

Contract regarding the Publication of Audio Walks

between

and

guidemate GmbH
Rudolfstraße 11
10245 Berlin

the *Guidemate* user who publishes
content on the *Guidemate* platform

– hereinafter *Guidemate* –

– hereinafter the *provider* –

Preamble

Guidemate operates an internet platform for audio walks under the domain *guidemate.com* and other top-level domains.

Audio walks consist of a route marked with stations. Photographs, illustrations, images or other pictorial or graphic content, audio content and text (collectively the “works”) may be uploaded to accompany individual stations, or the tour as a whole. The stations, the route and the associated works are hereinafter collectively referred to as an “*audio walk*”.

The users can download and listen to *audio walks* via the internet platform and mobile devices. The *provider* can determine which *audio walks*, and which stations within an *audio walk*, will be fee-based and which may be used free of charge.

Every user who has created a member account on the platform can themselves create *audio walks* and comment on and rate other *audio walks*.

§ 1 Object of the contract

1. By establishing a member account on the platform, the *provider* is able to create and edit *audio walks*. The *provider* thereby enters information for their profile page that is linked to each of their *audio walks*.
2. As a rule, the *provider* themselves posts the *audio walks* to the platform, determines the route, stations and prices and uploads the associated *works*. *Guidemate* may, in its sole discretion, assist the *provider* in the registration process and in part carry out the registration of *works* on the platform.
3. The *audio walks* made available by the *provider* are published on the platform and can then be viewed by all users of the platform. The *provider* who has posted the *audio walks* is always clearly indicated. For fee-based stations, the audio data can only be accessed once the *audio walk* has been paid for by the user. All other data and *works* of the *audio walk* can be viewed before payment is made.
4. *Guidemate* provides the technical platform (software, server infrastructure, database, delivery of the image and audio data) and the processing of the payment (via a payment provider such as PayPal).
5. The *provider* retains complete copyright for the *audio walks* and the *works*. *Guidemate* does not acquire any copyright claims to the *audio walks*.

§ 2 Service fees

1. *Guidemate* does not charge any service fee for providing fee-based *audio walks* to users. Instead, a commission will be retained from the sales proceeds in accordance with Section 3.
2. The following service fees apply for *audio walks* that are offered to users free of charge:

Non-corporate	Reduced	A&E	T&E
Audio walks made by - private persons without support of an institution - comprehensive schools that did not have financial support	Audio walks in the field of arts and education with an overall budget of up to 3.500 €	Audio walks in the field of arts and education	Audio walks in the field of tourism or economy
€ 0.00	€ 50 per 3 years or € 120.00 per 10 years	€ 75.00 per year or € 600.00 per 10 years	€ 180.00 per year or € 1,500.00 per 10 years

Fees include VAT.

Individual agreements and special conditions are possible and must be agreed in writing.

These service fees apply to all audio walks published after 1.1.2022.

As soon as the audio walk is published *Guidemate* will invoice the *provider* for the service fees. The service fees are to be paid by the *provider* via bank transfer or by issuing a SEPA direct debit mandate.

§ 3 Prices and commissions

1. The *provider* determines the sales price for the *audio walk* in its sole discretion. *Guidemate* reserves the right to restrict this discretion to set prices by setting an upper and lower price limit or price levels.
2. After a user has paid the sales price one time, they can listen to and download the audio data of the corresponding station or *audio walk* as often as they like, both on the internet platform and on mobile devices. This also applies if the price was adjusted after the purchase.
3. The proceeds from the sale of an *audio walk* that are credited to the *provider* are determined as follows. First, the value added tax (19%, or the future applicable rate) and the transaction costs (e.g., PayPal, Apple, Google fees) are deducted. *Guidemate* then receives a commission from the remaining amount. The remainder is then credited to the *provider*.

There are three *Guidemate* commission rates. They depend on the number of sales per *audio walk* in the billing period (six months) and the marketing efforts of the *provider*.

Commission Rate A: Guidemate receives 40%. The remaining 60% is credited to the *provider*.

