

# EXHIBIT 5

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***Oracle USA, Inc., et al***

***v.***

***SAP AG, et al***

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**Stephen K. Clarke**  
Expert Report

May 7, 2010

3. In June 2004, “we began to, or the, the sales team began to identify it as a service offering versus just having clients come to us and say can you do this for us.”<sup>377</sup>
4. By mid-2005, most of TomorrowNow’s customers were Critical Support customers.<sup>378</sup>

### **8.1. Georgia-Pacific Factor No. 1: Royalties Received by Licensor**

*“The royalties received by the patentee for the licensing of the patent in suit, proving or tending to prove an established royalty.”*

“An established royalty exists where the patent owner has licensed the infringed property to others...”<sup>379</sup> Plaintiffs provided various software license agreements related to PeopleSoft: software alliance program agreements; service alliance program agreements; consulting partner alliance program agreements; platform alliance program master agreements; an outsourcer alliance agreement; a value added remarketer agreement; end user licenses; and other agreements.

Plaintiffs also provided various software license agreements related to J.D.Edwards, including: alliance program agreements; consulting alliance program agreements; reseller and value added reseller agreements; and end-user license agreements. The license agreements are summarized in Appendix H and analyzed below:

#### **8.1.1. PeopleSoft: Software Alliance Program Agreements**

As shown in Appendix H, Plaintiffs provided Software Alliance Program agreements with eight alliance partners or prospective partners.<sup>380</sup> The Software Alliance Program Agreements document the terms whereby the alliance partners can use PeopleSoft software to develop and maintain an interface between their software and PeopleSoft software. The eight Software Alliance Program Agreements and terms of interest within those agreements are listed below:<sup>381</sup>

##### **8.1.1.1 Ariba Technologies, Inc.**

Ariba Technologies, Inc. (“Ariba”) entered into a Software Alliance Program Agreement with PeopleSoft with Partner Addendum on July 28, 1998,<sup>382</sup> a Software and Services Addendum dated August 5, 1998<sup>383</sup> and an Amendment dated October 12, 1998.<sup>384</sup> The agreement included the following terms:

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<sup>376</sup> Shelley Nelson deposition dated April 18, 2008, page 282 (Note: Ms. Nelson did not name the second customer).

<sup>377</sup> Shelley Nelson deposition dated April 18, 2008, page 282.

<sup>378</sup> Shelley Nelson deposition dated April 18, 2008, pages 282-283.

<sup>379</sup> *“Intellectual Property Infringement Damages”* by Russell L. Parr. 1993. PP. 11-12.

<sup>380</sup> As defined in the agreements.

<sup>381</sup> Capitalized terms are generally defined in the agreements.

<sup>382</sup> “PeopleSoft Software Alliance Program Master Agreement with Ariba Technologies, Inc.” (with Partner Addendum) July 28, 1998; ORCL19443-447.

<sup>383</sup> “PeopleSoft Addendum to the Software Alliance Program Master Agreement with Ariba Technologies, Inc.” (with Exhibits A-G). August 5, 1998; ORCL00019453-468.

<sup>384</sup> “First Amendment to the Software Alliance Program Master Agreement between Ariba Technologies, Inc. and PeopleSoft, Inc.” October 12, 1998; ORCL00019448-452.

1. “Nothing in this Agreement shall be construed as prohibiting or restricting either party from independently developing or acquiring and marketing materials, programs or software which are competitive with those of the other party or from entering into the same or similar agreements with others.”<sup>385</sup>

This term indicates that PeopleSoft was willing to enter into alliances with its competitors.

2. PeopleSoft shall... “[p]rovide Partner with access to the PeopleSoft Alliance Connection.”<sup>386</sup>
3. Ariba shall... “pay PeopleSoft a non-refundable annual partner fee of ten thousand dollars (\$10,000).”<sup>387</sup>
4. “‘Software’ means any or all portions of the then commercially available global version of the binary computer software programs, updates and enhancements thereto, (including corresponding source code, unless specifically excluded elsewhere in the Agreement)...”<sup>388</sup>
5. The August 1998 Software & Services Addendum provided that PeopleSoft agrees to provide software, technical support and related services to Partner under PeopleSoft’s Software Alliance Software and Services Program,<sup>389</sup> and that the fees for these services are waived.<sup>390</sup>

The software support services were described in more detail in Exhibit A to the Software and Services Addendum:

PeopleSoft will provide technical support for the PeopleSoft software licensed to Partner during the Term, including telephone support and software fixes to errors, pursuant to the Alliance Software Support Services Terms and Conditions attached hereto as Exhibit E. The PeopleSoft support hotline will handle general questions about using PeopleSoft software.<sup>391</sup>

Exhibit E to the Software and Services Addendum provides:

PeopleSoft shall periodically issue to Partner technical and functional fixes to errors...

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<sup>385</sup> “PeopleSoft Software Alliance Program Master Agreement with Ariba Technologies, Inc.” (with Partner Addendum). July 28, 1998; ORCL00019443-447, at -444.

<sup>386</sup> “PeopleSoft Software Alliance Program Master Agreement with Ariba Technologies, Inc.” (with Partner Addendum). July 28, 1998; ORCL00019443-447, at -446.

<sup>387</sup> “PeopleSoft Software Alliance Program Master Agreement with Ariba Technologies, Inc.” (with Partner Addendum) August 5, 1998; ORCL00019443-447, at -446-447.

<sup>388</sup> “PeopleSoft Software and Services Addendum to the Software Alliance Program Master Agreement with Ariba Technologies, Inc.” (with Exhibits A-G) August 5, 1998; ORCL00019453-468, at -456.

<sup>389</sup> “PeopleSoft Software and Services Addendum to the Software Alliance Program Master Agreement with Ariba Technologies, Inc.” (with Exhibits A-G) August 5, 1998; ORCL00019453-468, at -453.

<sup>390</sup> “PeopleSoft Software and Services Addendum to the Software Alliance Program Master Agreement with Ariba Technologies, Inc.” (with Exhibits A-G) August 5, 1998; ORCL00019453-468, at -455.

<sup>391</sup> “PeopleSoft Software and Services Addendum to the Software Alliance Program Master Agreement with Ariba Technologies, Inc.” (with Exhibits A-G) August 5, 1998; ORCL00019453-468, at -454.

PeopleSoft provides telephone support concerning installation and use of the Software...

Both the PeopleSoft Alliance Connection system ("PAC") and the PeopleSoft Customer Connection system ("PCC") are on-line self-service systems which feature postings by PeopleSoft and PeopleSoft Software users regarding technical and non-technical topics of interest. Partner may access PAC and/or PCC via the Internet...

All Software maintenance releases and Fixes to the Software may be delivered to Partner through PCC or by mail from PeopleSoft upon written request by Partner. All information specified in PAC or PCC...shall only be used in connection with Partner's use of the Software and informational communications with other PAC or PCC participants...

PeopleSoft shall have no obligation to support...Software installed in a hardware or operating environment not supported by PeopleSoft...<sup>392</sup>

Exhibit E also notes PeopleSoft's obligations should an error in the Software arise.<sup>393</sup>

The Software Alliance Program Agreement indicates that Ariba received a limited license for various modules of PeopleSoft software and support for that software for an annual fee of \$10,000. The agreement also indicates that Ariba and PeopleSoft could compete with each other in the marketplace without affecting their alliance.

#### **8.1.1.2 Computer Associates International, Inc.**

Computer Associates International, Inc. ("Computer Associates") entered into a Software Alliance Program Agreement and Addenda with PeopleSoft beginning November 19, 1998.<sup>394</sup> The agreement provides terms that are similar or the same as those in the Ariba Software Alliance Program Agreement with some exceptions, as shown below:

1. "Due to the fact that PeopleSoft deems that PeopleSoft and Partner are competitors, Partner agrees that it shall take all reasonable efforts, consistent with the practices of the software industry, to ensure that Partner does not make available, provide access to, or permit an operating environment wherein PeopleSoft's Confidential Information could be accessed by any member of Partner's organizations engaged in development, marketing and/or product strategy, except as necessary for the development, maintenance, support, demonstration and sale of the Interface..."

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<sup>392</sup> "PeopleSoft Software and Services Addendum to the Software Alliance Program Master Agreement with Ariba Technologies, Inc." (with Exhibits A-G). August 5, 1998; ORCL00019453-468, at -462-463.

<sup>393</sup> "PeopleSoft Software and Services Addendum to the Software Alliance Program Master Agreement with Ariba Technologies, Inc." (with Exhibits A-G). August 5, 1998; ORCL00019453-468, at -462-463.

<sup>394</sup> "PeopleSoft Software Alliance Program Master Agreement with Computer Associates International." November 19, 1998; ORCL00035263-268, at -263.

...Partner shall remain free to develop or market technology that may compete with PeopleSoft Confidential Information subject to all of the provisions and restrictions of this Agreement...<sup>395</sup>

2. “Partner shall...[b]e eligible only for a Software Partner Program fee waiver for the first year of the Agreement and a waiver of software license fees and related maintenance and support fees for PeopleSoft HRMS product suite releases 7.0 and 7.5 (Oracle and SQLServer) and for enhancement, fixes and upgrades thereto released during the first year of the Agreement.”<sup>396</sup>

The agreement appears to have been updated to an Alliance Agreement (with Addenda) on November 14, 2000,<sup>397</sup> which indicates that the Software Alliance Program Annual Renewal Fee of \$15,000 was discounted to zero.<sup>398</sup> The updated agreement had some notably different terms:

1. PeopleSoft provided Computer Associates with “access to the PeopleSoft Alliance Connection and alliances@peoplesoft.”<sup>399</sup>
2. “Upgrades to new releases are not included with support services.”<sup>400</sup>
3. The license fee for each copy of the Enterprise Performance Management Suite is \$5,000 (additional modules are also provided at either zero or the same rate in subsequent addenda).<sup>401</sup>
4. “Support services will continue to be provided on [software delivered on November 19, 1998] in accordance with the terms of PeopleSoft’s current standard published Alliance Software Support Services Terms and Conditions...”<sup>402</sup>

Plaintiffs also provided updated agreements dated January 10, 2002<sup>403</sup> and October 26, 2004<sup>404</sup> which include an annual program fee of \$25,000, but the agreements provided were incomplete.

