



form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, 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 other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other means of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## **ORDER**

### **DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. "Affected Consumers" shall mean persons who, prior to the date of issuance of this order, downloaded and installed any Data Collection Agent, including but not limited to the Compete Toolbar and Consumer Input Panel software.
2. "Clearly and prominently" shall mean as follows:
  - A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer or a mobile device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;

- B. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
  - C. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them;
  - D. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and
  - E. In all instances, the required disclosures are presented in an understandable language and syntax; in the same language as the predominant language that is used in the communication; and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.
- 3. “Collected Information” shall mean any information transmitted, on or before the date of issuance of this order, from a computer by a Data Collection Agent to any computer server owned by, operated by, or operated for the benefit of respondent.
  - 4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
  - 5. “Computer” shall mean any desktop, laptop computer, tablet, handheld device, telephone, or other electronic product or device that has a platform on which to download, install, or run any software program, code, script, or other content and to play any digital audio, visual, or audiovisual content.
  - 6. “Data Collection Agent” shall mean any software program, including any application; created, licensed or distributed, directly or through a Third Party, by respondent; installed on consumers’ computers, whether as a standalone product or as a feature of another product; and used to record, or transmit information about any activity occurring on that computer, unless: (a) the activity involves transmission of information related to the configuration of the software program or application itself; (b) the transmission is limited to information about whether the program is functioning as intended; or (c) the activity involves a consumer’s interactions with respondent’s websites and/or forms. The Compete Toolbar and the Consumer Input Panel software, for example, are both Data Collection Agents.

7. “Personal Information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license number or other government-issued identification number; (g) a bank account, debit card, or credit card account number; (h) a persistent identifier, such as a customer number held in a “cookie” or static IP address; or (i) a biometric record.
8. “Third Party” shall mean any individual or entity other than respondent, except that a third party shall not include a service provider of respondent that:
  - A. Only uses or receives information collected by or on behalf of respondent for and at the direction of the respondent and no other individual or entity;
  - B. Does not disclose the information, or any individually identifiable information derived from it, to any individual or entity other than respondent; and
  - C. Does not use the information for any other purpose.
9. Unless otherwise indicated, “respondent” shall mean Compete, Inc., and its successors and assigns, and its officers, agents, representatives, and employees.

## I.

**IT IS ORDERED** that respondent, directly or indirectly, including through any contract, agreement, license, sale, or arrangement with any Third Party, is prohibited from:

- A. Collecting any information from any Data Collection Agent made available to consumers directly by respondent after the date of service of this order, unless prior to such collection respondent has:
  1. Disclosed to the consumer clearly and prominently, and prior to the display of and on a separate screen from, any “end user license agreement,” “privacy policy,” “terms of use” page, or similar document:
    - a) all the types of information that will be collected, including, but not limited to, if applicable, a statement that the information includes consumer transactions (both completed and incomplete) or communications in forms, online accounts, web-based email accounts, or search engine pages, and whether the information includes personal, financial or health information; and

- b) how the information is to be used, including if it is shared with any Third Party; and
  2. Obtained express affirmative consent from the consumer to the collection, use or sharing of the information.
- B. Collecting any information from any Data Collection Agent made available to consumers by a Third Party after the date of service of this order, unless prior to such collection respondent has provided the disclosures and obtained the consent described in subpart A(1-2), or has both required the Third Party by contract to do so, and monitored compliance with such contractual provisions.
- C. Collecting any information from any Data Collection Agent that was made available to consumers before the date of service of this order, unless it has made the disclosures and obtained the express affirmative consent described in subpart A(1-2) or:
  1. It has made the disclosure required by Part II(A)(3); and
  2. It does not use information collected from an Affected Consumer by a Data Collection Agent, except in an aggregate and/or anonymous form that does not disclose, report, or otherwise share any individually identifiable information.
- D. Using any Collected Information gathered on or after February 1, 2010, unless it has obtained express affirmative consent from the consumer to the use of the Collected Information, or
  1. It does not use the Collected Information, except in an aggregate and/or anonymous form that does not disclose, report, or otherwise share any individually identifiable information; and
  2. It does not otherwise access any Affected Consumer's personal information that was collected by a Data Collection Agent.
- E. Making any material change from stated practices about collection, use or sharing of such information, unless it has obtained express affirmative consent from the consumer.

*Provided, however,* this Part will not apply to the collection, use or sharing of information as reasonably necessary: 1) to comply with applicable law, regulation, or legal process; 2) to enforce respondent's terms of use; 3) to detect, prevent, or mitigate

fraud or security vulnerabilities; 4) for configuration of the software program or application itself; or 5) to determine whether the program is functioning as intended.

## **II.**

**IT IS FURTHER ORDERED** that Compete, Inc., and its successors and assigns, shall:

- A. Notify Affected Consumers: 1) that they have or had a Data Collection Agent installed on their Computers, and that this software collected and transmitted information to or on behalf of respondent, listing the categories of personal information that were, or could have been, transmitted by a Data Collection Agent; and 2) how to permanently disable and/or uninstall the Data Collection Agent. Notification shall be by each of the following means:
1. On or before thirty (30) days after the date of service of this order and for two (2) years after the date of service of this order, posting of a clear and prominent notice on the websites of Compete, Inc., and its successors and assigns;
  2. On or before thirty (30) days after the date of service of this order and for three (3) years after the date of service of this order, informing Affected Consumers who complain or inquire about the privacy or security of a Data Collection Agent; and
  3. Beginning only once notification described in both subparts II(A)(1) and (2) above have commenced, and completed on or before sixty (60) days after the date of service of this order, providing clear and prominent notice to consumers via Affected Consumers' computers on which a Data Collection Agent is operating, through the browser, software upgrade or similar technology, that:
    - a) is visible until the consumer has taken action in response to the notice;
    - b) includes a hyperlink and/or the address for a website of Compete, Inc., and its successors or assigns; and
    - c) includes the name of the company from whom the consumer obtained the Data Collection Agent, or the brand name (as marketed to the consumer) of the software or application containing the Data Collection Agent, and an explanation that Compete provides technology for the specific Data Collection

Agent.

