

# EXHIBIT 28

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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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TEXT REMOVED - NOT RELEVANT TO MOTION

**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:**

24 THIS SIEBEL SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL  
25 INFORMATION.

26 This compound interrogatory would require TomorrowNow to chronicle information that  
27 involved numerous employees, took place over several years, and is too complex and detailed to  
28 describe in an interrogatory response. Pursuant to Rule 33(d), TomorrowNow points Plaintiffs to

1 the SAS database, which is a tool TomorrowNow used to chronicle its business efforts to service  
2 clients, certain files and folders in the Data Warehouse, and the production of certain policy and  
3 procedure documents.

4 The most complete record of the TomorrowNow employees who had access to any  
5 software and support materials for the Seibel service line prior to the wind down of  
6 TomorrowNow can be derived from the SAS database. *See* TN-OR03727374, TN (Disc). 157  
7 (Siebel.nsf) and TN-OR04446719, TN(Hard Drive).75 (same Siebel.nsf file). The SAS database  
8 also contains the most complete record of how TomorrowNow employees accessed those  
9 software and support materials. *Id.* Further, SAS is the most complete record regarding the  
10 services and materials, if any, provided to a TomorrowNow customer with respect to a specific  
11 customer case. *Id.* Additionally, information related to the services and information provided to  
12 certain customers in response to specific cases is also located on one of the Data Warehouse  
13 servers. *See* TN-OR 04232660, TN(Hard Drive).68 (NCSERV1\Development\Fixes by TN).

14 For information regarding how TomorrowNow stored and maintained software and  
15 support materials, including the identification of the computers, servers or other devices the  
16 software and support materials are stored on, TomorrowNow relies on all of its current responses  
17 to Interrogatory No. 11 of this set, including the Siebel supplemental response, which is  
18 incorporated by reference.

19 TomorrowNow further responds that its policies and procedures documents related to  
20 providing third party support for Siebel product lines include, but are not limited to, TN-  
21 OR07097693 to TN-OR07099072 on TN-OR06756453, TN (Disc).249. Moreover, as referenced  
22 above, applicable policies and procedures documents related to the provision of software and  
23 support materials to customers also include, but are not limited to, TN-OR07099596, TN-  
24 OR00411402, TN-OR03775488, SAP-OR00631478.

25 In addition, some of the overly broad and unduly burdensome information that this  
26 interrogatory seeks is the subject of requested Rule 30(b)(6) deposition testimony provided by  
27 TomorrowNow on September 17, 2009 and has already been the subject of prior individual  
28 testimony. *See* October 23, 2007 Amended Notice of Deposition of TomorrowNow, Inc.

1 Pursuant to Fed. R. Civ. P. 30(b)(6), Topic 13 (“The manner in which Software and Support  
2 Materials, or any support product developed by You, derived by You, or otherwise obtained by  
3 You, is maintained, archived, indexed and transmitted to any Customer, including descriptions of  
4 hardware and software Used and where this hardware or software is physically located”) and  
5 Topic 14 (“The use, distribution, transmission or other communication of Software and Support  
6 Materials including without limitation (a) the use, distribution, transmission or other  
7 communication of Software and Support Materials within SAP TN or between SAP TN, SAP  
8 America, and/or SAP AG; (b) the use, distribution, transmission or other communication of  
9 Software and Support Materials into, within, or out of any database or storage device, method, or  
10 application; (c) the use, distribution, transmission or other communication of Software and  
11 Support Materials between You and Your Customers; (d) the hardware and software Used for any  
12 such use, distribution, transmission or other communication identified in this paragraph; and (e)  
13 any ‘separate systems,’ ‘firewalls,’ or other methods or devices, that prevent the distribution,  
14 transmission or other communication of Oracle’s Software and Support Materials from You to  
15 SAP AG and SAP America.”) (*See* Plaintiffs’ June 23, 2009 E-mail Correspondence requesting  
16 Rule 30(b)(6) deposition testimony regarding TomorrowNow’s support of Siebel products on  
17 these topics); March 13, 2009 Deposition of John Tanner.

18 Finally, TomorrowNow incorporates by reference and relies on its current responses,  
19 including to the extent applicable the Siebel supplemental response, to Interrogatories Nos. 6, 7, 8  
20 and 12 of this set and Interrogatory No. 1 of the first set served by Oracle USA Inc, including all  
21 of the documents cited in those responses.

22 **FOURTH SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

23 THIS FOURTH SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
24 CONFIDENTIAL INFORMATION.

25 TomorrowNow has provided further deposition testimony that is responsive to the overly  
26 broad and unduly burdensome information that this request seeks. *See, e.g.*, December 5, 2008  
27 Deposition of Matthew Bowden; February 12, 2008 and May 12, 2009 Depositions of Catherine  
28 Hyde; March 12, 2008 Deposition of John Tanner; April 10, 2009 Deposition of Patti VonFeldt;

1 June 16, 2009 Deposition of Keith Shankle; June 16, 2009 Deposition of Pete Surette; August 13,  
2 2009 Deposition of John Baugh; September 3, 2009 Deposition of S. Nelson; September 17, 2009  
3 Deposition of Michael Garafola and John Tanner Pursuant to Rule 30(b)(6); September 22, 2009  
4 Deposition of Peggy Lanford; October 9, 2009 Deposition of Desmond Harris.

5 **ORACLE DATABASE AMENDED INTERROGATORY NO. 3:**

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

14 **ORACLE DATABASE SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

15 THIS ORACLE DATABASE SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
16 CONFIDENTIAL INFORMATION.

17 TomorrowNow objects to Plaintiffs' modification of this request by inserting the word  
18 "by" in the phrase "but not limited to [by] . . ." as an improper attempt to alter this admittedly  
19 overly broad, unduly burdensome, compound, vague and ambiguous request outside of the  
20 parties' discovery agreements. TomorrowNow reserves the right to assert that Oracle Database  
21 Amended Interrogatory No. 3 should be counted as an additional interrogatory against Plaintiffs'  
22 total allotted interrogatories. Subject to and without waving all of the foregoing objections,  
23 TomorrowNow provides the following supplemental response:

24 TomorrowNow did not provide Oracle database applications, including any updates or  
25 patches to those applications, to TomorrowNow customers as part of its services. Likewise,  
26 TomorrowNow did not provide support services or corresponding support materials for Oracle's  
27 database components and/or applications, including any updates or patches to those applications,  
28 to TomorrowNow customers as part of its services.

1 At least some of the environments maintained on behalf of TomorrowNow's customers on  
2 TomorrowNow's network used an Oracle database platform as a component. With regard to how  
3 these database related components were accessed, and by whom, as part of TomorrowNow's  
4 servicing of its customers, TomorrowNow incorporates by reference its current responses to this  
5 request above and its current responses to Plaintiff's Fifth Set of Interrogatories to Defendant  
6 TomorrowNow, Inc. and Fourth Set of Interrogatories to Defendants SAP AG and SAP America,  
7 Inc. Interrogatory Nos. 123 and 124. TomorrowNow incorporates by reference each document  
8 cited in those responses as part of its supplemental response to this interrogatory. As noted in  
9 response to Interrogatory No. 124, TomorrowNow reasonably believes that no systematic or  
10 centralized records were maintained regarding from whom or where these Oracle database  
11 components were obtained. To the extent any of these database components contain  
12 updates/patches or other support materials, these support materials likely would have been  
13 obtained from the website metalink.oracle.com and would be stored in the TN Software Library  
14 locations identified in response to Interrogatory No. 124. TomorrowNow is not currently aware of  
15 specific instances in which it applied patches or updates to the initial instance of any database  
16 components referenced in response to Interrogatory No. 124.

17 Moreover, for information regarding how TomorrowNow stored and maintained any  
18 Oracle database related components, including the identification of specific servers,  
19 TomorrowNow incorporates by reference into this response all of its current responses to  
20 Interrogatory No. 11 of this set, including the Oracle Database supplemental response, and its  
21 current response to Plaintiff's Fifth Set of Interrogatories to Defendant TomorrowNow and  
22 Fourth Set of Interrogatories to Defendants SAP AG and SAP America, Inc. Interrogatory Nos.  
23 123 and 124. Further, TomorrowNow is not aware of any policies specific to Oracle database  
24 related components other than those identified above.

25 In addition, some of the overly broad and unduly burdensome information that this  
26 interrogatory seeks has already been the subject of requested Rule 30(b)(6) deposition testimony  
27 on which former TomorrowNow employee John Baugh testified in February 2008. *See*  
28 Defendant TomorrowNow, Inc.'s January 22, 2008 Response to Plaintiff Oracle's Second

1 30(b)(6) Notice of Deposition of TomorrowNow, Topic 1(b) (designating John Baugh to testify to  
2 “The manner and method by which Customer Local Environments were created, stored, and Used  
3 by You”); Topic No. 1 (c) (designating John Baugh to testify to “The identity of all PSFT and  
4 JDE Customers for whom You created any type of Customer Local Environment”); Topic No. 1  
5 (d) (designating John Baugh to testify to “The total number of Customer Local Environments  
6 created for each identified Customer”); Topic No. 1 (l) (designating John Baugh to testify to “The  
7 process by which Customer Local Environments were Used as part of the ordinary course of  
8 business for [] TN, including without limitation to on-boarding of new Customers; support of  
9 Customer cases, issues, and problems; reactive and proactive development of bug fixes, updates,  
10 patches, explanations, or regulatory changes for Customers; research into and design of those  
11 changes; troubleshooting for Customers; and testing of other operating system levels”).

12 Moreover, the overly broad and unduly burdensome information that this interrogatory seeks is  
13 also the subject of additional requested Rule 30(b)(6) deposition testimony and has already been  
14 the subject of prior individual testimony. *See* September 30, 2009 Notice of Deposition of  
15 TomorrowNow, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6), Topic 1 (“The identification by release,  
16 version, and/or filename of any Oracle Database Software in []TN’s possession at any time or  
17 which []TN obtained, Copied, or used for any purpose”), Topic 2 (“The identification of []TN’s  
18 computers, servers, or other hardware on which any Oracle Database Software ever resided”),  
19 Topic 3 (“The manner, method, and purposes for which [] TN used any Oracle Database Software  
20 which ever existed on its Systems”), Topic 4 (“The identification of any Customers for which  
21 []TN used any Oracle Database Software on its Systems to provide support services”), Topic 5  
22 (“The manner and method by which []TN used any Oracle Database Software on its Systems to  
23 provide support services to Customers”), Topic 6 (“The original source of any Oracle Database  
24 Software which ever existed on []TN’s Systems and the manner or method by which []TN  
25 acquired or accessed each such original source”), Topic 7 (“Any [] TN policies or procedures  
26 related to [] TN’s Copying or Use of Oracle Database Software”); April 23, 2009 Deposition of  
27 George Lester; September 3, 2009 Deposition of Shelley Nelson. Pursuant to Rule 33(d),  
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1 Defendants rely on all documents and files cited and/or incorporated above to further respond to  
2 this interrogatory.

