

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

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

MSC.SOFTWARE CORPORATION,
a corporation.

Docket. No. 9299

**AGREEMENT CONTAINING
CONSENT ORDER**

This Agreement Containing Consent Order (“Consent Agreement”), by and between MSC.Software Corporation (“Respondent”), by its duly authorized officer and attorneys, and counsel for the Federal Trade Commission (“Commission”), is entered into in accordance with the Commission’s Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent MSC.Software Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 2 MacArthur Place, Santa Ana, California 92707.
2. Respondent has been served with a copy of the Complaint issued by the Commission charging it with violations of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, and has filed its Answer to the Complaint denying those charges and asserting affirmative defenses but admitting the jurisdictional facts set forth therein.
3. Respondent admits all the jurisdictional facts set forth in the Complaint.
4. Respondent waives:
 - a. any further procedural steps;

- b. the requirement that the Commission's Decision and Order ("Decision and Order"), attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. all rights to seek judicial review or otherwise challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.
5. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Decision and Order in disposition of the proceeding.
 6. This Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Complaint, or that the facts as alleged in the Complaint, other than jurisdictional facts, are true.
 7. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 3.25(f), 16 C.F.R. § 3.25(f), the Commission may, without further notice to Respondent: (1) issue its Decision and Order, and (2) make information public with respect thereto. When final, the Order shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time provided by statute for Commission orders. The Decision and Order shall become final upon service. Delivery of the Decision and Order to Respondent by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4.(a), shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order or the Consent Agreement may be used to vary or contradict the terms of the Order.
 8. By signing this Consent Agreement, Respondent represents and warrants that it can accomplish the full relief contemplated by the Consent Agreement and the attached Decision and Order, and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding and to the Decision and Order.
 9. Respondent has read the Decision and Order contemplated hereby. Respondent understands that once the Decision and Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Decision and Order. Respondent agrees to

comply with the Decision and Order from the date it signs this Consent Agreement. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after it becomes final.

MSC.SOFTWARE CORPORATION

FEDERAL TRADE COMMISSION

By: _____
Frank Perna, Jr.
Chief Executive Officer and Chairman
MSC.Software Corporation
Dated: _____, 2002

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Peggy D. Bayer
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Dated: _____, 2002

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a corporation.

Dkt. No. 9299

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having heretofore issued its complaint charging MSC.Software Corporation (“Respondent”) with violations of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, and Respondent having been served with a copy of that complaint, together with a notice of contemplated relief, and Respondent having answered the complaint denying said charges and asserting affirmative defenses but admitting the jurisdictional allegations set forth therein; and

The Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

1. MSC.Software Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 2 MacArthur Place, Santa Ana, California 92707.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” or “MSC” means MSC.Software Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by MSC.Software Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Acquirer” means any Person that acquires the Assets To Be Divested pursuant to this Order.
- C. “Acquisition of CSAR” means the transaction by which MSC acquired the right, title and interest in and to Computerized Structural Analysis and Research Corp. (“CSAR”), a California corporation, and all tangible and intangible assets thereof, which occurred on or about November 4, 1999.
- D. “Acquisition of UAI” means the transaction by which MSC acquired the right, title and interest in and to Universal Analytics, Inc. (“UAI”), a California corporation, and all tangible and intangible assets thereof, which occurred on or about June 24, 1999.
- E. “Assets To Be Divested” means:
 1. a License to the Licensed Rights;
 2. such tangible embodiments of the Licensed Rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable the Acquirer to utilize the Licensed Rights for the purposes set forth in this Order; and
 3. a copy or copies, in such form or format as may be necessary or appropriate to enable the Acquirer to utilize them, of the following:

