

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
Department of Justice, Antitrust Division
450 5th Street, NW, Suite 8000
Washington, DC 20530

Plaintiff,

v.

Symrise AG
Mühlenfeldstraße 1
37603 Holzminden, Germany

and

IDF Holdco, Inc.
3801 East Sunshine Street
Springfield, MO 65809

and

ADF Holdco, Inc.
3801 East Sunshine Street
Springfield, MO 65809

Defendants.

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff United States of America, filed its Complaint on October 30, 2019, the United States and Defendants, Symrise AG (“Symrise”), ADF Holdco, Inc. (“ADF Seller”) and IDF Holdco, Inc. (“IDF Seller”), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the Defendants agree to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestiture required below can and will be made and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

A. “Acquirer” means Kerry, Inc., a Delaware corporation, and Kerry Luxembourg S.a.r.l., a Luxembourg société à responsabilité limitée, or the entity to whom Defendants divest the Divestiture Assets.

B. “Symrise” means Defendant Symrise AG, an Aktiengesellschaft, or publicly listed company, organized under the laws of Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “IDF Seller” means Defendant IDF Holdco, Inc., a Missouri corporation, with its headquarters in Springfield, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “ADF Seller” means Defendant ADF Holdco, Inc., a Missouri corporation, with its headquarters in Springfield, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Diana Food” means Diana Food, Inc. (previously known as Diana Naturals, Inc.), a wholly-owned subsidiary of Symrise and an Oregon corporation with its headquarters in Silverton, Oregon, its successors and assigns, and its subsidiaries and divisions, groups,

affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents and employees.

F. “Development Authority” means the Development Authority of Banks County, Georgia, which currently holds legal title to the real estate and real property related to the Banks County facility pursuant to the Diana Food Bonds-for-Title Transaction.

G. “Banks County facility” means the production facility and surrounding real estate located at 171 Diana Way Commerce, GA 30529, owned by the Development Authority, leased to Diana Food pursuant to the Diana Food Bond-for-Title Transaction, and built to manufacture certain Chicken-Based Food Ingredients.

H. “Chicken-Based Food Ingredients” means ingredients manufactured and sold to food manufacturers for use in food for human consumption or pet consumption (including chicken broth, chicken fat, and cooked chicken meat) made in whole or in part from human-grade natural chicken.

I. “Diana Food Bonds-for-Title Transaction” means the current ownership and lease arrangement between Diana Food and the Development Authority for the Banks County facility.

J. “Divestiture Assets” means:

1. All interests and rights Diana Food holds in the Banks County facility;
2. All bonds, bond documents, grant documents, and lease agreements to which Diana Food is a party, related to the Banks County facility;

3. All tangible assets located at the Banks County facility and all tangible assets located elsewhere primarily related to the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility. Tangible assets includes, but is not limited to, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization relating to Chicken-Based Food Ingredients manufactured at the Banks County facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records relating to Chicken-Based Food Ingredients manufactured at the Banks County facility. Defendant Symrise may retain a copy of records necessary for tax, accounting, or regulatory purposes. To the extent any records also include commercially sensitive information, proprietary information, or personally identifiable information pertaining solely to Defendant Symrise's businesses, operations, or products not being transferred to Acquirer, Defendant Symrise may withhold or redact such portions of said records prior to Defendant Symrise's transfer to Acquirer;

4. All intangible assets used in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, including, but not limited to all patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names; technical information; computer software and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control

procedures; design tools and simulation capability; all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees relating to Chicken-Based Food Ingredients manufactured at the Banks County facility including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments.

Notwithstanding the above definition,

(1) Defendant Symrise shall license to Acquirer, through a perpetual and transferable license that is paid up, royalty free, worldwide, and irrevocable, any know-how, including research and development information, unpatented inventions, rights in research and development, and technical data or information, that is (i) controlled by Defendant Symrise, (ii) used in or necessary to the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, and (iii) used in or necessary to the development, production, servicing, and sale of other Symrise products;

(2) the Divestiture Assets do not include the intangible assets that Defendant Symrise shall provide as services or use to provide services identified in any transition services agreement entered between the Acquirer and Defendant Symrise, as described *infra* in Paragraph IV(G); and

(3) the Divestiture Assets do not include any trademarks, trade names, service marks, or service names containing the name “Symrise” or “Diana.

