

EXHIBIT II

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 SAP AG, SAP AMERICA, INC., and
 18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 OAKLAND DIVISION

22 ORACLE USA, INC., et al.,
 23 Plaintiffs,
 24 v.
 25 SAP AG, et al.,
 26 Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DEFENDANTS' RESPONSE TO
 PLAINTIFFS' FIFTH SET OF
 REQUESTS FOR ADMISSION TO
 DEFENDANTS TOMORROWNOW,
 INC., SAP AG, AND SAP AMERICA,
 INC.**

**CONFIDENTIAL PURSUANT TO
 PROTECTIVE ORDER**

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3 **REQUESTS FOR ADMISSION**

4 **REQUEST NO. 1:**

5 Admit that Defendants know of no technical way to determine which Customer's
6 Customer Connection credentials were used to download any given Software and Support
7 Material on SAP TN's systems.¹

8 **RESPONSE TO REQUEST NO. 1:**

9 Defendants object to this request on the grounds stated in the General Objections and
10 Responses. Defendants further object to this request as vague and ambiguous due to the phrases
11 "technical way" and "SAP TN's systems." Moreover, Defendants object that the request is
12 unduly burdensome and improperly attempts to shift the burden to Defendants to evaluate each
13 and every file on TomorrowNow's systems where the effort associated with responding to this
14 request is substantially similar for the parties, especially because the available documents, data
15 and other information sought from which the answer, if any, could be derived in response to this
16 request have been produced by Defendants in response to Plaintiffs' other discovery requests and
17 thus any relevant, available information is now as equally accessible to Plaintiffs as it is to
18 Defendants. Defendants object that this request calls for information within the control, custody,
19 or possession of Plaintiffs. Subject to, and without waiving the foregoing objections, Defendants
20 respond as follows:

21 ADMITTED on the following qualified basis: Defendants ADMIT that Defendants have
22 always acknowledged that there is no known technical way to specifically tie a downloaded item
23 on TomorrowNow's systems to a Customer Connection ID and password. As far as Defendants
24 have been able to determine, the downloaded files neither contain any physical electronic tagging
25 in the file itself, nor any file-based metadata associated with each file that provides both the exact
26 username and password that was used to download each file. It was TomorrowNow's policy to

27 ¹ See, e.g., Defendants' Opposition to Plaintiffs' Motion to Compel Production of
28 documents Related to Damages Model and Interrogatory Responses Related to Use of Plaintiffs'
Intellectual Property, July 14, 2009, Dkt. 334, p. 7, fn. 9

1 only download materials for customers before their maintenance end dates using a Customer
2 Connection ID and password provided by that customer and to only download materials for that
3 customer that were related to those products for which the customer had informed TomorrowNow
4 they were licensed. To the extent this request is not admitted, it is DENIED.

5 REQUEST NO. 2:
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PROOF OF SERVICE

I, Laurie Paige Burns , declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On November 23, 2009, I served a copy of the attached document(s):

DEFENDANTS' RESPONSES TO PLAINTIFFS' FIFTH SET OF REQUESTS FOR ADMISSIONS TO DEFENDANTS

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope and causing such envelope to be hand delivered to the office of the addressee on the date specified above.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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Executed on November 23, 2009, at San Francisco, California.

By: *Laurie Paige Burns*
 LAURIE PAIGE BURNS

HUI-121280