3 **SUPPLEMENTAL RESPONSE TO ORACLE DATABASE SUPPLEMENTAL**  
4 **RESPONSE TO INTERROGATORY NO. 3:**

5 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL  
6 INFORMATION.

7 TomorrowNow has provided further deposition testimony that is responsive to the overly  
8 broad and unduly burdensome information that this request seeks. *See, e.g.*, December 4, 2009 of  
9 Bill Thomas to Rule 30(b)(6); December 3, 2009 of John Baugh.

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**INTERROGATORY NO. 7:**

Describe in as much detail as possible any policies or procedures related to Downloading Software and Support Materials, as referred to in ¶¶ 9, 72 and 73 of the Answer, including but not limited to identifying whether that policy is oral or written, the dates of creation and any modification of the policy, and identifying the names of all Persons involved in drafting, reviewing, revising, authorizing, approving, implementing, or enforcing that policy.

1 **RESPONSE TO INTERROGATORY NO. 7:**

2 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

3 Subject to and without waiving the General Responses and Objections, TomorrowNow  
4 responds as follows: TomorrowNow's policies and procedures relating to downloading of  
5 relevant Software and Support Materials were created by certain TomorrowNow employees over  
6 time and were updated on an ongoing basis. The policies and procedures are set forth in  
7 numerous procedural documents, emails and related policy documents, and the personnel  
8 responsible for management of downloading are set forth in TomorrowNow's organization charts,  
9 which documents will be included in TomorrowNow's document production and on which  
10 TomorrowNow relies to further respond to this interrogatory pursuant to Rule 33(d).

11 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

12 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL  
13 INFORMATION.

14 TomorrowNow further responds that its policies and procedures documents include but  
15 are not limited to TN-OR00001278 – TN-OR00004196. Personnel who have been or are  
16 currently responsible for management of downloading include but are not limited to: Shelley  
17 Nelson, Laura Sweetman, Mark Kreutz, Keith Shankle, Peter Surette, Greg Nelson, Mark Meyer,  
18 Desmond Harris and Peggy Lanford. TomorrowNow reserves the right to further supplement this  
19 response as necessary during the course of document production.

20 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

21 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
22 CONFIDENTIAL INFORMATION.

23 TomorrowNow further responds that before the litigation, TomorrowNow's policies and  
24 procedures relating to downloading of relevant Software and Support Materials included the  
25 following: (1) TomorrowNow was to download each customer's materials individually, by  
26 customer, never sharing materials between customer; (2) TomorrowNow was to use a specific  
27 customer's login ID only to download that customer's materials; (3) TomorrowNow was to only  
28 use a customer's current and valid login ID, assigned to the customer by the vendor; and (4)

1 TomorrowNow was never to download materials on behalf of a customer past that customer's  
2 maintenance end date. *See, e.g.*, TN-OR00411402. Pursuant to Rule 33(d), TomorrowNow  
3 responds that its policies and procedures documents related to downloading include but are not  
4 limited to TN-OR00001462– TN-OR00001476, TN-OR0000213 –TN-OR00002142, TN-  
5 OR00002143–TN-OR00002148, TN-OR00002192–TN-OR00002210, TN-OR00002374–TN-  
6 OR00002380, TN-OR00002402–TN-OR00002413, TN-OR00002415–TN-OR00002426, TN-  
7 OR00002548–TN-OR00002602, TN-OR00002765–TN-OR00002782, TN-OR00003649–TN-  
8 OR00003660, TN-OR00003828–TN-OR00003833, TN-OR00003881–TN-OR00003886, TN-  
9 OR00003951–TN-OR00003961, TN-OR00004120–TN-OR00004169. TomorrowNow further  
10 incorporates by reference all of its current responses to Interrogatory No. 12.

11 After the litigation, TomorrowNow management issued the directive to change certain  
12 business processes related to downloading. These changes were memorialized in the  
13 TomorrowNow Compliance Guidelines of Support Services, V1 and V2. *See* SAP-OR00631478  
14 –SAP-OR00631496, TN-OR03775488–TN-OR03775511. The TomorrowNow executives and/or  
15 employees involved with the changes to the download process were Mark White, Martin Breuer,  
16 Harry Schoennagel, Mel Gadd, Mark Kreutz, John Tanner, Shelley Nelson, Rod Russell, John  
17 Baugh, Tab Brown, Broderick Ellis, Larry Garcia, Paul Henville, Chris Jackson, Tom Leier,  
18 Florence Leong, Gordon Robinson, and Kathy Williams. Both versions of the Compliance  
19 Guidelines state that downloading must be performed by the client, and TomorrowNow  
20 employees are prohibited from directly engaging in downloading activities. *Id.* Automated  
21 downloading tools could no longer be used after the business process changes went into effect.  
22 *Id.* TomorrowNow employees were permitted to provide “broad guidance” to customers with  
23 respect to the types of information the customers should download, but TomorrowNow  
24 employees were prohibited from making specific recommendations regarding the software and  
25 support materials that should be downloaded. *Id.* *See, e.g.*, SAP-OR00251437, TN-  
26 OR02813156–TN-OR02813157, TN-OR02813158–TN-OR02813159 (other changes to the  
27 download policies and procedures). Pursuant to Rule 33(d), TomorrowNow relies upon each  
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1 document cited in the Response and all Supplemental Responses to further respond to this  
2 interrogatory.

3 **ORACLE DATABASE AMENDED INTERROGATORY NO. 7:**

4 Describe in as much detail as possible any policies or procedures related to Downloading  
5 Software and Support Materials, including but not limited to identifying whether that policy is  
6 oral or written, the dates of creation and any modification of the policy, and identifying the names  
7 of all Persons involved in drafting, reviewing, revising, authorizing, approving, implementing, or  
8 enforcing that policy

9 **ORACLE DATABASE SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

10 THIS ORACLE DATABASE SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
11 CONFIDENTIAL INFORMATION.

12 TomorrowNow further supplements that it is not aware of any policies or procedures  
13 relating to downloading of relevant software and support materials specific to Oracle database  
14 components aside from TomorrowNow's general policies and procedures referenced above.

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**INTERROGATORY NO. 10:**

Describe in as much detail as possible all instances in which a Customer has provided You with a password for use in Downloading Software and Support Materials, including but not limited to Identifying all related Documents, Communications, or “warrant[ies]” provided by the Customer (as used in ¶¶ 71-72 of Your Answer), and indicating in each instance which Software and Support Materials the Customer authorized You to Download with the password.

**RESPONSE TO INTERROGATORY NO. 10:**

THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

TomorrowNow objects that this interrogatory is compound and that it is unduly burdensome and overbroad to the extent it seeks a narrative answer with respect to all of TomorrowNow’s relevant customers. Subject to and without waiving the foregoing objections and the General Objections and Responses, TomorrowNow responds as follows: Some of TomorrowNow customers have provided TomorrowNow with what the customers represented to be current, valid passwords and user ids. Customers further represented in their contracts with TomorrowNow and/or documentation relating to initiating service with TomorrowNow that they were entitled to provide TomorrowNow with such information and access to software and support materials. The specific information requested by this interrogatory can be derived or ascertained from TomorrowNow’s contracts as well as onboarding documentation received from and email communications with TomorrowNow’s relevant customers, all of which will be included in TomorrowNow’s document production and on which TomorrowNow relies to further respond to this interrogatory pursuant to Rule 33(d).

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

THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

TomorrowNow further responds that its customer contracts include but are not limited to: TN-OR00000027 – TN-OR00001007 and TN-OR 00004204 – TN-OR00004276; and that its

1 onboarding documentation includes but is not limited to TN-OR00001008 – TN-OR00001277.  
2 TomorrowNow reserves the right to further supplement this response as necessary during the  
3 course of document production.

4 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:**

5 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
6 CONFIDENTIAL INFORMATION.

7 TomorrowNow further responds as follows: As part of the onboarding process,  
8 TomorrowNow customers regularly provided TomorrowNow access to the customers' respective  
9 Customer Connection user IDs and passwords for use in downloading software and support  
10 materials. TomorrowNow customers provided their passwords to TomorrowNow through e-mail  
11 communications, in response to Urgent Steps letters, and/or included them in Pre-Install  
12 Questionnaires. The user IDs and passwords are stored in a variety of locations, including on  
13 Download Request forms, in DotProject, and in multiple locations within the SAS database.  
14 TomorrowNow customers represented in their contracts with TomorrowNow, including the  
15 accompanying exhibits and/or in the documentation relating to initiating service with  
16 TomorrowNow, that they were entitled to provide TomorrowNow with such information and  
17 access to software and support materials. The Product Verification forms completed by the  
18 TomorrowNow JDE World and OneWorld customers also informed TomorrowNow of the  
19 product information the customers were running in production and for which they desired  
20 TomorrowNow support.

21 TomorrowNow customers sometimes provided TomorrowNow with their respective user  
22 IDs and passwords in response to an e-mail request. *See, e.g.*, TN-OR00069136-TN-  
23 OR00069138, TN-OR00077544-TN-OR77546, TN-OR00089430-TN-OR00089431, TN-  
24 OR00177660-TN-OR00177661, TN-OR00184523-TN-OR00184525. Further, e-mail  
25 communications containing a user ID and password can be derived or ascertained from  
26 TomorrowNow's onboarding documents received from and e-mail communications with  
27 TomorrowNow's customers that are located within TomorrowNow's document production, and  
28

1 the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for  
2 both parties. Thus, TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.

