IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 11-cv-1468-WJM-BNB

SOLIDFX, LLC,

      Plaintiff,

v.

JEPPESEN SANDERSON, INC.,

      Defendant.

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## THIRD AMENDED COMPLAINT AND JURY DEMAND

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Plaintiff SOLIDFX, LLC ("SOLIDFX"), for its Complaint against Defendant

Jeppesen Sanderson, Inc. ("Jeppesen"), states as follows:

### I.      NATURE OF ACTION

1.      This suit is for damages and other relief arising from Jeppesen's willful and

unlawful actions in and pertaining to the market for electronic applications ("apps") that access,

utilize, and display worldwide aviation terminal charts on electronic book viewers.  Through its

wrongful and anticompetitive conduct, Jeppesen is illegally leveraging its monopoly in terminal

charts to attain or maintain a monopoly in the downstream market for apps that access, utilize,

and display terminal charts on electronic book viewers.

### II.      PARTIES

2.      Plaintiff SOLIDFX is a Massachusetts limited liability company, based in

Foxborough, Massachusetts.

3.      Defendant Jeppesen is a Delaware corporation, and a subsidiary of Boeing Commercial Aviation Services, which is a division of Boeing Commercial Airplane Group, a division of The Boeing Company.  Jeppesen's headquarters are located at 55 Inverness Drive East in Englewood, Colorado.

### III.      JURISDICTION AND VENUE

4.      The United States District Court for the District of Colorado has jurisdiction pursuant to 28 U.S.C. § 1332(a).  Plaintiff is organized under the laws of Massachusetts with its principal place of business in Massachusetts.  Defendant is incorporated in Delaware with its principal place of business in Colorado, and the amount in controversy exceeds $75,000 exclusive of interest and costs.

5.      Further, this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1337 and 15 U.S.C. § 15 based on SOLIDFX's allegations of Jeppesen's violations of Sections 1 and 2 of the Sherman Act, and has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).  The federal and state law claims arise from the same events and transactions, involve substantially identical issues of fact and law, and are so related to each other that they form part of the same case or controversy under Article III of the United States Constitution.

6.      Venue is proper in this judicial district under 15 U.S.C. § 22 and 28 U.S.C. § 1391.  Jeppesen transacts business and maintains offices in the District of Colorado, and many of the acts and events giving rise to this action occurred within the District of Colorado.

## IV.    TRADE AND COMMERCE

7.    Jeppesen and SOLIDFX are involved in interstate trade and commerce, and the activities of Jeppesen substantially and adversely affect interstate commerce.  In the conduct of its business, Jeppesen, directly or indirectly, uses the means and instrumentalities of interstate commerce in furtherance of the acts and communications alleged herein, including but not limited to the United States postal system, the nationwide system of telecommunications, the internet, and the nationwide transportation system, through and by means of which a substantial amount of the nation's communications, information exchanges, and transportation take place. For example, Jeppesen and SOLIDFX use all of these instrumentalities of interstate commerce to sell access to electronic aviation information to pilots.

## V.    GENERAL ALLEGATIONS

### A.    Defendant Jeppesen and the Aviation Terminal Charts Business.

8.    In order to fly airplanes safely, pilots require various aviation information, including terminal charts.  Terminal charts include airport approach procedure charts, various airport diagrams, flight arrival and departure procedures at airports, and noise abatement procedures.  These charts are required for any flight conducted under Instrument Flight Rules ("IFR"), which govern flights in non-visual conditions.  Most commercial, scheduled, charter, and corporate flights are conducted under IFR regardless of weather conditions.

9.    For decades, Jeppesen has been the dominant world leader in aeronautical charting and the provision of other aviation services, including production of worldwide terminal charts.

10.     Jeppesen uses its own terminal chart format and produces complete and consistent terminal charts available for use throughout the world.  It updates individual terminal charts every two weeks.  Jeppesen is – and has always been – the only provider of a worldwide set of terminal charts.

11.     Although many governmental entities throughout the world produce terminal charts for their countries' airports, many do not publish their charts, often leaving Jeppesen as the only available source for such terminal charts.  Moreover, other than Jeppesen's format, there is no consistent worldwide terminal chart format.  Where public charts do exist, they vary from country to country.  Publicly available terminal charts also are not updated as frequently as Jeppesen's terminal charts.  For example, the U.S. Federal Aviation Administration ("FAA") releases updated terminal charts only approximately every 56 days.  Although changes and corrections to the charts occur during the 56-day cycle, pilots are responsible to note such updates.

12.     For these reasons, Jeppesen charts are used on the vast majority of IFR flights, especially those on cross country or cross border routes.  Jeppesen's charts are often referred to by pilots as "Jepp charts," or just "Jepps," due to the charts' ubiquity and market dominance.

**B.     The Relationship and Course of Dealing Between Jeppesen and Plaintiff SOLIDFX.**

**(i).     SOLIDFX's Initial Software Development.**

13.     SOLIDFX is a small software company that creates software applications that allow customers to access, organize, and use critical data.  Its two principals are both private pilots.

14.     Through their experience in aviation, SOLIDFX's principals became aware of the difficulties posed by accessing terminal charts during flights. Pilots flying pursuant to IFR must carry terminal charts onboard in some form. Historically, pilots have carried heavy binders of paper charts for this purpose. Laptop computer solutions have been tried, but their short battery life, display limitations, and ergonomics make them impractical and cumbersome in airplane cockpits.

15.     Recognizing these limitations and anticipating rapid development in the emerging market for portable hardware that would display electronic data, in 2008 SOLIDFX began developing software that would allow pilots to access terminal charts electronically on this portable hardware.

16.     This portable hardware goes by many names, such as electronic book viewers, e-book viewers, e-readers, e-book readers, or tablets (collectively herein, "e-book viewers"). Today, several e-book viewers exist, including, but not limited to, the Apple iPad, the BlackBerry PlayBook, and those e-book viewers that run an Android operating system, such as the Motorola Xoom and the Barnes & Noble Nook.

