not limited to, 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; and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

§ 380.22 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) Minimum fee. Each Noncommercial Educational Webcaster shall pay an annual, nonrefundable minimum fee of $500 (the “Minimum Fee”) for each of its individual channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year it makes Eligible Transmissions subject to this subpart. For clarity, each individual stream (e.g., HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum. In addition, a Noncommercial Educational Webcaster electing the reporting waiver described in §380.23(g)(1), shall pay a $100 annual fee (the “Proxy Fee”) to the Collective.

(b) Additional usage fees. If, in any month, a Noncommercial Educational Webcaster makes total transmissions in excess of 158,140 Aggregate Tuning Hours on any individual channel or station, the Noncommercial Educational Webcaster shall pay additional usage fees (“Usage Fees”) for the Eligible Transmissions it makes on that channel or station after exceeding 158,140 total ATH at the following per-performance rates:

(1) 2011: $0.0017;
(2) 2012: $0.0020;
(3) 2013: $0.0022;
(4) 2014: $0.0023;
(5) 2015: $0.0025.

(6) For a Noncommercial Educational Webcaster unable to calculate actual total performances and not required to report ATH or actual total performances under §380.23(g)(3), the Noncommercial Educational Webcaster may pay its Usage Fees on an ATH basis, provided that the Noncommercial Educational Webcaster shall pay its Usage Fees at the per-performance rates provided in paragraphs (b)(1) through (5) of this section based on the assumption that the number of sound recordings performed is 12 per hour. The Collective may distribute royalties paid on the basis of ATH hereunder in accordance with its generally applicable methodology for distributing royalties paid on such basis. In addition, and for the avoidance of doubt, a Noncommercial Educational Webcaster offering more than one channel or station shall pay Usage Fees on a per-channel or -station basis.

(c) Ephemeral royalty. The royalty payable under 17 U.S.C. 112(e) for any ephemeral reproductions made by a Noncommercial Educational Webcaster and covered by this subpart is deemed to be included within the royalty payments set forth in paragraphs (a) and (b)(1) through (5) of this section and to equal the percentage of such royalty payments determined by the Copyright Royalty Judges for other webcasting in §380.3.

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

(a) Payment to the Collective. A Noncommercial Educational Webcaster shall make the royalty payments due under §380.22 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 Noncommercial Educational Webcasters due under §380.22 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents,