S SONGRILA.COM account. SONGRILA.COM is authorised to sell audio recordings through its service until all content has been removed by CONTRACTUAL PARTNER. This contract is not deemed to be terminated until CONTRACTUAL PARTNER removes all content from the SONGRILA.COM system. All granted rights of use revert back to CONTRACTUAL PARTNER after all content is removed from the SONGRILA.COM system. Following the termination of the contract on the part of SONGRILA.COM, SONGRILA.COM shall remove all content by CONTRACTUAL PARTNER from its service within three months time. The right to give extraordinary notice for important cause

remains unaffected. An important cause for SONGRILA.COM shall be deemed to exist if SONGRILA.COM discontinues operating the SONGRILA.COM Service.

## **12. MISCELLANEOUS**

12.1. SONGRILA.COM is entitled to name the CONTRACTUAL PARTNER as a reference customer when advertising, promoting and marketing the SONGRILA.COM Service, in particular in advertisements, in the Internet, on flyers and in information brochures.

12.2. This Agreement along with the Annexes thereto definitively reflects the content of the contractual agreements reached by and between the parties, and replaces all and any previous agreements between the parties on the contractual subject-matter. No ancillary agreements, including verbal ones, have been reached. Amendments or supplements to this Agreement (including this clause on written form) have to be done in writing.

12.3. If any of the provisions of this Agreement is or becomes null and void or impracticable, this shall not affect the validity or practicability of the remaining provisions. In any such case, the parties shall agree a provision approximating the invalid or impracticable one as nearly as possible in business terms.

12.4. German law applies. Venue shall be Munich.

**SONGRILA.COM**, ein Projekt von BAW Consulting (Inh. Bernd Awaloff), Tannenstrasse 1A, D – 85579 Neubiberg