

EXHIBIT 97

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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)

**DEFENDANT TOMORROWNOW,
INC.'S EIGHTH AMENDED AND
SUPPLEMENTAL RESPONSE TO
PLAINTIFF ORACLE
CORPORATION'S FIRST SET OF
INTERROGATORIES (SET ONE)**

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INTERROGATORY NO. 3:

Describe in as much detail as possible how You access, store, maintain, retrieve and provide any support materials to Your Customers, including Software and Support Materials, including but not limited to Identifying on what computers, servers or other devices the Software and Support Materials are stored, the names of Person(s) who have access to the Software and Support Materials, how those Software and Support Materials are accessed by Your Employees and Customers, and describing any policies, procedures, protocols or safeguards involved in the provision of Software and Support Materials to Customers, including ensuring they have a valid license for the material.

RESPONSE TO INTERROGATORY NO. 3:

THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

1 TomorrowNow objects that this interrogatory seeks information not reasonably calculated
2 to lead to the discovery of admissible evidence to the extent that it seeks information about
3 unspecified “support materials” other than the Software and Support Materials at issue in this
4 case. TomorrowNow further objects that this interrogatory is compound, is actually several
5 interrogatories, is wholly or partially duplicative of several other interrogatories served by Oracle
6 (including Nos. 6, 7, 8, 10 and 12 of this set and 1, 2 and 4 of the set served by Oracle USA Inc.),
7 and is unduly burdensome and oppressive to the extent it seeks a narrative answer as to a laundry
8 list of disparate subjects. Subject to and without waiving the foregoing objections and the
9 General Objections and Responses, TomorrowNow responds by incorporating by reference and
10 relies on its responses to Interrogatories Nos. 6, 7, 8, 10 and 12 of this set and Interrogatories 1, 2
11 and 4 of the set served by Oracle USA Inc., including those documents cited in those responses.
12 TomorrowNow further responds as follows: TomorrowNow has accessed, downloaded and/or
13 stored Software and Support Materials on behalf of its new customers. TomorrowNow has done
14 so after receiving from the customer certain representations and warranties that the customer is
15 entitled to permit TomorrowNow such access on its behalf. TomorrowNow’s policy was only to
16 conduct downloads for a customer using the specific password and user id. provided by that
17 customer and only before the relevant Maintenance End Date for that customer. Until recently,
18 TomorrowNow conducted the downloads and stored the relevant materials on its computers. The
19 downloads were conducted by TomorrowNow’s employees using certain laptop and desktop
20 computers as well as dedicated download servers located at TomorrowNow’s data center in
21 Bryan, Texas. TomorrowNow then transferred and stored downloaded materials on certain file
22 servers, the relevant files and file folders from which will be included in TomorrowNow’s
23 document production and on which TomorrowNow relies to further respond to this interrogatory
24 pursuant to Rule 33(d). TomorrowNow set forth the policies and procedures governing the
25 downloading and storage of relevant materials in procedure documentation, including emails,
26 which will be included in TomorrowNow’s document production and on which TomorrowNow
27 relies to further respond to this interrogatory pursuant to Rule 33(d). Beginning in July 2007,
28 TomorrowNow revised its procedures to have its customers conduct all appropriate downloads

1 they wish to be conducted from the customers' own computers, and to store any such downloaded
2 materials on the customers' computers. Beginning in July 2007, TomorrowNow may on occasion
3 assist or advise its customers in conducting downloads, but it is TomorrowNow's policy that each
4 customer makes the ultimate decision regarding which materials that customer downloads.
5 TomorrowNow has taken other steps to update its business processes, in part to address the
6 uncertainty caused by Oracle's allegations and Oracle's refusal to provide information underlying
7 its claims. Documents describing these process changes will be included in TomorrowNow's
8 document production and on which TomorrowNow relies to further respond to this interrogatory
9 pursuant to Rule 33(d).

10 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

11 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
12 INFORMATION.

