

## SOUND RECORDING CATALOG LICENSE

This agreement (the "Agreement") is entered into as of August 11, 2011 by and between SIRIUS XM RADIO INC., 1221 Avenue of the Americas, New York, New York, 10020 (collectively along with its Affiliates, "Licensee") [REDACTED]

WHEREAS, Label owns and/or controls certain sound recordings during the Term hereof (collectively, "Label's Catalog"); and

WHEREAS, Licensee operates a digital audio radio service consisting of a wide variety of music and non-music (e.g., news, weather, sports and talk) programming (the "Service(s)") in the Territory; and

WHEREAS, Licensee desires to obtain from Label a blanket license covering Label's Catalog for the rights set forth herein, and Label is willing to grant such rights to Licensee;

NOW THEREFORE, the Parties hereto agree as follows:

### *1. Grant of Rights:*

(a) Service Programming: Label hereby grants to Licensee, solely in the Territory and solely during the Term, the right, through to the listener, to edit, reproduce, distribute, and publicly perform by means of digital audio transmission some or all of the sound recordings in Label's Catalog (the "Recording(s)") solely in connection with the Service (including, without limitation, as made available to subscribers via satellite radio, the Internet, multi-channel video programming distributors, and commercial business establishment services). The grant of rights will further extend to the public performance, reproduction, and distribution of Label's Catalog on or through devices that have the functional capability set forth on Exhibit A in connection with the Service. Label will be free to grant licenses to others.

(b) The Service operates pursuant to the statutory license at 17 U.S.C. §114(f) and 17 U.S.C. §112(e) (collectively, the "Statutory Licenses"). Label acknowledges, however, that this Agreement is a voluntary license, and Service may from time-to-time introduce product and programming features (artist-specific channels, for example) that extend beyond the Statutory Licenses. Label agrees that such features will be licensed hereunder, and that restrictions which apply under the Statutory Licenses will not apply in relation to Label's Catalog, including but not limited to: (i) the so-called "sound recording performance complement"; (ii) the publication of advance playlists; and (iii) the six-month limit on retention of ephemeral recordings.

## 2. Royalties:

(a) Service Royalty Pool: For each calendar quarter of the Term, Label's pro-rata share of royalties for the license granted hereunder to Licensee will be determined by multiplying the "Service Royalty Pool" for that quarter by a fraction, the numerator of which is the total number of "Transmissions" of identified Recordings from Label's Catalog in that quarter, and the denominator of which is the total number of "Transmissions" of all sound recordings performed on the Service in that quarter.

(i) As used herein: the "Service Royalty Pool" will mean five percent (5%) of revenue recognized by the Licensee in accordance with U.S. GAAP from:

(A) Subscription revenue recognized by Licensee directly from subscribers in the Territory for the Service; and

(B) Advertising revenues, or other monies received from sponsors, if any, attributable to advertising on channels other than those that use only incidental performances of sound recordings, less advertising agency and sales commissions.

(ii) The Service Royalty Pool will exclude:

(A) Monies or other consideration attributable to the sale and/or license of equipment and/or other technology, including but not limited to bandwidth, sales of devices that receive the Service and any taxes, shipping and handling fees therefor;

(B) Royalties paid to Licensee for intellectual property rights;

(C) Monies or other consideration received by Licensee from the sale of phonorecords and digital phonorecord deliveries;

(D) Sales and use taxes, shipping and handling, credit card, invoice, and fulfillment service fees;

(E) Bad debt expense; and

(F) Revenues earned by Licensee for the provision of: (1) current and future data services (e.g., weather, traffic, destination information, messaging, sports scores, stock ticker information, extended program associated data, video and photographic images, and such other telematics and/or data services as may exist from time to time); (2) channels, programming, products and/or other services offered for a separate charge where such channels offer only incidental or occasional performances of sound recordings; (3) channels, programming, products and/or other services provided outside of the Territory; and (4) performances of sound recordings (and/or ephemeral recordings) that are exempt from any license requirement.

(iii) As used herein, a "Transmission" will mean each instance in which any portion of thirty seconds or more of a sound recording is publicly performed by digital audio transmission on the Sirius XM satellite radio service, but excluding performances of less than 30 seconds and performances that make no more than incidental use of sound recordings (including, without limitation, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events).

(b) Methodology for Transmission Counts: Transmissions will be counted without respect to the number of subscribers receiving the performance of the sound recording. For example, without limitation, if a particular sound recording is transmitted on a particular channel or program only once during the reporting period, then there is one Transmission, and if the sound recording is transmitted ten (10) times on a particular channel or program during the reporting period, then there are ten (10) Transmissions.

(c) Direct, "All-In" Royalties: All royalties hereunder will be payable directly to Label and not to a "Collective" (as described in section 370.1(h) of Title 37, Code of Federal Regulations). Such royalties will be inclusive of, and Label will be responsible for paying, all amounts payable to all third parties in connection with the use of the Recordings in the Service as provided herein, including but not limited to: (i) any artist(s); (ii) any producer(s); (iii) any sample owner(s); and (iv) any union(s) (including but not limited to AFM and AFTRA). (For clarity, royalties payable to Label hereunder include, without limitation, both the so-called "copyright owner's share(s)" and the so-called "performer's share(s)" of royalties). Licensee will be responsible for obtaining any required licenses from the owners of the musical compositions embodied in the Recordings in connection with their use in the Service and making all payments in connection therewith.