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<sup>395</sup> “PeopleSoft Software Alliance Program Master Agreement with Computer Associates International.” November 19, 1998; ORCL00035263-268, at -264-265.

<sup>396</sup> “PeopleSoft Software Alliance Program Master Agreement with Computer Associates International.” November 19, 1998; ORCL00035263-268, at -267-268.

<sup>397</sup> No agreements with Computer Associates between 1998 and 2000 were provided.

<sup>398</sup> “PeopleSoft Alliance Master Agreement with Computer Associates International.” (with Partner Addenda). November 14, 2000; ORCL00035298-305, at -302.

<sup>399</sup> “PeopleSoft Exhibit A to Alliance Master Agreement with Computer Associates International.” (with Partner Addenda). November 14, 2000; ORCL00035298-305, at -304.

<sup>400</sup> “PeopleSoft License Addendum to the Alliance Master Agreement with Computer Associates International.” (with Exhibit A). November 14, 2000; ORCL00035306-312, at -306.

<sup>401</sup> “PeopleSoft License Addendum to the Alliance Master Agreement with Computer Associates International.” (with Exhibit A). November 14, 2000; ORCL00035306-312, at -309. “PeopleSoft Schedule No. 2 to the Software License Addendum to the Alliance Master Agreement with Computer Associates International, Inc.” June 28, 2002; ORCL00035284-285, at -284. “Schedule No. 3 to the Software License Addendum to the Alliance Master Agreement with Computer Associates International, Inc.” September 12, 2002; ORCL00035286-287, at -286.

<sup>402</sup> “PeopleSoft License Addendum to the Alliance Master Agreement with Computer Associates International.” (with Exhibit A). November 14, 2000; ORCL00035306-312, at -309.

<sup>403</sup> “PeopleSoft Alliance Master Agreement with Computer Associates International” dated January 10, 2002 (with Partner Addendum and Software License Addendum); ORCL000373757-772.

The Alliance agreements indicate that Computer Associates received a limited license for various modules of PeopleSoft software and support for minimal or no annual fee. The agreement also indicates that even though Computer Associates and PeopleSoft were competitors, Computer Associates had access to PeopleSoft's source code.<sup>405</sup>

### 8.1.1.3 Informatica Corporation

Informatica Corporation ("Informatica") entered into a Prospective Software Partner Agreement with PeopleSoft on June 18, 1998.<sup>406</sup> The agreement allowed the parties to evaluate Informatica becoming a PeopleSoft Software Partner. The agreement included the following terms:

1. "PeopleSoft shall...provide Prospective Partner with access to PeopleSoft software, related technical support, PeopleBooks, training, consulting and evaluation services, and/or technical workshops, only as parties may mutually agree in writing..."<sup>407</sup>
2. Informatica shall... "[d]evelop, maintain, license and support the Interface at Prospective Partner's sole expense..."<sup>408</sup>
3. Informatica shall... "[n]ot refer to itself as 'partner' or 'alliance' of PeopleSoft, or any other similar name, to any third-party or to any PeopleSoft employees..."<sup>409</sup>
4. "PeopleSoft agrees to provide software, technical support and related services to Licensee under PeopleSoft's Licensee Software and Services Program..." The total fee for the Prospective Partner Software and Services was \$16,000 with \$15,000 payable for "Additional Software Application Suites..."<sup>410</sup>
5. "PeopleSoft grants Licensee a non-exclusive, nontransferable license to use the licensed Software..."

... 'Software' means any or all portions of the then commercially available global version of the binary computer software programs and enhancements thereto, (including corresponding source code, unless specifically excluded elsewhere in the Agreement)...<sup>411</sup>

6. "PeopleSoft will provide technical support for the PeopleSoft software licensed to Licensee during the Term, including telephone support and software fixes to errors, pursuant to the

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<sup>404</sup> "PeopleSoft Alliance Master Agreement with Computer Associates International" dated October 26, 2004; ORCL00035315-316.

<sup>405</sup> Similar to the Ariba Software Alliance Program Agreement, software is defined to include source code.

<sup>406</sup> "PeopleSoft Prospective Partner Master Agreement with Informatica Corporation." June 18, 1998; ORCL00041722-725, at -722.

<sup>407</sup> "PeopleSoft Prospective Partner Master Agreement with Informatica Corporation." June 18, 1998; ORCL00041722-725, at -722.

<sup>408</sup> "PeopleSoft Prospective Partner Master Agreement with Informatica Corporation." June 18, 1998; ORCL00041722-725, at -722.

<sup>409</sup> "PeopleSoft Prospective Partner Master Agreement with Informatica Corporation." June 18, 1998; ORCL00041722-725, at -722.

<sup>410</sup> "PeopleSoft Software and Services Addendum to the Prospective Software Partner Master Agreement with Informatica Corporation." (with Exhibits A-G). June 18, 1998; ORCL00041726-741, at -726.

<sup>411</sup> "PeopleSoft Software and Services Addendum to the Prospective Software Partner Master Agreement with Informatica Corporation." (with Exhibits A-G). June 18, 1998; ORCL00041726-741, at -729.

Alliance Software Support Services Terms and Conditions attached hereto as Exhibit E. The PeopleSoft support hotline will handle general questions about using PeopleSoft software.”<sup>412</sup>

7. Exhibit E to the Software and Services Addendum provides:

PeopleSoft shall periodically issue to Licensee technical and functional fixes to errors...

PeopleSoft provides telephone support concerning installation and use of the Software...

Both the PeopleSoft Alliance Connection system (“PAC”) and the PeopleSoft Customer Connection system (“PCC”) are on-line self-service systems which feature postings by PeopleSoft and/or PeopleSoft Software users regarding technical and non-technical topics of interest. Licensee may access PAC and/or PCC via the Internet...

...All Software maintenance releases and Fixes to the Software may be delivered to Licensee through PCC or by mail from PeopleSoft upon written request by Licensee. All information specified in PAC or PCC...shall only be used in connection with Licensee’s use of the Software and informational communications with other PAC or PCC participants.

...PeopleSoft shall have no obligation to support ...[s]oftware installed in a hardware or operating environment not supported by PeopleSoft...<sup>413</sup>

Exhibit E also notes PeopleSoft’s obligations should an error in the Software arise.

Additional software modules were licensed to Informatica for no fees later in 1998.<sup>414</sup>

The Prospective Software Partner Agreement is similar to the Software Alliance Program Agreements with the exception that the Prospective Partner could not identify itself as a “Partner.” However, even as a Prospective Partner, Informatica had access to PeopleSoft’s source code.

#### **8.1.1.4 Logica UK Limited**

Logica UK Ltd. (“Logica”) entered into a Prospective Alliances Software License Agreement with PeopleSoft on December 17, 1998.<sup>415</sup> The agreement included the following terms:

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<sup>412</sup> “PeopleSoft Software and Services Addendum to the Prospective Software Partner Master Agreement with Informatica Corporation.” (with Exhibits A-G). June 18, 1998; ORCL00041726-741, at -727.

<sup>413</sup> “PeopleSoft Software and Services Addendum to the Prospective Software Partner Master Agreement with Informatica Corporation.” (with Exhibits A-G). June 18, 1998; ORCL00041726-741, at -736-737.

<sup>414</sup> “First Amendment to the Prospective Software Partner Master Agreement between Informatica Corporation and PeopleSoft, Inc.” August 28, 1998; ORCL00041742-744, at -742. “Second Amendment to the Prospective Software Partner Master Agreement between Informatica Corporation and PeopleSoft, Inc.” September 24, 1998; ORCL00095766-768, at -766.



1. "...PeopleSoft shall provide Licensee with one (1) year of Software support services..."<sup>416</sup>
2. "PeopleSoft shall provide Licensee with access to training for the Software at the then current rates and policies..."<sup>417</sup>
3. "The following technical and functional improvements will be issued periodically by PeopleSoft to improve Software operations: a. Fixes to Errors; b. Updates; and c. Enhancements contained within new releases...PeopleSoft provides telephone support concerning installation and use of the Software."<sup>418</sup>
4. "Licensee may access PCC [PeopleSoft Customer Connection system] via the Internet."<sup>419</sup>
5. PeopleSoft grants Logica a license to three software modules for £1,420 each.<sup>420</sup> The agreement was amended on April 27, 1999 to add four modules at £3,550 each.<sup>421</sup>
6. Although the license provided by Plaintiffs was incomplete, it appears that Logica had access to PeopleSoft's source code.<sup>422</sup>

The Logica Prospective Software Partner Agreement is similar to the Software Alliance Program Agreement.

#### **8.1.1.5 NEON Systems**

NEON Systems, Inc. ("NEON") entered into an Alliance Master Agreement with PeopleSoft on October 13, 2000.<sup>423</sup> The agreement included the following terms:

1. "Nothing in this Agreement shall be construed as prohibiting or restricting either party from independently developing or acquiring and marketing materials, programs or software which are competitive with those of the other party or from entering into the same or similar agreements with others."<sup>424</sup>

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<sup>415</sup> "PeopleSoft Prospective Alliances Software License Agreement with Logica UK Limited." (with Exhibits A-E). December 17, 1998; ORCL00086391-406, at -391.

