

EXHIBIT 25

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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 SEVENTH AMENDED AND
SUPPLEMENTAL RESPONSE TO
PLAINTIFF ORACLE USA, INC.'S
FIRST SET OF INTERROGATORIES
(SET ONE)**

5 **INTERROGATORIES**

6 **INTERROGATORY NO. 1:**

7 Describe in as much detail as possible the “additional operational oversight at
8 TomorrowNow which will ensure the . . . maintenance of the SAP firewall,” as referenced in
9 Conference Call #1, including but not limited to Identifying all firewalls between and among SAP
10 AG, SAP America and SAP TN.

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

12 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

13 TomorrowNow objects that this interrogatory seeks information not reasonably calculated
14 to lead to the discovery of admissible evidence to the extent it seeks information concerning to
15 “firewalls” unrelated to TomorrowNow, and objects that this interrogatory is compound,
16 constituting two separate and distinct interrogatories, which TomorrowNow will treat as two in
17 this response. Subject to and without waiving the foregoing objections and the General
18 Responses and Objections, TomorrowNow responds as follows: the “additional operational
19 oversight” mentioned in the referenced conference call was the appointment of Mark White as
20 Executive Chairman of TomorrowNow. The “firewall” mentioned in the referenced conference
21 call is the technical and operational separation of TomorrowNow’s personnel, facilities, services
22 and information technology systems from those of SAP AG and SAP America (collectively,
23 “SAP”), including the maintenance of different email systems and the complete separation from
24 SAP’s systems of computers, computer networks and systems used by TomorrowNow for
25 customer service, including any downloading activity.

26 **INTERROGATORY NO. 2:**

27 Describe in as much detail as possible any express or implied authorization, permission, or
28 agreement, including any referenced in ¶¶ 9 or 72 of Your Answer, which You contend allows

1 You to access or Download Software and Support Materials from Oracle-maintained software
2 support websites, including Customer Connection.

3 **RESPONSE TO INTERROGATORY NO. 2:**

4 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

5 TomorrowNow objects that this interrogatory is unduly burdensome and oppressive to the
6 extent that it seeks a narrative with respect to each customer of TomorrowNow. Subject to and
7 without waiving the foregoing objection and the General Responses and Objections,
8 TomorrowNow responds as follows: Oracle was aware that TomorrowNow, on behalf of its
9 customers, had access to and conducted downloads of information from Oracle-maintained
10 software support websites, including Customer Connection, and did not object. Oracle has
11 provided training to TomorrowNow employees concerning access to and use of materials of the
12 type at issue in the litigation, even after this litigation began. Oracle admits in this action that
13 third party service providers are entitled to undertake such activities on behalf of their customers
14 to the extent the customers' license rights permit that activity. (Oracle has thus far failed to
15 produce those licenses, which may further evidence authorization of TomorrowNow's activities
16 on behalf of its customers.) TomorrowNow's contracts with its customers typically contain a
17 variety of representations and warranties that the customer is entitled to permit TomorrowNow
18 access to licensed materials for purposes of providing service to the customer. TomorrowNow
19 typically obtains from its customers written or other representations concerning the materials to
20 which that customer is licensed and to which TomorrowNow may have access for purposes of
21 providing service to the customer. Additional information responsive to this interrogatory as to
22 specific customers may be derived or ascertained from TomorrowNow's business records,
23 including specifically its contracts with its customers, emails with customers in the contract
24 negotiation process and initial steps to establish service for the customer (often referred to as the
25 "onboarding" process) and documentation concerning customer representations in the customer
26 onboarding process, which contracts, emails and onboarding documentation will be included in
27 TomorrowNow's production of documents in this case and on which TomorrowNow relies to
28

1 further respond to this interrogatory pursuant to Rule 33(d) of the Federal Rules of Civil
2 Procedure (“Rule 33(d”).

3 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

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

11 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

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

14 As stated in Defendants’ General Responses and Objections, TomorrowNow objects that
15 this interrogatory calls for a legal conclusion and for information protected by the work product
16 immunity. TomorrowNow further supplements its interrogatory response by incorporating by
17 reference and relying upon all of its current responses to Interrogatory No. 10 of Plaintiff Oracle
18 Corporation’s First Set of Interrogatories (Set One) and Interrogatory No. 4 contained herein.