Commission Rate B: The *Guidemate* commission rate is 30% for audio walks that have been sold at least 10 times in the billing period and that have been advertised at least once in the billing period by the *provider* via social media, blogs, press releases, etc. with a link to the product at *Guidemate*. The remaining 70% is credited to the *provider*.

Commission Rate C: The *Guidemate* commission rate is 20% for audio walks that have been sold at least 30 times during the billing period and that are permanently and prominently presented by the *provider* on their own website with a link to the audio walk at *Guidemate* (e.g., by integrating the *Guidemate* widget) and that have been advertised at least twice during the billing period by the *provider* via social media, blogs, press releases, etc. with a link to the product at *Guidemate*. The remaining 80% is credited to the *provider*.

In order to qualify for the commission rate B or C, the *provider* must furnish *Guidemate*, via email and by the end of the billing period, with individual evidence of their marketing efforts.

4. The *provider* can view a list in electronic form of the sales generated by the *audio walks* they have offered on the platform. This list is updated at least once a day and provides information about when and which *audio walks* were purchased.
5. *Guidemate* will transfer the percentage of the sale resulting from paragraph 3 to an account of the *provider* within 60 days after the end of each 6 months (billing period).

§ 4 Publication rights

1. The *provider* gives *Guidemate* permission to publish all *audio walks* that the provider has posted to the platform (including all related *works*) in any digital format via the internet platform or mobile apps and to sell fee-based *audio walks* to users of the platform.
2. Users can play the *audio walks* they have purchased on the platform as often as they like and download them from the internet platform in the form of MP3 files.
3. The *provider* assures that they own all necessary rights of use for the *audio walks* they have provided. If right of attribution exist, the *provider* will include all necessary information regarding the rights of creators and authors in the descriptions of the audio walks.
4. The *provider* guarantees that neither *Guidemate* nor the users will violate applicable law or the rights of third parties (such as copyright, trademark, title or personal rights) through the use of the works the provider has made available. Should such an infringement nevertheless occur, or should third parties make any claims in this regard, as a result of the proper implementation of this contract or the proper use of the internet platform, the *provider* shall indemnify *Guidemate* against all resulting third party claims. This includes the costs of any necessary legal defense and/or prosecution. *Guidemate* agrees to inform the *provider*

immediately in the event of claims by third parties and to provide all documents and information necessary for the preparation of legal defense and/or prosecution.

5. The *provider* guarantees that they will not post to the platform any *works* subject to GEMA fees. If claims are nevertheless made against *Guidemate* in connection with *works* of the *provider* that are subject to GEMA fees, the *provider* will indemnify *Guidemate* from these claims.
6. If *Guidemate* makes individual *works* available for the *provider* (such as photos), *Guidemate* guarantees that neither the users nor the *provider* in whose name the *audio walk* is published will violate applicable law or the rights of third parties (such as copyrights, trademark rights, title rights or personal rights) through the *works* made available by *Guidemate*. Should such an infringement nevertheless occur, or should third parties make any claims in this regard, as a result of the proper implementation of this contract or the proper use of the internet platform, *Guidemate* shall indemnify the *provider* from all resulting claims by third parties.

For the sake of clarification, we note that *Guidemate* is in no case responsible for works uploaded by the *provider* themselves, even if they are combined with the works provided by *Guidemate* to form an audio walk.

