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14 UNITED STATES DISTRICT COURT
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 ORACLE AMERICA, INC., a Delaware
 18 corporation; ORACLE INTERNATIONAL
 CORPORATION, a California corporation

19 Plaintiffs,

20 v.

21 HEWLETT PACKARD ENTERPRISE
 22 COMPANY, a Delaware corporation; and DOES
 1-50,

23 Defendants.

No. 16-cv-01393-JST

**STIPULATION AND ~~PROPOSED~~
 ORDER REGARDING DOCUMENTS
 AND ELECTRONICALLY STORED
 INFORMATION**

1 The parties have agreed to the terms of this [Proposed] Order Regarding
2 Documents and Electronically Stored Information.

3 **1. Introduction.** The parties have conferred regarding certain matters affecting the
4 discovery of Documents and electronically stored information (“ESI”) and agreed on the
5 following procedures and guidelines regarding the discovery of ESI in this Action (“e-
6 discovery”) as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for
7 the Discovery of Electronically Stored Information, and any other applicable orders and rules.

8 **2. Cooperation.** The parties are aware of the importance the Court places on
9 cooperation and commit to cooperate in good faith throughout the matter consistent with this
10 Court’s Guidelines for the Discovery of ESI.

11 **3. Definitions.** Capitalized terms shall have the meanings ascribed to them in this
12 Definitions Section.

13 (a) “Action” means the above-captioned litigation, *Oracle America, Inc., et*
14 *al. v. Hewlett Packard Enterprise Company*, Case No. 3:16-cv-01393-JST, which is currently
15 pending in the United States District Court for the Northern District of California.

16 (b) “Document(s)” is defined to be synonymous in meaning and equal in
17 scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and includes
18 ESI existing in any medium from which information can be translated into reasonably usable
19 form, including but not limited to email and attachments, word processing documents,
20 spreadsheets, graphics, presentations, images, text files, databases, instant messages, transaction
21 logs, audio and video files, voicemail, internet data, computer logs, text messages, or backup
22 materials.

23 (c) “Extracted Text” means the text extracted from a Native File and includes
24 all header, footer, comment, speaker notes, and document body information.

25 (d) “Metadata” means: (i) information embedded in a Native File that is not
26 ordinarily viewable or printable from the application that generated, edited, or modified such
27 Native File; and (ii) information generated automatically by the operation of a computer or other
28 information technology system when a Native File is created, modified, transmitted, deleted or

1 otherwise manipulated by a user of such system.

2 (e) “Metadata Load File” means: the extracted Metadata values gathered
3 during the process of converting to TIFF ESI from the electronic format of the application in
4 which the ESI is normally created, viewed or modified.

5 (f) “Native File” means ESI in the file type for (or of) the application in
6 which such ESI is normally created, viewed or modified.

7 (g) “OCR” means the optical character recognition file that is created by
8 software used in conjunction with a scanner that is capable of reading text-based Documents and
9 making such Documents searchable using appropriate software.

10 (h) “Producing Party” means a party or non-party that produces Documents or
11 ESI in this Action.

12 (i) “Receiving Party” means a Party that receives Documents or ESI from a
13 Party or non-party in this Action.

14 **4. Applicability.** This stipulation does not constitute a waiver, by any party, of any
15 objection to the production of particular ESI as unduly burdensome or not reasonably accessible.

16 **5. Custodians and Search Terms.** Mindful of the permissible scope of discovery
17 as described in Federal Rule of Civil Procedure 26(b), the parties agree to meet and confer in
18 good faith regarding document custodians and search terms.

19 **6. Format for Production.** Unless the parties agree otherwise, the parties shall
20 work in good faith to produce documents pursuant to the provisions set forth in this paragraph,
21 which shall govern the format for production of ESI; the parties will produce paper and
22 electronic Documents in Tagged Image File Format (“TIFF” or “.TIF”) files, except as provided
23 in paragraphs 17, 18, and 20 below.

24 (a) Each image should have a unique file name, which is the control number
25 of the page. TIFF files shall be produced in single-page Group IV format with a minimum
26 resolution of 300 dpi.

