

## EXHIBIT R

Message

**From:** Trainor, Scott  
**Sent:** 9/27/2005 9:08:52 AM  
**To:** 'RBays@lockeliddell.com' [RBays@lockeliddell.com]  
**Subject:** RE: License  
**Attachments:** 4.2 and 12.5.doc; TomorrowNow SAP response 9-26.DOC; TomorrowNow SAP response 9-26 clean.DOC

Rick, just checking to see if you are going to send over a marked up copy prior to our discussion tomorrow?

In addition, I received comments from our tax department and our bankruptcy guy on section 4.2 and 12.5 respectively. Please see the attached ("4.2 and 12.5").

Finally, attached are the most recent redline for TomorrowNow, as well as a cleaner version. I accepted your language where I could. I also formally marked up the legal terms and made the changes we could based on your requests on Saturday. Let me know if you have any questions.

Thanks,

Scott A. Trainor  
 Assistant General Counsel  
 SAP America, Inc.  
 Telephone: (650) 320-3083  
 Facsimile: (650) 320-3884



4.2 and 12.5.doc



TomorrowNow  
SAP response 9...



TomorrowNow  
SAP response 9...

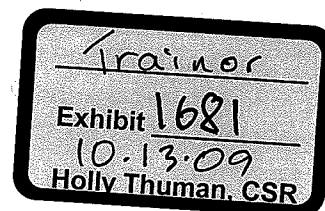
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**From:** Trainor, Scott  
**Sent:** Saturday, Sep 24, 2005 18:41 PM  
**To:** RBays@lockeliddell.com  
**Subject:** License

Rick, attached please find the license agreement in softcopy. I highlighted a couple of clauses that I should have highlighted for the hard copy. In other words, they are redlines I added on Saturday morning pursuant to our discussions Friday.

Thanks, << File: EULA 1 4 redline from SAP 9-24.DOC >>

Scott A. Trainor  
 Assistant General Counsel  
 SAP America, Inc.  
 Telephone: (650) 320-3083  
 Facsimile: (650) 320-3884



**TOMORROW NOW**

## Support Services Agreement

This Support Services Agreement ("**Agreement**") is made as of September 27, 2005, ("**Effective Date**") by and between TomorrowNow, Inc. ("**TomorrowNow**"), a Texas corporation having a principal place of business at 3131 East 29th Street, Building E, Bryan, Texas 77802, and Waste Management, Inc. ("**Client**"), having a principal place of business at 1001 Fannin Street, Houston, Texas 77002. TomorrowNow and Client shall be jointly referred to hereinafter as "**the Parties**." The Parties agree as follows:

### 1. Definitions.

A. "**Affiliate**" means a (i) corporation, partnership, or other similar entity in the Territory, of which Licensee owns, either directly or indirectly, more than fifty percent (50%) of the voting securities; and (ii) a Joint Venture, provided that a Joint Venture will only be an Affiliate if: (a) Licensee is the operator or managing agent of the Joint Venture and Use of the Software is incidental to the other services Licensee is providing to the Joint Venture as the operator or managing agent; and (b) the Joint Venture the Software may not be for operation or management of any business operations outside the specific business activity of such Joint Venture, including but not limited to the business operations of another entity owning an interest in the Joint Venture.

B. "**Covered Products**" means the software product(s) licensed by Customer from PeopleSoft, Inc., J.D. Edwards, Inc. or an affiliate or successor-in-interest thereof and specified in the applicable Appendix, including the release and the database and operating system combination.

C. "**Initial Support Period**" means the time period defined in the applicable Appendix.

D. "**Joint Venture**" means a business entity in the Territory which: (i) Licensee owns an ownership interest that is greater than thirty percent (30%) and greater than the ownership interest of any other entity. Any such entity shall be considered an Affiliate for only such time as Anadarko continues to directly or indirectly own such interest. If Licensee owns less than fifty percent (50%) of the interest in a Joint Venture, such Joint Venture must also be located in the United States [open as to Canada and Puerto Rico]. Under no circumstances will the Joint Venture possess the Software or a copy thereof, install a separate instance of the Software or allow the employees of other entities to Use the Software pursuant to the terms of any other SAP license agreement.

E. "**Proprietary Information**" means: (i) with respect to TomorrowNow, the TomorrowNow Work Product and any attendant documentation, benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, and functional specifications; (ii) with respect to Client and its Affiliates, all financial, business and customer information of Client and its Affiliates, (ii) the technical data, concepts, techniques, ideas, and know-how embodied and expressed in the TomorrowNow Work Product; and (iii) information reasonably identifiable as the confidential and proprietary information of TomorrowNow or Client, including the details of this Agreement but excluding any part of the TomorrowNow or Client Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party; or (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; or (c) becomes independently available to the other party as a matter of right.

F. "**Services**" means the support services and deliverables specified and defined in the Appendix referencing this Agreement.

G. "**Subsequent Support Period**" means the annual time periods after the Initial Support Period for which the Services are renewed pursuant to the applicable Appendix. Subsequent Support Periods shall begin upon termination of the immediately previous support period and terminate at one minute before midnight United States Central Time on the date one year later.

H. "**Territory**" means the United States of America and its territories and possessions (including without limitation, Puerto Rico) and Canada.

I. "**TomorrowNow Work Product**" means any expression of TomorrowNow's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, source and object code, and other technical information but not including any intellectual property owned by a third party, unless TomorrowNow or Client has procured proper written permission for the inclusion of such third party intellectual property in the TomorrowNow Work Product.

