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 15 Oracle America, Inc.

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA

18 ORACLE AMERICA, INC.  
 19 Plaintiff,  
 20 v.  
 21 INNOVATIVE TECHNOLOGY  
 22 DISTRIBUTORS LLC, HDLOGIX, INC.,  
 23 VINCENT JAMES SPINELLA, LINDA  
 24 SPINELLA, and BRIAN CONWAY,  
 25 Defendants.

CASE NO. 5:11-CV-01043-LHK (HRL)  
 Consolidated for all purposes with  
 CASE NO.: 5:11-CV-02135-LHK

**AMENDED STIPULATED PROTECTIVE  
 ORDER**

1           **WHEREAS** during the course of this action, the parties and certain non-parties may  
2 be subject to discovery requests and/or proceedings that seek the disclosure of information that the  
3 party or non-party to whom the request is directed considers to be confidential and/or proprietary.

4           **WHEREAS** the parties wish to preserve the confidentiality of such information  
5 through the use of a Protective Order.

6           **IT IS THEREFORE HEREBY STIPULATED AND AGREED**, by and between  
7 counsel for Innovative Technology Distributors, LLC (“ITD”), Oracle Corporation and Oracle  
8 America, Inc. (jointly, “Oracle”), subject to the approval of the Court, that the following Order shall  
9 govern the handling of documents, depositions, deposition exhibits, interrogatory responses,  
10 admissions and any other information or material produced, given or exchanged by and among the  
11 parties and any non-parties to this litigation (including, without limitation, any non-party that seeks  
12 to intervene or to object to any of the proceedings in the litigation) in connection with discovery in  
13 this litigation.

14           **A.     Designated Material**

15           1.     The parties may designate documents produced, testimony given, or any  
16 other materials exchanged in connection with this action as “Confidential” or “Attorneys’ Eyes  
17 Only” under the terms of this Order and Fed. R. Civ. P. 26(c).

18           2.     “**Confidential**” shall mean all documents and testimony, and all information  
19 contained therein, and other information designated as confidential, if such documents or testimony  
20 contain trade secrets, proprietary business information, competitively sensitive information, or any  
21 other non-public business information, the disclosure of which would, in the good faith judgment  
22 of the party designating the material as confidential, be detrimental to the conduct of that party’s  
23 business or the business of any of that party’s customers or clients if the material becomes public.

24           3.     “**Attorneys’ Eyes Only**” shall mean all documents and testimony, and all  
25 information contained therein, and other information designated as “Attorneys’ Eyes Only,” if such  
26 documents or testimony contain highly sensitive non-public business or financial information, the  
27 disclosure of which would, in the good faith judgment of the party designating the material as  
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1 “Attorneys’ Eyes Only,” cause serious and irreparable harm to that party’s business or the business  
2 of any of that party’s customers or clients if the material is disclosed to persons allowed to see  
3 Confidential material beyond the persons specified in Section B.2 below. The parties currently  
4 believe that there is little, if any, material that falls into this category, and therefore anticipate that  
5 this designation will be used very sparingly. Information that is already publicly available may not  
6 be designated as “Confidential” or “Attorneys’ Eyes Only.”

7 4. **“Producing Party”** shall mean the parties to this action and any non-parties  
8 producing “Confidential” or “Attorneys’ Eyes Only” information in connection with depositions,  
9 document production or otherwise, or the party asserting the confidentiality privilege, as the case  
10 may be.

11 5. **“Receiving Party”** shall mean the parties to this action and any non-parties  
12 receiving “Confidential” or “Attorneys’ Eyes Only” information in connection with depositions,  
13 document production, or otherwise.

