

# EXHIBIT H

1 Robert A. Mittelstaedt (SBN 060359)  
JONES DAY  
2 San Francisco Office  
555 California Street, 26<sup>th</sup> Floor  
3 San Francisco, CA 94104  
Telephone: (415) 626-3939  
4 Facsimile: (415) 875-5700  
ramittelstaedt@jonesday.com  
5

Tharan Gregory Lanier (SBN 138784)  
6 Jane L. Froyd (SBN 220776)  
JONES DAY  
7 Silicon Valley Office  
1755 Embarcadero Road  
8 Palo Alto, CA 94303  
Telephone: (650) 739-3939  
9 Facsimile: (650) 739-3900  
tglanier@jonesday.com  
10 jfroyd@jonesday.com

11 Scott W. Cowan (*Admitted Pro Hac Vice*)  
Joshua L. Fuchs (*Admitted Pro Hac Vice*)  
12 JONES DAY  
717 Texas, Suite 3300  
13 Houston, TX 77002  
Telephone: (832) 239-3939  
14 Facsimile: (832) 239-3600  
swcowan@jonesday.com  
15 jlfuchs@jonesday.com

16 Attorneys for Defendants  
SAP AG, SAP AMERICA, INC., and  
17 TOMORROWNOW, INC.

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

21 ORACLE CORPORATION, et al.,  
22 Plaintiffs,  
23 v.  
24 SAP AG, et al.,  
25 Defendants.

Case No. 07-CV-1658 PJH

**DEFENDANT TOMORROWNOW,  
INC.'S FIRST AMENDED AND  
SUPPLEMENTAL RESPONSE TO  
PLAINTIFF ORACLE USA, INC.'S  
SECOND SET OF  
INTERROGATORIES**

26  
27  
28

1 Cheryl Drive, Livermore, California, 94550. Mr. Soumokil's last known address is:  
2 Poelruitstraat, 5217 HS, Rosmalen, Netherlands. Additional information responsive to this  
3 interrogatory may be derived or ascertained from TomorrowNow's business records, including  
4 specifically TN-OR 00000009 to TN-OR 00000015, TN-OR 00009560 to TN-OR 00009566, and  
5 TN-OR 00009568, which have been or will be included in TomorrowNow's production of  
6 documents in this case and on which TomorrowNow relies to further respond to this interrogatory  
7 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure ("Rule 33(d)").

8 **INTERROGATORY NO. 12:**

9 For each Customer for whom SAP TN has created one or more local PeopleSoft  
10 environments on SAP TN's systems from copies of that Customer's PeopleSoft software, as  
11 testified by Shelley Nelson (Shelley Nelson Dep. at 13:24-17:11 (Oct. 30, 2007)), Identify the  
12 Customer, Identify each product name and release copied to create the local environment, and  
13 state the total number of local environments created for the customer.

14 **RESPONSE TO INTERROGATORY NO. 12:**

15 THIS RESPONSE IS DESIGNATED AS HIGHLY CONFIDENTIAL.

16 TomorrowNow objects that this interrogatory is compound, unduly burdensome and  
17 oppressive to the extent that it seeks a narrative answer with respect to Peoplesoft environments  
18 and each product name and release copied to each such environment. Subject to and without  
19 waiving the foregoing objections and the General Responses and Objections, TomorrowNow  
20 responds as follows: TomorrowNow has maintained approximately 183 Peoplesoft environments  
21 on behalf of approximately 122 different customers, which have variously included one or more  
22 of the CRM, EPM, FDM, SA, Portal, and HRMS products, with varying releases of each  
23 (including CRM - releases 8.4, 8.8 SP1, and 8.9; EPM- release 8.9; FDM - releases 7.52, 7.53, 8  
24 SP3, 8.4, 8.4 SP1, 8.4 SP2, 8.8 SP1, and 8.9; SA – releases 7.6 and 8 SP1; Portal – releases 8.4  
25 and 9.9; and HRMS - releases 7.02, 7.50, 7.51, 8, 8 SP1, 8.3, 8.3 SP1, 8.8 SP1, and 8.9).  
26 Additional information responsive to this interrogatory as to specific customers may be derived or  
27 ascertained from TomorrowNow's business records, including specifically TomorrowNow's E  
28 Portal .nsf file, produced at TN-OR 00169313, information contained at TN-OR 00169315,

1 TomorrowNow's emails among development and support engineers and its databases of customer  
2 service information, including its SAS databases (which have been previously produced, in native  
3 format, at TN-OR 00009569), which have been or will be included in TomorrowNow's  
4 production of documents and on which TomorrowNow relies to further respond to this  
5 interrogatory pursuant to Rule 33(d).

