

Jan, 2006

## **SOUNDCLICK ECOMMERCE AGREEMENT TERMS AND CONDITIONS**

### **1. Description of Services:**

**SoundClick Inc.** is a provider of music related services. These services are provided to Clients desiring to sell products via the Internet or World Wide Web. Client hereby appoints SoundClick Inc. as the Online Retailer of Client's merchandise as provided under this Agreement. Client may use the service to allow Customers to purchase Client's products from SoundClick Inc. using any major credit card.

SoundClick Inc. accepts three types of credit cards: Visa, MasterCard, and American Express. All charges are billed to Customer credit cards by "SoundClick Inc.". For some of its service SoundClick Inc. may accept PayPal payments.

The following terms are defined for use in this Agreement:

"Client Product" means any Soft Good or Hard Good that originated from Client.

"Client Web Site" means one or more interactive Internet World Wide Web sites maintained by Client for the purpose of displaying and offering products for sale to Customers.

"Customer" means any person desiring to make a purchase of a Client Product.

"SoundClick Inc." and "Company" refer to SoundClick Inc.

"Hard Good" means a tangible product that is manufactured or distributed by Client.

"Soft Good" means an intangible product that can be downloaded via the Internet.

"Customer Charge" means the Product Price plus Shipping Charge if applicable to be charged to the Customer's credit card account for the purchase of Client's product(s).

"Delivery" means (a) for hard goods, the placing of Product(s) with a common carrier such as the United States Postal Service, United Parcel Service, or Federal Express etc., shipping charges prepaid, with instructions to deliver the Product(s) to the Customer (b) for soft goods the digital transaction from servers operated by SoundClick Inc. to the Customer's computer.

### **2. Standard Sales Commission:**

(a) Hard goods: SoundClick currently does not accept new signups for this service. For previous subscribers: SoundClick Inc.'s is providing e-commerce for Client at no-commission. There's a monthly fee of US \$4.95 for store maintenance. This fee applies only to the service for the sale of hard goods (e.g. physical CDs). Please see below for soft goods (i.e. digital MP3 store). This fee will be billed quarterly. The Client can cancel anytime for any reason. Cancellation will be effective to the next quarter. The current quarter that is already paid for will not be reimbursed. The Client's store will remain open until the end of

the quarter.

(b) Soft goods (also known as "Digital MP3 Store"): SoundClick Inc. provides this service free of recurring subscription charges. In other words, there are no monthly fees. SoundClick Inc applies a sales commission to every purchase of soft goods. The sales commission will be the charge to the customer less the payment to the Client as described in 'Payment from SoundClick Inc. to Client'.

### **3. Payment from SoundClick Inc. to Client**

SoundClick Inc. agrees to pay Client for all products re-sold by SoundClick Inc. as described hereinafter. In this regard, SoundClick Inc. will cause the Customer Charges associated with each order to be charged to the Customer's credit card or PayPal account after order placement by the Customer, and SoundClick Inc. shall pay the Client out of the proceeds received from the credit card or PayPal service provider after delivery of the products.

The amount to be paid to Client will be determined weekly for the prior pay period. SoundClick Inc. will deliver its payments to Client as promptly after these dates as is practicable. The payment due the Client is (a) for soft goods according to the current [payout table](#) (b) for hard goods equal to the sum of all Customer Charges for products which have been delivered within the specified time period. For (a) and (b) SoundClick Inc. deducts from any payment

- (i) the sum of all Customer Charges denied, refused, or charged back by the Customer or the credit card service provider during the period
- (ii) all inquiries, disputes, and refunds processed on account of Client's Customer Charges during the period,
- (iii) all taxes, penalties, charges and other items reimbursable under Sections 6, 8, and 10 of this Agreement or otherwise occurring during the period
- (iiii) service charges by SoundClick Inc. for any service related to inquiries, disputes, charge backs and refunds.

SoundClick Inc pays the Client by PayPal only. The Client has the responsibility to provide a valid PayPal account at all times.