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HOUSTON: 015396.00104: 1037885v2

2. **Services to Be Provided.** TomorrowNow shall provide Client with the Services for the Covered Products during the Initial Support Period, and for Subsequent Support Periods if renewed pursuant to the terms of the applicable Appendix.

3. **Fees, Payment, Expenses.**

A. **Payment Terms.** Client agrees: (i) to pay TomorrowNow within thirty (30) days of the date of the applicable invoice, except that any payment terms stated in an Appendix shall take precedence over this Section 3(A); (ii) except as specified herein, all Client payments are non-refundable; (iii) all past due amounts will accrue interest at twelve percent (12%) per annum, but not to exceed the maximum amount as allowed under applicable law, except that Client shall pay no interest on any fees disputed in good faith; and (iv) if any properly invoiced fees, taxes, duties, or reimbursements related to this Agreement remain past due for payment for thirty (30) days after written notice from TomorrowNow to Client stating that such amounts are past due, TomorrowNow, at its sole discretion and not in lieu of any other remedy, may cease providing any Services until such time as Client is once again current in its payments to TomorrowNow.

B. **Taxes.** Fees and other charges described in this Agreement do not include federal, state or local sales, use, excise, services, value added or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be billed to and paid by Client. Taxes do not include any taxes based on TomorrowNow's income or payroll or franchise taxes resulting from TomorrowNow's operations. With respect to state/local sales tax, direct pay permits or a valid tax-exempt certificate must be provided to TomorrowNow prior to the execution of this Agreement. If TomorrowNow is required to pay Taxes based on this Agreement, Client shall reimburse TomorrowNow for such amounts. Client hereby agrees to indemnify TomorrowNow for any Taxes and related costs, interest and penalties paid or payable by TomorrowNow. In no event will Client's indemnification as provided in the foregoing sentence extend to interest or penalties incurred as a result of TomorrowNow's failure to remit taxes after Client has paid TomorrowNow or as a result of TomorrowNow's gross negligence or willful misconduct.

C. **Travel and Living Expenses.** TomorrowNow assumes that no travel to Client's location will be necessary to render Services pursuant to this Agreement. TomorrowNow will travel only as mutually agreed by the parties. If the parties so agree, travel and living expenses actually incurred during such agreed-upon travel will be invoiced to and paid by Client within thirty (30) days of the date of the invoice provided that such invoice is accompanied by appropriate reasonable documentation and that such expenses are incurred in accordance with Client's policies for such expenses, provided that those policies are reasonable and provided to Client prior to the travel. However, if TomorrowNow is required to travel to address an emergency situation and Client approves of such travel, TomorrowNow will be reimbursed for any travel regardless of compliance with the travel policy, provided that TomorrowNow makes commercially reasonable efforts to minimize costs for such travel.

4. **Client Obligations.** Client agrees to provide TomorrowNow with any information necessary to perform the Services and perform the Client Obligations listed below and any other duties and tasks set forth in the Appendix(s). Client acknowledges and agrees that TomorrowNow's ability to perform the Services is conditioned upon Client's timely performance of Client Obligations described herein, and the performance of such Client Obligations is material to TomorrowNow's ability to commence and successfully perform the Services. The Client Obligations are defined as follows and include any other obligations agreed to by the parties in an Appendix:

A. **Primary Contact.** Client will designate one (1) primary point of contact that shall be responsible for assisting TomorrowNow in rendering the Services.

B. **Personnel.** Client will provide sufficient, qualified, and knowledgeable personnel capable of: (i) performing Client Obligations set forth in this Agreement; (ii) making necessary and timely decisions on behalf of Client, and assisting TomorrowNow in rendering Services; (iii) facilitating the testing of software fixes and updates and workarounds provided by TomorrowNow, PeopleSoft, J.D. Edwards and/or Oracle [LLS NOTE: THIS IMPLIES CLIENT WILL CONTINUE TO RECEIVE MAINTENANCE FROM PEOPLESFT, ETC. IS THIS THE CASE? NO, just those fixes and updates obtained before terminating support]; and (iv) customizing, installing, and configuring code fixes and updates provided by TomorrowNow as needed for use with Client's Covered Products.

C. **Facility Access and Work Space.** If TomorrowNow is to render Services on Client's site, Client agrees to provide access to Client's facilities during Client's normal business hours and otherwise as reasonably requested by TomorrowNow. Client also agrees to provide TomorrowNow equipment and office support (including, but not limited to analog phone lines for dial up capabilities, phone lines for long distance and local calls related to the provision of Services, photocopying equipment), and an adequate environment for TomorrowNow representatives where they can conduct work and meet with Client personnel and/or other TomorrowNow representatives as necessary.

D. **Access to Software.** Client acknowledges that TomorrowNow will need to access, customize and/or configure certain software products licensed to Client in order to provide the Services. [Source code access is granted to WM under their license with PeopleSoft and can be granted to third parties – it is no different than object code under the PeopleSoft license] Client will either provide TomorrowNow with direct and unrestricted access to copies of the following, or Client will provide TomorrowNow with remote dial up or VPN access via the Internet to the following during the Support Period:

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(i) for PeopleSoft Covered Products, (a) the Covered Products; (b) PeopleSoft PeopleTools; and (c) any third-party software imbedded, integrated, or required for proper operation of Covered Products in an uncustomized PeopleSoft DEMO database [I think this is to WM's advantage because you don't want us accessing production, testing and development environment];

(ii) for J.D. Edwards Covered Products, (a) the Covered Products; (b) Software Protection Codes; and (c) any third-party software imbedded, integrated, or required for proper operation of Covered Products in a non-production test and development and test environment.

