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NOTE CHANGES MADE BY COURT

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Attorneys for Plaintiff and Counterdefendant
Richard A. Williamson, on behalf of and as
Trustee for At Home Bondholders' Liquidating
Trust

See Signature Block For Names Of Attorneys
For Defendants

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

RICHARD A. WILLIAMSON, ON
BEHALF OF AND AS TRUSTEE
FOR AT HOME BONDHOLDERS'
LIQUIDATING TRUST,

Plaintiff,

vs.

CITRIX ONLINE, LLC, et al.,

Defendants.

AND RELATED
COUNTERCLAIMS.

Case No.: 2:11-CV-02409 AHM (JEMx)

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

1 **STIPULATED PROTECTIVE ORDER**

2 Plaintiff Richard A. Williamson, on behalf of and as Trustee for At Home
3 Bondholders' Liquidating Trust ("Plaintiff") and Defendants Adobe Systems, Inc.
4 ("Adobe"); Blackboard Inc., Wimba, Inc., and Elluminate USA, Inc.; WebEx
5 Communications, Inc., Cisco WebEx LLC, and Cisco Systems, Inc.; Citrix Online,
6 LLC and Citrix Systems, Inc.; DimDim, Inc. and Salesforce.com, Inc.; Fuzebox,
7 Inc. ("Fuzebox"); International Business Machines Corporation ("IBM"); WYBS,
8 Inc. d.b.a. MerchantCircle, Inc. ("MerchantCircle"); Microsoft Corporation
9 ("Microsoft"); and TokBox, Inc. ("TokBox") (collectively referred to as the
10 "Defendants") recognize that the parties and third parties may be required, pursuant
11 to discovery, to disclose confidential, proprietary, trade secret, or private
12 information in *At Home v. Citrix Online, LLC, et al.*, No. CV11-02409 AHM
13 (JEMx) and any adjunct subpoena proceedings incident hereto before any tribunal
14 (collectively the "Litigation"). To protect against the improper use or disclosure of
15 such information, the parties agree that good cause exists for the entry of this
16 Protective Order pursuant to Rule 26(c), in the above-captioned action as evidenced
17 by the signatures of respective counsel, and accordingly stipulate as follows:

18 **IT IS HEREBY ORDERED BY STIPULATION OF THE PARTIES THAT:**
19 **INFORMATION SUBJECT TO THIS ORDER**

20 1. This Protective Order shall apply to all information, documents and
21 things subject to discovery in this Litigation produced either by a party or a non-
22 party in discovery including, without limitation, testimony adduced at any hearing
23 or deposition upon oral examination or upon written questions, answers to
24 interrogatories, documents and things produced, information obtained from
25 inspection of premises or things, and answers to requests for admission, or
26 information disclosed pursuant to subpoena under Fed. R. Civ. P. 45 ("Discovery
27 Material").

28 2. For the purposes of this Order, "Confidential Information" shall mean

1 proprietary information not generally known to the public that the designating party
2 would not disclose to competitors or third parties within the ordinary course of
3 business. Discovery Material containing Confidential Information is referred to as
4 “Confidential Material.”

5 3. Particular examples of Confidential Information include, without
6 limitation, internal engineering, marketing, or financial documents, documents
7 containing information regarded by third parties as confidential; information
8 disclosing customer identity or customer actions, information containing
9 engineering, marketing, or sales information not generally available to the public,
10 information concerning competitive analysis, pending but unpublished patent
11 applications, information concerning research, development and other activities
12 related to unreleased products, license agreements, trade secrets (as defined in Cal.
13 Civil Code § 3426.1), know-how, pricing data, financial data, customer-confidential
14 information, agreements or relationships with non-parties, market projections or
15 forecasts, strategic business plans, information about employees, and other highly
16 confidential technical, research and development, and financial information.

17 4. The following is not Confidential Material: (i) material which, on its
18 face, shows or which, through other evidence, the receiving party can show has
19 been published to the general public; (ii) information that the receiving party can
20 show was lawfully in the receiving party’s possession prior to being designated as
21 Confidential Material in this litigation and that the receiving party is not otherwise
22 obligated to treat as confidential; (iii) information that the receiving party can show
23 was obtained (without any benefit or use of Confidential Material) from a third
24 party having the right to disclose such information to the receiving party without
25 restriction or obligation of confidentiality; (iv) information which, after its
26 disclosure to a receiving party, is published to the general public by a party having
27 the right to publish such information; (v) information that the receiving party can
28 show by written record was independently developed by it after the time of

1 disclosure by personnel who did not have access to the producing party's
2 Confidential Material; or (vi) information that was submitted to a governmental
3 entity without request for confidential treatment.

