

**DISCLAIMER: This is an interim text of the non-confidential version of the commitments in Case M.6800 - PRSfM / STIM / GEMA / JV. The text is made available for information purposes only and does not constitute an official publication. The full text of the decision and the commitments in Annex will be published on DG COMP's website.**

**M.6800 – PRSfM / GEMA / STIM – JV  
COMMITMENTS TO THE EUROPEAN COMMISSION**

**NON-CONFIDENTIAL VERSION**

Pursuant to Article 8(2) and 10(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), PRS for Music Limited (hereinafter referred to as “**PRSfM**”), Föreningen Svenska Tonsättares Internationella Musikbyrå (STIM) u.p.a. (hereinafter referred to as “**STIM**”), and Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (hereinafter referred to as “**GEMA**”) (the “*Notifying Parties*”) hereby enter into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the creation of the full-function joint venture between PRSfM, STIM and GEMA (the “*Concentration*”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “*Decision*”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “*Remedies Notice*”).

**Section A. Definitions**

For the purpose of the Commitments, the following terms shall have the following meaning:

**Active Works** means works due to be distributed or licensed.

**Activity Triggers** means the customer’s way of notifying ICE when works data is due to be used in distributions and/or for licensing/invoicing purposes.

**Affiliated Undertakings** means undertakings controlled by the Notifying Parties and/or by the ultimate parents of the Notifying Parties, including the DELTA Company and the ZETA Company, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger

Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "*Consolidated Jurisdictional Notice*").

**API** means Application Program Interface.

**API Calls** means the supply of copyright data to and from a customer via a set of APIs.

**Appointment** means the appointment of a Third Party Customer or any of the Notifying Parties by an Option-3-Publisher for the purpose of granting licences of the latter's rights for multi-territorial online/mobile exploitation in the EEA.

**Back-Office Services** means an integrated service solution consisting of Copyright Services and Processing Services provided by DELTA Company, either directly or through a subsidiary.

**CIS Imports and Extracts** means functions to support CMOs in complying with international standards and binding resolutions by, on a regular basis, exchanging data with the international CIS data tools.

**CMO** means a Collective Management Organisation as defined in Art. 3 lit. a) of the CRM Directive.

**CRM Directive** means the Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market ([2014] OJ L 84, pp. 72 et seq.).

**Confidential Information** means any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest** means any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments.

**Copyright Services** means the provision of IT software solutions for the purpose of identification, documentation and maintenance of ownership of musical works solely to support copyright licensing by the customer, IT services (centralised and local managed IT platforms, the creation of additional test environments and the management of change requests) and copyright management services (managing publishing agreements (local and pan-European), work notifications, Active Works (local and pan-European), Work Updates, ICE Online Access, Activity Triggers, API Calls, CIS and Customised Imports and Extracts, and producing reports on demand).

**Customised Imports and Extracts** means customised services related to exchange of copyright data.

**Data Protection Rules** means the UK Data Protection Act 1998, the Swedish Personal Data Act (1998:204), the German Data Protection Act, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all other applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by any competent supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

**DELTA Company** means ICE or any other company which will provide Back-Office Services and/or Copyright Services within the JV and will be owned and jointly controlled by the Notifying Parties or their Affiliated Undertakings.

**DELTA Company Copyright Database** means the database containing data relating to specific musical works, - including data provided to ICE/DELTA Company from time to time by its customers - as may be run from time to time on ICE/DELTA Company's information technology software and system(s), to which a Third Party Customer is granted access to benefit from the Copyright Services or Back Office Services of the JV.

**Effective Date** means the date of adoption of the Decision.

**Exclusive Mandate** means a Mandate which contractually obliges the Option 3 Publisher or CMO granting the Mandate to refrain from (i) granting mandates to other entities for the purpose of the multi-territorial licensing of the relevant Option 3 Publisher's/CMO's copyrights for online/mobile exploitation, and (ii) directly licensing the copyrights controlled by the relevant Option 3 Publisher/CMO for online/mobile exploitation on a multi-territory basis.