17.     In 2008, there were few e-book viewers on the market, and even fewer e-book viewers that supported third-party software development opportunities. When SOLIDFX began to develop software for its prototype e-book viewer to display Jeppesen terminal charts electronically, it used an e-book viewer manufactured by iRex Technologies BV ("iRex").

**(ii).   The Relationship Between Jeppesen and SOLIDFX.**

18.   In November 2008, Jeppesen contacted SOLIDFX to discuss the feasibility of a business relationship in which SOLIDFX would develop new software that would allow pilots to access Jeppesen terminal charts on e-book viewers.

19.   In December 2008, SOLIDFX presented to Jeppesen SOLIDFX's prototype on an iRex e-book viewer.

20.   Throughout 2009, SOLIDFX discussed with Jeppesen hardware options in addition to the iRex e-book viewer, including a new Apple, Inc. e-book viewer that eventually was to become the iPad.

21.   In late 2009, SOLIDFX and Jeppesen entered into a five-year License and Cooperation Agreement ("Agreement").  The Agreement provided that Jeppesen and SOLIDFX would cooperate to allow SOLIDFX to develop and sell software that would allow pilots to access Jeppesen's terminal charts electronically.  Part of this cooperation included Jeppesen providing SOLIDFX with a Jeppesen Integration Toolkit ("JIT") which would allow SOLIDFX to access, utilize, and display "Jeppesen Data," which the Agreement defines to include Jeppesen's electronic terminal charts.

22.   An early draft of the agreement provided by Jeppesen had limited SOLIDFX to developing software for the iRex e-book viewer only.  SOLIDFX requested that the agreement not be limited to only the iRex e-book viewer, and, prior to execution of the Agreement, Jeppesen removed this limitation, so that the final, executed version of the Agreement encompassed all e-book viewers.

**(iii).    Jeppesen's Refusal to Cooperate with SOLIDFX on the iPad.**

23.    Even prior to the execution of the Agreement, Jeppesen had provided SOLIDFX with a JIT in a format for use with several iRex e-book viewer models, and SOLIDFX had begun successfully selling an iRex e-book viewer with SOLIDFX'S software system in July 2009.

24.    Between July 2009 and January 2010, Jeppesen and SOLIDFX continued to discuss and work on numerous other hardware platforms, including the Apple tablet that would ultimately become the iPad.

25.    In January 2010, Apple announced that the iPad would be released in March 2010.  Shortly thereafter, SOLIDFX registered as a developer for apps on the iPad, and continued to move forward to develop its app.

26.    From January 2010 forward, SOLIDFX repeatedly requested that Jeppesen provide its JIT in the necessary format for SOLIDFX to create its app for the iPad so that customers would purchase the SOLIDFX app in order to access Jeppesen terminal charts.

27.    Moving forward with the iPad app was especially important because of the iPad's expanded functionality and because iRex had discontinued its initial product line, was struggling financially, and was facing imminent bankruptcy.  Thus, on several occasions SOLIDFX informed Jeppesen that the iPad "is a platform that we ignore at our own peril."

28.    In response to SOLIDFX's continuous requests, Jeppesen told SOLIDFX to wait while Jeppesen determined its strategy for the iPad.

**(iv).    Jeppesen's Concealment of Its Own Development of an iPad App.**

29.    On May 26, 2010, Jeppesen finally informed SOLIDFX that it would not allow others, including SOLIDFX, to have its necessary JIT and support in order to develop an app for

the iPad. Jeppesen further informed SOLIDFX that Jeppesen would offer its own iPad app to display its terminal charts and that "[d]irect competition with a Jeppesen offerings [*sic*] will generally be avoided."

30. The next day, May 27, 2010, Jeppesen announced its forthcoming iPad app that would be available to its subscribing customers for no additional charge. In response to questions from SOLIDFX, on or about June 3, 2010, a Jeppesen employee informed them the app was only "free for now," indicating Jeppesen's intent to later begin charging for the app.

31. From January through May 2010, Jeppesen stalled SOLIDFX so that Jeppesen could develop its own app to display terminal charts on the iPad. Throughout the time SOLIDFX was requesting the iPad JIT from Jeppesen, Jeppesen concealed its efforts to develop its own iPad app from SOLIDFX.

### (v). Jeppesen Had No Legitimate Business Reason to Prevent SOLIDFX from Developing an App for the iPad.

32. As described above, the Agreement covered development of software for all e-book viewers and was not limited to the iRex e-book viewer.

33. On February 17, 2010, Jeppesen contract specialist Sheryl Nguyen confirmed in an internal e-mail to Michael Long that the Agreement covered various types of e-book viewers, including the iPad: "If the hardware changes from iRex to a different [K]indle or iPad, that would also be covered since the hardware is never called out by name [in the Agreement]." Jeppesen forwarded this e-mail to SOLIDFX on February 22, 2010.

34. Despite informing SOLIDFX that the Agreement included developing an app for the iPad, Jeppesen concealed its intent to prevent SOLIDFX from actually developing an app for

the iPad or other e-book viewer while Jeppesen developed such an app in-house.  Examples include the following:

- On February 18, 2010, Christopher Dean, Jeppesen's Senior Manager for Electronic Flight Bags and eCharts, acknowledged in an internal e-mail communication to Michael Long that the Agreement authorized SOLIDFX to develop an app for the iPad, but expressed concern that any effort by SOLIDFX could hurt Jeppesen's efforts to develop its own iPad app.

- On February 23, 2010, Jeppesen Senior Manager Timothy Howard informed Christopher Dean that Jeppesen should refrain from working with SOLIDFX to develop an iPad app until Jeppesen had solidified its iPad strategy.

- On April 19, 2011, Michael Long acknowledged in an internal e-mail communication that Jeppesen initially approved SOLIDFX's request to build an app for the iPad and the Android, but later reversed course when it decided to build such apps in-house.

35.     On September 21, 2010, Jeppesen officials met with SOLIDFX in Boston and explained the change in their course of conduct and their new refusal to provide SOLIDFX with the necessary JIT, among other things.  They explained that Jeppesen initially "dismissed [the] iPad as [a] toy."  Therefore, the Jeppesen representatives explained, they originally "had no qualms about [the] SOLIDFX multiplatform" strategy for providing access to the terminal charts.  That course of conduct and willingness to deal admittedly changed, however, as the iPad grew in commercial popularity in early 2010, which one of the Jeppesen officials described as causing a "knee jerk anticompetitive reaction" at Jeppesen.