4 **DESIGNATING PROTECTED INFORMATION**

5 5. In determining the scope of information that a party may designate as
6 its Confidential Material, each party acknowledges the importance of client access
7 to information necessary to client decision-making in the prosecution or defense of
8 litigation, and therefore agrees that designations of information as Confidential
9 Material and responses to requests to permit further disclosure of Confidential
10 Material shall be made in good faith and not (1) to impose burden or delay on an
11 opposing party or (2) for tactical or other advantage in litigation.

12 6. All designations of Confidential material shall be made in good faith.

13 7. The producing party shall label or mark each document and thing that
14 it deems to be Confidential Materials with the following term:

15 **“CONFIDENTIAL — OUTSIDE COUNSEL ONLY”**

16 8. The parties acknowledge that a distinct level of protection is required
17 for certain Confidential Materials as to which CONFIDENTIAL — OUTSIDE
18 COUNSEL ONLY designation would not provide adequate protection to the
19 interests of the designating party and whose wrongful dissemination could result in
20 irreparable harm to the designating party. Such information may be designated as
21 “Highly Restricted Confidential” by labeling or marking each such document or
22 thing with one of the following terms:

23 **“HIGHLY RESTRICTED CONFIDENTIAL”**

24 Such designations shall be used only for source code, executable code, microcode,
25 RTL, HDL, or other documents or electronic files used in network operations,
26 comments for source code or network operation files, revision histories, or other
27 material whose wrongful dissemination could result in irreparable harm to the
28 designating party.

1 9. The labeling or marking of a document or tangible thing with the
2 designation “CONFIDENTIAL — OUTSIDE COUNSEL ONLY” or “HIGHLY
3 RESTRICTED CONFIDENTIAL” shall be made when a copy of the document or
4 thing is provided to the receiving party by placing the legend “CONFIDENTIAL —
5 OUTSIDE COUNSEL ONLY” or “HIGHLY RESTRICTED CONFIDENTIAL”
6 on the face of each such document or thing.

7 10. Any such designation that is inadvertently omitted or mis-designated
8 may be corrected by written notification to counsel for the receiving party, and the
9 receiving party shall thereafter mark and treat the materials as “CONFIDENTIAL
10 — OUTSIDE COUNSEL ONLY” or “HIGHLY RESTRICTED
11 CONFIDENTIAL” as appropriate, and such material shall be subject to this
12 Protective Order as if it had been initially so designated. If, prior to receiving such
13 notice, the receiving party has disseminated the Confidential Material to individuals
14 not authorized to receive it hereunder, it shall make a reasonable effort to retrieve
15 the Confidential Material or to otherwise assure that the recipient(s) properly mark
16 the Confidential Material and maintain the confidentiality of the Confidential
17 Material, but shall have no other responsibility or obligation with respect to the
18 information disseminated.

19 11. In the case of deposition upon oral examination or written questions,
20 such testimony shall be deemed “CONFIDENTIAL — OUTSIDE COUNSEL
21 ONLY” until the expiration of thirty (30) days after the deposition unless otherwise
22 designated at the time of the deposition or during the thirty (30) day period. Pages
23 or entire transcripts of testimony given at a deposition or hearing may be designated
24 as containing “CONFIDENTIAL — OUTSIDE COUNSEL ONLY” or “HIGHLY
25 RESTRICTED CONFIDENTIAL” information by an appropriate statement either
26 at the time of the giving of such testimony or by written notification within thirty
27 (30) days after the deposition. If the testimony is not otherwise designated at the
28 time of the deposition or during the thirty (30) day period after the deposition, the

1 testimony will not be deemed Confidential Material.

2 12. In the case of written discovery responses and the information
3 contained therein, the responses may be designated as containing
4 “CONFIDENTIAL — OUTSIDE COUNSEL ONLY” or “HIGHLY
5 RESTRICTED CONFIDENTIAL” information by means of a statement at the
6 conclusion of each response that contains such information specifying the level of
7 designation of the Confidential Information and by placing a legend of the front
8 page of such discovery responses stating: “CONTAINS CONFIDENTIAL
9 INFORMATION/[the highest level of designation contained in the answers].” Any
10 such designation that is inadvertently omitted or mis-designated may be corrected
11 within thirty (30) days of service of such discovery responses by written
12 notification to counsel for the receiving party, and the receiving party shall
13 thereafter mark and treat the materials as “CONFIDENTIAL — OUTSIDE
14 COUNSEL ONLY” or “HIGHLY RESTRICTED CONFIDENTIAL,” as
15 appropriate, and such material shall be subject to this Protective Order as if it had
16 been initially so designated. If, prior to receiving such notice, the receiving party
17 has disseminated the Confidential Material to individuals not authorized to receive
18 it hereunder, it shall make a reasonable effort to retrieve the Confidential Material
19 or to otherwise assure that the recipient(s) properly mark and maintain the
20 confidentiality of the Confidential Material, but shall have no other responsibility or
21 obligation with respect to the information disseminated.