**Front Office Services** means (i) conducting and/or supporting licensing negotiations on behalf of ZETA-Customers for the purposes of licensing copyrights in musical works for online and mobile exploitation either individually on behalf of each ZETA-Customer or as part of the ZETA Core Licence; (ii) customer account and relationship management concerning licensees of the JV, ZETA-Customers and the Notifying Parties; (iii) monitoring of authorized online usage, detection of unauthorized usage and judicial enforcement of the copyrights owned or controlled by the Notifying Parties and ZETA-Customers.

**ICE** means International Copyright Enterprise Services AB, including its subsidiaries and its legal successor(s).

**ICE Online Access** means an online read-only access to the ICE copyright application for customer users.

**JV** means the notified full-function joint venture consisting of a joint licensing hub and a shared back-office, i.e. (i) the newly established ZETA Company (and/or its legal successors or any other company jointly owned or controlled by the Notifying Parties which in full or in part

replaces the ZETA Company) and (ii) DELTA Company (and/or its legal successors or any other company jointly owned or controlled by the Parties which in full or in part replaces the DELTA Company).

**Licensing Entity** means a CMO or an entity directly or indirectly controlled by a CMO, which has been mandated by an Option-3-Publisher to provide licensing related services for online/mobile exploitation.

**Mandate** means the appointment of the JV by an Option-3-Publisher or a CMO for the purpose of granting licences of their rights for multi-territorial online/mobile exploitation within the EEA.

**Middle Office Services** means the invoicing of licensees, dispute analysis and resolution, collection of royalties on behalf of, and/or the preparation of business intelligence reports and market data analyses at the request of, the ZETA Company, the Notifying Parties and/or ZETA-Customers.

**Monitoring Trustee** means one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Parties, and who has/have the duty to monitor the Notifying Parties and the JV's compliance with the conditions and obligations attached to the Decision.

**Option-3-Publisher** means a publisher of musical works which, at the Effective Date, has withdrawn or otherwise reorganised, or, following the Effective Date decides to withdraw or otherwise reorganize, its Anglo-American mechanical rights in the EEA for the purposes of licensing online/mobile exploitation on a multi-territorial basis.

**Parties** means the Notifying Parties and ICE.

**PRS** means Performing Right Society Limited including its subsidiaries and its legal successor(s).

**PRS Mandate** means the mandate granted by PRS to a Licensing Entity which sets out the basis for allowing the Licensing Entity to license PRS Rights.

**PRS Policy** means PRS's general policy concerning the PRS Rights including the grant of PRS Mandates and the inclusion of the PRS Rights in licence agreements.

**PRS Rights** means, for the purposes of licensing online/mobile exploitation on a multi-territory basis in the EEA, the communication to the public right, including the making available right, in the works, or shares of works, written and composed by members of PRS which are published by an Option-3-Publisher.

**Processing Services** means the management of online usage processing (collection and processing of usage reports from online licensees to produce output files to enable invoicing), online licensee portfolios (processes to assist the management of a customer's repertoire and li-

cences portfolio), and new and existing licensee accounts/licences in DELTA Company systems (e.g. testing of initial usage reporting).

**Sole Mandate** means a Mandate which contractually obliges the Option 3 Publisher or CMO granting a Mandate to the JV to refrain from (i) granting mandates to other entities for the purpose of the multi-territorial licensing of the relevant Option 3 Publisher's/CMO's copyrights for online/mobile exploitation, without excluding the right of the relevant Option 3 Publisher/CMO to directly license the copyrights controlled by this Option 3 Publisher/CMO for online/mobile exploitation on a multi-territory basis.

**Third Party Customer** means any CMO other than the Notifying Parties, and/or any entity directly or indirectly controlled by a CMO (including any Licensing Entity) other than the newly established ZETA Company (or its legal successors), which is, or intends to become, a direct customer of DELTA company.

**Work Updates** means ICE/DELTA Company's process for handling member and customer work query or update.

**ZETA Company** means a newly established company currently owned by PRSfM which will be activated upon closing of the Transaction and will form the future Front- and Middle Office of the JV.