27 (b) If after receiving a production in TIFF, a Receiving Party discovers that a
28 document is illegible or cannot be properly understood in TIFF format, then the Receiving Party

1 may request in writing that the Producing Party produce specific Documents in their native
2 format. Aside from requests relating to a problem with the readability or usability of a
3 previously produced TIFF file, the expenses of reproduction in native format of documents
4 previously produced in TIFF format would be borne by the party making the request. Should the
5 parties not reach agreement after meeting and conferring in good faith, the requesting party may
6 move the Court for such production.

7 (c) Each Document production will be accompanied by two load files: an
8 image load file and a Metadata Load File. Those load files shall be produced in Concordance
9 format (.DAT file using Concordance standard delimiters for the Metadata Load Files, and .OPT
10 file using Concordance standard fields for the image load files).

11 (d) The image load file shall provide image and document break information
12 for the TIFF files produced that correspond to the beginning control number contained in the
13 Metadata Load File. Every TIFF file in each production must be referenced in the production's
14 corresponding image load file. The total number of TIFF files referenced in a production's
15 image load file should match the number of TIFF files in the production.

16 (e) For Documents that do not contain redactions, the Producing Party will
17 produce an Extracted Text file for each electronic Document and an OCR text file for each
18 imaged paper Document. For Documents that contain redactions, the Producing Party will
19 provide an OCR text file for the unredacted portions of such Documents. All non-redacted
20 Documents are to be provided with multi-page searchable text (.TXT) files. The OCR text files
21 and image load files should indicate page breaks to the extent possible.

22 **7. Metadata.** To the extent they are reasonably available, the Metadata values that
23 are to be extracted and produced in the Metadata Load Files, to the extent their production is
24 reasonably possible, are:

25 Metadata from Email:

26 Email Subject

27 Email Author

28 Email Recipient

- 1 Email CC
- 2 Email BCC
- 3 Email Received Date
- 4 Email Sent Date
- 5 Email Received Time
- 6 Email Sent Time
- 7 Email Thread ID (*e.g.*, in MS Outlook, both the thread-index from
- 8 message header and “PR_conversation-index” from message properties)

9 Metadata from Electronic Files:

- 10 File Name
- 11 File Author
- 12 File Created Date
- 13 File Created Time
- 14 File Modified Date
- 15 File Modified Time
- 16 File Extension

17 Metadata for both Email and Electronic Files:

- 18 Custodian/Source
- 19 Attachment Count
- 20 Original Path or Parent Folder (of original item, not including structure of
- 21 capture device)
- 22 MD5 Hash (if generated when processed)
- 23 Native Link
- 24 Page Count
- 25 File Application Type (*e.g.*, Microsoft Excel 2009; PowerPoint; Microsoft
- 26 Word 2007)
- 27 Production Number Begin (ProdBegDoc)
- 28 Production Number End (ProdEndDoc)

1 This list of fields does not create any obligation to create or manually code fields that are not
2 automatically generated for the processing of the ESI or that do not exist as part of the original
3 Metadata of the Document; provided however, the Producing Party must populate the
4 Custodian/Source field for all produced ESI as well as paper Documents converted to electronic
5 form.

6 With respect to ESI gathered from an individual's hard drive or network share, Metadata
7 will be provided in the Custodian/Source field sufficient to identify the individual custodian from
8 whose hard drive or network share such ESI has been gathered. The Producing Party will
9 identify the source for any data that is not collected from an individual's hard drive or network
10 share and is not reasonably identifiable as to source as "company documents" (or some other
11 such identifier of the documents as belonging to the company's central files) in the
12 Custodian/Source field.

13 **8. Processing Specifications.**

14 (a) The preferred time zone of processing ESI is GMT. Care should be taken,
15 however, that any alteration of time zone during processing does not interfere with or alter
16 original Metadata of that ESI. To the extent that a party has already processed ESI using a
17 different time zone, the Producing Party will identify the time zone used in its processing.
18 Parties shall consistently produce all ESI processed using the same time zone and shall identify
19 differences in the time zones used for processing ESI from different custodians if any.