If TomorrowNow is providing Services for a Client-hosted environment via remote dial up or VPN, Client Obligations shall include the requirements for providing remote access as detailed herein in the "Client Database Hosting Requirements Exhibit," which is hereby incorporated. Client acknowledges that service levels and TomorrowNow's ability to perform hereunder are entirely dependent upon direct and timely access to the items described in this section, and that response times and service levels may be impacted if access is unavailable or if the guidelines defined in Exhibit 1 are not followed.

**E. Recruitment and Hiring.** Each party agrees not to solicit (directly or indirectly) or hire the other party's employees who have been involved in working with the other party hereunder during the term of this Agreement for a period of six (6) months from the termination of such work. If party breaches this provision, that party agrees to pay the other party fifty percent (50%) of the annualized salary of the employee hired in violation of this provision, payable within twenty (20) days of such employee's hire date. Newspaper, periodical, office bulletin board job postings, Internet-based listings or other general solicitations of employment opportunities shall not be considered direct or indirect solicitation.

**F. Final Testing of Fixes and Updates.** Client is responsible for all final system testing to assure that TomorrowNow provided fixes and updates perform as documented with Client's Covered Products before moving said fixes and updates into any production environment.

**5. TomorrowNow Obligations.** Subject to Client's performing Client Obligations, and in addition to the obligations set forth in Section 2, TomorrowNow shall perform or cause to be performed the following obligations (collectively referred to as "TomorrowNow Obligations"):

**A. Communications.** Prior to the beginning of the Initial Support Period, TomorrowNow will provide Client with detailed instructions about how to work with TomorrowNow's Support engineers, analysts, and representatives, including information about how to report Serious Issues and obtain assistance and resolutions. TomorrowNow will also provide information about how and when any software code fixes and updates will be delivered to Client.

**B. Personnel.** TomorrowNow will provide sufficient, qualified, and knowledgeable personnel capable of: (i) performing the Services set forth in this Agreement; and (ii) making necessary and timely decisions on behalf of TomorrowNow.

**C. Services.** TomorrowNow will perform the Services in accordance with the terms and conditions of this Agreement.

## 6. Termination of Agreement

**A. Term.** This Agreement shall become effective as of the date first set forth above and shall continue in effect through the end of the Initial Support Period unless terminated pursuant to this Section 5 or extended pursuant to the applicable Appendix. Services shall commence on the beginning of the Initial Support Period as defined in the applicable Appendix.

**B. Termination for Cause.** Either party may terminate this Agreement thirty (30) days after giving the other party notice of a material breach of any provision of the Agreement, unless such breach is cured during such thirty (30) day period. TomorrowNow may terminate immediately if Client's license to the Covered Products is terminated or if Client files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors. Notwithstanding the foregoing, if the alleged material breach was of section 8 and was caused by an employee of Client or its Affiliate acting: (i) without the approval or subsequent validation of Client's management and (b) in violation of the existing Licensee or Affiliate policies (which must conform to the obligations set forth in Section 8), TomorrowNow cannot terminate this Agreement provided that Client has immediately made efforts satisfactory to TomorrowNow to resolve and mitigate the material breach within the notice period, ultimately resolves the breach within a thirty (30) day period of time, and agrees to compensate or negotiate in good faith to compensate TomorrowNow for damages suffered by such breach. TomorrowNow does not hereby waive any right to recover damages for the breach except as may be agreed to as part of Client compensating TomorrowNow pursuant to the foregoing sentence.

**C. Termination for Convenience.** After the Initial Support Period, Client may terminate this Agreement at any time, for any reason or no reason with ninety (90) calendar days prior written notice, provided that all fees, taxes, duties, and expense reimbursements due under this Agreement shall be paid by Client to TomorrowNow on or before the actual date of termination. If Client terminates pursuant to this Section, TomorrowNow will refund a pro-rated portion of the fees that have

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been paid by Client to TomorrowNow for that annual period, such pro-rata to be calculated based upon the date of termination.

## 7. Work Product.

**A. Ownership; License.** Nothing herein shall be interpreted to claim rights to the Covered Products or derivative works thereof. As between TomorrowNow and the Client, all TomorrowNow Work Product is the property of TomorrowNow and is licensed perpetually and nonexclusively to Client to run Client's internal business operations and to provide internal training, development, backup, disaster recovery and testing for such internal business operations. To the extent Client acquires any rights in the TomorrowNow Work Product, Client hereby assigns those rights to TomorrowNow. Except as expressly provided herein, Client may not sublicense, distribute or share TomorrowNow Work Product with any third party, affiliate or beneficiary, regardless of their relationship with Client, except with the express written permission of TomorrowNow. Except for the rights set forth below, Client is not permitted to make derivative works of the TomorrowNow Work Product and ownership of any unauthorized derivative works shall vest in TomorrowNow. Client may permit contractors and service providers who agree to Use the TomorrowNow Work Product solely for the benefit of Client in accordance with the terms and conditions of this Agreement to provide facility, systems or disaster recovery services (including without limitation, outsourcing information technology services to third parties and/or having third parties host the TomorrowNow Work Product and Designated Units) to Client in connection with Client's business for which the TomorrowNow Work Product is herein licensed provided such services providers and contractors are subject to an obligation of confidentiality prior to such access and Use and such contractors and services provider shall be permitted to Use the TomorrowNow Work Product solely to operate the business of Client as set forth herein. Client may make copy the TomorrowNow Work Product for production, archival backup, off-site disaster recovery and business continuity plans and otherwise as needed for its internal business operations. Affiliates may use the TomorrowNow Work Product to the same extent as Client provided that the Affiliate has the right to use the Covered Products and a breach of this Agreement by an Affiliate is considered a breach by Client.

