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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

of business located at 3 Stamford Landing, Suite 400, 46 Southfield Avenue, Stamford, CT 06902.

- D. “LoopNet” or “Respondent LoopNet” means LoopNet, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by LoopNet, Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- E. “Lonestar” or “Respondent Lonestar” means Lonestar Acquisition Sub, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Lonestar Acquisition Sub, Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- F. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- G. “Xceligent” means Xceligent, Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the state of Missouri, with its office and principal place of business located at 4231 S. Hocker Dr., Building 13, Independence, MO 64055.

GENERAL DEFINITIONS

- H. “Acquirer” means DMGI or any other Person approved by the Commission to acquire the Xceligent Interest and the LoopNet Assets.
- I. “Acquisition” means the proposed acquisition of LoopNet, Inc., by Respondent CoStar pursuant to an Agreement and Plan of Merger dated April 27, 2011, among LoopNet, Inc., CoStar Group, Inc., and Lonestar Acquisition Sub, Inc.
- J. “Acquisition Date” means the date the Acquisition closes and is consummated.
- K. “Commercial Real Estate” or “CRE” means land or real property in the United States, with or without any structures, fixtures, or other improvements of any kind, used at any time, suitable for use, or offered for sale or lease solely or primarily for retailing, manufacturing, shipping, governmental, the exploitation of natural resources, commercial, or business purposes of any kind. Commercial Real Estate includes residential structures containing five or more units used as short-term residences (e.g., hotels and motels) or as long-term residences (e.g., condominium and apartment buildings).
- L. “Commercialsearch.com” means a domain name currently assigned to LoopNet under the rules of the International Corporation for Assigned Names and Numbers, and the rights in such domain name appurtenant to such assignation, but not the content or files associated with such domain name.

- M. “CoStar Competitor” means any Person (other than Respondents) who regularly markets, sells, or licenses CRE Listings or CRE Information; *provided, however*, a Person that supplies CRE Listings or CRE Information as part of such Person’s CRE brokerage or appraisal services shall not be considered a CoStar Competitor.
- N. “CoStar Database” means an organized collection of CRE Listings or CRE Information owned solely by Respondent CoStar (including such materials as may be licensed from third parties) supporting CoStar’s CRE Product Offerings, whether stored digitally, electronically, magnetically, or in any other format.
- O. “CoStar Sales Market” means each CoStar sales market listed on Appendix A.
- P. “CRE Information” means information or databases containing property-level information (e.g., information about specific real property or structures) about Commercial Real Estate gathered and made available primarily to enable users to locate, research, or evaluate Commercial Real Estate. CRE Information includes, but is not limited to, Commercial Real Estate addresses, the prices at which property has been offered for lease or sale, the prices at which comparable property has been offered, leased or sold in the past, lease histories, property descriptions, detailed floor plans, photographs, tenant history, and vacancy rates. CRE Information does not include (i) Commercial Real Estate market analyses, market forecasts, or market projections prepared based upon the information gathered concerning Commercial Real Estate, (ii) software applications or products (and any related software integration services) offered for sale or lease, or sold or leased separately, from data relating to Commercial Real Estate. CRE Information does not include information or databases relating to the rental or leasing of residential units in residential structures containing five or more residential units, or the sale of individual units in such structures, which information or databases are not used by purchasers or sellers (or agents for purchasers or sellers) of residential structures containing five or more residential units to locate, research, or evaluate Commercial Real Estate, or to list Commercial Real Estate for sale or lease.
- Q. “CRE Listings” means the information or a collection of information concerning Commercial Real Estate available for lease or for sale. CRE Listings includes, but is not limited to, Commercial Real Estate addresses, price information, square footage, photographs, narrative descriptions of the property, and Representative’s contact information.
- R. “CRE Product Offerings” means the offering, sale, lease, licensing, or other provision of data or other information from or constituting databases containing CRE Listings or CRE Information, and services and product support relating primarily to the offering, sale, lease or other provision of CRE Listings or CRE Information. CRE Product Offerings shall be defined as CoStar Property, CoStar COMPS, CoStar Tenant, LoopNet Premium Lister, and LoopNet Premium Searcher, and any modified or successor versions of those products (regardless of their names) that in whole or in part, are functionally equivalent to any of the products of the CoStar Company.