6 **AMENDED AND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

7 TomorrowNow amends the confidentiality designation of its prior response to be  
8 designated as Confidential Information.

9 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL.

10 TomorrowNow further responds that an Excel workbook that has been produced at  
11 TN-OR06515456 that contains the most detailed information TomorrowNow has been able to  
12 gather regarding the PeopleSoft environment components that might have existed on  
13 TomorrowNow's network. Additional information responsive to this interrogatory may be  
14 derived or ascertained from TomorrowNow's business records of local PeopleSoft environments  
15 and their locations, including specifically TomorrowNow's BakTrack database, produced at TN-  
16 OR 06125330, TomorrowNow's SAS database, produced at TN-OR 03775478, TN(Hard  
17 drive).67, TN-OR 04446717, TN(Disc).173, TN-OR 04446719, TN(Hard drive).75,  
18 TomorrowNow's SAS environment portals, produced at TN-OR 00169313, TN-OR 00871902,  
19 TN-OR 03775478, and TN-OR04446719, TomorrowNow's Path Finder database, produced at  
20 TN-OR 04498712, and TomorrowNow's DotProject database, produced at TN-OR06220764,  
21 TN(Disc).214, as well as through the servers that have been made available in the "Data  
22 Warehouse," all which have been included in TomorrowNow's production of documents or  
23 otherwise made available to Plaintiffs and on which TomorrowNow relies to further respond to  
24 this interrogatory pursuant to Rule 33(d).

25 Further, in response to these noticed topics and during the course of individual depositions  
26 of TomorrowNow witnesses, TomorrowNow has provided more than sufficient testimony on the  
27 local PeopleSoft environments. *See, e.g.*, February 6-7, 2008 Deposition of John Baugh Pursuant  
28 to Rule 30(b)(6); June 25, 2008 Deposition of Rod Russell Pursuant to Rule 30(b)(6); April 1,

1 2008 Deposition of Kathy Williams Pursuant to Rule 30(b)(6); April 1, 2008 Deposition of  
2 Catherine Hyde Pursuant to Rule 30(b)(6); December 5, 2008 Deposition of Matthew Bowden;  
3 February 12, 2009 Deposition of Catherine Hyde; May 12, 2009 Deposition of Catherine Hyde;  
4 February 5, 2009 Deposition of Rod Russell; April 18, 2008 Deposition of Shelley Nelson.  
5 Pursuant to Rule 33(d), TomorrowNow relies on this testimony to further respond to this  
6 interrogatory.

7 **INTERROGATORY NO. 13:**

8 For each Customer for whom SAP TN has created one or more local J.D. Edwards  
9 environments on SAP TN's systems from copies of that Customer's J.D. Edwards software, as  
10 testified by Mark Kreutz (Mark Kreutz Dep. at 90:14-94:12-18 (Oct. 30, 2007)), Identify the  
11 Customer, Identify each product name and release copied to create the local environment, and  
12 state the total number of local environments created for that customer.

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

14 THIS RESPONSE IS DESIGNATED AS HIGHLY CONFIDENTIAL.

15 TomorrowNow objects that this interrogatory is compound, unduly burdensome and  
16 oppressive to the extent that it seeks a narrative answer with respect to JDE environments and  
17 each product name and release copied to each such environment. Subject to and without waiving  
18 the foregoing objections and the General Responses and Objections, TomorrowNow responds as  
19 follows: TomorrowNow has maintained JDE environments on behalf of three different customers:  
20 Koontz-Wagner Electric, Inc., The Bonne Bell Company, Inc., and Praxair, Inc. For Koontz-  
21 Wagner, there are nine environments, which include products Distribution, Financials, HRMS,  
22 and Manufacturing, release A7.3, Cumulative Update 7. For Bonne Bell, there are three  
23 environments, which include products Distribution, Financials, HRMS, and Manufacturing,  
24 release A8.1, Cumulative Update 6. For Praxair, there are twelve environments, which include  
25 products Distribution, Financials, HRMS, and Manufacturing, release Xe SP23G1. Additional  
26 Information responsive to this interrogatory as to specific customers may be derived or  
27 ascertained from TomorrowNow's business records, including TomorrowNow's emails among  
28 development and support engineers and its databases of customer service information, including

1 its SAS databases (which have been previously produced, in native format, at TN-OR 00009569),  
2 which have been or will be included in TomorrowNow's production of documents and on which  
3 TomorrowNow relies to further respond to this interrogatory pursuant to Rule 33(d).

4 **AMENDED AND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

5 TomorrowNow amends the confidentiality designation of its prior response to be  
6 designated as Confidential.

7 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL.