19 **SIEBEL SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

20 THIS SIEBEL SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
21 INFORMATION.

22 TomorrowNow further responds that its customer contracts include but are not limited to:
23 TN-OR02985469 – TN-OR02985485; TN-OR02812692 – TN-OR02812735; TN-OR03712204 -
24 TN-OR03712214; TN-OR00006463 - TN-OR00006476; TN-OR03712233 - TN-OR03712239;
25 TN-OR00006771 - TN-OR00006781; TN-OR00006952 - TN-OR00006970; TN-OR00007078 -
26 TN-OR00007092; TN-OR06085843 - TN-OR06085854; TN-OR06085827 - TN-OR06085828;
27 TN-OR00000540 - TN-OR00000564; TN-OR00007868 – TN-OR00007877; TN-OR00008179 -
28 TN-OR00008192; TN-OR00008322 - TN-OR00008332; TN-OR00008389 - TN-OR00008405;

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

3 TomorrowNow's onboarding documentation includes but is not limited to TN-
4 OR07098763 – TN-OR07098765, TN-OR07098766-TN- TN-OR02985469 – TN-OR02985485;
5 TN-OR02812692 – TN-OR02812735; TN-OR03712204 - TN-OR03712214; TN-OR00006463 -
6 TN-OR00006476; TN-OR03712233 - TN-OR03712239; TN-OR00006771 - TN-OR00006781;
7 TN-OR00006952 - TN-OR00006970; TN-OR00007078 - TN-OR00007092; TN-OR06085843 -
8 TN-OR06085854; TN-OR06085827 - TN-OR06085828; TN-OR00000540 - TN-OR00000564;
9 TN-OR00007868 – TN-OR00007877; TN-OR00008179 - TN-OR00008192; TN-OR00008322 -
10 TN-OR00008332; TN-OR00008389 - TN-OR00008405; TN-OR00008671 - TN-OR00008681;
11 TN-OR03712369 - TN-OR03712371; TN-OR00000755 - TN-OR00000772; and TN-
12 OR02985918 - TN-OR02985931.OR07098767, TN-OR07098551-TN-OR07098561, and TN-
13 OR07098924-TN-OR07098934. TomorrowNow also stored onboarding documentation within
14 the SAS database. Examples of such documentation include, but are not limited to:

- 15 • For Alcatel-Lucent: In SAS Clients v3.5.1 - 1. Support/1. All by Customer/Alcatel-
16 Lucent/Customer, e-mail comments are posted under Comments/Email/Time.
17 Alcatel-Lucent onboarding documentation includes but is not limited to Comment –
18 Anthony Cefola 12/28/2008 11:53:00 AM; Proactive Call – Engineer – Vicky
19 D'Amelio 04/01/2008 08:33:03 AM; Outgoing Email – Vicky D'Amelio 02/06/2008
20 11:17:24 AM; Incoming Email – Vicky D'Amelio 01/15/2008 06:22:03 AM (and
21 accompanying attachment entitled DiscoveryDocument_Form_HCM_88.doc); and
22 Comment – Chris Jackson 12/04/2007 12:43:25 PM.
- 23 • For CSBP Limited:
 - 24 ○ In SAS Clients v3.5.1 - 1. Support/1. All by Customer/CSBP Limited/Customer, e-
25 mail comments are posted under Comments/Email/Time. CSBP Limited
26 onboarding documentation includes but is not limited to Outgoing Email –
27 Orlando de Souza 01/16/2007 07:45:32 PM (and accompanying attachment
28 entitled Scan5131.pdf); Outgoing Email – Orlando de Souza 11/05/2006 11:23:33

1 PM (and accompanying attachments entitled ChangeAssistant_061020.xls and
2 Download_Directory_CSBP.txt); Incoming Email – Orlando de Souza 10/19/2006
3 04:17:04 AM; and Outgoing Email – Orlando de Souza 10/10/2006 06:44:18 AM
4 (and accompanying attachment entitled CSBP – Kickoff Meeting Agenda
5 (20061011A).pps).

