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CLERK OF DISTRICT COURT
U.S. DISTRICT COURT
SAN FRANCISCO, CALIF.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO JUDICIAL DISTRICT

UNITED STATES OF AMERICA, et al.,
Plaintiffs,
v.
ORACLE CORPORATION,
Defendant.

CASE NO. C 04-0807 VRW

STIPULATED PROTECTIVE ORDER

In the interest of ensuring an efficient and prompt resolution of this action and of protecting confidential information from improper disclosure, the undersigned hereby stipulate, subject to approval and entry by the Court, to the following Protective Order issued pursuant to Fed. R. Civ. Proc. R. 26(c):

A. DEFINITIONS

1. As used herein:

a. "This action" means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

b. "Party" means a plaintiff or a defendant in this action.

c. "Protected third party" means a non-party that produced or produces any investigation material or litigation material to a party.

d. "Investigation material" means any information, documents, testimony, declarations, oral examination transcripts, depositions, presentations, or other materials produced to a party in connection with plaintiff Department of Justice's or plaintiff States' investigations of the matters at issue in this action, regardless of whether those materials are produced

1 voluntarily or in response to a Civil Investigative Demand, subpoena, or other formal or informal
2 discovery process.

3 e. "Litigation material" means information, documents, testimony,
4 declarations, oral examination transcripts, depositions, presentations, or any other materials
5 produced to a party in connection with this action, regardless of whether those materials are
6 produced voluntarily or in response to a Civil Investigative Demand, subpoena, or other formal
7 or informal discovery process.

8 f. "Confidential information" means any party's or protected third party's
9 trade secret or other confidential research, development, or commercial information, as such
10 terms are used in Fed. R. Civ. P. 26(c)(7).

11 g. "Protected information" means information designated as "HIGHLY
12 CONFIDENTIAL" under paragraphs 2, below.

13 h. "Produce" means directly or indirectly show, divulge, reveal, disclose,
14 describe, transmit, publish or otherwise communicate, in whole or in part.

15 i. "Document" is defined as the term is used in Fed. R. Civ. P. 34(a).

16 **B. DESIGNATION OF PROTECTED INFORMATION**

17 2. A party or protected third party may designate as "HIGHLY CONFIDENTIAL"
18 any investigation materials or litigation materials it produced or produces, either voluntarily or
19 pursuant to discovery in this action, to any party in connection with this action, to the extent such
20 information constitutes confidential information as defined in this Order. Such designations
21 shall constitute a representation to the Court that such party or protected person (and counsel, if
22 any) in good faith believes that the information so designated constitutes confidential
23 information.

24 3. Investigation materials or litigation materials that a party or protected third party
25 seeks to designate as "HIGHLY CONFIDENTIAL" in accordance with this Order shall be
26 designated as such by placing on or affixing to the document or transcript containing confidential
27 information (in such a manner as will not interfere with the document's legibility), the
28 designation "HIGHLY CONFIDENTIAL" as appropriate, or any other appropriate notice,

1 together with an indication of the portion or portions of the document considered to be
2 confidential information. With respect to electronic documents, the party or protected third party
3 at the time such information is produced shall specify in writing the information that is
4 "HIGHLY CONFIDENTIAL." Investigation material previously produced to a party shall be
5 designated as "HIGHLY CONFIDENTIAL" by forwarding a letter to all parties identifying the
6 confidential information (by ranges of document identification numbers or page and line
7 numbers where applicable, or other appropriate means) to be so designated. If the entire
8 document is not confidential, the party or protected third party shall specify the portions of the
9 document that contains confidential information.

10 4. Within **five business days** of ^{March 10, 2004} ~~notice of entry of this Order~~, any party who
11 previously produced investigation materials to another party shall designate any such materials
12 as "HIGHLY CONFIDENTIAL," to the extent such information constitutes protected
13 information as defined in this Order.

14 5. Not later than 4:00 p.m. PST on March 16, 2004, any protected third party that
15 believes that this Protective Order does not adequately protect any of the investigation materials
16 or litigation materials that party previously produced shall seek further relief from the Court for
17 those materials.

18 6. Within **three business days** of entry of this Order, any party who previously
19 received investigation materials or litigation materials from any protected third party will provide
20 a written notice and a copy of this Order to that protected third party, with a copy of the notice to
21 all other parties. A protected third party may, within **ten business days** of receiving notice of
22 this Order from a party, designate any such materials as "HIGHLY CONFIDENTIAL," to the
23 extent such information constitutes protected information as defined in this Order. In the
24 meantime, the parties shall treat all material as "HIGHLY CONFIDENTIAL" pursuant to this
25 Order.