<sup>416</sup> "PeopleSoft Prospective Alliances Software License Agreement with Logica UK Limited." (with Exhibits A-E). December 17, 1998; ORCL00086391-406, at -393.

<sup>417</sup> "PeopleSoft Prospective Alliances Software License Agreement with Logica UK Limited." (with Exhibits A-E). December 17, 1998; ORCL00086391-406, at -393.

<sup>418</sup> "PeopleSoft Prospective Alliances Software License Agreement with Logica UK Limited." (with Exhibits A-E). December 17, 1998; ORCL00086391-406, at -401.

<sup>419</sup> "PeopleSoft Prospective Alliances Software License Agreement with Logica UK Limited." (with Exhibits A-E). December 17, 1998; ORCL00086391-406, at -401.

<sup>420</sup> "PeopleSoft Prospective Alliances Software License Agreement with Logica UK Limited." (with Exhibits A-E). December 17, 1998; ORCL00086391-406, at -397.

<sup>421</sup> "First Amendment to the Prospective Alliances Software License Agreement between Logica UK Limited and PeopleSoft UK Limited." April 27, 1999; ORCL00086413-416, at -413.

<sup>422</sup> "PeopleSoft Prospective Alliances Software License Agreement with Logica UK Limited." (with Exhibits A-E). December 17, 1998; ORCL00086391-406, at -392.

<sup>423</sup> "PeopleSoft Alliance Master Agreement with NEON Systems, Inc." (with Partner Addendum to the Alliance Master Agreement and Exhibits A-B). October 13, 2000; ORCL00083815-822, at -815.

<sup>424</sup> "PeopleSoft Alliance Master Agreement with NEON Systems, Inc." (with Partner Addendum to the Alliance Master Agreement and Exhibits A-B). October 13, 2000; ORCL00083815-822, at -816.

2. NEON is designated as a non-exclusive “Software Partner” with a Software Partner Program Initiation Fee of \$7,500.<sup>425</sup>
3. “PeopleSoft shall...[u]pon receipt of additional fees from Company, provide Company with access to the following, as the parties agree is necessary and appropriate for the relationship: PeopleSoft software, related limited technical support, PeopleBooks, training, consulting services, PeopleSoft partner developer’s conference and/or certification services.”<sup>426</sup>
4. “PeopleSoft shall...[p]rovide Company with access to the PeopleSoft Alliance Connection and alliances@peoplesoft.”<sup>427</sup>
5. “PeopleSoft will provide technical support for the PeopleSoft Software licensed to Company during the Term, including telephone support and software fixes to errors, pursuant to PeopleSoft’s standard published Alliance Software Support Services Terms and Conditions a copy of which can be found on PeopleSoft Alliance Connection. Upgrades to new releases are not included with support services. Upgrades must be ordered separately and will be licensed on a separate Schedule for an additional fee. The PeopleSoft support hotline will handle general questions about using PeopleSoft software.”<sup>428</sup>

Additional software modules were licensed to NEON for a license fee of zero or \$5,000.<sup>429</sup>

The Alliance Master Agreement between PeopleSoft and NEON was renewed on December 4, 2001<sup>430</sup> with similar terms, except the description of Software Support Services provided changed to:

PeopleSoft will provide limited technical support for the Software licensed to Company during the Term, including telephone support. PeopleSoft reserves the right to limit the number of calls accepted by the PeopleSoft Global Support Center hotline from Company. All fixes to errors and updates to Software, if any, will be provided to Company pursuant to PeopleSoft’s then-current standard published Alliance Software Support Services Terms and Conditions, a copy of which can be found on PeopleSoft Alliance Connection. Upgrades to new releases are not included in or provided with support services. Upgrades must be ordered separately and will be licensed on a separate Schedule for an additional fee. The

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<sup>425</sup> “PeopleSoft Alliance Master Agreement with NEON Systems, Inc.” (with Partner Addendum to the Alliance Master Agreement and Exhibits A-B). October 13, 2000; ORCL00083815-822, at -819.

<sup>426</sup> “PeopleSoft Alliance Master Agreement with NEON Systems, Inc.” (with Partner Addendum to the Alliance Master Agreement and Exhibits A-B). October 13, 2000; ORCL00083815-822, at -821.

<sup>427</sup> “PeopleSoft Alliance Master Agreement with NEON Systems, Inc.” (with Partner Addendum to the Alliance Master Agreement and Exhibits A-B). October 13, 2000; ORCL00083815-822, at -821.

<sup>428</sup> “PeopleSoft Software License Addendum to the Alliance Master Agreement with NEON Systems, Inc.” (with Software Schedule #1 and Exhibit A). October 13, 2000; ORCL00083823-828, at -823.

<sup>429</sup> “First Amendment to the Alliance Master Agreement Between NEON Systems, Inc. and PeopleSoft, Inc.” (with Exhibit). November 7, 2000; ORCL00083829-831, at -829. “Second Amendment to the Alliance Master Agreement Between NEON Systems, Inc. and PeopleSoft, Inc.” (with Exhibit). August 3, 2001; ORCL00083832-834, at -832.

<sup>430</sup> PeopleSoft Alliance Master Agreement and Partner Addendum to the Alliance Master Agreement with NEON Systems, Inc. dated December 4, 2001; ORCL00083795-802 and 803-814.

PeopleSoft support hotline will handle general questions about using PeopleSoft software.<sup>431</sup>

The NEON Alliance Agreements are similar to the Software Alliance Agreements already discussed, but indicate that by 2001 PeopleSoft was limiting the amount of support to its Partners.

#### **8.1.1.6 Intraware Inc.**

Intraware, Inc. (“Intraware”) entered into an Alliance agreement with PeopleSoft on October 1, 2001. The agreement includes similar terms to the 2001 Alliance Agreement between PeopleSoft and NEON, except that software modules were priced at either \$1,000 or \$5,000.<sup>432</sup>

#### **8.1.1.7 Vanguard Solutions Group, Inc.**

The Vanguard Solutions Group, Inc. (“Vanguard”) licensed software from J.D. Edwards pursuant to a Product Alliance ISV Agreement dated January 2, 2003. The software was re-licensed to Vanguard on January 31, 2004 by PeopleSoft pursuant to a Alliance Master Agreement for zero fees.<sup>433</sup>

The Vanguard Alliance Master Agreement differs from prior software alliance agreements in that both parties work together to develop an interface<sup>434</sup> rather than the development being the partner’s responsibility. Although the license provided is incomplete, it is clear that the Vanguard agreement includes different terms from previous Software Alliance Agreements. However, all the differences cannot be identified because many of the agreement’s terms were “currently located on PeopleSoft’s web site under the ‘Program Structure’ heading, or a subsequently identified location (‘Web Terms’).” The Web Terms were not provided by Plaintiffs.

The difference appears to be due to the Vanguard Alliance Agreement being “for former JDE Partners,” rather than the standard Alliance Agreements issued by PeopleSoft.<sup>435</sup>

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<sup>431</sup> “PeopleSoft Software License Addendum to the Alliance Master Agreement with NEON Systems, Inc.” (with Software Schedule #1 and Exhibit A). December 4, 2001; ORCL00083803-814, at -803.

<sup>432</sup> “PeopleSoft Software License Addendum to the Alliance Master Agreement with Intraware, Inc.” (with Software Schedule #1, Exhibit A, Consulting Services Addendum to the Alliance Master Agreement). October 1, 2001; ORCL00097067-077, at -071.

<sup>433</sup> “PeopleSoft Alliance Master Agreement (for former JDE Partners)” (with Supplemental Terms and Conditions to EnterpriseOne/World Software Order Form). January 31, 2004; ORCL00102448-467, at -448-449.

<sup>434</sup> “PeopleSoft Alliance Master Agreement (for former JDE Partners)” (with Supplemental Terms and Conditions to EnterpriseOne/World Software Order Form). January 31, 2004; ORCL00102448-467, at -457.

<sup>435</sup> “PeopleSoft Alliance Master Agreement (for former JDE Partners)” (with Supplemental Terms and Conditions to EnterpriseOne/World Software Order Form). January 31, 2004; ORCL00102448-467, at -448.

### **8.1.1.8 AON Consulting, Inc.**

AON Consulting, Inc. (“AON”) entered into an Alliance Master Agreement with PeopleSoft on December 11, 2000.<sup>436</sup> The Alliance Master Agreement between PeopleSoft and AON was renewed on February 6, 2002.<sup>437</sup> The AON Agreements are similar to the software alliance agreements, except this agreement also provides Company with reasonable information and assistance for Company to maintain integration between Company’s and PeopleSoft’s products and makes services available to mutual customers concerning the integration of Company’s and PeopleSoft’s products.

### **8.1.1.9 Summary of PeopleSoft: Software Alliance Program Agreements**

The 1998 Software Alliance Agreements suggest that PeopleSoft Partners and Prospective Partners could be competitors, had access to PeopleSoft source code and received comprehensive software support from PeopleSoft, including upgrades. In the late 1990s, PeopleSoft was willing to accommodate others in the software industry, even competitors, if it was beneficial to their customers. The fees PeopleSoft charged the partner for these agreements were de minimus.

Over time the benefits to Partners declined with PeopleSoft requiring a fee for upgrades in 2000 and limiting support in 2001. However, PeopleSoft still provided its Partners significant access and support to allow integration between PeopleSoft and others’ software.