36.     Jeppesen never informed SOLIDFX that the Agreement did not obligate Jeppesen to provide the JIT for e-book viewers other than the iRex until after it received notice of this lawsuit in May 2011.

37.     At no time has Jeppesen communicated any business reason for its refusal to provide SOLIDFX with the iPad JIT, other than the "knee jerk anticompetitive reaction" to exclude competitors from the terminal charts app market.  Upon information and belief, there was no legitimate business justification for Jeppesen's conduct.

### (vi).    **The High Demand for the iPad App.**

38.     In late July and early August 2010, Jeppesen introduced its app for the iPad, "Jeppesen Mobile TC," which it offered to all of its subscribers free of charge.

39.     Since Jeppesen introduced its iPad app in July 2010, it has been in high demand. To date, Jeppesen's iPad apps have been downloaded more than 230,000 times.

40.     In February 2011, Executive Jet Management, a private jet charter and aircraft management company, obtained FAA approval for use of Jeppesen's iPad app as the sole source of terminal chart data, and numerous other commercial carriers are attempting to follow suit, further excluding Jeppesen's competitors from the apps market.

41.     Since Jeppesen's announcement of its iPad app, Jeppesen has aggressively promoted its iPad app at trade shows, in direct e-mail to its subscribers, and in an advertising campaign in industry publications.  Upon information and belief, Jeppesen has made extensive use of the word "free" in its promotion of the iPad app.  In addition, Jeppesen has received a great deal of press attention nationwide.

**(vii).   Jeppesen Failed to Cooperate with SOLIDFX With Respect to the iRex and Interfered with SOLIDFX's Prospective Relationships with Customers.**

42.     For the remainder of 2010 and into 2011, Jeppesen also failed to cooperate with SOLIDFX with respect to the iRex viewer.

43.     Jeppesen has refused to provide SOLIDFX with the support and cooperation necessary for SOLIDFX to provide commercial airline customers access to terminal charts on the iRex viewer, despite the fact that there were commercial airlines waiting to try SOLIDFX's product.

44.     Jeppesen also intentionally interfered with and exploited SOLIDFX's potential relationships in business and commercial aviation.  Examples of such improper interference include the following:

- April 30, 2010 internal Jeppesen communication recapping Jeppesen discussion with Executive Jet Management ("EJM") wherein EJM expressed interest in the iPad and recommended that SOLIDFX write an app for the iPad to access Jeppesen terminal charts.  EJM and EJM's clients eventually became Jeppesen iPad app customers.

- August 5, 2010 internal Jeppesen communication in which Mike Abbott states that Jeppesen will not support tailored integration onto SOLIDFX's platform without a customer commitment and that Jeppesen's resources were to be directed toward development of Jeppesen's iPad app, not support for SOLIDFX's product.

45.     Jeppesen also has failed to provide adequate customer service to SOLIDFX customers and potential customers, including, but not limited to, failing to timely set up Jeppesen accounts for customers who purchased SOLIDFX products.

**(viii).   Jeppesen Has Confirmed Its Intent to Exclude Competitors From Developing Apps for Any Commercially Feasible E-Book Viewer.**

46.     Upon information and belief, Jeppesen continues to develop its apps for other e-book viewers including, but not limited to, e-book viewers operating on an Android operating system, such as the Samsung Galaxy, the Motorola Xoom, and numerous other e-book viewers that have not yet been released.  Recently, Jeppesen informed SOLIDFX that it intended to reserve for itself the market for apps to run on the Android operating system and refused to provide the JIT or work with SOLIDFX on an Android app.  To date, however, Jeppesen has failed to release an app for any operating system other than Apple's iOS operating system.

47.     Jeppesen has engaged in its exclusionary conduct to prevent SOLIDFX and others from competing in the market for apps that display terminal charts on e-book viewers so that Jeppesen could create and/or maintain a monopoly for itself in that market.

48.     Despite repeated requests from SOLIDFX, Jeppesen has refused to provide its JIT and necessary support to SOLIDFX so that SOLIDFX can develop apps for any e-book viewer other than the iRex products.

49.     Although the iRex products were commercially feasible e-book viewers when SOLIDFX first began its sales, they were rapidly marginalized by new e-book viewers entering the market.  These new e-book viewers offered greater functionality, including the ability to use many different kinds of apps, and were available for retail purchase.  In addition, iRex went through bankruptcy in 2010, and ceased any further development of its e-book viewer products.

As new products entered the market and iRex's business strategy changed, the commercial feasibility of the iRex e-book viewers rapidly declined.

50.     Jeppesen's wrongful conduct has severely damaged SOLIDFX and unlawfully prevented SOLIDFX from developing its apps for the iPad and other commercially feasible e-book viewers for Jeppesen worldwide terminal charts.

**C.      Relevant Markets and Monopoly Power.**

**(i).     The Terminal Charts Market.**

51.     The first relevant product market is that for worldwide terminal charts with standardized symbology, for which there are no reasonably interchangeable or otherwise substitutable products.  The relevant geographic area for this first product market is worldwide.  Together, this relevant product and geographic market is referred to herein as the "Terminal Charts Market" or the "Upstream Market."

52.     While some governments publish terminal charts, government charts and their symbology vary from country to country, and there is no consistent governmental chart format.  Moreover, numerous countries do not even produce or publish terminal charts.  Besides Jeppesen, there are only two other companies that produce terminal charts – Lufthansa Systems and Navtech.  The terminal charts produced by these companies, however, are far more limited than Jeppesen charts with respect to the types, locations, and numbers of airports they cover.  In addition, terminal charts produced by Lufthansa Systems and Navtech are sold only within discrete segments of the broader aviation market.  Thus, they are not reasonably interchangeable with or substitutable for Jeppesen charts.