26 7. Any investigation material delivered to one or more of the plaintiffs prior to the
27 filing of the Complaint in this action by any party or protected third party may be presumptively
28 designated, in whole or in part, "HIGHLY CONFIDENTIAL" by the party or protected third

1 party producing such documents or other information by communicating such designation to the
2 receiving party. Such designations shall be communicated to all parties, who shall then treat all
3 such documents or other information produced by that party or protected third party as
4 "HIGHLY CONFIDENTIAL."

5 8. All transcripts of depositions taken in this action after the filing of the Complaint
6 shall be treated as if designated "HIGHLY CONFIDENTIAL" for a period of five business days
7 after a full and complete copy of the transcript has been available to the deponent or deponent's
8 counsel. Any deponent or counsel for that deponent or counsel for a party may designate during
9 the deposition or during the five-day period after the transcript is available from the court
10 reporter any portion of the transcript as "HIGHLY CONFIDENTIAL" by denominating by page
11 and line, and by designating any exhibits, that are to be considered "HIGHLY
12 CONFIDENTIAL." Such designation shall be communicated to all parties.

13 **C. DISCLOSURE OF "HIGHLY CONFIDENTIAL" INFORMATION**

14 9. Except as otherwise authorized by this Order, information designated as
15 "HIGHLY CONFIDENTIAL" shall be used only in connection with this action, shall not be
16 disclosed to any person other than the individuals set forth below, and may be disclosed only as
17 necessary in connection with this action to the individuals set forth below:

18 a. The Court and all persons assisting the Court in this action, including
19 court reporters and stenographic or clerical personnel;

20 b. Plaintiffs' attorneys and employees, and anyone retained to assist the
21 plaintiffs in the preparation or trial of this action, including contract paralegals, secretaries, other
22 administrative personnel and any persons employed or retained as data base managers and their
23 employees;

24 c. Defendant's inside counsel of record Dorian Daley and Jeff Ross, as well
25 as the designated inside counsel's necessary secretarial, clerical, administrative or support staff,
26 provided that the inside counsel, secretarial, clerical, administrative or support staff are not
27 involved in competitive decision making for the party (i.e., development, marketing or pricing
28 decisions) as to the subjects of the information designated as "HIGHLY CONFIDENTIAL,"

1 except that no Investigation Material shall be disclosed to the persons listed in this subparagraph
2 9.c until March 17, 2004 and, thereafter, no Investigation Material that is covered by a timely
3 third party request for further protection to the Court shall be disclosed to the persons listed in
4 this subparagraph 9.c until the Court resolves any such request;

5 d. Defendant's outside counsel of record and the employees of such outside
6 counsel including paralegals, secretaries, and other administrative personnel and any persons
7 employed or retained as data base managers and their employees, provided that such persons are
8 not employed or affiliated in any other way with any defendant, did not previously participate in
9 the representation of SSA/Baan in connection with the United States' investigation of Oracle's
10 unsolicited offer to acquire PeopleSoft, Inc., and do not represent SSA/Baan on an ongoing
11 basis;

12 e. Employees of third-party contractors of the parties involved solely in
13 providing copying services or litigation support services such as organizing, filing, coding,
14 converting, storing, or retrieving material connected with this action, provided that such persons
15 are not employed or affiliated in any other way with any defendant;

16 f. Experts or consultants retained by a party solely to assist in the conduct of
17 this action, including employees of the firm with which the expert or consultant is associated to
18 the extent necessary for purposes of this action only, provided that such experts and staff are not
19 employed or affiliated in any other way with any defendant and provided that such expert or
20 consultant has executed **Appendix A** hereto;

21 g. Authors, addressees, and recipients of particular information designated as
22 confidential solely to the extent of disclosing such information of which they are an author,
23 addressee, or recipient;

24 h. Persons who have had, or whom any counsel for any party in good faith
25 believes to have had, prior access to confidential information, or who have been participants in a
26 communication that is the subject of the confidential information and from whom verification of
27 or other information about that access or participation is sought, solely to the extent of disclosing
28 such information to which they have or may have had access or that is the subject of the

1 communication in which they have or may have participated, except that, unless and until
2 counsel confirms that any such persons have had access or were participants, only as much of the
3 information may be disclosed as may be necessary to confirm the person's access or
4 participation.

5 i. Subject to the provisions of paragraph 10, other persons not included in
6 the above subparagraphs who are examined by deposition in this action.