While not dispositive of an established market royalty rate, the Software alliance agreements discussed above suggest that PeopleSoft allowed numerous entities access to its software code and did so for fees that were de minimus.

### **8.1.2. PeopleSoft: Service Alliance Program Agreements**

As shown in Appendix H, Plaintiffs provided Service Alliance Program Agreements with three service partners,<sup>438</sup> one based in the United Kingdom and two based in the United States. The Service Alliance Program Agreement documents the terms whereby the alliance partners can use PeopleSoft software to develop “Implementation Methods”<sup>439</sup> and provide training to customers.

#### **8.1.2.1 Logica**

Logica entered into a Service Alliance Master Agreement with PeopleSoft on February 15, 1999. The agreement included the following terms:

1. Logica is required to pay an annual alliance program fee of £6,500.

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<sup>436</sup> “PeopleSoft Alliance Master Agreement with AON Consulting, Inc.” (with Partner Addendum) dated December 11, 2000; ORCL00376286-295.

<sup>437</sup> “PeopleSoft Alliance Master Agreement with AON Consulting, Inc.” (with Partner Addendum) dated February 6, 2002; ORCL00376276-285, at -279.

<sup>438</sup> As defined in the service alliance agreements.

<sup>439</sup> Based on the “PeopleSoft Alliance Master Agreement with CIBER, Inc.” September 27, 2003; ORCL00025143-151, at -145. Implementation Methods are defined as “service methodologies, including but not limited to, concepts, structures, techniques, processes, and the tools or utilities and content associated with such methods, which are developed by the Company having reference to the Licensed Software, and which Company utilizes solely in connection with the provision of its services to customers.”

2. Logica has “access to PeopleSoft’s... Software Support Services...”<sup>440</sup>
3. “Nothing in this Agreement shall be construed as prohibiting or restricting either party from independently developing or acquiring and marketing materials, programs, software or services which are competitive with those of the other party or from entering into the same or similar agreements with others.”<sup>441</sup>

### **8.1.2.2 CIBER, Inc.**

CIBER entered into an Alliance Master Agreement with PeopleSoft on September 27, 2003.<sup>442</sup> There appear to have been earlier agreements between the parties that were not provided by Plaintiffs.<sup>443</sup> The agreement included the following terms:

1. CIBER is required to pay an annual program fee of \$25,000
2. “Nothing in the AMA or the Program shall be construed to prohibit or restrict either PeopleSoft or the Company: (i) from entering into agreements that are the same or similar to the AMA with others; or (ii) from developing, acquiring, or marketing materials, programs, services or software that compete with those of the other, so long as PeopleSoft or Company develops or acquires them independently and without any use of the other’s Confidential information.”<sup>444</sup>

Some of the terms of the agreement are not available because they were “located on PeopleSoft’s web site under the ‘Program Structure’ heading, or a subsequently identified location (‘Web Terms’).”<sup>445</sup> The Web Terms were not provided by Plaintiffs.

### **8.1.2.3 Crestone International, Inc.**

Crestone International, Inc. (“Crestone”) entered into an Alliance Master Agreement with PeopleSoft on January 8, 2004.<sup>446</sup> The agreement includes the same terms as the CIBER

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<sup>440</sup> “PeopleSoft Alliance Master Agreement with Logica UK Ltd.” (with Addendum. dated February 15, 1999; ORCL00086382-389, at -387.

<sup>441</sup> “PeopleSoft Alliance Master Agreement with Logica UK Ltd.” (with Addendum. dated February 15, 1999; ORCL00086382-389, at -383.

<sup>442</sup> Based on the “PeopleSoft Alliance Master Agreement with CIBER, Inc.” September 27, 2003; ORCL00025143-151, at -145.

<sup>443</sup> Prior agreements appear to have charged \$5,000 for each additional software module licensed, e.g. “First Amendment to the Alliance Master Agreement Between CIBER, Inc. and PeopleSoft, Inc.” (with Exhibit). October 8, 2001; ORCL00025173-175, at -173.

<sup>444</sup> “PeopleSoft Alliance Master Agreement with CIBER, Inc.” September 27, 2003; ORCL00025143-151, -150.

<sup>445</sup> “PeopleSoft Alliance Master Agreement with CIBER, Inc.” September 27, 2003; ORCL00025162-169, at -162 and -163.

<sup>446</sup> “PeopleSoft Alliance Master Agreement with Crestone International, Inc.” (with Software License Terms and Conditions and Mid-Market Implementation Partner Terms and Conditions). January 8, 2004; ORCL00369245-261, at -245.

agreement, but also includes a Mid-Market Implementation Partner Agreement<sup>447</sup> that allows Crestone to use the Mid-Market Program for rapid implementation.

#### **8.1.2.4 Summary of PeopleSoft: Service Alliance Program Agreements**

The 1999 UK Service Alliance Agreement shows that PeopleSoft Partners could be competitors and receive software support from PeopleSoft. Over time, the benefits to Partners appear to have declined with no support being provided in 2003 with the CIBER agreement and 2004 with the Crestone agreement.

#### **8.1.3. PeopleSoft: Consulting Partner Alliance Program Agreements**

As shown in Appendix H, Plaintiffs provided Consulting Partner Agreements for two PeopleSoft partners. The agreements allow the consulting partner to provide “consulting services...to Customers for the purpose of assisting Customers with the implementation and use of PeopleSoft products”<sup>448</sup>

##### **8.1.3.1 Logica**

Logica entered into an Alliance Master Agreement and a Consulting Partner Addendum with PeopleSoft October 13, 2000. Plaintiffs also provided a March 20, 2001 Addendum to the Alliance Master Agreement as Exhibit A to a Software License, but did not provide the Software License Addendum to the Alliance Master Agreement. The Alliance Master Agreement included the following terms:

1. “Nothing in this Agreement shall be construed as prohibiting or restricting either party from independently developing or acquiring and marketing materials, programs or software which are competitive with those of the other party or from entering into the same or similar agreements with others.”<sup>449</sup>
2. “Consulting Alliance Program Annual Renewal Fee” is \$10,000.<sup>450</sup>
3. PeopleSoft shall provide Logica “with access to training for PeopleSoft software for Company’s employees, in accordance with PeopleSoft’s standard terms for alliances and at then current rates...”<sup>451</sup>

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<sup>447</sup> “PeopleSoft Alliance Master Agreement with Crestone International, Inc.” (with Software License Terms and Conditions and Mid-Market Implementation Partner Terms and Conditions). January 8, 2004; ORCL00369245-261, at -256-257.

<sup>448</sup> “PeopleSoft Alliance Master Agreement with Logica UK Ltd.” (with Partner Addendum and Exhibit A). October 13, 2000; ORCL00086375-381, at -381. “PeopleSoft Exhibit A to the Software License Addendum to the Alliance Master Agreement with Logica UK Ltd.” March 20, 2001; ORCL00144273-281, at -281.

<sup>449</sup> “PeopleSoft Alliance Master Agreement with Logica UK Ltd.” (with Partner Addendum and Exhibit A). October 13, 2000; ORCL00086375-381, at -376.

<sup>450</sup> “PeopleSoft Alliance Master Agreement with Logica UK Ltd.” (with Partner Addendum and Exhibit A). October 13, 2000; ORCL00086375-381, at -379.

<sup>451</sup> “PeopleSoft Alliance Master Agreement with Logica UK Ltd.” (with Partner Addendum and Exhibit A). October 13, 2000; ORCL00086375-381, at -381.

4. PeopleSoft shall provide Logica “with access to PeopleSoft’s Customer Connection and Alliance Connection, in accordance with PeopleSoft’s standard terms for alliances.”<sup>452</sup>
5. “‘Software’ means all or any portion of the binary computer software programs and related source code...”<sup>453</sup>
6. “PeopleSoft will provide technical support for the PeopleSoft Software licensed to Company during the Term, including telephone support and software fixes to errors, pursuant to PeopleSoft’s standard published Alliance Software Support Services Terms and Conditions a copy of which can be found on PeopleSoft Alliance Connection. Upgrades to new releases are not included with support services.”<sup>454</sup>

The agreement provides PeopleSoft software and technical support to train the partner’s employees, enabling Logica to offer consulting services to customers. Fees consist of an annual fee of \$10,000.

### 8.1.3.2 Crestone

Crestone entered into an Alliance Master Agreement to become a PeopleSoft Consulting Alliance Partner<sup>455</sup> on January 8, 2002. The agreement included the same terms as the Logica Consulting Partner Alliance Agreement except the annual renewal fee was \$20,000 rather than \$10,000<sup>456</sup> and Crestone paid \$5,000 for a license to one software module and Logica paid no fees for a license to six software modules.<sup>457</sup>

In addition, the Crestone agreement includes two addenda not attached to the Logica agreement (perhaps because the Logica agreement is incomplete):

1. A Certification Addendum that requires Crestone to meet particular requirements in order to be certified as a “PeopleSoft Certified Consulting Alliance Partner” and market itself as such.<sup>458</sup>
2. A Lead Referral Addendum whereby Crestone received a referral fee for referring certain leads to PeopleSoft. The referral fee was dependant on the amount the customer actually

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<sup>452</sup> “PeopleSoft Alliance Master Agreement with Logica UK Ltd.” (with Partner Addendum and Exhibit A). October 13, 2000; ORCL00086375-381, at -381.

<sup>453</sup> “PeopleSoft Exhibit A to the Software License Addendum to the Alliance Master Agreement with Logica UK Ltd.” March 20, 2001; ORCL00144273-281, at -273.