53.     In the alternative, the first relevant product market is that for terminal charts.  The relevant geographic area for this product market is worldwide.  In addition to terminal charts produced by Jeppesen, this market includes terminal charts produced by government agencies, such as the FAA, and terminal charts produced by Lufthansa Systems and Navtech.

54.     Under either definition, the Terminal Charts Market has high entry barriers, including, among others, access to the worldwide airport and other aviation data necessary to produce such charts; the economies of scale that a company like Jeppesen already has after decades of producing such terminal charts; the huge capital outlay necessary to replicate Jeppesen's worldwide set of charts; and the installed consumer base that already exists for a company like Jeppesen.

55.     Under either definition of the Terminal Charts Market, Jeppesen has monopoly power in the Terminal Charts Market, including both the power to raise prices and exclude competition.  Upon information and belief, Jeppesen has a market share of well over 70% in the Terminal Charts Market.

56.     The aviation industry also recognizes certain market segments, including Commercial Aviation, Business Aviation, and General Aviation.  Jeppesen is by far the dominant provider of terminal charts across all of these market segments and all geographical regions, and Jeppesen has market power in each of these market segments.  Furthermore, for numerous airlines and pilots, Jeppesen is the only available supplier of terminal charts.

**(ii).     The Market for Apps That Access, Utilize, and Display Jeppesen Charts on E-Book Viewers.**

57.     The second relevant product market – the one that is the subject of SOLIDFX's antitrust claims – is the market for apps that access, utilize, and display worldwide terminal

charts on commercially feasible e-book viewers. There are no products reasonably interchangeable with, or substitutable for, apps that access, utilize, and display worldwide terminal charts for viewing on such e-book viewers. The relevant geographic market is worldwide. Products in this market include Jeppesen Mobile TC, Jeppesen Mobile FD, and SOLIDFX FXView for the FX8 and FX10 e-book viewers. Together, this relevant product and geographic market is referred to herein as the "Relevant Market," the "Apps Market," or the "Downstream Market."

58. Alternatively, the second relevant product market is the market for apps that access, utilize, and display terminal charts on commercially feasible e-book viewers. This market includes Jeppesen Mobile TC, Jeppesen Mobile FD, SOLIDFX FXView for the FX8 and FX10 e-book viewers, Lido/iRoute Manual, iCharts for iPad (Navtech), as well as apps that work in conjunction with charts published by individual governments, such as ForeFlight HD, ForeFlight Pro, WingX Pro7 for iPad, WingX for Android, Flight Guide iEFB, Reader Plates, and EFB by GlobalNavSource.

59. Under either definition, the Apps Market has high entry barriers, including, among others, access to terminal charts, and the installed consumer base available to a company like Jeppesen that already has a monopoly in the Upstream Market that provides an essential input necessary to compete in the Downstream Market.

60. Jeppesen willfully and unlawfully has monopolized, or is willfully and unlawfully attempting to monopolize, the Apps Market. Upon information and belief, Jeppesen has the power to raise prices in, and exclude competition from, the Apps Market, and, under either definition, Jeppesen has greater than a 70% market share in the Apps Market.

61.     The aviation industry also recognizes certain market segments, including Commercial Aviation, Business Aviation, and General Aviation.  Jeppesen is by far the dominant provider of apps across all of these market segments and all geographical regions, and Jeppesen has market power in each of these market segments.  Furthermore, for numerous airlines and pilots, Jeppesen is the only available supplier of apps.

**D.     Jeppesen's Willful and Unlawful Conduct.**

62.     Jeppesen has unreasonably restrained trade in the Apps Market and engaged in several anticompetitive, predatory, and exclusionary practices to leverage its monopoly power in the Terminal Charts Market into an unlawful monopoly in the Apps Market.

63.     For example, Jeppesen has used its monopoly power in the Terminal Charts Market to force consumers in the Apps Market to choose a product in that Downstream Market that they would not choose in a competitive market.  Jeppesen unlawfully denies competitors like SOLIDFX its JIT or other electronic chart design information necessary to develop apps that access, use, and display Jeppesen's worldwide terminal charts on commercially feasible e-book viewers, which eliminates competitive choice in the Apps Market and forces consumers in that market to use Jeppesen's app instead of a competitor's app.

64.     Jeppesen refuses to cooperate and provide SOLIDFX with the access necessary to develop the apps at issue despite the Agreement and previous cooperative venture between Jeppesen and SOLIDFX.  For example, Jeppesen has reduced or eliminated competition in the Apps Market by refusing to provide access to its worldwide terminal charts for any commercially feasible e-book viewers.  Given Jeppesen's monopoly power, its refusal to deal in this regard constitutes willful and unlawful anticompetitive conduct.

65.     Access to Jeppesen's JIT or other electronic chart design information is necessary to develop apps to use and display such charts on e-book viewers.  Jeppesen's refusal to allow competitors like SOLIDFX to access this "essential facility" constitutes willful and unlawful anticompetitive conduct.

66.     Further, Jeppesen has so far offered its iPad app at no additional charge – which is below any appropriate measure of Jeppesen's cost – in a willful and unlawful effort to eliminate competition.  Jeppesen has admitted that its iPad app is free "for now," suggesting its intention to raise prices after it no longer has any competitors left in the Apps Market.

67.     Despite its contractual obligations, Jeppesen interfered with SOLIDFX's prospective customer relationships, so that Jeppesen could divert those customers to its iPad app and secure its monopoly in the Apps Market.

68.     Jeppesen's conduct has reduced consumer choice and placed SOLIDFX and others who wish to compete in the Relevant Market at a competitive disadvantage by adversely impacting their ability to develop apps for the iPad, which has quickly become widely accepted in the aviation industry, as well as other e-book viewers.  Such conduct has been and will continue to be devastating to SOLIDFX because apps which access Jeppesen worldwide terminal charts and data are critical to the development and success of its business.

69.     Jeppesen's decision to exclude SOLIDFX and other third parties from developing apps to display its terminal charts was not based on any legitimate business reason.  Jeppesen decided to develop its apps in-house, despite its acknowledged lack of expertise in software development, and despite its belief that it was leaving substantial amounts of revenue on the table.

