

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**SECURITIES AND EXCHANGE  
COMMISSION**

**Plaintiff,**

**v.**

**DIEBOLD, INC.**

**Defendant.**

**CIVIL ACTION NO.**

**CONSENT OF DEFENDANT DIEBOLD, INC.**

1. Defendant Diebold, Inc. ("Defendant or Diebold") waives service of a summons and the Complaint in this action, enters a general appearance, and consents to the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has entered into a deferred prosecution agreement that acknowledges responsibility for criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in United States v. Diebold, Inc., Crim. No. \_\_\_\_\_ (N.D. Ohio). Defendant acknowledged responsibility for conspiracy, 18 U.S.C. § 371, to violate the Foreign Corrupt Practices Act anti-bribery provisions, 15 U.S.C. § 78dd-1, and the books and records provisions of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78m, 78m(b)(2), 78(m)(b)(5), and 78ff(a), and violating the books and records provisions of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78m, 78m(b)(2), 78(m)(b)(5), and 78ff(a). In connection with that deferred-prosecution agreement, Defendant admitted the facts set out in the Statement of Facts attached to the deferred prosecution agreement which is attached as Exhibit A to this Consent. This Consent

shall remain in full force and effect regardless of the existence or outcome of any further proceedings in United States v. Diebold, Inc.

3. Defendant hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violation of Sections 30A, 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78dd-1, 78m(b)(2)(A), 78m(b)(2)(B)];
- (b) orders Defendant to pay disgorgement in the amount of \$19,719,550, plus prejudgment interest thereon in the amount of \$3,253,392; and
- (c) orders Defendant within ninety (90) calendar days of the entry of the Final Judgment, to retain an independent corporate compliance monitor and provide corporate compliance reporting pursuant to paragraphs 4 through 18 of this Consent.

4. Diebold undertakes to engage an independent corporate compliance monitor ("the Monitor") within ninety (90) calendar days of the entry of the Final Judgment. Within thirty (30) calendar days of the entry of the Final Judgment, and after consultation with the Commission staff, Diebold will recommend to the Commission staff three qualified Monitor candidates. Commission staff retains the right, in its sole discretion, to accept or reject any Monitor candidate proposed by Diebold pursuant to the Consent. In the event the Commission staff rejects a proposed Monitor, Diebold shall propose another candidate within ten (10) calendar days after receiving notice of the rejection. This process shall continue until a Monitor acceptable to both parties is chosen. The term of the monitorship, as set forth in paragraph 6

**below, shall commence upon the Commission staff's acceptance of a Monitor candidate proposed by Diebold.**

**5. Diebold may not employ or be affiliated with the Monitor for a period of not less than one year from the date of the termination of the monitorship.**

**6. Diebold shall retain the Monitor for a period of not less than eighteen (18) months. Subject to certain conditions specified below that would, in the sole discretion of the Commission staff, allow for a reduction or extension of the term (the "Term of the Monitorship"), the Monitor shall be retained until the criteria in paragraph 13 are satisfied or three years from the entry of the Final Judgment ("Expiration"), whichever occurs first.**

**7. The Monitor's primary responsibility is to assess and monitor Diebold's compliance with the terms of this Consent so as to specifically address and reduce the risk of any recurrence of Diebold's misconduct. During the Term of the Monitorship, the Monitor will evaluate, in the manner set forth in Paragraphs 8 through 15 below, the effectiveness and implementation of the corporate compliance program, internal controls and financial reporting policies and procedures of Diebold as they relate to Diebold's current and ongoing compliance with the anti-bribery provisions of the FCPA and other anti-corruption laws applicable to Diebold (collectively, the "anti-corruption laws"), and take such reasonable steps as, in his or her view, may be necessary to fulfill the foregoing mandate (the "Mandate").**

**8. Diebold shall cooperate fully with the Monitor, and the Monitor shall have the authority to take such reasonable steps as, in his or her view, may be necessary to be fully informed about Diebold's compliance program within the scope of the Mandate in accordance with the principles set forth herein and applicable law, including data protection, blocking statutes, and labor laws and regulations applicable to Diebold. To that end, Diebold shall:**

