

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

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                 **Rebecca Kelly Slaughter**  
                                 **Alvaro M. Bedoya**

In the Matter of	)	
	)	
<b>Intercontinental Exchange, Inc.,</b>	)	<b>DECISION AND ORDER</b>
a corporation, and	)	Docket No. 9413
	)	
<b>Black Knight, Inc.,</b>	)	
a corporation.	)	
	)	

**DECISION**

The Federal Trade Commission (“Commission”) issued its Complaint charging Respondent Intercontinental Exchange, Inc. (“ICE”) and Respondent Black Knight, Inc. (“Black Knight”) (collectively “Respondents”) with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The Commission served Respondents with a copy of that Complaint together with a notice of contemplated relief. Respondents answered the Complaint and denied the charges.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents 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, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued an Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent Intercontinental Exchange, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 5660 New Northside Drive, Atlanta, Georgia 30328.

2. Respondent Black Knight, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204.
3. Constellation Software, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Province of Ontario, Canada with its executive offices and principal place of business located at 20 Adelaide Street East, Suite 12000, Toronto, Ontario, M5C 2T6, Canada.
4. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents and the proceeding is in the public interest.

## **ORDER**

### **I. Definitions**

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

- A. “ICE” means Intercontinental Exchange, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Intercontinental Exchange, Inc., including Sand Merger Sub Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Black Knight” means Black Knight, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Black Knight, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Constellation” means Constellation Software, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Constellation Software, Inc., including Perseus U.S. Holdco, Inc., Constellation Web Solutions Inc., Project Badger HoldCo Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means ICE and Black Knight collectively.
- E. “Acquirer” means (1) Constellation, or (2) any other Person that the Commission approves to acquire any of the Divestiture Assets pursuant to Section IX of this Order.
- F. “Acquisition” means the proposed acquisition described in the agreement titled Agreement and Plan of Merger dated as of May 4, 2022, and as amended as of March 7, 2023, among Intercontinental Exchange, Inc., Sand Merger Sub Corporation, and Black Knight, Inc.

- G. “Acquisition Date” means the date Respondents consummate the Acquisition.
- H. “Business Information” means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format. Business Information includes books, records, data, and information relating to sales, marketing, logistics, products, pricing, promotions, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, vendors, research and development, registrations, licenses, and permits, and operations.
- I. “Cloned Software Code” means a source code copy of each of (a) the origination software code within the version of the Actionable Intelligence Platform (AIP) software (inclusive of the Motivity Solutions and Data Hub software) that is used by Black Knight as of the Divestiture Date; (b) the version of Broker Digital software that is used by Black Knight as of the Divestiture Date; and (c) the version of the Foundation software (inclusive of the associated website and Node Package manager) that is used by Black Knight as of the Divestiture Date.
- J. “Confidential Information” means all Business Information and knowledge of employees not in the public domain related to the Divested Businesses that was learned prior to the divestiture, through providing Transitional Assistance, or without the consent of the Acquirer, except for information that was or becomes generally available to the public other than as a result of disclosure by Respondents.
- K. “Consent” means an approval, consent, ratification, waiver, or other authorization.
- L. “Contract” means an agreement, contract, lease, license agreement, consensual obligation, promise or undertaking with one or more third parties, whether written or oral and whether express or implied.
- M. “Direct Cost” means the cost of labor, goods and materials, travel, and other expenditures. The cost of any labor included in Direct Cost shall not exceed the hours of labor provided times the then-current average hourly wage rate, including benefits, for the employee providing such labor.
- N. “Divestiture Agreements” means the (1) Empower Divestiture Agreement, (2) Optimal Blue Divestiture Agreement, and (3) any agreement between a Divestiture Trustee appointed pursuant to Section IX of this Order and an Acquirer for the purchase of any of the Divestiture Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- O. “Divested Businesses” means the Empower Business and the Optimal Blue Business.