- B. Provide prompt and free support with clear and prominent contact information to help consumers disable and/or uninstall a Data Collection Agent. For two (2) years after the date of service of this order, this support shall include toll-free, telephonic and electronic mail support.

### III.

**IT IS FURTHER ORDERED** that before entering into any contract, agreement, license, sale, or arrangement with any Third Party in connection with any Data Collection Agent made available to consumers by such Third Party, Compete, Inc., and its successors and assigns, shall serve the Third Party with a copy of this order. For any existing contract, agreement, license, sale, or arrangement with any Third Party in connection with any Data Collection Agent made available to consumers by such Third Party, respondent shall serve the Third Party with a copy of this order within 30 days of service of this order.

### IV.

**IT IS FURTHER ORDERED** that respondent, directly or through any corporation, subsidiary, division, website, or other device, in connection with the offering of any service or product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the extent to which respondent collects, maintains and protects the security, privacy, confidentiality, or integrity of any information collected from or about consumers, unless the representation is true, and non-misleading.

### V.

**IT IS FURTHER ORDERED** that Compete, Inc., and its successors and assigns; directly or through any corporation, subsidiary, division, website, or other device; in connection with its advertising, marketing, promotion, or offering of any product or service, in or affecting commerce; shall no later than the date of service of this order, establish and implement, and thereafter maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of personal information collected from or about consumers. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondent's size and complexity and the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about consumers, including:

- A. The designation of an employee or employees to coordinate and be accountable for the information security program;

- B. The identification of material internal and external risks that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of personal information and an assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, account takeovers, or other systems failures;
- C. The design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures;
- D. The development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information such service providers receive from respondent or obtain on respondent's behalf, and the requirement, by contract, that such service providers implement and maintain appropriate safeguards; and
- E. The evaluation and adjustment of respondent's information security program in light of the results of the testing and monitoring required by subpart C, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its information security program.

## VI

**IT IS FURTHER ORDERED** that, in connection with its compliance with Part V of this order, Compete, Inc., and its successors and assigns, shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. Professionals qualified to prepare such Assessments shall be: a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:



- A. Set forth the specific administrative, technical, and physical safeguards that respondent has implemented and maintained during the reporting period;
- B. Explain how such safeguards are appropriate to respondent's size and complexity, and the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about consumers;
- C. Explain how the safeguards that have been implemented meet or exceed the protections required by Part V of this order; and
- D. Certify that respondent's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

## **VII.**

**IT IS FURTHER ORDERED** that Compete, Inc., and its successors and assigns, shall, within fourteen (14) days after the date of service of this order, delete or destroy, Collected Information in respondent's custody or control that was collected prior to February 1, 2010, unless otherwise directed by a representative of the Commission.

## **VIII.**

**IT IS FURTHER ORDERED** that Compete, Inc., and its successors and assigns, shall, for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

- A. All advertisements, labeling, packaging and promotional material containing the representation;
- B. All materials relied upon in disseminating the representation;

- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. All acknowledgments of receipt of this order, obtained pursuant to Part IX.
- E. All notices related to service of the order on Third Parties, pursuant to Part III.
- F. All materials demonstrating compliance with Part I(B), including all contracts and measures to monitor compliance.

Moreover, for a period of three (3) years after the date of preparation of each Assessment required under Part VI of this order, respondent shall maintain and upon request make available to the Commission for inspection and copying all materials relied upon to prepare the Assessment, whether prepared by or on behalf of the respondent, including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, for the compliance period covered by such Assessment.

#### **IX.**

**IT IS FURTHER ORDERED** that Compete, Inc., and its successors and assigns, shall deliver a copy of this order to: (1) all current and future principals, officers, and directors; and (2) all current and future managers who have responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

#### **X.**

**IT IS FURTHER ORDERED** that Compete, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in respondent that may affect compliance obligations arising under this order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary (including an LLC), parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in respondent's name or address. *Provided, however,* that with respect to any proposed change about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable

after obtaining such knowledge.

Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line FTC v. Compete. *Provided, however,* that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

## XI.

**IT IS FURTHER ORDERED** that Compete, Inc., and its successors and assigns, shall, within sixty (60) days after service of this order, and at such other times as the FTC may require, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

## XII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

*Provided, further,* that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

COMPETE, INC.

By: \_\_\_\_\_  
SCOTT ERNST  
President  
Compete, Inc.

By: \_\_\_\_\_  
CHRISTOPHER WOLF  
Hogan Lovells US LLP  
Counsel for Respondent

By: \_\_\_\_\_  
GARY KIBEL  
Davis & Gilbert LLP  
Counsel for Respondent

FEDERAL TRADE COMMISSION

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