- a. all customer files acquired by MSC as a result of the Acquisition of UAI and the Acquisition of CSAR; and
 - b. all marketing information, sales training materials, and current (as of the Divestiture Date) customer lists, customer contact information, and customer support log database contents relating to customers who use MSC.Nastran in the United States.
- F. “Complementary Software” means any Software intended to be used in conjunction with Nastran, including but not limited to pre- and post-processors and meshers.
- G. “Commission” means the Federal Trade Commission.
- H. "Divestiture Agreement" means any agreement or agreements pursuant to which Respondent or a trustee divests the Assets to Be Divested pursuant to this Order.
- I. “Divestiture Date” means for each Acquirer the date on which Respondent has completed divestiture of all the Assets To Be Divested to that Acquirer.
- J. “Intellectual Property” means Software, inventions, technology, formulations, specifications, patents, patent applications, trade secrets, copyrights, know-how, research materials, technical information, designs, drawings, manufacturing information, integration information, and testing and quality control data.
- K. “License” means:
- 1. A perpetual, worldwide, royalty-free, non-exclusive license to the Acquirer (with full rights retained by MSC) to use, market, distribute and prepare derivative works of the Licensed Rights, without restriction and without further remuneration to Respondent;
 - 2. The right of the Acquirer to assign or sub-license all or any part of its rights under the License to other Persons, including but not limited to the right to sub-license as the Acquirer may see fit for purposes of establishing a system for the sale or distribution of the Licensed Rights;
 - 3. For a period of not less than three (3) years following the Divestiture Date, the right of the Acquirer to use the trademarks or trade names of the Licensed Rights solely for the limited purpose of identifying the Acquirer as a licensee of the Licensed Rights (including but not limited to the rights to MSC.Nastran) from MSC; provided, however, that the Acquirer shall not otherwise obtain any rights of any kind to the name “MSC” or “MSC.Nastran” or related logos and trademarks of MSC; and provided further that nothing herein shall be construed to limit to any extent the Acquirer’s use of the name “Nastran”; and

4. For a period of twelve (12) months following the Divestiture Date, the right of the Acquirer to obtain from the Respondent, upon reasonable notice and at reasonable times and levels, such personnel, information, technical assistance, advice and training to the Acquirer as are necessary or appropriate to effectuate the purposes of this Order; PROVIDED that Respondent shall be under no obligation to provide any such personnel, information, technical assistance, advice or training relating to the items identified in Paragraph I.L.1.b. and I.L.1.c of this Order. Such assistance shall include reasonable consultation with knowledgeable employees of MSC to ensure that the personnel of the Acquirer are appropriately trained to enable the Acquirer to maintain, develop and support the Licensed Rights in a manner comparable to MSC. Respondent shall not charge the Acquirer more than its own direct, out-of-pocket expenses of labor and travel in providing such assistance, not including overhead or administration expenses.

L. "Licensed Rights" means:

1. the following:
 - a. all Intellectual Property and other property rights owned or licensed by MSC relating to the version of MSC.Nastran that is most current as of the date the Agreement Containing Consent Order is accepted by the Commission for public comment;
 - b. all Intellectual Property of any kind acquired by MSC as a result of the Acquisition of UAI, including all rights in and to any versions of Nastran and any other computer Software; and
 - c. all Intellectual Property of any kind acquired by MSC as a result of the Acquisition of CSAR, including all rights in and to any versions of Nastran and any other computer Software.
2. "Licensed Rights" includes but is not limited to, with respect to each of the enumerated items set forth in the foregoing Paragraph I.L.1., the following:
 - a. all computer code, including standard versions and user-modifiable versions, source code, object code, linear and nonlinear solution sequences, object libraries, applications, features, enhancements, optional modules, DMAP capabilities and features, program interfaces with Complementary Software, and MSC.Nastran Tool Kits, for all operating systems and computer platforms;
 - b. all Software programs, instructions, manuals, documentation, scripts, development tools, development environments, proprietary programming languages, designs, drawings, specifications, research data, problem resolution protocols and all other Intellectual

Property used to develop, upgrade, maintain, test, enhance or add features, capabilities, elements or improvements to the licensed items;