- P. “Divestiture Assets” means the Cloned Software Code and all of Respondents’ rights, title, and interest in and to all property and assets, real, personal, or mixed, tangible, and intangible, of every kind and description, wherever located, used in the Divested Businesses, including:
1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
  2. Cash;
  3. All accounts receivable;
  4. All Intellectual Property;
  5. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
  6. All Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;
  7. All Business Information;
  8. Tangible personal property (other than inventories or accounts receivable), whether owned or leased, including machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, together with all express or implied warranties by manufacturers, sellers or lessors and all maintenance records and operating manuals; and
  9. All intangible rights and property, including going concern value, goodwill, telephone listings, internet sites, and social media accounts,

*Provided, however,* that the Divestiture Assets need not include (x) Excluded Assets or (y) Retained Intellectual Property.

- Q. “Divestiture Date” means a date on which Respondents (or a Divestiture Trustee appointed pursuant to Section IX of this Order) close on the divestiture of the Divestiture Assets as required by Section II of this Order.
- R. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Section IX of this Order.
- S. “Employee Information” means for each Relevant Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:

1. Name, job title or position, date of hire, and effective service date;
  2. Specific description of the employee's responsibilities;
  3. The employee's base salary or current wages;
  4. Most recent bonus paid, aggregate annual compensation for the last fiscal year, and current target or guaranteed bonus, if any;
  5. Written performance reviews for the past three years, if any;
  6. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
  7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
  8. At an Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- T. "Empower" means Black Knight's LOS.
- U. "Empower Business" means the research, development, commercialization, distribution, marketing, advertisement, sale, and servicing of Empower and the related products and services listed in Appendix D.
- V. "Empower Divestiture Agreement" means the Equity Purchase Agreement by and between Constellation Web Solutions, Inc., Black Knight, Inc., and Intercontinental Exchange, Inc., dated as of March 7, 2023, and all amendments, exhibits, and schedules thereto, and the agreements identified in Nonpublic Appendix A. The Empower Divestiture Agreement is attached to this Decision and Order as Nonpublic Appendix A.
- W. "Excluded Assets" means the assets identified in Nonpublic Appendix C of this Order.
- X. "Governmental Authorization" means a Consent, license, registration, or permit issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- Y. "Intellectual Property" means all intellectual property, including: (1) commercial names, all assumed fictional business names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications, and trade dress; (2) all patents, patent applications and inventions and discoveries that may be patentable; (3) all registered and unregistered copyrights in both published works and unpublished works; (4) all rights in mask works; (5) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process

technology, plans, drawings, and blue prints; and (6) and all rights in internet web sites and internet domain names presently used.

- Z. “LOS” means loan origination system, which is software that lenders use as the primary tool to manage the residential mortgage loan origination process, serves as the lender’s system of record for each loan and is used to manage the workflow for the origination process and to perform commercial, legal, and compliance tasks required during the lending process.
- AA. “Monitor” means any Person appointed by the Commission to serve as a monitor pursuant to this Order or the Order to Maintain Assets.
- BB. “Optimal Blue” means Black Knight’s PPE products that reside in the Optimal Blue Business.
- CC. “Optimal Blue Business” means the (a) products and services that reside in Black Knight’s Optimal Blue, LLC subsidiary, including Optimal Blue, and (b) the research, development, commercialization, distribution, marketing, advertisement, sale, and servicing of these products and services, regardless of where those functions reside at Black Knight.
- DD. “Optimal Blue Divestiture Agreement” means the Equity Purchase Agreement by and between Project Badger Holdco, Inc., Black Knight, Inc., and Intercontinental Exchange, Inc, dated as of July 14, 2023, and all amendments, exhibits, and schedules thereto, and the agreements identified in Nonpublic Appendix B. The Optimal Blue Divestiture Agreement is attached to this Decision and Order as Nonpublic Appendix B.
- EE. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- FF. “PPE” means product pricing and eligibility engine, which is software that a mortgage lender uses to identify potential loan rates for residential loan products for a borrower, determine the borrower’s eligibility for a given loan, and lock in the loan’s terms for the borrower. PPE does not include products relating to loan trading, loan analytics, and interest-rate hedging services that do not also provide the services in the preceding sentence.
- GG. “Relevant Employees” means all full-time or part-time employees who are not employed by the Acquirer as of the Divestiture Date, are associated with Respondent Black Knight’s Origination Technologies Division, India Division, or the Optimal Blue Business as of the date the Empower Divestiture Agreement was first executed, and spent the majority of their time working on the Divested Businesses.
- HH. “Retained Intellectual Property” means any owned or licensed (as licensor or licensee) Intellectual Property (not included in the Excluded Assets) used in the operation of both

the Divested Businesses and any other business owned by Respondent Black Knight prior to the Acquisition that is being retained by the Respondents.

