

TERM SHEET FOR SMALL COMMERCIAL WEBCASTERS

1. Election

Eligible small commercial webcasters ("SCWs"), as defined in this term sheet, may elect to be governed by the rates and terms in this term sheet with respect to transmissions of sound recordings made by SoundExchange, Inc.'s ("SoundExchange") copyright owner members by submitting a signed signature page to this term sheet by September 14, 2007. Any SCW who does not submit a signed signature page by September 14, 2007 shall comply with the rates and terms set forth by the Final Determination of the Copyright Royalty Judges, published in the Federal Register at 72 Fed. Reg. 24084 (May 1, 2007) and any modifications thereto made by the Copyright Royalty Judges, the United States Court of Appeals for the District of Columbia Circuit, or any other body of appropriate authority.

2. Recitals

(a) By agreeing to the rates and terms provided in this term sheet, an SCW recognizes and confirms that SoundExchange is offering the rates and terms set forth herein solely at the insistence of relevant members and committees of Congress. These members and committees of Congress have requested that rates and terms not consistent with the willing buyer/willing standard be offered to small commercial webcasters in a manner similar to that which were adopted pursuant to the Small Webcaster Settlement Act of 2004.

(b) It is the express intention of the parties to this term sheet that the rates and terms set forth herein do not reflect rates and terms to which willing buyers and willing sellers would agree in the marketplace.

(c) Each of the parties agrees that, in the identical manner that rates and terms adopted under the Small Webcaster Settlement Act were non-precedential and could not be used as evidence in any judicial, Copyright Royalty Board or other proceeding of any kind, the rates and terms set forth herein (including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth herein), shall not be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding. This prohibition applies to, but is not limited to, those proceedings involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Copyright Royalty Board under paragraph (4) or section 112 (e)(4). The parties hereby agree that they shall not, in any way, seek to use in any way the rates and terms set forth herein (including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements) in any such proceeding and further agree to take whatever steps are appropriate to prevent use of such rates and terms in those proceedings.

(d) It is the intent of the parties that the rates and terms set forth herein (including any rate structure, definitions, terms, conditions, or notice and recordkeeping requirements) shall be considered as a compromise motivated by the unique business, economic and political

circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in 17 U.S.C. § 801(b).

(e) The SCW acknowledges that the rates and terms set forth herein apply only to transmissions of sound recordings owned by SoundExchange's copyright owner members, as those are the only parties on whose behalf SoundExchange has the authority to negotiate separate rates and terms. All SCWs remain responsible for making payments of any transmissions of sound recordings owned by non-members of SoundExchange pursuant to the otherwise applicable rates.

3. Eligibility

An "eligible small webcaster" is a webcaster/simulcaster that (a) complies with all provisions of the statutory license; (b) is a nonsubscription service; and (c) does not exceed the annual gross revenue threshold for the year in which it claims eligibility. Any webcaster that does not satisfy these eligibility criteria during a reporting period shall comply with the rates and terms set forth by the Final Determination of the Copyright Royalty Judges, published in the Federal Register at 72 Fed. Reg. 24084 (May 1, 2007) and any modifications thereto made by the Copyright Royalty Judges, the United States Court of Appeals for the District of Columbia Circuit, or any other body of appropriate authority.

4. Revenue Threshold

The gross revenue threshold is \$1,250,000 on an annual basis. In calculating gross revenues, all revenues, including but not limited to revenue from affiliates and third-party participation revenues, must be included for purposes of determining eligibility.

5. Excess Transmissions

On any transmissions over 5,000,000 aggregate tuning hours per month (equivalent to approximately 6,945 average simultaneous listeners, listening for thirty consecutive days, 24 hours a day), the SCW must calculate liability based on the applicable commercial webcasting rates, as described in the Federal Register at 72 Fed. Reg. 24084, 24,111 (May 1, 2007).

6. Rates

(a) For eligible nonsubscription transmissions made by an SCW from 2006-2010, the royalty rate shall be the greater of: ten percent (10%) of the SCW's first \$250,000 in gross revenues and twelve percent (12%) of any gross revenues in excess of \$250,000 during the applicable year; or seven percent (7%) of the webcaster's expenses during the applicable year.

(b) The royalty payable under 17 U.S.C. § 112(e) for any reproduction of a phonorecord made during the period from 2006-2010, and used solely by an SCW to facilitate transmissions for which it pays royalties as and when provided pursuant to this agreement shall be deemed to be included within, and to comprise nine percent (9%) of, such royalty payments.