T. “Customer” means any Person who purchases, leases, licenses, subscribes to, or

2. LoopNet Customer Data.
- CC. “LoopNet Customer Data” means a copy of an electronic data compilation transferable via an internet download, external hard drive, or some other technically feasible and commercially reasonable manner compatible with the information technology systems of Respondents, the Acquirer, and Xceligent that includes, for each of the geographic areas listed on Confidential Appendix C:
1. The customer or company name, street address, phone number, and name of a natural Person who is a contact for each Person who has entered, updated, imported, or electronically modified from January 1, 2009, to the Divestiture Date listings for the sale or lease of Commercial Real Estate in any database created, maintained, marketed, or sold by LoopNet on LoopNet.com, but not including listings solely maintained on LandAndFarm.com, LandsOfAmerica.com, Cityfeet.com, BizBuySell.com, and BizQuest.com; and,
 2. The number (e.g., quantity) of the listings, by customer and by listing type (e.g., office, industrial, mixed-use), that have been entered, updated, imported, or electronically modified from January 1, 2009, to the Divestiture Date in any database created, maintained, marketed, or sold by LoopNet on LoopNet.com, but not including listings solely maintained on LandAndFarm.com, LandsOfAmerica.com, Cityfeet.com, BizBuySell.com, and BizQuest.com.
- DD. “Monitor” means any Monitor appointed by the Commission pursuant to the relevant provisions of this Order.
- EE. “Monitor Agreement” means any agreement between Respondents and the Monitor approved by the Commission pursuant to the relevant provisions of this Order.
- FF. “Non-Competition Restriction” means any contractual provision, or any restriction based on or arising from common law, that directly or indirectly restricts the ability or legal right of a Potential Employee to:
1. Accept employment or enter into an agency relationship with the Acquirer or Xceligent; or,
 2. Otherwise participate, directly or indirectly, in any business of the Acquirer or Xceligent.
- GG. “Non-Represented Property” means Commercial Real Estate for which a Person does not act, or in the prior 48 months has not acted, as a Representative.
- HH. “Non-Solicitation Restriction” means any contractual provision, or any restriction based on or arising from common law, that directly or indirectly restricts the ability or legal right of a Potential Employee to solicit, to provide any services or information (other than Respondent Confidential Information) to, to receive any information from, or otherwise contact any past, current, future, or potential customer, supplier, agent, or employee of the Acquirer or Xceligent.
- II. “Order Date” means the date this Order becomes final.

- JJ. “Potential Employee(s)” means all Persons employed by Respondent LoopNet at any time between April 27, 2011, and the Divestiture Date, but not including those Persons listed on Confidential Appendix D to this Order.
- KK. “REApplications” means the web-based software marketed, leased or sold to customers as REApplications and used by them for managing market research (including property inventory), listings and comparables, commissions, customer relationships, project tracking, and transactions.
- LL. “Record Keeping Requirements” means, with respect to any CRE Listings or CRE Information relating to Non-represented Property provided by a Customer to a CoStar Competitor, a log or other record certified by the Customer that includes:
1. The source and manner of collection of the CRE Listings or CRE Information;
 2. The date(s) the information was gathered and the name of the Person who gathered it;
 3. A copy of the CRE Listings or CRE Information provided to the CoStar Competitor; and,
 4. The name of the CoStar Competitor to whom the CRE Listings or CRE Information was provided and the date it was provided.
- MM. “Relevant Information” means any knowledge or information that directly or indirectly relates to the:
1. Collection, organization, or research of CRE Listings or CRE Information;
 2. Marketing or sale of CRE Listings or CRE Information; or,
 3. The business of LoopNet.
- Provided, however, Relevant Information does not include:*
- a. Any electronic, magnetic, or paper reproduction, or copy in any format, of all or any part of any CRE Listings or CRE Information database owned solely by LoopNet; or,
 - b. Respondent Confidential Information.
- NN. “Relevant Person” means any Potential Employee:
1. Who has accepted an offer of employment from, or entered into an agency relationship with, the Acquirer or Xceligent at any time between the date the Agreement Containing Consent Order was signed and six (6) months after the Order Date; or
 2. Whose employment has been terminated by Respondents, at any time between the date the Agreement Containing Consent Order was signed and six (6) months after the date this Order becomes final, and who has accepted an offer of employment from, or entered into an agency relationship with, the Acquirer or Xceligent.