<sup>454</sup> “PeopleSoft Exhibit A to the Software License Addendum to the Alliance Master Agreement with Logica UK Ltd.” March 20, 2001; ORCL00144273-281, at -273.

<sup>455</sup> As defined in the agreements.

<sup>456</sup> “PeopleSoft Alliance Master Agreement with Logica UK Ltd.” (with Partner Addendum and Exhibit A). October 13, 2000; ORCL00086375-381, at -379. “PeopleSoft Alliance Master Agreement with Crestone International, Inc.” (with Addendum, Exhibit A, and fax coversheet). January 8, 2002; ORCL00369534-541, at -539.

<sup>457</sup> “PeopleSoft Software License Addendum to the Alliance Master Agreement with Crestone International, Inc.” (with Software Schedule #1 and Exhibit A). January 8, 2002; ORCL00369542-549, at -546. “PeopleSoft Exhibit A to the Software License Addendum to the Alliance Master Agreement with Logica UK Ltd.” March 20, 2001; ORCL00144273-281, at -276.

<sup>458</sup> “PeopleSoft Certification Addendum for Consulting Alliance Partners with Crestone International, Inc.” January 8, 2002; ORCL00369550-551, at -550.

paid for the software licensed, ranging from 0% of the license fee paid if the customer paid 49% or less of the list price to 15% of the license fee paid if the customer paid 80% or greater of the list price.<sup>459</sup>

The Crestone Alliance Master Agreement was amended on January 8, 2004, but Plaintiffs did not provide the complete amended agreement.<sup>460</sup>

### **8.1.3.3 Summary of PeopleSoft: Consulting Partner Alliance Program Agreements**

The consulting agreements show that PeopleSoft permitted third parties to provide consulting services for customers, provided the third parties were properly trained, for a small annual fee. In addition, some of the agreements actually included payments to the Partner by PeopleSoft in the form of sales commissions or referral fees.

### **8.1.4. PeopleSoft: Platform Alliance Program Master Agreement**

As shown in Appendix H, Plaintiffs entered into a Platform Alliance Master Agreement, an Amendment and a Performance Toolkit Addendum with Sybase, Inc. (“Sybase”) on May 17, 2000. The agreement granted Sybase a license to a Performance ToolKit (“PTK”), which included “software, instructions, documentation, databases, data, and any necessary scripts for use with the PTK (as specifically described in the ‘Performance ToolKit Guide for Partners’) and its results.”<sup>461</sup> The Agreement terms include:

1. A trained Sybase employee could use the PTK to “execute performance benchmarks, performance tests and sizing projects.”<sup>462</sup>
2. PeopleSoft provides Sybase with limited technical support and updates.<sup>463</sup>
3. Sybase agrees to provide PeopleSoft all benchmark results obtained with the use of the PTK.<sup>464</sup>
4. “Nothing in this Agreement shall be construed as prohibiting or restricting either party from independently developing or acquiring and marketing materials, programs or software which are competitive with those of the other party or from entering into the same or similar agreements with others.”<sup>465</sup>

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<sup>459</sup> “PeopleSoft Lead Referral Addendum to the Alliance Master Agreement with Crestone International, Inc.” January 8, 2002; ORCL00369553-555, at -553-554.

<sup>460</sup> First Amendment to the Alliance Master Agreement Between Crestone International Inc., and PeopleSoft, Inc., ORCL00369245-265, at -262.

<sup>461</sup> “PeopleSoft Performance Toolkit Addendum to the Platform Alliance Program Master Agreement with Sybase, Inc.” May 17, 2000; ORCL00101264-267, at -264.

<sup>462</sup> “PeopleSoft Performance Toolkit Addendum to the Platform Alliance Program Master Agreement with Sybase, Inc.” May 17, 2000; ORCL00101264-267, at -264.

<sup>463</sup> “PeopleSoft Performance Toolkit Addendum to the Platform Alliance Program Master Agreement with Sybase, Inc.” May 17, 2000; ORCL00101264-267, at -265.

<sup>464</sup> “PeopleSoft Performance Toolkit Addendum to the Platform Alliance Program Master Agreement with Sybase, Inc.” May 17, 2000; ORCL00101264-267, at -266.

<sup>465</sup> “Platform Alliance Program Master Agreement with Sybase, Inc.” May 17, 2000; ORCL00101261-263, at -262.



5. There is no mention of fees in the agreement provided.

PeopleSoft entered into another agreement with Sybase on August 23, 2001 (Alliance Master Agreement with Partner Addendum and Software License Addendum) which included the following terms:

1. Fees are waived.<sup>466</sup>
2. PeopleSoft provides Sybase with access to the PeopleSoft Alliance Connection web site.<sup>467</sup>
3. Sybase and PeopleSoft shall provide each other “with reasonable information and assistance” for the integration maintenance between both parties’ products.<sup>468</sup>
4. PeopleSoft provides a license for “all or any portion of the binary computer software programs and related source code...on the applicable Schedule.”<sup>469</sup>
5. “PeopleSoft will provide limited technical support for the Software licensed...including telephone support. PeopleSoft reserves the right to limit the number of calls accepted by the PeopleSoft Global Support Center hotline from Company. All fixes to errors and updates to Software, if any, will be provided to Company pursuant to PeopleSoft’s then-current standard published Alliance Software Support Services Terms and Conditions, a copy of which can be found on PeopleSoft Alliance Connection. Upgrades to new releases are not included in or provided with support services. Upgrades must be ordered separately and will be licensed on a separate Schedule for an additional fee. The PeopleSoft support hotline will handle general questions about using PeopleSoft software.”<sup>470</sup>
6. PeopleSoft grants Company a non-exclusive, nontransferable limited license...solely for Company’s (i) development and related testing of the Company’s Interface(s), (ii) conducting custom performance benchmarks for customers and prospective customers relating to the Software operating on Company’s platform(s)...(iii) authorized use in connection with the Alliance Solution Center..., and (iv) authorized use in connection with Performance Toolkits...<sup>471</sup>

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<sup>466</sup> “PeopleSoft Exhibit A to Partner Addendum to the Alliance Master Agreement with Sybase, Inc.” (with Partner Addendum and Exhibit A). August 23, 2001; ORCL00101224-230, at -228.

<sup>467</sup> “PeopleSoft Exhibit A to Partner Addendum to the Alliance Master Agreement with Sybase, Inc.” (with Partner Addendum and Exhibit A). August 23, 2001; ORCL00101224-230, at -230.

<sup>468</sup> “PeopleSoft Alliance Master Agreement with Sybase, Inc.” (with Partner Addendum and Exhibit A). August 23, 2001; ORCL00101224-230, at -230.

<sup>469</sup> “PeopleSoft Software License Addendum to the Alliance Master Agreement with Sybase, Inc.” (with Software Schedule #1 and Exhibit A). August 23, 2001; ORCL00101231-244, at -231.

<sup>470</sup> “PeopleSoft Software License Addendum to the Alliance Master Agreement with Sybase, Inc.” (with Software Schedule #1 and Exhibit A). August 23, 2001; ORCL00101231-244, at -231.

<sup>471</sup> “PeopleSoft Exhibit A to the Software License Addendum to the Alliance Master Agreement with Sybase, Inc.” (with Software Schedule #1 and Exhibit A). August 23, 2001; ORCL00101231-244, at -244.

7. The agreement was amended on January 23, 2002, March 10, 2003, April 17, 2003 and May 16, 2003 to add additional software modules at no additional fee.<sup>472</sup>
8. On February 11, 2002 the agreement was amended to designate Sybase as a Software Partner in addition to a Platform Partner for an annual fee of \$7,500.<sup>473</sup>

Again, PeopleSoft grants licenses of its software and access to source code to its competitors for no fees in order to provide customers with better service.

### **8.1.5. PeopleSoft: Outsourcer Alliance Agreement**

As shown in Appendix H, Plaintiffs entered into an Outsourcer Alliance Agreement with Corio, Inc. (“Corio”) on January 1, 1999. Corio appears to have entered into prior Outsourcer Alliance Agreements with PeopleSoft, but Plaintiffs did not provide those agreements.<sup>474</sup> The Outsourcer Alliance Agreement grants Corio a worldwide, non-exclusive, non-transferable, restricted license to provide applications management services to customers at a Corio location.<sup>475</sup> The agreement included the following terms:

1. Corio could sublicense the software to customers.<sup>476</sup>
2. Corio had “the right to (i) notify any Designated Customer of a migration option that would permit a Designated Customer who has been a...[Corio] Designated Customer for a least three (3) years to migrate from...[Corio’s] Outsourcing Services to licensing the Software pursuant to a perpetual license at a discounted rate; and (ii) sell the Software to that Designated Customer for a discounted rate not to be less than fifty percent (50%) of the then-current standard PeopleSoft perpetual license list price. If...[Corio] executes any such sales transactions, [Corio] shall remit to PeopleSoft an amount equal to fifty percent (50%) of the then-current standard PeopleSoft perpetual license price and any additional amount received by [Corio] from the Designated Customer shall be retained by...[Corio].”<sup>477</sup>
3. “For eighteen (18) months following the Effective Date,...[Corio] shall not market, sell, host, or otherwise provide access to, any software in connection with the Outsourcing Services

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<sup>472</sup> “First Amendment to the Alliance Master Agreement Between Sybase, Inc. and PeopleSoft, Inc.” (with Exhibit). January 23, 2002; ORCL00101245-249. “PeopleSoft Schedule No. 3 to the Software License Addendum to the Alliance Master Agreement with Sybase, Inc.” March 10, 2003; ORCL00101255-256. PeopleSoft Schedule No. 4 to the Software License Addendum to the Alliance Master Agreement with Sybase, Inc.” April 17, 2003; ORCL00101257-258. “PeopleSoft Schedule No. 5 to the Software License Addendum to the Alliance Master Agreement with Sybase, Inc.” May 16, 2003; ORCL00101259-260.