**B. Modifications.** "Modification" means a change to the TomorrowNow Work Product that changes the delivered source code, or an enhancement to the TomorrowNow Work Product that is made using TomorrowNow tools or utilizing or incorporating TomorrowNow Proprietary Information. Client may make Modifications to the TomorrowNow Work Product, and shall be permitted to use Modifications with the TomorrowNow Work Product or the Covered Products in accordance with this Agreement. Except for materials owned by third parties, all Modifications and all rights associated therewith shall be the exclusive property of TomorrowNow and shall be considered TomorrowNow Work Product for all purposes including the license granted herein to Client. Client agrees to execute those documents reasonably necessary to secure TomorrowNow's rights in the foregoing. TomorrowNow retains the right to independently develop enhancements to the TomorrowNow Work Product and Client agrees not to take any action that would limit TomorrowNow's sale, assignment, licensing or use of the TomorrowNow Work Product or Modifications or enhancements thereto.

## 8. Protection of Proprietary Information.

**A. Non-Disclosure.** Each party agrees that it shall not use or permit the use of any Proprietary Information of the other party except for purposes of this Agreement, nor disclose or permit to be disclosed the Proprietary Information of the other party to any person (other than its own employees, agents, representatives, contractors under an obligation of confidentiality or affiliated entities having a reasonable need for such information in order to support Client's internal business), nor duplicate any Proprietary Information of the other party which consists of computer software or documentation or other materials expressly restricted against copying, unless such duplication, use or disclosure is specifically authorized by this Agreement or in writing by the other party. TomorrowNow and Client agree to take reasonable steps and the same protective precautions to protect the Proprietary Information from disclosure to third parties as with its own proprietary and confidential information. Each party agrees that prior to disclosing any Proprietary Information of the other party to any third party other than to bona fide individuals whose access is necessary to enable such party to exercise its rights hereunder or as otherwise expressly state in this Agreement, it will obtain from that third party a written acknowledgment that such third party will be bound by substantially the same terms as specified in this Section 6 with respect to the Proprietary Information.

**B. Exceptions.** Neither party shall be liable for any disclosure of Proprietary Information of the other party, which is required by law or is reasonably necessary in order to enforce this Agreement. Neither party will disclose Proprietary Information as required by law until the party receiving the legal notice to disclose such information gives prompt notice, to the extent practical, to the owner of the Proprietary Information such that the owner of the Proprietary Information has time to make a reasonable effort to obtain a protective order or otherwise protect the confidentiality of such information. Each party agrees that a remedy at law may not be adequate to protect the other party in the event of a threatened breach of this section, and that either party may take equitable action, including injunctive relief, to enforce this section. The provisions of this section shall survive the termination or expiration of this Agreement by two (2) years. Trade secret information will remain confidential for as long as the information remains a trade secret.

## 9. Indemnity

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~~[We do not have access to the terms of the PeopleSoft license. We therefore need this protection.]~~ A.

**Client Indemnity.** Client shall indemnify and hold TomorrowNow harmless against any claims that those portions of TomorrowNow Work Product that embody Client's Proprietary Information, software code, or ideas, including, without limitation, any portion of TomorrowNow Work Product that is developed pursuant to Client's specifications, infringe any copyright, provided that Client is given prompt written notice of such claim and is given information, reasonable assistance, and the sole authority to defend or settle such claim.

**A. TomorrowNow Indemnity.** [This will need to be different from the license. Our rights to use the PeopleSoft software come entirely by way of ~~the VM license with PeopleSoft.~~ TomorrowNow shall, defend, indemnify and hold Client harmless against all claims, liabilities, and costs, including reasonable attorneys' fees, reasonably incurred in the defense of any claim brought against Client in the territory by third parties alleging that Client's Use of the Software and Documentation infringes or misappropriates any United State or Canadian patent, copyright, , or trade secret provided that: Client promptly notifies TomorrowNow in writing of any such claim and TomorrowNow is permitted to control fully the defense and any settlement of such claim as long as such settlement shall not include a financial obligation on Client. Client shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to TomorrowNow. Client shall not undertake any action in response to any infringement or alleged infringement of the TomorrowNow Work Product unless TomorrowNow fails to do so upon notice from Client and Client is defending an infringement claim asserted against Client. In the event of a threatened claim, TomorrowNow shall, in its reasonable judgment, at its sole obligation, and at its option and expense: (i) obtain for Client the right to continue using the TomorrowNow Work Product; (ii) replace or modify the TomorrowNow Work Product so that it becomes noninfringing; or (iii) terminate the right to use the TomorrowNow Work Product and return the Services fees paid by Client for such portion of the TomorrowNow Work Product which is allegedly infringing. TomorrowNow shall have no obligation to indemnify or defend Client to the extent: (a) the alleged infringement is based on information, software code or other material furnished to TomorrowNow by Client, its agents, representatives, and suppliers, including Client's Proprietary Information and specifications; (b) the alleged infringement is the result of a modification made by anyone other than TomorrowNow directly or through a subcontractor ; (c) if the alleged infringement results from use of the TomorrowNow Work Product in conjunction with any other software, equipment or apparatus other than other software or apparatus approved by TomorrowNow in the TomorrowNow documentation or in writing, or unlicensed activities, or (d) Client uses the TomorrowNow Work Product other than in accordance with this Agreement or other than in accordance with a license agreement between Client and one or more third-parties.

