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19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 OAKLAND DIVISION

22 ORACLE USA, INC., *et al.*,
 23 Plaintiffs,
 24 v.
 25 SAP AG, *et al.*,
 26 Defendants.

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Case No. 07-CV-1658 PJH (EDL)

**STIPULATION AND [PROPOSED]
 ORDER TO AMEND THE
 STIPULATED PROTECTIVE
 ORDER**

1 Plaintiffs Oracle USA, Inc. Oracle International Corporation, Oracle EMEA Limited, and
2 Siebel Systems, Inc. (“Plaintiffs”) and Defendants SAP AG, SAP America, Inc., and
3 TomorrowNow, Inc. (“Defendants,” and together with Oracle, the “Parties”) jointly submit this
4 Stipulation and Proposed Order to Amend the Stipulated Protective Order.

5 WHEREAS, on June 6, 2007, the Court issued a Stipulated Protective Order in this matter
6 (D.I. 32);

7 WHEREAS, the Parties have agreed, with the permission of the Court, Exhibit B to the
8 Stipulated Protective Order (“Exhibit B”), titled “Insurance Carrier Addendum,” shall be made
9 part of the Stipulated Protective Order;

10 WHEREAS, the Parties have agreed, with the permission of the Court, Exhibit C to the
11 Stipulated Protective Order (“Exhibit C”), titled “Insurer Declaration of Compliance,” shall be
12 made part of the Stipulated Protective Order;

13 WHEREAS, the Parties have agreed, with the permission of the Court, Exhibit B and
14 Exhibit C, attached to this Joint Stipulation and Proposed Order as Attachment 1, shall
15 immediately follow Exhibit A in the Stipulated Protective Order.

16 **IT IS SO STIPULATED.**

17 DATED: November 18, 2009

JONES DAY

18
19 By: /s/ Scott Cowan
Scott Cowan

20 Attorneys for Defendants
21 SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

22 In accordance with General Order No. 45, Rule X, the above signatory attests that
23 concurrence in the filing of this document has been obtained from the signatory below.
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DATED: November 18, 2009

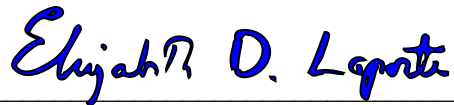
BINGHAM McCUTCHEN LLP

By: /s/ Bree Hann
Bree Hann

Attorneys for Plaintiffs
ORACLE USA, INC., ORACLE
INTERNATIONAL CORPORATION,
ORACLE EMEA LIMITED, and SIEBEL
SYSTEMS, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: November 19, 2009



Judge Elizabeth D. Laporte

United States Magistrate Judge

Exhibit B

INSURANCE CARRIER ADDENDUM

This is an addendum to the Stipulated Protective Order (“Protective Order”) dated June 6, 2007, in the matter Oracle Corp. et al. v. SAP AG, et al. (the “Action”), 07-CV-1658, filed in the United States for the Northern District of California, San Francisco Division, and shall be made part of the Protective Order.

I. Definitions

All capitalized terms herein shall have the same meanings as those terms that are capitalized in the Protective Order. In addition, "SAP Insurers" shall refer to those liability insurers or reinsurers of SAP to which claims for coverage of the Action have been made and who are listed in the attached SAP Insurer Addendum. "SAP Insurers Outside Counsel" shall refer to an SAP Insurer's retained outside counsel including members of the outside counsel firm, associate attorneys, contract attorneys, paralegals, secretarial staff, clerical and other regular employees. A list of the SAP Insurers Outside Counsel are provided in the attached SAP Insurer Outside Counsel Addendum. "Insurer Receiver Parties" shall refer to SAP's broker and those of SAP Insurers and SAP Insurers outside Counsel that receive Discovery Materials designated as “Confidential Information” or “Highly Confidential Information – Attorneys’ Eyes Only” under the Protective Order ("Designated Material") under this Insurance Carrier Addendum to the Protective Order. In addition, for the purposes of this Addendum only, “Software and Support Materials” means, without limitation, all program updates, software updates, bug fixes, patches, custom solutions, and instructional materials, created or owned by Oracle, or derived from, copied from, or based on any such materials, including, if any, by Defendants, across the entire family of Oracle products (including Oracle Database products, PeopleSoft products, JDE Products, and Siebel products). In addition, “Material Subject to Export Control Laws” includes any material subject to export control laws and regulations of the United States and other relevant export control laws and regulations worldwide (collectively referred to as “export control laws”), and includes Oracle software, Oracle products including software (including object code, source code, interpreted code or any other code), materials incorporating or referring to object code, source code, interpreted code or any other code, Software and Support Materials (including paper fixes), and documentation applying to Oracle software or Oracle products including software, as well as configuration files and translations, and any technical or functional documents (such as architectural plans, project plans, and system diagrams).