70.     Jeppesen decided to forego the immediate revenues it would achieve by allowing apps to be developed by third parties in favor of protecting the long-term revenues it believes it can achieve by maintaining control over its customer relationships, controlling its customers' ability to migrate to electronic display of charts, and preserving its ability to bundle its other products with its terminal charts and its apps.

71.     By controlling all aspects of the customer relationship, Jeppesen is able to control the products available to customers in different segments of the aviation industry and keep its pricing practices difficult for the customer to decipher.  This allows Jeppesen to engage in price discrimination against its customers, particularly against its lucrative airline customers.

72.     Consistent with this strategy, Jeppesen actively discouraged commercial airlines interested in the SOLIDFX product from purchasing the product and attempted to confine SOLIDFX to the business-to-consumer market, and exclude it from the business-to-business market.

73.     By excluding any competitors in the App Market, Jeppesen has been able to continue to control the terminal chart products available to its consumers, control the pace at which its customers migrate to electronic charts, control the prices for those products, and maintain its opaque bundling strategies.

74.     By maintaining this control over its customers, Jeppesen continues to extract monopolistic prices from its customers; to maintain or increase its charting revenue, even during times of economic recession, by increasing its prices; to set its prices without regard to the prices for other products; and to achieve envious profit margins.

**E.    Anticompetitive Effects of Jeppesen's Willful and Unlawful Conduct**

75.    Jeppesen's unreasonable restraint of trade and monopolistic and exclusionary practices have had the following anticompetitive effects in the Apps Market:

a.    Competition in the Apps Market has been unreasonably restrained, suppressed, and, in some cases, destroyed;

b.    Potential competitors have been restrained from entering into the Apps Market and have been prevented from competing effectively against Jeppesen;

c.    Jeppesen's monopoly has been entrenched and expanded, resulting in greater domination of the Apps Market and the enhancement of barriers to entry;

d.    Jeppesen's willful and unlawful leveraging and tying of its monopoly power from the Terminal Charts Market to the Apps Market has resulted in the diversion to Jeppesen of pilots who, in a free and open market, would otherwise turn to SOLIDFX or others for apps to access such aviation information;

e.    Pilots have been denied the benefits of competition in a free and open market by receiving an inferior product;

f.    Upon information and belief, Jeppesen has enjoyed, and will continue to enjoy, monopolistic benefits to the detriment of potential competitors, including SOLIDFX.

g.    Through its anticompetitive conduct, Jeppesen has willfully and unlawfully maintained its monopoly power, including its ability to charge monopolistic prices.

76.    Jeppesen has built a monopolistic aviation information empire that is severely harming SOLIDFX's ability to compete, decreasing overall competition, risking higher prices, and lowering product quality and consumer choice.

77.     The aforementioned anticompetitive effects of Jeppesen's conduct on competition in the Relevant Market outweigh any conceivable pro-competitive benefits.

**FIRST CLAIM FOR RELIEF**
**(Breach of Contract)**

78.     SOLIDFX incorporates by reference the allegations contained in paragraphs 1-77 above.

79.     Jeppesen entered into the Agreement with SOLIDFX to cooperate to host Jeppesen Data on SOLIDFX systems.

80.     This Agreement includes Jeppesen providing its JIT and other support for SOLIDFX's apps to access, utilize, and display Jeppesen Data on e-book viewers including, but not limited to, the iPad.

81.     Jeppesen failed to cooperate with SOLIDFX and perform under the Agreement including, but not limited to, the following:

a.     Jeppesen did not provide the necessary JIT to allow SOLIDFX to develop apps for commercially feasible e-book viewers, including, but not limited to, the iPad;

b.     Jeppesen did not provide the JIT or Data necessary to allow SOLIDFX to access, utilize and display Jeppesen worldwide terminal charts for commercial airline customers;

c.     Jeppesen failed to provide adequate customer service to purchasers of SOLIDFX's products; and

d.     In all of the above, Jeppesen has acted in bad faith and has not dealt fairly with SOLIDFX.

82.     Jeppesen, in bad faith and willfully and wantonly, failed to fulfill its duties under the Agreement listed above, including but not limited to, stalling SOLIDFX for months while secretly developing its own application for the iPad.

83.     SOLIDFX substantially performed its obligations under the Agreement and stands ready to perform.

84.     By failing to perform its obligations under the Agreement, Jeppesen caused SOLIDFX damages, an exact amount to be proven at trial.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

## SECOND CLAIM FOR RELIEF
### (Breach of Contract -- Implied Covenant of Good Faith and Fair Dealing)

85.     SOLIDFX incorporates by reference the allegations contained in paragraphs 1-84 above.

86.     As detailed above, Jeppesen entered into an Agreement with SOLIDFX to cooperate to host Jeppesen Data on SOLIDFX systems.

87.     Under the Agreement, Jeppesen had the discretion to determine when and how to provide its JITs to SOLIDFX to develop apps to access, utilize, and display Jeppesen Data on e-book viewers.

88.     Jeppesen failed to act in good faith and to deal fairly with SOLIDFX in performing the duties above, including by stalling SOLIDFX for months while secretly developing its own app for the iPad.

89.     Jeppesen's actions were contrary to the agreed common purpose and the parties' reasonable expectations.

90.     By willfully and wantonly failing to perform its obligations under the Agreement,

Jeppesen caused SOLIDFX damages, an exact amount to be proven at trial.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

**THIRD CLAIM FOR RELIEF**
**(Violation of 15 U.S.C. § 1 – Sherman Act Section 1 – Per Se Illegal Tying)**

91.     SOLIDFX incorporates by reference the allegations contained in paragraphs 1-90

above.

92.     Terminal charts and the apps necessary to access, utilize, and display such charts

on commercially feasible e-book viewers constitute two separate and distinct products.

93.     Jeppesen has monopoly power in the Terminal Charts Market, where it has the

ability to control prices or exclude competition, and, upon information and belief, has a market

share of over 70%.