**C. General Indemnity.** Each party ("**Indemnifying Party**") shall indemnify and hold the other party ("**Indemnified Party**") harmless against any claim, including costs and reasonable attorney's fees, in which the Indemnified Party is named as a result of the negligent or intentional acts or failure to act by the Indemnifying Party, its employees or agents, while performing its obligations pursuant to this Agreement which result in death or personal injury. This indemnification obligation is contingent upon the Indemnified Party's providing the Indemnifying Party with prompt written notice of such claim, information, all reasonable assistance in the defense of such action, and the sole authority to defend or settle such claim.

**D.** TomorrowNow shall, at its sole cost and expense, secure and maintain, at all times when TomorrowNow is providing Services at any of Licensee's facilities, with one or more insurance companies: (i) automobile liability insurance with bodily injury limits of not less than Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) per accident and property damage limits of not less than One Hundred Thousand Dollars (\$100,000) per event; (ii) worker's compensation insurance of not less than the applicable statutory limit covering all individuals employed by TomorrowNow in connection with the provision of the Services, and with employer's liability coverage of not less than Five Hundred Thousand Dollars (\$500,000); and (iii) commercial general liability insurance in an amount not less than Two Million Dollars (\$5,000,000) insuring against loss, damage or injury to property or persons that might arise out of TomorrowNow's activities in connection with this Agreement and including personal injury liability, property damage, independent contractors and broad form contractual liability coverage. All insurance policies hereunder shall name Client as an additional insured.

**E. Entire Liability.** THE FOREGOING PROVISIONS OF THIS SECTION 11 (ELEVEN) STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF TOMORROWNOW, AND THE EXCLUSIVE REMEDY OF CLIENT, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES AND THE DEVELOPMENT AND/OR USE OF THE WORK PRODUCT.

## 10. Limited Warranty

**A. Warranty.** TomorrowNow warrants that the Services will be performed be performed in a professional manner, consistent with generally accepted industry standards and in accordance with the specifically stated specifications and requirements of this Agreement and the applicable Appendix. No specific result from provision of the Services is assured or guaranteed. Client warrants that it has full legal authority to enter into this Agreement and perform its obligations hereunder, and that no third party rights or permissions are required in order for it to do so. ~~[The third party rights issue - we cannot warrant this because we cannot see the PeopleSoft license agreement]~~ OTHER THAN THOSE EXPRESSLY SET FORTH  
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HEREIN, THE PARTIES DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES AND THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TOMORROWNOW DOES NOT WARRANT THAT SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE ERROR-FREE.

**B. Remedies.** Client's sole remedy and TomorrowNow's sole obligation in the event of a breach of the warranty contained herein is, at TomorrowNow's sole option: (i) to re-perform the Services or otherwise replace the deliverable, (ii) to refund an appropriate portion of any amounts paid by Client with respect to the applicable portion of the Services.

**11. Limitation of Liability.** ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF PROPRIETARY INFORMATION, UNDER NO CIRCUMSTANCES SHALL TOMORROWNOW, ITS CONSULTANTS BE LIABLE TO CLIENT OR SHALL CLIENT BE LIABLE TO TOMORROWNOW FOR AN AMOUNT IN EXCESS OF TWO TIMES ALL FEES RECEIVED BY TOMORROWNOW FROM CLIENT UNDER THIS AGREEMENT FOR THE ANNUAL PERIOD IN WHICH AN ALLEGED LIABILITY ARISES OR BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION 11.

13.1 TomorrowNow will reasonably cooperate with Client with respect to its efforts to maintain effective Internal Controls and comply with its obligations under federal securities laws. TomorrowNow will provide such documentation reasonably requested by Client or its independent auditor.

### 13. General

**A. Independent Contractor Status.** TomorrowNow performs its obligations pursuant to this Agreement as an independent contractor, not as an employee of Client. Nothing in this Agreement is intended to create or be construed as the existence of a partnership, joint venture, or agency relationship between the parties.

**B. Notice.** All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered by mail or personal delivery to the respective executive offices of TomorrowNow and Client at the addresses first set forth above or such other address which either party may provide in writing as a replacement address. Notices to TomorrowNow should be addressed to TomorrowNow's Legal Department.

**D. Section Headings.** The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

**E. Survival.** The terms of Sections 3, 6, 7, 8, 9 (to the extent the claim arose prior to termination), and 13(I), (L) and (M) shall survive the termination of this Agreement.

**F. Waiver.** If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

**G. Entire Agreement; Amendments.** This Agreement and each Appendix hereto, which Appendix(ces) are part of this Agreement, constitute the complete and exclusive statement of the agreement between TomorrowNow and Client, and all previous representations, discussions, and writings are merged in, and superseded by, this Agreement. Nothing in this Agreement is meant to create or creates any rights, obligations, or benefits directly or indirectly to any party not a signatory of this Agreement. Additional Appendix(ces) may be added to this Agreement upon mutual agreement of the parties hereto, but this Agreement and any executed Appendix(ces) may be modified only by a writing signed by both parties. This Agreement and each Appendix hereto shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Client to TomorrowNow.

**H. Force Majeure.** Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance. If however, TomorrowNow is preventing from performing its obligations under this Agreement due to such conditions for more than 30 days, Client may at its option terminate this Agreement by written notice to TomorrowNow. TomorrowNow will immediately notify Client if TomorrowNow is preventing from performing its obligations under this Agreement due to such conditions.

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I. Remedies. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

J. Reference Program and Client Lists. Upon execution of this Agreement, TomorrowNow may use Client's name (in text form but not its logo, service marks or trademarks) and the general product category of "PeopleSoft Product Support" or "J.D. Edwards Product Support," as applicable, in its' client list, whether such without obtaining any further written permission from Client. Other than as noted herein, neither party may issue press releases regarding the existence of this Agreement, the terms of this Agreement, or any services or subsequent work performed hereunder, without first obtaining written approval of the other party.

