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

23 ORACLE USA, INC., *et al.*,

24 Plaintiffs,

25 v.

26 SAP AG, *et al.*,

27 Defendants.
 28

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

**STIPULATION TO PERMIT
 DEFENDANTS TO FILE UNDER SEAL
 PLAINTIFFS' DOCUMENTS IN
 SUPPORT OF DEFENDANTS' OFFER
 OF PROOF REGARDING THE AT-RISK
 REPORT AND IMPACT ON DAMAGES
 ANALYSIS**

1 Pursuant to Local Rules 7-11(a) and 79-5(c), Plaintiffs Oracle USA, Inc., Oracle
2 International Corporation, and Siebel System, Inc. (“Plaintiffs”) and Defendants SAP AG, SAP
3 America, Inc., and TomorrowNow, Inc. (“Defendants,” and together with Plaintiffs, the “Parties”)
4 jointly submit this Stipulation to Permit Defendants to File Under Seal Plaintiffs’ Documents in
5 Support of Defendants’ Offer of Proof Regarding the At-Risk Report and Impact on Damages
6 Analysis.

7 WHEREAS, Defendants filed on November 19, 2010 (1) Defendants’ Offer of Proof
8 Regarding the At-Risk Report and Impact on Damages Analysis (“Defendants’ Offer of Proof”);
9 (2) Declaration of Jason McDonell ISO Defendants’ Administrative Motion to Permit Defendants
10 to File under Seal Plaintiffs’ Documents in Support of Defendants’ Offer of Proof; and (3) the
11 [Proposed] Order Granting Defendants’ Administrative Motion to Permit Defendants to File
12 Under Seal Plaintiffs’ Documents in Support of Defendants’ Offer of Proof.

13 WHEREAS, by stipulation of the Parties, Defendants have filed an Administrative Motion
14 to Permit Defendants to File Under Seal Plaintiffs’ Documents in Support of Defendants’ Offer of
15 Proof;

16 WHEREAS the requested relief is necessary and narrowly tailored to protect the
17 confidentiality of the material put at issue by Defendants’ Offer of Proof until such time as the
18 Court makes a final ruling as to confidentiality of the relevant subject matter. Specifically, the
19 following documents and portions of documents contain information designated by Plaintiffs as
20 “Highly Confidential - Attorneys’ Eyes Only” or “Confidential Information” pursuant to the
21 Stipulated Protective Order in this case:

- 22 • Portions of Defendants’ Offer of Proof Regarding the At-Risk Report and Impact on
23 Damages Analysis: portions of 3:18-27, and 4:21-5:4;
- 24 • Exhibit A to Defendants’ Offer of Proof (Trial Exhibit A-0059);
- 25 • Exhibit B to Defendants’ Offer of Proof (Trial Exhibit A-9338); and
- 26 • Exhibit L to Defendants’ Offer of Proof (Clarke Report, at 209-235).

27 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their
28 respective counsel of record, that Defendants be permitted to move for permission to file under

1 seal (1) portions of Defendants' Offer of Proof and (2) Exhibits A (Trial Exhibit A-0059), B
2 (Trial Exhibit A-9338), and L (portions of the Clarke Report), to Defendants' Offer of Proof.
3 While the Parties agree that Defendants' concurrently filed Offer of Proof, as well as exhibits
4 filed in support thereof, may be publicly filed, the Parties also agree that the filing shall not be
5 construed as a waiver of any confidentiality designation or other protection with respect to
6 documents, transcripts, or other information referred to in, or that serve as the basis for, the
7 allegations or arguments made in them.

8 **IT IS SO STIPULATED.**

9 DATED: November 19, 2010

JONES DAY

11 By: /s/ Jason McDonell
12 Jason McDonell

13 Attorneys for Defendants
14 SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

15 In accordance with General Order No. 45, Rule X, the above signatory attests that
16 concurrence in the filing of this document has been obtained from the signatory below.

17 DATED: November 19, 2010

BINGHAM McCUTCHEN LLP

19 By: /s/ Geoffrey M. Howard
20 Geoffrey M. Howard

21 Attorneys for Plaintiffs
22 ORACLE USA, INC., ORACLE
23 INTERNATIONAL CORPORATION,
24 ORACLE EMEA LIMITED, and SIEBEL
25 SYSTEMS, INC.