**provide the Monitor access to Diebold's documents and resources; not limit such access, except as provided in this paragraph; and provide guidance on applicable laws (such as relevant data protection, blocking statutes, and labor laws). Diebold shall provide the Monitor with access to all information, documents, records, facilities and/or employees, as requested by the Monitor, that fall within the scope of the Mandate of the Monitor under this Consent. Any disclosure by Diebold to the Monitor concerning corrupt payments shall not relieve Diebold of any otherwise applicable obligation to truthfully disclose such matters to the Commission staff.**

**a. The parties agree that no attorney-client relationship shall be formed between Diebold and the Monitor.**

**b. In the event that Diebold seeks to withhold from the Monitor access to information, documents, records, facilities and/or employees of Diebold that may be subject to a claim of attorney-client privilege or to the attorney work-product doctrine, or where Diebold reasonably believes production would otherwise be inconsistent with applicable law, Diebold shall work cooperatively with the Monitor to resolve the matter to the satisfaction of the Monitor. If the matter cannot be resolved, at the request of the Monitor, Diebold shall promptly provide written notice to the Monitor and the Commission staff. Such notice shall include a general description of the nature of the information, documents, records, facilities and/or employees that are being withheld, as well as the basis for the claim. To the extent Diebold has provided information to the Commission staff in the course of the investigation leading to this action pursuant to a non-waiver of privilege agreement, Diebold and the Monitor may agree to production of such information to the Monitor pursuant to a similar non-waiver agreement.**

**9. To carry out the Mandate during the Term of the Monitorship, the Monitor shall conduct an initial review and prepare an initial report, followed by at least one (1) follow-up**

review and report as described in Paragraph 12 below, and one (1) final report as described in Paragraph 13 below. With respect to the initial report and the follow-up review, after consultation with Diebold and the Commission staff, the Monitor shall prepare a written work plan, which shall be submitted no fewer than sixty (60) calendar days prior to commencing each review to Diebold and the Commission staff for comment, which comment shall be provided no more than thirty (30) calendar days after receipt of the written work plan. The Monitor's work plan for the initial review shall include such steps as are reasonably necessary to conduct an effective initial review in accordance with the Mandate, including developing an understanding, to the extent the Monitor deems appropriate, of the facts and circumstances surrounding any violations that may have occurred before the date of this Consent is filed with the Court. In developing such understanding, the Monitor is to rely to the extent possible on available information and documents provided by Diebold, and it is not intended that the Monitor will conduct his or her own inquiry into those historical events. In developing each work plan and in carrying out the reviews pursuant to such plans, the Monitor is encouraged to coordinate with Diebold personnel, including auditors and compliance personnel, and, to the extent the Monitor deems appropriate, he or she may rely on Diebold processes, on the results of studies, reviews, audits and analyses conducted by or on behalf of Diebold and on sampling and testing methodologies. Any disputes between Diebold and the Monitor with respect to the work plan shall be decided by the Commission staff in its sole discretion.

10. The initial review shall commence no later than ninety (90) calendar days from the date of the engagement of the Monitor (unless otherwise agreed by Diebold, the Monitor and the Commission staff), and the Monitor shall issue a written report within ninety (90) calendar days of initiating the initial review, setting forth the Monitor's assessment and making

recommendations reasonably designed to improve the effectiveness of Diebold's program for ensuring compliance with the anti-corruption laws. The Monitor is encouraged to consult with Diebold concerning his or her other findings and recommendations on an ongoing basis, and to consider and reflect Diebold's comments and input to the extent the Monitor deems appropriate. The Monitor need not in his or her initial or subsequent reports recite or describe comprehensively Diebold's history or compliance policies, procedures and practices, but rather may focus on those areas with respect to which the Monitor wishes to make recommendations for improvement or which the Monitor otherwise concludes merit particular attention. The Monitor shall provide the report to the Board of Directors of Diebold and contemporaneously transmit copies to Brian O. Quinn, Assistant Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, DC. 20549. After consultation with Diebold, the Monitor may extend the time period for issuance of the report for up to thirty (30) calendar days with prior written approval of the Commission staff.

