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**** E-filed May 5, 2010 ****

6 Attorneys for Plaintiff
 7 ARIBA, INC.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

11 ARIBA, INC., a Delaware corporation,
 12 Plaintiff,

13 v.

14 NATIONAL GRID CORPORATION OF
 THE PHILIPPINES, a Philippines
 15 corporation,

16 Defendant.

CASE NO. C09 04495 RS

**STIPULATED PROTECTIVE ORDER
 AS AMENDED BY THE COURT**

Judge: The Honorable **Richard Seeborg**

Magistrate Judge: The Honorable **Howard R. Lloyd**

18 1. PURPOSES AND LIMITATIONS

19 Disclosure and discovery activity in this action are likely to involve production of
 20 confidential, proprietary, or private information for which special protection from public
 21 disclosure and from use for any purpose other than prosecuting this litigation would be
 22 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
 23 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
 24 blanket protections on all disclosures or responses to discovery and that the protection it affords
 25 extends only to the limited information or items that are entitled under the applicable legal
 26 principles to treatment as confidential. The parties further acknowledge, as set forth in Section
 27 10, below, that this Stipulated Protective Order creates no entitlement to file confidential
 28 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and

1 reflects the standards that will be applied when a party seeks permission from the court to file
2 material under seal.

3 2. DEFINITIONS

4 2.1 Party: any party to this action, including all of its officers, directors,
5 employees, consultants, retained experts, and outside counsel (and their support staff).

6 2.2 Disclosure or Discovery Material: all items or information, regardless of
7 the medium or manner generated, stored, or maintained (including, among other things,
8 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
9 responses to discovery in this matter.

10 2.3 “Confidential” Information or Items: information (regardless of how
11 generated, stored or maintained) or tangible things that qualify for protection under standards
12 developed under F.R.Civ.P. 26(c).

13 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
14 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
15 nonparty would create a substantial risk of serious injury that could not be avoided by less
16 restrictive means.

17 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
18 from a Producing Party.

19 2.6 Producing Party: a Party or non-party that produces Disclosure or
20 Discovery Material in this action.

21 2.7 Designating Party: a Party or non-party that designates information or
22 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
23 Confidential — Attorneys’ Eyes Only.”

24 2.8 Protected Material: any Disclosure or Discovery Material that is
25 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

26 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
27 retained to represent or advise a Party in this action.

28 2.10 House Counsel: attorneys who are employees of a Party.

1 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
2 as their support staffs).

3 2.12 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
5 witness or as a consultant in this action and who is not a past or a current employee of a Party or
6 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
7 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
8 trial consultant retained in connection with this litigation.

9 2.13 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
11 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
12 subcontractors.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only Protected Material
15 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
16 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
17 parties or counsel to or in court or in other settings that might reveal Protected Material.

18 4. DURATION

19 Even after the termination of this litigation, the confidentiality obligations imposed by
20 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
21 order otherwise directs. **For a period of six months after the final termination of this action, this
22 court will retain jurisdiction to enforce the terms of the this protective order.**

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or non-party that designates information or items for protection under this Order must
25 take care to limit any such designation to specific material that qualifies under the appropriate
26 standards. A Designating Party must take care to designate for protection only those parts of
27 material, documents, items, or oral or written communications that qualify – so that other
28 portions of the material, documents, items, or communications for which protection is not

1 warranted are not swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that
3 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
4 unnecessarily encumber or retard the case development process, or to impose unnecessary
5 expenses and burdens on other parties), expose the Designating Party to sanctions.

6 If it comes to a Party's or a non-party's attention that information or items that it
7 designated for protection do not qualify for protection at all, or do not qualify for the level of
8 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
9 withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
12 material that qualifies for protection under this Order must be clearly so designated before the
13 material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (apart from transcripts of
16 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top
18 of each page that contains protected material. If only a portion or portions of the material on a
19 page qualifies for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
21 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
22 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

23 A Party or non-party that makes original documents or materials available
24 for inspection need not designate them for protection until after the inspecting Party has indicated
25 which material it would like copied and produced. During the inspection and before the
26 designation, all of the material made available for inspection shall be deemed "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
28 documents it wants copied and produced, the Producing Party must determine which documents,

1 or portions thereof, qualify for protection under this Order, then, before producing the specified
2 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that
4 contains Protected Material. If only a portion or portions of the material on a page qualifies for
5 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
6 making appropriate markings in the margins) and must specify, for each portion, the level of
7 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY”).

9 (b) for testimony given in deposition or in other pretrial or trial
10 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
11 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
12 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of
14 testimony that is entitled to protection, and when it appears that substantial portions of the
15 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
16 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
17 have up to 20 days to identify the specific portions of the testimony as to which protection is
18 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
20 are appropriately designated for protection within the 20 days shall be covered by the provisions
21 of this Stipulated Protective Order.

22 Transcript pages containing Protected Material must be separately bound
23 by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL”
24 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
25 nonparty offering or sponsoring the witness or presenting the testimony.

26 (c) for information produced in some form other than documentary,
27 and for any other tangible items, that the Producing Party affix in a prominent place on the
28 exterior of the container or containers in which the information or item is stored the legend

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
2 portions of the information or item warrant protection, the Producing Party, to the extent
3 practicable, shall identify the protected portions, specifying whether they qualify as
4 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
7 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
8 under this Order for such material. If material is appropriately designated as “Confidential” or
9 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the
10 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
11 that the material is treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
14 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
15 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
16 waive its right to challenge a confidentiality designation by electing not to mount a challenge
17 promptly after the original designation is disclosed.