3 TomorrowNow also received user IDs and passwords from TomorrowNow customers in  
4 response to Urgent Steps Letters and on the Pre-Install Questionnaires TomorrowNow provided  
5 to its customers. The standard TomorrowNow PeopleSoft Urgent Steps letter sent to  
6 TomorrowNow customers reminded customers to “Complete and return the Pre-Install  
7 Questionnaire” and “Please make sure to fill in the section for the Customer Connection  
8 Username and Password. . . . We will download all Updates & Fixes for your product release, red  
9 papers, and platform information.” *See, e.g.*, TN-OR00184963-TN-OR00184964. Some  
10 customers would provide their respective user IDs and passwords in response to the Urgent Steps  
11 Letter. *See, e.g.*, TN-OR00056147, TN-OR00064944-TN-OR00064946, TN-OR00065864-TN-  
12 OR00065868, TN-OR00081437-TN-OR00081438, TN-OR00173285-TN-OR00173287, TN-  
13 OR00183955-TN-OR00183957, TN-OR00092059-TN-OR00092060, TN-OR00308821-TN-  
14 OR00308822. The Urgent Steps Letters can be located by running a search for “Urgent Steps  
15 Letters” in TomorrowNow’s document production. Further, user IDs and passwords received by  
16 TomorrowNow in response to Urgent Steps Letters can be derived or ascertained from  
17 TomorrowNow’s onboarding documents received from and e-mail communications with  
18 TomorrowNow’s customers that are located within TomorrowNow’s document production, and  
19 the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for  
20 both parties. Thus, TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.

21 Other customers included their respective user IDs and passwords on the Pre-Install  
22 Questionnaire that the customers sent to TomorrowNow after receiving an Urgent Steps letter.  
23 *See, e.g.*, TN-OR00215378-TN-OR00215380, TN-OR00215381-TN-OR00215382, TN-  
24 OR00475082-TN-OR00475084, TN-OR00475085-TN-OR00475086, TN-OR00173349, TN-  
25 OR00173350-TN-OR00173351, TN-OR00173352-TN-OR00173353. Examples of Pre-Install  
26 Questionnaires containing Customer Connection user IDs and passwords can be found at: TN-  
27 OR00185602-TN-OR00185603, TN-OR00184985-TN-OR00184986, TN-OR00185006-TN-  
28 OR00185007, TN-OR00185014-TN-OR00185015, TN-OR00199550-TN-OR00199551, TN-

1 OR00185022-TN-OR00185023, TN-OR00185041-TN-OR00185042, TN-OR00199935-TN-  
2 OR00199936, TN-OR00208806-TN-OR00208807, TN-OR00211801-TN-OR00211802, TN-  
3 OR00208864-TN-OR00208865, TN-OR00215665-TN-OR00215666, TN-OR00214943-TN-  
4 OR00214944, TN-OR00251397-TN-OR00251398, TN-OR00311267-TN-OR00311268, TN-  
5 OR00311405-TN-OR00311406, TN-OR00313360-TN-OR00313361, TN-OR00314141-TN-  
6 OR00314142, TN-OR00173525-TN-OR00173526, TN-OR00171689-TN-OR00171691, TN-  
7 OR00173946-TN-OR00173947, TN-OR00173339-TN-OR00173340, TN-OR00173352-TN-  
8 OR00173353, TN-OR00176222-TN-OR00176224, TN-OR00176621-TN-OR00176623, TN-  
9 OR00176662-TN-OR00176664, TN-OR00176100-TN-OR00176101, TN-OR00180152-TN-  
10 OR00180153, TN-OR00184007-TN-OR00184008. Additional Pre-Install Questionnaires can be  
11 located by running a search over TomorrowNow’s production for “Pre-Install Questionnaire” in  
12 the full text with document type “Word.” Further, Pre-Install Questionnaires containing user ID  
13 and password information can be derived or ascertained from TomorrowNow’s onboarding  
14 documents received from and e-mail communications with TomorrowNow’s customers that are  
15 located within TomorrowNow’s document production, and the burden of deriving or ascertaining  
16 the answer to this interrogatory is substantially the same for both parties. Thus, TomorrowNow  
17 relies on Rule 33(d) to further respond to this interrogatory.

18 TomorrowNow often stored customer user IDs and passwords on Download Request  
19 forms, which were used by certain TomorrowNow JDE World and OneWorld individuals. *See,*  
20 *e.g.*, TN-OR00056036- TN-OR00056037, TN-OR00001002-TN-OR00001007, TN-  
21 OR00000479-TN-OR0000484, TN-OR0000094-TN-OR0000096, TN-OR00000588-TN-  
22 OR00000590, TN-OR00000253-TN-OR00000258, TN-OR00000625-TN-OR0000627, TN-  
23 OR00000313-TN-OR00000318, TN-OR00000715-TN-OR00000721, TN-OR00000319-TN-  
24 OR00000324, TN-OR00000749-TN-OR00000754, TN-OR00000811-TN-OR00000816, TN-  
25 OR00000817-TN-OR00000822, TN-OR00000839-TN-OR00000845, TN-OR00000846-TN-  
26 OR00000852, TN-OR00000428-TN-OR00000430, TN-OR00000889-TN-OR00000892, TN-  
27 OR00005995-TN-OR00006000, TN-OR00008908-TN-OR00008911, TN-OR00006915-TN-  
28 OR00006920, TN-OR00008953-TN-OR00008959, TN-OR00005256-TN-OR00005258, TN-

1 OR00008989-TN-OR00008994, TN-OR00007969-TN-OR00007974, TN-OR00005387-TN-  
2 OR00005392, TN-OR00007243-TN-OR00007248, TN-OR00007324-TN-OR00007329, TN-  
3 OR00006477-TN-OR00006482, TN-OR00005789-TN-OR00005794, TN-OR00005834-TN-  
4 OR00005836, TN-OR00007424-TN-OR00007427, TN-OR00000990-TN-OR00000995, TN-  
5 OR00000490-TN-OR00000495, TN-OR00000057-TN-OR00000061, TN-OR00000062-TN-  
6 OR00000067, TN-OR00000509-TN-OR00000514, TN-OR00000515-TN-OR00000520, TN-  
7 OR00000088-TN-OR00000093, TN-OR00000521-TN-OR00000526, TN-OR00000527-TN-  
8 OR00000532, TN-OR00000128-TN-OR00000133, TN-OR00000161-TN-OR00000166, TN-  
9 OR00000591-TN-OR00000596, TN-OR00000601-TN-OR00000606, TN-OR00000235-TN-  
10 OR00000239, TN-OR00000607-TN-OR00000612, TN-OR00000613-TN-OR00000618, TN-  
11 OR00000285-TN-OR00000289, TN-OR00000307-TN-OR00000312, TN-OR00000695-TN-  
12 OR00000700, TN-OR00000325-TN-OR00000330, TN-OR00000344-TN-OR00000349, TN-  
13 OR00000383-TN-OR00000388, TN-OR00000823- TN-OR00000838, TN-OR00000399- TN-  
14 OR00000404, TN-OR00000405- TN-OR00000410, TN-OR00000863- TN-OR00000868, TN-  
15 OR00000869- TN-OR00000874, TN-OR00000432- TN-OR00000436, TN-OR00000453- TN-  
16 OR00000458, TN-OR00000459- TN-OR00000463, TN-OR00006607- TN-OR00006610, TN-  
17 OR00008607- TN-OR00008611, TN-OR00008640- TN-OR00008644, TN-OR00006634- TN-  
18 OR00006637, TN-OR00006638- TN-OR00006641, TN-OR00007525- TN-OR00007540, TN-  
19 OR00006032- TN-OR00006035, TN-OR00006123- TN-OR00006128, TN-OR00007670- TN-  
20 OR00007673, TN-OR00006147- TN-OR00006151, TN-OR00006869- TN-OR00006873, TN-  
21 OR00008948- TN-OR00008952, TN-OR00006164- TN-OR00006167, TN-OR00005326- TN-  
22 OR00005330, TN-OR00007070- TN-OR00007073, TN-OR00006319- TN-OR00006322, TN-  
23 OR00007117- TN-OR00007120, TN-OR00008995- TN-OR00008998, TN-OR00007207- TN-  
24 OR00007210, TN-OR00005481- TN-OR00005484, TN-OR00007221- TN-OR00007225, TN-  
25 OR00006421- TN-OR00006424, TN-OR00009325- TN-OR00009328, TN-OR00005689- TN-  
26 OR00005692, TN-OR00006533- TN-OR00006538, TN-OR00006553- TN-OR00006557.

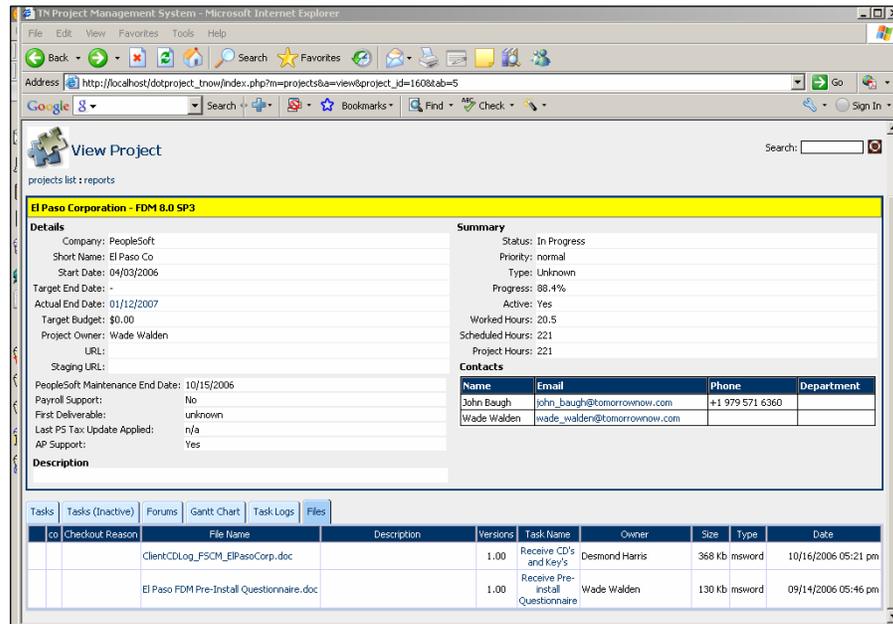
27 Further, Download Request Forms containing user ID and password information can be derived  
28 or ascertained from TomorrowNow's onboarding documents received from and e-mail

1 communications with TomorrowNow's customers that are located within TomorrowNow's  
2 document production, and the burden of deriving or ascertaining the answer to this interrogatory  
3 is substantially the same for both parties. Thus, TomorrowNow relies on Rule 33(d) to further  
4 respond to this interrogatory.