8 TomorrowNow further responds that Plaintiffs have questioned TomorrowNow's  
9 witnesses extensively in deposition on topics related to this interrogatory. For example, Plaintiffs  
10 requested deposition testimony on TomorrowNow's "creation and use of Customer Local  
11 Environments, including without limitation: b. The manner and method by which Customer Local  
12 Environments were created, stored and Used by You; . . . d. The total number of Customer Local  
13 Environments created for each identified customer; e. The name, release, and version of all PSFT  
14 or JDE branded Software obtained and/or copied to create each identified Customer Local  
15 Environment; f. The identity and description of all Customer Local Environments maintained in  
16 any way by You relating to Customers for whom You had ceased to provide support services; g.  
17 The identity and description of all Customer Local Environments Used by You in any way to  
18 support any Customer other than the one that provided the Software used to create the Customer  
19 Local Environment; . . . [and] l. The process by which Customer Local Environments were Used  
20 as part of the ordinary course of business for SAP TN, including without limitation to on-  
21 boarding of new Customers; support of Customer cases, issues, and problems; reactive and  
22 proactive development of bug fixes, updates, patches, explanations, or regulatory changes for  
23 Customers; and testing of other operating systems levels. . . ." See January 22, 2008 Amended  
24 Notice of Deposition of TomorrowNow, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6).

25 In response to these noticed topics and during the course of individual depositions of  
26 TomorrowNow witnesses, TomorrowNow has provided more than sufficient testimony on the  
27 creation and use of TomorrowNow's local JDE environments. See, e.g., February 19, 2008  
28 Deposition of Mark Kreutz Pursuant to Rule 30(b)(6); April 10, 2009 Deposition of Patti

1 VonFeldt. *See also* Future Deposition of Keith Shankle. In addition, TomorrowNow has made  
2 the relevant server partitions available through “Data Warehouse.” Pursuant to Rule 33(d),  
3 TomorrowNow relies upon all testimony and each document cited in this Supplemental Response  
4 to further respond to this interrogatory.

5 **INTERROGATORY NO. 14:**

6 **For each local environment Identified in Your responses to Interrogatories 12 and 13,**  
7 **Identify all Customers who received support based on the Use of that environment, and a detailed**  
8 **description of that support (such as, for example, the retrofit tax updates testified to by Shelley**  
9 **Nelson (Shelley Nelson Dep. at 32:19-34:13 (Oct. 30, 2007)) including, where applicable,**  
10 **Identification of the name, number, version or other Identifying information of the product**  
11 **provided as part of the support.**

12 **RESPONSE TO INTERROGATORY NO. 14:**

13 THIS RESPONSE IS DESIGNATED AS HIGHLY CONFIDENTIAL.

14 TomorrowNow objects that this interrogatory is cumulative, compound, unduly  
15 burdensome and oppressive to the extent it seeks to require TomorrowNow to attempt to evaluate  
16 millions of pages of documents and data relating to customer support that have been created over  
17 several years. Subject to and without waiving the foregoing objections and the General  
18 Responses and Objections, TomorrowNow responds as follows: Generally, to the extent a  
19 particular entity is or was a TomorrowNow customer, and when TomorrowNow maintains an  
20 environment on that customer’s behalf, TomorrowNow provided or provides support to that  
21 customer utilizing that environment. For updates and/or fixes to Peoplesoft and JDE products,  
22 TomorrowNow has generally used the customer’s environment(s) (whether maintained by  
23 TomorrowNow or the customer) to create or test the updates and/or fixes. TomorrowNow is  
24 aware of certain instances where an environment maintained on behalf of one customer may have  
25 been used to create or test updates and/or fixes for other customers. *See, e.g.*, Tr. of October 30,  
26 2007 Deposition of Mark Kreutz, at 197:8-199:25; Tr. of October 30, 2007 Deposition of Shelley  
27 Nelson at 32:19-41:17, 53:13-55:7; Dec. 6, 2007 Deposition of Shelley Nelson at 126:4-139:3,  
28 145:1-14, 160:16-161:5, 185:3-16, 195:24-196:20. Additional information responsive to this

1 interrogatory as to specific customers may be derived or ascertained from TomorrowNow's  
2 business records; specifically, the relevant specific customer support efforts, updates, and fixes  
3 are set forth and described in detail in TomorrowNow's emails among development and support  
4 engineers and its databases of customer service information, including its SAS databases (which  
5 have been previously produced, in native format, at TN-OR 00009569), which have been or will  
6 be included in TomorrowNow's production of documents and on which TomorrowNow relies to  
7 further respond to this interrogatory pursuant to Rule 33(d).