**ZETA Core Licence** means the standard multi-repertoire, multi-territory licence for online exploitation negotiated and granted by ZETA Company which will comprise at least the repertoires of STIM, GEMA and PRS (the latter only to the extent PRS Rights are not licensed elsewhere in line with the PRS Policy and the Commitment in Section B. below).

**ZETA-Customer** means CMOs, Option-3-Publishers, Licensing Entities other than the Notifying Parties and any other entity which is, or intends to become during the period for which the Commitments are applicable, a direct customer of ZETA Company.

## **Section B. Commitments related to PRS-Rights**

1. While the PRS board shall retain the absolute discretion to determine the PRS Policy from time to time, PRS commits
  - a) to adhere to the PRS Policy in relation to the granting of PRS Mandates and the inclusion of the PRS Rights in a licence agreement;
  - b) not to make the grant of a PRS Mandate contingent upon any or all of (i) the Licensing Entity (ii) the CMOs that directly or indirectly control the Licensing Entity and/or (iii) the Option 3 Publisher:
    - joining the ZETA Core Licence and/or

- using any other services of the JV.

In the event PRS refuses the grant of a PRS Mandate, PRS shall clearly document the reasons for such refusal and shall provide the relevant documentation to the Monitoring Trustee for review so as to allow the Monitoring Trustee to assess whether the refusal is consistent with the PRS Policy and that commitment B.1.a) and b) is complied with.

- c) where a PRS Mandate has been granted, not to make the grant of consent to include the relevant PRS Rights in a licence agreement contingent upon any or all of (i) the Licensing Entity (ii) the CMOs that directly or indirectly control the Licensing Entity and/or (iii) the Option 3 Publisher:

- joining the ZETA Core Licence and/or
- using any other services of the JV.

In the event PRS refuses the consent to include the relevant PRS Rights in a licence agreement, PRS shall clearly document the reasons for such refusal and shall provide the relevant documentation to the Monitoring Trustee for review so as to allow the Monitoring Trustee to assess whether the refusal is consistent with the PRS Policy and that commitment B.1.a) and c) is complied with.

- 2. In the event and to the extent the PRS Policy provides for the grant of PRS Mandates to Option 3 Publishers or to entities other than Licensing Entities, the commitments above shall apply *mutatis mutandis*.

### **Section C. Commitments related to the provision of services to other CMOs**

- 1. The Parties commit that DELTA Company will provide Copyright Services and/or Back-Office Services to Third Party Customers on terms which are fair, reasonable and non-discriminatory in comparison to the terms offered to ZETA Company and the Notifying Parties in line with the following provisions. For the avoidance of doubt these commitments are without prejudice to existing agreements between DELTA Company and its existing Third Party Customers.

#### **Provision of Copyright Services and Back-Office Services to Third Party Customers**

- 2. The Parties commit that DELTA Company will provide Third Party Customers with a choice between Copyright Services as a standalone service offer and an integrated set of Back-Office Services.
- 3. The Parties commit not to require Third Party Customers requesting standalone Copyright Services to use Processing Services and/or to source Front- and/or Middle-Office Services from the JV. The Parties further commit not to require Third Party Customers requesting a full set of Back-Office Services to source Front- and/or Middle-Office Services from the JV.

4. The time required for onboarding Third Party Customer data will vary depending on the particular services requested, available DELTA Company-capacity and the volume and quality of the customer data to be onboarded. The Parties commit that DELTA Company will onboard additional Third Party Customer data as soon as reasonably practicable based on objective criteria, including [CONFIDENTIAL] and regardless of whether the Third Party Customer also sources other services from the JV. DELTA Company will agree with each Third Party Customer a detailed and reasonable timeline for the onboarding of its customer data setting out the actions required by DELTA Company and the Third Party Customer for this purpose.
5. All services will be offered on the basis of a standard customer contract and a standard “price book” which will set out objective criteria (including, but not limited to [CONFIDENTIAL]). The standard customer contract and the price book, as well as any amendments thereto, will be presented to the Monitoring Trustee for review. The standard customer contract and the non-confidential version of the price book will be made available to potential Third Party Customers at the negotiation stage, provided that the customer agrees to comply with a standard non-disclosure agreement.
6. Differences in the conditions, including pricing and terms, upon which Copyright Services or Back-Office Services are made available to the Notifying Parties and/or ZETA Company on the one hand and to Third Party Customers on the other hand shall be based upon objective reasons which shall be clearly documented and subject to review by the Monitoring Trustee.
7. The Parties commit to provide the Monitoring Trustee with all agreements concluded with Third Party Customers and an annual analysis of [CONFIDENTIAL].
8. If the Monitoring Trustee considers that any difference in conditions, upon which Copyright Services or Back-Office Services are made available to the Notifying Parties and/or ZETA Company on the one hand, and to Third Party Customers on the other hand, is not objectively justified, it shall promptly inform the Parties and the relevant Third Party Customer.
9. DELTA Company will include the Dispute Resolution/Arbitration Clause as contained in Schedule 1 to these Commitments in each of its contracts with Third Party Customers.

