

EXHIBIT AA

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

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

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

Case No. 07-CV-1658 PHJ
**DEFENDANT TOMORROWNOW,
INC.'S THIRD AMENDED AND
SUPPLEMENTAL RESPONSE TO
PLAINTIFF ORACLE USA, INC.'S
FIRST SET OF INTERROGATORIES
(SET ONE)**

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INTERROGATORY NO. 4:

Identify all “agreements between Plaintiffs and their customers and/or former customers” on which you base the contentions made in Your Answer’s Affirmative Defenses, including but not limited to Identifying which terms of those agreements form the basis of Your contentions.

RESPONSE TO INTERROGATORY NO. 4:

THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

TomorrowNow objects that this interrogatory is compound and unduly burdensome and oppressive to the extent it seeks a narrative answer as to each relevant customer. Subject to and without waiving the foregoing objections and the General Responses and Objections, TomorrowNow responds as follows: TomorrowNow incorporates by reference its response to Interrogatory No. 2, including the related production of documents identified in that response.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:

THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

1 TomorrowNow further responds that its customer contracts include but are not limited to:
2 TN-OR00000027 – TN-OR00001007 and TN-OR 00004204 – TN-OR00004276; and that its
3 onboarding documentation includes but is not limited to TN-OR00001008 – TN-OR00001277.
4 TomorrowNow reserves the right to further supplement this response as necessary during the
5 course of document production.

6 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:**

7 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS HIGHLY
8 CONFIDENTIAL - ATTORNEYS' EYES ONLY.

9 TomorrowNow objects that this interrogatory calls for a legal conclusion and for
10 information protected by the work product immunity. Subject to and without waiving the
11 foregoing objections and the General Responses and Objections, TomorrowNow provides this
12 further supplemental response as follows: TomorrowNow incorporates by reference and relies
13 upon its responses to Interrogatory Nos. 10, 11 and 16 of Plaintiff Oracle Corp.'s First Set of
14 Interrogatories to TomorrowNow. TomorrowNow further responds that it is unable to provide a
15 full response at this time as to every contract with every customer because such a response
16 requires knowledge of each specific wrongdoing alleged by Plaintiffs. Because Plaintiffs have
17 failed to identify this specific alleged wrongdoing and because they have refused to produce
18 adequate information on which Defendants can make a determination of specific alleged
19 wrongdoing, TomorrowNow's response relies only on various illustrative agreements and does
20 not address each and every customer contract, of which they are many. Accordingly, exemplar
21 agreements between Plaintiffs and their customers and/or former customers and the terms of those
22 agreements upon which TomorrowNow currently bases its contentions are as follows:

- 23 • Various iterations of PeopleSoft agreements, namely ORCL00007529-
24 ORCL00007533 ("PeopleSoft March 1996") under Sections 1.1 and 4.1,
25 ORCL00017200-ORCL00017202 ("PeopleSoft December 1996") under Section 4.1,
26 ORCL00007399-ORCL00007402 ("PeopleSoft 1999") under Sections 1.1 and 4.1,
27 ORCL00082090-ORCL00082095 ("PeopleSoft 2001") under Section 2.1,
28 ORCL00086063-ORCL00086073 ("PeopleSoft 2003") under Section 1.2,

1 ORCL00000001-ORCL00000009 (“PeopleSoft March 2004”) under Section 1.1(c),
2 and ORCL00022649-ORCL00022657 (“PeopleSoft June 2004”) under Section 1.1,
3 state some variation of the following: “Licensee may modify or merge the Software
4 with other software with the understanding that any modifications, however extensive,
5 shall not diminish PeopleSoft’s title or interest in the Software” and “Licensee shall
6 have title to the modifications to the Software that it develops only to the extent that
7 usable software remains after PeopleTools has been removed.” PeopleSoft March
8 1996, Sections 1.1 and 4.1. *See also* PeopleSoft 2001, Section 2.1 (stating
9 “PeopleSoft grants License a nonexclusive, nontransferable license to make and run
10 copies of the Software for access by Licensee and Designates for Licensee’s internal
11 data processing operations on one or more servers and/or workstations located at
12 facilities owned or leased by Licensee...” and defining “designate” as “Licensee’s
13 customers, suppliers, vendors, benefits providers and other such third parties providing
14 goods or services to Licensee...”).

- 15 • PeopleSoft March 1996, Section 14.2; PeopleSoft December 1996, Section 14.1;
16 PeopleSoft 1999, Section 14.2; PeopleSoft 2001, Section 10.4; PeopleSoft 2003,
17 Section 9.5; PeopleSoft March 2004, Section 9.4; and PeopleSoft June 2004, Section
18 9.4 state some variation of the following: “Licensee may provide access to and use of
19 the Software only to those third parties, (undertaking similar nondisclosure
20 obligations), providing services concerning Licensee’s use of the Software.”
- 21 • PeopleSoft 1999, Section 14.4; PeopleSoft 2001, Section 10.3; PeopleSoft 2003,
22 Section 9.4; PeopleSoft March 2004, Section 9.3; and PeopleSoft June 2004, Section
23 9.3 state some variation of the following: “The Agreement imposes no obligation on
24 Recipient with respect to Discloser’s Confidential Information that Recipient can
25 establish by legally sufficient evidence: (a) was, prior to receipt from Discloser, in the
26 possession of, or rightfully known by Recipient, without an obligation to Discloser to
27 maintain its confidentiality; (b) is or becomes generally known to the public or comes
28 into the public domain without violation of the Agreement or without a violation of an

1 obligation of confidentiality owed to the Discloser; or (c) is obtained by Recipient in
2 good faith from a third party having the right to disclose it without an obligation of
3 confidentiality to Discloser.”