6 ○ Also, in SAS Siebel v3.5.1 – 1. Support/1. All by Customer/CSBP
7 Limited/CRM/Engagement e-mail comments are posted under
8 Comments/Email/Time. CSBP Limited onboarding documentation includes but is
9 not limited to Incoming Email – Broderick Ellis 07/12/2007 02:59:35 PM (and
10 accompanying attachment entitled SR Siebel 2007 1.1.doc).

11 ● For Fujitsu Siemens Computers: In SAS Clients v3.5.1 - 1. Support/1. All by
12 Customer/Fujitsu Siemens Computers/Customer, e-mail comments are posted under
13 Comments/Email/Time. Fujitsu Siemens Computers onboarding documentation
14 includes but is not limited to Incoming Email – Michael Garafola 04/10/2007 12:04:24
15 PM; and Incoming Email – John Tanner 11/22/2006 02:46:22 PM.

16 ● For Madix, Inc.: In SAS Clients v3.5.1 - 1. Support/1. All by Customer/Madix,
17 Inc./Customer, e-mail comments are posted under Comments/Email/Time. Madix,
18 Inc. onboarding documentation includes but is not limited to Outgoing Email –
19 Anthony Cefola 10/08/2007 03:42:00 PM (and accompanying attachments entitled
20 Post kickoff call follow-up.doc and Client Connectivity Summary.doc).

21 ● For MKS, Inc.:

22 ○ In SAS Clients v3.5.1 - 1. Support/1. All by Customer/MKS, Inc./Customer, e-
23 mail comments are posted under Comments/Email/Time. MKS, Inc. onboarding
24 documentation includes but is not limited to Outgoing Email – Jerry Jin
25 10/31/2006 02:58:00 PM; Outgoing Call – Pete Surette 10/27/2006 03:41:52 PM
26 (and accompanying attachment entitled 2006 Year-End Requirements Form v
27 1.0.doc); Outgoing Email – Pete Surette 10/25/2006 06:03:21 PM (and
28 accompanying attachment entitled MKS DiscoveryDocMasterE1.doc); and

1 Outgoing Email – Jerry Jin 10/12/2006 04:20:03 PM (and accompanying
2 attachment entitled Onboarding Steps_MKS.doc).

3 ○ Also, in SAS Siebel v3.5.1 – 1. Support/1. All by Customer/MKS
4 Inc./CRM/Engagement/Services to be Provided/24X7 Stnd – CRM 7.7 e-mail
5 comments are posted under Comments/Email/Time. MKS Inc. onboarding
6 documentation includes but is not limited to Outgoing Email –Jerry Jin 11/09/2006
7 10:41:56 AM; Incoming Email – Jerry Jin 11/09/2006 11:02:53 AM; Incoming
8 Email – Jerry Jin 11/09/2006 03:43:36; Incoming Email – Jerry Jin 11/09/2006
9 10:34:49 PM; Outgoing Email – Jerry Jin 11/09/2006 11:04:55 PM; and Incoming
10 Email – Jerry Jin 11/23/2006 04:16:51 PM.

11 ● For PSCU Financial Services, In SAS Siebel v3.5.1 – 1. Support/1. All by
12 Customer/PSCU Financial Services/CRM/Engagement/Services to be Provided/24X7
13 Stnd – CRM 7.5 e-mail comments are posted under Comments/Email/Time. PSCU
14 Financial Services onboarding documentation includes but is not limited to Outgoing
15 Email – Michael Jahrsdoerfer 03/20/2007 01:27:51 PM; Incoming Email – Michael
16 Jahrsdoerfer 03/26/2007 02:17:34; Outgoing Email – Michael Jahrsdoerfer 03/26/2007
17 02:28:38 PM; Outgoing Email – Michael Jahrsdoerfer 04/18/2007 12:13:49 PM;

18 ● For Rockwell Automation: In SAS Clients v3.5.1 - 1. Support/1. All by
19 Customer/Rockwell Automation/Customer, e-mail comments are posted under
20 Comments/Email/Time. Rockwell Automation onboarding documentation includes
21 but is not limited to Outgoing Call – Aaron Phillips 11/30/2006 11:54:00 AM;
22 Incoming Email – George Lester 03/16/2006 06:16:55 PM (and accompanying
23 attachment entitled Pre-install checklistv1.0.doc); and Incoming Email – George
24 Lester 02/28/2006 07:32:59 PM.