III. APPLICABILITY

A. This Final Judgment applies to Symrise, IDF Seller, and ADF Seller as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURE

A. Defendants are ordered and directed, within forty-five (45) calendar days after the entry of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event the Defendants attempt to divest the Divestiture Assets to an Acquirer other than Kerry, Inc., Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide Acquirer and the United States with organization charts and other information relating to the personnel who spend all, or a majority of their business time involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, including name, job title, experience, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable Acquirer to make offers of employment. Upon request, Defendants shall make such personnel available for interviews with Acquirer during normal business hours at a mutually agreeable location and will not interfere with any negotiations by Acquirer to employ such personnel involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility. Interference with respect to this paragraph includes, but is not limited to, offering to increase the salary or benefits of such personnel involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility other than as part of a company-wide increase in salary or benefits granted in the ordinary course of business.

D. Defendant Symrise shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel who spend all, or a majority of their business time involved

in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility and to make inspections of the Banks County facility; access to any and all environmental, zoning, and other permit documents and information; access to any of the underlying documents for the Diana Food Bonds-for-Title Transaction; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process. For any employees who elect employment with Acquirer, Defendants shall waive all noncompete and nondisclosure agreements. For a period of eighteen (18) months after the divestiture has been completed under Section IV or V, Defendants may not solicit to hire, or hire, any employee hired by Acquirer, unless: (1) Acquirer agrees in writing that Defendants may solicit or hire that employee; or, (2) the employee responds to a general advertisement or solicitation not targeted at employees who accept employment with Acquirer. Nothing in Paragraphs IV(C) and (D) shall prohibit Defendant Symrise from maintaining reasonable restrictions on the disclosure by any employee who accepts an offer of employment with Acquirer of Defendant Symrise's proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to Defendant Symrise's businesses and clients, and (3) unrelated to the Divestiture Assets.

E. Defendant Symrise shall warrant to Acquirer that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. At the option of Acquirer, and subject to approval by the United States, Defendant Symrise shall enter into a transition services agreement to provide back office and information technology support for the Banks County facility for a period ranging between three (3) and twenty (20) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional three (3) months. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing needed assistance. The Symrise employees tasked with providing these transition services may not share any competitively sensitive information of Acquirer with any other Symrise, IDF Seller, or ADF Seller employee. If Acquirer seeks an extension of the term of this transition services agreement, Defendants shall notify the United States in writing at least three (3) months prior to the date the transition services agreement expires.

H. Defendant Symrise shall warrant to Acquirer (1) that there are no material defects in the environmental, zoning, certifications, or other permits pertaining to the operation of the Divestiture Assets, and (2) that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, certifications, or other permits relating to the operation of the Divestiture Assets.

I. At the option of Acquirer, and with the written consent of the United States, Defendants may convey, transfer, or otherwise sell Divestiture Assets to the Development Authority in exchange for tax-exempt bonds pursuant to the Diana Food Bonds-for-Title Transaction arrangement in order to facilitate the divestiture.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business in the manufacture and sale of Chicken-Based Food Ingredients in the United States, and that the divestiture will remedy the competitive harm alleged in the Complaint. If any of the terms of an agreement between Defendants and Acquirer to effectuate the divestitures required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms, this Final Judgment shall determine Defendants' obligations. The divestiture, whether pursuant to Section IV or V of this Final Judgment:

1. shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the market for the manufacture and sale of Chicken-Based Food Ingredients; and

2. shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants gives Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of Acquirer to compete effectively.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States of that fact in writing.

Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendant Symrise pursuant to a written agreement, on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture

Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any agents and consultants retained by the Divestiture Trustee, all remaining money shall be paid to Defendant Symrise and the trust shall then be terminated. The compensation of the Divestiture Trustee and any agents and consultants retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendant Symrise are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any agents or consultants, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information, or any applicable privileges. Defendants

shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered by this Final Judgment within six (6) months of appointment, the Divestiture Trustee must promptly provide the United States with a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. The United States will have the right to make additional recommendations consistent with the purpose of the trust to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of the Final Judgment, which, if necessary, may include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, the United States may recommend the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. In the event Defendants are divesting the Divestiture Assets to an Acquirer other than Kerry, Inc., within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever

is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not, in its sole discretion, it objects to the Acquirer or any other aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit, signed by each Defendant's chief financial officer and general counsel, describing the fact and manner of Defendants'

compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including agents retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the

executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,” then the United States shall give Defendants ten (10) calendar days’ notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NO REACQUISITION

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought

by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of the Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired,

the United States may file an action against that Defendant in this Court requesting that the Court order (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section, (2) any appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of the Final Judgment, and (4) fees or expenses as called for in this Section.

XIV. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures
of Antitrust Procedures and Penalties Act,
15 U.S.C. § 16

United States District Judge