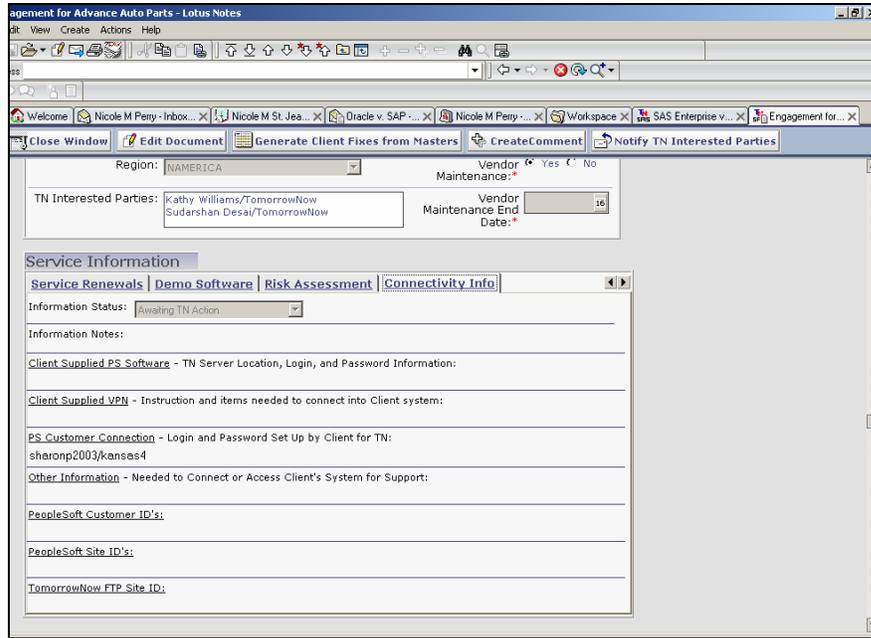
5 Many of the JDE World and OneWorld Download Request forms can also be located in a  
6 folder titled "JDE Clients – TNOW" on DCITBU01. Also located in the "JDE Clients – TNOW"  
7 folder is a spreadsheet called "Download Priorities.xls." See DCITBU01\_G/JDE\_1-3/JDE  
8 Clients - TNOW/Download Request/Download\_Priorities.xls. This spreadsheet contains many of  
9 the Customer Connection user IDs and passwords for TomorrowNow JDE customers. Thus,  
10 TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.

11 TomorrowNow also stored PeopleSoft customer user IDs and passwords within its  
12 onboarding database DotProject. See TN-OR 01361344, TN (Disc) 62. In order to locate the  
13 user id and password information in DotProject, select any customer in the entry screen of  
14 DotProject. From the customer's "Projects" page, select the blue "Files" tab, and open the Pre-  
15 Install Questionnaire. Again, this questionnaire contains the customers' respective user IDs and  
16 passwords. For example, within El Paso Corporation, select the Files tab, and a link to the FDM  
17 Pre-Install Questionnaire is available. The screen shot below shows where to locate the Pre-  
18 Install Questionnaire for El Paso Corporation. Thus, TomorrowNow relies on Rule 33(d) to  
19 further respond to this interrogatory.

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Finally, TomorrowNow stored customer user IDs and passwords within the SAS database. For example, within the SAS Enterprise database, user id and password information can be found in the view 1. Support/ 1. All / By Customer. See TN-OR03775478, TN (Hard drive) 67. For customer Advance Auto Parts, double-click on the Engagement NAmerica tab under FDM. This will bring up a separate window containing the Engagement Master Form. Under Service Information, scroll to the right until Connectivity Info appears. Within Connectivity Info, the “PS Customer Connection – Login and Password Set Up by Client for TN” is available. See TN-OR00184527. Kathy Williams reminded the TomorrowNow PeopleSoft team to “update the SAS ‘connection’ tab” with the customer user ID and password information. *Id.* The screen shot below shows where the Customer Connection user ID and password can be found for Advance Auto Parts. Thus, TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.



TomorrowNow stored customer user ids and passwords within the SAS Clients Database as well. See TN-OR03727374, TN (Disc) 157. For example, in the view 1. Support / 1. All By Customer / Koontz-Wagner / Customer, e-mail correspondence is posted under Comments / Email / Time. The Koontz-Wagner Customer Connection user ID and password can be found in Incoming Email – Shelley Nelson 01/21/2005 9:50:40 AM Onboarding update. Thus, TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.

Each TomorrowNow customer’s Support Services Agreement and the exhibits accompanying the Agreement authorized TomorrowNow to download software and support materials on the customer’s behalf. The “Covered Products” portion of the Exhibit to the Agreement identifies product-specific information that TomorrowNow was to service for the customer. See Exhibit A to Second Supplemental Interrogatory Responses for a spreadsheet listing the Bates numbers for Support Services Agreements and relevant exhibits for each TomorrowNow customer. The TomorrowNow JDE World and OneWorld teams also requested that its customers complete a Product Verification Form, which included a listing of products for which the customers were licensed and for which they desired TomorrowNow support. See, e.g., TN-OR00051406-TN-OR00051408, TN-OR00051858-TN-OR00051860, TN-OR00052001-TN-OR00052004, TN-OR00052707-TN-OR00052710, TN-OR00052711-TN-OR00052714, TN-

1 OR00053241-TN-OR00053244, TN-OR00053245-TN-OR00053248, TN-OR00052805-TN-  
2 OR0052808, TN-OR00053154-TN-OR00053156, TN-OR00053438-TN-OR00053441, TN-  
3 OR00053684-TN-OR00053586, TN-OR0053473-TN-OR00053475, TN-OR00053615-TN-  
4 OR00053617, TN-OR00053430-TN-OR00053433, TN-OR00053434-TN-OR00053437, TN-  
5 OR00054127-TN-OR00054129, TN-OR00053746-TN-OR00053749, TN-OR00054507-TN-  
6 OR00054509, TN-OR00054347-TN-OR00054349, TN-OR000555724-TN-OR00055726.

7 Additional examples of Product Verification Forms can be located by running the search “Product  
8 Verification Form” in the full text with “Word” as the document type. Further, Product  
9 Verification Forms containing user ID and password information can be derived or ascertained  
10 from TomorrowNow’s Support Services Agreements as well as onboarding documents received  
11 from and e-mail communications with TomorrowNow’s customers that are located within  
12 TomorrowNow’s document production, and the burden of deriving or ascertaining the answer to  
13 this interrogatory is substantially the same for both parties. Thus, TomorrowNow relies on Rule  
14 33(d) to further respond to this interrogatory.

15 **ORACLE DATABASE AMENDED INTERROGATORY NO. 10:**

16 Describe in as much detail as possible all instances in which a Customer has provided you  
17 with a password for use in Downloading Software and Support Materials, including but not  
18 limited to Identifying all related Documents, Communications, or warranties provided by the  
19 Customer, and indicating in each instance which Software and Support Materials the Customer  
20 authorized You to Download with the password.

21 **ORACLE DATABASE SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:**

22 THIS ORACLE DATABASE SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
23 CONFIDENTIAL INFORMATION.

24 TomorrowNow is not currently aware of an instance where a customer provided a  
25 password to TomorrowNow for TomorrowNow’s use in obtaining Oracle database related  
26 components and/or applications, including any updates or patches for those applications.

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**INTERROGATORY NO. 12:**

Describe in as much detail as possible any policies, practices or procedures, including clean room procedures, that You have to ensure that Software and Support Materials are not mixed between and among Customers or sent to SAP AG or SAP America.

**RESPONSE TO INTERROGATORY NO. 12:**

THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

Subject to and without waiving the General Responses and Objections, TomorrowNow responds by incorporating by reference its response to Interrogatory No. 6. TomorrowNow further responds that its policy was to store a customer’s downloaded material in a separate folder structure for that particular customer and only to use such materials for that customer.

1 TomorrowNow's policies and procedures were promulgated in a variety of documents, which will  
2 be included in TomorrowNow's document production and on which TomorrowNow relies to  
3 further respond to this interrogatory pursuant to Rule 33(d).

4 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

5 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL  
6 INFORMATION.

7 TomorrowNow further responds by incorporating by reference its supplemental response  
8 to Interrogatory No. 6. TomorrowNow's policies and procedures documents include but are not  
9 limited to TN-OR00001278 – TN-OR00004196. TomorrowNow reserves the right to further  
10 supplement this response as necessary during the course of document production.

11 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

12 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
13 CONFIDENTIAL INFORMATION.

14 TomorrowNow further responds that before the litigation, TomorrowNow's relevant  
15 policies and procedures included the following: (1) TomorrowNow was to download each  
16 customer's materials individually, by customer, never sharing materials between customer; (2)  
17 TomorrowNow was to use a specific customer's login ID only to download that customer's  
18 materials; (3) TomorrowNow was to only use a customer's current and valid login ID, assigned  
19 to the customer by the vendor; and (4) TomorrowNow was never to download materials on  
20 behalf of a customer past that customer's maintenance end date. *See, e.g.*, TN-OR00411402.

21 For other relevant TomorrowNow policies and procedures, *see* SAP-OR00631478 – SAP-  
22 OR00631496, TN-OR03775488 – TN-OR03775511, SAP-OR00251437, TN-OR02813156 – TN-  
23 OR02813157, TN-OR02813158 – TN-OR02813159, SAP-OR00129611-SAP-OR00129614, TN-  
24 OR00489529-TN-OR00489532. TomorrowNow further responds by incorporating by reference  
25 all of its current responses to Interrogatory No. 7. Pursuant to Rule 33(d), TomorrowNow relies  
26 upon each document cited in the Response and all Supplemental Responses to further respond to  
27 this interrogatory.

1 **SIEBEL SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

2 THIS SIEBEL SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL  
3 INFORMATION.

4 TomorrowNow is not aware of any policies, practices, or procedures solely related to  
5 TomorrowNow's support services for its Siebel customers separate and apart from those  
6 discussed above. Therefore, TomorrowNow incorporates by reference its current responses  
7 above and TomorrowNow relies upon each document cited in the response and all supplemental  
8 responses to respond to this interrogatory. TomorrowNow further incorporates by reference and  
9 relies on its current responses to Interrogatories Nos. 6 and 7 of this set.

10 **INTERROGATORY NO. 13:**

11 Describe in as much detail as possible all Software and Support Materials that "have been  
12 downloaded beyond those that, according to TN's records, related to applications licensed to the  
13 particular customer on whose behalf the downloads were made," as alleged in ¶ 15 of Your  
14 Answer, including but not limited to Identifying the "records" You referenced in making Your  
15 determination.