### **4. Client's Cancellation**

(a) Hard goods: The Client may at any time cancel this Agreement with notice to SoundClick Inc. SoundClick Inc. will terminate this Agreement and will no longer sell Client's products to Customers after cancellation notice is received and processed. Any payments due to the Client for Orders sent prior to cancellation will be paid as described in the Payment description. The Client is further obligated to honor any outstanding Customer Orders submitted prior to the cancellation. Client will not be reimbursed for already paid quarter, see 'Standard Sales Commission'.

(b) Soft goods: The Client may remove his product(s) at any time. Any payments due to the Client for Orders sent prior to cancellation will be paid as described in the Payment description.

## **5. General Terms and Conditions.**

### a) Losses.

Client shall indemnify and hold SoundClick Inc. harmless from all claims, expenses, and losses occurring for any reason in connection with the sale of Client Product(s) to Customers by SoundClick Inc., specifically including, without limitation, the costs and expenses of:

- (i) Customer refunds and/or returns and Charge Backs;
- (ii) Warranty and/or service claims of Customers arising out of express or implied representations of Client or by operation of law, regulation, or trade custom; or
- (iii) Claims and losses as a consequence of damage or misdirection in shipping products to Customers. In this regard, Client is responsible for declaring a value with the shipper or obtaining insurance sufficient to permit Client to recover the value of items lost, destroyed, or damaged during shipment.

### b) Transaction Limits.

SoundClick Inc. reserves the right to impose limits on sales of products in its sole discretion and to refuse to process transactions to specific Customers for any reason. Specifically, SoundClick Inc. may limit or restrict sales to a minimum or maximum Product Price, impose limits on the amount or number of purchases which may be charged to an individual credit card account during any time period, or refuse to accept orders from Customers with a prior history of questionable charges. SoundClick Inc. may impose Transaction Limits or Reserve Amounts on specific client accounts, either temporarily or permanently, which are more restrictive than limits placed on other clients in order to reduce SoundClick Inc.'s reasonable apprehension of risk of loss under varying circumstances. SoundClick Inc. is in no way responsible for any losses sustained by Client, including claims for lost profits, on account of the imposition of Transaction Limits or Reserve Amounts for any reason.

### c) Refund and Return Policy.

Client will accept returns of products, and will agree to refunds for Customers who initiate an inquiry or complaint either with SoundClick Inc. or with their credit card issuer. SoundClick Inc. will use its best efforts to resolve customer inquiries and complaints in a manner that is acceptable to both Customers and Clients; however, SoundClick Inc. reserves the right to issue a refund without the knowledge or consent of Client in any case that it deems appropriate. Notwithstanding anything to the contrary contained herein, SoundClick Inc. will provide a refund without penalty to any Customer who returns the products to Client within 30 days from the date of delivery. Client may not impose a "Restocking Fee" or other charge on customers who make such returns.

#### e) Customer Support.

Client shall at all times have the ability to respond promptly to inquiries from SoundClick Inc. on behalf of Customers, and shall endeavour to resolve disputes with Customers amicably. The occurrence of complaints from customers and/or inquiries or charge backs regarding Client's merchandise may be cause for termination of this Agreement if such events occur with unacceptable frequency as determined in the sole discretion of SoundClick Inc. In addition, SoundClick Inc. reserves the right to charge Client reasonable fees and recover its expenses on account of excessive customer inquiries, refunds, or charge backs. Prior to imposing such fees and attempting to recover its costs, SoundClick Inc. shall notify Client of the details and nature of the problems and attempt to find mutually acceptable solutions. If SoundClick Inc. and Client are unable to achieve mutually acceptable solutions, Client shall have the option of continuing this Agreement subject to the additional fees and costs imposed by SoundClick Inc. or of terminating this Agreement.

### **6. Regulation Authorization**

Client represents and warrants that it is legally authorized and has obtained all necessary regulatory approvals and certificates to sell any product it intends to offer. Client further represents that it will conform to any and all laws, rules, regulations, requirements and/or other standards that are established by the Federal Trade Commission, state and local consumer protection agencies, and credit card governing agencies regarding the sale of products over the Internet or in situations where the card is not present.

### **7. Taxes**

Each party agrees to report and pay its own taxes imposed on its income by any jurisdiction, such as state and federal income taxes. Should SoundClick Inc. be required to pay any such taxes on the income of Client, the amount of such taxes and all related interest, fines, or penalties shall become immediately due and payable to SoundClick Inc. pursuant to Section 10.