25 ● For Smart Centers, LLC:

26 ○ In SAS Siebel v3.5.1 – 1. Support/1. All by Customer/Smart Centers,
27 LLC/CRM/Engagement e-mail comments are posted under
28 Comments/Email/Time. Smart Centers, LLC onboarding documentation includes

1 but is not limited to Outgoing Email – Michael Jahrsdoerfer 03/06/2007 02:22:06;
2 and Outgoing Email – Michael Jahrsdoerfer 05/01/2007 03:06:35 PM.

3 ○ Also in SAS Siebel v3.5.1 – 1. Support/1. All by Customer/Smart Centers,
4 LLC/CRM/Engagement/Services to be Provided/24X7 Std – CRM 6.x (Start
5 Date 12/20/2007; End Date 09/30/2008) e-mail comments are posted under
6 Comments/Email/Time. Smart Centers, LLC onboarding documentation includes
7 but is not limited to Incoming Email – Michael Jahrsdoerfer 03/28/2007 01:01:19
8 PM.

- 9 • For Standard Register Company: In SAS Clients v3.5.1 - 1. Support/1. All by
10 Customer/Standard Register Company/Customer, e-mail comments are posted under
11 Comments/Email/Time. Standard Register Company onboarding documentation
12 includes but is not limited to Incoming Email –Wade Walden 03/14/2007 03:54:11
13 PM.

14 TomorrowNow reserves the right to further supplement this response as necessary during
15 the course of document production. TomorrowNow further responds to this interrogatory by
16 incorporating by reference all documents cited herein pursuant to Rule 33(d).

17 **FOURTH SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

18 THIS FOURTH SUPPLEMENTAL RESPONSE IS DESIGNATED AS
19 CONFIDENTIAL INFORMATION.

20 TomorrowNow further responds that the terms of use that purport to govern access to and
21 use of materials available on Oracle-maintained websites permit TomorrowNow to access and
22 download licensed materials for purposes of providing service to its customers. *See e.g.*,
23 November 12, 2009 Richard Allison Deposition, 234:5-235:11; *see also* ORCL00051971;
24 ORCL00051974; ORCL00051976; ORCL00051977; ORCL00672413 – ORCL00672414
25 (“However, the Materials may be shared with or accessed by third parties who are your agents or
26 contractors acting on your behalf solely for your internal business operations and you are
27 responsible for their compliance with these Customer Connection Terms of Use.”);
28 ORCL00672415 – ORCL00672418; ORCL00672428 – ORCL00672431.

1 **ORACLE DATABASE AMENDED INTERROGATORY NO. 2:**

2 Describe in as much detail as possible any express or implied authorization, permission, or
3 agreement, which You contend allows You to access or Download Software and Support
4 Materials from Oracle-maintained software support websites, including Metalink and E-Delivery.

5 **ORACLE DATABASE SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

6 THIS ORACLE DATABASE SUPPLEMENTAL RESPONSE IS DESIGNATED AS
7 CONFIDENTIAL INFORMATION.

8 TomorrowNow also objects that this Topic prematurely calls for a legal opinion regarding
9 the terms of contracts, licenses, terms of use, and agreements that Plaintiffs have only recently
10 begun to produce on a rolling basis. Subject to and without waiving the foregoing objections,
11 TomorrowNow responds as follows: Defendants are not aware of any such materials that were
12 obtained from Oracle's E-Delivery Website; thus, no further response is necessary. To the extent
13 that the materials referenced in this interrogatory are the actual database applications, it is likely
14 that the initial instance of the database release was obtained from the public Oracle Technology
15 Network website. TomorrowNow reasonably believes this website could be
16 www.oracle.com/technology. To the extent the location and address of the website can be known
17 during the relevant time period, this is information which would be within Plaintiffs' custody,
18 control, and possession. To the extent updates/patches for Oracle database products were
19 obtained by TomorrowNow, TomorrowNow reasonably believes that they were likely obtained
20 by TomorrowNow employees from the metalink.oracle.com website. With regard to any
21 downloads of database materials from www.oracle.com/technology and metalink.oracle.com,
22 TomorrowNow employees were acting for the benefit of TomorrowNow's customers, and
23 TomorrowNow likely used those materials to provide software support services for PeopleSoft
24 and Siebel products for limited TomorrowNow customers. TomorrowNow reserves the right to
25 amend this response as necessary.