§ 5 Adaptation of audio walks and marketing

1. In order to maintain uniform standards on the internet platform, *Guidemate* reserves the right to request that the *provider* adapt certain works or entire *audio walks*. The *provider* must either carry out this request or, alternately, may remove the *audio walk*. *Guidemate* has the right to make minor adjustments (e.g., correction of spelling mistakes or inaccuracies in content) itself.
2. On the internet platform, the posted *audio walks* will be clearly associated with the profile page of the *provider*. On the profile page, the *provider* has the option of referring to their own internet platform by means of a link and description. The *provider* agrees to refer to *Guidemate's* offering on its own website and to include links to its own *audio walks* at *Guidemate* or the domain [guidemate.com](https://www.guidemate.com).
3. A clip of 30 seconds from each audio track may be made available for free playback as an audio sample.
4. *Guidemate* is entitled to reduce the price set by the provider for complete *audio walks* or individual stations as part of sales promotion campaigns. The relative distribution of the retail price between the *provider* and *Guidemate* in accordance with Section 3 remains unaffected. Such a promotion is to be communicated to the *provider* via email with advance notice of one week. During this period the *provider* has the possibility to object to the planned promotion.
5. *Guidemate* has the right to provide fee-based *audio walks* from the *provider* to individual persons (such as journalists) as part of advertising measures, including without payment or separate proof.

§ 6 Vouchers

1. The *provider* can generate voucher codes for audio walks the *provider* has uploaded. A voucher code always applies to an entire *audio walk*.
2. A voucher is considered redeemed as soon as the user has entered the voucher code on the internet platform. The voucher code can only be used by one user.
3. The *provider* will reimburse *Guidemate* for this service provided by *Guidemate* for redeeming the voucher with an amount of 5% of the gross selling price, while the minimum fee is € 0.50 (plus statutory VAT) for each voucher redeemed by the user.
4. Should the *provider* need free vouchers for special advertising measures, *Guidemate* may decide to make these available.
5. *Guidemate* offers gift vouchers for sale for all audio walks that are sold via the platform. Each gift voucher is bound to a specific audio walk. The provider receives the earnings from sold vouchers according to the conditions of §3. After deductions of VAT and transaction costs 60-80% of the remaining amount is credited to the provider.
6. *Guidemate* may widen the sales channels through an affiliate program. The provisions of affiliates will be paid out of the additionally generated earnings. The provider's credit as well as *Guidemate's* provision will be decreased by the affiliate's provision.
Providers are invited to acquire affiliates for their audio walks themselves. Providers do not operate as affiliates for their own audio walks. Providers allow advertisement for their audio walks by affiliates including the use of parts of their audio walks (pictures, texts, parts of the audio files)

§ 7 Duration of contract and termination

1. The term of this contract is one year. At the end of each term, the contract shall be extended by a further year unless it is terminated in writing by one of the contracting parties with a notice period of three months before the end of the term of the contract. Some fee categories require a longer term. In this case, the term of the contract shall be the length of the period for which the fee was charged, and the contract shall be extended by this same period of time if it is not terminated in writing by one of the contracting parties with a notice period of three months before the end of the term of the contract.
2. Individual *audio walks* or parts of *audio walks* can be changed or deleted from the platform by the *provider* at any time; further *audio walks* can also be added. Which audio walks will be provided and for how long is not part of this contract. To enable users to listen to purchased *audio walks* repeatedly, *audio walks* should not be deleted without reason.
3. In cases of force majeure and for other reasons for which *Guidemate* is not responsible, publication and sale via the internet platform may be interrupted or terminated prematurely.

§ 8 Liability

1. *Guidemate* is liable without limitation in the event of intent and gross negligence. In the event of a negligent breach of duty, *Guidemate* is only liable without limitation if life, body or health has been injured as a result of the negligent breach of duty.

§ 9 Miscellaneous

1. This contract is subject to the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods. For all disputes arising from or in connection with this contract or its validity, the courts of first instance in Berlin shall have jurisdiction.
2. Oral collateral agreements do not exist. This contract or individual provisions of this contract can only be canceled by written agreement. This also applies to any agreement regarding oral agreements.
3. *Guidemate* may also transfer this contract to affiliated companies. *Guidemate* carries the same responsibility for the services of its affiliated companies as it does for its own services.
4. If one or more provisions of this contract are or become invalid for any reason, or if there are loopholes in this contract, this shall not affect the validity of the rest of the contract.
5. This contract comes into force with the consent of the *provider* via an opt-in procedure. To opt in, the *provider* declares their consent to the contract by clicking a corresponding button on the *Guidemate* website, after which the contract will be sent to the *provider* via the email address they have indicated.

As of: 01/01/2022