- OO. “Relevant Restriction” means any:
1. Non-Competition Restriction;
 2. Non-Solicitation Restriction; and,
 3. Restriction On The Use Of Relevant Information In Memory.
- PP. “Representative” means a Person who has been retained, whether exclusively or jointly with other Persons:
1. To act as an agent to market the lease or sale of Commercial Real Estate, or to identify or negotiate with Persons interested in leasing or purchasing Commercial Real Estate, as a listing agent or broker; or,
 2. To act as an agent to manage or operate all or any portion of Commercial Real Estate.
- QQ. “Represented Property” means Commercial Real Estate for which a Person acts, or in the prior 48 months has acted, as a Representative.
- RR. “Respondent Confidential Information” means any material, non-public information of Respondents relating to patents, technologies, processes, and future or planned products, or corporate-level marketing methods, business plans, and business strategies, including:
1. Design structure, technical specifications, databases, software structure, sequence and organization, and software source code related to LoopNet’s proprietary CRE listings search and display database technology;
 2. Design structure, technical specifications, databases, software structure, sequence and organization and software source code related to LoopNet’s proprietary models used in search engine marketing and search engine optimization; and,
 3. Design structure, technical specifications, databases, software structure, sequence and organization and software source code related to LoopNet’s proprietary models used to analyze LoopNet’s community of users for the purpose of identifying and scoring sales leads.
 4. Without limiting the foregoing, Respondent Confidential Information does not include information of or relating to CRE Product Offerings, past or present pricing, marketing methods and practices, or sales methods and practices used by Potential Employees in the ordinary course of their duties in offering for lease or sale, or leasing or selling, CRE Product Offerings to Customers.
- Provided, however,* that Respondent Confidential Information shall not include:
- a.

- d. Information that becomes known to Respondents from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.

SS. “Restricted Customer” means all Currently Restricted Customers and all Future Restricted Customers.

TT. “Restriction On The Use Of Relevant Information In Memory” means any contractual provision, or any restriction based on or arising from common law, that directly or indirectly restricts the ability or legal right of a Potential Employee to use Relevant Information:

law, that 1. Obtained by the Potential Employee at any time that the Potential Employee was an officer, director, employee, or agent of LoopNet; and,

- 2. Retained by the Potential Employee only in his or her memory after ceasing to be an officer, director, employee, or agent of LoopNet.

records supporting the Xceligent Database as provided in Paragraph II.B.1. above, the Divestiture Agreement shall also require Respondents to consent, upon the Acquirer's or Xceligent's request and at the Acquirer's or Xceligent's sole cost

6. Shall not:
- a. For a period of one (1) year following the date upon which each Potential Employee becomes an employee of the Acquirer or Xceligent, directly or indirectly, solicit or otherwise attempt to induce any such Potential Employee to terminate his or her employment with the Acquirer or Xceligent; and,
 - b. For a period of one (1) year following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer or Xceligent to terminate his or her employment with the Acquirer or Xceligent;

Provided, however, Respondents may:

- (i) Advertise for employees in newspapers, trade publications or other media, or engage recruiters to conduct general employee searches for employees, in each either case not targeted specifically at employees of the Acquirer or Xceligent; and,
- (ii) Hire Potential Employees who become employees of the Acquirer or Xceligent, or other employees of the Acquirer or Xceligent, who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this Order;

Provided further, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing Persons: (i) who were Potential Employees and who became employees of the Acquirer or Xceligent; or, (ii) who were employees of the Acquirer or Xceligent, if the Acquirer or Xceligent has notified Respondents the Acquirer or Xceligent has terminated the employment of such Person; and,

7. Shall not threaten to seek or seek any damages or injunctive relief against any Relevant Person, the Acquirer, Xceligent, or any customer or supplier of the Acquirer or Xceligent for the violation of any Relevant Restriction relating directly or indirectly to a Relevant Person.
- E. Respondents shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Divestiture Ag

Commission, or any failure to meet any material condition precedent to closing (whether waived or not), shall constitute a failure to comply with this Order.

G. The purpose of the divestiture of the Xceligen

iv. Require such Restricted Customer to

adopting practices or policies that result in either, (i) a significant increase in the

Customer with a double credit for the time that service was terminated or suspended.