7 10. Subject to the exceptions stated in this paragraph, before disclosure of protected
8 information is made to any person or persons not authorized to receive the information under the
9 provisions of Paragraph 9 of this Order, the party wishing to make such a disclosure shall give at
10 least **five business days'** advance notice in writing, via facsimile, to the party or protected third
11 party who provided the protected information, stating the names, addresses, and employers of the
12 person(s) to whom the disclosure will be made. The notice shall identify with particularity the
13 documents or specific parts of the information to be disclosed, including the production number
14 of the documents. If, within the five-business-day period, an objection is made regarding a
15 disclosure, disclosure of the protected information shall not be made pending a ruling by the
16 Court. The Court will permit access upon such terms as it deems proper, unless the party or
17 protected third party objecting to the proposed disclosure shows good cause why the proposed
18 disclosure should not be permitted. The notice provisions of this Paragraph shall not apply with
19 respect to any deposition, pretrial, or trial testimony of any employee of any party or protected
20 third party designating particular information as protected information; any author, addressee, or
21 recipient of particular information designated protected information; or any persons who have
22 had, or whom any counsel for any party in good faith believes to have had, prior access to
23 information designated as protected information, or who have been participants in a
24 communication that is the subject of the protected information at issue in the deposition or
25 testimony of such witness.

26 11. Each individual described in Paragraph 9 or 10 above, to whom protected
27 information is disclosed, shall not disclose that information to any other individual, except as
28 provided in this Order, or use it for any purpose other than in connection with this action. Before

1 any protected information may be disclosed to any person described in Paragraph 9 or 10 above,
2 he or she shall have first read this Order or shall have otherwise been instructed in his or her
3 obligations under the Order by counsel for a party. Additionally, before any protected
4 information may be disclosed to any expert or consultant described in Subparagraph 9(f), he or
5 she shall have executed the agreement included as Appendix A hereto. Counsel for the party
6 making the disclosure shall maintain the original of such executed agreement for a period of at
7 least one year following the final resolution of this action.

8 12. Notwithstanding the provisions of this Protective Order, nothing in this Order
9 shall:

10 a. Limit a party's or protected third party's use or disclosure of its own
11 protected information;

12 b. Prevent disclosure of protected information with the consent of counsel for
13 the designating party or protected third party;

14 c. Prevent plaintiffs, subject to taking appropriate steps to preserve the
15 confidentiality of such information, from disclosing protected information: (i) to duly-authorized
16 representatives of the Executive Branch of the United States Government; (ii) in the course of
17 legal proceedings to which the United States or any plaintiff State is a party; (iii) for the purpose
18 of securing compliance with any Final Judgment in this action; or (iv) for law enforcement
19 purposes or as otherwise required by law. Unless otherwise prohibited by law or regulation, the
20 plaintiffs will endeavor to promptly inform the party or protected third party who designated the
21 information as protected information if disclosure pursuant to this paragraph is made.

22 **D. USE OF PROTECTED INFORMATION IN LITIGATION**

23 13. All protected information contained or discussed in any pleading, motion, exhibit,
24 or other paper filed with the Court shall be filed under seal. Where possible, only portions of
25 filings with the court containing protected information shall be filed under seal. Information
26 filed under seal shall be placed in a sealed envelope/box with the endorsements required by the
27 applicable rules of the Court and/or filed in accordance with the electronic filing rules of the
28 Court. The Clerk shall keep such papers under seal until further order of this Court; provided

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1 however, that such papers shall be furnished to the Court and to persons and entities who may
2 receive protected information pursuant to the Protective Order. Upon or within **five business**
3 **days** after the filing of any paper containing protected information, the filing party shall file on
4 the public record a copy of the paper with the protected information deleted.

5 14. The parties shall provide protected third parties with **five days** notice of potential
6 use of any protected information produced by them if and when such materials are listed as
7 potential exhibits if such exhibits are to be made part of the public record. The parties shall give
8 protected third parties notice as soon as practicable after protected information which is not listed
9 as an exhibit is determined to be used by counsel for a party in the course of examination or
10 cross-examination at trial if such protected information is to be disclosed as part of the public
11 record. Nothing in this paragraph shall require any advance notice of the use of any document of
12 a party in cross-examining a witness for that party, except immediately before such use. A party
13 or protected third party may request the Court to establish and apply protective procedures
14 (including, without limitation, in camera review of protected information, sealing of portions of
15 transcripts containing or discussing confidential information and/or excluding persons from the
16 courtroom who are not described in Paragraph 9 or 10 above when protected information is
17 shown or discussed) governing the disclosure of protected information at any hearing or trial in
18 this case.

19 **E. OTHER PROCEDURES**

20 15. If a party believes that another party or protected third party has designated
21 material as "HIGHLY CONFIDENTIAL" that is not entitled to such protection, the party
22 seeking disclosure shall make a good faith attempt to resolve the disagreement over the
23 classification of the material with the protected third party or party. If the parties and/or the
24 protected third party cannot resolve the matter, the party seeking disclosure has the burden to file
25 a motion, notify all parties and affected protected third parties of the filing of the motion, identify
26 each document that is the subject of the motion (e.g., by Bates-number or title, author, recipient
27 and date), and submit the matter to the Court for resolution. In the event that a motion is filed
28 challenging a confidentiality designation, the person designating the material shall respond

1 within **ten business days**. Failure to respond shall constitute a waiver of opposition to the
2 motion. The party that has designated the records as "HIGHLY CONFIDENTIAL" shall bear
3 the burden of showing that the materials in question constitute protected information.

