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 18 TOMORROWNOW, INC.

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 D to the  
8 Stipulated Protective Order (“Exhibit D”), titled “SAP Coverage Counsel Addendum,” and its  
9 related acknowledgement form titled “SAP Coverage Counsel Declaration of Compliance”  
10 (“Exhibit E”) shall be made part of the Stipulated Protective Order; and

11 WHEREAS, the Parties have agreed, with the permission of the Court, Exhibits D and E,  
12 attached to this Joint Stipulation and Proposed Order as Attachment 1, shall immediately follow  
13 Exhibit C in the Stipulated Protective Order.

14 **IT IS SO STIPULATED.**

15 DATED: January 6, 2009

JONES DAY

17  
18 By: /s/ Scott Cowan  
Scott Cowan

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

21 In accordance with General Order No. 45, Rule X, the above signatory attests that  
22 concurrence in the filing of this document has been obtained from the signatory below.  
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DATED: January 6, 2009

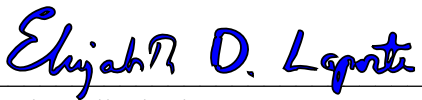
BINGHAM McCUTCHEN LLP

By: /s/ Holly House  
Holly House

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

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Date: January 7, 2010

  
\_\_\_\_\_  
Judge Elizabeth D. Laporte  
United States Magistrate Judge

## **Exhibit D**

### **SAP COVERAGE COUNSEL ADDENDUM**

This is an addendum to the Stipulated Protective Order (“Protective Order”) dated June 6, 2007, and the Amendment to the Stipulated Protective Order (“Protective Order Amendment”) dated November 19, 2009, in the matter Oracle Corp. et al. v. SAP AG, et al. (the “Action”), 07-CV-1658, filed in the United States District Court for the Northern District of California, San Francisco Division, and shall be made part of the Protective Order and Protective Order Amendment.

#### ***I. Definitions***

All capitalized terms herein shall have the same meanings as those terms that are capitalized in the Protective Order and the Protective Order Amendment. In addition, "SAP Coverage Counsel" shall refer to SAP's retained outside counsel who have been retained to provide counsel to SAP as to SAP Insurers and who also receive Discovery Materials designated as “Confidential Information” or “Highly Confidential Information – Attorneys’ Eyes Only” under the Protective Order ("Designated Material") under this SAP Coverage Counsel Addendum to the Protective Order and Protective Order Amendment. SAP Coverage counsel shall also include members of the outside counsel firm, associate attorneys, contract attorneys, paralegals, secretarial staff, clerical and other regular employees. In addition, “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 by SAP AG, SAP America, or SAP TN, 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. SAP Coverage Counsel Access to Designated Materials***

Notwithstanding all provisions contained in the Protective Order and the Protective Order Addendum, pursuant to this SAP Coverage Counsel Addendum, upon request, SAP Coverage Counsel 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 Coverage Counsel will not only use this information to provide counsel to SAP in regard to coverage issues arising from the Action, but will also provide this information where necessary and on behalf of SAP to the Insurer Receiver Parties, as defined in the Protective Order Addendum. 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, by way of SAP Coverage Counsel, 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.

Nothing in this addendum shall be deemed to permit SAP to use any Designated Materials that were created by or owned by Oracle in any litigation between SAP and the SAP Insurers.

*a. Access to Materials Designated as "Confidential"*

In addition to those persons listed in paragraph 9 of the Protective Order and those listed in the Protective Order Addendum, 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 SAP Coverage Counsel 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 and those listed in the Protective Order Addendum, 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 SAP Coverage Counsel.

*c. Access Contingent upon Signing the Coverage Counsel Declaration of Compliance*

Each person seeking to receive Designated Materials shall execute a SAP Coverage Counsel Declaration of Compliance in the form attached to this Protective Order as Exhibit E prior to receiving access to such materials. The SAP Coverage Counsel Declaration of Compliance(s) shall be submitted by electronic mail to [holly.house@bingham.com](mailto:holly.house@bingham.com) and [jennifer.gloss@oracle.com](mailto:jennifer.gloss@oracle.com).

**III. Additional Provisions Applicable to SAP Coverage Counsel.**

The following provisions shall be added to the Protective Order and Protective Order Addendum, and shall apply to SAP Coverage Counsel who shall have the same rights and obligations, and be subject to the same restrictions, as the Receiving Parties under the Protective Order and the Insurer Receiving Parties under the Protective Order Addendum, with the following caveats:

*a. Use of Materials*

Subject to the restrictions on access in Section II, SAP Coverage Counsel may use Discovery Material for the purposes of: (i) preparation and creation of SAP Coverage Counsel 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 and (ii) responding to court order, subpoena, or like obligation.

*b. Obligations under Paragraph 20*

Further, SAP Coverage Counsel's obligations under Paragraph 20 of the 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. SAP Coverage Counsel will not be required to return or destroy any materials prepared solely by SAP Coverage Counsel and shall be entitled to retain all information and materials which it is required to retain by regulation or law. However, where SAP Coverage Counsel retains such information and materials, SAP Coverage Counsel shall keep them confidential in the same manner as during the pendency of the Litigation.

**Exhibit E**

**SAP COVERAGE COUNSEL DECLARATION OF COMPLIANCE**

I, \_\_\_\_\_ [print or type full name],  
counsel for SAP America, Inc., declare that I have read in its entirety and understand the  
Stipulated Protective Order as amended by Exhibit B – Insurance Carrier Addendum and as  
amended by Exhibit E – SAP Coverage Counsel 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]