22 13. In the case of Confidential Information not reduced to documentary or
23 tangible form or which cannot be conveniently designated as set forth above, such
24 information may be designated “CONFIDENTIAL — OUTSIDE COUNSEL
25 ONLY” or “HIGHLY RESTRICTED CONFIDENTIAL” information by informing
26 the receiving party of the designation in writing either at the time of transfer of such
27 information or within thirty (30) days after the transfer of such information.

28 14. Any documents or tangible things other than source code made

1 available for inspection prior to producing copies of selected items shall initially be
2 deemed “CONFIDENTIAL — OUTSIDE COUNSEL ONLY” unless otherwise
3 designated at the time of inspection and shall be subject to this Protective Order.
4 Thereafter, the producing party shall have a reasonable time to review and
5 designate the documents as set forth in paragraph 9 above prior to furnishing copies
6 to the receiving party. Treatment of source code is addressed separately herein.

7 **Disclosing Protected Information Designated**

8 **CONFIDENTIAL — OUTSIDE COUNSEL ONLY**

9 15. CONFIDENTIAL — OUTSIDE COUNSEL ONLY material and any
10 information contained therein shall be disclosed only to the following persons:

11 a. Outside counsel of record in this action for the receiving party,
12 including both local and trial counsel, provided such persons agree to be bound by
13 this Protective Order (an appearance by such counsel shall be deemed agreement).
14 Such outside counsel is subject to the patent prosecution bar set forth elsewhere
15 (e.g., paragraph 21) of this Order.

16 b. Employees and agents of such counsel including paralegals,
17 litigation support services, secretarial and clerical staff as well as the following
18 categories of persons provided that such persons have no involvement in addressing
19 any matter regarding the substantive issues in the case: independent legal
20 translators retained to translate in connection with this action; independent
21 stenographic reporters and videographers retained to record and transcribe
22 testimony in connection with this action; graphics, translation, or design services
23 retained by counsel of record for purposes of preparing demonstrative or other
24 exhibits for deposition, trial, or other court proceedings in this action; and non-
25 technical jury or trial consulting services (expressly excluding mock jurors)
26 provided such individuals agree in writing to be bound by this Protective Order;

27 c. The Court, its personnel and stenographic reporters (with such
28 CONFIDENTIAL — OUTSIDE COUNSEL ONLY Material having been filed

1 under seal or with other suitable precautions as determined by the Court);

2 d. At a deposition, any person who authored or previously received
3 the Confidential Material and, subject to timely objection including objection that
4 such person is not internally authorized to receive such information, any person
5 currently employed by the designating party; and

6 e. Any independent expert or consultant, and any employee or
7 assistant under the control of such expert or consultant, who (1) is engaged by
8 counsel of record in this action, whether or not such expert or consultant is paid
9 directly by a party, and (2) is not regularly employed by or associated with a party
10 hereto, other than by the designating party, provided however that disclosure to
11 such persons shall be made only on the conditions set forth in paragraph 22 below.

12 f. With respect to financial information consisting of revenues and
13 profits derived from the defendants' accused products and any brief filed by a
14 defendant or expert report served by a defendant on Plaintiff, Richard A.
15 Williamson and Robert Polifka, who act in a legal capacity for Plaintiff and are
16 responsible for supervising this litigation, provided such persons agree to be bound
17 by this Protective Order.

18 g. With respect to any brief filed by Plaintiff or expert report
19 served by Plaintiff on a Defendant, up to two (2) in-house counsel in the exclusive
20 employment of that Defendant or its parent corporation and who presently is not
21 directly involved in patent prosecution activities or other competitive decision-
22 making provided such individuals agree in writing to be bound by this Order.

23 **Disclosing Protected Information Designated**

24 **HIGHLY RESTRICTED CONFIDENTIAL**

25 16. Inspection of Source Code. To the extent that materials designated
26 "HIGHLY RESTRICTED CONFIDENTIAL" are made available for inspection in
27 this action, the materials shall be made available for inspection in native electronic
28 format and access to such materials will be given only to those individuals for the

1 receiving party who are designated under paragraph 15.a and 15.e above, and only
2 on “stand-alone” secured systems (i.e., computer systems not connected to a
3 network or the Internet) maintained in the sole control and custody of counsel of
4 record for the producing party and shall be maintained in the United States at a
5 mutually agreed office of counsel of record for the producing party. If counsel of
6 record for the producing party has an office in the Silicon Valley, California area,
7 the producing party will make the secured computer system available at that office,
8 unless another arrangement is mutually agreed upon by the producing party and the
9 receiving party (or parties). If counsel of record for the producing party does not
10 have an office in the Silicon Valley, California area, the producing party will make
11 the secured computer system available at a mutually agreed office of outside
12 counsel for the producing party. The producing party will accommodate reasonable
13 requests by the receiving party to install source code analysis tools, applications,
14 and/or utilities provided by the receiving party on the secured computer system.