18 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
19 Designating Party’s confidentiality designation must do so in good faith and must begin the
20 process by conferring directly (in voice to voice dialogue; other forms of communication are not
21 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
22 explain the basis for its belief that the confidentiality designation was not proper and must give
23 the Designating Party an opportunity to review the designated material, to reconsider the
24 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
25 designation. A challenging Party may proceed to the next stage of the challenge process only if it
26 has engaged in this meet and confer process first.

27 6.3 Judicial Intervention. A Party that elects to press a challenge to a
28 confidentiality designation after considering the justification offered by the Designating Party

1 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
2 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
3 challenge. Each such motion must be accompanied by a competent declaration that affirms that
4 the movant has complied with the meet and confer requirements imposed in the preceding
5 paragraph and that sets forth with specificity the justification for the confidentiality designation
6 that was given by the Designating Party in the meet and confer dialogue.

7 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
9 material in question the level of protection to which it is entitled under the Producing Party's
10 designation.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a non-party in connection with this case only for
14 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
15 disclosed only to the categories of persons and under the conditions described in this Order.
16 When the litigation has been terminated, a Receiving Party must comply with the provisions of
17 section 11, below (FINAL DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons authorized under
20 this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
23 disclose any information or item designated CONFIDENTIAL only to:

24 (a) the Receiving Party's Outside Counsel of record in this action, as
25 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
26 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
27 attached hereto as Exhibit A;

28 (b) the officers, directors, and employees (including House Counsel)

1 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who
2 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

3 (c) experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
5 Bound by Protective Order" (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters, their staffs, and professional vendors to whom
8 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
9 Bound by Protective Order" (Exhibit A);

10 (f) during their depositions, witnesses in the action to whom
11 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by
12 Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
13 depositions that reveal Protected Material must be separately bound by the court reporter and
14 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

15 (g) the author of the document or the original source of the
16 information.

17 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
18 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by
19 the Designating Party, a Receiving Party may disclose any information or item designated
20 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as
22 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
23 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
24 attached hereto as Exhibit A;

25 (b) House Counsel of a Receiving Party (1) to whom disclosure is
26 reasonably necessary for this litigation, and (2) who has signed the "Agreement to Be Bound by
27 Protective Order" (Exhibit A);]

28 (c) Experts (as defined in this Order) (1) to whom disclosure is

1 reasonably necessary for this litigation; and (2) who have signed the “Agreement to Be Bound by
2 Protective Order” (Exhibit A);

3 (d) the Court and its personnel;

4 (e) court reporters, their staffs, and professional vendors to whom
5 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
6 Bound by Protective Order” (Exhibit A); and

7 (f) the author of the document or the original source of the
8 information.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION.

11 If a Receiving Party is served with a subpoena or an order issued in other litigation that
12 would compel disclosure of any information or items designated in this action as
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
14 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
15 and in no event more than three court days after receiving the subpoena or order. Such
16 notification must include a copy of the subpoena or court order.

17 The Receiving Party also must immediately inform in writing the Party who caused the
18 subpoena or order to issue in the other litigation that some or all the material covered by the
19 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
20 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
21 caused the subpoena or order to issue.

22 The purpose of imposing these duties is to alert the interested parties to the existence of
23 this Protective Order and to afford the Designating Party in this case an opportunity to try to
24 protect its confidentiality interests in the court from which the subpoena or order issued. The
25 Designating Party shall bear the burdens and the expenses of seeking protection in that court of
26 its confidential material – and nothing in these provisions should be construed as authorizing or
27 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

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1 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
7 this Order, and (d) request such person or persons to execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 10. FILING PROTECTED MATERIAL. Without written permission from the
10 Designating Party or a court order secured after appropriate notice to all interested persons, a
11 Party may not file in the public record in this action any Protected Material. A Party that seeks to
12 file under seal any Protected Material must comply with Civil Local Rule 79-5.

13 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
14 Producing Party, within sixty days after the final termination of this action, each Receiving Party
15 must return all Protected Material to the Producing Party. As used in this subdivision, “all
16 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
17 reproducing or capturing any of the Protected Material. With permission in writing from the
18 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
19 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party
20 must submit a written certification to the Producing Party (and, if not the same person or entity,
21 to the Designating Party) by the sixty day deadline that identifies (by category, where
22 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
23 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of
24 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel
25 are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
26 memoranda, correspondence or attorney work product, even if such materials contain Protected
27 Material. Any such archival copies that contain or constitute Protected Material remain subject
28 to this Protective Order as set forth in Section 4 (DURATION), above.

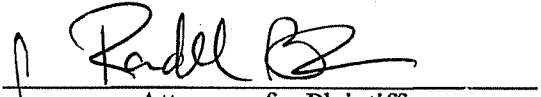
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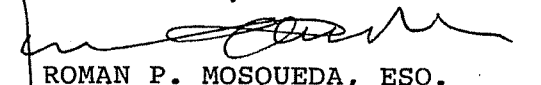
12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

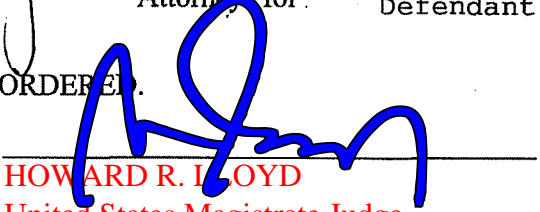
12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: May 3, 2010 
Attorneys for Plaintiff

DATED: April 28, 2010 
ROMAN P. MOSQUEDA, ESQ.
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 5, 2010 
HOWARD R. LLOYD
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for
6 the Northern District of California on [date] in the case of _____ [insert formal name of
7 **the case and the number and initials assigned to it by the court**]. I agree to comply with and
8 to be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Stipulated Protective Order.

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]

27
28