Provided, however, that if the Customer disagrees with Respondents' determination it reserves the right to bring its grievance to the Monitor for further review; or,

4. For alleged breach of the Customer's obligation to make payment under the Customer Contract, unless:
 - a. Respondents have delivered to the Customer (and, if known, to its legal counsel) a notice of default of the Customer's payment obligation, provided to the Customer a commercially reasonable opportunity to cure the default, and the Customer has failed to cure the default; and,
 - b. Respondents have provided reasonable written notice to the Customer (and, if known, to its legal counsel) that Respondents will suspend or terminate the provision of CRE Listings or CRE Information no less than five (5) business days before suspension or termination.
- D. For five (5) years after the Order Date, Respondents shall allow, and each currently existing or future written agreement, contract or understanding with any Customers shall provide that, any Customer against whom Respondents have filed, or threatened to file, a judicial action alleging violation of Respondents' Intellectual Property rights or the use restrictions of a Customer Contract in any state or federal court may elect to resolve the Respondents' claims through arbitration, according to the following conditions:
 1. The arbitration will be governed by the American Arbitration Association's Rules suspended.

Provided, however, that, by itself, it shall not be considered offering materially less favorable price terms if the terms are comparable to terms offered or provided to Customers engaged in similar lines of business (e.g., brokers, financial institutions, real estate investment firms, etc.) who purchase, license, or subscribe to CRE Product Offerings for a comparable number of Persons who will use or have access to the CRE Product Offerings and who are located in a comparable CoStar Sales Market;

- b. Offering fewer products and services to Customers who purchase or lease services, CRE Listings, or CRE Information from a CoStar Competitor than to Customers who purchase or lease such products only from Respondents; and,
 - c. Offering products and services relating to fewer or smaller geographic areas to Customers who purchase or lease services, CRE Listings, or CRE Information from a CoStar Competitor than to Customers who purchase or lease such products only from Respondents.
3. Respondents' (1) termination of a Customer Contract, or (2) refusal to renew a Customer Contract upon commercially reasonable terms;

Provided, however, it shall not constitute prohibited retaliation, by itself, if Respondents terminate or refuse to renew a Customer Contract because: (i) a Restricted Customer refuses to agree to the provisions of Paragraph III.A.1.(i)–(iv) of this Order and provides CRE Listings or CRE Information on Non-Represented Properties to a CoStar Competitor; or, (ii) a Restricted Customer purchases a passive ownership or equity interest of more than ten percent (10%) and less than twenty percent (20%) in a CoStar Competitor and (A) participates in the management of the CoStar Competitor (beyond merely voting its shares or exercising its rights as a limited partner) or (B) refuses to agree to the provisions of Paragraph III.A.1.(i)–(iv) of this Order; or (iii) a Restricted Customer breaches or fails to comply with its agreement to the provisions of Paragraph III.A.1.(i)–(iv) of this Order that are included in a Customer Contract.

Provided further, however, that, for Paragraphs H.2., and H.3(2) of this Paragraph III., Respondents may decline to include in New Customer Contracts CoStar Database extracts to, or allow the creation of internal databases incorporating portions of the CoStar Database by, Customers who purchase, license, or subscribe to CRE Product Offerings from CoStar Competitors. For purposes of this proviso, “New Customer Contracts” mean only: 1) the first or initial Customer Contract between CoStar and a Customer; or 2) a Customer Contract that results from a new agreement between CoStar and that Customer. For the avoidance of doubt, a New Customer Contract does not include any extension, continuation, or renewal of a Customer Contract by the Customer pursuant to the terms of that Customer Contract. During the initial, extension, continuation, or

renewal term of any Customer Contract that expressly entitles a Customer to receive a CoStar Database extract or allows the Customer to create internal databases incorporating portions of CoStar's Database, CoStar shall honor such Customer Contract and shall not refuse to provide such CoStar Database extract or disallow the creation of such internal databases.

- I. Respondents shall waive on the Order Date any oral or written condition, requirement, policy, agreement, contract or understanding with any Customer that is inconsistent with the terms of this Order. Within thirty (30) days after the Order Date, Respondents shall amend or modify any oral or written condition, requirement, policy, agreement, contract or understanding with any Customer that is in effect on the Order Date to conform the condition, requirement, policy, agreement, contract or understanding to the terms of this Order.
- J. Any wrongful termination or suspension by Respondents of the provision of CRE Listings or CRE Information to a Customer in retaliation for the Customer's purchase or lease of CRE Listings or CRE Information from a CoStar Competitor shall constitute a violation of this Order, with each day the wrongful termination or suspension continues constituting a separate violation of this Order.
- K. Respondents shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Customer Contract or in this Order, or in any judicial action, a decision the result of which would be inconsistent with the terms or achieving the purposes of this Order.
- L. Respondent CoStar shall:
 - 1. Within thirty (30) days of the Order Date:
 - a. Mail a copy of Appendix E to this Order by first class mail to each Currently Restricted Customer of Respondent CoStar; and,
 - b. mechani the Ord0 -1.65 TD7.8106T45(7.9(-.1(tit

IV.

