

EXHIBIT J

1 BINGHAM McCUTCHEM LLP
CHRISTOPHER B. HOCKETT (SBN 121539)
2 GEOFFREY M. HOWARD (SBN 157468)
HOLLY A. HOUSE (SBN 136045)
3 ZACHARY J. ALINDER (SBN 209009)
BREE HANN (SBN 215695)
4 Three Embarcadero Center
San Francisco, CA 94111-4067
5 Telephone: (415) 393-2000
Facsimile: (415) 393-2286
6 chris.hockett@bingham.com
geoff.howard@bingham.com
7 holly.house@bingham.com
zachary.alinder@bingham.com
8 bree.hann@bingham.com

9 DORIAN DALEY (SBN 129049)
JENNIFER GLOSS (SBN 154227)
10 500 Oracle Parkway
M/S 5op7
11 Redwood City, CA 94070
12 Telephone: (650) 506-4846
Facsimile: (650) 506-7114
13 dorian.daley@oracle.com
jennifer.gloss@oracle.com
14

Attorneys for Plaintiffs
15 Oracle Corporation, Oracle USA, Inc.,
and Oracle International Corporation
16

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

20 ORACLE CORPORATION, a Delaware
21 corporation, ORACLE USA, INC., a Colorado
22 corporation, and ORACLE INTERNATIONAL
CORPORATION, a California corporation,

23 Plaintiffs,

24 v.

25 SAP AG, a German corporation, SAP
26 AMERICA, INC., a Delaware corporation,
TOMORROWNOW, INC., a Texas corporation,
and DOES 1-50, inclusive,

27 Defendants.
28

Case No. 07-CV-01658 (MJJ)

**AMENDED NOTICE OF
DEPOSITION OF
TOMORROWNOW, INC.
PURSUANT TO FED. R. CIV. P.
30(b)(6)**

Contains information designated
Confidential pursuant to Protective Order

Case No. 07-CV-01658 (MJJ)

AMENDED NOTICE OF DEPOSITION OF TOMORROWNOW, INC. PURSUANT TO FED. R. CIV. P. 30(b)(6)
CONTAINS INFORMATION DESIGNATED CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that plaintiff Oracle Corporation (“Oracle”), through
3 its counsel, shall conduct the deposition of defendant TomorrowNow, Inc. (“You” or “SAP TN”)
4 regarding the topics of examination set forth below. The deposition will be taken at the law
5 office of Holme Roberts & Owen LLP, 1700 Lincoln Street, Suite 4100, Denver, Colorado
6 80203, and will commence on the afternoon of February 6, 2008 and continue on the morning of
7 February 7, 2008, until completed (with exact times to be determined by the parties). If
8 necessary, the deposition will continue at 9:00 a.m. at the law office of Bingham McCutchen
9 LLP, Three Embarcadero Center, San Francisco, CA, 94111 on February 19, 2008. SAP TN is
10 directed, pursuant to Federal Rule of Civil Procedure 30(b)(6), to designate one or more officers,
11 directors, managing agents, or other persons who can testify on behalf of SAP TN with respect to
12 the matters set forth below.

13 The examination shall be conducted before an officer or other person authorized
14 to administer oaths pursuant to Rule 28 of the Federal Rules of Civil Procedure. The testimony
15 at the deposition will be recorded stenographically by a qualified certified shorthand reporter
16 who is authorized to administer the oath, through instant visual display means (Live Note), and
17 by video. Parties wishing to see the real time display must supply their own computer. Oracle
18 reserves the right to use the written transcript or video as evidence in the trial of this matter.

19 **DEFINITIONS**

20 For purposes of this Amended Notice of Deposition, the following definitions shall apply,
21 unless otherwise indicated:

22 1. “Customer” refers to Your current and former customers and clients,
23 including, without limitation, all customers listed or described on Your website.