94.     Jeppesen uses its monopoly power in the Terminal Charts Market to force

consumers in the Apps Market to choose a product in that Downstream Market that those

consumers would not choose in a competitive market.  By denying competitors like SOLIDFX

the JIT or other electronic chart design information necessary to develop apps that access, utilize,

and display Jeppesen's worldwide terminal charts on commercially feasible e-book viewers,

Jeppesen has eliminated competitive choice in the Apps Market and forced consumers there to

use Jeppesen's app instead of a competitor's app in furtherance of Jeppesen's own financial

interests.

95.     Jeppesen's conduct constitutes per se illegal tying under Section 1 of the Sherman

Act that has substantially reduced customer choice, prevented SOLIDFX from competing in the

Apps Market, and foreclosed SOLIDFX from a volume of sales in the Apps Market that is substantial enough as to not be merely *de minimis*.

96.     As a direct and proximate result of Jeppesen's willful and unlawful conduct, which occurred in and affected interstate commerce, competition in the Apps Market has been unreasonably restrained and injured to the detriment of consumers and the competitive process, and SOLIDFX has been damaged in that:  (i) its ability to compete in the Apps Market has been frustrated, delayed, or destroyed, causing SOLIDFX to lose actual and potential customers and past and future profits and harming SOLIDFX's goodwill and reputation; and (ii) the effect on SOLIDFX's revenues, market share, and growth potential has seriously reduced the going concern or sale value of SOLIDFX's business.  SOLIDFX has suffered and will continue to suffer damages and losses to its business and property in an amount to be determined.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

### FOURTH CLAIM FOR RELIEF
**(Violation of 15 U.S.C. § 1 – Sherman Act Section 1 – Illegal Tying Under Rule of Reason)**

97.     SOLIDFX incorporates by reference the allegations contained in paragraphs 1-96 above.

98.     Terminal charts and the apps necessary to access, utilize, and display such charts on commercially feasible e-book viewers constitute two separate and distinct products.

99.     Jeppesen has appreciable economic power in the Terminal Charts Market and uses that market power to force consumers in the Apps Market to choose a product in that Downstream Market that those consumers would not choose in a competitive market. By denying competitors like SOLIDFX the JIT or other electronic chart design information necessary to develop apps that access, utilize, and display Jeppesen's worldwide terminal charts

on commercially feasible e-book viewers, Jeppesen has eliminated competitive choice in the

Apps Market and forced consumers there to use Jeppesen's app instead of a competitor's app in

furtherance of Jeppesen's own financial interests.

100.    This willful and unlawful coercion by Jeppesen has caused unreasonable

anticompetitive harm in the Apps Market, unreasonably reduced or eliminated competition in

that market, substantially reduced consumer choice, prevented SOLIDFX from competing in the

Apps Market, and foreclosed SOLIDFX from a substantial volume of sales in that market.

101.    As a direct and proximate result of Jeppesen's willful and unlawful conduct,

which occurred in and affected interstate commerce, competition in the Apps Market has been

unreasonably restrained and injured to the detriment of consumers and the competitive process,

and SOLIDFX has been damaged in that:  (i) its ability to compete in the Apps Market has been

frustrated, delayed, or destroyed, causing SOLIDFX to lose actual and potential customers and

past and future profits and harming SOLIDFX's goodwill and reputation; and (ii) the effect on

SOLIDFX's revenues, market share, and growth potential has seriously reduced the going

concern or sale value of SOLIDFX's business.  SOLIDFX has suffered and will continue to

suffer damages and losses to its business and property in an amount to be determined.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

## FIFTH CLAIM FOR RELIEF
### (Violation of 15 U.S.C. § 2 – Sherman Act Section 2 – Monopolization)

102.    SOLIDFX incorporates by reference the allegations contained in paragraphs 1-

101 above.

103.    Jeppesen has monopoly power in the Apps Market, where it has the ability to

control prices or exclude competition, and, upon information and belief, a market share of over

70%.  The Apps Market has high entry barriers, including, among others, access to terminal charts necessary to effectively compete in the relevant market.

104.     Through its anticompetitive conduct described above (including, but not limited to, paragraphs 23-77) and further below, Jeppesen has willfully acquired and maintained its monopoly power in the Apps Market in an unlawful effort to exclude competition to the detriment of consumers, the competitive process, and individual competitors like SOLIDFX.  For example, Jeppesen has used, leveraged, and extended its monopoly power in the upstream Terminal Charts Market to illegally acquire and maintain a monopoly in the downstream Apps Market through, but not limited to, the following types of anticompetitive conduct, in addition to the willful and unlawful behavior outlined above in paragraphs 23-77.

### *Monopolistic Tying*

105.     Jeppesen uses its monopoly power in the upstream Terminal Charts Market to force customers in the Apps Market to choose a product in that Downstream Market that those consumers would not choose in a competitive market.  By denying competitors like SOLIDFX the JIT or other electronic chart design information necessary to develop apps that access, utilize, and display Jeppesen's worldwide terminal charts on commercially feasible e-book viewers, Jeppesen has eliminated competitive choice in the Apps Market and forced consumers there to use Jeppesen's app instead of a competitor's app.

106.     This coercive tying by Jeppesen has caused substantial anticompetitive harm in the Apps Market, unreasonably reduced or eliminated competition in that Downstream Market, substantially reduced consumer choice, prevented SOLIDFX from competing in the Apps

Market, foreclosed SOLIDFX from a substantial volume of sales in that market, and monopolized the Apps Market for Jeppesen.

107.    At no time has Jeppesen stated any legitimate business reason for its willful and unlawful monopolistic tying arrangement, other than its admitted "knee jerk anticompetitive reaction" to exclude competitors from the Apps Market.  Upon information and belief, there is no legitimate business justification for Jeppesen's willful and unlawful monopolistic tying.

### *Monopolistic Refusal to Deal*

108.    Despite contractually agreeing to provide SOLIDFX with the JIT or electronic chart design information necessary to access, utilize, and display Jeppesen's terminal charts on commercially feasible e-book viewers and actually doing so for a significant period of time, Jeppesen changed its course of dealing when it realized the commercial value of business in the Apps Market.