#### **Costs and Accounting**

10. The Parties commit that DELTA Company will record its relevant costs in respect of providing Copyright Services and, where relevant, Processing Services [CONFIDENTIAL].
11. The Parties commit to provide the Monitoring Trustee, after the end of each financial year of DELTA Company, with a detailed statement of DELTA Company’s recorded costs [CONFIDENTIAL].

### **Interoperability of Copyright Database with third-party processing solutions**

12. The Parties commit that DELTA Company will continue to accept and support industry-established standard identifiers and data formats such as, at the time of these Commitments, CWR-files, DDEX-reports, CCID-reports, etc. DELTA Company further commits to continue to use standard APIs allowing Third Party Customers access to the DELTA Company Copyright Database. Upon reasonable request and following the conclusion of a customer contract, provided the customer is not in default of such contract, all information related to DELTA Company APIs and communications protocols will be made available to Third Party Customers. This information will also be made available upon reasonable request to a potential Third Party Customer at the negotiation stage after the signing of a standard non-disclosure agreement.
13. The Parties commit that DELTA Company will not take any measures for the deliberate purpose of degrading the performance of processing systems of Third Party Customers (or any other entity to which a Third Party Customers has outsourced its processing system) and/or the interoperability of such processing systems with the DELTA Company Copyright Database.

### **Exit**

14. The Parties commit that DELTA Company will allow Third Party Customers to terminate their DELTA Company-customer service contracts for convenience at any point in time, subject to a 6-months' notice period. Following the receipt of a valid termination notice, DELTA Company will provide the relevant Third Party Customer with all information reasonably requested and reasonably required for the purpose of allowing the customer to test interoperability with, and prepare the transition towards another provider of Copyright or Back Office Services.
15. Following the completion of the onboarding of the relevant Third Party Customer's copyright data onto the DELTA Company Copyright Database and upon valid termination of said agreements by the Third Party Customer, the Parties also commit that DELTA Company will provide any Third Party Customer upon request on the effective date of termination (provided that such request has been notified to DELTA Company no later than 3 months before the effective date of termination), with
  - a) an extract of the data on the DELTA Company Copyright Database pertaining to the works administered by the relevant Third Party Customer at the time of the termination of the DELTA Company customer contract that has been made available to, and is used and required by, this Third Party Customer to conduct its business (the extract constituting at least a copy of the updated version of the data that was onboarded by the Third Party Customer or its members on the Third Party Customer's instruction throughout the term of the customer agreement) in a standardized format which allows the integration of these data in other database solutions, and