- II. “Seller Note” means the Promissory Note that will be issued by Project Badger HoldCo, Inc., a Constellation subsidiary, to Respondents pursuant to the Optimal Blue Divestiture Agreement to finance the acquisition of the Optimal Blue Business.
- JJ. “Seller Note Trustee” means the Person appointed by the Commission pursuant to Section X of this Order.
- KK. “Transitional Assistance” means services and support as required by the Acquirer to facilitate the transfer of the Divested Businesses and operation of the Divestiture Assets, including services and support related to human resources, payroll, employee benefits, accounting and finance, information technology systems, supply chain management, vendor relations, customer relations, marketing, research and development, engineering, quality control, customers, Contracts, Governmental Authorizations, and use of trademarks or trade names for transitional purposes.
- LL. “Updated Broker Digital Code Agreement” means an agreement executed by the Acquirer and Respondents whereby Respondents will modify the source code for Broker Digital and provide the modified source code and related training to the Acquirer.

## II. Divestiture

**IT IS FURTHER ORDERED** that:

- A. Respondents shall, no later than 20 days after the Acquisition Date, divest, absolutely and in good faith, the Divestiture Assets to the Acquirer,

*Provided, however,* that if Business Information relating to any of the Divestiture Assets includes information (i) that also relates to other retained businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to such Divestiture Assets or (ii) where Respondents have a legal obligation to retain the original copies, then Respondents may provide copies of the Business Information (with redactions as appropriate) and shall provide an Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes, and

*Provided, further,* that some Business Information related to the Divested Businesses may be transferred pursuant to an agreed transfer plan following the Divestiture Date provided that the Acquirer has access to such Business Information and that Respondents segregate such Business Information from Respondent ICE’s information and ensure it is only accessed by Respondent ICE employees that are providing transfer assistance or need the Business Information to comply with legal or contractual obligations.

- B. Respondents and the Acquirer shall use reasonable best efforts to enter a mutually agreed Updated Broker Digital Code Agreement after this Order is issued, and within 5 days

after entering an Updated Broker Digital Code Agreement with the Acquirer, Respondents shall provide a copy of the executed agreement to Commission staff.

- C. No later than the Divestiture Date, Respondents shall:
1. Provide Acquirer with a perpetual, fully-paid up, and sublicensable license to all Retained Intellectual Property for use in the Divested Businesses;
  2. Refrain from using any Retained Intellectual Property in any LOS or PPE; and
  3. Provide the Acquirer with a perpetual, fully-paid up license to the Cloned Software Code that is sublicensable to any existing or future business partner of the Acquirer who is working with or on behalf of the Acquirer, including any third-party software or service providers with which the Acquirer shares or transfers data on behalf of customers,  
  
*Provided, however,* Acquirer (i) shall not, and shall not permit any third party to, license or grant any rights to any portion of the AIP, Broker Digital or Foundation code under an open-source licensing or similar model and (ii) shall use its best efforts to protect the confidentiality of all the AIP, Broker Digital and Foundation code.
- D. Respondents shall obtain, no later than the applicable Divestiture Date, all Consents from third parties and all Governmental Authorizations that are necessary to effect the transfer of the Divested Businesses to the Acquirer.