<sup>473</sup> “Second Amendment to the Alliance Master Agreement Between Sybase, Inc. and PeopleSoft, Inc.” (with Exhibits A-1 and B). February 11, 2002; ORCL00101250-254, at -250.

<sup>474</sup> “First Amendment to the Outsourcer Alliance Agreement between Corio, Inc. and PeopleSoft, Inc.” (with Exhibit). November 11, 1998; ORCL00035671-673, at -671.

<sup>475</sup> “PeopleSoft Outsourcer Alliance Agreement with Corio, Inc.” (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -695 and -696.

<sup>476</sup> “PeopleSoft Outsourcer Alliance Agreement with Corio, Inc.” (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -696.

<sup>477</sup> “PeopleSoft Outsourcer Alliance Agreement with Corio, Inc.” (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -696.

which could compete or does compete directly with PeopleSoft's core current Software products."<sup>478</sup>

4. "For eighteen (18) months following the Effective Date, PeopleSoft shall not start, fund, or otherwise invest in any Competitive ASP."<sup>479</sup>
5. PeopleSoft shall provide PeopleSoft training to Corio during the first year of the agreement.<sup>480</sup>
6. Corio "shall be responsible for Designated Customer's implementation efforts."<sup>481</sup>
7. Corio "will provide Designated Customers with the first level of software support to the Designated Customers."<sup>482</sup>
8. PeopleSoft will provide Corio with support services including fixes to errors, updates and enhancements.<sup>483</sup>
9. Corio "will provide ongoing consulting to Designated Customers which will include the application of Software fixes and upgrades."<sup>484</sup>
10. Corio will pay PeopleSoft a monthly per-user fee of \$135 per active user of the customer during the first year, and \$125 per month per active user after the first year. Corio will pay PeopleSoft \$25 per month for casual users in the first two years. These fees include support.<sup>485</sup> Corio will pay minimum fees of \$250,000 in years 3 through 6 and \$500,000 in years 7 through 10.<sup>486</sup>
11. PeopleSoft and Corio "agree not to market, sell or otherwise distribute the Software or Outsourcing Services to existing end user customers of the other Party without the prior written consent of such other Party, which consent shall not be unreasonably withheld."<sup>487</sup>

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<sup>478</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -697.

<sup>479</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -697.

<sup>480</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -698.

<sup>481</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -698.

<sup>482</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -698.

<sup>483</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -717.

<sup>484</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -698.

<sup>485</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -718.

<sup>486</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -699.

<sup>487</sup> "PeopleSoft Outsourcer Alliance Agreement with Corio, Inc." (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -701 and -702

### **8.1.6. PeopleSoft: Value Added Remarketer Agreements**

Value Added Remarketer Agreements allow PeopleSoft to incorporate third-party software into their products for distribution to end users.

#### **8.1.6.1 BEA Systems, Inc.**

BEA Systems, Inc. grant PeopleSoft a license to incorporate their software into PeopleSoft application software for distribution to end users. Fees payable by PeopleSoft in the March 31, 1996 remarketer agreement were \$900,000 in 1996, \$2,000,000 in 1997, \$2,500,000 in 1998 and \$3,000,000 thereafter.<sup>488</sup>

#### **8.1.6.2 Informatica**

Fees payable by PeopleSoft to Informatica in the December 22, 1998 Value Added Remarketer Agreement were \$2 million in 1999, \$2.5 million in 2000, \$3 million in 2001 with adjustments if certain options are taken up.<sup>489</sup> The December 22, 1998 Remarketer Agreement was amended on January 1, 2001 changing the fee structure from a fixed fee basis to a royalty based fee structure with a royalty floor and ceiling, respectively, of \$2.5 and \$4 million in 2001, \$3 million and \$5 million in 2002 and \$3.5 and \$6 million in 2003.<sup>490</sup>

#### **8.1.6.3 Computer Associates International**

Plaintiffs provided the First Amendment to a Value Added Remarketer Agreement between PeopleSoft and Computer Associates, but did not provide the actual agreement. Therefore, no analysis could be performed.

### **8.1.7. PeopleSoft Channel Partner Master Agreement**

In the 2004 Channel Partner Master Agreement between PeopleSoft and S&I Business Applications Pte Ltd (“S&I”), S&I sublicenses PeopleSoft software to end users. S&I pays PeopleSoft between 45% and 60% of the list price of the software sublicensed, depending on S&I’s sales.<sup>491</sup>

S&I has access to PeopleSoft Customer Connections and provides First and Second level support to the end users. PeopleSoft provides Third level support for an additional fee. In the first year of the Channel Partner Master Agreement, the S&I pays PeopleSoft the greater of 5% of the

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<sup>488</sup> “BEA Systems, Inc. Exhibit A to Pricing Addendum to Value Added Remarketer Agreement with PeopleSoft, Inc.” (with Exhibits A-D and Schedules 1-2). March 31, 1996; ORCL00085379-410, at -385.

<sup>489</sup> “Informatica Corporation Exhibit B Pricing Addendum to Value Added Remarketer Agreement with Development Terms with PeopleSoft, Inc.” (with Exhibits A-E). December 22, 1998; ORCL00095769-788, at -780.

<sup>490</sup> “Informatica Corporation Fourth Amendment to the Value Added Remarketer Agreement with Development Terms.” January 1, 2001; ORCL00095803-806, at -804.

<sup>491</sup> “PeopleSoft Asia Pte Ltd Channel Partner Master Agreement” (with coversheet, order form, and Exhibits A-B). June 28, 2004; ORCL00175191-222, at -192.

software list price or \$5,000 per end user for the Third level support. In subsequent years S&I pays the then current fee for support services as a percentage of the software list price.<sup>492</sup>

### **8.1.8. PeopleSoft Implementation Partner Agreement**

Plaintiffs provided some but not all amendments to a 1993 Implementation Partner Agreement with Business Information Technology, Inc. which added modules or platforms. Plaintiffs did not provide the original agreement. The amendments generally do not include a fee for the additional modules or platforms, although the tenth amendment charged \$2,000 for two copies of the Student Administration Suite 7.5.<sup>493</sup>

### **8.1.9. PeopleSoft Temporary Use Licenses**

PeopleSoft granted temporary use licenses for internal testing purposes. PeopleSoft generally did not charge a fee for the use of the software, but in one 1998 license with Epiphany, PeopleSoft charged \$5,000 each for two of the three modules licensed.<sup>494</sup>

### **8.1.10. PeopleSoft PSBN Merchant Program Agreement**

The PSBN Merchant Agreement dated May 20, 1999 requires PeopleSoft to develop and implement integration between PeopleSoft's PSBN software and the merchant's software. The merchant paid PeopleSoft \$1 million for the two year term.<sup>495</sup>

### **8.1.11. PeopleSoft Services Agreement**

A 1999 Services Agreement with Intraware allows PeopleSoft to obtain and distribute Intraware's software to PeopleSoft customers. PeopleSoft paid a \$200,000 start up fee plus 2% of all support revenue received as a result of new transactions, not to exceed \$2 million.<sup>496</sup>

### **8.1.12. J.D.Edwards Agreements**

#### **8.1.12.1 J.D.Edwards Product Alliances Program Agreements**

J.D.Edwards grants Vanguard Solutions Group, Inc. ("Vanguard") a license to J.D.Edwards Toolsets to assist Vanguard in developing an interface between J.D.Edwards software and Vanguard's software. The 2003 license indicates that Vanguard paid an initial fee of \$40,000 to

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<sup>492</sup> "PeopleSoft Asia Pte Ltd Channel Partner Master Agreement" (with coversheet, order form, and Exhibits A-B). June 28, 2004; ORCL00175191-222, at -192 and 193.

<sup>493</sup> "Tenth Amendment to the Implementation Partner Agreement between Business Information Technology, Inc. and PeopleSoft, Inc." (with Exhibits). December 28, 1998; ORCL00025274-276, at -274.

<sup>494</sup> "PeopleSoft Exhibit A Schedule to Temporary Use Software License Agreement with Epiphany Marketing Software, Inc." (with Exhibits A-B). January 8, 1998; ORCL00174648-654, at -654.

<sup>495</sup> "PeopleSoft PSBN Charter Merchant Program Agreement with Intraware, Inc." (with Exhibit A). May 20, 1999; ORCL00097044-058, at -045.