15 17. Review of Source Code. The receiving party’s consultant or testifying
16 experts shall not alter, dismantle, disassemble or modify the secure computer in any
17 way, and shall not attempt to circumvent any security feature of the computer.

18 18. The receiving party shall not have the right to, and agrees not to,
19 copy, transmit or duplicate **HIGHLY RESTRICTED CONFIDENTIAL** materials in
20 any manner, including scanning or otherwise creating an electronic image of the
21 **HIGHLY RESTRICTED CONFIDENTIAL** materials, except as set forth herein:

22 a. A printer shall be attached to the Standalone Computer and the
23 receiving party may print hard copies of source code as needed by the receiving
24 party for use in judicial filings or proceedings, expert reports, and depositions of
25 persons or entities permitted to access “**HIGHLY RESTRICTED**
26 **CONFIDENTIAL**” material. The receiving party may also print hard copies of
27 output files generated by source code analysis tools, applications, and/or utilities.
28 The producing party shall provide paper for the printer that has been pre-marked by

1 the producing party with production numbers. The producing party shall use such
2 pre-marked paper for printing the hard copies of source code as needed by the
3 receiving party for use in judicial filings or proceedings, or expert reports. The
4 producing party may retain a copy of the hard copies of source code printed by the
5 receiving party. Should it become necessary, the producing party and the receiving
6 party shall negotiate reasonable limitations on the number of pages of source code
7 that may be printed by the receiving party.

8 b. Any hard copies shall be conspicuously marked **HIGHLY**
9 **RESTRICTED CONFIDENTIAL** in conformity with paragraphs 8-12 above.

10 c. The receiving party shall keep a log including: (a) the custodian
11 of each copy of any **HIGHLY RESTRICTED CONFIDENTIAL** materials; and (b)
12 the name of all persons other than outside counsel of record accessing **HIGHLY**
13 **RESTRICTED CONFIDENTIAL** materials.

14 d. All **HIGHLY RESTRICTED CONFIDENTIAL** materials,
15 including all copies thereof, in the possession of the Receiving Party shall be
16 maintained in a secured, locked area.

17 e. All **HIGHLY RESTRICTED CONFIDENTIAL** materials
18 utilized during deposition or marked as an exhibit at a deposition will be retrieved
19 by the party conducting the deposition at the end of each day. At no time will any
20 **HIGHLY RESTRICTED CONFIDENTIAL** material be given to or left with the
21 court reporter, videographer, or any other individual not authorized under the
22 Protective Order to retain such **HIGHLY RESTRICTED CONFIDENTIAL**
23 material.

24 f. The receiving party shall not convert any of the information
25 contained in any hard copies of **HIGHLY RESTRICTED CONFIDENTIAL**
26 material into an electronic format, except when reproducing specifically identified
27 excerpts of the information in an expert report or court filing, and then only
28 according to the additional restrictions on **HIGHLY RESTRICTED**

1 CONFIDENTIAL materials contained in this Protective Order. In the event that a
2 receiving party includes HIGHLY RESTRICTED CONFIDENTIAL material in an
3 expert report, the HIGHLY RESTRICTED CONFIDENTIAL material must be
4 redacted from the version of the expert report served on all parties other than the
5 producing party. The redacted version must be served on the other parties within
6 two days of the date on which the unredacted version is served on the producing
7 party. In the event that a receiving party includes HIGHLY RESTRICTED
8 CONFIDENTIAL material in a court filing, the HIGHLY RESTRICTED
9 CONFIDENTIAL material shall only be filed under seal in accordance with
10 paragraph 24. Further, the receiving party shall not serve the HIGHLY
11 RESTRICTED CONFIDENTIAL material on any party other than the producing
12 party, but instead shall prepare a redacted version of the filing with the HIGHLY
13 RESTRICTED CONFIDENTIAL material excluded, and shall serve that redacted
14 version on all parties other than the producing party within two days of the date on
15 which the unredacted version is served on the producing party.

16 19. Should the Review procedures described herein become unduly
17 burdensome or impracticable to the Parties, the Parties shall timely confer in good
18 faith with a view to modifying these Review procedures.

19 **Export Control Requirements**

20 20. Notwithstanding anything to the contrary contained herein, the
21 following additional requirements apply to all Confidential Materials:

22 a. The receiving party acknowledges that the Confidential
23 Materials received under this Protective Order may be subject to export controls
24 under the laws of the United States and other applicable laws. The receiving party
25 shall comply with such laws and agrees not to knowingly export, re-export or
26 transfer Confidential Materials of the producing party without first obtaining all
27 required United States or any other applicable authorizations or licenses. The
28 receiving party acknowledges that Confidential Materials disclosed by the

1 producing party may be subject to, including but not limited to, the U.S. Export
2 Administration Regulations (EAR), Export Control Classification Number (ECCN)
3 5E001 pertaining to Dynamic Adaptive Routing, Optical Switching, SS7, non-
4 aggregated port speed data transfer rates exceeding 15Gbps; and ECCN 5E002
5 cryptography.