### 3. Accounting:

(a) Quarterly Accountings: Commencing with the first calendar quarter accounting period, Licensee will calculate and pay any royalties due hereunder to Label quarterly, within forty-five (45) days after the end of each calendar quarter during the Term and provide accounting statements in connection therewith. All royalty payments will be in U.S. Dollars payable to Label and sent to the Label's address as set forth above. If Label's pro rata share of royalties for a quarter is subsequently determined by Licensee to be less than the amount paid to Label for that quarter, then such payment will be deemed to be an overpayment. Label will reimburse Licensee on demand for any such overpayment. In the alternative, Licensee may deduct the amount of the overpayment from future amounts payable to Label under this or any other agreement. If Label's pro rata share of royalties for a quarter is subsequently determined by Licensee to be more than the amount paid to Label for that quarter, then such payment will be deemed to be an underpayment, and Licensee will pay the underpayment to Label during the accounting period after the accounting period in which the underpayment is determined by Licensee.

(b) Audits: Licensee will maintain books and records concerning the use of Label's Catalog in connection with the Service. Label will have the right, upon ninety (90) days notice to Licensee, to designate an independent certified public accountant on Label's behalf, who will not be retained on a contingency basis, to examine those books and records, at its sole cost and expense, solely for the purpose of verifying the accuracy of royalty accountings hereunder, only once per accounting statement, only once per year, and solely during Licensee's normal business hours. Prior to commencing any such examination, Licensee, Label, and Label's auditor will enter into a confidentiality agreement to protect the confidential information of Licensee which will be exposed during the course of the examination.

(c) Audit Restrictions: Each accounting statement hereunder will be binding and not subject to any objection unless Label notifies Licensee of that objection within two (2) years after the date such statement is required to be rendered hereunder (and each accounting statement will be deemed rendered on time unless Label notifies Licensee to the contrary not later than sixty (60) days after the date on which such statement is required to be rendered). Label may not commence legal action against Licensee in respect of any accounting (or failure to account) unless Label commences such legal action in accordance with Section 7(c) within two (2) years after the date the applicable accounting is required to be rendered, and the scope of any such legal action will be limited to a determination of the amount of royalties, if any, payable to Label for such accounting concerned. Label's sole and exclusive remedy in connection therewith will be the recovery of the royalties Label is adjudged to be owed hereunder, if any.

#### **4. Term And Territory:**

(a) Term: This Agreement will commence as of the date first written above and will continue for a period of three (3) years (the "Initial Period"), after which it will renew automatically for successive periods of one (1) year, each a "Renewal Period," unless terminated by either Party as provided herein. The Initial Period, together with all Renewal Periods, if any, will constitute the "Term." Either Party may terminate this Agreement, effective as of the end of the Initial Period or any Renewal Period, by notice to the other not less than ninety (90) days prior to the conclusion of the then-current period of the Agreement.

(b) Territory: The "Territory" of this Agreement will mean the United States, its territories, possessions, commonwealths and military bases.

#### **5. Representations and Warranties/Indemnity:**

(a) Mutual Ability: Each Party represents and warrants to the other that: (i) it has full right, power and authority to enter into this Agreement and to perform its obligations hereunder; (ii) this Agreement and its performance will not constitute a breach or default under any agreement to which such Party or its assets are bound; and

(iii) no consent from any party is required for the execution or performance of this Agreement.

(b) Non-Infringement: Label represents and warrants that the use of Label's Catalog in the Services as provided herein will not infringe the rights, including but not limited to intellectual property rights or contractual rights, of any third party.

(c) Indemnity: Each Party hereto will indemnify and hold the other Party harmless from any third party claim, cost, or expense (including, without limitation, legal costs and attorneys' fees) arising out of a breach by the other Party of such Party's representations or warranties hereunder.

(d) Availability/Catalog File:

(i) Label represents and warrants that the entirety of Label's Catalog will be available for use by Licensee as provided herein during the Term.

(ii) Label will promptly deliver to Licensee (or Licensee's agent) an MS Excel spreadsheet including, without limitation, complete metadata for Label's Catalog (a "Label Metadata Spreadsheet"), inclusive of the following fields: title; artist; album; ISRC; UPC; duration; Distributing Label; Sub-Label; Label Catalog Number; and Initial Release Date. Label represents and warrants that it will similarly deliver updated Label Metadata Spreadsheets to Licensee promptly, but in no event later than once per month, during the Term.

(iii) Licensee will identify the Recording(s) in textual data by reference to the title of the Recording(s) and the featured recording artist, in a manner to permit it to be displayed to subscribers.

## **6. Confidentiality:**

(a) Both Licensee and Label may disclose the existence of this Agreement, the identity of any and all Recordings subject to this Agreement, the scope of rights granted and the term and territory of the grant of rights.