14 6. The Receiving Party may, at any time, notify the Producing Party that the  
15 Receiving Party does not concur in the designation of a document or other material as  
16 “Confidential” or “Attorneys’ Eyes Only.” If the Receiving Party contends that any document or  
17 other material designated as “Confidential” or “Attorneys’ Eyes Only” is not entitled to  
18 confidential treatment, the Receiving Party shall give written notice to the party who designated the  
19 material, specifically identifying the challenged material. The designating party, by its counsel,  
20 shall respond in writing within 5 days of receipt of the written request, or within such other period  
21 of time as may be designated by order of the Court or agreement of the parties. If the designating  
22 party refuses to remove the “Confidential” or “Attorneys’ Eyes Only” designation, its written  
23 response shall state the reasons for this refusal. If the challenge to the confidential designation is  
24 not resolved after a good faith meet and confer, the party challenging the designation may move  
25 before the Court for an order declassifying those documents or materials. If no such motion is  
26 filed, such documents or materials shall continue to be treated as designated by the Producing  
27 Party. If such a motion is filed, the documents or other materials shall be deemed as designated by  
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1 the Producing Party unless and until the Court rules otherwise.

2 **B. Access to Confidential Information**

3 1. Except with the prior written consent of the Producing Party or by Order of  
4 the Court, “**Confidential**” information shall not be furnished, shown or disclosed to any person or  
5 entity except to:

- 6 a. Personnel of ITD or Oracle involved in the litigation of this matter and  
7 who have been advised of their obligations hereunder;
- 8 b. Counsel of record for the parties to this action and their associated  
9 attorneys, paralegals and other professional personnel (including  
10 support staff) who are directly assisting such counsel in the preparation  
11 of this action for trial or other proceedings herein, are under the  
12 supervision or control of such counsel, and who have been advised by  
13 such counsel of their obligations hereunder, and Jeff Ross, Oracle’s  
14 Managing Counsel, Debbie Miller, Oracle’s Director of Litigation, and  
15 Dorian Daley, Oracle’s General Counsel;
- 16 c. Expert witnesses or consultants retained by the parties or their counsel  
17 to furnish technical or expert services in connection with this action or  
18 to give testimony with respect to the subject matter of this action at the  
19 trial of this action or other proceeding herein; provided, however, that  
20 such Confidential information is furnished, shown or disclosed in  
21 accordance with Paragraph (B)(5) below;
- 22 d. The Court and court personnel;
- 23 e. An officer before whom a deposition is taken, including stenographic  
24 and video reporters and any necessary secretarial, clerical or other  
25 personnel of such officer;
- 26 f. Trial and deposition witnesses;
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- 1 g. Any person indicated on the face of a document to be the author,  
2 addressee, or a copy recipient of the document;
- 3 h. Vendors with whom counsel of record for the parties to this litigation  
4 have contracted for purely clerical functions, such as the copying of  
5 documents;
- 6 i. Mock jurors and jury consultants who have been engaged by any party  
7 and/or a party's consultant in preparation for trial. For any jury  
8 research, an appropriate screening process must be used to assure that  
9 the jury consultant(s) and mock jurors chosen for any mock jury  
10 presentation are not current or former officers, directors, employees or  
11 consultants of any party or any direct competitors of any party. Each  
12 jury consultant and/or mock jurors must agree in writing to be bound  
13 by this Order by signing and undertaking the form of Exhibit A to this  
14 Order; and
- 15 j. Any other person agreed to by the parties.

16 2. Except with the prior written consent of the Producing Party or by Order of  
17 the Court, "**Attorneys' Eyes Only**" information shall not be furnished, shown or disclosed to any  
18 person or entity except to those persons listed above in Paragraph (B)(1) under item (b) (with the  
19 exception of Dorian Daley), item (c) (subject to Paragraph (B)(5) below), item (d), item (e), item (g),  
20 and item (h). Attorneys' Eyes Only information may be furnished, shown or disclosed to any person  
21 or entity listed above under Paragraph (B)(1)(f) if that person or entity is (i) an author, addressee, or  
22 a copy recipient of the document, or (ii) an employee, officer, or director of the Producing Party.  
23 For any person or entity under Paragraph (B)(1)(f) that is not within the scope of the preceding  
24 sentence, Attorneys' Eyes Only information may be furnished, shown or disclosed to such person or  
25 entity only (i) with the prior written consent of the Producing Party or by Court Order, and (ii) after  
26 the person or entity has signed Exhibit A attached hereto and agreed to comply with and be bound by  
27 its terms.