11. Within ninety (90) calendar days after receiving the Monitor's report, Diebold shall adopt all recommendations in the report; provided, however, that within thirty (30) calendar days after receiving the report, Diebold shall notify the Monitor and the Commission staff in writing of any recommendations that Diebold considers unduly burdensome, inconsistent with local or other applicable law or regulation, impractical, unduly costly or otherwise inadvisable. With respect to any recommendation that Diebold considers unduly burdensome, inconsistent with local or other applicable law or regulation, impractical, unduly costly or otherwise inadvisable, Diebold need not adopt that recommendation within that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which Diebold and the Monitor do not agree, such

parties shall attempt in good faith to reach an agreement within thirty (30) calendar days after Diebold serves the written notice. In the event Diebold and the Monitor are unable to agree on an acceptable alternative proposal, Diebold shall promptly consult with the Commission staff. Any disputes between Diebold, on the one hand, and the Monitor, on the other hand, with respect to the recommendations shall be decided by the Commission staff in its sole discretion. The Commission staff may consider the Monitor's recommendation and Diebold's reasons for not adopting the recommendation in determining whether Diebold has fully complied with its obligations under this Consent. Pending such determination, Diebold shall not be required to implement any contested recommendation(s). With respect to any recommendation that the Monitor determines cannot reasonably be implemented within ninety (90) calendar days after receiving the report, the Monitor may extend the time period for implementation with prior written approval of the Commission staff.

12. The Monitor shall undertake at least one follow-up review to carry out the Mandate. Within one hundred and twenty (120) calendar days of initiating the follow-up review, the Monitor shall: (a) complete the review; (b) certify whether the compliance program of Diebold, including its policies and procedures, is reasonably designed and implemented to detect and prevent violations within Diebold of the anti-corruption laws and is functioning effectively; and (c) report on the Monitor's findings in the same fashion as set forth in paragraph 10 with respect to the initial review. The first follow-up review shall commence one year after the initial review commenced. If, reasonably promptly after completing the follow-up review, the Monitor and the Commission staff mutually agree that Diebold has not by that time successfully satisfied its obligations under the Consent with respect to the Monitor's Mandate, the Term of the Monitorship shall be extended for one additional year, and the Monitor shall undertake a second

**follow-up review in accordance with the procedures for such follow-up reviews set out in this Consent. If, after completing a second follow-up review, the Monitor and the Commission staff again mutually agree that Diebold has not successfully satisfied its obligations under this Consent with respect to the Monitor's Mandate, the Term of the Monitorship shall be extended until the Expiration, and the Monitor shall undertake a third follow-up review in accordance with the procedures for such follow-up reviews set out in this Consent. Additional follow-up reviews, should any be required, shall commence one year after the first follow-up review commenced. After consultation with Diebold, the Monitor may extend the time period for these follow-up reviews for up to sixty (60) calendar days with prior written approval of the Commission staff.**

**13. If, reasonably promptly after completing a follow-up review, the Monitor, the Commission staff, and Diebold mutually agree that Diebold's compliance program is reasonably designed and implemented to detect and prevent violations of the anti-corruption laws and is functioning effectively, the Monitor and Diebold shall submit to the Commission staff a written report within sixty (60) calendar days of the submission of the follow up review setting forth a complete description of its remediation efforts to date, its proposals reasonably designed to improve the internal controls, policies, and procedures of Diebold for ensuring compliance with the FCPA and other applicable anticorruption laws, and the proposed scope for Diebold's self-reporting. This report shall include a schedule of enhanced compliance obligations already undertaken by Diebold for the Commission staff's approval, and Diebold's self-reporting shall include measures taken to implement the enhanced compliance obligations. Diebold may extend the time period for issuance of the report with prior written approval of the Commission staff. At such time as the Commission staff approves the schedule of enhanced compliance obligations, the Monitorship shall be terminated and Diebold will self-report to the Commission staff on its**



**enhanced compliance obligations until the Expiration, as described in Paragraph 18 of the Consent.**

**14. In undertaking the assessments and reviews described in paragraphs 9 through 13 of the Consent, the Monitor shall formulate conclusions based on, among other things: (a) inspection of relevant documents, including Diebold's current anti-corruption policies and procedures; (b) on-site observation of selected systems and procedures of Diebold at sample sites, including internal controls and record-keeping and internal audit procedures; (c) meetings with, and interviews of, relevant employees, officers, directors and other persons at mutually convenient times and places; and (d) analyses, studies and testing of Diebold's compliance program with respect to the anticorruption laws.**