II. Insurer Receiver Party Access to Designated Materials

Notwithstanding all provisions contained in the Protective Order, pursuant to this Insurance Carrier Addendum, upon request, the Insurer Receiver Parties shall be provided with copies of Discovery Materials including, but not limited to, Designated Materials, which are in SAP’s possession, custody, or control. SAP Insurers contend, and SAP agrees that this information is considered by the SAP Insurers to be necessary for the SAP Insurers’ evaluation of the allegations in the Action. The SAP Insurers and SAP share a common and mutual interest in the defense of the Action, notwithstanding the SAP Insurers’ ongoing reservation of rights, and the exchange of information between SAP and the SAP Insurers shall not affect any privilege or attorney work-product protection that may apply to such information, or the protections granted by the Protective Order.

a. Access to Materials Designated as "Confidential"

In addition to those persons listed in paragraph 9 of the Protective Order, counsel for a Receiving Party may disclose or make available any Discovery Material designated as "Confidential Information" and/or any information derived from such Discovery Material to the Insurer Receiving Parties including necessary secretarial, clerical, administrative or support staff.

b. Access to Materials Designated as "Highly Confidential"

In addition to those persons listed in paragraph 10 of the Protective Order, counsel for a Receiving Party may disclose or make available any Discovery Material designated as "Highly Confidential – Attorneys' Eyes Only" and/or any information derived from such Discovery Material to the following persons: (1) SAP Insurers Outside Counsel, (2) from each SAP Insurer, 15 individuals designated by name, position, and address (which shall be provided to Oracle) as well as the designated individuals' necessary secretarial, clerical, administrative or support staff, (3) from SAP's broker, 5 individuals designated by name, position, and address (which shall be provided to Oracle) as well as the designated individuals' necessary secretarial, clerical, administrative or support staff; and (4) auditors, or regulators provided the auditor or regulator is provided a copy of the Protective Order and informed that the report is being distributed subject to it, and provided Material Subject to Export Control Laws is not among the categories of information or data provided to the auditor or regulator if such distribution would violate those export control laws. In the event a designated individual should leave the employ of the insurer, reinsurer or broker, a replacement may be named by the relevant insurer, reinsurer, or broker. The number of insurer recipients is intended to be flexible and to the extent an insurer or reinsurer requires greater access, it may seek a modification of the number from the Court.

c. Access Contingent upon Signing the Insurer Declaration of Compliance

With the exception of regulators, each person seeking to receive Designated Materials shall execute an Insurer Declaration of Compliance in the form attached to this Protective Order as Exhibit C prior to receiving access to such materials. The Insurer Declaration of Compliance(s) along with a list of the designated individuals for each SAP Insurer under paragraph II(b) above shall be submitted by electronic mail to holly.house@bingham.com and jennifer.gloss@oracle.com.

III. Additional Provisions Applicable to the Insurer Receiving Parties.

The following provisions shall be added to the Protective Order, but shall only apply with respect to the Insurer Receiving Parties each of which shall have the same rights and obligations, and be subject to the same restrictions, as the Receiving Parties under the Protective Order, with the following caveats:

a. Use of Materials

Subject to the restrictions on access in Section II, an Insurer Receiving Party may use Discovery Material for the purposes of: (i) presentations to, or file review by, supervisors or management at the respective SAP Insurer to evaluate insurance coverage, potential liability and exposure, or to determine insurance payments, provided that the supervisors or management at the respective SAP Insurer receiving or reviewing Discovery Material designated as "Highly Confidential -- Attorneys' Eyes Only" are among the 15 individuals designated by name at that SAP Insurer and which have

been identified to Oracle, (ii) preparation by the Insurer Receiving Party of confidential written analyses, summaries, memoranda or other documents or records derived from Discovery Material for coverage evaluation, the evaluation of potential liability and exposure, the determination of insurance payments and/or the resolution of any non-public coverage dispute, (iii) file review by, preparation of reports for, and responses to requests made by re-insurers, auditors, or regulators, provided that, with the exception of regulators, any such persons sign the Declaration of Compliance attached as Exhibit "C" hereto, and that the signed declaration for each such individual is submitted by electronic mail to holly.house@bingham.com and jennifer.gloss@oracle.com, and provided the Discovery Material is not Material Subject to Export Control Laws if such distribution would violate those export control laws and (iv) responding to court order, subpoena, or like obligation.

If there is a coverage dispute between SAP and an SAP Insurer relating to coverage for this Action, nothing in the Protective Order or Addendum shall preclude or prejudice the SAP Insurer from: (1) requesting Oracle to permit use of its Designated Materials in a coverage proceeding relating to the coverage for this Action, or (2) requesting the Court to modify the Protective Order or Addendum to allow use in a coverage proceeding relating to this Action.

b. Obligations under Paragraph 20

Further, an Insurer Receiving Party's obligations under Paragraph 20 of this Protective Order do not arise until final resolution between SAP and all SAP Insurers of all coverage determinations and issues (and related payments, if any) pertaining to the relevant policies. The Insurer Receiving Party will not be required to return or destroy any materials prepared solely by the Insurer Receiving Party and shall be entitled to retain all information and materials which it is required to retain by regulation or law. However, each Insurer Receiving Party retaining such information and materials shall keep them confidential in the same manner as during the pendency of the Litigation.

c. No Admission

Nothing in the Protective Order or this Addendum shall constitute an admission by the Insurer Receiving Party that any of the claims against SAP are covered, in whole or in part, under any insurance policy. Neither the Protective Order nor this Addendum shall be construed as a waiver or amendment of any terms and/or conditions of any insurance policy, including but not limited to SAP's duties of information and cooperation.

Exhibit C

INSURER DECLARATION OF COMPLIANCE

I, [print or type full name], of [print] or type full address], for [Company name], declare that I have read in its entirety and understand the Stipulated Protective Order (as amended by Exhibit B – Insurance Carrier Addendum) (“Stipulated Protective Order”) that was amended by the United States District Court for the Northern District of California on [date] in the case of Oracle Corporation, et al. v. SAP AG, et al. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order. I promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in compliance with the provisions of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Title: _____

Signature: _____
[signature]