16 **RESPONSE TO INTERROGATORY NO. 13:**

17 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

18 Subject to and without waiving the General Responses and Objections, TomorrowNow  
19 responds as follows: TomorrowNow's downloads on behalf of customers using JDE's OneWorld  
20 products were made based on instructions set forth on a Download Request Form. The Download  
21 Request Forms for Merck, OCE, SPX, Metro Machine and Yakazi instructed the download team  
22 to download all ESUs for all system codes on a particular release level. TomorrowNow's records  
23 did not show that those customers had represented that they were licensed to all system codes on  
24 a particular release level. Additionally, TomorrowNow has learned that the password and user id.  
25 for Honeywell were used to access the Customer Connection site to download materials  
26 apparently related to JDE products. Additional information responsive to this interrogatory can  
27 be derived or ascertained from the relevant customer contracts, onboarding documentation,  
28 Download Request Forms and the relevant customer files, which will be included in

1 TomorrowNow's document production and on which TomorrowNow relies to further respond to  
2 this interrogatory pursuant to Rule 33(d).

3 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

4 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL  
5 INFORMATION.

6 TomorrowNow further responds that its customer contracts include but are not limited to:  
7 TN-OR00000027 – TN-OR00001007 and TN-OR 00004204 – TN-OR00004276; and that its  
8 onboarding documentation includes but is not limited to TN-OR00001008 – TN-OR00001277.  
9 Download material (in native format) includes but is not limited to: TN-OR00004202,  
10 TN-OR00005146 and TN-OR00005147. TomorrowNow reserves the right to further supplement  
11 this response as necessary during the course of document production.

12 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

13 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
14 CONFIDENTIAL INFORMATION.

15 TomorrowNow further responds that because TomorrowNow did not have access to its  
16 customers' respective license agreements with the software vendor, TomorrowNow relied on the  
17 representations of its customers in each customer's Support Services Agreement and the  
18 "Covered Products" portion of the Agreement's accompanying exhibits, as well as the product  
19 information provided by the customer in the Product Verification Forms. As stated in the  
20 response above, TomorrowNow believes that there were some downloads made for products  
21 beyond those to which the customer informed TomorrowNow that the customer was licensed.  
22 However, despite numerous discovery requests for information from Plaintiffs that will map  
23 downloads to specific products, no such information has been produced which in turn means that  
24 TomorrowNow does not have the ability to map each of the specific downloads to each of the  
25 specific products. Plaintiffs have represented to the Court that they also do not have the ability  
26 post-download to determine which downloads relate to which products. Thus, without such  
27 mapping information (provided in a manner that permits an electronic "download to product"  
28 comparison), it is not possible for TomorrowNow to evaluate the appropriateness of each

1 download it made on behalf of its customers. TomorrowNow further responds by incorporating  
2 by reference all of its current responses to Interrogatory No. 14 and Interrogatory No. 16.

3 **SIEBEL SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

4 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
5 CONFIDENTIAL INFORMATION.

6 With regard to TomorrowNow's servicing of Siebel customers and the limited  
7 downloading of informational documents from SupportWeb for a few clients, TomorrowNow is  
8 not aware of any specific downloads from SupportWeb or elsewhere that were in excess of a  
9 customer's license agreement with Oracle. Moreover, TomorrowNow has not conducted a  
10 download by download analysis of any such downloads. Because TomorrowNow did not have  
11 access to its customers' respective license agreements with the software vendor, TomorrowNow  
12 relied on the representations of its customers in each customer's Support Services Agreement and  
13 the "Covered Products" portion of the Agreement's accompanying exhibits for information  
14 regarding the data licensed to a customer. Despite numerous discovery requests for information  
15 from Plaintiffs that will map downloads to specific products, sufficient information has not been  
16 produced which in turn means that TomorrowNow does not have the ability to map each of the  
17 specific downloads to each of the specific products. Plaintiffs have represented to the Court that  
18 they also do not have the ability post-download to determine which downloads relate to which  
19 products. Thus, without such mapping information (provided in a manner that permits an  
20 electronic "download to product" comparison), it is not possible for TomorrowNow to evaluate  
21 the appropriateness of each download it made on behalf of its Siebel customers.

22 TomorrowNow further responds that its customer contracts for Siebel services include,  
23 but are not limited to, TN-OR02985469 – TN-OR02985485; TN-OR02812692 – TN-  
24 OR02812735; TN-OR03712204 - TN-OR03712214; TN-OR00006463 - TN-OR00006476; TN-  
25 OR03712233 - TN-OR03712239; TN-OR00006771 - TN-OR00006781; TN-OR00006952 - TN-  
26 OR00006970; TN-OR00007078 - TN-OR00007092; TN-OR06085843 - TN-OR06085854; TN-  
27 OR06085827 - TN-OR06085828; TN-OR00000540 - TN-OR00000564; TN-OR00007868 – TN-  
28 OR00007877; TN-OR00008179 - TN-OR00008192; TN-OR00008322 - TN-OR00008332; TN-

1 OR00008389 - TN-OR00008405; TN-OR00008671 - TN-OR00008681; TN-OR03712369 - TN-  
2 OR03712371; TN-OR00000755 - TN-OR00000772; and TN-OR02985918 - TN-OR02985931.

3 **FOURTH SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

4 THIS FOURTH SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
5 CONFIDENTIAL INFORMATION.

6 Paragraphs 75 through 80 of Plaintiffs' March 22, 2007 Complaint lists several alleged  
7 TomorrowNow customers for whom Plaintiffs alleged they had "uncovered unlicensed  
8 downloads linked to" TomorrowNow. Plaintiffs' March 22, 2007 Complaint for Damages and  
9 Injunctive Relief ("Original Complaint") (Docket Entry No. 1), at ¶ 75 (24:21-22). After  
10 receiving the Complaint, TomorrowNow, with the assistance of its counsel<sup>1</sup> in this litigation,  
11 began an investigation in an attempt to determine what downloads TomorrowNow made on  
12 behalf of those customers and which, if any, any such downloads which were beyond those for  
13 which each customer had indicated to TomorrowNow it was licensed. At the same time,  
14 TomorrowNow, with the assistance of its counsel in this litigation, systematically engaged in an  
15 effort to preserve all electronic and hard copy data that was potentially relevant to Plaintiffs'  
16 allegations and began interviewing those TomorrowNow employees with knowledge of  
17 TomorrowNow's downloading activities.

18 For certain of the entities named in paragraphs 75-80 of the Original Complaint,  
19 TomorrowNow preliminarily concluded by May 30, 2007 that TomorrowNow had the following  
20 minimum number of downloaded files for at least the following entities:

21  
22  
23  
24  
25  
26 <sup>1</sup> Judge Laporte's August 31, 2009 Order (Dkt. 460), under which this Fourth  
27 Supplemental Response is made, specifically states: "Defendants' supplemental response to  
28 Interrogatory No. 13 shall not be construed as a waiver of either the attorney-client privilege or  
work product immunity." *Id.* at 1:26-28. Thus, this response is made subject to, and without  
waiving, the attorney-client privilege, work product immunity or any other applicable privilege.  
This supplemental response does not, and is not intended to, contain any legal advice or opinions.

| Customer Name                  | PeopleSoft Software | JDEdwards Software | Listed in Paragraphs 76-80 of Complaint | Listed in Paragraph 75 of Complaint | Minimum downloaded files located on TomorrowNow's server as of May 30, 2007 |
|--------------------------------|---------------------|--------------------|---|-------------------------------------|---|
| Honeywell                      | Y                   |                    | Y                                       | Y                                   | 18,210  |
| Merck                          |                     | Y                  | Y                                       | Y                                   | 14,591  |
| Metro Machine Corp             |                     | Y                  | Y                                       | Y                                   | 15,499  |
| Oce Technologies               |                     | Y                  | Y                                       | Y                                   | 46,810  |
| SPX Cooling                    |                     | Y                  | Y                                       | Y                                   | 11,243  |
| SPX Flow                       |                     | Y                  | Y                                       | Y                                   | 7,664   |
| SPX Flow Technology            |                     | Y                  | Y                                       | Y                                   | 2,157   |
| SPX Weil-McLain                |                     | Y                  | Y                                       | Y                                   | 12,313  |
| Abbott Labs                    |                     | Y                  |   | Y                                   | 1,915   |
| Abitibi Consolidated           |                     | Y                  |   | Y                                   | 36,405  |
| Bear Stearns                   | Y                   |                    |   | Y                                   | 0   |
| Borders Foods                  |                     | Y                  |   | Y                                   | 0   |
| Caterpillar                    |                     | Y                  |   | Y                                   | 6,258   |
| Fuelserv                       |                     | Y                  |   | Y                                   | 2,329   |
| Helzberg Diamond Shop          |                     | Y                  |   | Y                                   | 0   |
| Herbert Waldmann               |                     | Y                  |   | Y                                   | 5,126   |
| Laird Plastic                  |                     | Y                  |   | Y                                   | 2,261   |
| National Manufacturing         |                     | Y                  |   | Y                                   | 0   |
| Ronis                          |                     | Y                  |   | Y                                   | 3,370   |
| Stora Enso Corp                |                     | Y                  |   | Y                                   | 14,711  |
| Texas Associates School Boards |                     | Y                  |   | Y                                   | 3,236   |
| VSM Group                      |                     | Y                  |   | Y                                   | 2,775   |
| Yazaki North America           |                     | Y                  |   | Y                                   | 45,751  |

These files were located on TomorrowNow's server known as DCITBU01\_G, which has been produced to Plaintiffs as part of TomorrowNow's Data Warehouse native file production. See DCITBU01\_G (TN-OR02989997, TN-OR02989995, TN-OR02989994, TN-OR02989993). And, as of May 30, 2007, TomorrowNow had preliminarily concluded that these files appeared to have been downloaded using each respective customer's username and password credentials, which were either listed on a spreadsheet the TomorrowNow JDE team maintained that was known as "Download Priorities.xls" and/or in various places in each customers' record entries in TomorrowNow's SAS database. See TN-OR08312517. See also DCITBU01\_G/JDE\_1-3/JDE Clients - TNOW/Download Request/Download\_Priorities.xls; Second Supplemental Response to Interrogatory 10 above, for a description of how to access the "Connectivity Info" tab in SAS. For Honeywell and Bear Stearns, TomorrowNow had preliminarily concluded as of May 30, 2007

1 that: (a) Honeywell's apparent customer credentials that were used to download its files were  
2 username "hwe000999" and password "texas33," which is located in Honeywell's data contained  
3 in SAS under "Connectivity Info"; and (b) Bear Stearns' apparent customer credentials that were  
4 used to download its files was username "tomorrownow\_bs" and password "texas3" which is  
5 located in Bear Stearns' data contained in SAS under "Connectivity Info". *See, e.g.*, TN-OR  
6 04446717, TN (Disc).173. As far as TomorrowNow has been able to determine, the downloaded  
7 files neither contain any physical electronic tagging in the file itself, nor any file-based metadata  
8 associated with each file that provides both the exact username and password that was used to  
9 download each file.