13 TomorrowNow further responds that its policies and procedures documents include but
14 are not limited to TN-OR00001278 – TN-OR00004196. Downloaded material (in native format)
15 includes but is not limited to TN-OR00004203, TN-OR00005106 and TN-OR00005147.
16 TomorrowNow reserves the right to further supplement this response as necessary during the
17 course of document production.

18 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

19 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS
20 CONFIDENTIAL INFORMATION.

21 This compound interrogatory would require TomorrowNow to chronicle information that
22 involved numerous employees, took place over several years, and is too complex and detailed to
23 describe in an interrogatory response. Pursuant to Rule 33(d), TomorrowNow points Plaintiffs to
24 the SAS database, which is a tool TomorrowNow used to chronicle its business efforts to service
25 clients. *See* TN-OR 03775478, TN(Hard drive).67, TN-OR 04446717, TN(Disc).173, TN-OR
26 04446719, TN(Hard drive).75. Further, in addition to the policies and procedures cited above,
27 policies and procedures documents related to the provision of Software and Support Materials to
28 Customers include, but are not limited to, SAP-OR00251437, TN-OR00411402, TN-

1 OR00209243, TN-OR00209244, TN-OR03775488, SAP-OR00631478. For information
2 regarding how TomorrowNow stores and maintains Software and Support Materials, including
3 the identification of the computers, servers or other devices the Software and Support Materials
4 are stored, TomorrowNow relies on all of its current responses to Interrogatory No. 11 of this set,
5 which is incorporated by reference.

6 The most complete record of the TomorrowNow employees who had access to the
7 Software and Support Materials prior to the wind down of TomorrowNow can be derived from
8 the SAS database. *See* TN-OR 03775478, TN(Hard drive).67, TN-OR 04446717, TN(Disc).173,
9 TN-OR 04446719, TN(Hard drive).75. The SAS database also contains the most complete record
10 of how TomorrowNow employees accessed those Software and Support Materials. *Id.* The most
11 complete record regarding the fixes TomorrowNow provided its customers can be derived from
12 TN-OR 00009557, TN(Disc).9, TN-OR04497673, TN(Disc).186 (client fixes from Web 01,
13 DCWEB01); TN-OR04497668, TN(Hard drive).78 (client fixes from Mail 03). In addition,
14 some of the overly broad and unduly burdensome information that this request seeks can be
15 derived from the hours of overlapping 30(b)(6) testimony. *See* October 29, 2007 Deposition of
16 Bill Thomas Pursuant to Rule 30(b)(6); October 29-30, 2007 Deposition of Mark Kreutz
17 Pursuant to Rule 30(b)(6); October 30, 2007 Deposition of Shelley Nelson Pursuant to Rule
18 30(b)(6); December 6, 2007 Deposition of Shelley Nelson Pursuant to Rule 30(b)(6); February 6-
19 7, 2008 Deposition of John Baugh Pursuant to Rule 30(b)(6); February 19, 2008 Deposition of
20 Mark Kreutz Pursuant to Rule 30(b)(6); June 25, 2008 Deposition of Rod Russell Pursuant to
21 Rule 30(b)(6); April 1, 2008 Deposition of Kathy Williams Pursuant to Rule 30(b)(6); April 1,
22 2008 Deposition of Catherine Hyde Pursuant to Rule 30(b)(6).

23 **SIEBEL SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

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Dated: December 4, 2009

JONES DAY

By: /s/ Jason McDonell
Jason McDonell

Counsel for Defendants
SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

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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 December 4, 2009, I served a copy of the attached document(s):

DEFENDANT TOMORROWNOW, INC.'S EIGHTH AMENDED AND SUPPLEMENTAL RESPONSE TO PLAINTIFF ORACLE CORPORATION'S FIRST SET OF INTERROGATORIES (SET ONE)

- 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 with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- 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 December 4, 2009, at San Francisco, California.

By: 
LAURIE PAIGE BURNS