6 b. The receiving party agrees to maintain adequate controls to
7 prevent nationals of countries listed in the EAR, Part 740 Supplement No. 1,
8 Country Group D:1 or E from accessing the producing party's Confidential
9 Materials, subject to ECCN 5E001; or nationals outside the U.S. and Canada from
10 accessing such Confidential Materials, subject to ECCN 5E002 -- without U.S.
11 Government authorization. The receiving party furthermore, agrees to notify the
12 producing party prior to granting a foreign national, of countries listed in the groups
13 D:1 or E, access to the Standalone Computer, access to hard copies of Confidential
14 Materials, or placement on a project requiring receipt or review of the producing
15 party's Confidential Materials. The term "national" is defined as any person who is
16 not a U.S. person or national/citizen, lawful permanent resident, person granted
17 asylee or refugee status, or temporary resident granted amnesty.

18 **Limited Patent Prosecution By Receiving Party**

19 21. The Plaintiff, any individual attorney representing Plaintiff, whether
20 in-house or outside counsel, and any individual person retained by Plaintiff or
21 attorneys of Plaintiff who obtains, receives, has access to, or otherwise learns, in
22 whole or in part, technical information designated CONFIDENTIAL — OUTSIDE
23 COUNSEL ONLY or HIGHLY RESTRICTED CONFIDENTIAL under this
24 Protective Order shall not prepare, prosecute, supervise, or assist in the prosecution
25 of any patent application that claims the subject matter disclosed in the patent(s)-in-
26 suit, or subject matter directly related to remote or distributed learning systems,
27 within three (3) years from disclosure of the technical information or one (1) year
28 after conclusion of the litigation (including any appeals), whichever period is

1 longer. An attorney associated by law firm with the attorneys representing Plaintiff
2 shall not be bound by this restriction unless such attorney obtains, receives, has
3 access to, or otherwise learns, in whole or in part, information designated
4 CONFIDENTIAL — OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED
5 CONFIDENTIAL. To ensure compliance with the purpose of this provision,
6 Plaintiff shall create an ethical wall between those persons with access to technical
7 information designated CONFIDENTIAL — OUTSIDE COUNSEL ONLY or
8 HIGHLY RESTRICTED CONFIDENTIAL and those individuals who prepare,
9 prosecute, supervise, or assist in the prosecution of any patent application
10 pertaining to the same subject matter of the patent(s)-in-suit.

11 **Limited Outside Disclosure Of Confidential Material**

12 22. Trial counsel desiring to disclose Confidential Materials of another
13 party to experts or consultants specified in paragraph 15.e above shall first obtain a
14 signed undertaking, in the form of Exhibit A attached hereto, from each such expert
15 or consultant, and such counsel shall retain in his/her files the original of each such
16 signed undertaking. A copy of the signed undertaking shall be forwarded to
17 counsel for the disclosing party with the current curriculum vitae for such expert or
18 consultant, a list of their past, current, and anticipated consulting or other
19 employment relationships, a list of the cases in which they have testified
20 (deposition or trial) within the last four years, and all prior and/or present
21 relationships with the parties in this case. No Confidential Materials of another
22 party shall be disclosed to such expert or consultant until after the expiration of a
23 seven (7) calendar day period commencing with the service of a copy of the signed
24 undertaking and curriculum vitae. During that seven (7) day period, the parties may
25 meet and confer to resolve any objections to the disclosure and, if the parties cannot
26 resolve the objection, the objecting party shall be entitled to seek a Court resolution.
27 If after the expiration of the seven (7) day period the objecting party has not sought
28 a Court order preventing disclosure, trial counsel may disclose the confidential

1 information to the expert or consultant identified in the signed undertaking.

2 23. The restrictions on the use of Confidential Materials established by
3 this Protective Order are applicable only to the use of information received by a
4 party from another party or from a non-party. A party is free to use its own
5 information as it pleases.

6 24. Any party may file or lodge with the Court documents or tangible
7 items designated as CONFIDENTIAL — OUTSIDE COUNSEL ONLY or
8 HIGHLY RESTRICTED CONFIDENTIAL. Any briefs, transcripts, exhibits,
9 depositions, or documents which are filed with the Court which comprise, embody,
10 summarize, discuss, or quote from documents or tangible things designated as
11 CONFIDENTIAL — OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED
12 CONFIDENTIAL material shall be sealed to the extent permitted by and in
13 accordance with Local Rule 79-5. Where reasonably practicable, only the portions
14 of documents consisting of such items or information shall be lodged under seal.