K. Assignment. Neither party shall assign this Agreement or transfer its responsibilities under this Agreement, nor any interest in this Agreement, except with written consent of the other party, which consent shall not be unreasonably withheld. The parties agree that assignment by operation of law in the context of the sale of all or substantially all of a party's stock or assets shall not constitute an "assignment" for purposes of this prohibition. [Not applicable/acceptable because of TomorrowNow's business model]

L. Export Control Notice. The TomorrowNow Work Product and Proprietary Information are being released or transferred to Client in the United States and are therefore subject to the U.S. export control laws. Client acknowledges its obligation to ensure that its exports from the United States are in compliance with the U.S. export control laws. Client shall also be responsible for complying with all applicable governmental regulations of any foreign countries with respect to the use of the Proprietary Information by its Affiliates outside of the United States. Except for the foregoing, Client agrees that it will not submit any TomorrowNow Work Product to any government agency for licensing consideration or other regulatory approval without the prior written consent of TomorrowNow.

M. Governing Law. This Agreement shall be governed by and construed under the law of the State of Delaware without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and United States of America law, rules, and regulations, United States of America law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement. The Uniform Computer Information Transactions Act as enacted shall not apply.

N. Third Party Trademark. The J.D. Edwards, PeopleSoft and Oracle names, product names, and release names are trademarks of PeopleSoft, Inc. or its successor in interest, Oracle Corporation.

O. Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

The undersigned represent and warrant that they are authorized, as representatives of the party on whose behalf they are signing, to sign this Agreement and to bind their respective party thereto.

For Waste Management, Inc.:  
For TomorrowNow, Inc.:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Contract ID:

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HOUSTON: 015396.00104: 1037885v2

**APPENDIX A,**  
 effective \_\_\_\_\_, 2005 ("Appendix"),  
 to  
**TOMORROWNOW, INC. ("TOMORROWNOW") SUPPORT SERVICES AGREEMENT,**  
 effective \_\_\_\_\_, 2005 ("Agreement"), with  
**Waste Management, Inc. ("Client")**

This Appendix is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Appendix contradict or are inconsistent with the provisions of the Agreement, the provisions of this Appendix shall prevail and govern. The parties hereby agree as follows:

1. **Covered Products.**

A. **Production System.**

Production Database #1 (HCM)	
IT System Physical Location:	United States
Support Team Location:	United States
Support Team Language(s):	American English only
Database Platform:	Oracle
Operating System:	AIX
System Access Option:	Access to Software Copies
Language Objects:	U.S. English, Canadian French and Spanish
Country Localizations:	None
Interface Responsibility:	Client (All)
Tax & Regulatory Coverage:	United States

Production Database #2 (FMS)	
IT System Physical Location:	United States
Support Team Location:	United States
Support Team Language(s):	American English (only)
Database Platform:	Oracle
Operating System:	AIX
System Access Option:	Access to Software Copies
Language Objects:	U.S. English, Canadian French and Spanish
Country Localizations:	None
Interface Responsibility:	Client (All)
Tax & Regulatory Coverage:	United States, Canada and Puerto Rico

Production Database #2 (FMS ReTI Project)	
IT System Physical Location:	United States
Support Team Location:	United States
Support Team Language(s):	American English (only)
Database Platform:	Oracle
Operating System:	AIX
System Access Option:	Access to Software Copies
Language Objects:	U.S. English, Canadian French and Spanish
Country Localizations:	None
Interface Responsibility:	Client (All)
Tax & Regulatory Coverage:	United States, Canada and Puerto Rico

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**B. Covered Products.** The Covered Products are the products listed in the table, limited to the database platform and operating system specified in section 1(A).

Covered Product	Current Release and Service Pack	Possible Future Release(s)	Production Database Number	Tax and/or Regulatory Geographic Coverage
PeopleSoft Human Resources	8.8	8.8 SP1	1	<b>United States, Canada &amp; Puerto Rico:</b> Tax & regulatory data collection and mandatory regulatory reporting
PeopleSoft Payroll for North American Customers	8.8	8.8 SP1	1	<b>United States, Canada &amp; Puerto Rico:</b> Payroll tax & regulatory updates <b>Other Geographies:</b> None
PeopleSoft Benefits Administration	8.8	8.8 SP1	1	<b>United States, Canada &amp; Puerto Rico:</b> Tax & regulatory data collection and mandatory regulatory reporting
Covered Product	Current Release and Service Pack	Possible Future Release(s)	Production Database Number	Tax and/or Regulatory Geographic Coverage
PeopleSoft General Ledger	8.4 SP2	8.8 SP1	2	<b>United States, Canada &amp; Puerto Rico:</b> Tax & regulatory data collection and mandatory regulatory reporting
PeopleSoft Payables	8.4 SP2	8.8 SP1	2	<b>United States, Canada &amp; Puerto Rico:</b> Tax & regulatory data collection and mandatory regulatory reporting
PeopleSoft Assets	8.4 SP2	8.8 SP1	2	<b>United States, Canada &amp; Puerto Rico:</b> Tax & regulatory data collection and mandatory regulatory reporting
PeopleSoft Project Costing	8.4 SP2	8.8 SP1	2	Not Applicable
PeopleSoft eProcurement	8.8 SP1	8.8 SP1	2	Not Applicable
PeopleSoft Purchasing	8.8 SP1	8.8 SP1	2	Not Applicable
PeopleSoft Financials Warehouse	8.8 SP1	8.8 SP1	2	Not Applicable
PeopleSoft Enterprise Portal	8.8 SP1	8.8 SP1	2	Not Applicable
Covered Product	Current Release and Service Pack	Possible Future Release(s)	Production Database Number	Tax and/or Regulatory Geographic Coverage
PeopleSoft General Ledger	8.8 SP1	8.8 SP1	3	<b>United States, Canada &amp; Puerto Rico:</b> Tax & regulatory data collection and mandatory regulatory reporting
PeopleSoft Payables	8.8 SP1	8.8 SP1	3	<b>United States, Canada &amp; Puerto Rico:</b> Tax & regulatory data collection and mandatory regulatory reporting
PeopleSoft Billing	8.8 SP1	8.8 SP1	3	Not Applicable
PeopleSoft Inventory	8.8 SP1	8.8 SP1	3	Not Applicable
PeopleSoft Receivables	8.8 SP1	8.8 SP1	3	Not Applicable
PeopleSoft Bills & Routings	8.8 SP1	8.8 SP1	3	Not Applicable
PeopleSoft Cost Management	8.8 SP1	8.8 SP1	3	Not Applicable
PeopleSoft Order Management	8.8 SP1	8.8 SP1	3	Not Applicable