20 (b) When processing ESI for review and for production in TIFF format, the
21 Producing Party will instruct its vendor to force off Auto Date and force on track changes, and
22 comments.

23 **9. Encrypted or Password-Protected ESI.** For any ESI that exists in encrypted
24 format or is password-protected, the Producing Party shall undertake reasonable efforts to
25 provide the Receiving Party a means to gain access to the files. The parties shall meet and
26 confer in an effort to supply reasonably available passwords and other information that will
27 enable the Receiving Party to obtain access as well as provide the Receiving Party with
28 exception report(s).

1 **10. Production of E-Discovery with Attachments.** For all e-discovery, the
2 following fields should be produced and populated as part of the Metadata Load File to provide
3 the parent/child or parent/sibling relationship:

4 Production Number Begin (ProdBegDoc)

5 Production Number End (ProdEndDoc)

6 Production Attachment Range Number Begin (ProdBegAttach)

7 Production Attachment Range Number End (ProdEndAttach)

8 Parent-child relationships (the association between an attachment and its parent Document)
9 should be preserved. Control numbering of a parent Document and any attachments shall be
10 sequential such that a parent Document has the lowest number control number when compared to
11 its attachment or attachments, and should, to the extent reasonably possible, be shown in the
12 document field.

13 **11. Hard-Copy or Paper Documents.** With respect to the production of hard-copy
14 Documents, the parties agree:

15 (a) Hard Copy Documents Will Be Produced in Electronic Format. Hard-
16 copy Documents shall be produced as image files with related OCR text to the extent such
17 Documents are converted into electronic format. At this time, each party contemplates
18 converting all hard-copy Documents into electronic images for production purposes and agrees
19 to address any exceptions with the other parties. The parties shall meet and confer to discuss
20 Documents that present imaging or formatting problems. To the extent exceptions to the
21 foregoing are required, the parties will meet and confer to discuss alternative production
22 requirements, concerns, or formats. A Metadata field entitled “Paper” will be populated by a
23 “Y” for all Documents scanned from hard copy to the extent reasonably possible.

24 (b) Document Unitization. To the extent possible and on a going-forward
25 basis, the parties will endeavor to apply unitization practices consistent with the following
26 description. Each page of a hard-copy Document shall be scanned into an image and, if a
27 Document is more than one page, the unitization of the Document and any attachments shall be
28 maintained as it existed in the original when creating the image file. For Documents that contain

1 affixed notes, the pages will be scanned both with and without the notes and those pages will be
2 treated as part of the same Document. The relationship of Documents in a Document collection
3 (e.g., cover letter and enclosures, e-mail and attachments, binder containing multiple Documents,
4 or other Documents where a parent-child relationship exists between the Documents) shall be
5 maintained through the scanning or conversion process. If more than one level of parent-child
6 relationship exists, Documents will be kept in order, but all will be treated as children of the
7 initial parent Document. Such information shall be produced in the load file in a manner to
8 enable the parent-child relationship among Documents in a Document collection to be
9 reconstituted by the Receiving Party in Concordance.

10 **12. De-duplication.** A party is required to produce only a single copy of any
11 responsive Document. A party may de-duplicate ESI across each party's custodians or sources,
12 but, if that option is exercised, the Producing Party must identify each custodian or source where
13 the Document was located in the Custodian/Source field or a custodian append file. De-
14 duplication will be based on MD5 or SHA-1 hash values, and each party will disclose the
15 methodology it uses to de-duplicate. However, (i) de-duplication shall be performed only at the
16 Document family level so that attachments are not de-duplicated against identical stand-alone
17 versions of such Documents and vice versa; (ii) attachments to emails or other Documents shall
18 not be disassociated from the parent email or Document, even if they are exact duplicates of
19 another Document in the production; and (iii) hard copy Documents may not be eliminated as
20 duplicates of responsive ESI if there is anything written on the hard copy Document that makes it
21 different from the electronic copy. A party may only de-duplicate "exact duplicate" Documents
22 and may not de-duplicate "near duplicate" Documents, both of the quoted terms in this sentence
23 being given their ordinary meaning in the e-discovery field.