- b) any other customer-specific data stored in the DELTA Company systems which is reasonably requested and reasonably required by the Third Party Customer in order to conduct its business.
16. To the extent that the data extract contains (i) data that have originally been onboarded throughout the term of the customer agreement by a Third Party Customer or its members on the Third Party Customer's instruction (and/or updates of these data by DELTA Company during the term of the customer contract) and/or (ii) any other customer-specific data referred to in paragraph C.15 lit. b) above, nothing shall restrict that customer from using such data at its free discretion, including using it to set up new databases, integrating it into other databases or passing it on to other service operators. Any other data that may be requested and provided as part of the extract according to the principles in paragraph C.15 lit. a) above will be made available by DELTA Company on fair, reasonable and non-discriminatory conditions.
  17. The exiting Third Party Customer shall compensate DELTA Company for the documented and objectively justified costs of extracting the relevant data from the DELTA Company Copyright Database and any other customer-specific costs incurred by DELTA Company until termination which could not be recouped as a result of the termination of the contracts (such costs in all cases to be reviewed and validated by the Monitoring Trustee).
  18. Nothing in the foregoing paragraphs shall preclude DELTA Company from including adequate provisions in the standard customer agreement which ensure compliance of DELTA Company and the exiting customer with the applicable Data Protection Rules and any other statutory or contractual confidentiality obligations applicable to DELTA Company and/or the exiting Third Party Customer in relation to any data provided.
  19. During the term of its customer contract, a Third Party Customer that has received a termination notice of an Appointment and/or, subject to the relevant Third Party Customer's consent, the Option-3-Publisher who has terminated the Appointment of this customer may request DELTA Company to provide the Third Party Customer or the Option-3-Publisher with an extract of data solely relating to that Appointment (such data constituting and limited to the updated version of the Option-3-Publisher data that have been onboarded throughout the term of the customer agreement by the Third Party Customer or the Option-3-Publisher for the purposes of that Appointment). In this case, paragraph C.18 shall apply *mutatis mutandis*. The requesting Third Party Customer or Option-3-Publisher shall compensate DELTA Company for the documented and objectively justified costs of extracting the relevant data from the DELTA Company Copyright Database.

#### **Section D. Commitments related to the provision of services to Option-3-Publishers**

1. The Parties commit that the JV will make available to Option 3 Publishers (i) a fully integrated set of Front-, Middle- and Back-Office Services and (ii) a standalone service package of Middle- and Back-Office Services. For the avoidance of doubt, publishers who elect the Middle-

and Back-Office Service package will not be required to source Front-Office Services from the JV.

2. Upon effective termination of a customer contract between the JV and an Option-3-Publisher, and/or in case any of the Notifying Parties receives termination notice of an existing Appointment, the Notifying Parties commit that the JV will provide the relevant Option-3-Publisher with (i) a data extract as described in paragraph C.19 above, and/or (ii) any other customer-specific data stored in the JV systems which is reasonably requested and reasonably required by the Option-3-Publisher in order to conduct its business. Paragraphs C.17 and C.18 shall apply *mutatis mutandis*.
3. In the event an Option-3-Publisher elects to withdraw all or part of the rights owned by it from any of the Notifying Parties for the purposes of licensing online/mobile exploitation for certain territories, the relevant Notifying Party commits to provide the relevant publisher upon request with an extract of the updated version of the data that have been onboarded throughout the term of the membership agreement by the Option-3-Publisher and relate to the withdrawn rights and the territories covered by the withdrawal. Paragraphs C.17 and C.18 shall apply *mutatis mutandis*.

#### **Section E. Commitment related to CMO/publisher-Mandates**

1. Without prejudice to the lawfulness of such appointments and on a strictly non-precedential basis vis-à-vis the Notifying Parties' business, the Notifying Parties commit that the JV will not enter into Exclusive or Sole Mandates with ZETA Customers.
2. For the avoidance of doubt, the JV shall not be precluded from being the only entity administering mandates for ZETA Customers, provided such appointments comply with applicable laws and regulations.

## **Section F. Monitoring Trustee**

### **Appointment procedure**

1. The Notifying Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.
2. The Monitoring Trustee shall:
  - (i) at the time of appointment, be independent of the Notifying Parties and their Affiliated Undertakings;
  - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as a consultant or auditor;
  - (iii) neither have nor become exposed to a Conflict of Interest; and
  - (iv) have had no direct or indirect employment, consultancy or other relationship with the Parties during the past two years and shall have no such relationship with the Parties or the JV for the three years following the completion of its mandate.
3. The Monitoring Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate.

#### *Proposal by the Notifying Parties*

4. No later than two weeks after the Effective Date, the Notifying Parties shall submit the name or names of one or more natural or legal persons whom the Notifying Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph F.2 and shall include:
  - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
  - (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

#### *Approval or rejection by the Commission*

5. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, the Notifying Parties shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is ap-

proved, the Notifying Parties shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by the Notifying Parties*

6. If all the proposed Monitoring Trustees are rejected, the Notifying Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 1 and 5 of this section of the Commitments.