**15. Should the Monitor, during the course of his or her engagement, discover that questionable or corrupt payments or questionable or corrupt transfers of property or interests may have been offered, promised, paid or authorized by any entity or person within Diebold, or any entity or person working directly or indirectly for Diebold, either (a) after the date of the entry of the Final Judgment or (b) that have not been adequately dealt with by Diebold (collectively, "improper activities"), the Monitor shall promptly report such improper activities to Diebold's General Counsel for further action. If the Monitor believes that any improper activity or activities may constitute a significant violation of law, the Monitor shall also report such improper activity to the Commission staff. The Monitor shall disclose improper activities in his or her discretion directly to the Commission staff, and not to the General Counsel, only if the Monitor believes that disclosure to Diebold's General Counsel would be inappropriate under the circumstances, and in such case should disclose the improper activities to Diebold's General Counsel as promptly and completely as the Monitor deems appropriate under the circumstances.**

**The Monitor shall address in his or her reports the appropriateness of Diebold's response to all improper activities, whether previously disclosed to the Commission staff or not. Further, in the event that Diebold, or any entity or person working directly or indirectly within Diebold, refuses to provide information necessary for the performance of the Monitor's responsibilities, if the Monitor believes that such refusal is without just cause, the Monitor shall disclose that fact to the Commission staff. Diebold shall not take any action to retaliate against the Monitor for any such disclosures or for any other reason. The Monitor may report any criminal or regulatory violations by Diebold or any other entity discovered in the course of performing his or her duties in the same manner as described above.**

**16. At least annually, and more frequently if appropriate, representatives from Diebold and the Commission staff will meet together to discuss the monitorship and any suggestions, comments or improvements Diebold may wish to discuss with or propose to the Commission staff.**

**17. At the end of the monitorship, provided all requirements set forth in paragraph 13 are met, Diebold will report on its compliance to the Commission staff as set forth in Paragraph 18 until the Expiration.**

**18. Corporate Compliance Reporting: Diebold agrees that, following the monitorship, it will report to the Commission staff periodically, at no less than six-month intervals, until the Expiration, regarding remediation and implementation of the enhanced compliance measures set forth by the monitor as described in paragraph 13. Diebold shall designate a senior company officer as the person responsible for overseeing Diebold's corporate compliance reporting obligations. Should Diebold discover credible evidence that questionable or corrupt payments or questionable or corrupt transfers of property or interests may have been**

**offered, promised, paid, or authorized by any Diebold entity or person, or any entity or person working directly for Diebold, or that related false books and records have been maintained, Diebold shall promptly report such conduct to the Commission staff. During this period, Diebold shall conduct and prepare at least three follow-up reviews and reports, as described below:**

**a. Diebold shall undertake follow-up reviews at six-month intervals, each incorporating the Commission staff's views and comments on Diebold's prior reviews and reports, to further monitor and assess whether the policies and procedures of Diebold are reasonably designed to detect and prevent violations of the FCPA and other applicable anticorruption laws. Reports shall be transmitted to Brian O. Quinn, Assistant Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, DC. 20549.**

**b. The first follow-up review and report shall be completed by no later than 180 calendar days after the approval of the enhanced compliance measures described in paragraph 13 by the Commission staff. Subsequent follow-up reviews and reports shall be completed by no later than 180 calendar days after the completion of the preceding follow-up review.**

**c. Diebold may extend the time period for submission of any of the follow-up reports with prior written approval of the Commission staff.**

**19. Diebold shall certify, in writing, compliance with the undertakings set forth in paragraphs 4 to 18 above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further**

evidence of compliance, and Defendant agrees to provide such evidence. Defendant shall submit the certification and supporting material to Assistant Director Brian O. Quinn, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

20. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

21. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

22. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

23. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

24. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

25. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

**26. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that it shall not be permitted to contest the factual allegations of the Complaint in this action.**

**27. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the Complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant acknowledges the deferred prosecution agreement for the related criminal conduct described in paragraph 2 above, and agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; and (ii)**

that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

28. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

29. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and

subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

30. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

31. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: Sept 30, 2013

[Signature]  
Diebold, Inc.

By: CHAD F. HESSE  
[Name of person signing for entity]  
[Title] VICE PRESIDENT, GENERAL COUNSEL & SECRETARY  
[Address] 5995 MAYFAIR RD, NORTH CANTON, OHIO 44720

On 9/30, 2013, Chad F. Hesse, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Diebold, Inc. as its VP General Counsel

[Signature]



KELLIE L. MOLEDOR  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
October 30, 2017

Approved as to form:

[Signature]

Jonathan Leiken, Esq.  
Jones Day  
901 Lakeside Avenue  
Cleveland, OH 44114-1190

Attorney for Diebold, Inc.

Date: Sept 30, 2013