<sup>496</sup> "Services Agreement between PeopleSoft, Inc. and Intraware, Inc." May 20, 1999; ORCL00097088-099, at -088-090.

cover the Agreement for three year's use of World Software. Additional Licenses could be purchased for \$5,000 each per year.<sup>497</sup>

#### **8.1.12.2 J.D.Edwards: Consulting Alliance Program Agreements**

In 1999, J.D.Edwards grants the Consulting Alliance Partner HCL Perot Systems a license to its software so the parties can jointly develop and execute marketing programs and provide complementary professional services to both parties' customers. There are no fees associated with this agreement.<sup>498</sup>

#### **8.1.12.3 J.D.Edwards: Value Added Reseller Agreements**

In the 2000 Value Added Reseller Agreement, J.D.Edwards grants the reseller i2 the right to sublicense its software. The reseller will pay J.D.Edwards 50% of the sublicense fees and not less than \$225,000 for the first sublicense.<sup>499</sup> The reseller will pay J.D.Edwards 67% of Net Maintenance Fees invoiced to the end user by the reseller. The reseller will provide Level 1 support and J.D.Edwards will provide Level 2 and Level 3 support. Level 1 support is defined as:

...logging and monitoring of issues, triaging and assessing the severity of the issues, searching for previously reported solutions, passing issues to the correct resources, translating issues to English if necessary, and ordering of J.D. Edwards Software and Documentation.<sup>500</sup>

#### **8.1.12.4 J.D.Edwards: Reseller Agreement**

In the 1999 Reseller Agreement J.D.Edwards acts as reseller of Ariba's software, which is used in conjunction with J.D.Edwards OneWorld software. J.D.Edwards pays Ariba the list price of software sublicensed less a discount of 45% if it does not use Ariba's sales support and maintenance support. If J.D.Edwards uses Ariba's sales support the discount is reduced by either 5% or 7.5% (of the list price of software sublicensed) and if J.D.Edwards uses Ariba's maintenance support the discount is reduced by an additional 10% (of the list price of software sublicensed).<sup>501</sup>

The Ariba Reseller Agreement with J.D.Edwards contains the following terms:

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<sup>497</sup> "J.D. Edwards Product Alliances Agreement Program Schedule 1 with Vanguard Solutions Group, Inc." January 3, 2003; ORCL00102441-442.

<sup>498</sup> "J.D. Edwards Consulting Firm Software Licensing Agreement with HCL Perot Systems, Private Limited." May 21, 1991; ORCL00145701-707.

<sup>499</sup> "i2 Value Added Reseller Agreement with J.D. Edwards World Solutions Company." April 12, 2000; ORCL00095676-686, at -683.

<sup>500</sup> "i2 Value Added Reseller Agreement with J.D. Edwards World Solutions Company." April 12, 2000; ORCL00095676-686, at -686.

<sup>501</sup> "Ariba Exhibit B to Reseller Agreement with J.D.Edwards World Solutions Company" May 15, 1999; ORCL00019469-555, at -490.

1. Ariba grants J.D.Edwards a license to develop or Prototype the Value Added Package (“VAP”)<sup>502</sup>
2. The VAP is a software package that contains Ariba software and J.D.Edwards software.<sup>503</sup>
3. Ariba grants J.D.Edwards a license to grant worldwide Sublicenses for the VAP.<sup>504</sup>
4. Ariba will provide support to J.D.Edwards for Ariba software.<sup>505</sup>
5. J.D.Edwards is responsible for providing support for the VAP to customers.<sup>506</sup>
6. J.D.Edwards charges 18% of Ariba software license fee for 22\*7 Ariba support.<sup>507</sup>
7. For the first year (or until J.D.Edwards is able to provide support for Ariba software, if sooner) Ariba will provide support for Ariba software and J.D.Edwards will only provide pass-through support, i.e. pass on customers problems to Ariba.<sup>508</sup>
8. While Ariba provides support, it receives all of the support revenue.<sup>509</sup>
9. Annual support fees for specific programs are equal to 18% or 15% of the list price (depending on the program), and the support initially will be provided by Ariba. After the first year, J.D.Edwards will provide the support, and receive 7% or 5% (depending on the program) of the support fee, with the remainder being paid to Ariba (i.e. support fees are split between Ariba and J.D.Edwards in the ratios 11:7 or 10:5 depending on the program).<sup>510</sup>

In the greater of the two figures in the above example, J.D.Edwards paid 11% (18%-7%) of the software price to Ariba for the maintenance it provided. Oracle typically charges 22% of the software price for maintenance, and TomorrowNow typically charged 50% of what Oracle did (50% times 22%), which equals 11%. Therefore, to estimate a reasonable royalty in TomorrowNow’s case, we should use 100% of the amount Ariba received from J.D.Edwards, which would be 11% of the software price.

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<sup>502</sup> “Ariba Reseller Agreement with J.D.Edwards World Solutions Company” May 15, 1999; ORCL00019469-555, at -470.

<sup>503</sup> “Ariba Reseller Agreement with J.D.Edwards World Solutions Company” May 15, 1999; ORCL00019469-555, at -470.

<sup>504</sup> “Ariba Reseller Agreement with J.D.Edwards World Solutions Company” May 15, 1999; ORCL00019469-555, at -471.

<sup>505</sup> “Ariba Reseller Agreement with J.D.Edwards World Solutions Company” May 15, 1999; ORCL00019469-555, at -474.

<sup>506</sup> “Ariba Reseller Agreement with J.D.Edwards World Solutions Company” May 15, 1999; ORCL00019469-555, at -475.

<sup>507</sup> “Ariba Reseller Agreement with J.D.Edwards World Solutions Company” May 15, 1999; ORCL00019469-555, at -477.

<sup>508</sup> “Ariba Reseller Agreement with J.D.Edwards World Solutions Company” May 15, 1999; ORCL00019469-555, at -477-478.

<sup>509</sup> “Ariba Reseller Agreement with J.D.Edwards World Solutions Company” May 15, 1999; ORCL00019469-555, at -478.

<sup>510</sup> “Ariba Reseller Agreement with J.D. Edwards World Solutions Company.” May 15, 1999; ORCL00019469-555, at -477-478.

### **8.1.12.5 J.D.Edwards Implementation Service Provider & Training Agreement**

Plaintiffs provided various schedules and attachments to an “Implementation Service Provider & Training Agreement – Market Influence Program,” but did not provide the agreement with J.D.Edwards. Without the complete agreement, I cannot determine the objective of the agreement.

### **8.1.12.6 J.D.Edwards Authorized Business Partner Agreement**

Plaintiffs provided various schedules, attachments and amendments to Authorized Business Partner Agreements, but not the agreement itself. The Authorized Business Partner Agreements appear to have been converted to a Channel Partner Master Agreement when PeopleSoft acquired J.D.Edwards. Although the complete Authorized Business Partner Agreements were not provided, Attachment E – Certified Response Line was provided. Attachment E indicates that the business partner would provide “Response Line” to customers (the agreement states that J.D.Edwards software support consists of Software Updates and Response Line) and resolve a minimum of 50% of problems reported by customers.<sup>511</sup> The Business Partner would receive 15% of the software support fees collected (subsequently increased to 25%).<sup>512</sup>

### **8.1.12.7 Conclusion of Existing Agreements**

The wide variety of agreements that both PeopleSoft and J.D.Edwards entered into prior to the Oracle acquisition show a pattern of cooperation between those companies and a range of partners. The common thread of all these agreements is that the fees the companies charged to their partners were de minimus and, as a general proposition, they gave the partner access to the source code for the licensed materials. In many cases, the partner also received support from the licensor at nominal, if any, cost.

The only significant sum paid to PeopleSoft was the Corio Outsourcer Alliance Agreement with PeopleSoft, but even then the \$5.5 million fee was modest in relation to the licensed material which included “...remotely hosting the Software<sup>513</sup> ...and bundled back-end user services.”<sup>514</sup> PeopleSoft paid several resellers significant sums but they are not relevant to my analysis.

Although none of the agreements referenced above establish a market royalty rate, the evidence points to low rates for a variety of licenses and agreements that cover some of the activities that are similar in nature to the License at issue.

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<sup>511</sup> “J.D. Edwards Authorized Business Partner Agreement Attachment E-Certified Response Line with Sunway Business Applications Pte. Ltd.” November 1, 1998; ORCL00175262-263, at -262. “J.D. Edwards Authorized Business Partner Agreement Attachment E-Certified Response Line with S&I Business Applications Pte. Ltd.” November 1, 2000; ORCL00175169-170, at -169.

<sup>512</sup> “J.D. Edwards Addendum Authorized Business Partner Agreement with S&I Business Applications Pte. Ltd.” January 29, 2001; ORCL00175135.

<sup>513</sup> “PeopleSoft Outsourcer Alliance Agreement with Corio, Inc.” (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -693.

<sup>514</sup> “PeopleSoft Exhibit A to Outsourcer Alliance Agreement with Corio, Inc.” (with Exhibits A-D). January 1, 1999; ORCL00035693-725, at -713.



any customer that wishes to use it. Because the price is known and well established in the marketplace, all Mr. Meyer needs to do to quantify the amount TomorrowNow should have paid for the allegedly inappropriate use of the Oracle database is multiply the quantity used by the applicable price. However, Mr. Meyer did not make this calculation correctly.

Mr. Meyer is correct in his statement that the per processor<sup>1000</sup> price for the Oracle Database Enterprise Edition software was \$40,000 for the license and \$8,800 for support.<sup>1001</sup> Mr. Meyer then claims:

The server with the majority of TomorrowNow local environments running on Oracle database was purchased in January 2005 and was a 4 processor Unix server with dual-cores, or effectively 8 processors, based upon which Oracle would price a license for 6 processors (Oracle applies a .75 processor factor to Unix processors, so  $8 * .75 = 6$  processors priced in the license)...Therefore, I have assumed that Oracle would require SAP to purchase no less than a license that covered each customer accessing Oracle database priced at 6 processors per license. A 6 processor Enterprise Edition Oracle database license would be priced at 6 processors times the license fee of \$40,000 per customer, or \$240,000 per customer, and an annual support fee of \$8,800 times 6 processors, or \$52,800 per year per customer.<sup>1002</sup>

Mr. Meyer applies the base license and support costs for the number of years each customer used the Oracle database, deducting 5% to account for any additional costs. He then claims that “counting only one environment per customer, at least 71 local environments were running Oracle database software on TomorrowNow’s systems (both customer-specific and non-customer specific).”<sup>1003</sup> This calculation results in damages of \$23.6 million.<sup>1004</sup>

Mr. Meyer’s approach to computing these damages is incorrect. The Oracle database pricing does not work in the way that he suggests. Database licenses are purchased based on the server core processors on which they will be installed. The number of databases the licensed user (or environments) creates after the installation is irrelevant. I understand that TomorrowNow had the Oracle database software that was ultimately used to support its customers installed on servers with 27 processors as follows:<sup>1005</sup>

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<sup>1000</sup> The actual processor metric used to calculate the quantity is based on the number of cores multiplied by a processor factor to arrive at the licensing quantity. For example, a dual-core, quad-processor Intel server would consist of eight cores ( $4 * 2$ ), which would be multiplied by a processor factor of 0.5. See Oracle E-Business Global Price List, September 1, 2006; “Oracle E-Business Global Price List.” September 1, 2006; ORCL00704381-396, at -392 to arrive at a licensing quantity of four ( $8 * 0.5$ ).