IT IS FURTHER ORDERED that:

A.

Provided, however, that such advance notification to the Commission is not required for any acquisition, directly or indirectly, of any stock, share capital, equity or other interests in or assets of any Person, corporate or non-corporate, that offers for sale, lease, or licensing only Commercial Real Estate software (and any related software integration services) or Commercial Real Estate analytic services.

- C. The advance written notification provided by Respondents shall include:
1. A description of the acquisition and any executed letter agreement, letter of intent, purchase and sale agreement, stock acquisition agreement, or other contract or agreement between Respondents and the Person describing or effecting the proposed acquisition;
 2. All documents that would be responsive to Items 4(c) and 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed acquisition;
 3. Gross annual revenues of CRE Listings and CRE Information:
 - a. Of the Person, stated separately for each geographic area (e.g., Metropolitan Statistical Area) in which the Person does or has done business for the last three (3) completed fiscal years;
 - b. Of Respondents stated separately for each geographic area in which the Person does business;
 4. The name and address of the ten largest customers:
 - a. Of the Person, stated separately for each geographic area (when available in the normal course of business) and in the most recently completed fiscal year, the gross revenues generated by transactions with each customer, and the name and phone number of a contact person at each customer; and,
 - b. Of Respondents in each geographic area in which the Person does business and, stated separately for each geographic area (when available in the normal course of business) in the most recently completed fiscal year, the gross revenues generated by transactions with each customer, and the name and phone number of a contact person at each customer;
 5. The total number of customers (e.g., Persons who purchase, lease, or license CRE Listings or CRE Information):
 - a. Of the Person (when available, in each geographic area in which the Person does business) in the most recently completed fiscal year; and,
 - b. Of Respondents in each geographic area in which the Person does business;
 6. Information in reasonable detail to identify Persons who were, but no longer remain, Respondents' Customers in each of the three (3) most recently completed fiscal years in each geographic area in which the Person does business, to the extent such information is available in the normal course of business; and,

7. A description in reasonable detail of the products and services offered by the Person from whom Respondents propose to acquire equity or assets, as well as the geographic areas in which such products and services are offered.

Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- D. Respondents shall provide the advance written notification at least thirty (30) days prior to consummating the transaction that is the subject of the notification (hereinafter the “First Waiting Period”). If, within the First Waiting Period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting all of the additional information and documentary information (hereinafter the “Second Waiting Period”). Early termination of the First Waiting Period and the Second Waiting Period may be requested and, where appropriate, granted by a letter from the Commission’s Bureau of Competition.

VI.

IT IS FURTHER ORDERED that:

- A. The Commission appoints Guy Dorey as Monitor and approves the Monitor Agreement between Guy Dorey and Respondents, attached as Appendix H.
- B. Respondents shall facilitate the ability of the Monitor to comply with the duties and

- c. The waiver of any terms, and the amendment or modification, of any Customer Contracts as may be required by Paragraphs III.A. and III.D. of this Order; and,
 - d. Respondents' compliance with any of Respondents' obligations under this Order or with any Customer Contract term required by this Order;
- 4. The Monitor shall have power and authority to review and audit, at Respondents' sole cost and expense, compliance by Customers with their agreement to the provisions of Paragraph III.A.1. of this Order. The Monitor also shall have power and authority to verify that Customers' investments in CoStar Competitors are passive. The Monitor shall expeditiously provide written notice to any Customer, the Commission, and the Respondents if the Monitor reasonably believes that the Customer has failed to comply with their agreement to the provisions of Paragraph III.A.1.(i)–(iv) of this Order or that the Customer's investment in a CoStar Competitor is not passive. The written notice shall only:
 - a. Identify the Customer;
 - b. Identify the Commercial Real Estate to which the CRE Listings or CRE Information relates;
 - c. State the date upon which the CRE Listings or CRE Information was provided;
 - d. Identify the CoStar Competitor to which the CRE Listings or CRE Information was provided;
 - e. Describe any violation of the Customer's agreement to the provisions of Paragraph III.A.1.(i)–(iv) of this Order; and,
 - f. Identify the CoStar Competitor in which the Customer's investment is not passive;
- 5. The Monitor shall have power and authority to review and audit, at the Acquirer's or Respondents' sole cost and expense (with the party responsible for the cost and expense determined by which party requested the review and audit), the books and records of Xceligent and Respondents pursuant to and for the purposes set forth in Paragraph II.B. of this Order. The Monitor shall expeditiously provide written notice to Xceligent, the Commission, and the Respondents if the Monitor reasonably believes that Xceligent or Respondents has received any CRE Listings or CRE Information derived from the database of the other. The written notice shall only:
 - a. State that Xceligent or Respondents have received the CRE Listings or CRE Information;
 - b. Identify the Commercial Real Estate to which the CRE Listings or CRE Information relates; and,
 - c. State the date upon which the CRE Listings or CRE Information was received;