24 2. “Customer Local Environment” means a copy of a PSFT or JDE branded
25 software release obtained from a Customer or other source which is or was at any time
26 maintained locally by TomorrowNow (as discussed by Mark Kreutz and Shelley Nelson at their
27 depositions on October 29, October 30, and December 6, 2007).

1 3. “Distribute” or “Distribution” means to make available to a Customer,
2 another third party, or to another party to this action, through any means.

3 4. “Download” or “Downloading” means any duplication, copying, transfer, or
4 replication, in whole or in part, of any file, document, data, or other information from an outside
5 source connected through the internet to a computer, server, or network that is part of another
6 Person’s computer infrastructure or subject to that Person’s control.

7 5. “Employee(s)” means past and present officers, executives, directors,
8 employees, attorneys, agents, representatives, and other Persons acting or purporting to act on
9 behalf of the entity to which the term refers.

10 6. “Facilities” means any building or part of any building, structure, or real
11 property owned, rented, leased, or controlled by You and used in any way to provide or to assist
12 in providing software support services, including without limitation offices, call centers,
13 Downloading facilities, training facilities, data or other storage facilities, or other places where
14 Your Employees work.

15 7. “Master Library”, also referred to as a master folder, means any manner or
16 means of storing Software and Support Materials obtained using the credentials of more than one
17 Customer to Download them from Oracle's systems, in a pooled fashion that does not separate
18 them into separate, client specific folders (as discussed by Mark Kreutz in his deposition on
19 October 29, 2007).

20 8. “Oracle” means plaintiffs Oracle Corporation, Oracle USA, Inc., and Oracle
21 International Corporation, their predecessors, and their successors.

22 9. “Person(s)” means, without limitation, any individual or entity.

23 10. “SAP America” means defendant SAP America, Inc., its predecessors,
24 successors, employees, directors, managers, consultants, agents, and any other Person acting on
25 its behalf.

26 11. “SAP AG” means defendant SAP AG, its predecessors, successors,
27 employees, directors, managers, consultants, agents, and any other Person acting on its behalf.

- 1 g. The identity and description of all Customer Local Environments Used by You in
2 any way to support any Customer other than the one that provided the Software
3 Used to create the Customer Local Environment;
- 4 h. The “off-boarding” process relating to Customer Local Environments for
5 Customers who leave SAP TN support, including without limitation: 1) whether
6 copies of any Customer Local Environments are destroyed or deleted; 2) the
7 manner and method for creating any back-up of the Customer Local Environment;
8 and 3) the storage of any created back-up for any Customer Local Environment;
- 9 i. Any instances in which a backed-up Customer Local Environment was restored,
10 including without limitation any instance in which a back-up of a Customer Local
11 Environment was restored for a Customer that left SAP TN support but later
12 returned;
- 13 j. A description of all methods and means You Used with any Customer Local
14 Environment to support any Customer other than the one that provided the
15 Software Used to create that Customer Local Environment;
- 16 k. All ways in which You supported any Customer using a Customer Local
17 Environment created with Software obtained from a different Customer, including
18 without limitation the name, description, date created, date delivered, exact
19 recipients, and identities of all involved SAP TN personnel and, of any Support
20 Material created, developed, or modified for one Customer using a Customer
21 Local Environment created with Software from a different Customer;
- 22 l. The process by which Customer Local Environments were Used as part of the
23 ordinary course of business for SAP TN, including without limitation to on-
24 boarding of new Customers; support of Customer cases, issues, and problems;
25 reactive and proactive development of bug fixes, updates, patches, explanations,
26 or regulatory changes for Customers; research into and design of those changes;
27 troubleshooting for Customers; and testing of other operating system levels;
- 28

- 1 m. Any instance in which the existence and Use of Customer Local Environments
2 was communicated to anyone at SAP AG or SAP America, including during the
3 negotiation of the acquisition by SAP AG or SAP America of SAP TN.
4 n. Any instance in which anyone from SAP AG or SAP America was given or had
5 access to any Customer Local Environment or any Support Material created using
6 such Customer Local Environment; and
7 o. All policies, and communications with Customers, relating to the creation and
8 Use of Customer Local Environments.

