



September 7, 2017

[*CB-CDA 2017-097*]

File: SOCAN-Re:Sound – Pay Audio Services Tariffs, 2007-2016

**SUPPLEMENTARY ORDER DEALING WITH INFORMATION FOR WHICH
CONFIDENTIAL TREATMENT MAY BE CLAIMED**

1. In this order

“confidential information” and “highly confidential information” mean information that a supplier believes is so sensitive that its disclosure to persons other than those authorized pursuant to this order would reasonably be expected to result in injury to the supplier or to the person who supplied the information to the supplier;

“counsel” means, unless otherwise indicated, external counsel and internal counsel for a participant to this proceeding;

“disclosure order” means Order of the Board CB-CDA 2017-032 dated April 26, 2017, requiring that an entity identified therein disclose certain highly confidential agreements in its possession, in accordance with the terms of that order;

“recipient” means a participant to this proceeding who receives information from a supplier;

“supplementary confidentiality agreement” means the agreement set out in Appendix A to this order; and

“supplier” means a participant to this proceeding who supplies information to another participant as part of the proceeding.

2. This order applies to information that a supplier designates as confidential information or highly confidential information within the highly confidential agreements.

3. Counsel to the recipient shall execute and deliver the supplementary confidentiality agreement to counsel to the supplier.

4. Information subject to this order shall be disclosed only to persons authorized pursuant to this order.

5. Subject to paragraphs 7 and 8, confidential information designated as such by the supplier and received by counsel to the recipient, shall not be disclosed to anyone except:

(a) external counsel's staff and staff of internal counsel's legal department;

(b) persons retained by the recipient as an expert or consultant (other than a director or employee of a participant) for the purposes of these proceedings, and that person's staff; and

(c) no more than ten representatives to be designated by each recipient. Such a person may be a director or employee of the recipient and should, if possible, be a member of the recipient's executive management team.

6. Subject to paragraphs 7 and 8, highly confidential information designated as such by the supplier and received by external counsel to the recipient, shall not be disclosed to anyone except:

(a) external counsel's staff; and

(b) persons retained by the recipient as an expert or consultant (other than a director or employee of a participant) for the purposes of these proceedings and that person's staff.

7. No information that is subject to this order may be disclosed to a person unless permitted by this order and unless and until the supplementary confidentiality agreement executed by that person has been delivered to counsel to the supplier. Notwithstanding the foregoing, staff of the recipient's external counsel are not required to execute and deliver a supplementary confidentiality agreement, so long as the recipient's external counsel has done so.

8. The executed supplementary confidentiality agreement referred to in paragraph 7 must be delivered to counsel to the supplier three clear working days before any information subject to this order is disclosed. The supplier may, within that time, object to the disclosure of information to the person who has signed the agreement. The supplier may waive the objection period by informing the recipient. If an objection is made, no information subject to this order shall be disclosed to the person until the Board has ruled on the objection and thereafter, only if permitted by the Board's ruling.

9. All documents containing confidential information or highly confidential information shall be printed on white paper with confidential information highlighted in yellow and highly confidential information highlighted in blue. Where an entire page is either confidential or highly confidential, that page only may be printed on yellow or blue paper, respectively, and the balance of the document shall be printed on white paper.

10. Anyone who intends to use, during the proceeding, information subject to this order or any summary, aggregations or reproduction, in whole or in part, of such information shall attempt to agree with the supplier on a manner in which the information may be put into the public record or, alternatively, on a form that, though it may require confidential treatment, will minimize the risks and difficulties associated with dealing with the information. Any confidentiality claim relating to information intended to be used during the proceeding, including information subject to this order, shall be dealt with pursuant to the Directive on Procedure applicable to the proceeding.

11. Where information subject to this order can be conveniently aggregated with similar information provided by others, it shall not be a breach of this order for the recipient to aggregate the information and to provide the aggregated results to all the suppliers who provided the disaggregated information, on the condition that all those who supplied the disaggregated information consent to the aggregated information being provided to the others. Unless all those who supplied the disaggregated information consent, the aggregated information shall be treated as highly confidential information if any of the disaggregated information was designated as such, and otherwise shall be treated as confidential information.

12. All information that is subject to this order shall be destroyed within 30 days following completion of this proceeding, including any applications for judicial review and any appeals therefrom, except where required by statute or regulation to be retained, or where retained pursuant to paragraphs 13 or 14.

13. Counsel to a recipient may retain in counsel's files information subject to this order, and any materials derived therefrom, after the proceeding is completed. Experts or consultants retained by a recipient may, to the extent necessary to satisfy any professional record keeping obligations, retain in their confidential files information subject to this order, and any materials derived therefrom, after the proceeding is completed.

14. A person may retain in that person's confidential files any material prepared by or for that person which does not replicate the information subject to this order but which, if itself disclosed, could lead indirectly to the disclosure of the information subject to this order. Such material shall be subject to this order until it is destroyed.

15. This order does not restrict in any way the use by a supplier of information that it has designated as confidential information or highly confidential information.

16. The entity required to disclose the highly confidential agreements, in accordance with the terms of Order of the Board CB-CDA 2017-032 shall be deemed a "supplier", as that term is defined in this order, notwithstanding the fact that the entity is not to be otherwise considered a participant to this proceeding.

17. The names of all counter-parties to the highly confidential agreements subject to the disclosure order shall be redacted such that their respective identities remain undisclosed.

18. This order is subject to further direction of the Board. Consequently, anyone who is of the view that this order is inappropriate for dealing with any information subject to this order or that a supplier's designation of information as confidential or highly confidential under this order is inappropriate, may apply for further direction from the Board.



Gilles McDougall
Secretary General

APPENDIX “A”

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SUPPLEMENTARY CONFIDENTIALITY AGREEMENT

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IN CONSIDERATION of being provided with information in connection with this proceeding over which claims for confidentiality have been advanced, I, _____ of the City of _____, in the Province of _____, agree to maintain the confidentiality of that information. I shall not copy or disclose it to anyone other than a person authorized pursuant to the Copyright Board’s Supplementary Order of September 6, 2017 (the “Order”), nor shall I use it for any purpose other than in connection with this proceeding.

I have read the Order, a copy of which is attached hereto, and agree to be bound by it. I acknowledge that any breach of this agreement shall be considered to be a breach of the Order. I also acknowledge and agree that the person who supplied the information may not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this agreement are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that the person shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce its terms and provisions, in addition to any other remedy to which the person may be entitled at law or in equity.

I shall comply with the provisions of the Order with respect to the retention and destruction of all information that is subject to the Order.

I hereby submit to the jurisdiction of the Copyright Board of Canada and the Federal Court of Canada, for the purposes of this supplementary confidentiality agreement and the Order and any necessary enforcement or injunction proceedings.

Signed, sealed and delivered before a witness this _____ day of _____, 2017.

(Print Name)

(Signature)

Relationship to Recipient (as defined in the Order): _____

(Print Name – Witness)

(Signature – Witness)