- c. all Software programs, instructions, manuals, documentation or materials of any kind used or supplied to a user of any of the licensed items to facilitate installation or operation of any of the licensed items, or to facilitate migration or conversion by any user to or from any of the licensed items;
 - d. all executable programs, test problems, test results, regression test Software, development support Software, interfaces with Complementary Software, APIs, manuals, guides, reports, and other documentation; and
 - e. all other Intellectual Property and intangible property rights that may be reasonably necessary to facilitate the use by the Acquirer of the Licensed Rights for the purposes set forth in this Order.
- M. “MSC.Nastran” means the proprietary version of Nastran developed, distributed or licensed by MSC, excluding the following MSC products: MSC.Nastran for Windows, MSC.Dytran, MSC Working Model products, MSC.FEA, MSC.AFEA, MSCAKUSMOD, MSC.Construct, MSC.Patran, MSC.SuperModel, MSC.FlightLoads, MSC.Ultima, the MSC V5i family, MSC.Fatigue and MSC.Actran.
- N. “Nastran” means the finite element analysis solver software first developed by the U.S. National Aeronautics and Space Administration (“NASA”) during the 1960’s to perform structural analysis for NASA projects, which was thereafter released by NASA into the public domain to allow broader use and commercial development. The term includes not only the version of the Nastran software that NASA has placed in the public domain, but also the proprietary versions of the software developed and enhanced by private parties based on the source code made available by NASA.
- O. “Person” means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.
- P. “Pro rata portion for the remaining term of the contract or license” means the percentage calculated by dividing the amount of time remaining on the term of a contract or license by the amount of time of the total term of that contract or license, and by converting the resulting ratio into a percentage by multiplying by one hundred (100).
- Q. “Relating to” means in whole or in part constituting, containing, concerning, discussing, describing, embodying, analyzing, identifying, or stating.

- R. “Software” means any type of computer code, including, but not limited to, source code, object code, executable programs, software scripts, modules, add-ons, patches, library functions, object libraries, test programs, test results, regression test software, interfaces with Complementary Software, enhancements, customizations, development tools, development environments, and proprietary programming languages.

II.

IT IS FURTHER ORDERED that:

- A. No later than one hundred fifty (150) days after the date the Agreement Containing Consent Order is accepted for public comment by the Commission, or ninety (90) days after the date on which this Order becomes final, whichever date is later, Respondent shall divest absolutely, in good faith, and in a manner that receives the prior approval of the Commission, the Assets To Be Divested to each of up to two Acquirers that receive the prior approval of the Commission.
- B. If any of MSC’s rights in any of the Licensed Rights are licensed from any third party under terms that would prevent MSC from conveying, licensing, sublicensing or assigning such rights to the Acquirer, then MSC shall obtain, no later than the Divestiture Date, the agreement of the third party to the licensing of such rights to the Acquirer.
- C. The purpose of the divestiture provided for in this Order is to remedy the lessening of competition alleged in the Commission’s complaint herein by establishing one or more viable and effective competitors to MSC, engaged in the sale, distribution and licensing of advanced Nastran Software for use by customers, including customers in the aerospace and automotive industries, and with the ability to engage in further development and enhancement of Nastran Software. In determining whether the licensing of more than one Acquirer may be required, or whether to approve the grant of a License to a prospective Acquirer, the Commission will consider among other things the likely future capability of the prospective Acquirer or Acquirers to achieve this purpose and provide effective price and innovation competition to MSC. The Commission will consider as well, among other things, any provisions for the hiring by the Acquirer of personnel knowledgeable concerning the design, development, maintenance, customer support, sales and marketing of the Licensed Rights.
- D. Any Divestiture Agreement entered into by MSC shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, and nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondent under such Divestiture Agreement. Any Divestiture Agreement approved by the Commission shall be deemed to be incorporated by reference into this Order and shall be deemed a part hereof, and any failure

by the Respondent to comply with any provision of such Divestiture Agreement shall constitute a failure to comply with this Order.