(b) All other terms of this Agreement and information required to be disclosed pursuant to this Agreement will be considered confidential and may not be disclosed to third parties without the written consent of the other Party, provided, however, that:

(i) either Party may disclose such other terms of this Agreement to its employees, officers, directors, owners, agents, consultants, representatives, attorneys and auditors, in their capacity as such, on a need-to-know basis and subject to the confidentiality obligations set forth herein; and

(ii) either Party may disclose such other terms of this Agreement to third parties in the context of legal proceedings, government investigations, or compliance

with federal or state securities laws or regulations (provided reasonable prior notice of such disclosure, if permitted by law, is given to the other Party and, in each case, the disclosing Party takes all reasonable steps to prevent impermissible further disclosure by recipients authorized hereunder).

7. Miscellaneous:

(a) Definitions: (i) “Affiliates” will mean, with respect to any specified person or entity, any other person or entity that now or in the future, directly or indirectly, through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with, such specified person or entity. As used in this definition, the term “control” of a person or entity means the ownership of at least fifty percent (50%) of the voting equity of that person or entity or possessing the power to direct or cause the direction of the management of that person or entity. (ii) “Business Day” will mean any day other than: (A) a Saturday or Sunday; and (B) a day in which the banks in New York City are authorized or required to close.

(b) Addresses and Notices: All notices hereunder must be in writing and sent by certified mail, return receipt requested, to the address of the Party set forth above, in order to be effective. Notices so sent will be deemed to be effective when mailed (except for notice of change of address, which will be effective upon receipt).

(c) New York Law & Venue: This Agreement will be governed by and construed in accordance with the laws of the State of New York, and the New York courts, state and federal (located in the borough of Manhattan), will have exclusive jurisdiction and venue over any disputes arising out of this Agreement.

(d) Notice Of Breach: Neither Party will be deemed to be in breach of this Agreement unless the non-breaching party has notified the breaching Party of the breach with specificity, and the breaching Party has failed to cure the breach concerned within thirty (30) days.

(e) Merger/No Oral Amendments: This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof, and all prior and contemporaneous agreements are merged herein. No modification of this Agreement, or waiver of any right hereunder, will be binding on either Party unless memorialized in a writing signed by the Party to be charged with such amendment or waiver.

(f) Counterparts: This Agreement may be executed in counterparts, all of which, when taken together, will constitute one and the same document. Facsimile or scanned signatures hereto will be deemed original for all purposes.

(g) Assignment: This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party. This Agreement will be binding upon the Parties and their permitted successors and assigns and will be binding

on all Affiliates of Label (including, without limitation, when they cease to remain an Affiliate of Label).

(h) LIMITATION OF LIABILITY. IN NO EVENT WILL ANY PARTY BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY AMOUNTS REPRESENTING ITS RESPECTIVE LOSS OF PROFITS, LOSS OF BUSINESS, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES (EVEN IF PREVIOUSLY APPRISED OF THE POSSIBILITY THEREOF) IN CONNECTION WITH OR ARISING FROM THIS AGREEMENT OR RELATED ACTS OR OMISSIONS. NO PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

(i) Severability. If any term of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms of this Agreement will nevertheless remain in full force and effect.

**ACCEPTED AND AGREED:**

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SIRIUS XM RADIO INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**SERVICE ACCESS RULES**

1. The Service may be accessed in any of the following ways:
  - (a) Through devices and applications which are authorized by Licensee (“Authorized Devices/Applications”) which enable such subscribers to record a discrete number of individual sound recordings while listening to Service channels and retain such recordings only for so long as the user remains a subscriber;
  - (b) Through Authorized Devices/Applications which automatically record a discrete number of individual sound recordings from the Service (based on subscriber preferences) and present the recordings to the subscriber, on a non-interactive basis, as a customized “channel”;
  - (c) Through Authorized Devices/Applications which record subscriber-designated blocks of Service programming for later playback by the subscriber;
  - (d) Through Authorized Devices/Applications which enable subscribers to select and listen to blocks of pre-recorded Service programming;
  - (e) Through Authorized Devices/Applications where the Service programming concerned has been “cached” (i.e., copied locally) for access when Authorized Devices are not connected to the Service; and
  - (f) Through Authorized Devices/Applications which enable one to fast-forward; skip; rewind; pause; and/or resume Service programming.
2. Notwithstanding the foregoing, Licensee will not:
  - (a) Take affirmative steps to enable Service subscribers to transfer Recordings to media other than Authorized Devices/Applications; or
  - (b) Take affirmative steps to enable Service subscribers to access Recordings after their subscriptions have expired or been terminated for any reason (provided that if a subscriber subsequently restores its subscription, then access to such Recordings may be re-instated).
3. For the avoidance of doubt, this Exhibit A is intended solely to illustrate the rights granted in this voluntary Agreement; it is not intended to describe the rights or limitations of the Section 112 and 114 statutory licenses, or to indicate what service offerings/features are allowed, required, or prevented or otherwise encompassed under the statutory licenses.