8 **AMENDED AND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14:**

9 TomorrowNow amends the confidentiality designation of its prior response to be  
10 designated as Confidential.

11 TomorrowNow supplements its prior response as follows:

12 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL.

13 TomorrowNow further responds that information responsive to this interrogatory can be  
14 found in the SAS database. *See* TN-OR 03775478, TN(Hard drive).67. TomorrowNow further  
15 responds that Plaintiffs have questioned TomorrowNow's witnesses extensively in deposition on  
16 topics related to this interrogatory. For example, Plaintiffs requested deposition testimony on  
17 TomorrowNow's "creation and use of Customer Local Environments, including without  
18 limitation: b. The manner and method by which Customer Local Environments were created,  
19 stored and Used by You; . . . d. The total number of Customer Local Environments created for  
20 each identified customer; e. The name, release, and version of all PSFT or JDE branded Software  
21 obtained and/or copied to create each identified Customer Local Environment; f. The identity and  
22 description of all Customer Local Environments maintained in any way by You relating to  
23 Customers for whom You had ceased to provide support services; g. The identity and description  
24 of all Customer Local Environments Used by You in any way to support any Customer other than  
25 the one that provided the Software used to create the Customer Local Environment; . . . [and] l.  
26 The process by which Customer Local Environments were Used as part of the ordinary course of  
27 business for SAP TN, including without limitation to on-boarding of new Customers; support of  
28 Customer cases, issues, and problems; reactive and proactive development of bug fixes, updates,



1 patches, explanations, or regulatory changes for Customers; and testing of other operating  
2 systems levels. . . ." See January 22, 2008 Amended Notice of Deposition of TomorrowNow, Inc.  
3 Pursuant to Fed. R. Civ. P. 30(b)(6).

4 In response to these noticed topics and during the course of individual depositions of  
5 TomorrowNow witnesses, TomorrowNow has provided more than sufficient testimony on the use  
6 of TomorrowNow's local environments. See, e.g., February 6-7, 2008 Deposition of John Baugh  
7 Pursuant to Rule 30(b)(6); February 19, 2008 Deposition of Mark Kreutz Pursuant to Rule  
8 30(b)(6); December 6, 2007 Deposition Testimony of Shelley Nelson Pursuant to Rule 30(b)(6);  
9 June 25, 2008 Deposition of Rod Russell Pursuant to Rule 30(b)(6); April 1, 2008 Deposition of  
10 Kathy Williams Pursuant to Rule 30(b)(6); April 1, 2008 Deposition of Catherine Hyde Pursuant  
11 to Rule 30(b)(6); April 18, 2008 Deposition of Shelley Nelson; December 5, 2008 Deposition of  
12 Matthew Bowden; February 12, 2009 Deposition of Catherine Hyde; May 12, 2009 Deposition of  
13 Catherine Hyde; February 5, 2009 Deposition of Rod Russell; April 10, 2009 Deposition of Patti  
14 VonFeldt; February 26, 2009 Deposition for Andrew Nelson; April 29, 2009 Deposition of  
15 Andrew Nelson.

16 TomorrowNow further states that it would be impossible and unreasonable to expect  
17 TomorrowNow to provide a detailed description of the support provided with each local  
18 environment. This interrogatory calls for tracking information for hundreds of environments  
19 from 2002 until the local environments were shut down on April 30, 2008. TomorrowNow relies  
20 upon all testimony and each document cited in this Supplemental Response to further respond to  
21 this interrogatory pursuant to Rule 33(d).

22 Dated: May 22, 2009

JONES DAY

23  
24 By: 

Jason McDonell

25  
26 Counsel for Defendants  
27 SAP AG, SAP AMERICA, INC., and  
28 TOMORROWNOW, INC.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Grace Wayte, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26<sup>th</sup> Floor, San Francisco, California 94104. On May 22, 2009, I served a copy of the attached document(s):

**DEFENDANT TOMORROWNOW, INC.'S FIRST AMENDED AND SUPPLEMENTAL RESPONSE TO PLAINTIFF ORACLE USA, INC.'S SECOND SET OF INTERROGATORIES**

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

Donn Pickett  
Geoffrey M. Howard  
Zachary J. Alinder  
Bree Hahn  
BINGHAM McCUTCHEN LLP  
Three Embarcadero Center  
San Francisco, CA 94111-4067  
*donn.pickett@bingham.com*  
*geoff.howard@bingham.com*  
*zachary.alinder@bingham.com*  
*bree.hahn@bingham.com*

Executed on May 22, 2009, at Palo Alto, California.

By: Grace Wayte  
Grace Wayte