

# EXHIBIT D

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**From:** Alinder, Zachary J.  
**Sent:** Wednesday, May 18, 2011 11:33 PM  
**To:** 'Jane L Froyd'  
**Cc:** 'Gregory Castanias'; Howard, Geoff; 'Jacqueline K. S. Lee'; Chin, Lisa; 'Rachel L. Rawson'; Brundage, Robert A.; 'Greg Lanier'  
**Subject:** Edits to Defendants' Supersedeas Bond

**Attachments:** WS\_BinaryComparison\_#74284923v1\_ACTIVE\_ - Edits to Defendants' Supersedeas Bond-#74284923v2\_ACTIVE\_ - Edits to Defendants' Supersedeas Bond.doc; #74284923v2\_ACTIVE\_ - Edits to Defendants' Supersedeas Bond.DOC

**SentFromDeltaView:** 0

Jane,

Attached are redline and clean versions of SAP's proposed bond format with minor proposed revisions from Oracle.

For ease of review, the revisions are as follows:

(1) In the initial paragraph, we've removed Oracle USA and Siebel Systems, and added OIC's successors and assignees. Oracle USA and Siebel Systems did not receive the \$1.3 billion judgment -- only OIC did and only OIC can execute on that judgment.

(2) The first "NOW, THEREFORE," paragraph was unclear and was missing at least one word in the final sentence after "said". We attempted to add the missing language and to make the paragraph clear. We did not alter the paragraph substantively.

(3) We added FRCP 65.1 to the lead-in to Paragraph 6 because it is also applicable and also provides that the surety shall submit to jurisdiction of the district court. We also changed "as surety" to "each Surety" since the former language was unclear.

(4) We added a new paragraph at the end to provide two additional points -- (a) we've added language that the Surety meets the qualifications of Civil Local Rule 65.1 (describing the qualifications of sureties), which I assume you agree that they must meet, and (b) we've added the ability for the Court to order judgment and award execution on the surety's obligation, in the event that the surety either defaults or refuses to obey a court order regarding payment. This language is not only standard, but also, the fact that there are numerous sureties involved, each with its own financial outlook, makes this minor addition even more important than for a typical bond.

We expect that these minor revisions will meet with your approval. If you disagree with any of them, we are available to meet and confer. Oracle hopes that the Parties will be able to present a stipulated motion for approval of the bond to the Court.

Best regards,  
Zac



NS\_BinaryComparis#74284923v2\_ACT  
on\_#74284923v... IVE\_ - Edits to...

Zachary J. Alinder  
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T (415) 393-2226 | F (415) 393-2286  
zachary.alinder@bingham.com

## SUPERSEDEAS BOND

KNOW ALL BY THESE PRESENTS, That SAP America, Inc., as principal and on behalf of defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively, "Defendants"), and Continental Casualty Company and U.S. Specialty Insurance Company and American Contractors Indemnity Company and Travelers Casualty and Surety Company of America and XL Specialty Insurance Company and XL Reinsurance America, Inc. and Greenwich Insurance Company and Fidelity and Deposit Company of Maryland and Zurich American Insurance Company and Liberty Mutual Insurance Company, as sureties, (hereinafter collectively and individually called "Surety") are held and firmly bound unto Oracle ~~USA, Inc., Oracle~~ International Corporation, ~~and Siebel Systems, Inc.~~ its successors and assignees ("Oracle"), in the total aggregate sum of One Billion Three Hundred Twenty Five Million Thirty Three Thousand Five Hundred Forty Seven AND 00/100THS-----(\$1,325,033,547.00) DOLLARS, lawful money of the United States to be paid to Oracle for which payment well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, severally by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, judgment was entered on February 3, 2011 in favor of Oracle and against Defendants in the amount of \$1,314,751,797.00.

WHEREAS, Defendants filed post-judgment motions, and if denied, will appeal the judgment.

NOW, THEREFORE, the condition of this obligation is such that this obligation shall be void if Defendants prosecute their postjudgment motions and/or any subsequent appeals to the Ninth Circuit Court of Appeals and/or the United States Supreme Court ~~\with effect\~~, and ~~\shall\~~ either (a) Defendants satisfy said judgment in full together with costs, interest and damages for delay, ~~\;~~ if for any reason the motions are not granted and the appeal is dismissed or if the judgment is affirmed; ~~\;~~ or ~~\shall\~~ (b) Defendants satisfy in full such modification of the judgment and such costs, interest and damages as the \said\United States District Court for the Northern District of California, the Ninth Circuit Court of Appeals and/or the United States Supreme Court may adjudge and award, ~~\,then\~~ Otherwise this obligation ~~\to be void, otherwise to\~~ shall remain in full force and effect.