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PeopleSoft Production Management	8.8 SP1	8.8 SP1	3	Not Applicable
PeopleSoft Enterprise Portal	8.8 SP1	8.8 SP1	3	Not Applicable

**NEED TO ADD FINANCIALS WAREHOUSE**

C. **Initial Support Period.** The Initial Support Period for the Services is as set forth in this Section 1(C).

<b>Starting at one minute past midnight United States Central time on:</b>	<b>Ending at one minute before midnight United States time on:</b>
October 15, , 2005	October 14, 2010

2. **Services.** Services provided pursuant to this Appendix shall include:

A. **Product Support.** TomorrowNow will provide product diagnostic services, product fixes, and/or operational workarounds for Serious Issues (as defined herein) identified for the Covered Products.

i. **Support for Serious Issues.** TomorrowNow will attempt to diagnose and create fixes and/or workarounds for Serious Issues only. A "Serious Issue" is defined as a code defect that meets all of the following criteria: the code defect is (i) found by Client in the online or batch code of Covered Products in an uncustomized PeopleSoft DEMO database or in uncustomized updates and fixes provided to Client by PeopleSoft up through the date that Client terminates its Support Services Agreement with Oracle for Covered Products; (ii) comes to Client's attention during the Support Period; (iii) seriously impacts Client's ability to process effectively or in a timely manner; and (iv) causes the failure of a substantial feature or function of Covered Products.

ii. **Use of Fixes and Updates.** TomorrowNow will provide fixes and updates only for the number of production databases listed Section 1(A) for each Covered Product. Client may use the provided fixes and updates in other non-production databases as needed to operate its internal business but TomorrowNow will not provide support for those databases.

iii. **PeopleTools, Third Party Product, and Language Support.** If listed as a Covered Product in Section 1(B), above, TomorrowNow will provide support for PeopleSoft PeopleTools under this Agreement. However, Client understands and acknowledges that TomorrowNow is not able and will not provide any fixes or updates for the PeopleSoft PeopleTools product or any third party, non-PeopleSoft products used with, imbedded, integrated, or bundled with the Covered Products since Client does not have source code for these products. For purposes of example only, such third party products include, but are not limited to, operating systems, database systems, application servers, web servers, online and batch processing tools, reporting tools, and analytic tools. Additionally, this Agreement expressly excludes any support for any issues related to language objects other than American English, unless otherwise specified above.

B. **Additional Consulting.** Any services required by Client outside the defined Services in this Agreement are expressly excluded from the scope of this Agreement. TomorrowNow will not perform such services without Client's pre-approval, and if Client desires TomorrowNow to provide such services, separate agreements setting forth the terms governing the provisions of such services must be agreed to and executed by the Parties prior to TomorrowNow performing such services. This Agreement expressly excludes from its scope any provision by TomorrowNow of advisory, technical, functional, or training project labor for: (i) new product, feature, or function implementations; (ii) release upgrades; or (iii) database platform migrations. If Client desires TomorrowNow to provide such services, separate agreements setting forth the terms governing the provisions of such services must be agreed to and executed by the Parties prior to TomorrowNow performing such services. TomorrowNow agrees that Client may purchase such services from TomorrowNow at the rates set forth in Exhibit 2 hereto.

C. **Tax and Regulatory Support.** TomorrowNow will provide tax and regulatory updates for the Covered Products during the Support Period within a reasonable period of time from the date such tax and regulatory updates are made generally available by Oracle. TomorrowNow Tax and Regulatory updates may only be used as an adjunct to the PeopleSoft products included in Covered Products in order for products to operate in accordance with PeopleSoft documentation for Covered Products. TomorrowNow Tax and Regulatory updates usually include material software code updates to PeopleTools Objects, COBOL, SQL, Database Objects, and application data. TomorrowNow does not provide modifications to the Covered Products, but TomorrowNow will provide regulatory updates, including regulatory data collection and mandatory regulatory reporting, that are at least equivalent in scope and coverage to those regulatory updates provided by Oracle, or its successor-in-interest, for the core and non-localized] versions of the Covered Products.

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**3. Total Fees.**

**A. First Year of Services.** In consideration for Services provided pursuant to this Agreement, Client agrees to pay TomorrowNow fees in the amount of \$343,750 USD United States dollars) ("Total Fees") for the first annual period of the Initial Support Period, which shall be invoiced as of the date of this Appendix and is payable net thirty (30) days from date of invoice.

