§ 382.13 Terms for making payment of royalty fees and statements of account.

(a) Payment to the Collective. A Licensee shall make the royalty payments due under §382.12 to the Collective.

(b) Designation of the Collective. (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Licensees due under §382.12 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114.

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114 that have themselves authorized the Collective.

(ii) The Copyright Royalty Judges shall publish in the Federal Register within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) Monthly payments. A Licensee shall make any payments due under §382.12 on a monthly basis on or before the 45th day after the end of each month for that month, except that payments due under §382.12 for the period beginning January 1, 2007, through the last day of the month in which the
Copyright Royalty Judges issue their final determination adopting these rates and terms shall be due 45 days after the end of such period. All payments shall be rounded to the nearest cent.

(d) Late payments and statements of account. A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment and/or statement of account received by the Collective after the due date. Late fees shall accrue from the due date until payment is received by the Collective.

(e) Statements of account. Any payment due under §382.12 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

1. Such information as is necessary to calculate the accompanying royalty payments;
2. The name, address, business title, telephone number, facsimile number (if any), electronic mail address and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;
3. The handwritten signature of a duly authorized officer or representative of the Licensee;
4. The printed or typewritten name of the person signing the statement of account;
5. The date of signature;
6. The title or official position held in relation to the Licensee by the person signing the statement of account;
7. A certification of the capacity of the person signing; and
8. A statement to the following effect:

I, the undersigned officer or representative of the Licensee, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(f) Distribution of royalties. (1) The Collective shall promptly distribute royalties received from Licensees to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in §370.3 of this chapter.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (f)(1) of this section within 3 years from the date of payment by a Licensee, such royalties shall be handled in accordance with §382.17.

(g) Retention of records. Books and records of a Licensee and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

§382.14 Confidential information.

(a) Definition. For purposes of this subpart, “Confidential Information” shall include the statements of account and any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) Exclusion. Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) Use of Confidential Information. In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) Disclosure of Confidential Information. Access to Confidential Information shall be limited to:

1. Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their activities.