15 25. The acceptance by a party of documents designated as
16 CONFIDENTIAL — OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED
17 CONFIDENTIAL shall not constitute an agreement, admission or concession, or
18 permit an inference, that the material(s) are in fact properly the subject for
19 protection under Fed. R. Civ. P. 26(c), or some other basis. Documents designated
20 CONFIDENTIAL — OUTSIDE COUNSEL ONLY or HIGHLY RESTRICTED
21 CONFIDENTIAL shall be treated in accordance with the provisions of this
22 Protective Order, except that any party may at any time seek an Order from the
23 Court determining that specified information or categories of information are not
24 properly designated as CONFIDENTIAL — OUTSIDE COUNSEL ONLY or
25 HIGHLY RESTRICTED CONFIDENTIAL. Before making such a motion, the
26 parties shall meet and confer in good faith to resolve any differences over the
27 designation. In response to the filing of such a motion, the party asserting
28 confidentiality shall have the burden of proving that the Confidential Material in

1 question is protectable under Fed. R. Civ. P. 26(c) or some other basis, or, as the
2 case may be, that the designation of CONFIDENTIAL — OUTSIDE COUNSEL
3 ONLY or HIGHLY RESTRICTED CONFIDENTIAL is necessary under the
4 circumstances. A party shall not be obligated to challenge the propriety of a
5 designation of Confidential Material at the time made, and failure to do so shall not
6 preclude subsequent challenge. Should any party (or non-party) seek an Order from
7 the Court to determine whether specified information or categories of information
8 are not properly designated as CONFIDENTIAL — OUTSIDE COUNSEL ONLY
9 or HIGHLY RESTRICTED CONFIDENTIAL, the claimed designation shall
10 remain operative and respected by all the parties and non-parties pending the
11 Court's ruling.

12 26. Nothing in this Protective Order shall require disclosure of material
13 that a party contends is protected from disclosure by the attorney-client privilege or
14 the attorney work-product immunity, or any other applicable privilege or protection
15 (e.g., common interest, joint defense). This shall not preclude any party from
16 moving the Court for an Order directing the disclosure of such material.

17 27. Inadvertent production or disclosure of documents or information
18 subject to the attorney-client privilege, work product immunity, or any other
19 applicable privilege shall not constitute a waiver of, nor a prejudice to, any claim
20 that such or related material is privileged or protected by the work product
21 immunity or any other applicable privilege. A producing party may notify the
22 receiving party in writing that produced documents or information are subject to the
23 attorney-client privilege, work product immunity, or any other applicable privilege
24 and that such documents were inadvertently produced. Within five (5) business
25 days of this notice, the receiving party shall return or destroy all such documents or
26 information and all copies thereof, including those that have been shared with
27 experts, consultants, and vendors, and confirm in writing that all such documents or
28 information have been returned or destroyed. In the absence of a court order

1 ordering production of the returned documents, no use shall be made of such
2 documents during depositions, through motion practice, or at trial. In the case of
3 such returned production, the producing party shall provide a privilege log
4 identifying such documents or information within ten (10) business days of its
5 original notice to the receiving party. The receiving party may move the Court for
6 an Order compelling production of any such documents or information in
7 accordance with the Federal Rules of Civil Procedure. That motion shall not assert
8 as a ground for production the fact of the earlier production nor shall the motion
9 disclose or otherwise use the content of the previously produced and returned
10 documents or information except to disprove a claim of privilege or work product
11 immunity. Any portion of the motion that discloses or uses the content of the
12 previously produced and returned documents or information to disprove a claim of
13 privilege or work product immunity shall be redacted from the public record and
14 filed *in camera*.

15 28. In the event of any accidental or inadvertent disclosure of Confidential
16 Material other than in a manner authorized by this Protective Order, counsel for the
17 party responsible for the disclosure shall immediately notify opposing counsel of all
18 the pertinent facts, and make every effort to prevent further unauthorized disclosure
19 including retrieving all copies of the Confidential Material from the recipient(s)
20 thereof and securing the agreement of the recipients not to further disseminate the
21 Confidential Material in any form. Compliance with the foregoing shall not
22 prevent a party from seeking further relief from the Court.

23 29. In addition to the specific requirements set forth in paragraph 16
24 hereof regarding the handling of HIGHLY RESTRICTED CONFIDENTIAL
25 materials, the recipient of any Confidential Material shall maintain such
26 information in a secure and safe place, and shall exercise at least the same degree of
27 care in handling the Confidential Material as is exercised by the recipient with
28 respect to its own Confidential Material and to confidential information of a similar

1 nature, but in no event less than due care. Each recipient of any Confidential
2 Material hereby agrees to be subject to the jurisdiction of this Court for purposes of
3 the implementation and enforcement of this Protective Order.

4 30. This Protective Order shall not prevent the parties from applying to the
5 Court for relief therefrom or modification thereto, or from applying to the Court for
6 further or additional relief by way of protective orders or otherwise, or from
7 agreeing between themselves to modifications of this Protective Order.