7. Minimum Annual Fees

(a) For each year from 2006 to 2010, SCWs shall pay annual minimum fees as follows:

(1) \$2,000, for SCWs that had gross revenues during the prior year of not more than \$50,000 and expect gross revenues of not more than \$50,000 during the applicable year; or

(2) \$5,000, for SCWs that had gross revenues during the prior year of more than \$50,000 or expect gross revenues to exceed \$50,000 during the applicable year.

(b) The minimum fees specified in Sections 7(a)(1), (2) shall be paid by January 31 of each year.

(c) Payments of all amounts specified in this Section shall be made to SoundExchange and shall under no circumstances be refundable.

(d) All amounts paid under the minimum fee provision shall be fully creditable toward royalties due for the year for which such amounts are paid, but not any subsequent year.

8. Calculation of Monthly Payments

(a) Qualification to Make Current Payments as Eligible Small Webcaster. If the gross revenues, plus the third party participation revenues and revenues from the operation of new subscription services, of a transmitting entity and its affiliates have not exceeded \$1,250,000 in any year, and the transmitting entity expects to be an SCW in a given year, the transmitting entity may make payments for that year on the assumption that it will be an SCW for that year for so long as that assumption is reasonable.

(b) True-Up Between Gross Revenues and Expenses. In making monthly payments, an SCW shall, at the time a payment is due, calculate its gross revenues and expenses for the year through the end of the applicable month and pay the applicable percentage of gross revenues or expenses, as the case may be, for the year through the end of the applicable month, less any amounts previously paid for such year. For the purposes of illustration only, if an SCW has \$100,000 in gross revenues and \$2,000 in expenses in Month 1, the monthly payment shall be \$10,000 (10% of aggregate gross yearly revenue up to \$250,000). In Month 2, if the SCW has \$100,000 in gross revenue and \$2,000 in expenses, then the SCW shall pay \$10,000 in monthly payments (10% of aggregate gross yearly revenue for the year up to \$250,000 less the \$10,000 paid in Month 1). In Month 3, if the SCW has \$100,000 in gross revenue and \$2,000 in expenses, then the SCW shall pay \$11,000 in monthly payments (10% of aggregate gross yearly revenue for the year up to \$250,000 plus 12% of aggregate gross yearly revenue for the amount above \$250,000, less prior payments).

(c) True-Up if Eligibility Condition is Exceeded. If a transmitting entity has made payments for any year based on the assumption that it will qualify as an SCW, but the actual gross revenues plus third party participation revenues and revenues from the operation of new subscription services in that year of the SCW and its affiliates exceed the gross revenue threshold, then the transmitting entity shall receive a six (6) month grace period measured from the first month

following the month in which such revenues exceed \$1,250,000. (the “Grace Period”). During the Grace Period, the transmitting entity shall pay the rates as specified in Section 6(a), provided however that if the transmitting entity exceeds the threshold on transmissions as noted in Section 5 above, then the transmitting entity shall pay the full commercial rates, as specified in the Final Determination of the Copyright Royalty Judges, for those excess transmissions. From and after the date the Grace Period has expired, the transmitting entity will pay the full commercial rates only for periods after the expiration of the Grace Period.

(d) Remittance. Payments of all amounts specified in this section herein shall be made to SoundExchange and shall under no circumstances be refundable, but if an SCW makes overpayments during a year, it shall be entitled to a credit in the amount of its overpayment, and such credit shall be applicable to its payments in subsequent years.

9. Notice and Recordkeeping

(a) Reports to Be Provided. As a material condition of this agreement, an SCW shall submit records of use of sound recordings to SoundExchange covering the following on a channel by channel basis:

- (1) The featured recording artist, group or orchestra;
- (2) The sound recording title;
- (3) The title of the retail album or other product (or, in the case of compilation albums created for commercial purposes, the name of the retail album upon which the track was originally released);
- (4) The marketing label of the commercially available album or other product on which the sound recording is found;
- (5) The International Standard Recording Code (“ISRC”) embedded in the sound recording, if available;
- (6) The copyright owner information provided in the copyright notice on the retail album or other product (e.g., following the symbol (P) (the letter P in a circle) or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual track);
- (7) The aggregate tuning hours, on a monthly basis, for each channel provided by the SCW as computed by a recognized industry ratings service or as computed by the SCW from its server logs;
- (8) The channel for each transmission of each sound recording; and
- (9) The start date and time of each transmission of each sound recording.

(b) In the event that SoundExchange develops and implements an automated system for obtaining census reporting of transmissions of sound recordings by SCWs, such webcasters agree to implement that system if such implementation is technically feasible and commercially reasonable.