10 Despite the fact that, as of May 30, 2007, TomorrowNow was able to ascertain that a  
11 certain number of files were downloaded by TomorrowNow on behalf of certain entities,  
12 TomorrowNow was unable to locate any specific product mapping information that would enable  
13 TomorrowNow to systematically tie any specific download to one or more of Plaintiffs'  
14 separately licensed products. Since that time, Defendants have repeatedly asked Plaintiffs for this  
15 product mapping information and to date, Plaintiffs have refused and/or been unable to produce  
16 any information that would permit Defendants in any systematic, reasonable way to tie each  
17 specific downloaded file to one or more of Plaintiffs' separately licensed products. Thus, as of  
18 May 30, 2007, TomorrowNow was still unable to determine specifically which of the downloaded  
19 files it was maintaining on behalf of the entities listed above were related solely to Plaintiffs'  
20 products beyond those to which each entity had informed TomorrowNow it was licensed.

21 Plaintiffs filed their First Amended Complaint for Damages and Injunctive Relief  
22 ("FAC") (Docket Entry No. 31) on June 1, 2007. For the first time, Plaintiffs specifically  
23 identified in ¶ 85 of the FAC four distinct files that Plaintiffs alleged TomorrowNow had  
24 downloaded and that were beyond that customers' license rights. The relevant portions of  
25 Plaintiffs' allegations in ¶ 85 of the FAC state:

26 ...On December 5, 2006, SAP TN used SPX's log-in ID to download a Payroll  
27 ESU, JJ13072, for EnterpriseOne software version 8.11 SP1. ... SAP TN used the  
28 log-in ID of another customer, Merck, to download an EnterpriseOne 8.12 Blend  
Management ESU, JK10093, on December 13, 2006. ... Further, SAP TN logged

1 in on December 18, 2006 using the log-in credentials of Yazaki and downloaded  
2 a Customer Relationship Management ESU, PH11676, for EnterpriseOne  
3 software version 8.11.... SAP TN also used the log-in ID of OCE to download a  
4 payroll update for World Software version A7.3, A738217431, on December 21,  
5 2006. ... None of these customers was licensed to copy these works. ...

6 TomorrowNow was then able to use this information in ¶ 85 of the FAC to find the  
7 customer-specific download folder locations on DCITBU01\_G in which these specific files were  
8 located. TomorrowNow then concluded that TomorrowNow had downloaded the ESUs with the  
9 file names JJ13072 (SPX), JK10093 (Merck) and PH11676 (Yazaki) and the SAR with the name  
10 of A738217431 (OCE), which correspond to the respective customers listed in ¶ 85 of the FAC  
11 (and as noted in parenthesis herein). See DCITBU01\_G (TN-OR02989997, TN-OR02989995).  
12 By the time TomorrowNow filed its answer to the FAC on July 2, 2007 TomorrowNow had  
13 reached the preliminary conclusions that: (a) TomorrowNow apparently downloaded each of the  
14 files noted in ¶ 85 of the FAC using that specific customer's username and password credentials;  
15 and (b) by referring to each specific customer's Support Services Agreement with  
16 TomorrowNow, product verification forms and download request forms, it appeared that each of  
17 the four files noted in ¶ 85 of the FAC related to products other than those for which each  
18 respective customer had informed TomorrowNow they were licensed.<sup>2</sup> The documents and other  
19 information on which TomorrowNow's preliminary conclusions at that time were based are as  
20 follows:

21 **SPX**

22 **File name:** JJ13072

23 **File location:** BU01\_G\JDEUPDATES&FIXES75-84\Single Files\SPX Weil-  
24 McLain\OneWorld\Electronic Software Updates\811SP1\JJ13072\_exe\JJ13072.htm

25 **System code(s) noted in file:** 07 Payroll

26 **TomorrowNow Support Services Agreement:** TN-OR00601393-TN-OR00601404

27 **Product Verification Form:** TN-OR00056188-TN-OR00056190

28 **Download Request Form:** TN-OR00235417

**Username apparently used:** wmcnc1

<sup>2</sup> In preparing this supplemental response and gathering the records associated with the preliminary factual conclusions TomorrowNow made before it filed its Answer to the FAC on July 2, 2007, TomorrowNow re-examined the ESU file labeled PH11676 (Yazaki), which notes system code 90 (CRM), and Appendix A to Yazaki's Support Services Agreement with TomorrowNow (TN-OR01711151- TN-OR01711152), which indicates that Yazaki informed TomorrowNow that it was in fact licensed to the JDE OneWorld CRM application, release 8.11. Thus, it appears that TomorrowNow's preliminary conclusion as of July 2, 2007 was incorrect with respect to the ESU file labeled PH11676 that is referred to in ¶ 85 of the FAC.

1 **Login apparently used:** wmx\_e\_811

2 **Sources for Username and ID:** "Download\_Priorities.xls," located at TN-OR08312517; TN-OR00235417

3 **Merck**

4 **File name:** JK10093

5 **File location:** BU01\_G\JDEUPDATES&FIXES56-64\Merck\OneWorld\Software\Electronic Software Updates\812\JK10093\_exe\JK10093.htm

6 **System code(s) noted in file:** 31 Shop Floor Control

7 **TomorrowNow Support Services Agreement:** TN-OR00000464-TN-OR00000478

8 **Product Verification Form:** N/A

9 **Download Request Form:** TN-OR00000479-TN-OR00000484

10 **Username apparently used:** jagjit\_singh@merck.com

11 **Login apparently used:** kanyakumari2000

12 **Sources for Username and ID:** "Download\_Priorities.xls," located at TN-OR08312517; TN-OR00000479

13 **Yazaki**

14 **File name:** PH11676

15 **File location:** BU01\_G\JDEUPDATES&FIXES85-103\Single Files\Yazaki North America\One World\Electronic Software Update\811\PH11676\_exe\PH11676.htm

16 **System code(s) noted in file:** 90 CRM

17 **TomorrowNow Support Services Agreement:** TN-OR01711142-TN-OR01711158

18 **Product Verification Form:** TN-OR01573472-TN-OR01573474

19 **Download Request Form:** TN-OR00001002-TN-00001007

20 **Username apparently used:** Joel\_joyce

21 **Login apparently used:** jj48182

22 **Sources for Username and ID:** "Download\_Priorities.xls," located at TN-OR08312517; TN-OR00001002

23 **OCE**

24 **File name:** A738217431

25 **File location:** BU01\_G\JDEUPDATES&FIXES65-74\Oce Technologies\World\World A73\World Updates\A738217431\_EXE\A738217431.EXE

26 **System code(s) noted in file:** 07 Payroll

27 **TomorrowNow Support Services Agreement:** TN-OR00602324-TN-OR00602335

28 **Product Verification Form:** TN-OR00001163-TN-OR00001165

**Download Request Form:** TN-OR05941642-TN-OR05941647

**Username apparently used:** john\_knoops

**Login apparently used:** geheim1@2

**Sources for Username and ID:** "Download\_Priorities.xls," located at TN-OR08312517; TN-OR05941642

Although it appeared to TomorrowNow as of July 2, 2007 that each of the four files noted above were solely related to system codes that are beyond those which each respective TomorrowNow customer indicated to TomorrowNow they were licensed, Plaintiffs' have not provided any information establishing that the system codes noted in each of the four files are the exclusive system codes for which that file is permitted to be used. Even as of September 23,

1 2009, Plaintiffs still have not provided adequate product mapping information that Defendants  
2 could possibly use in an effort to attempt to definitely conclude that each of the four files do not  
3 relate in any way to the products for which each of the specific customers are licensed.

4 As Plaintiffs know, many of its separately licensed products are subject to numerous  
5 interdependencies and prerequisites associated with other licensed products in order for those  
6 products to function properly. Thus, it is possible that a ESU or SAR that notes only one system  
7 code in the file itself could in fact be intended and authorized by Plaintiffs to be used by  
8 customers licensed for other system codes besides the one(s) noted in each ESU or SAR file.  
9 This issue may be the subject of both fact and expert testimony at trial. Therefore,  
10 TomorrowNow does not concede that the ESUs with the file names JJ13072, JK10093 and  
11 PH11676 and the SAR with the name of A738217431 were unlicensed, illegal or unauthorized.

12 The statement in TomorrowNow's July 2, 2007 answer to ¶ 15 of the FAC that there were  
13 downloads "beyond those that, according to TomorrowNow's records, related to applications  
14 licensed to the particular customer on whose behalf the downloads were made," and Defendants'  
15 representatives' subsequent statements in press releases/news conferences on July 2-3, 2007 that  
16 "inappropriate downloads" took place, simply acknowledge the fact that TomorrowNow had  
17 concluded as of July 2, 2007 that its records did not indicate that SPX, Merck, Yazaki and OCE  
18 represented that they were licensed to the system codes noted in the ESUs with the file names  
19 JJ13072 (SPX), JK10093 (Merck) and PH11676 (Yazaki) and the SAR with the name of  
20 A738217431 (OCE). Thus, these particular downloads were considered by TomorrowNow to be  
21 "inappropriate" because it was TomorrowNow's policy to only download materials for customers  
22 related to those products for which the customer had informed TomorrowNow they were  
23 licensed. That does not mean that TomorrowNow concedes either that these customers were not  
24 in fact licensed to receive the subject files or that the licenses the customers had or have with  
25 Plaintiffs do not permit these customers, or TomorrowNow acting on their behalf, to download  
26 the files specifically referenced in ¶ 85 of the FAC.