*Monitoring Trustee nominated by the Commission*

7. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom the Notifying Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

**Functions of the Monitoring Trustee**

8. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or the Notifying Parties, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

9. The Monitoring Trustee shall:
  - (i) propose to the Commission within one month after the Monitoring Trustee's appointment, a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
  - (ii) monitor compliance with the Commitments set out in Section B to E;
  - (iii) propose to the Notifying Parties and/or the JV such measures as the Monitoring Trustee considers necessary to ensure the Notifying Parties' and/or the JV's compliance with the conditions and obligations attached to the Decision;
  - (iv) act as a contact point for any requests by third parties, in particular Third Party Customers, in relation to the Commitments and broker a resolution of any dispute that would arise between a third party and the JV and/or the Notifying Parties regarding compliance with the Commitments;
  - (v) provide to the Commission, sending the Notifying Parties a non-confidential copy at the same time, a written report regarding the compliance by the Parties with the Commitments. The Monitoring Trustee shall submit these reports (a) during the first two years

following the Effective Date: within [CONFIDENTIAL]; (b) thereafter: within [CONFIDENTIAL];

- (vi) promptly report in writing to the Commission, sending the Notifying Parties and the JV a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Parties and/or the JV are failing to comply with the Commitments; and
- (vii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

### **Duties and obligations of the Parties**

10. The Notifying Parties and the JV shall provide and shall cause their advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of the JV's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the JV shall provide the Monitoring Trustee upon request with copies of any document. The JV shall make available to the Monitoring Trustee one or more offices on its premises and the Notifying Parties and the JV shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
11. The Notifying Parties shall indemnify the Monitoring Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agree that an Indemnified Party shall have no liability to the Notifying Parties and/or the JV for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.
12. At the expense of the Notifying Parties, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Parties' prior approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should the Notifying Parties refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Parties. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 11 of this section of the Commitments shall apply *mutatis mutandis*.
13. The Notifying Parties agree that the Commission may share Confidential Information proprietary to the Notifying Parties and/or the JV with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

14. The Notifying Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential Third Party Customers, of the identity and the tasks of the Monitoring Trustee.
15. For a period of [CONFIDENTIAL] from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

**Replacement, discharge and reappointment of the Monitoring Trustee**

16. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:
  - a) the Commission may, after hearing the Monitoring Trustee and the Notifying Parties, require the Notifying Parties to replace the Monitoring Trustee; or
  - b) the Notifying Parties may, with the prior approval of the Commission, replace the Monitoring Trustee.
17. If the Monitoring Trustee is removed according to paragraph 16 of this section of the Commitments, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 1-7 of this section of the Commitments.
18. Unless removed according to paragraph 16 of this section of the Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented or expired. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

## Section G. Fast Track Dispute Resolution

1. If a Third Party Customer claims that DELTA Company is failing to comply with the commitments described above in Section C. (the “**Section C Commitments**”) vis-à-vis this Third Party Customer, the fast track dispute resolution procedure as described below shall apply. To the extent that the dispute covers matters regulated under the DELTA Company customer contract other than the Section C Commitments, these matters shall be dealt with exclusively under the dispute resolution mechanism contained in the contract as set out above in paragraph C.9 and in Schedule 1 to these Commitments, unless DELTA Company agrees that the Fast Track Dispute Resolution Procedure in this Section G. may also apply to these matters.
2. Any Third Party Customer who wishes to avail itself of the fast track dispute resolution procedure (a “**Requesting Party**”) shall send a written request to DELTA Company (with a copy to the Monitoring Trustee) setting out in detail the reasons leading that party to believe that the JV is failing to comply with the requirements of the Section C Commitments. The Requesting Party and DELTA Company will use their best efforts to resolve all differences of opinion and to settle all disputes that may arise through co-operation and consultation within a reasonable period of time not exceeding 15 Working Days after receipt of the Request.