24 **13. System and Program Files.** System and program files defined by the National
25 Institute on Standards & Technology, available at <http://www.nist.gov/>, need not be processed,
26 reviewed, or produced. Additional files may be added to the list of excluded files by mutual
27 agreement of the parties.

28

1 **14. Embedded Objects.** Non-image files embedded within documents, such as
2 spreadsheets within a PowerPoint, will be extracted as separate documents and treated like
3 attachments to the document in which they were embedded. Graphic objects embedded within
4 documents or emails, such as logos, signature blocks, and backgrounds need not be extracted as
5 separate documents.

6 **15. Compressed Files.** Compression file types (*e.g.*, .CAB, .GZ, .TAR, .Z, .ZIP)
7 shall be decompressed in a manner that ensures a container within a container is decompressed
8 into the lowest uncompressed elements resulting in individual files. The container file itself shall
9 not be produced.

10 **16. Searches – Key Words and Other Search Methodologies.** To the extent that
11 key words or other methodologies are to be used in limiting the universe of potentially
12 responsive Documents to be reviewed in advance of production, the parties shall meet and confer
13 to develop a mutually agreeable list of search terms and protocols.

14 **17. Production of Excel and Database E-Discovery.** Unless such materials contain
15 privileged information, MS-Excel spreadsheets shall be produced as Native Files and need not be
16 produced as full TIFFs. If such spreadsheets include redacted information, they need not be
17 produced in native format, but shall be produced as TIFFs with the redacted OCR-ed text and
18 applicable Metadata fields set forth in Paragraphs 7 and 10 of this Order.

19 When producing spreadsheets in other than their native formats, the Producing
20 Party shall include all hidden rows, columns, cells, worksheets, data, comments, or formulas, as
21 well as any associated headers or footers.

22 Parties will meet and confer regarding production in a mutually agreeable format
23 of responsive data contained in databases.

24 **18. Production of Media Files.** Unless otherwise mutually agreed by the parties,
25 media files are to be produced in the native media file format in which they were maintained in
26 the ordinary course of business unless redactions are needed. If redactions are needed, the
27 redacted media file may be produced either in the original native format or in a standard media
28 format.

1 **19. Control Numbering for Productions in TIFF Format.** Each page of an
2 e-discovery Document produced in TIFF format will contain a legible control number that is
3 unique across the Document production; has a constant length (0- padded) across the production;
4 and is sequential within a given Document. Each page of a produced e-discovery Document will
5 also contain a confidentiality designation, if applicable. If a control number or set of control
6 numbers is skipped in a production, the Producing Party will notify the Receiving Party in its
7 cover letter to the production that the production contains skipped control numbers. Both the
8 control number and confidentiality designation shall be placed on the page image in a manner
9 that does not conceal or interfere with any information contained on the page. No other stamp or
10 information will be placed on a Document other than a control number, confidentiality
11 designation, and any redactions. This paragraph does not apply to Excel spreadsheets or other
12 files produced in native electronic format.

13 **20. Native File Production.** Any file produced in its native format is to be named
14 with its corresponding control number and extension and produced with a corresponding
15 placeholder image TIFF file that bears a confidentiality endorsement (if applicable), BATES
16 number, and language referencing the Native File production (*e.g.*, “Produced in Native
17 Format”). If any produced Native File is Confidential or Attorneys’ Eyes Only under the terms
18 of the Stipulated Protective Order, the file name should include the corresponding confidentiality
19 designation following the control number to the extent reasonably possible. For example, Native
20 Files that are designated “Confidential” must be named following the pattern,
21 “ControlNumber_Confidential.extension,” Native Files that are designated “Attorneys’ Eyes
22 Only” must be named following the pattern “ControlNumber_AEO.extension.” If a control
23 number or set of control numbers is skipped in a production, the Producing Party will notify the
24 Receiving Party in its cover letter to the production that the production contains skipped control
25 numbers. Any file produced in native format should be produced with its corresponding load
26 file, including a coding field containing its original file name. The load file shall contain a link
27 to any Native File produced.