III.

IT IS FURTHER ORDERED that:

- A. At any time after the Commission issues this Order, the Commission may appoint one or more Monitors to assure that Respondent expeditiously complies with its obligations under this Order and the Divestiture Agreement.
- B. Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities and responsibilities of any Monitor appointed pursuant to Paragraph III.A.:
 1. The Commission shall select the Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Monitor within ten (10) days after receipt of written notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.
 2. The Monitor shall have the power and authority to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreement.
 3. Within ten (10) days after appointment of the Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreement.
 4. The Monitor shall serve for such time as is necessary to monitor Respondent's compliance with the provisions of this Order and the Divestiture Agreement.
 5. The Monitor shall have full and complete access, subject to any legally recognized privilege of Respondent, to Respondent's personnel, books, records, documents, facilities and technical information relating to any of the Assets To Be Divested, or to any other relevant information, as the Monitor may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to any matters contained in this Order. Respondent shall cooperate with any reasonable request of the Monitor. Respondent shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with this Order and the Divestiture Agreement.

6. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
7. Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
8. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in Paragraph III.A. of this Order.
9. 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 this Order and the Divestiture Agreement.
10. The Monitor shall report in writing to the Commission concerning compliance by Respondent with the requirements of this Order and the Divestiture Agreement within twenty (20) days from the date of appointment and every thirty (30) days thereafter until the end of his term.
11. Respondent may require the Monitor to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Monitor from providing any information to the Commission.
12. Any Monitor appointed pursuant to Paragraph III.A. of this Order may be the same Person appointed as trustee pursuant to Paragraph IV.A. of this Order.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within the time and in the manner required by Paragraph II of this Order, the Commission may appoint a trustee to accomplish the divestiture, at no minimum price. In the event that the Commission or the Attorney General brings an action pursuant to

Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.
3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect each divestiture required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph IV.B.3. to accomplish the divestitures. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the period for no more than two (2) additional periods of twelve (12) months each.
5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in

divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestitures shall be made only in a manner that receives the prior approval of the Commission, and only to an acquirer that receives the prior approval of the Commission. Provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity and to allow the Respondent to choose from among them, then the trustee shall divest such asset to the acquiring entity or entities selected by Respondent from among those approved by the Commission; provided further, however, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested.
8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish divestitures required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.
12. The trustee shall report in writing to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures required by this Order.

V.

IT IS FURTHER ORDERED that:

- A. No later than one week after the execution of a Divestiture Agreement, Respondent shall provide the proposed Acquirer with the following lists, stating each individual's name, position, business address and business telephone number, to the extent known by MSC:
 1. a list of all non-clerical employees of MSC in the United States who are then currently involved in the design, development, maintenance or customer support of MSC.Nastran;
 2. to the extent permissible under applicable laws and with the permission of such individuals (which permission MSC shall in good faith seek promptly upon execution of the Agreement Containing Consent Order), a list of all former non-clerical employees of MSC in the United States who at any time since June 24, 1999, were involved in the design, development, maintenance, customer support, sales or marketing of MSC.Nastran; and
 3. to the extent permissible under applicable laws and with the permission of such individuals (which permission MSC shall in good faith seek promptly upon execution of the Agreement Containing Consent Order), a list of all former non-clerical employees of UAI or CSAR who were employed by either of those firms at any time within two years prior to the firms' respective acquisitions by MSC.
- B. Respondent shall make available to any proposed Acquirer, for inspection, the personnel files and other documentation relating to the individuals identified pursuant to this Paragraph to the extent permissible under applicable laws and with the permission of such individuals (which permission MSC shall in good faith seek promptly upon execution of the Agreement Containing Consent Order).
- C. Until six (6) months following the Divestiture Date:
 1. Respondent shall provide the Acquirer with an opportunity to interview such individuals identified pursuant to this Paragraph and negotiate employment with any of them;