- 4 • Various iterations of JD Edwards contracts, namely ORCL00004747-ORCL00004748
5 (“JD Edwards 1991”) under Section 5, ORCL00019242-ORCL00019253 (“JD
6 Edwards 1992”) under Section 5(A), ORCL00016998-ORCL00016999 (“JD Edwards
7 1994”) under Section 5, ORCL00003025-ORCL00003028 (“JD Edwards 1995”)
8 under Section 6, ORCL00145246-ORCL00145252 (“JD Edwards 1996”) under
9 Section 5, ORCL00017745-ORCL00017748 (“JD Edwards 1997”) under Article IV,
10 Section 2, ORCL00004713-ORCL00004718 (“JD Edwards Europe 1997”) under
11 Article 5, Section 2, ORCL00103087-ORCL00103091 (“JD Edwards Australia 1999”)
12 under Section 6, ORCL00017595-ORCL00017598 (“JD Edwards 1999”) under
13 Article II, Section 1(C), and ORCL00086180-ORCL00086185 (“JD Edwards 2001”)
14 under Article II, Section 1(C), state some variation of the following: “Customer shall
15 have the right to modify the Licensed Products without the prior consent of JDE;
16 however, Customer understands that JDE makes no warranty, express or implied,
17 regarding any modified portions of the Licensed Products and that no modifications,
18 however extensive, shall reduce the title and ownership of JDE and/or J.D. Edwards &
19 Company in the Licensed Products.” JD Edwards 1991, Section 5. Further, JD
20 Edwards 1992 under Section 5(B), JD Edwards 1997 under Article V, Section 2, JD
21 Edwards Europe 1997 under Article V, Section 2, JD Edwards Australia 1999 under
22 Section 6, JD Edwards 1999 under Article II, Section 1(C), and JD Edwards 2001
23 under Article II, Section 1(C), state with substantially similar language:

24 “Modifications made by Customer, its employees or third-party agents to the Licensed
25 Products shall be the property of Customer...” JD Edwards 1992, Section 5(A).

- 26 • JD Edwards 1991, Section 6; JD Edwards 1992, Section 4(B); JD Edwards 1994,
27 Section 4(B); JD Edwards 1995, 5(B); JD Edwards 1996, Section 4(b); JD Edwards
28 1997, Article V, Section 1(C); JD Edwards Europe 1997, Article V, Section 1(C); and

1 JD Edwards Australia 1999, Section 5(C) state some variation of the following:
2 "CUSTOMER ACKNOWLEDGES THAT JDE HAS INSTALLED DISABLING
3 PROCEDURES IN THE LICENSED PRODUCTS. IF THERE OCCURS ANY
4 UNAUTHORIZED USE OF THE LICENSED PRODUCTS, SUCH SELF
5 DISABLING PROCEDURES WOULD RENDER THE LICENSED PRODUCTS
6 INOPERABLE."

- 7 • JD Edwards 1999 and JD Edwards 2001 under Article II, Section 4, state some
8 variation of the following: "J.D. Edwards, not more frequently than annually and at its
9 own expense, may audit Customer's use of Licensed Products. Any such audit shall
10 be conducted during regular business hours at Customer's facilities and shall not
11 unreasonably interfere with Customer's business activities."
- 12 • One exemplar Oracle contract at ORCL00142315-ORCL00142318 under Section 2.4
13 states: "On Oracle's written request, not more frequently than annually, Client shall
14 furnish Oracle with a signed certification (a) verifying that the Programs are being
15 used pursuant to the provisions of this Agreement, including any User limitations; and
16 (b) listing the locations, types and serial numbers of the Designated Systems on which
17 the systems are run. Oracle may, at its expense, audit Client's use of the Programs."

18 Similar language is contained in ORCL00042995-ORCL00043004 under Section O.

19 TomorrowNow further responds that these agreements must be read as a whole and each
20 in context of the entire agreement; TomorrowNow's failure to set forth above any particular
21 provision is not a waiver of its right to rely on it as part of its overall contentions. Additionally,
22 TomorrowNow notes that it grounds its affirmative defenses not only on the language of the
23 agreements, but also on its understanding, based on discovery and fact investigations to date, of
24 how Plaintiffs and the customers at issue have interpreted the agreements and conducted
25 themselves with respect to the agreements.

26 TomorrowNow reserves the right to further supplement this response as necessary during
27 the course of document production.

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Dated: April 15, 2009

JONES DAY

By: 

Jason McDonell

Counsel for Defendants

SAP AG, SAP AMERICA, INC., and

TOMORROWNOW, INC.

1 **PROOF OF SERVICE**

2 I, Grace Wayte, declare:

3 I am a citizen of the United States and employed in San Francisco County, California. I
4 am over the age of eighteen years and not a party to the within-entitled action. My business
5 address is 555 California Street, 26th Floor, San Francisco, California 94104. On April 15, 2009,
6 I served a copy of the attached document(s):

7 **DEFENDANT TOMORROWNOW, INC.'S THIRD AMENDED AND**
8 **SUPPLEMENTAL RESPONSE TO PLAINTIFF ORACLE USA, INC.'S**
9 **FIRST SET OF INTERROGATORIES (SET ONE)**

- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set
10 forth below on this date before 5:00 p.m.
- 11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, in the United States mail at San Francisco, California addressed as
13 set forth below.
- 14 by placing the document(s) listed above in a sealed Federal Express envelope and
15 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
16 Express agent for delivery.
- 17 by personally delivering the document(s) listed above to the person(s) at the
18 address(es) set forth below.
- 19 by transmitting via e-mail or electronic transmission the document(s) listed above
20 to the person(s) at the e-mail address(es) set forth below.

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Executed on April 15, 2009, at San Francisco, California.

By: Grace Wayte
GRACE WAYTE