### **III. Divestiture Agreements**

**IT IS FURTHER ORDERED** that:

- A. The Divestiture Agreements shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreements shall constitute a violation of this Order,  
  
*Provided, however,* that the Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreements varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order,  
  
*Provided, further,* that upon execution of the Updated Broker Digital Code Agreement, it shall be incorporated into this Order.
- B. Respondents shall not modify or amend the terms of the Divestiture Agreements after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

#### **IV. Transitional Assistance**

**IT IS FURTHER ORDERED** that:

- A. Until Respondents have transferred all Business Information included in the Divestiture Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. At the option of Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Divestiture Assets to the Acquirer and (2) assist the Acquirer in operating the Divested Businesses in all material respects in accordance with the manner in which the Divested Businesses were operated prior to the Acquisition.
- C. Respondents shall provide Transitional Assistance:
  - 1. As set forth in the Divestiture Agreements, or as otherwise reasonably requested by the Acquirer (whether before or after the applicable Divestiture Date);
  - 2. At the price set forth in the Divestiture Agreements, or if no price is set forth, at no more than Direct Cost; and
  - 3. For a time period sufficient to meet the requirements of this Section IV.
- D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transitional Assistance provisions of the Divestiture Agreements upon commercially reasonable notice and without cost or penalty.
- E. Respondents shall not cease providing Transitional Assistance due to a breach by the Acquirer of the Divestiture Agreements.

#### **V. Employees**

**IT IS FURTHER ORDERED** that:

- A. Until 1 year after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer of the Divestiture Assets to evaluate independently and offer employment to any Relevant Employee.
- B. Until 1 year after the Divestiture Date, Respondents shall:
  - 1. No later than 20 days after a request from the Acquirer, provide a list of all Relevant Employees and provide Employee Information for each;

2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to privately interview any of the Relevant Employees outside the presence or hearing of any employee or agent of any Respondent;
  3. After the Acquirer informs Respondents in writing or a Relevant Employee informs Respondents orally or in writing that Constellation has made an offer to the Relevant Employee, remove any impediments within the control of Respondents that may deter such Relevant Employee from accepting employment with the Acquirer, including, but not limited to, removal of any noncompete provisions of employment or other contracts with Respondents that may affect the ability or incentive of such Relevant Employee to be employed by the Acquirer, and not make any counteroffer to such Relevant Employee,  
  
*Provided, however,* that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
  4. Continue to provide Relevant Employees with compensation and benefits through the Divestiture Date, including regularly scheduled raises and bonuses and the vesting of benefits; and
  5. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Relevant Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Acquirer.
- C. Respondents shall not, for a period of 2 years following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any former Black Knight employee who is employed by the Acquirer to work in the Divested Businesses to terminate their employment with the Acquirer; *provided, however,* Respondents may:
1. Hire any such Person whose employment has been terminated by the Acquirer;
  2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more such Persons employed by the Acquirer; or
  3. Hire any such Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section V.
- D. Respondents shall not enforce any noncompete or non-solicit provision or agreement against any individual who seeks or obtains a position with the Divested Businesses.

## VI. Asset Maintenance

**IT IS FURTHER ORDERED** that Respondents shall, subject to their obligations under the Order to Maintain Assets, ensure that the Divestiture Assets are operated and maintained in the ordinary course of business consistent with past practices until such assets are fully transferred to the Acquirer, and shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Divested Businesses and Divestiture Assets, to minimize the risk of any loss of their competitive potential, to operate them in a manner consistent with applicable laws and regulations, and to prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear);
- B. Not sell, transfer, encumber, or otherwise impair the Divested Businesses and related Divestiture Assets (other than in the manner prescribed in this Order and the Order to Maintain Assets) or take any action that lessens their full economic viability, marketability, or competitiveness;
- C. Not terminate the operations of the Divested Businesses and related Divestiture Assets, and shall conduct or cause to be conducted the operations of the Divested Businesses and related Divestiture Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, ongoing operations, marketability, and competitiveness of the Divested Businesses and related Divestiture Assets; and
- D. Use reasonable best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Divested Businesses and related Divestiture Assets. In Respondents' first 30-day Compliance Report under Paragraph XIV.B.1, they shall identify all confirmed terminations that occurred from when Respondents signed the Consent Agreement to the Divestiture Date.

*Provided, however,* that Respondents may take actions that the Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Divestiture Assets and consistent with the purposes of this Order and the Order to Maintain Assets.