26 **SUPPLEMENTAL RESPONSE TO ORACLE DATABASE SUPPLEMENTAL**
27 **RESPONSE TO INTERROGATORY NO. 2:**

28 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS

1 CONFIDENTIAL INFORMATION.

2 TomorrowNow further responds that the terms of use that purport to govern access to and
3 use of materials available on Oracle-maintained software permit TomorrowNow to access and
4 download licensed materials for purposes of providing service to its customers. *See e.g.*,
5 November 12, 2009 Richard Allison Deposition, 234:5-235:11; *see also* ORCL00672419 –
6 ORCL00672421; ORCL00672422 - ORCL00672423 (“However, the Materials may be shared
7 with or accessed by third parties who are your agents or contractors acting on your behalf solely
8 for your internal business operations and you are responsible for their compliance with these
9 Metalink Terms of Use.”); ORCL00672424 – ORCL00672427.

10 **INTERROGATORY NO. 3:**

11 Describe in as much detail as possible the termination or suspension of any Person(s) from
12 SAP TN related in any way to the allegations made in the Complaint, the First Amended
13 Complaint, Your Answer or any investigation that You have performed, including but not limited
14 to Identifying the Employee terminated or suspended, stating the date of the termination or
15 suspension, Identifying the Person(s) who made the decision to terminate or suspend the
16 Employee, and stating any reasons for the termination or suspension.

17 **RESPONSE TO INTERROGATORY NO. 3:**

18 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

19 TomorrowNow objects that this interrogatory seeks personal and private information of
20 individual TomorrowNow employees protected from disclosure by the laws of their jurisdictions
21 of residence and/or employment. Subject to and without waiving the foregoing objection and the
22 General Responses and Objections, TomorrowNow responds as follows: TomorrowNow has
23 terminated Hadi Arakib and Peter Surette. TomorrowNow has placed Gregory Nelson on a leave
24 of absence, with pay, pending further investigation, which investigation has not been completed.

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

26 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
27 INFORMATION.

1 TomorrowNow further responds that Mark White, TomorrowNow Executive Chairman,
2 made the decisions described in TomorrowNow's Response to Interrogatory No. 3. The timing
3 and purpose for the terminations and suspension is described in memoranda given to each
4 employee, which will be included in TomorrowNow's production of documents in this case and
5 on which TomorrowNow relies to further respond to this interrogatory pursuant to Rule 33(d).
6 Gregory Nelson was placed on a leave of absence with pay beginning on July 17, 2007 and
7 returned to work from this leave of absence on October 1, 2007. TomorrowNow reserves the
8 right to further supplement this response as necessary during the course of document production.

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

10 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS
11 CONFIDENTIAL INFORMATION.

12 TomorrowNow further responds that Ed Harris was terminated. *See* TN-OR02812000.
13 Pursuant to Rule 33(d), the reasons for the terminations and suspension are described in
14 memoranda given to each terminated or suspended employee, which are included in
15 TomorrowNow's production of documents and on which TomorrowNow relies to further respond
16 to this interrogatory. *See* TN-OR02812000, TN-OR00009540-TN-OR00009541, TN-
17 OR00009542, TN-OR00009538-TN-OR00009539.

18 **INTERROGATORY NO. 4:**

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

22 **RESPONSE TO INTERROGATORY NO. 4:**

23 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

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

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

2 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
3 INFORMATION.

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

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

10 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS HIGHLY
11 CONFIDENTIAL - ATTORNEYS' EYES ONLY.

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

- 26 • Various iterations of PeopleSoft agreements, namely ORCL00007529-
27 ORCL00007533 ("PeopleSoft March 1996") under Sections 1.1 and 4.1,
28 ORCL00017200-ORCL00017202 ("PeopleSoft December 1996") under Section 4.1,