9 2. The creation and Use of the Master Library in which Downloads of Customers
10 Kountz Wagner or Praxair were stored, and any similar or equivalent Master Library for any
11 PSFT Customers, including without limitation:

- 12 a. The process by which the Master Library was created;
13 b. The process by which it was Used;
14 c. How and where the Master Library was stored;
15 d. Any possible back-up of the Master Library after Customer-specific folders were
16 created, including the AA Cleanup folder and possible local storage;
17 e. The process by which Downloads in the Master Library were identified; and
18 f. The process by which Downloads from the pooled Master Library were split and
19 copied into Customer-specific folders, including without limitation documents
20 related to the splitting process and identification of the SAP TN team members
21 who were involved in the splitting process.
22 g. The creation and Use of Information Station.

23 3. The source code that is “exploded” on the AS/400, as described by Mark Kreutz
24 at his deposition on October 30, 2007, including without limitation:

- 25 a. The movement of Downloaded items from Customer libraries to the AS/400;
26 b. The manner, method, and purpose of “exploding” Downloaded items;
27 c. The purpose of creating a list of objects resulting from the explosion process to
28

1 bring back to the Customer's Download libraries and indexing with Information
2 Station;

- 3 d. The Use for any purpose of the exploded files on AS/400;
4 e. Any instances in which any source code on the AS/400 was Used in any way by
5 SAP TN;
6 f. How source code on the AS/400 is identified by Customer, if at all.
7

8 DATED: January 22, 2008

9 By: _____
10



Bree Hann

BINGHAM MCCUTCHEN LLP

Three Embarcadero Center

San Francisco, CA 94111-4067

Telephone: (415) 393-2000

Facsimile: (415) 393-2286

bree.hann@bingham.com

Attorneys for Plaintiffs

Oracle Corporation, Oracle USA, Inc.,
and Oracle International Corporation

1 **PROOF OF SERVICE**

2 I am over 18 years of age, not a party to this action and employed in the
3 County of San Francisco, California at Three Embarcadero Center, San Francisco, California
4 94111-4067. I am readily familiar with the practice of this office for collection and processing
5 of correspondence by U.S. Mail and Electronic Mail, and they are deposited and/or sent that
6 same day in the ordinary course of business.

7 Today I served the following documents:

8 **AMENDED NOTICE OF DEPOSITION OF TOMORROWNOW,
9 INC. PURSUANT TO FED. R. CIV. P. 30(b)(6)**

10 (BY ELECTRONIC MAIL) by transmitting via electronic mail document(s) in
11 portable document format (PDF) listed below to the email address set forth below
12 on this date.

13 (BY MAIL) by causing a true and correct copy of the above to be placed in the
14 United States Mail at San Francisco, California in sealed envelope(s) with postage
15 prepaid, addressed as set forth below. I am readily familiar with this law firm's
16 practice for collection and processing of correspondence for mailing with the
17 United States Postal Service. Correspondence is deposited with the United States
18 Postal Service the same day it is left for collection and processing in the ordinary
19 course of business.

18 Robert A. Mittelstaedt, Esq.
19 Jones Day
20 555 California Street
21 26th Floor
22 San Francisco, CA 94104
23 Tel: (415) 626.3939

18 Tharan Gregory Lanier, Esq.
19 Jane L. Froyd, Esq.
20 Jones Day
21 1755 Embarcadero Road
22 Palo Alto, CA 94303
23 Tel: (650) 739-3939

21 ramittelstaedt@JonesDay.com

21 tglanier@JonesDay.com
22 jfroyd@JonesDay.com

23 I declare that I am employed in the office of a member of the bar of this court at
24 whose direction the service was made and that this declaration was executed on January 22,
25 2008, at San Francisco, California.

26 
27 _____
28 Joyce Holman