## VII. Confidentiality

**IT IS FURTHER ORDERED** that:

- A. Respondents shall not disclose Confidential Information to employees who have direct or supervisory responsibilities related to sales, marketing or development of any products that compete with the Divested Businesses,

*Provided, however,* Respondents may disclose Confidential Information under Sections 9.5(b) and 9.6 of Exhibit B to the Empower Divestiture Agreement, to employees who have supervisory responsibilities related to sales, marketing or developments of any products that compete with the Divested Businesses to the extent necessary to fulfill Respondents' obligations and exercise Respondents' rights under Sections 9.5(b) and 9.6.

- B. Respondents shall not (1) disclose (including to Respondents' employees) or (2) use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to Divestiture Assets or Divested Businesses ("Confidential Divestiture Information"),

*Provided, however,*

1. Respondents may disclose or use such Confidential Information in the course of performing their obligations or as permitted under this Order, the Order to Maintain Assets, or a Divestiture Agreement, enforcing Respondents' rights under any Divestiture Agreement, complying with financial reporting requirements, obtaining legal advice, prosecuting, or defending legal claims, investigations, or enforcing actions threatened or brought against the Divestiture Assets or Divested Businesses, or as required by law or regulation, including any applicable securities exchange rules or regulations; and
  2. Respondents may use Confidential Information obtained pursuant to agreements between the parties and the Acquirer for the purposes permitted under those agreements and to enforce the parties' rights under those agreements.
- C. Respondents shall use reasonable best efforts to require all employees who possess Confidential Information to sign a non-disclosure agreement ("NDA") prohibiting the disclosure or use of Confidential Divestiture Information except as permitted by this Order. Further, if, despite Respondents' reasonable best efforts, an employee refuses to execute an NDA, Respondents will:
1. Within 30 days of first asking the employee to sign an NDA, prohibit the employee from working on an LOS or PPE product;
  2. Inform the employee of their confidentiality obligations to ensure ICE's compliance with the Order; and
  3. Within 30 days of the employee's refusal to execute an NDA, provide to the Commission the employee's name, job title and responsibilities before the Acquisition date; job title and prospective responsibilities after the Acquisition Date; Respondents' efforts undertaken to have the employee sign the NDA; a copy of the NDA the employee was requested to sign; and verification that Respondents informed the employee of their confidentiality obligation under the Order.

- D. If disclosure or use of any Confidential Information is made to Respondents' employees or to any other Person under Paragraph VII.A or Paragraph VII.B of this Order, Respondents shall limit such disclosure or use (1) only to the extent such information is required, and (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph VII.A.
- E. Respondents shall enforce the terms of this Section VII and take necessary actions to ensure that their employees and other Persons comply with the terms of this Section VII, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

### **VIII. Monitor**

**IT IS FURTHER ORDERED** that:

- A. The Commission appoints William E. Berlin to serve as Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
  - 1. Shall be subject to the approval of the Commission;
  - 2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VIII or Section VII of the Order to Maintain Assets ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
  - 3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of this Order in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in this Order, Respondents and the Monitor shall comply with this Order.
- C. The Monitor shall:
  - 1. Have the authority to monitor Respondents' compliance with the obligations set forth in this Order;
  - 2. Act in consultation with the Commission or its staff and communicate with staff as requested by Commission staff regarding Respondents' compliance with the obligations set forth in this Order;

3. Serve as an independent third party and not as an employee or agent of Respondents, of the Acquirer or of the Commission;
4. Serve without bond or other security;
5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional, or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with this Order on a schedule as determined by Commission staff, and at any other time requested by the staff of the Commission; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II, IV, and VI of this Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing their duties for the purpose of reviewing Respondents' compliance with their obligations under this Order, including, as requested by the Monitor (a) ensuring the person designated to oversee the transition or their designee are available to the Monitor for weekly communications; (b) providing the Monitor full and complete access to personnel, information, and facilities; and (c) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform their duties pursuant to this Order;
3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's

customary fees, as well as expenses the Monitor incurs performing their duties under this Order, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out their duties and responsibilities;

4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to this Order; and
  5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under this Order, unless the loss, claim, damage, liability, or expense results from fraud, gross negligence or willful misconduct by the Monitor.
- E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with this Order.
- F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of this Order. The Commission shall select the substitute Monitor, subject to the consent of the Respondents.

Respondents:

1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VIII.B; or (b) receives Commission approval.

- G. 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.

