

Attachment 3
Direct Access Letter Agreement

[DATE]

FACSIMILE TRANSMITTAL [PHONE#]

[COUNSEL]

Re: **[ACQUIRING CO.]’s Acquisition of [TARGET CO.]**
Internet Access to [COMPANY]’s Web-based Resources

Dear [COUNSEL]:

In our discussions, your client, [COMPANY], has agreed to provide direct access over the Internet to certain portions of its intranet and/or databases (collectively, “Web-based Resources”) in response to the Second Request issued by the Department. For this direct access to be sufficient to comply with the Second Request, the access shall be provided under the following conditions:

1. The Web-based Resources shall be accessible over the Internet using Microsoft Internet Explorer v. 6.0. If software other than Microsoft Word 2000, Microsoft Excel 2000, Microsoft PowerPoint 2000, Microsoft Access 2000, or Adobe Acrobat Reader 7.0 is necessary to view any content of the Web-based Resources, [COMPANY] shall work with the Department to make that content accessible.
2. The access shall allow printing to a local printer, printing to a file, and saving information onto the local computer from these Web-based Resources.
3. [COMPANY] will provide enough logon identities to allow simultaneous access for [five] users from multiple, different locations for each of the Web-based Resources. These logon identities may differ by the Web-based Resource that is being accessed or may be the same, but shall allow simultaneous access for [five] users for each Web-based Resource. Any of the logon identities may be used by any of the Department staff and its consultants.
4. Access will be provided on the same basis that access is provided to [COMPANY]’s employees (e.g., the Web-based Resource shall be available to the Department during the same periods that it is available to [COMPANY] employees). Any new material provided to [COMPANY] employees on these Web-based Resources shall also be accessible by the Department.
5. Material shall not be removed from any of these Web-based Resources during the period in which the Department has access other than for routine updates. If any significant part of a Web-based Resource is scheduled to be made inaccessible, shutdown, or altered, [COMPANY] shall notify the Department at least 2 business days in advance and make sure the

Department has continued access. If any significant part of a Web-based Resources goes down or becomes inaccessible due to an unplanned event, [COMPANY] shall notify the Department within [3] hours via [e-mail] along with a projection on when the resource will again be accessible.

6. No one shall track or collect information on the pages viewed or the queries run by the Department. Any logging of access or page visits currently performed by the Web-based Resources' systems or web sites of all users does not violate this prohibition. However, no reports shall be run that collect information on the activity of the logon identities provided to the Department, and no information on that activity shall be provided to [COMPANY]'s in-house or outside counsel, employees, agents, consultants, or third parties. This prohibition shall be shown to and explained to all persons that may have access to any logon-identity activity information for these Web-based Resources as part of their regular duties, and [COMPANY] must certify that this has occurred and that these conditions have not been violated before [COMPANY] can certify compliance with Second Request.

7. Access shall be provided at [COMPANY]'s expense without interruption until 30 days after the end of any litigation involving the Department (including any period for appeal) related to [ACQUIRING CO.]'s acquisition of [TARGET CO.] or after the Department has notified [COMPANY] that its investigation of the merger has been closed.

8. [COMPANY] shall make personnel available during regular business hours (9 a.m. - 5 p.m. eastern time) to answer questions and provide support related to accessing the Web-based Resources (e.g., how to enter a query or generate a report).

9. Any violation of the above conditions shall be considered sufficient to make any certification of compliance with the Second Request deficient or null and void.

The Department understands that [COMPANY] is providing direct access to these Web-based Resources in response to the Second Request. The Department shall treat all material accessed through these Web-based Resources as it does any other material provided in response to the Second Request – available for the same uses and having the same protections, including those provided by statute (*see, e.g.*, 15 U.S.C. § 18a(h)).

Prior to certifying compliance with the Second Request,

- (1) a representative of [COMPANY] must sign and return this letter signifying [COMPANY]'s agreement to these conditions;
- (2) [COMPANY] must certify compliance with item 6; and
- (3) all [COMPANY]'s Web-based Resources must be accessible by the Department in a manner meeting the conditions in this letter with procedures in place to comply with the conditions.

If you have any questions, contact me at [PHONE#].

Sincerely,

[YOUR NAME]
Attorney, **[SECTION]**

For **[COMPANY]**

Dated: _____