2. Respondent shall not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict any Person who was employed by Respondent from working for the Acquirer and shall cooperate with the Acquirer in effecting transfer to the Acquirer of any such employee who chooses to transfer to the Acquirer;
3. Respondent shall not offer any incentive to any employees to decline employment with the Acquirer or to accept other employment by MSC; shall eliminate any non-compete restrictions that would otherwise prevent employment of such employees by the Acquirer; and shall eliminate any confidentiality restrictions that would prevent employees who accept employment with the Acquirer from using or transferring to the Acquirer any information or Intellectual Property that is in the employee's memory or that is part of the Licensed Rights. Respondent shall pay, for the benefit of any employees transferring to the Acquirer, all accrued bonuses, vested pensions and other accrued benefits.

PROVIDED, HOWEVER, that MSC is entitled as provided by contract, statutory law or common law to seek damages from the Acquirer and/or the former MSC employee(s) for damages incurred as a result of the transfer of MSC's Intellectual Property other than the Intellectual Property that is part of the Licensed Rights; and further

PROVIDED, HOWEVER, nothing in this Paragraph shall restrict Respondent from protecting or asserting in good faith Respondent's attorney client or work product privileges.

- D. For a period of one (1) year commencing on the date of any individual's employment by the Acquirer pursuant to this Paragraph V, Respondent shall not offer employment to such individual, unless such individual is no longer employed by the Acquirer.

VI.

IT IS FURTHER ORDERED that, until the divestiture of the Assets To Be Divested is completed, Respondent shall not cause the wasting, deterioration, or loss of the Assets To Be Divested, nor shall Respondent sell, transfer, or encumber the Assets To Be Divested.

VII.

IT IS FURTHER ORDERED that

- A. Respondent shall, for a period of twelve (12) months from the Divestiture Date, allow, without penalty, any customer who uses MSC.Nastran in the United States who, in the period between June 24, 1999, and the first anniversary after the Divestiture Date, has converted or does convert

from an annual contract or license for MSC.Nastran (or for multiple MSC products including MSC.Nastran) to a paid-up contract or license for MSC.Nastran (or for multiple MSC products including MSC.Nastran), to terminate or rescind such contract or license in whole or in part in order to deal with the Acquirer, including but not limited to eliminating any restrictions or disincentives to terminating or rescinding such contracts or licenses as they relate to MSC.Nastran and otherwise refunding or returning a pro rata portion of the consideration paid in advance for MSC.Nastran under such contract or license. The existing customers affected by this provision include at least those listed on Confidential Appendix B. If the contract or license is for multiple MSC products including MSC.Nastran, Respondent shall bear the burden of proof, in any proceeding either before the Commission or in a court, to show that the consideration paid in advance for MSC.Nastran under any such contract or license is less than the entire consideration paid in advance under the contract or license. In the event that the customer is listed on Confidential Appendix B, the amount of the advance consideration shall be no less than shown. For those customers not listed on Confidential Appendix B, the amount of the advance consideration shall be the greater of that set forth in the express terms of the contract or license, or the amount determined by allocating the advance consideration using the same methodology used to generate Confidential Appendix B. For purposes of this provision, the advance consideration to be refunded or returned shall be the pro rata portion for the remaining term of the contract or license as of the time the customer elects to deal with the Acquirer, provided however that for purposes of calculating such refund or return of consideration the total term of the contract or license shall be deemed to be the lesser of four (4) years or the term specified in the contract or license.

- B. Respondent shall, within fourteen (14) days after the Divestiture Date, provide notice by first class mail to any customer of MSC described in this Paragraph of its rights as set forth in this Paragraph. Such notice shall be made by means of a letter substantially similar to Appendix A to this Order, shall disclose the amount of advance consideration allocable to MSC.Nastran under the customer's contract or license, and shall make reference to and enclose a complete copy of the complaint and Order in this matter. Respondent shall include with any new paid up contract or license for MSC.Nastran (or for multiple MSC products including MSC.Nastran) that results from a conversion as described in the preceding Subparagraph A a provision embodying the rights set forth in this Paragraph.