### **IX. Divestiture Trustee**

**IT IS FURTHER ORDERED** that:

- A. If Respondents cannot divest the Divested Businesses and Divested Assets to Constellation as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of 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 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 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
- D. If a Divestiture Trustee is appointed by the Commission pursuant to this Section IX, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee’s powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets;
  2. The Divestiture Trustee shall have 6 months from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the 6-month period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission as necessary to achieve the divestiture;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets. Respondents shall develop such financial or other information as the Divestiture Trustee may reasonably request and cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Section IX in an amount equal to the delay, as determined by the Commission;
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer that receives the prior approval of the Commission as required by this Order,

*Provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission, and

*Provided further,* however, that Respondents shall select such person within 5 days of 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 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 the 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. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by this Order; and

7. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

E. Respondents:

1. May require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement;
2. 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 fraud, gross negligence or willful misconduct by the Divestiture Trustee; and
3. Shall assist any potential Acquirer in conducting a due diligence investigation of the Divested Businesses and Divestiture Assets, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording each Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, Business Information, and other documents and data relating to the Divested Businesses, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents,

*Provided, however,* that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section IX.
- H. The Commission 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 divestitures and other obligations or action required by this Order.

## X. Seller Note

**IT IS FURTHER ORDERED** that:

- A. The Commission will appoint a Seller Note Trustee no later than one day after the Divestiture Date to sell the Seller Note within 6 months after the Seller Note Trustee's appointment.
- B. The Commission shall select the Seller Note Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Seller Note Trustee shall be a Person with experience and expertise in buying and selling negotiable instruments. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Seller Note Trustee within 10 days after notice by the Commission to Respondents of the identity of any proposed Seller Note Trustee, Respondents shall be deemed to have consented to the selection of the proposed Seller Note Trustee.
- C. Not later than 10 days after the appointment of a Seller Note Trustee, Respondents shall transfer their rights, title, and interest in the Seller Note to the Seller Note Trustee in a manner consistent with the requirements of this Section X of this Order and execute a trust agreement that, subject to the prior approval of the Assistant Director of Compliance, transfers to the Seller Note Trustee all rights and powers necessary to permit the Seller Note Trustee to effect the sale of the Seller Note required by this Order. Any failure by Respondents to comply with a trust agreement approved by the Assistant Director of Compliance shall be a violation of this Order.
- D. Respondents shall consent to the following terms and conditions regarding the Seller Note Trustee's powers, duties, authority, and responsibilities:
  1. The Seller Note Trustee shall have the exclusive power and authority to sell the Seller Note as required by this Order;
  2. The Seller Note Trustee shall have 6 months from the date the Assistant Director of Compliance approves the trustee agreement described herein to accomplish the sale of the Seller Note, which shall be subject to the prior approval of the Commission. If, however, at the end of the 6-month period, the Seller Note Trustee has submitted a plan of sale or the Director of the Bureau of Competition, or their designee, believes that the sale can be achieved within a reasonable time, the divestiture period may be extended by the Director of the Bureau of Competition;
  3. Subject to any demonstrated legally recognized privilege, the Seller Note Trustee shall have full and complete access to the personnel, books, and records related to the Seller Note and to any other relevant information, as the Seller Note Trustee may reasonably request. Respondents shall develop such financial or other

information as the Seller Note Trustee may reasonably request and reasonably cooperate with the Seller Note Trustee. Respondents shall take no action to interfere with or impede the Seller Note Trustee's accomplishment of the sale of the Seller Note;

4. The Seller Note Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Director of the Bureau of Competition, or their designee, or subject to Respondents' absolute and unconditional obligation to sell the Seller Note expeditiously and at no minimum price. The sale shall be made in the manner and to a buyer that receives the prior approval of the Commission as required by this Order,

*Provided, however,* that the Seller Note Trustee shall not sell to any persons selling a PPE or LOS, in accordance with Section 5.17(a) of the Optimal Blue Divestiture Agreement;

*Provided further,* if the Seller Note Trustee receives bona fide offers from more than one buyer, and if the Director of the Bureau of Competition, or their designee, determines to approve more than one such buyer, the Seller Note Trustee shall sell to the buyer selected by Respondents from among those approved by the Commission within 5 days of receiving notification of the Director of the Bureau of Competition's or their designee's approval;