The Monitoring Trustee shall be entitled to reject any request of a Requesting Party if the Requesting Party’s claim that DELTA Company is failing to comply with the Section C Commitments is vexatious or manifestly unfounded (e.g. because the dispute does not concern matters within the scope of the Section C Commitments). In all other cases, the Monitoring Trustee shall present its own proposal (the “**Trustee Proposal**”) for resolving the dispute within 8 Working Days, specifying in writing the action, if any, to be taken by DELTA Company in order to ensure compliance with the Section C Commitments vis-à-vis the Requesting Party, and be prepared, if requested, to facilitate the settlement of the dispute.

3. Should the Requesting Party and DELTA Company (together the “**Parties to the Arbitration**”) fail to resolve their differences of opinion in the consultation phase as described in paragraph G.2. above, and unless the request has been rejected by the Monitoring Trustee as vexatious or manifestly unfounded, the Requesting Party may serve a notice (the “**Notice**”), in the sense of a request for arbitration, to the International Chamber of Commerce (hereinafter the “**Arbitral Institution**”), with a copy of such Notice and request for arbitration to DELTA Company and the Monitoring Trustee.

The Notice shall set out in detail the dispute, difference or claim (the “**Dispute**”) and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements. The Notice shall also contain a detailed description of the action to be undertaken by DELTA Company (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.

4. DELTA Company shall, within 10 Working Days from receipt of the Notice, submit its answer (the “**Answer**”), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g., documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action, which DELTA Company proposes to undertake vis-à-vis the Requesting Party (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

#### **Appointment of the Arbitrators**

5. The Arbitral Tribunal shall consist of three persons having experience in copyright matters. The Requesting Party shall nominate its arbitrator in the Notice; DELTA Company shall nominate its arbitrator in the Answer. The arbitrators nominated by the Requesting Party and by DELTA Company shall, within five Working Days of the nomination of the latter, nominate the chairman, making such nomination known to the Parties to the Arbitration and the Arbitral Institution, which shall forthwith confirm the appointment of all three arbitrators.

Should any of the Parties to the Arbitration fail to nominate an arbitrator, or if the two arbitrators fail to agree on the chairman, the default appointment(s) shall be made by the Arbitral Institution.

The three-person arbitral tribunal is herein referred to as the “**Arbitral Tribunal**”.

#### **Arbitration Procedure**

6. The Dispute shall be finally resolved by arbitration under the rules of the Arbitral Institution with such modifications or adaptations as foreseen herein or necessary under the circumstances (the “**Rules**”). The arbitration shall be conducted in Berlin, Germany in the English language.
7. The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The Parties to the Arbitration shall consent to the use of e-mail for the exchange of documents.

The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the Parties to the Arbitration. Terms of Reference shall be drawn up and signed by the Parties to the Arbitration and the Arbitral Tribunal at the organizational meeting or immediately thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.

8. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Parties to the Arbitration, to appoint experts and to examine them at



the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the Parties to the Arbitration agree.

9. The Arbitral Tribunal shall not disclose confidential information and shall apply the standards attributable to confidential information under the Merger Regulation. The Arbitral Tribunal may take measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Monitoring Trustee, and outside counsel and experts of the opposing party.
10. The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Requesting Party must produce evidence of a prima facie case and (ii) if the Requesting Party produces evidence of a prima facie case, subject to paragraph G.12. below, the Arbitral Tribunal must find in favour of the Requesting Party unless DELTA Company can produce evidence to the contrary.

#### **Involvement of the Commission**

11. The Commission shall be allowed and enabled to participate in all stages of the procedure by
  - Receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;
  - Receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including Terms of Reference and procedural time-table);
  - Giving the Commission the opportunity to file amicus curiae briefs; and
  - Being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission without delay.

In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Section C Commitments, the Arbitral Tribunal may seek the Commission's interpretation of the Section C Commitments before finding in favour of any Party to the Arbitration and shall be bound by the interpretation.

#### **Decisions of the Arbitral Tribunal**

12. The Arbitral Tribunal shall decide the dispute on the basis of Commitments and the Decision. Issues not covered by the Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and the general principles of law common to

the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.