1           3.       Confidential and Attorneys' Eyes Only information shall be utilized by the  
2 Receiving Party and/or its counsel, as applicable, only for purposes of this litigation and for no other  
3 purposes.

4           4.       With respect to any information produced by ITD on an "Attorneys' Eyes  
5 Only" basis, Jeff Ross and Debbie Miller will take all necessary steps to ensure that any such  
6 Attorneys' Eyes Only documents are not available for inspection by other employees within Oracle,  
7 and such Attorneys' Eyes Only documents shall not be stored on an Oracle server or computer  
8 system that could be accessed by other Oracle employees.

9           5.       Before any disclosure of Confidential or Attorneys' Eyes Only information is  
10 made to an expert witness or consultant pursuant to Paragraph (B)(1)(c) above, counsel for the  
11 Receiving Party shall obtain from the expert, the expert's written agreement, in the form of Exhibit  
12 A attached hereto, to comply with and be bound by its terms. Confidential or Attorneys' Eyes Only  
13 information may be provided to an expert witness or consultant to the extent necessary for such  
14 expert or consultant to prepare a written opinion, to prepare to testify, or to assist counsel in the  
15 prosecution or defense of this litigation, *provided that* such expert or consultant (i) is not currently  
16 an employee of, or advising or discussing employment with, or consultant to, any party to or any  
17 competitor or potential transaction counterparty of any party to this litigation, as far as the expert or  
18 consultant can reasonably determine, and (ii) is using said Confidential or Attorneys' Eyes Only  
19 information solely in connection with this litigation.

20           **C.       Designation Of Materials**

21           The designation of materials as "Confidential" or "Attorneys' Eyes Only" for  
22 purposes of this Order shall be made in the following manner by any Producing Party:

23           1.       In the case of documents or other materials (apart from depositions or other  
24 pretrial testimony), by affixing the legend "Confidential" or "Attorneys' Eyes Only" to each page  
25 containing any Confidential or Attorneys' Eyes Only information, except that in the case of multi-  
26 page documents bound together by a staple or other permanent binding, the word(s) "Confidential"  
27 or "Attorneys' Eyes Only" need only be stamped on the first page of the document in order for the  
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1 entire document to be treated as Confidential or Attorneys' Eyes Only; provided that the failure to  
2 designate a document as "Confidential" or "Attorneys' Eyes Only" does not constitute a waiver of  
3 such claim, and a Producing Party may so designate a document after such document has been  
4 produced, with the effect that such document is thereafter subject to the protections of this Order.

5           2.       In the case of depositions or other pretrial testimony, (a) by a statement on the  
6 record, by counsel, at the time of such disclosure; or (b) by written notice, sent to all parties within 5  
7 days after receiving a copy of the transcript thereof, and in both of the foregoing instances, by  
8 directing the court reporter that the appropriate confidentiality legend be affixed to the first page and  
9 all portions of the original and all copies of the transcript containing any Confidential or Attorneys'  
10 Eyes Only material. Unless otherwise stated on the record, all depositions and other pretrial  
11 testimony shall be deemed to be "Confidential" until the expiration of the fifth day after counsel  
12 receives a copy of the transcript thereof, after which time such deposition or pretrial testimony shall  
13 be treated in accordance with its designation, if any. The parties may modify this procedure for any  
14 particular deposition, through agreement on the record at such deposition, without further order of  
15 the Court.

16           **D.       Inadvertent Production Of Privileged Materials**

17           1.       If information subject to a claim of attorney-client privilege, attorney work  
18 product or any other ground on which production of such information should not be made to any  
19 party is nevertheless inadvertently produced to a party or parties, Federal Rule of Evidence 502(b)  
20 and Federal Rule of Civil Procedure 26(b)(5)(B) shall apply.