1 ORCL00007399-ORCL00007402 (“PeopleSoft 1999”) under Sections 1.1 and 4.1,
2 ORCL00082090-ORCL00082095 (“PeopleSoft 2001”) under Section 2.1,
3 ORCL00086063-ORCL00086073 (“PeopleSoft 2003”) under Section 1.2,
4 ORCL00000001-ORCL00000009 (“PeopleSoft March 2004”) under Section 1.1(c),
5 and ORCL00022649-ORCL00022657 (“PeopleSoft June 2004”) under Section 1.1,
6 state some variation of the following: “Licensee may modify or merge the Software
7 with other software with the understanding that any modifications, however extensive,
8 shall not diminish PeopleSoft’s title or interest in the Software” and “Licensee shall
9 have title to the modifications to the Software that it develops only to the extent that
10 usable software remains after PeopleTools has been removed.” PeopleSoft March
11 1996, Sections 1.1 and 4.1. *See also* PeopleSoft 2001, Section 2.1 (stating
12 “PeopleSoft grants License a nonexclusive, nontransferable license to make and run
13 copies of the Software for access by Licensee and Designates for Licensee’s internal
14 data processing operations on one or more servers and/or workstations located at
15 facilities owned or leased by Licensee...” and defining “designate” as “Licensee’s
16 customers, suppliers, vendors, benefits providers and other such third parties providing
17 goods or services to Licensee...”).

- 18 • PeopleSoft March 1996, Section 14.2; PeopleSoft December 1996, Section 14.1;
19 PeopleSoft 1999, Section 14.2; PeopleSoft 2001, Section 10.4; PeopleSoft 2003,
20 Section 9.5; PeopleSoft March 2004, Section 9.4; and PeopleSoft June 2004, Section
21 9.4 state some variation of the following: “Licensee may provide access to and use of
22 the Software only to those third parties, (undertaking similar nondisclosure
23 obligations), providing services concerning Licensee’s use of the Software.”
- 24 • PeopleSoft 1999, Section 14.4; PeopleSoft 2001, Section 10.3; PeopleSoft 2003,
25 Section 9.4; PeopleSoft March 2004, Section 9.3; and PeopleSoft June 2004, Section
26 9.3 state some variation of the following: “The Agreement imposes no obligation on
27 Recipient with respect to Discloser’s Confidential Information that Recipient can
28 establish by legally sufficient evidence: (a) was, prior to receipt from Discloser, in the

1 possession of, or rightfully known by Recipient, without an obligation to Discloser to
2 maintain its confidentiality; (b) is or becomes generally known to the public or comes
3 into the public domain without violation of the Agreement or without a violation of an
4 obligation of confidentiality owed to the Discloser; or (c) is obtained by Recipient in
5 good faith from a third party having the right to disclose it without an obligation of
6 confidentiality to Discloser.”

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

- 1 • JD Edwards 1991, Section 6; JD Edwards 1992, Section 4(B); JD Edwards 1994,
2 Section 4(B); JD Edwards 1995, 5(B); JD Edwards 1996, Section 4(b); JD Edwards
3 1997, Article V, Section 1(C); JD Edwards Europe 1997, Article V, Section 1(C); and
4 JD Edwards Australia 1999, Section 5(C) state some variation of the following:
5 “CUSTOMER ACKNOWLEDGES THAT JDE HAS INSTALLED DISABLING
6 PROCEDURES IN THE LICENSED PRODUCTS. IF THERE OCCURS ANY
7 UNAUTHORIZED USE OF THE LICENSED PRODUCTS, SUCH SELF
8 DISABLING PROCEDURES WOULD RENDER THE LICENSED PRODUCTS
9 INOPERABLE.”
- 10 • JD Edwards 1999 and JD Edwards 2001 under Article II, Section 4, state some
11 variation of the following: “J.D. Edwards, not more frequently than annually and at its
12 own expense, may audit Customer’s use of Licensed Products. Any such audit shall
13 be conducted during regular business hours at Customer’s facilities and shall not
14 unreasonably interfere with Customer’s business activities.”
- 15 • One exemplar Oracle contract at ORCL00142315-ORCL00142318 under Section 2.4
16 states: “On Oracle’s written request, not more frequently than annually, Client shall
17 furnish Oracle with a signed certification (a) verifying that the Programs are being
18 used pursuant to the provisions of this Agreement, including any User limitations; and
19 (b) listing the locations, types and serial numbers of the Designated Systems on which
20 the systems are run. Oracle may, at its expense, audit Client’s use of the Programs.”
21 Similar language is contained in ORCL00042995-ORCL00043004 under Section O.