<sup>1001</sup> Meyer Report, page 165, paragraph 252.

<sup>1002</sup> Meyer Report, pages 166-167.

<sup>1003</sup> Meyer Report, page 167, paragraph 254. Schedule 44.1.SU lists 69 customer-specific and two non-customer specific environments.

<sup>1004</sup> Meyer Report, page 169, table 9.

<sup>1005</sup> Based on an email from Josh Fuchs at Jones Day to Nitin Jindal at Bingham McCutchen dated February 19, 2010, TomorrowNow had Oracle Database software installed on 7 servers with 20 processors and a total of 46 cores. Taking into account the applicable licensing factors results in a licensing quantity of 27 processors; ORCL00704381-396, at -392.

<b>Server Name</b>	<b>Processor Type</b>	<b>Processors</b>	<b>Core Count</b>	<b>Total Cores</b>	<b>Licensing Factor</b>	<b>Licensing Quantity</b>
PSDEV01	PowerPC	4	2	8	0.75	6
PSDEV02	PowerPC	4	2	8	0.75	6
DCPSTEMP01	Intel	2	2	4	0.50	2
DCPSTEMP02	Intel	4	4	16	0.50	8
DCSBLPROD03	Intel	2	2	4	0.50	2
TN-FS01	Intel	2	2	4	0.50	2
TN-Dell2650	Intel	2	1	2	0.50	1
<b>Totals</b>		<b>20</b>		<b>46</b>		<b>27</b>

Accordingly, the correct license computation multiplies the actual number of licensed processors by the cost per processor, plus support on the licensed processors for four years:<sup>1006</sup>

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<sup>1006</sup> This overstates the cost for support, because as Mr. Meyer points out on page 168 of the Meyer Report, TomorrowNow would only have paid for support during the period that the software was installed and being used to support the environments.

<b>Oracle Database – Enterprise Edition</b>	<b>Pricing</b>
Processor License <sup>1007</sup>	\$40,000
x Licensing Quantity	27
<i>Total License Cost</i>	<i>\$1,080,000</i>
Software Update & Support (per year) <sup>1008</sup>	\$8,800
x Licensing Quantity	27
x Number of years	4
<i>Total Support Cost</i>	<i>\$950,400</i>
Subtotal	\$2,030,400
x Profit Margin <sup>1009</sup>	95%
<b>Total Oracle Database Cost</b>	<b>\$1,928,880</b>

Alternatively, if forced to have a separate license for each customer supported, TomorrowNow could have installed the Oracle Database on a single processor server.<sup>1010</sup> At the single processor level, TomorrowNow would have been able to purchase Standard Edition software at a much lower price than Enterprise Edition. In addition, though Mr. Meyer claims that Oracle would not license the database to TomorrowNow at a discount,<sup>1011</sup> evidence indicates that TomorrowNow could have acquired the Oracle database license at a discount from a third party reseller.<sup>1012</sup> For purposes of this calculation, I have ignored discounts and rely on retail pricing as follows:

<b>Oracle Database – Standard Edition</b>	<b>Pricing</b>
Processor License <sup>1013</sup>	\$15,000
x Number of customers (single-processor) <sup>1014</sup>	71
<i>Total License Cost</i>	<i>\$1,065,000</i>
Software Update & Support (per year) <sup>1015</sup>	\$3,300

<sup>1007</sup> “Oracle E-Business Global Price List,” September 1, 2006; ORCL00704381-396, at -382.

<sup>1008</sup> “Oracle E-Business Global Price List,” September 1, 2006; ORCL00704381-396, at -382.

<sup>1009</sup> Meyer Report, page 169, table 9.

<sup>1010</sup> I base this conclusion on Mr. Gray’s Report.

<sup>1011</sup> Meyer Report, page 163, paragraph 250.

<sup>1012</sup> Email from Paul Bigos of SAP to George Lester of TomorrowNow dated March 31, 2006. TN-OR01029489-493, at -489-490 with attached pricing proposal from SHI. TN-OR01029494. The proposal indicates that TomorrowNow could have purchased the Oracle Standard Edition license at a 24% discount ((15,000-11,414)/15,000) and the support at a 30% discount ((3,300 – 2,310)/3,300).

<sup>1013</sup> Oracle E-Business Global Price List,” September 1, 2006; ORCL00704381-396, at -382.

<sup>1014</sup> Meyer Report, page 167, paragraph 254.

<sup>1015</sup> Oracle E-Business Global Price List,” September 1, 2006; ORCL00704381-396, at -382.

x Number of customers	71
x Number of years	4
<i>Total Support Cost</i>	<i>\$937,200</i>
Subtotal	\$2,002,200
x Profit Margin	95%
<b>Total Oracle Database Cost</b>	<b>\$1,902,090</b>

## 10. Causation - Disgorgement

I understand that Oracle may recover lost profits suffered as a result of the alleged infringement (“Lost Profits”) and any profits of Defendants attributable to the alleged infringement that are not taken into account in computing lost profits (“Disgorgement”). In this case, that means Oracle must prove that an Oracle customer terminated Oracle support services and *as a result of the Alleged Actions* (a) contracted for support with TomorrowNow, or (b) contracted for support with TomorrowNow and contracted with SAP for products or services.

Mr. Meyer did not properly analyze the reasons a customer terminated support at Oracle.<sup>1016</sup> I determined, at the outset, however, that I needed to do so. Accordingly, I analyzed millions of pages of produced documents<sup>1017</sup> using sophisticated search techniques<sup>1018</sup> to identify relevant documents. When I identified a document that explained why the customer made the decision to terminate Oracle support and contract for support or applications from one or both of the Defendants, I extracted from it the pertinent details and included those details in a database.<sup>1019</sup> For those customers on the List of 86, I reviewed contracts in conjunction with other available sources to substantiate the documentation reviewed during the course of my analysis. I then used

<sup>1016</sup> Mr. Meyer’s analysis of the reasons a customer terminated Oracle support is inadequate. He excluded 17 customers from his summation of accused revenues on Schedule 42.SU, and explained that “...those [were] customers for which evidence indicates that they may have decided to switch to SAP before engaging TomorrowNow...” (Meyer Report, page 274, paragraph 446). While Mr. Meyer properly excluded the 17 customers because they purchased software for reasons unrelated to the Alleged Actions, he failed to exclude numerous other customers for which there was adequate evidence that their termination and buying decisions were unrelated to the Alleged Actions.

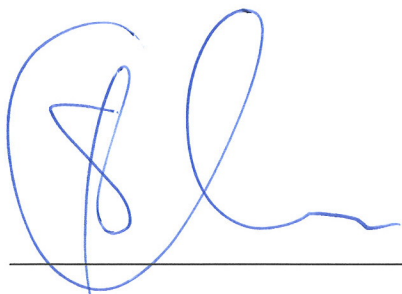
<sup>1017</sup> Including email traffic, correspondence, contracts, spreadsheets and reports produced by the parties, as quantified in total in Appendix C-2.

<sup>1018</sup> Appendix I-1 contains a list of search terms applied to identify documents relating to the 358 TomorrowNow customers and the List of 86 SAP customers. Appendix I-2 contains a list of search terms applied to identify documents relating to: the customers’ relationship with Oracle; the customers’ relationship with TomorrowNow; and the reasons customers may have purchased products or services at SAP.

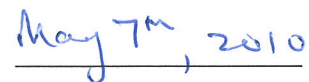
<sup>1019</sup> The database has been provided as Bates range SAP-SKG-118165 for the customers I excluded for disgorgement and/or lost profits. SAP-SKC-118166 contains the database entries for all customers I did not exclude from the damage analysis.

<b>Damages Summary</b> <sup>1269</sup>	
Disgorgement – SAP <sup>1270</sup>	\$4,344,212
Disgorgement – TomorrowNow <sup>1271</sup>	\$1,054,474
Oracle Lost Profits	
OUSA	\$10,162,957
OEMEA	
PeopleSoft	\$241,616
J.D.Edwards EnterpriseOne	\$476,574
J.D.Edwards World	\$159,632
Siebel	\$787,569
OIC	\$17,312,276
OTC	\$1,660,199
ORC	\$248,569
<b>Total</b>	<b>\$36,448,078</b>

Lost Profits and Disgorgement damages are additive. Therefore, total damages if Defendants are found liable for all of Oracle's claims are \$36,448,078.



Stephen K. Clarke



Date

<sup>1269</sup> I did not calculate damages for the No Accused Conduct customers in any of my damages analyses. Earlier in my report, I calculated a reasonable royalty in response to Mr. Meyer's presentation. I do not consider reasonable royalty to be an appropriate measure of damages in this matter.

<sup>1270</sup> Appendix N-1.

<sup>1271</sup> Appendix Q-1.