109.    At that point, Jeppesen changed its course of dealing by denying competitors like SOLIDFX access to the necessary JIT or other electronic chart design information in a willful and unlawful effort to exclude competition from the market in order to monopolize the Apps Market for itself.

110.    At no time has Jeppesen stated any legitimate business reason for its refusal to deal, other than its admitted "knee jerk anticompetitive reaction" to exclude competitors from the Apps Market.  Upon information and belief, there is no legitimate business justification for Jeppesen's refusal to deal.

### *Denial of Access to an Essential Facility*

111.     Jeppesen's JIT or other electronic chart design information constitutes an essential

facility controlled by Jeppesen, access to which is required for effective competition in the Apps

Market.

112.     There are no practical means of duplicating Jeppesen's JIT or other electronic

chart design information or accessing the worldwide terminal charts owned, operated and

otherwise controlled by Jeppesen, and there are no alternative means of accessing Jeppesen's

worldwide terminal charts for use and display on commercially feasible e-book viewers.

113.     Jeppesen unlawfully has denied, and continues to deny, SOLIDFX access to the

JIT or electronic chart design information and Jeppesen's terminal charts as necessary and

essential for development of apps for the iPad and other commercially feasible e-book viewers.

114.     Jeppesen could have feasibly granted SOLIDFX access to this essential facility

without interfering with Jeppesen's use or significantly inhibiting its ability to conduct business.

115.     At no time has Jeppesen stated any legitimate business reason for its denial of

access to this essential facility, other than its admitted "knee jerk anticompetitive reaction" to

exclude competitors from the Apps Market.  Upon information and belief, there is no legitimate

business justification for Jeppesen's denial of access to the essential facility.

### *Interference with Prospective Business Relationships*

116.     Despite its contractual obligations, Jeppesen interfered with SOLIDFX's

prospective customers relationships in order to divert customers to its iPad app and secure its

monopoly position in the Apps Market.

*Totality of Anticompetitive and Exclusionary Conduct Combined to Injure Competition*

117.   In addition to independently causing anticompetitive harm in the Apps Market, the various types of anticompetitive, predatory, and exclusionary activities outlined above and in paragraphs 23-77, have combined together to injure and/or eliminate competition in the Apps Market through their cumulative anticompetitive effects in that market.

118.   As a direct and proximate result of Jeppesen's anticompetitive and monopolistic conduct, which occurred in and affected interstate commerce, competition in the Apps Market has been unreasonably reduced or eliminated to the detriment of consumers and the competitive process, and SOLIDFX has been damaged in that:  (i) its ability to compete in the Apps Market has been frustrated, delayed, or destroyed, causing SOLIDFX to lose actual and potential customers and past and future profits and harming SOLIDFX's goodwill and reputation; and (ii) the effect on SOLIDFX's revenues, market share, and growth potential has seriously reduced the going concern or sale value of SOLIDFX's business.  SOLIDFX has suffered and will continue to suffer damages and losses to its business and property in an amount to be determined.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

**SIXTH CLAIM FOR RELIEF**
**(Violation of 15 U.S.C. § 2 – Sherman Act Section 2 – Attempted Monopolization)**

119.   SOLIDFX incorporates by reference the allegations contained in paragraphs 1-118 above.

120.   Jeppesen has engaged in the anticompetitive, exclusionary, and predatory conduct described above (including but not limited to paragraphs 23-77) in a willful and unlawful attempt to monopolize the Apps Market, with the specific intent and dangerous probability of doing so.

121.     As indicated in the above factual allegations, e-mails, meetings, and other communications, Jeppesen has the specific intent to monopolize the Apps Market.

122.     Upon information and belief, Jeppesen already has achieved monopoly power in the Apps Market, but if, in the alternative, it has not, there is a dangerous probability that Jeppesen will do so soon as a result of its anticompetitive conduct outlined above, including, but not limited to, illegal tying, refusal to deal, denial of access to an essential facility, and the combination and totality of all such anticompetitive and exclusionary behavior.

123.     As a direct and proximate result of Jeppesen's attempt to monopolize and anticompetitive conduct, which occurred in and affected interstate commerce, competition in the Apps Market has been, or is dangerously likely to be, unreasonably reduced or eliminated to the detriment of consumers and the competitive process, and SOLIDFX has been damaged in that: (i) its ability to compete in the Apps Market has been frustrated, delayed, or destroyed, causing SOLIDFX to lose actual and potential customers and past and future profits and harming SOLIDFX's goodwill and reputation; and (ii) the effect on SOLIDFX's revenues, market share, and growth potential has seriously reduced the going concern or sale value of SOLIDFX's business.  SOLIDFX has suffered and will continue to suffer damages and losses to its business and property in an amount to be determined.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

**SEVENTH CLAIM FOR RELIEF**
**(Violation of 15 U.S.C. § 2 – Sherman Act Section 2 –**
**In the Alternative, Monopolization of the Combined Market for Terminal Charts and**
**Apps)**

124.     SOLIDFX incorporates by reference the allegations contained in paragraphs 1-123 above.

125.     SOLIDFX contends that there are separate markets for Terminal Charts and for Apps.  Jeppesen, however, has asserted that Terminal Charts and Apps are not separate products, but are sold together in a single market.  If Jeppesen is correct, then SOLIDFX asserts in the alternative that it is a competitor of Jeppesen's in the market that includes both Terminal Charts and Apps ("Combined Market") and that Jeppesen has willfully maintained its monopoly power in that market.

126.     Jeppesen has monopoly power in the Combined Market, where it has the ability to control prices or exclude competition, and, upon information and belief, has a market share of over 70%.  The Combined Market has high entry barriers, including, among others, access to terminal charts necessary to effectively compete in the relevant market.

127.     Through its anticompetitive conduct described above (including, but not limited to, paragraphs 23-77 and 105-118), Jeppesen has willfully maintained its monopoly power in the Combined Market in an unlawful effort to exclude competition to the detriment of consumers, the competitive process, and individual competitors like SOLIDFX.