5. The Seller Note Trustee shall not, without the express consent of the Acquirer, disclose Business Information to the Respondents and shall use reasonable best efforts to prevent any third party to whom the Seller Note Trustee provides Business Information from disclosing it to Respondents;
6. The Seller Note 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 Director of the Bureau of Competition, or their designee, may set. The Seller Note 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 Seller Note Trustee's duties and responsibilities. The Seller Note Trustee shall account for all monies derived from the sale of the Seller Note and all expenses incurred. After approval by the Commission of the account of the Seller Note Trustee, including fees for the Seller Note Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Seller Note Trustee's power shall be terminated. The compensation of the Seller Note Trustee shall be based in whole or in part on a commission arrangement contingent on the sale of the Seller Note that is required to be sold by this Order; and

7. The Seller Note Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Seller Note Trustee's efforts to accomplish the sale of the Seller Note.

E. Respondents:

1. Shall indemnify the Seller Note Trustee and hold the Seller Note Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Seller Note 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 fraud, gross negligence or willful misconduct by the Seller Note Trustee; and
2. May require the Seller Note Trustee and each of the Seller Note Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement,

*Provided, however,* that such agreement shall not restrict the Seller Note Trustee from providing any information to the Commission.

F. Constellation, if reasonably requested by the Seller Note Trustee:

1. Shall provide information maintained in the ordinary course of business relating to the Optimal Blue Business to the Seller Note Trustee and prospective purchasers of the Seller Note of the type customarily made available to potential debt financing sources in connection with the potential sale of similar debt instruments, including historical financial statements, budgets and projections, basic corporate information regarding the legal entities operating the Optimal Blue Business (including legal names, jurisdictions of organization and beneficial ownership information), description of material operating agreements, descriptions of any other indebtedness (including payor and payee, principal amount, collateral and maturity date); and descriptions of any material (potential) liabilities (including with respect to litigation and/or tax matters) ("customary due diligence information");
2. Shall reasonably cooperate with the Respondents' development of customary due diligence information in a manner that is consistent with Respondents' confidentiality obligations under Section VII of this Order;
3. Shall reasonably cooperate with the Seller Note Trustee; and
4. Shall take no action to interfere with or impede the Seller Note Trustee's accomplishment of the sale of the Seller Note.

- G. The Assistant Director of Compliance may, among other things, require the Seller Note Trustee and each of the Seller Note Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Seller Note Trustee's duties.
- H. If the Director of the Bureau of Competition, or their designee, determines that a Seller Note Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Seller Note Trustee in the same manner as provided in this Section X.
- I. The Commission may on its own initiative or at the request of the Seller Note Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the sale of the Seller Note and other obligations or action required by this Order.

### **XI. Respondents Prior Approval**

**IT IS FURTHER ORDERED** that:

- A. Respondents shall not, without prior approval of the Commission, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in the Divested Businesses.
- B. Respondents shall not, without prior approval of the Commission, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any business that owns or sells an LOS,

*Provided, however,* prior approval of the Commission is not required for an acquisition by a third party in which Respondents have an existing non-controlling interest so long as Respondents give notice to the Commission of the acquisition within 30 days after the Respondents first learn of the acquisition or proposed acquisition.

### **XII. Respondents Prior Notice**

**IT IS FURTHER ORDERED** that:

- A. Respondents shall not, without prior notice, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any PPE business,

*Provided, however,* prior notice to the Commission is not required for an acquisition by a third party in which Respondents have an existing non-controlling interest if the acquisition was made without Respondents' knowledge so long as Respondents give notice to the Commission of the acquisition within 30 days after the Respondents first learn of the acquisition or proposed acquisition.

- B. Until the second anniversary of the date the Commission issued this Order, Respondents shall provide the notice required in Paragraph XII.A at least 15 days before acquiring any PPE business and thereafter Respondents shall provide such notice at least 30 days prior to acquiring any PPE business. The notice must identify the person from whom Respondents are acquiring the PPE, the PPE being acquired and describe the transaction,

*Provided, however,* that nothing in this Section XII will require the parties to delay the proposed transaction.