27 Additionally, as part of TomorrowNow's preliminary investigation and related fact  
28 finding efforts from March 22, 2007 through July 2, 2007 when TomorrowNow filed its answer

1 to ¶ 15 of the FAC indicating that there were downloads “beyond those that, according to  
2 TomorrowNow’s records, related to applications licensed to the particular customer on whose  
3 behalf the downloads were made” and Defendants’ representatives’ subsequently made  
4 statements in press releases/news conferences on July 2-3, 2007 that “inappropriate downloads”  
5 took place, TomorrowNow made the following additional preliminary conclusions:

6 a. Paragraph 76 of the FAC – This paragraph contains Plaintiffs’ allegation regarding  
7 Honeywell. TomorrowNow only serviced Honeywell’s PeopleSoft applications. However,  
8 TomorrowNow concluded that it had stored in Honeywell’s download folders at TomorrowNow  
9 certain downloads related to JDE, for which Honeywell had not indicated to TomorrowNow it  
10 was licensed. Specifically, TomorrowNow concluded that Honeywell’s download folder on  
11 TomorrowNow’s servers contained product roadmaps for certain JDE EnterpriseOne Products.  
12 See six separate “EnterpriseOne” folders in Honeywell\Product Roadmaps\2005\2005-Q1 on the  
13 DCITBU01\_G server, which has been produced as part of TomorrowNow’s Data Warehouse  
14 native file production. See DCITBU01\_G (TN-OR02989993). TomorrowNow also concluded  
15 that Honeywell’s download folder on TomorrowNow’s servers contained red papers for certain  
16 JDE EnterpriseOne Products. See three separate “EnterpriseOne” folders in Honeywell\Red  
17 Papers on DCITBU01\_G server (*id.*).

18 The statement in TomorrowNow’s July 2, 2007 answer to ¶ 15 of the FAC that there were  
19 downloads “beyond those that, according to TomorrowNow’s records, related to applications  
20 licensed to the particular customer on whose behalf the downloads were made” and Defendants’  
21 representatives’ subsequent statements in press releases/news conferences on July 2-3, 2007 that  
22 “inappropriate downloads” took place simply acknowledge the fact that TomorrowNow’s  
23 downloads of JDE materials for Honeywell, a PS customer, were considered by TomorrowNow  
24 to be “inappropriate” because it was TomorrowNow’s policy to only download materials for  
25 customers related to those products for which the customer had informed TomorrowNow they  
26 were licensed. However, as noted above, that does not mean that TomorrowNow concedes either  
27 that Honeywell was not in fact licensed to receive the subject files or that the licenses Honeywell  
28 had or has with Plaintiffs do not permit Honeywell, or TomorrowNow acting on its behalf, to

1 download all of the files specifically referenced in ¶ 76 of the FAC.

2 b. Paragraphs 77-81 of the FAC – Plaintiffs make several customer specific  
3 allegations in ¶¶ 77-81 of the FAC. Although Plaintiffs did not provide (and as of September 23,  
4 2009 still have not provided) the specific file names of each file it contends in ¶¶ 77-81 were  
5 improperly downloaded, Plaintiffs did provide certain file counts. And, TomorrowNow  
6 attempted to determine the accuracy of those counts. However, TomorrowNow was not and is  
7 still not able to definitively conclude whether the file counts in ¶¶ 77-81 of the FAC are accurate.  
8 But, as part of its investigation before it filed its answer to the FAC on July 2, 2007,  
9 TomorrowNow confirmed that its records for Merck (¶ 77), SPX (¶ 78), OCE (¶ 79) and Yazaki  
10 (¶ 81) showed that those customers had indicated to TomorrowNow that they were licensed to  
11 some, but not all of Plaintiffs’ JDE products. Before TomorrowNow filed its answer to the FAC  
12 on July 2, 2007, TomorrowNow confirmed that its download request forms indicated that at the  
13 time that TomorrowNow conducted downloads on behalf each of these customers,  
14 TomorrowNow downloaded all available ESUs for certain releases instead of only those ESUs for  
15 those releases that note the system codes that those customers told TomorrowNow they were  
16 licensed to. Likewise, for each of those customers, TomorrowNow’s records indicated that at the  
17 time that TomorrowNow conducted downloads on behalf each of these customers,  
18 TomorrowNow may have downloaded SARs for certain releases that note system codes other  
19 than those the referenced customers told TomorrowNow they were licensed to. The records that  
20 TomorrowNow used to make these preliminary conclusions include download request forms (TN-  
21 OR00235417, TN-OR00000479-TN-OR00000478, TN-OR00000490- TN-OR00000495, TN-  
22 OR00001002-TN-OR00001007, TN-OR00000990-TN-OR00000995, TN-OR05941642-TN-  
23 OR05941647, TN-OR00081327), product verification forms (TN-OR00056188-TN-  
24 OR00056190, TN-OR01573472-TN-OR01573474, TN-OR00001163-TN-OR00001165),  
25 Appendix A forms to TomorrowNow’s Support Services Agreements (TN-OR00601393-TN-  
26 OR00601404, TN-OR00000464-TN-OR00000478, TN-OR01711142-TN-OR01711158, TN-  
27 OR00602324-TN-OR00602335), and log files (TN-OR02193737, TN(Disc).82).

28 The following table compares Plaintiffs’ allegations in ¶¶ 77-81 of the FAC to the

1 preliminary conclusions TomorrowNow reached regarding the combined number of total  
2 downloads of ESUs and SARs that TomorrowNow had on its systems before it filed its answer to  
3 the First Amended Complaint on July 2, 2007. The total number of downloads for each customer  
4 noted in the far right column of the table below represents TomorrowNow's preliminary  
5 conclusions as of July 2, 2007 regarding the combined total number of files for both: (a) those  
6 groups of downloads that note system codes for which TomorrowNow's records reflected that its  
7 customers indicated they were licensed; and (b) those groups of downloads that note system  
8 codes for which TomorrowNow's records did not reflect its customers indicated they were  
9 licensed. TomorrowNow has sought from Plaintiffs, but not received, information in Plaintiffs'  
10 exclusive possession (to the extent it exists at all) that would potentially permit Defendants to  
11 accurately segregate those two groups of downloads.

| Company       | Para. of FAC | Plaintiffs' Number of Alleged Downloads | Plaintiffs' Number of Alleged Unauthorized Downloads | TomorrowNow's Preliminary Conclusion of Total Number of Downloaded ESUs and SARs on TomorrowNow's Servers |
|---------------|--------------|---|--|---|
| Merck         | 77           | 6,500                                   | 3,800  | 6,001   |
| Oce           | 78           | 5,600                                   | 1,800  | 9,543   |
| SPX           | 79           | 9,000                                   | 1,500  | 10,911  |
| Metro Machine | 80           | 600                                     | 50   | 6,052   |
| Yazaki        | 81           | 11,000                                  | 1,500  | 18,047  |

TomorrowNow acknowledges that at least some of the downloaded ESUs and SARs on TomorrowNow's servers for these particular customers likely note a system code other than the system codes that those customers told TomorrowNow they were licensed to. However, that conclusion is reached by deductive reasoning based solely on the objective fact that, for certain releases, TomorrowNow downloaded all available ESUs. Thus, the conclusion is not based on any specific segregation or isolation of the downloads noted in the table above into subgroups of "appropriate" and "inappropriate" downloads. The statement in TomorrowNow's July 2, 2007 answer to ¶ 15 of the FAC that there were downloads "beyond those that, according to TomorrowNow's records, related to applications licensed to the particular customer on whose behalf the downloads were made" and Defendants' representatives' subsequent statements in press releases/news conferences on July 2-3, 2007 that "inappropriate downloads" took place simply acknowledge the fact that some unidentified subset of these particular downloads were considered by TomorrowNow to be "inappropriate" because it was TomorrowNow's policy to only download materials for customers related to those products for which the customer had informed TomorrowNow they were licensed. However, as noted above, that does not mean that TomorrowNow concedes either that these customers were not in fact licensed to receive the subject files or that the licenses the customers had or have with Plaintiffs do not permit these customers, or TomorrowNow acting on their behalf, to download all of the files specifically referenced in ¶¶ 77-81 of the FAC.

c. IMCD Group – Before TomorrowNow filed its July 2, 2007 answer to ¶ 15 of the FAC, TomorrowNow concluded that a white paper with the file name "ods-00-0136.txt" titled

1 “Landed Costs in Enterprise One” may have been downloaded after IMCD’s maintenance end  
2 date. *See* TN-OR05657398, TN-OR05657459. *See also* JDWSVR01\_G\JDE\JDE Delivered  
3 Updates & Fixes\Generic WhitePapers\White Papers\OneWorld\ODS\ods-00-0136\[ods-oo-  
4 136]Landed Costs in EnterpriseOne.txt (TN-OR06125331). Defendants’ representatives’  
5 statements in press releases/news conferences on July 2-3, 2007 that “inappropriate downloads”  
6 took place simply acknowledged the fact that downloading after a customer’s maintenance end  
7 date was considered by TomorrowNow to be “inappropriate” because it was TomorrowNow’s  
8 policy to only download materials for customers before their maintenance end dates and related to  
9 those products for which the customer had informed TomorrowNow they were licensed.  
10 However, as noted above, that does not mean that TomorrowNow concedes that IMCD was not in  
11 fact licensed to receive a white paper with the file name “ods-00-0136.txt” titled “Landed Costs  
12 in Enterprise One” or that the license IMCD had or have with Plaintiffs do not permit IMCD, or  
13 TomorrowNow acting on its behalf, to download all of the files specifically referenced in ¶¶ 77-  
14 81 of the FAC.

15 Finally, because Plaintiffs have refused and/or are unable to provide adequate product  
16 mapping information that would enable the cross-referencing of every one of Plaintiffs  
17 downloadable files to each and every one of Plaintiffs’ potentially applicable separately licensed  
18 products to which those downloads relate, TN has not been able to conduct a download-by-  
19 download analysis to conclude for each download on TN’s servers which ones were for those  
20 products that TN’s customers indicated they were licensed to and which ones were not.  
21 Moreover, TN does not concede that Plaintiffs are able to meet their burden of proof on any of  
22 their claims now that years have passed in discovery in this case without Plaintiffs producing the  
23 definitive product-to-download mapping information that Defendants have requested since the  
24 beginning of the case.

25 **FIFTH SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

26 THIS FIFTH SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL  
27 INFORMATION.

1 TomorrowNow's Fourth Supplemental Response to Interrogatory No. 13 is further  
2 supplemented to correct a clerical error as follows:

3 The sentence in the penultimate paragraph of TomorrowNow's Fourth Supplemental  
4 Response to Interrogatory No. 13 that states:

5 "However, as noted above, that does not mean that TomorrowNow concedes that IMCD  
6 was not in fact licensed to receive a white paper with the file name "ods-00-0136.txt" titled  
7 "Landed Costs in Enterprise One" or that the license IMCD had or have with Plaintiffs do not  
8 permit IMCD, or TomorrowNow acting on its behalf, to download all of the files specifically  
9 referenced in ¶¶ 77-81 of the FAC."