10. Filing Dates

All SCWs must make monthly payments, file statements of account, and submit reports of use for each month on the 45th day following the month in which the transmissions subject to the payments, statements of account, and reports of use were made.

11. Proof of Eligibility

(a) At all times, the burden of proof shall be on the SCW to demonstrate eligibility for the rates and terms set forth herein and at all times the obligation shall be on the SCW to maintain records sufficient to determine eligibility.

(b) Failure to retain sufficient records to determine eligibility shall constitute a violation of the terms of this agreement and shall render a small commercial webcasting ineligible for the rates and terms set forth herein.

(c) An SCW that elects to be governed by the rates and terms set forth herein shall make available to SoundExchange, within thirty (30) days after SoundExchange's written request at any time during the three (3) years following a period during which it is to be treated as an SCW for purposes of these Rates and Terms, sufficient evidence to support its eligibility as an SCW during that period, including but not limited to an accounting of all affiliate and third-party participation revenue, and aggregate tuning hours on a monthly basis. Any proof of eligibility provided hereunder shall be provided with a certification signed by the SCW if a natural person, or by an officer or partner of the SCW if the SCW is a corporation or partnership, stating, under penalty of perjury, that the information provided is accurate and the person signing is authorized to act on behalf of the SCW.

(d) Default. As a condition of this agreement an SCW shall comply with all the requirements of these rates and terms. If it fails to do so, SoundExchange may give written notice to the SCW that, unless the breach is remedied within thirty (30) days from the date of notice and not repeated, the SCW's authorization to make public performances and ephemeral reproductions under these rates and terms will be automatically terminated. Such termination renders any public performances and ephemeral reproductions as to which the breach relates actionable as acts of infringement under 17 U.S.C. § 501 and fully subject to the remedies provided by 17 U.S.C. §§ 502-506 and 509.

12. Remaining Terms

To the extent not inconsistent with the terms herein, the SCWs shall be governed by and comply with the terms set forth by the Copyright Royalty Judges 37 C.F.R. Part 380

13. Effect of Agreement on Non-members of SoundExchange

(a) This agreement applies only to transmissions made of sound recordings whose copyrights are owned by SoundExchange's copyright owner members, as these are the only entities on whose behalf SoundExchange is authorized to enter into this agreement. SCWs recognize and agree that they must comply with the otherwise applicable rates and terms for transmissions of non-SoundExchange members. At all times, it shall be the responsibility of the SCW to comply with its obligations to non-SoundExchange members.

(b) In order to facilitate proper reporting, SoundExchange shall provide to the SCW information and data sufficient to distinguish between member and non-member transmissions. Such information and data shall be maintained as confidential by the eligible small commercial webcaster and shall not be disclosed in any manner, in whole or in part, absent consent from SoundExchange. To the extent that the SCW makes transmissions of sound recordings whose copyrights are owned by non-SoundExchange members, the SCW must, consistent with the specifications of Section 9, submit two separate reports of use each month: one detailing transmissions of sound recordings whose copyrights are owned by SoundExchange's copyright owner members and one detailing transmissions whose copyrights are owned by non-SoundExchange members.

(c) With respect to transmissions of sound recordings owned by non-members of SoundExchange, SCWs shall comply with the rates and terms, including submission to SoundExchange in its role as Collective of payments, statements of account and reports of use for transmissions of non-members of SoundExchange, as set forth by the Final Determination of the Copyright Royalty Judges, published in the Federal Register at 72 Fed. Reg. 24084 (May 1, 2007) and any modifications thereto made by the Copyright Royalty Judges, the United States Court of Appeals for the District of Columbia Circuit, or other body of appropriate authority.

14. Impact of Industry-wide Agreement or Resolution

In the event that rates and terms reflecting an industry-wide agreement, or a resolution specifically targeted to the category of small commercial webcasters with revenues or usage substantially similar to the thresholds set forth above (or less) is implemented through the Copyright Royalty Judges, the D.C. Circuit Court of Appeals, or through legislation by the United States Congress, and such agreement or resolution is substantially similar to the rates and terms provided in this term sheet, any agreements entered into between SoundExchange and SCWs pursuant to this term sheet shall be null and void and the parties shall be governed by the rates and terms in the industry-wide agreement or resolution.

15. Definitions

As used in this Term Sheet, the following terms shall have the following meanings:

(a) An "affiliate" of a transmitting entity is a person or entity that directly, or indirectly through one or more intermediaries –

- (1) has securities or other ownership interests representing more than 50 percent of such person's or entity's voting interests beneficially owned by –
 - (A) such transmitting entity; or
 - (B) a person or entity beneficially owning securities or other ownership interests representing more than 50 percent of the voting interests of the transmitting entity;
- (2) beneficially owns securities or other ownership interests representing more than 50 percent of the voting interests of the transmitting entity; or
- (3) otherwise controls, is controlled by, or is under common control with the transmitting entity.