21           2.       The failure of a party at a deposition to challenge the assertion of any  
22 privilege, work-product protection or immunity over any document shall not prejudice the right of  
23 such party to challenge the assertion of any such privilege or immunity in accordance with the other  
24 procedures described in this paragraph.

25           **E.       Other Items**

26           1.       If any party intends to file with the Court materials that have been designated  
27 as Confidential or Attorneys' Eyes Only, the filing party must comply with Local Rule 79-5. Prior  
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1 to any dispositive motion hearings and/or trial in this matter, counsel for the parties shall meet and  
2 confer to negotiate a proposal regarding the treatment of Confidential or Attorneys' Eyes Only  
3 information proposed to be used at such hearing or trial. Ultimately, the determination of treatment  
4 of Confidential or Attorneys' Eyes Only information at such hearing or trial will be determined by  
5 the Court.

6           2.       The parties to this action agree that the production of any discovery material  
7 by any non-party shall be subject to and governed by the terms of this Order.

8           3.       The parties and any other persons subject to the terms of this Order agree that  
9 the Court shall retain jurisdiction over them for the purpose of enforcing this Order.

10           4.       Upon termination of this litigation, any appeal or the expiration of the right to  
11 appeal, all originals and copies of any Confidential or Attorneys' Eyes Only information shall either  
12 be destroyed or returned to the Producing Party.

13           5.       Nothing in this Order shall prevent any party or other person from seeking  
14 modification of this Order or from objecting to discovery that it believes to be otherwise improper.  
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16  
17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18  
19 Dated: March 14, 2012

BRYAN CAVE LLP

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21 By: /s/ Meryl Macklin

Meryl Macklin

Attorneys for Plaintiff Oracle America, Inc.

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23  
24 Dated: March 14, 2012

GCA LAW PARTNERS LLP

25 By: /s/ Valerie M. Wagner

Valerie M. Wagner

Attorneys for Defendant Innovative Technology  
Distributors LLC.  
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1 **ATTESTATION**

2 I, Meryl Macklin, am counsel for Oracle America, Inc. I am the registered ECF user  
3 whose username and password are being used to file this AMENDED STIPULATED  
4 PROTECTIVE ORDER. In compliance with General Order 45, Section X(B), I hereby attest that  
5 the above-identified counsel concurred in this filing.

6  
7 Dated: March 14, 2012

BRYAN CAVE LLP

8 By: /s/ Meryl Macklin

9 Meryl Macklin

10 Attorneys for Plaintiff Oracle America, Inc.  
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**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: March 19, 2012



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Hon. Lucy H. Koh  
United States District Judge

1 **EXHIBIT A**

2  
3 I have been given a copy of the Amended Stipulated Protective Order entered in the  
4 consolidated actions titled *Oracle America, Inc. v. Innovative Technology Distributors, Inc.*, Civil  
5 Action Nos. 11-CV-01043 and 11-CV-02135 (LHK), pending in the United States District Court  
6 for the Northern District of California.. I have read and understand the terms of the Order. I  
7 understand that unauthorized disclosure of “Confidential” or “Attorneys’ Eyes Only” information  
8 will constitute a violation of the Order and that the parties reserve the right to seek appropriate  
9 redress, including sanctions, from the Court for willful violations thereof. With full knowledge of  
10 the terms and requirements of the Order, I agree to be bound by its terms. I agree that I shall not  
11 disclose to others, except in accordance with the Order, such information or documents, and that  
12 such information or documents shall be used only for the purpose of the legal proceeding in which  
13 the documents were produced. I further agree and attest to my understanding that my obligation to  
14 honor the confidentiality of such information or documents will continue even after the termination  
15 of this legal proceeding.

16 I agree to subject myself to the jurisdiction of the United States District Court for  
17 the Northern District of California for the purposes of enforcement of this Order.

18  
19 Dated: \_\_\_\_\_

By: \_\_\_\_\_