8 31. Confidential Materials shall be used solely for the purposes of this
9 Litigation and shall not be used for any other purpose except as expressly provided
10 herein or by further Order of the Court. Those persons subject to this Order,
11 including Outside Counsel, shall exercise reasonable care to ensure that information
12 protected under this Order is used only for the purposes specified herein, and
13 disclosed only to authorized persons.

14 32. In the event that a party desires to provide access to or disseminate
15 Confidential Materials to any person not entitled to access under this Protective
16 Order, it may move the Court for an order that such person be given access thereto
17 if the parties cannot, after negotiating in good faith, agree to such additional access
18 or dissemination.

19 33. Within thirty (30) days after the final conclusion of this Litigation
20 (“Termination of Litigation”), including any appeals, all Confidential Materials
21 (except HIGHLY RESTRICTED CONFIDENTIAL materials) produced by any
22 party, and all copies of such information, shall be returned to the producing party,
23 or counsel of record shall certify in writing that such material has been destroyed.
24 Within ten (10) days after the final conclusion of this Litigation, including any
25 appeals, all HIGHLY RESTRICTED CONFIDENTIAL materials produced by any
26 party shall be returned to the producing party along with certification by outside
27 counsel of record and any other individuals who accessed such materials that all
28 such materials have been returned. Counsel of record may retain a copy of all

1 correspondence, pleadings, motion papers, discovery responses, deposition and trial
2 transcripts, legal memoranda, work product and any document that has been filed
3 with the Court under seal.

4 34. This Protective Order shall survive the final termination of this
5 Litigation with respect to any retained Confidential Materials.

6 35. Nothing in this Protective Order shall prevent or otherwise restrict
7 outside counsel from rendering advice to their clients and, in the course thereof,
8 relying generally on Confidential Material; provided, however, that in rendering
9 such advice counsel shall not disclose, reveal or describe any such materials except
10 insofar as allowed (if allowed at all) under the terms of this Order.

11 36. If a party wishes to use Confidential Material at the examination by
12 deposition of any witness not entitled to have access to such Confidential Materials,
13 such Party shall obtain the consent of the producing party, in advance, and the
14 failure of the examining attorney to obtain such consent or order of the Court shall
15 not be grounds for delaying the deposition. Where Confidential Material may be
16 revealed or referred to in a question that will be put to the witness at a deposition
17 upon oral examination or Confidential Materials will be used as exhibits during the
18 examination, the producing party may require that all persons in attendance who are
19 not entitled access to such Confidential Material under this Protective Order leave
20 the room until such line of inquiry is completed. Where Confidential Material may
21 be revealed or referred to in a question that will be put to the witness at trial upon
22 oral examination or Confidential Materials will be used as exhibits during the
23 examination, the producing party may request that the Court require that all persons
24 in attendance who are not entitled access to such Confidential Material under this
25 Protective Order leave the courtroom until such line of inquiry is completed.

26 37. No copy of any transcript of any deposition which is designated, in
27 part or in whole, as CONFIDENTIAL — OUTSIDE COUNSEL ONLY or
28 HIGHLY RESTRICTED CONFIDENTIAL shall be furnished by the court reporter

1 to any person other than to counsel of record and counsel for a non-party, if the
2 furnished transcript is of the non-party's own deposition. The original of any
3 transcript of any deposition designated as CONFIDENTIAL — OUTSIDE
4 COUNSEL ONLY or HIGHLY RESTRICTED CONFIDENTIAL, if required to be
5 filed, shall be filed with the Court under seal in accordance with paragraph 24
6 hereof, unless otherwise agreed by the producing party.

7 38. The terms of this Protective Order may be applied to the Confidential
8 Materials of a non-party, as long as that non-party agrees in writing to be bound by
9 the terms of this Protective Order.

10 39. If Designated Information in the possession, custody, or control of any
11 receiving party is sought by subpoena, request for production of documents,
12 interrogatories, or any other form of discovery request or compulsory process, the
13 receiving party to whom the discovery request or compulsory process is directed
14 shall within three (3) business days after receipt thereof give written notice by hand,
15 certified mail, facsimile, or electronic transmission of such discovery request or
16 compulsory process to the producing party, and provide the producing party with a
17 copy of the discovery request or compulsory process. If the producing party timely
18 makes a motion to quash, and to the extent permitted by law, the receiving party
19 shall withhold such Designated Information until disposition of any such motion to
20 quash.

21 40. By affixing their signatures below, the parties agree to abide by the
22 terms of this Stipulation until this Protective Order or a further protective order is
23 entered by the Court. Upon the signing of this Order by the District Court Judge,
24 this Protective Order shall be effective as against all party signatories hereto as of
25 the date of such signature of that party or party's representative, thereby rendering
26 this Protective Order effective nunc pro tunc to the date of such party's signature.