PROVIDED, HOWEVER, THAT:

1. The maximum amount of liability for each Surety shall be limited to the following amounts:

Continental Casualty Company, an Illinois corporation, for One Hundred Fifty Million and 00/100 Dollars (\$150,000,000.00) - (.113) percent

U.S. Specialty Insurance Company, a Texas corporation, for Forty Million and 00/100 Dollars (\$40,000,000.00) - (.03) percent

American Contractors Indemnity Company, a California corporation, for Five Million and 00/100 Dollars (\$5,000,000.00) - (.0037) percent

Travelers Casualty and Surety Company of America, a Connecticut corporation, for One Hundred Million and 00/100 Dollars (\$100,000,000.00) - (.0755) percent

XL Specialty Insurance Company, a Delaware corporation, for Fifteen Million and 00/100 Dollars (\$15,000,000.00) • (.0113) percent

XL Reinsurance America, Inc., a New York corporation, for One Hundred Fifty Five Million and 00/100 Dollars (\$155,000,000.00) - (.117) percent

Greenwich Insurance Company, a Delaware corporation, for Thirty Million and 00/100 Dollars (\$30,000,000.00) - (.023) percent

Fidelity and Deposit Company of Maryland, a Maryland corporation, for Ten Million and 00/100 Dollars (\$10,000,000.00) - (.0075) percent

Zurich American Insurance Company, a New York corporation, for Five Hundred Seventy Million Thirty Three Thousand Five Hundred Forty Seven and 00/100 Dollars (\$570,033,547.00) - (.43) percent

Liberty Mutual Insurance Company, a Massachusetts corporation, for Two Hundred Fifty Million and 001100 Dollars (\$250,000,000.00) - (.189) percent

2. It is expressly provided that the obligation of the Surety shall be several and not joint, and no Surety shall be responsible in an amount greater than their respective maximum amount of liability set forth above in paragraph 1. Nor shall any Surety's liability be increased or affected hereunder in any way whatsoever as a result of the performance or non-performance by any other Surety of such other Surety's obligation under this Bond.

3. Any claim for payment by Oracle arising under this bond shall be allocated to the percentage of each Surety's limit of liability relative to the aggregate amount of this bond.

4. In no event shall the total obligation of the Surety hereunder exceed the amount herein stated, regardless of the number of years this bond is in force.

5. This Bond may be executed in any number of counterparts, and by the different parties hereto on separate counterparts, each of which counterpart shall be an original, but all of which shall together constitute one and the same instrument.

6. Pursuant to Rule 8(b) of the Federal Rules of Appellate [Procedure and Rule 65.1 of the Federal Rules of Procedure](#), see Surety List above, ~~as surety~~, [each Surety](#) submits itself to the jurisdiction of the District Court.

[IT IS FURTHER AGREED by each Surety that it meets the qualification requirements of Civil L.R. 65.1-1\(b\), and that, in the event that the Surety defaults or refuses to obey any court order requiring payment, the Court may, upon notice to the Surety of not less than ten days, proceed summarily and render judgment against the Surety in accordance with its obligation and award execution thereon.](#)

2 Workshare Professional comparison of  
interwovenSite://IMANDMS/ACTIVE/74284923/1 and  
interwovenSite://IMANDMS/ACTIVE/74284923/2. Performed on 5/18/2011.

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NOW, THEREFORE, the condition of this obligation is such that this obligation shall be void if Defendants prosecute their postjudgment motions and/or any subsequent appeals to the Ninth Circuit Court of Appeals and/or the United States Supreme Court, and either (a) Defendants satisfy said judgment in full together with costs, interest and damages for delay if for any reason the motions are not granted and the appeal is dismissed or if the judgment is affirmed; or (b) Defendants satisfy in full such modification of the judgment and such costs, interest and damages as the United States District Court for the Northern District of California, the Ninth Circuit Court of Appeals and/or the United States Supreme Court may adjudge and award. Otherwise this obligation shall remain in full force and effect.

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