128.     As a direct and proximate result of Jeppesen's anticompetitive and monopolistic conduct, which occurred in and affected interstate commerce, competition in the Combined Market has been unreasonably reduced or eliminated to the detriment of consumers and the competitive process, and SOLIDFX has been damaged in that:  (i) its ability to compete in the Combined Market has been frustrated, delayed, or destroyed, causing SOLIDFX to lose actual and potential customers and past and future profits and harming SOLIDFX's goodwill and reputation; and (ii) the effect on SOLIDFX's revenues, market share, and growth potential has seriously reduced the going concern or sale value of SOLIDFX's business.  SOLIDFX has

suffered and will continue to suffer damages and losses to its business and property in an amount

to be determined.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

### EIGHTH CLAIM FOR RELIEF
### (Violation of 15 U.S.C. § 2 – Sherman Act Section 2 –
### In the Alternative, Attempted Monopolization of the Combined Market for
### Terminal Charts and Apps)

129.    SOLIDFX incorporates by reference the allegations contained in paragraphs 1-

128 above.

130.    As indicated above (including, but not limited to, paragraphs 23-77, 126-128),

Jeppesen has the specific intent to monopolize the Combined Market, to the extent such a market

exists.

131.    Upon information and belief, Jeppesen already has achieved monopoly power in

the Combined Market, but if, in the alternative, it has not, there is a dangerous probability that

Jeppesen will do so soon as a result of its anticompetitive conduct outlined above, including, but

not limited to, illegal tying, refusal to deal, denial of access to an essential facility, and the

combination and totality of all such anticompetitive and exclusionary behavior.

132.    As a direct and proximate result of Jeppesen's attempt to monopolize and

anticompetitive conduct, which occurred in and affected interstate commerce, competition in the

Combined Market has been, or is dangerously likely to be, unreasonably reduced or eliminated to

the detriment of consumers and the competitive process, and SOLIDFX has been damaged in

that:  (i) its ability to compete in the Combined Market has been frustrated, delayed, or

destroyed, causing SOLIDFX to lose actual and potential customers and past and future profits

and harming SOLIDFX's goodwill and reputation; and (ii) the effect on SOLIDFX's revenues,

market share, and growth potential has seriously reduced the going concern or sale value of SOLIDFX's business.  SOLIDFX has suffered and will continue to suffer damages and losses to its business and property in an amount to be determined.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

## NINTH CLAIM FOR RELIEF
### (Fraud)

133.     SOLIDFX incorporates by reference the allegations contained in paragraphs 1-132 above.

134.     Jeppesen gave false information to SOLIDFX regarding material facts including that Jeppesen would provide the JITs and other support for SOLIDFX to support its customers and attract new customers, as well as to create apps to access, utilize, and display Jeppesen Data on e-book viewers including, but not limited to, the iPad.

135.     Jeppesen made these false representations knowing they were either false, or was aware that it did not know whether such representations were true.

136.     Jeppesen also fraudulently concealed its subsequent positions regarding material facts including its commitments with SOLIDFX regarding Jeppesen providing the JITs and other support for SOLIDFX to support its customers and attract new customers, as well as to create apps to access, utilize, and display Jeppesen Data on e-book viewers including, but not limited to, the iPad.

137.     Jeppesen fraudulently failed to disclose material changes in its position and in prior representations of its position regarding these material facts.

138.    Jeppesen knew or should have known that it created a false impression regarding these material facts and, therefore, Jeppesen had a duty to disclose to SOLIDFX its positions and material changes in its positions and prior statements.

139.    Jeppesen made these false representations, fraudulently concealed its positions, and fraudulently failed to disclose material changes in its positions and prior representations with the intent that SOLIDFX would rely upon these representations.

140.    To SOLIDFX's detriment, it reasonably relied on Jeppesen's false information.

141.    SOLIDFX's reliance on the false information provided by Jeppesen caused SOLIDFX damages, an exact amount to be proven at trial.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

## TENTH CLAIM FOR RELIEF
### (Intentional Interference with Prospective Business Relations)

142.    SOLIDFX incorporates by reference the allegations contained in paragraphs 1-141 above.

143.    SOLIDFX had prospective business relationships with various commercial businesses such as EJM and there is a reasonable likelihood that these business relationships would have resulted in a contract.

144.    Jeppesen knew or should have known of the prospective business relationships between SOLIDFX and such prospective customers.

145.    By misleading and intentionally not allowing SOLIDFX to create apps to access, utilize, and display Jeppesen Data on e-book viewers including, but not limited to, the iPad, Jeppesen caused SOLIDFX to be unable to solidify into contractual relationships its prospective business relationships.

146.    Jeppesen has taken additional steps to undermine or otherwise interfere with SOLIDFX's prospective business relationships, including but not limited to, developing such relationships, including EJM and commercial airlines, into Jeppesen app customers.

147.    Jeppesen's willful and wanton actions were improper, without justification, and in furtherance of Jeppesen's anticompetitive intent.

148.    Jeppesen's improper interference with SOLIDFX's prospective business relationships caused SOLIDFX damages, an exact amount to be proven at trial.

WHEREFORE, SOLIDFX seeks relief as set forth at the end of this Complaint.

### RELIEF REQUESTED

WHEREFORE, SOLIDFX demands judgment in its favor, and against Jeppesen, plus the following additional relief:

A.    Damages in an amount to be proven at trial;

B.    Treble damages on SOLIDFX's antitrust claims pursuant to 15 U.S.C. § 15;

C.    Damages resulting from the diminished value of SOLIDFX;

D.    A preliminary and permanent injunction enjoining and restraining Jeppesen, its officers, agents, servants and/or employees and all persons in active concert with them from engaging in conduct intended to protect or establish a monopoly, and from engaging in any other form of predatory or anticompetitive behavior;

E.    Exemplary damages pursuant to applicable law, including, but not limited to, C.R.S. § 13-21-102;

F.    Reasonable attorneys' fees and costs, including expert witness fees as permitted by law;

G.      Prejudgment and post-judgment interest at the highest allowable legal rates; and

H.      Such other and further relief as the Court deems just and proper.

## DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated:  May 29, 2014

                                                          *s/ Kenzo Kawanabe*
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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2014, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing.  Based upon the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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