27 **STIPULATED TO AND SUBMITTED BY:**
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Dated: January 17, 2012 /s/ Brett J. Williamson
Brett J. Williamson
O'Melveny & Myers LLP
William C. Norvell, Jr.
Beirne, Maynard & Parsons, LLP
Attorneys for Plaintiff and Counterdefendant
Richard A. Williamson, As Trustee And On
Behalf Of At Home Bondholders' Liquidating
Trust

Dated: January 17, 2012 /s/ Tal Kedem
Frank E. Scherkenbach
Nancy L. Stagg
Kurt L. Glitzenstein
Indranil Mukerji
Tal Kedem
Attorneys for Defendants and Counterclaimants
Adobe Systems, Inc, Citrix Online LLC and
Citrix Systems, Inc., and Microsoft Corporation

Dated: January 17, 2012 /s/ Doug Kubehl
Doug Kubehl (pro hac vice)
Kurt Pankratz (pro hac vice)
Brett Mangrum (pro hac vice)
Travis Thomas
Kevin Cadwell
Baker Botts L.L.P
Attorneys for Defendants and Counterclaimants
WebEx Communications, Inc., Cisco WebEx
LLC, and Cisco Systems, Inc.

Dated: January 17, 2012 /s/ Gregory S. Bishop
Gregory S. Bishop
Goodwin Procter LLP
Mark J. Abate (pro hac vice)
Goodwin Procter LLP
Attorneys for Defendant and Counterclaimant
International Business Machines Corporation

1 Dated: January 17, 2012 /s/ Jose C. Villarreal
2 Jose C. Villarreal (pro hac vice)
3 Wilson, Sonsini, Goodrich & Rosati
4 Melvin N.A. Avanzado
5 The Avanzado Law Firm
6 Attorneys for Defendants and Counterclaimants
7 Salesforce.com, Inc. and DimDim, Inc.
8
9 Dated: January 17, 2012 /s/ Fay E. Morisseau
10 Fay E. Morisseau
11 McDermott Will & Emery
12 Attorneys for Defendants and Counterclaimants
13 Blackboard, Inc., Elluminate USA, Inc., and
14 Wimba, Inc.
15 Dated: January 17, 2012 /s/ Micah R. Jacobs
16 Micah R. Jacobs
17 Jacobs Law Group SF
18 Attorneys for Defendant and Counterclaimant
19 WYBS, Inc. d.b.a. MerchantCircle, Inc.
20
21 Dated: January 17, 2012 /s/ Douglas G. Muehlhauser
22 Douglas G. Muehlhauser
23 Knobbe Martens Olson & Bear
24 Attorneys for Defendant FuzeBox, Inc.
25
26 Dated: January 17, 2012 /s/ Joseph M. Paunovich
27 Joseph M. Paunovich
28 Quinn Emanuel Urquhart and Sullivan LLP
Attorneys for Defendant and Counterclaimant
Tokbox Inc.

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Based on the stipulation of the parties and for good cause shown, IT IS SO ORDERED.

Dated: January 19, 2012

/s/John E. McDermott
Hon. John E. McDermott
U.S. Magistrate Judge

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EXHIBIT A
INSERT CAPTION
UNDERTAKING CONCERNING RECEIPT OF
CONFIDENTIAL MATERIALS SUBJECT TO PROTECTIVE
ORDER

I, _____, declare that:

1. My present residential address is _____
_____.

2. My present employer is _____
and the address of my present employer is _____
_____.

3. My present occupation or job description is _____
_____.

4. I have received and carefully read the Protective Order in this
Litigation dated _____, and understand its provisions. As a condition
precedent to receiving any Confidential Materials, as such are defined in the
Protective Order, I agree to subject myself to the personal jurisdiction of this Court
with respect to the enforcement of the provisions of the attached Protective Order. I
understand that I am obligated, under Order of the Court, to hold in confidence and
not to disclose the contents of any document marked or later designated pursuant to
the Protective Order as CONFIDENTIAL — OUTSIDE COUNSEL ONLY or
HIGHLY RESTRICTED CONFIDENTIAL to anyone other than those persons
authorized under this Protective Order to review such information. I further
understand that I am not to disclose to persons other than those persons authorized
under this Protective Order to review such information any words, substances,
summaries, abstracts or indices of Confidential Materials or transcripts disclosed to
me. In addition to the foregoing, I understand that I must abide by all of the
provisions of the Protective Order.

1 5. At the termination of this Litigation or at any time requested by
2 counsel of record in this Litigation, I will return to counsel of record in this
3 Litigation all documents and other materials, including notes, computer data,
4 summaries, abstracts, or any other materials including or reflecting Confidential
5 Materials which have come into my possession, and will return all documents or
6 things I have prepared relating to or reflecting such information.

7 6. I understand that if I violate the provisions of this Protective Order, I
8 will be in violation of a Court Order and subject to sanctions or other remedies that
9 may be imposed by the Court and potentially liable in a civil Litigation for damages
10 by the disclosing party.

11 7. I declare under penalty of perjury of the laws of the United States that
12 the foregoing is true and correct.

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14 Executed on: _____ Name: _____
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