10 Is hereby amended to state:

11 "However, as noted above, that does not mean that TomorrowNow concedes that IMCD  
12 was not in fact licensed to receive a white paper with the file name "ods-00-0136.txt" titled  
13 "Landed Costs in Enterprise One" or that the license IMCD had or have with Plaintiffs do not  
14 permit IMCD, or TomorrowNow acting on its behalf, to download all of the files that were  
15 downloaded by or on behalf of IMCD."

16 For ease of reference, the amended language affected by this Fourth Supplemental  
17 Response to Interrogatory No. 13 is underlined above.

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21 TEXT REMOVED - NOT RELEVANT TO MOTION  
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**INTERROGATORY NO. 16:**

Identify all Persons who were aware of, engaged in, conducted, supervised, authorized, investigated, or stopped any “inappropriate” downloads, including but not limited to stating their name, date of hire and termination, job title, job responsibilities, and a brief description of how they related to the “inappropriate” Downloads.

**RESPONSE TO INTERROGATORY NO. 16:**

THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

TomorrowNow objects that this interrogatory seeks information not in the possession of TomorrowNow. TomorrowNow further objects that because the investigation of the issues referenced in this interrogatory was and is conducted in response to the filing of Oracle’s complaint, this interrogatory seeks information that is protected from disclosure by the attorney-client privilege and the work product doctrine. Subject to and without waiving the foregoing objections and the General Responses and Objections, TomorrowNow responds as follows: Peter Surette was the TomorrowNow employee generally responsible for completing the Download Request Forms for JDE One World, as discussed in response to Interrogatory No. 13. Keith Shankle was the TomorrowNow employee generally responsible for completing the Download Request Forms for JDE World. Various TomorrowNow employees working on the PeopleSoft side of TomorrowNow’s business provided information to TomorrowNow employees Peggy Lanford and Mark Meyer, who generally supervised other TomorrowNow employees who actually conducted the downloads at relevant times. The job titles and dates of hire and termination, if relevant, for the employees named in this response are contained on the spreadsheet referenced in the response to Interrogatory No. 2, above. TomorrowNow executive management gave direction to change certain business processes relating to downloading. Documents relating to those process changes will be included in TomorrowNow’s document production, and TomorrowNow relies on such documents to further respond to this interrogatory pursuant to Rule 33(d).

1 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:**

2 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

3 TomorrowNow further responds as follows: TomorrowNow typically downloaded  
4 software and support materials to which its customers represented that they were entitled while  
5 the customers were in the on-boarding process with TomorrowNow. As part of that process,  
6 TomorrowNow determined what materials to download by reviewing the information located in a  
7 customer's Support Services Agreement and the information in the "Covered Products" portion of  
8 the Agreement's accompanying exhibits. *See* Exhibit A to Second Supplemental Interrogatory  
9 Responses for a spreadsheet listing the Bates numbers for Support Services Agreements and  
10 relevant exhibits for each TomorrowNow customer. The TomorrowNow JDE World and  
11 OneWorld teams also received product information from the customer through the Product  
12 Verification Forms. *See* Second Supplemental Response to Interrogatory No. 10 for a listing of  
13 the Support Services Agreements and Product Verification Forms.

14 Generally, the following people assisted with or supervised the TomorrowNow JDE  
15 World and OneWorld downloads: Laura Sweetman, Mark Kreutz, Pete Surette, Keith Shankle,  
16 Melissa Garcia, Florence Leong, David Palmer, Mark Deling, and Harry Schoennagel. Other  
17 members of the TomorrowNow JDE team may have gone on to Customer Connection on certain  
18 occasions. *See, e.g.*, TN-OR00005150-TN-OR00005160, TN-OR00013829-TN-OR00013831,  
19 TN-OR00020044-TN-OR00020051, TN-OR00061681-TN-OR00061686, TN-OR00133328-TN-  
20 OR0013335, TN-OR00099747-TN-OR00099754 (TomorrowNow organizational charts). In  
21 addition to the TomorrowNow JDE team members listed above, the TomorrowNow information  
22 services team was also enlisted to help with the downloading process. *See, e.g.*, TN-  
23 OR00005150-TN-OR00005160, TN-OR00013829-TN-OR00013831, TN-OR00020044-TN-  
24 OR00020051, TN-OR00061681-TN-OR00061686, TN-OR00133328-TN-OR0013335, TN-  
25 OR00099747-TN-OR00099754 (TomorrowNow organizational charts).

26 Generally, the following people assisted with or supervised the TomorrowNow PeopleSoft  
27 downloads: Peggy Lanford, Desmond Harris, George Lester, Wade Walden, Robin Alex, Melissa  
28 Garcia, Mark Meyer, Shelley Nelson, Greg Nelson, Kathy Williams, Aaron Woods, Amanda

1 Krenek, Linda Birdwell, Dimitri Garcia, Zachary Grafe, Cynthia Lampkin, Audrey Wessels,  
2 Sarah Rekieta, Briana Perkins, Yolanda Espiriqueta, Brenda Clark, Justin Johnson, and RoseAnna  
3 Ramirez. Other members of the TomorrowNow PeopleSoft team may have gone on to Customer  
4 Connection on certain occasions. *See, e.g.*, TN-OR00005150-TN-OR00005160, TN-  
5 OR00013829-TN-OR00013831, TN-OR00020044-TN-OR00020051, TN-OR00061681-TN-  
6 OR00061686, TN-OR00133328-TN-OR0013335, TN-OR00099747-TN-OR00099754  
7 (TomorrowNow organizational charts). There were also temporary employees used along the  
8 way to facilitate the downloads conducted on behalf of the TomorrowNow PeopleSoft customers.

9 Initially, all downloading was done manually with the assistance of temporary employees.  
10 At a later date, George Lester created downloading scripts, and Melissa Garcia was later placed in  
11 charge of the use and maintenance of the downloading scripts that assisted with the downloading  
12 process. TomorrowNow subsequently created Titan to assist with the downloading process.  
13 Titan is an automated program created initially by Josh Testone and then further developed by  
14 John Ritchie. However, during the time periods that TomorrowNow used Titan, some manual  
15 downloading occurred.

16 Because TomorrowNow did not have access to its customers' respective license  
17 agreements with the software vendor, TomorrowNow relied on the representations of its  
18 customers in the customer's Support Services Agreement and the "Covered Products" portion of  
19 the Agreement's accompanying exhibits, as well as the product information provided by the  
20 customer in the Product Verification Forms. TomorrowNow now believes that there were some  
21 downloads made for products beyond those to which the customer informed TomorrowNow that  
22 the customer was licensed. However, despite numerous discovery requests for this mapping  
23 information from Plaintiffs, TomorrowNow still does not have the ability to map each of the  
24 specific downloads to each of the specific products. Plaintiffs have represented to the Court that  
25 they also do not have the ability post-download to determine which downloads relate to which  
26 products. Thus, without such mapping information (provided in a manner that permits an  
27 electronic "download to product" comparison), it is not possible for TomorrowNow to evaluate  
28 the appropriateness of each of the downloads it made on behalf of its customers.

1 In order to determine if any specific download was appropriate, a review of millions of  
2 downloaded files and the objects contained in those files would be required, along with Support  
3 Services Agreements, Product Verification Forms, Download Request Forms, the customers'  
4 license agreements with the vendor, and a mapping from the vendor of what software and support  
5 materials correspond with what products. *See* Second Supplemental Response to Interrogatory  
6 No. 11 for a listing of where the downloaded materials can be found; *see* Second Supplemental  
7 Response to Interrogatory No. 10 for a listing of Download Request Forms. This complex  
8 mapping process would be equally burdensome for all parties.

9 After the litigation, TomorrowNow management gave the directive to change certain  
10 business processes related to downloading. These changes were memorialized in the  
11 TomorrowNow Compliance Guidelines of Support Services, V1 and V2. *See* SAP-OR00631478-  
12 SAP-OR00631496, TN-OR03775488-TN-OR03775511. The TomorrowNow executives and/or  
13 employees involved with the changes to the download process were Mark White, Martin Breuer,  
14 Harry Schoennagel, Mel Gadd, Mark Kreutz, John Tanner, Shelley Nelson, Rod Russell, John  
15 Baugh, Tab Brown, Broderick Ellis, Larry Garcia, Paul Henville, Chris Jackson, Tom Leier,  
16 Florence Leong, Gordon Robinson, and Kathy Williams. Both versions of the Compliance  
17 Guidelines state that downloading must be performed by the client, and TomorrowNow  
18 employees are prohibited from directly engaging in downloading activities. *Id.* Automated  
19 downloading tools could no longer be used after the business process changes went into effect.  
20 *Id.* TomorrowNow employees were permitted to provide "broad guidance" to customers with  
21 respect to the types of information the customers should download, but TomorrowNow  
22 employees were prohibited from making specific recommendations regarding the software and  
23 support materials that should be downloaded. *Id.* For a list of the other changes to the download  
24 process, *see* SAP-OR00631478-SAP-OR00631496 and TN-OR03775488-TN-OR03775511.

25 The following employees were disciplined for download-related reasons: Ed Harris and  
26 Greg Nelson. *See* TN-OR02812000, TN-OR00009540-TN-OR00009541.

27 For a list of the dates of hire, dates of termination, and job titles of the employees listed  
28 above, *see* TomorrowNow Employees spreadsheet. *See* TN-OR 00009568, TN (Disc) 12.

1 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:**

2 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS  
3 CONFIDENTIAL INFORMATION.

4 TomorrowNow further responds that after the litigation, the TomorrowNow executives  
5 and/or employees involved with the changes to the download process also include Peggy Lanford,  
6 Desmond Harris, Mark Meyer, and Robin Alex. For a list of the dates of hire, dates of  
7 termination, and job titles of the employees listed above, see TomorrowNow's updated employee  
8 spreadsheet. *See* TN-OR05942443, Exhibit B to TomorrowNow's Third Amended and  
9 Supplemental Response to Plaintiff Oracle Corporation's First Set of Interrogatories (Set One).

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TEXT REMOVED - NOT RELEVANT TO MOTION

1 **PROOF OF SERVICE**

2 I, Laurie Paige Burns, 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, 26<sup>th</sup> Floor, San Francisco, California 94104. On December 4,  
6 2009, I served a copy of the attached document(s):

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

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

23 Donn Pickett  
24 Geoffrey M. Howard  
25 Holly A. House  
26 Zachary J. Alinder  
27 Bree Hann  
28 BINGHAM McCUTCHEN LLP  
Three Embarcadero Center  
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*holly.house@bingham.com*  
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*bree.hann@bingham.com*

Executed on December 4, 2009, at San Francisco, California.

By:   
LAURIE PAIGE BURNS