Further, the parties agree that if additional taxes in the nature of an excise, sales or use tax are imposed in connection with SoundClick Inc.'s services on behalf of Client, the burden of such taxes shall be the Client's responsibility. SoundClick Inc. shall have the right to collect and pay over taxes in the nature of an excise, sales, or use tax on behalf of Client or on account of its own sales of products if reasonably required to do so by a taxing authority of competent jurisdiction and shall further have the right to recover from Client under Section 10 of this Agreement the amount of any such taxes and related penalties and interest which are paid by SoundClick Inc. with its own funds.

## **8. Limitations of Liability for the SoundClick Inc. service**

SoundClick Inc. assumes no liability for disruptions or improper operation of its equipment or software for any reason, including, but not limited to, vandalism, theft, phone service outages, Internet disruptions, human error, extreme or severe weather conditions or any other causes in the nature of "Acts of God" or force majeure. SoundClick Inc. shall not be responsible for consequential damages or punitive or exemplary damages under any circumstances. In no case shall Client be entitled to recover damages from SoundClick Inc. which exceed the sum of the amounts of sales commissions and service fees retained by SoundClick Inc. under this Agreement during the six months prior to event giving rise to the claim for damages.

## **9. Indemnification**

Client is fully responsible for the content of its Web site and for the advertising and promotion of all of Client's products. Client certifies and represents to SoundClick Inc. that it is the owner or that it has full right and authority to use and disseminate all information, data, graphics, text, video, music or other intellectual property which either forms a part of its Web site, which is provided by Client to Customers, or which is used by Client in its advertising and promotion and to sell and deliver products to Customers.

Client agrees to indemnify and hold harmless SoundClick Inc., its employees, officers, agents, and directors from any and all fines, penalties, losses, claims, expenses (including attorney's fees), or other liabilities resulting from or in connection with this Agreement. SoundClick Inc. assumes no liability of the Client for failure to follow this Service Agreement and any results caused by the acts, omissions or negligence of the Client, sub-contractor or an agent of Client or an employee of any one to them, including, but not limited to, claims of third parties arising out of or resulting from or in connection with the Client's products, messages, programs, caller contracts, promotions, advertising, infringement or any claim for libel or slander or for violation of copyright, trademark or other intellectual property rights.

## **10. Term**

The term of this Agreement shall continue until a notice of cancellation by SoundClick Inc. or Client is given, or until terminated under other provisions of this Agreement. SoundClick Inc. reserves the right to terminate this Agreement without cause. SoundClick Inc. may further terminate this Agreement immediately without notice at any time if the Client breaches any part of this Agreement, or if any program or facility used by SoundClick Inc. to implement this Agreement is disrupted or terminated for any reason. SoundClick Inc. reserves the right to decline any Client, remove the Client's account or provide only partial service for the Client's account without cause.

## **11. Default**

In the event Client defaults in any provision or fails to perform pursuant to this Agreement,

SoundClick Inc. shall be entitled to damages, costs and attorney's fees from the Client.

## **12. Invalid or Non-enforceable Provisions**

The invalidity or non-enforceability of any provision of this Agreement, as so determined by a court of competent jurisdiction, shall not affect the other provisions hereof, and in any such occasion this Agreement shall be construed in all respects as if such invalid or non-enforceable provision were omitted.

## **13. Choice of Law/Venue**

This Agreement shall be construed and enforced in accordance with the laws of the State of California and the venue for any action, dispute or proceeding with respect to this Agreement shall be Sunnyvale, California.

## **14. Captions**

The captions in this Agreement are for convenience only and shall not be used in interpreting, construing, performing or enforcing this Agreement.

## **15. Age requirements for use of the Service**

This Service is available for individuals aged 13 years or older. If the Client is 13 or older but under the age of 18, the Client should review these terms and conditions with its parent or guardian to make sure that the Client and its parent or guardian understand these terms and conditions.

## **16. Amendments and Modifications**

SoundClick Inc. may make amendments or modifications to this Agreement from time to time. Whenever practical, SoundClick Inc. will give Client advance notice of the changes to this Agreement.