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

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

3 **SIEBEL SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:**

4 THIS SIEBEL SUPPLEMENTAL RESPONSE IS DESIGNATED AS HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

6 This compound interrogatory would require TomorrowNow to chronicle information that
7 involved numerous customers, took place over several years, and is too complex and detailed to
8 describe in an interrogatory response. Subject to and without waiving the foregoing objections
9 and the General Responses and Objections, TomorrowNow provides this further supplemental
10 response as follows: TomorrowNow responds that it is unable to provide a full response at this
11 time as to every contract with every customer because Plaintiffs have failed to produce all
12 customer contracts and the total number of contracts is many. TomorrowNow’s response thus
13 relies only on various illustrative agreements and does not address each and every customer
14 contract individually. Accordingly, exemplar agreements between Plaintiffs and their customers
15 and/or former customers and the terms of those agreements upon which TomorrowNow currently
16 bases its contentions are as follows:

- 17 • Various iterations of the Siebel agreements, namely ORCL00523974-
18 ORCL00523982 (“Alberto-Culver Agreement”) under Sections 2.1(A) and (B),
19 ORCL00524227-ORCL00524238 (“Alcatel Agreement”) under Sections 2.1(A)
20 and (B), ORCL00524202-ORCL00524218 (“Alcatel e-Business Agreement”)
21 under Sections 3.1(1)(f) and 3.1(2)(a)-(d), ORCL00524261-ORCL00524264 (“By
22 Referral Agreement”) under Section 2.1, ORCL00524272-ORCL00524280
23 (“Wesfarmers Agreement”) under Section 2.1, ORCL00524384-ORCL00524392
24 (“Everdream Agreement”) under Sections 2.1(A) and (B), ORCL00524650-
25 ORCL00524659 (“Madix Agreement”) under Sections 2.1(A) and (B),
26 ORCL00524678-ORCL00524687 (“Mortice Agreement”) under Sections 2.1(A)
27 and (B), ORCL00524778-ORCL00524788 (“Pomeroy Agreement”) under
28 Sections 2.1(A) and (B), and ORCL00524873-ORCL00524882 (“Standard

1 Register Agreement”) under Sections 2.1(A) and (B) state some variation of the
2 following: “Subject to the terms and conditions of this Agreement, Siebel grants
3 Customer the worldwide, nonexclusive, perpetual right, solely for its own internal
4 business operations...to use the Programs and Ancillary Programs solely on the
5 Designated System for production purposes, on an additional Designated System
6 for testing purposes, or on a backup system if the Designated System is
7 inoperative...and to have third parties (e.g., system integrators) install, integrate,
8 and implement the Programs and Ancillary Programs for the Customer...[and] (i)
9 to copy the System Programs as reasonably necessary to support the maximum
10 number of named Users; (ii) to copy the User Programs and Ancillary Programs up
11 to the maximum number of named Users, provided that Customer may make on
12 additional copy of each User Program for use on one User System, per named
13 User, so long as such User operates only one copy of the User Program at any
14 given time; (iii) to make a reasonable number of additional copies of the Programs
15 and Ancillary Programs solely for archival, emergency back-up, or disaster
16 recovery purposes; and (iv) to copy the on-line help Documentation as reasonably
17 necessary to support its Users.”

- 18 • Various iterations of the Siebel agreements, namely the Alberto-Culver Agreement
19 under Section 2.7, the Alcatel Agreement under Section 2.6, the Alcatel e-Business
20 Agreement under Section 5.3, the By Referral Agreement under Section 9.3, the
21 Wesfarmers Agreement under Section 9.3, the Everdream Agreement under
22 Section 2.5, the Madix Agreement under Section 2.5, the Mortice Agreement
23 under Section 2.7, the Pomeroy Agreement under Section 2.5, and the Standard
24 Register Agreement under Section 2.5 state some variation of the following: “At
25 Siebel’s written request, but not more frequently than annually, Customer shall
26 furnish Siebel with a document signed by Customer’s authorized representative
27 verifying that the Programs are being used pursuant to the provisions of this
28 Agreement and the applicable Order Form. Customer is responsible for

1 implementing reasonable means to monitor its compliance with the terms of this
2 Agreement. Siebel reserves the right to audit Customer's use of the Programs no
3 more than once annually at Siebel's expense."