VIII.

IT IS FURTHER ORDERED, for a period of three (3) years following the Divestiture Date:

- A. Respondent shall maintain the interoperability of the current and any future versions of MSC's Complementary Software (including but not limited to MSC.Patran) with the Licensed Rights.

- B. Respondent shall not restrict, preclude, or influence a supplier of Complementary Software or services from dealing with the Acquirer or from supporting interoperability with any of the Licensed Rights.
- C. Respondent shall maintain all current input and output file formats for MSC.Nastran so that users of MSC.Nastran would not be impeded or penalized in their use of models, files, or Complementary Software if they switched to the version of Nastran offered by the Acquirer.
- D. Respondent shall not refuse to deal with any customer or prospective customer for the reason, in whole or in part, that such customer or prospective customer deals with the Acquirer.

IX.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without prior notification to the Commission, directly or indirectly acquire any stock, share capital, equity, or other interest in any Person engaged in the development of any version of Nastran, or in any Person engaged in, or in any assets used in, the sales, distribution or licensing of Nastran; provided that no such prior notification is required with respect to any Person or assets whose relationship to Nastran is limited to the reselling or distribution of Nastran on behalf of another Person or Persons. Such prior notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of Part 803, except for the following: no filing fee will be required for any such notification; notification shall be filed with the Secretary of the Commission; notification need not be made to the United States Department of Justice; and notification is required only of Respondent. Respondent shall provide such notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until thirty days after substantially complying with such request for additional information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. 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, and that nothing in this Order shall be construed to relieve Respondent of its obligation to comply with any notification requirement of that statute.

X.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with its obligations under Paragraphs II, IV, V, VI, and VII.B. of this Order, Respondent 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 Paragraphs II, IV, V, VI, VII.A., and VII.B. of this Order. Respondent shall include in such compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.
- B. Within six (6) months after the date this Order becomes final and every six (6) months thereafter until it has fully complied with its obligations under Paragraph VII.A. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with Paragraph VII.A. of this Order.
- C. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

XI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

XII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and

documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, employees, independent contractors, or agents of Respondent, who may have counsel present, relating to any matters contained in this Order.

XIII.

IT IS FURTHER ORDERED that this Order will terminate ten (10) years after the date it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED:

Appendix A

[MSC.Software Corporation letterhead]

[date]

[Name of customer]

Attention:[name of contact person at customer]

[Address of contact person at customer]

[telephone number of contact person]

Dear [contact person]:

This is to inform you that, pursuant to an order of the Federal Trade Commission, MSC.Software Corporation (“MSC”) is required to allow certain of its customers under a contract or license for a term longer than one year for MSC.Nastran, or for multiple MSC products including MSC.Nastran, to terminate or rescind such contract or license in whole or in part in order to deal with [Acquirer]. Accordingly, if and when you license a version of Nastran from [Acquirer], you have a right to terminate your contract or currently existing amendments to your contract as it relates to MSC.Nastran regardless of the termination date specified in that contract or amendment. There will be no charge or other fee in connection with this early termination. In addition, MSC may be required to refund or return a pro rata portion of the consideration paid in advance for MSC.Nastran under your contract or license. The amount of advance consideration allocable to MSC.Nastran under the customer’s contract or license is \$ _____.

A copy of the Federal Trade Commission’s complaint and final order in this matter is attached. If you have any questions concerning the implementation of the provisions of the FTC’s Order, you may wish to contact [Name of Monitor], who has been named Monitor under the terms of the Order.

Sincerely,

[President of MSC.Software Corporation]

President

MSC.Software Corporation

APPENDIX B

CONFIDENTIAL

[LIST OF AFFECTED CUSTOMERS]