(b) The term “aggregate tuning hours” has the meaning given that term in section 380.2(a) of title 37, Code of Federal Regulations, as published in the Federal Register on May 1, 2007.

(c) A “beneficial owner” of a security or other ownership interest is any person or entity who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares voting power with respect to such security or other ownership interest.

(d) The term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

(e) An “eligible small commercial webcaster” means a person or entity that has obtained a compulsory license under 17 U.S.C. §§ 112 or 114 and the implementing regulations therefore to make eligible nonsubscription transmissions and ephemeral recordings for each year from 2006 to 2010, together with its affiliates, and has annual gross revenues plus third party participation revenues and revenues from the operation of new subscription services of not more than \$1,250,000.

In determining qualification under this section, a transmitting entity shall exclude –

- (1) income of an affiliate that is a natural person, other than income such natural person derives from another affiliate of such natural person that is either a media or entertainment related business that provides audio or other entertainment programming, or a business that primarily operates an Internet or wireless service; and
- (2) gross revenues of any affiliate that is not engaged in a media or entertainment related business that provides audio or other entertainment programming, and is not engaged in a business that primarily operates an Internet or wireless service, if the only reason such affiliate is affiliated with the transmitting entity is that (i) it is under common control of the same natural person or (ii) both are beneficially owned by the same natural person.

(f) The term “expenses” –

- (1) means all costs incurred (whether actually paid or not) by an SCW, except that capital costs shall be treated as expenses allocable to a period only to the extent of charges for amortization or depreciation of such costs during such period as are properly allocated to such period in accordance with United States generally accepted accounting principles (“GAAP”);
- (2) includes the fair market value of all goods, services, or other non-cash consideration (including real, personal, tangible, and intangible property) provided by an SCW to any third party in lieu of a cash payment and the fair market value of any goods or services purchased for or provided to an SCW by an affiliate of such webcaster; and
- (3) shall not include –
 - (A) the imputed value of personal services rendered by up to 5 natural persons who are, directly or indirectly, owners of the SCW, and for which no compensation has been paid;
 - (B) the imputed value of occupancy of residential property for which no Federal income tax deduction is claimed as a business expense;
 - (C) costs of purchasing phonorecords of sound recordings used in the SCW’s service;
 - (D) royalties paid for the public performance of sound recordings; or
 - (E) the reasonable costs of collecting overdue accounts receivable, provided that the reasonable costs of collecting any single overdue account receivable may not exceed the actual account receivable.

(g) The term “gross revenues” –

- (1) means all revenue of any kind earned by a person or entity, less –
 - (A) revenue from sales of phonorecords and digital phonorecord deliveries of sound recordings;
 - (B) the person or entity’s actual costs of other products and services actually sold through a service that makes eligible nonsubscription transmissions, and related sales and use taxes imposed on such transactions, costs of shipping such products, allowance for bad debts, and credit card and similar fees paid to unrelated third parties;
 - (C) revenue from the operation of a new subscription service for which royalties are paid in accordance with provisions of 17 U.S.C. §§ 112 and 114; and

(D) revenue from the sale of assets in connection with the sale of all or substantially all of the assets of such person's or entity's business, or from the sale of capital assets; and

(2) includes –

(A) all cash or cash equivalents;

(B) the fair market value of goods, services, or other non-cash consideration (including real, personal, tangible, and intangible property);

(C) in-kind and cash donations and other gifts (but not capital contributions made in exchange for an equity interest in the recipient); and

(D) amounts earned by such person or entity but paid to an affiliate of such person or entity in lieu of payment to such person or entity.

Gross revenues shall be calculated in accordance with GAAP, except that a transmitting entity that computes Federal taxable income on the basis of the cash receipts and disbursements method of accounting for any taxable year may compute its gross receipts for any period included in such taxable year on the same basis.

(i) The term “new subscription service” has the meaning given that term in 17 U.S.C. § 114(j)(8).

(j) The “third party participation revenues” of a transmitting entity are revenues of any kind earned by a person or entity, other than the transmitting entity, including those:

(1) that relate to the public performance of sound recordings and are subject to an economic arrangement in which the transmitting entity receives anything of value;
or

(2) that are earned by such person or entity from the sale of advertising of any kind in connection with the transmitting entity's eligible nonsubscription transmissions.

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AGREED AND ACCEPTED BY:

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Company: _____ Company: _____

Date: _____ Date: _____