13. Upon request of the Requesting Party, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one month after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.
14. The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by DELTA Company in order to comply with the Section C Commitments vis-à-vis the Requesting Party (e.g., specify a contract including all relevant terms and conditions). The award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.
15. The final award shall, as a rule, be rendered within six months after the adoption of the Terms of Reference; provided, however that if both Parties to the Arbitration agree, the award may be rendered not more than three months thereafter. The time-frame shall, in any case, be extended by the time required for the Commission to submit an interpretation of the Section C Commitments if so requested by the Arbitral Tribunal.

The Parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award.

16. Nothing in the arbitration procedure shall affect the power to the Commission to take decisions in relation to the Section C Commitments in accordance with its powers under the Merger Regulation.

## Section H. General Provisions

1. These Commitments shall be effective within the EEA and shall remain in effect for 10 years from the Effective Date.
2. If the JV is abandoned, wound up or otherwise terminated, these Commitments shall automatically cease to apply.
3. If only ZETA Company is abandoned, wound up or otherwise terminated, only the Commitments in Section B., D.1 and E. shall cease to apply. The Commitments contained in Section C. and D.2 and 3 shall continue to apply in this case for the rest of the duration indicated in paragraph H.1 above. Conversely, if only DELTA Company is abandoned, wound up or otherwise terminated, only the Commitments in Sections B. and E. shall continue to apply for the rest of the duration indicated in paragraph H.1 above.
4. Any Notifying Party exiting the JV or ceasing to be a controlling shareholder of both JV-companies shall no longer be bound by the Commitments.
5. In exceptional circumstances, such as in particular
  - a significant change of market circumstances in the markets for copyright administration services and/or the licensing of online rights,
  - the JV and/or the Parties being or becoming subject to regulatory requirements or legislative changes that are potentially inconsistent with the Commitments or achieve the same result as the Commitments,

the Commission may, in response to a reasoned request from the Notifying Parties (or of PRS in the case of the commitment in section B.) showing good cause waive, modify or substitute, one or more of the undertakings in these Commitments. Any such request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

**Section I. Entry into force**

1. The Commitments shall take effect upon the date of adoption of the Decision.

Brussels, 10 April 2015

[Signed]

duly authorised for and on behalf of

PRS for Music Limited

Föreningen Svenska Tonsättares Internationella Musikbyrå (STIM) u.p.a.

Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte

International Copyright Enterprise Services AB

**SCHEDULE 1 - DELTA Company customer contract dispute resolution clause**

- 1.1.1. Any dispute, controversy or claim arising out of or in connection with this Agreement, shall first be referred to the escalation procedure described in this Clause 1.1.1.
- a) A Party who wishes to raise a dispute, controversy or claim shall notify the other Party thereof by sending the Service Delivery Manager or Service Demand Manager, as appropriate, a written notice clearly marked as "Escalation" and containing a description of the matter that requires escalation ("**Escalation Notice**").
  - b) Upon receipt of an Escalation Notice, the Service Delivery Manager and the Service Demand Manager shall seek to resolve the escalated matter within five (5) working days from receipt of the Escalation Notice.
  - c) If the Service Delivery Manager and Service Demand Manager fail to resolve or provide a solution for the escalated matter within the period set forth in Clause b), the escalated matter shall be referred to the executive management of the Parties. The executive management teams shall seek to resolve the escalated matter within ten (10) working days from the expiry of the period set forth in Clause b).
- 1.1.2. Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, which has not been resolved in accordance with the Escalation Procedure, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The seat of the arbitration shall be [Paris, France]. The language of the arbitration procedure shall be English.
- 1.1.3. All opinions, documents and negotiations shared and expressed by Parties during these arbitral proceedings as well as the arbitral award itself shall remain confidential, provided however that a Party may make any disclosure necessary to protect or enforce its rights under such award.
- 1.1.4. The foregoing shall not prevent a Party from instigating proceedings before any court(s) of competent jurisdiction at any time during the term of this Agreement in order to obtain a preliminary injunction or other adequate immediate relief where the dispute resolution procedure above cannot reasonably be expected to provide a sufficient and timely solution or relief, including where the Customer fails to pay any amounts due without a legitimate bona fide ground for withholding such payment.