### **XIII. Acquirer Prior Approval**

**IT IS FURTHER ORDERED** that:

- A. For a period of 3 years after the Divestiture Date, the Acquirer shall not sell, license, or otherwise convey, through subsidiaries or otherwise, without the prior approval of the Commission, all or substantially all of the Divestiture Assets divested pursuant to Section II to any Person; and
- B. For a period of 7 years after the term of Paragraph XIII.A ends, Constellation or any other Acquirer shall not sell, license, or convey, through subsidiaries or otherwise, without the prior approval of the Commission, all or substantially all of the assets divested pursuant to Section II to any Person who competes in the LOS or PPE markets,

*Provided, however,* Constellation is not required to obtain prior approval of the Commission under this Section XIII for a change of control, merger, reorganization, or sale of all or substantially all of its business.

### **XIV. Compliance Reports**

- A. Respondent ICE shall:
1. Notify Commission staff via email at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) of the Acquisition Date and of the Divestiture Date no later than 5 days after the occurrence of each; and
  2. Submit the complete Divestiture Agreements to the Commission at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) no later than 30 days after the Divestiture Date.
- B. Respondents shall file verified written reports (“Compliance Reports”) in accordance with the following:
1. Respondent ICE shall file interim Compliance Reports 30 days after this Order is issued and every 60 days thereafter until Respondents have fully complied with the provisions of Sections II and IV of this Order;

2. Respondent ICE shall file annual Compliance Reports one year after the date this Order is issued and annually thereafter for the next nine years on the anniversary of that date;
  3. Respondents shall file additional Compliance Reports as the Commission, or its staff may request;
  4. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of this Order; and
  5. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in each Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent's obligations under this Order during the period covered by such Compliance Report. Respondents shall provide copies of these documents to Commission staff upon request.
- C. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file its compliance reports with the Secretary of the Commission at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and the Compliance Division at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov), as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

## **XV. Change in Respondent ICE**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of Intercontinental Exchange, Inc.;
- B. The proposed acquisition, merger, or consolidation of Intercontinental Exchange, Inc.; or
- C. Any other changes in ICE including assignment and the creation, sale, or dissolution of subsidiaries, if such changes may affect compliance obligations arising out of the Order.

## **XVI. Access**

**IT IS FURTHER ORDERED** that for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

## **XVII. Purpose**

**IT IS FURTHER ORDERED** that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and to ensure the Acquirer can operate the Divested Businesses in all material respects in accordance with the manner in which Respondents operated the Divested Businesses prior to the Acquisition.

## **XVIII. Term**

**IT IS FURTHER ORDERED** that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor  
Secretary

**SEAL**

**ISSUED: November 3, 2023**

**Nonpublic Appendix A**

**Empower Divestiture Agreement**

**[Redacted From the Public Record Version, But Incorporated By Reference]**

**Nonpublic Appendix B**

**Optimal Blue Divestiture Agreement**

**[Redacted From the Public Record Version, But Incorporated By Reference]**

**Nonpublic Appendix C**

**Excluded Assets**

**[Redacted From the Public Record Version, But Incorporated By Reference]**

## **Appendix D**

### **Products and Services Related to the Empower Business**

1. Empower (inclusive of Empower LOS, Empower Native PPE, Empower Wholesale Portal)
2. LendingSpace
3. Borrower Digital (a/k/a Consumer Point of Sale 'POS', Originations Digital)
4. Loan Officer Digital (collectively with Borrower Digital, a/k/a Originations Digital)
5. Correspondent Seller Digital (a/k/a Seller Digital, Seller Direct)
6. Decision Select (a/k/a Business Rules Engine)
7. Migration Tool (a/k/a Monarch)
8. AIVA (a/k/a HeavyWater)
9. Underwriter Assist
10. Post Close Assist (a/k/a Post Close Digital)
11. Regulatory Assist
12. Document and Data Ledger (a/k/a eVault)
13. Exchange (a/k/a Exchange Common Services; Exchange Document Services; inclusive of Closing Insights, Valuation Insights and Quality Insights)