6. The Monitor shall exercise such power and authority and carry out his or her duties and responsibilities in a manner consistent with the purposes of the Order and in consultation with the Commission and its staff;
 7. The Monitor shall, in his or her sole discretion, consult with Third Parties in the exercise of his or her duties under this Order or any agreement between the Monitor and Respondents;
 8. The Monitor shall review all reports submitted to the Commission by Respondents pursuant to the Order and the Consent Agreement, and within thirty (30) days from the date the Monitor receives a report, and upon request of the Commission or its staff, report in writing to the Commission concerning performance by Respondents of their obligations under Paragraphs II. through V. of this Order; and,
 9. The Monitor shall provide periodic written reports to the Commission upon a schedule (but at least annually) that is sufficient to provide the Commission with timely information to determine if Respondents have complied and are complying with their obligations under this Order (including the Divestiture Agreements). In addition, the Monitor shall provide such additional written reports as Commission staff may request that reasonably are related to determining if Respondents have complied and are complying with their obligations under this Order (including the Divestiture Agreements). The Monitor shall not provide to Respondents, and Respondents shall not be entitled to receive, copies of these reports.
- D. Respondents shall grant and transfer to the Monitor, and such Monitor shall have, all rights, powers, and authority necessary to carry out the Monitor's duties and responsibilities, including, but not limited to, the following:
1. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with Paragraphs II. through V. of this Order;
 2. Subject to any demonstrated legally recognized privilege, Respondents shall provide the Monitor full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under Paragraphs II. through V. of this Order;
 3. Within five (5) calendar days of submitting a report required by this Order or the Consent Agreement to the Commission, Respondents shall deliver a copy of such report to the Monitor;
 4. Except as otherwise set forth in this Order, the Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions to which the Monitor and Respondents agree and that the Commission approves;

5. The Monitor shall have authority to employ, at the expense of Respondents (except as otherwise set forth in this Order), such consultants, accountants,

the terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor as set forth in this Paragraph.

- H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- I. A Monitor appointed pursuant to this Order may be the same Person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a Divestiture Trustee to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other available relief, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement (“Divestiture Trustee Agreement”) that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and

days after receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order,
Provided, however, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions of this Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and

- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- G. Respondents shall comply with all terms of the Divestiture Trustee Agreement, and any breach by Respondents of any term of the Divestiture Trustee Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Trustee Agreement, any modification of the Divestiture Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

VIII.

IT IS FURTHER ORDERED that

- A. Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
 - 1. Within sixty (60) days after the Order Date and every sixty (60) days thereafter until the second annual anniversary of the Order Date; and
 - 2. On the second anniversary of the Order Date, and thereafter on the annual anniversary until this Order terminates.
- B. In addition to such other information that may be required, each verified written report filed by Respondents shall identify each Person who claims or asserts (whether or not the claim has been submitted for arbitration or the subject of judicial action) that Respondents have breached or violated any provision of this Order or any provision or term of any Customer Contract that is required by or relates to any provision of this Order, and for each such Person:
 - 1. State the name, phone number, email address, and street address of a natural Person who is the primary contact for Respondents with such Person;
 - 2. Describe in reasonable detail the basis of the Person's claim or assertion;
 - 3. Describe in reasonable detail whether Respondents' dispute the Person's claim or assertion, and if Respondents do dispute the claim or assertion, why it does; and,
 - 4. Provide copies of any letters, emails, court pleadings, arbitration documents, or any other written or electronic document that describe or reference the Person's claim or assertion and Respondents' response thereto.
- C. For purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents made to their principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

1. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of the Respondents; and,
2. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of such Respondents;
- B. acquisition, merger or consolidation of Respondents; or,
- C. any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

X.

IT IS FURTHER ORDERED that this Order shall terminate on August 29, 2022.

By the Commission, Commissioner Ohlhausen not participating.

Richard C. Donohue
Acting Secretary

ISSUED: August 29, 2012
SEAL