- 4 • Various iterations of the Siebel agreements, namely the Alberto-Culver Agreement
5 under Section 9.1, the Alcatel Agreement under Section 9.1, the Alcatel e-Business
6 Agreement under Section 14.1, the By Referral Agreement under Section 9.1, the
7 Wesfarmers Agreement under Section 9.1, the Everdream Agreement under
8 Section 9.1, the Madix Agreement under Section 9.1, the Mortice Agreement
9 under Section 9.1, the Pomeroy Agreement under Section 9.1, and the Standard
10 Register Agreement under Section 9.1 state some variation of the following: "A
11 party's Confidential Information shall not include information that (i) is or
12 becomes a part of the public domain through no act or omission of the other party;
13 (ii) was in the other party's lawful possession prior to the disclosure and had not
14 been obtained by the other party either directly or indirectly from the disclosing
15 party; (iii) is lawfully disclosed to the other party by a third party without
16 restriction on disclosure; (iv) is independently developed by the other party
17 without use of or reference to the other party's Confidential Information; or (v) is
18 required to be disclosed by law or valid order of a court or other governmental
19 authority; *provided, however*, that the responding party shall first have given
20 notice to the other party and shall have made a reasonable effort to obtain a
21 protective order requiring that the Confidential Information so disclosed be used
22 only for the purposes for which the order was issued."
- 23 • The Wesfarmers Agreement, under Section 2.1 further states: "The parties
24 acknowledge that a User may access the Programs in a number of application
25 environments (for example, production environments, development environments,
26 training environments) ("Application Environments"). The use of the Programs by
27 a Named User in multiple Application Environments will not incur additional
28 license fees under this Agreement, provided that the number of individuals

1 authorized to use the Programs in all Application Environments does not exceed
2 the maximum number of authorized Users at any time.” Further, in Section 1.12,
3 “Users” is defined as potentially including third parties.

4 Two exemplar Global Master Services Addendums at ORCL00524699-ORCL00524701
5 and ORCL00523983-ORCL00523984 under Section 3 state: “Customer acknowledges that,
6 subject to the license grants set forth in Section 2 of the SLSA, Siebel owns all intellectual
7 property rights in and to the Deliverables and the Deliverables are deemed to be Confidential
8 Information of Siebel; provided, however, that to the extent the Deliverables incorporate
9 Customer’s Confidential Information as defined in the SLSA, Customer shall retain all right, title
10 and interest therein.” TomorrowNow further responds to this interrogatory by incorporating by
11 reference all documents and testimony cited herein pursuant to Rule 33(d).

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

13 THIS ORACLE DATABASE SUPPLEMENTAL RESPONSE IS DESIGNATED AS
14 CONFIDENTIAL INFORMATION.

15 TomorrowNow objects that this interrogatory is compound and unduly burdensome and
16 oppressive to the extent it seeks a narrative answer as to each relevant customer. TomorrowNow
17 also objects that this Topic prematurely calls for an expert opinion regarding the terms of
18 contracts, licenses and agreements that Plaintiffs have only recently begun to produce on a rolling
19 basis. TomorrowNow’s analysis of Plaintiffs’ production is ongoing, and TomorrowNow will
20 supplement its response as necessary. Subject to and without waiving the foregoing objections:
21 TomorrowNow incorporates by reference its responses to Interrogatory No. 2 from Plaintiff
22 Oracle USA’s First Set of Interrogatories to Defendant TomorrowNow, Inc., above.

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25 TEXT REMOVED - NOT RELEVANT TO MOTION
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PROOF OF SERVICE

I, Laurie Paige Burns, declare:

I am a citizen of the United States and employed in Santa Clara 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 St, 26th Fl., San Francisco, CA 94104. On December 4, 2009, I served a copy of the attached document(s):

DEFENDANTS' SEVENTH AMENDED AND SUPPLEMENTAL RESPONSE TO PLAINTIFFS' FOURTH SET OF INTERROGATORIES TO DEFENDANT TOMORROWNOW, INC. AND THIRD SET OF INTERROGATORIES TO DEFENDANTS SAP AG AND SAP AMERICA, INC.

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

Donn Pickett, Esq.
 Geoffrey M. Howard, Esq.
 Holly House, Esq.
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Executed on December 4, 2009, at San Francisco, California.

By: 
 LAURIE PAIGE BURNS