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1 **21. Redacted E-Discovery.** To the extent a Producing Party redacts any Document,
2 such redaction shall be clearly marked on the TIFF image of the Document. The party shall also
3 either provide (a) a list identifying by control number those pages that have been redacted and all
4 reasons for such redactions or (b) a database field populated with an indicator of redaction. Any
5 failure to redact information does not automatically waive any right to claims of privilege or
6 privacy or any objection, including relevancy, as to the specific Document or any other
7 Document that is or will be produced.

8 **22. Inadvertently Produced Documents.** Inadvertently produced Documents,
9 testimony, information, or things that are protected from disclosure under the attorney-client
10 privilege, work-product doctrine, or any other applicable privilege, protection, or immunity from
11 disclosure shall be handled using the procedures set forth in the Stipulated Protective Order (ECF
12 No. 73).

13 **23. Confidential Material.** ESI that contains Confidential or Attorneys’ Eyes Only
14 information shall be handled using the procedures set forth in the Stipulated Protective Order
15 (ECF No. 73).

16 **24. Production Media.** The parties agree to produce Documents on CD-ROM,
17 DVD, external hard drive, or such other readily accessible computer or electronic media on
18 which the parties may hereafter agree (the “Production Media”). Each item of Production Media
19 shall identify on the Production Media: (1) who the Producing Party is (*e.g.*, Oracle America,
20 Inc.; or Hewlett Packard Enterprise Company); (2) the control number range on that Production
21 Media (*e.g.*, “ORCL-001 through ORCL-002”); (3) the case number of the case in which it is
22 produced; and (4) the production date. Notwithstanding the foregoing, the parties may produce
23 Documents via SFTP or similarly secure facility, in which case, the required production related
24 information set forth in the preceding sentence must be provided in a cover letter accompanying
25 a party’s instructions on how another party can access its document production.

26 **25. Original Documents.** The Producing Parties will retain the original Documents.
27 Subject to preservation of appropriate privileges and other protections, the parties will consider
28 reasonable requests, after any necessary meet-and-confer, to make originals of any produced

1 hard-copy Document available for inspection by the requesting party in the form in which such
2 Documents are kept in the ordinary course of business.

3 **26. Costs.** Each party shall bear its own e-discovery costs unless otherwise ordered
4 by the Court. This document does not purport to alter any cost shifting determinations governed
5 by the Federal Rules of Civil Procedure.

6 **27. Modifications.** In the event of individual issues that arise with regard to the
7 identification and production of ESI and ESI-related information, any practice or procedure
8 provided in this Order as to such identification or production may be varied by written agreement
9 of the parties, where such variance is deemed appropriate to facilitate the timely and economical
10 exchange of Documents, ESI, or ESI-related information. The parties shall meet and confer in
11 the event of any dispute over the need for or nature of such variance in practice or procedure in
12 an effort to reach agreement prior to informing the Court of any unresolved issues.

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1 **IT IS SO STIPULATED.**

2 Dated: August 11, 2016

LATHAM & WATKINS LLP

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By: /s/ Christopher S. Yates
Christopher S. Yates
Attorneys for Plaintiffs
Oracle America, Inc. and
Oracle International Corporation

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7 Dated: August 11, 2016

GIBSON, DUNN & CRUTCHER LLP

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By: /s/ Blaine H. Evanson
Blaine H. Evanson
Attorneys for Hewlett Packard Enterprise
Company

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13 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

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15 DATED: August 16, 2016

By: _____

Judge Jon S. Tigar

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18 **ATTESTATION OF CONCURRENCE IN**

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Pursuant to Civil Local Rule 5-1(i)(3), I declare that concurrence has been

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obtained from each of the above signatories to file this document with the Court.

21

22 Dated: August 11, 2016

LATHAM & WATKINS LLP

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By: /s/ Christopher S. Yates
Christopher S. Yates
Attorneys for Plaintiffs
Oracle America, Inc. and
Oracle International Corporation

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