4 16. This Order shall be without prejudice to the right of any party to bring before the
5 Court the question of whether any particular information designated "HIGHLY
6 CONFIDENTIAL" is appropriately designated, or whether any particular information designated
7 "HIGHLY CONFIDENTIAL" is or is not discoverable or admissible evidence at any hearing or
8 trial of this action. Nothing in this Order shall be construed to effect an abrogation, waiver or
9 limitation of any kind on the right of the parties or protected third parties to assert any applicable
10 discovery or trial privilege. No party concedes by complying with this Order that any
11 information designated by any party or protected third party as protected information is in fact
12 confidential as that term is defined in Paragraph 1(a) of this Order. However, no information
13 designated as "HIGHLY CONFIDENTIAL" pursuant to this Order shall be disclosed except as
14 provided herein unless and until the Court orders the release of such information from the
15 confidentiality provisions of this Order.

16 17. Any production of information without its being designated as "HIGHLY
17 CONFIDENTIAL" shall not thereby be deemed a waiver of any claim of confidentiality as to
18 such information, and the same may thereafter be designated "HIGHLY CONFIDENTIAL."
19 Upon receiving notice from a party or protected third party that confidential information has not
20 been previously denominated, all such information shall be redennominated and treated
21 appropriately. Any such subsequent designation, however, shall not apply retroactively to any
22 previously disclosed information for which disclosure was proper when made.

23 18. This Order shall not apply to information in the public domain or obtained from
24 other sources regardless of whether such information is also contained in materials designated as
25 confidential pursuant to this Order.

26 19. Upon entry of this Order, the parties shall provide notice and a copy of this Order
27 to all protected third parties who provided them documents or information in this action prior to
28 entry of this Order.

1 20. The parties, in conducting discovery from non-parties, shall attach to such
2 discovery requests a copy of this Order so as to appraise such non-parties of their rights.

3 **F. PROCEDURES UPON TERMINATION OF LITIGATION**

4 21. Within 90 days after receiving notice of the entry of an order, judgment or decree
5 terminating this action and after the conclusion of any appeals, all persons having received
6 protected information shall, at the election of the party or protected third party who produced the
7 information, either return such material containing such information and all copies thereof to
8 counsel for the party or protected third party that produced it, or destroy all such material and
9 certify that fact in writing. The plaintiffs and their counsel and outside counsel for any defendant
10 shall be entitled to retain court papers, deposition and trial transcripts and exhibits, and attorney-
11 work product (including discovery material containing protected information), provided that
12 plaintiffs' employees, and defendants' outside counsel, and employees of such outside counsel
13 shall not disclose the portions of court papers, deposition transcripts, exhibits or attorney-work
14 product containing protected information to any person except pursuant to court order, or
15 agreement with the party or protected third party that produced the protected information. All
16 protected information returned to the parties or their counsel by the Court likewise shall be
17 disposed of in accordance with this Paragraph. Nothing in this provision, however, shall restrict
18 the rights of the plaintiffs to retain and use protected information for law enforcement purposes,
19 in accordance with the statutory provisions of the Hart-Scott-Rodino Act, insofar as applicable,
20 or as otherwise authorized by law.

21 **G. RIGHT TO SEEK MODIFICATION**

22 22. The parties reserve the right to apply to the Court for any order modifying this
23 Order or seeking further protections against discovery or other use of protected information.
24 Any protected third party requiring further confidentiality protection than is provided by this
25 Order may petition the Court for a separate order governing disclosure of its confidential
26 material.

27 23. All hearings in this action, including the trial, will presumptively be open to the
28 public, except that this Court will issue further orders as necessary to protect any protected third

1 party's or party's protected information from improper disclosure.

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SO STIPULATED.

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/S/
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10 **For Plaintiff United States.**

For Plaintiff States.

For Defendant Oracle Corp.

11 March 12, 2004

March 12, 2004

March 12, 2004

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SO ORDERED.

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15 Dated: March 15, 2004



Vaughn R. Walker
UNITED STATES DISTRICT JUDGE

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APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO JUDICIAL DISTRICT

United States of America, et al.,

Plaintiffs,

v.

Oracle Corporation,

Defendant.

CASE NO. [INSERT]

Filed: [INSERT]

**AGREEMENT CONCERNING
CONFIDENTIALITY**

I, _____, am employed as a _____
by _____. I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.

2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only for the purposes of this litigation.

3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the District of Columbia solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

5. I make this certificate this _____ day of _____, 2004.

(SIGNATURE)