**B. Fees for Remainder of Initial Support Period.** Prior to the end of the previous annual period, TomorrowNow will invoice Client for the next year of Services. In consideration for Services provided pursuant to this Agreement, Client agrees to pay TomorrowNow fees in the amounts set forth below net thirty (30) days from date of invoice.

Annual Period	Start Date	End Date	Amount (USD)
2	September 15, 2006	September 14, 2007	\$ 343,750
3	September 15, 2007	September 14, 2008	\$343,750
4	September 15, 2008	September 14, 2009	\$343,750
5	September 15, 2009	September 14, 2010	\$343,750

**4. Renewal.** For a period of 10 years after the Initial Support Period, so long as the Services continue to be generally available and subject to Client remaining a continuous client in good standing, the Services can be renewed by Client for Subsequent Support Periods and the fees for such Subsequent Support Periods shall not exceed 112% of the preceding, contiguous, annual fee. TomorrowNow shall support Covered Products that Client is operating in production for ten(10) years following the date that the specified release of the Covered Products was originally made generally available to customers.

**5. Delivery of Software and Maintenance.** Without reducing its obligations set forth above regarding the creation of updates and patches, TomorrowNow will use commercially reasonable efforts to deliver any product or operational fixes, tax or regulatory updates or other electronic or hard copy deliverables provided under this Agreement ("Deliverables") by making it available for download or other electronic transmission to Licensee location in: Houston, Texas

Licensee will defend and indemnify TomorrowNow for any taxes, penalties and related interest (excluding taxes based on TomorrowNow's income) should such taxes result, as TomorrowNow makes no representations regarding the taxability of such transaction but is simply complying with TomorrowNow's request. Client agrees that in the event any physical delivery of Deliverables should occur, such delivery shall be rejected by Client. Client additionally acknowledges that should any Deliverables be unavailable electronically, a delay in receipt of such software or maintenance deliverable may extend until electronic delivery is available or until TomorrowNow and Client agree contractually on another form of delivery."

**6. Service Level.** Client will be entitled to receive emergency support twenty-four hours a day, seven days a week (including major holidays) for all Serious Issues. Service levels are as set forth in Exhibit 1. Add response

**7. Client Contacts**

Primary Contact	Billing Contact	Download Contact
Name: Mr. Paul Cooley	Name: Same	Name: Same
Title: Director, Distributed Computing Services	Title:	Title:
Address1: 1001 Fannin	Address1:	Address1:
Address2: Suite 4000	Address2:	Address2:
City, St, Zip: Houston, TX 77002	City, St, Zip:	City, St, Zip:
Phone: 713-394-2147	Phone:	Phone:
Fax:	Fax:	Fax:
Email: pcooley9@wm.com	Email:	Email:

**8. Expiration of Offer.** Client acknowledges that TomorrowNow requires at least a thirty (30) day period of overlap with Vendor Software maintenance period in order to conduct an effective on-boarding process. The offer set forth in this Agreement is only valid through September 30, 2005. If the Agreement is not executed by Client and received by TomorrowNow on or before such date, the offer is rescinded, all terms are null and void, and neither party shall have any obligation in relation thereto.

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The undersigned represent and warrant that they are authorized, as representatives of the party on whose behalf they are signing, to sign this Agreement and to bind their respective party thereto.

**For Waste Management, Inc:**  
**For TomorrowNow, Inc.:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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**Exhibit 1 to Appendix A  
Service Level Standards  
Escalation Contact Information**

Response time commitment for a first live conversation between TomorrowNow and Client after Client contacts TomorrowNow for support is thirty (30) minutes or less.

There are three levels of priority for service requests. Target resolution times are subject to proper system access and timely responses from Client. Request priority is determined as follows:

- P1 -- Within 4 hours of initial contact, commence efforts to resolve the issue by patch, work around, temporary fix and documentation correction pages. Defined as critical revenue affecting emergency, immediate customer impact, multiple employees unable to work.
- P2 -- Commence efforts to resolve within 1 business day by patch, work around, temporary fix and documentation correction pages. Defined as a single employee unable to work.
- P3 -- Commence efforts to resolve within 5 business days by patch, work around, temporary fix and documentation correction pages. Defined as a non critical system issues.

TomorrowNow Client Support Website: <http://www.tomorrownow.com/clients/login.htm>

TomorrowNow After-Hours Pager: 888-444-6678

Executive Escalation Contacts:

PeopleSoft Support Manager, Kathy Williams

E-Mail:

[Kathy\\_Williams@tomorrownow.com](mailto:Kathy_Williams@tomorrownow.com)

Office Number:

770-420-8265

Fax Number:

979-595-1301

Executive Team – Service Delivery, Andrew Nelson

E-Mail:

[Andrew\\_Nelson@tomorrownow.com](mailto:Andrew_Nelson@tomorrownow.com)

Office Number:

979-571-6386

Fax Number:

979-595-1301

Executive Team – Sales & Marketing, Robert Geib

E-Mail:

[Bob\\_Geib@tomorrownow.com](mailto:Bob_Geib@tomorrownow.com)

Office Number:

925-931-1333

Fax Number:

925-892-7980

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Exhibit 2

Consulting Services Rates

TomorrowNow agrees to provide consulting services to Client under this Agreement at the rates set forth below:

\$145 an hour \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TomorrnNow agrees that these rates will r not increase in any twelve-month period by more than \$5 per hour per year over the rates applicable to the preceding twelve-month period so long as this Agreement is effective.

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