

This Consulting Services Agreement (“Agreement”) is entered into as of _____, 20__ (the “Effective Date”) between Serena Software, Inc. (“Serena”) and _____ (“Client”).

1. Services and Deliverables. Serena shall provide the services (“Services”) set forth in a mutually agreed Statement of Work (“SOW”), as well as deliverables (“Deliverables”), if any, specified in such SOW. The terms of this Agreement will be deemed incorporated into each SOW. Any changes to an SOW will be agreed upon in writing in the form of a change order executed by both parties. In the event of any conflict between the terms of an SOW and this Agreement, the terms of this Agreement will prevail unless such SOW expressly states that it supersedes the applicable terms in this Agreement. This Agreement and the applicable SOW will supersede any conflicting, inconsistent, or pre-printed terms and conditions contained in any Client purchase order or other ordering document.

2. Fees; Payment; Taxes. Client shall pay Serena the fees for the Services as set forth in the fee schedule contained in the applicable SOW. Client acknowledges and agrees that payment for Services hereunder is not contingent upon the delivery or performance of any Serena software. Client shall also pay reasonable travel and living expenses that are incurred in the performance of Services, as agreed between Client and Serena. Client shall pay invoiced amounts within thirty (30) days of the invoice date. Client shall also be responsible for taxes arising out of this Agreement, except for taxes imposed on Serena’s income or arising from the employment relationship between Serena and its personnel. If any sum payable to Serena under this Agreement is in arrears for more than thirty (30) days from the due date, Serena reserves the right, without prejudice to any other remedy, to (a) charge interest on such overdue sum at the rate of 1.5% per month; and/or (b) suspend the performance of the Services until such time as payment is received.

3. Term; Termination. This Agreement will begin on the Effective Date and continue until termination. This Agreement and/or an SOW may be terminated at any time by either party (a) upon thirty (30) days prior written notice without cause or (b) upon written notice if the other party breaches any material term of this Agreement and such breach remains uncorrected for fifteen (15) business days following written notice from the other party. Upon any termination, Serena shall be entitled to be paid for all work performed, including fees and expenses, up to the effective date of termination.

4. Confidentiality. To the extent that confidential and proprietary information of each party (“Confidential Information”) is exchanged and received in connection with the Services, each party agrees not to use the other party’s Confidential Information except in the performance of, or as authorized by, this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties. Use of Confidential Information by each party’s third party contractors is permitted if such contractor has a need to know and is obligated to maintain the confidentiality of such Confidential Information as required by this Section 4. Each party shall be responsible for its contractors’ compliance with this Section 4. Confidential Information includes, but is not limited to, Serena Information (as defined in Section 5.1 herein), and does not include (a) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (b) information previously known by or developed by the receiving party independent of the Confidential Information, or (c) information that the receiving party rightfully obtained without restrictions on use and disclosure.

5. Proprietary Rights.

5.1 Any pre-existing work or Confidential Information of Serena that is used in the performance of Services or included in any Deliverables, including, without limitation, software, methodologies, code, templates, tools, policies, records, working papers, know-how, data or other intellectual property (collectively, “Serena Information”), shall remain the exclusive property of Serena. In addition, any functionality or workflows that are already contained in Serena’s software or developed during the performance of Services (“Reusable Concepts”) shall remain the exclusive property of Serena. To the extent that Serena incorporates any Serena Information or Reusable Concepts into a Deliverable, Serena grants to Client a non-exclusive, non-transferable license to use such Serena Information at no additional charge solely for Client’s internal business purposes, subject to such limitations set forth in this Agreement and the applicable SOW. Any Client pre-existing information, including without limitation, Confidential Information of Client and intellectual property provided to Serena by Client, shall remain the exclusive property of Client (“Client Information”).

5.2 Any derivative works of Serena Information or Reusable Concepts shall vest in and be the exclusive property of Serena (“Serena Derivative Works”). Any derivative works of Client Information shall vest in and be the exclusive property of Client. Except for Serena’s ownership of and rights in Serena Information, Reusable Concepts, and Serena Derivative Works, any Deliverables provided to Client by Serena under an SOW and created specifically for Client shall, upon final payment to Serena, become the property of Client.

5.3 Client acknowledges that Serena provides services to other clients which may be similar to the Services, and that nothing in this Agreement shall be construed to prevent Serena from providing such services. Serena shall have the right to retain and use internally copies of all Deliverables.

6. Indemnification.

6.1 Serena shall defend any claim against Client that Client’s authorized use of any Deliverable infringes any intellectual property right of a third party, provided that the third party is located in a country that is a signatory to the Berne Convention, and provided that Client promptly notifies Serena in writing of any such claim or suit. Serena shall have sole control of the defense of such claim (including, without limitation, the right to settle on behalf of Client) and Client shall cooperate with Serena in connection with such defense at the reasonable expense of Serena. If Client is enjoined from using any Deliverable, or if Serena believes that any Deliverable is likely to be found to infringe, then Serena shall (a) obtain the right for Client to continue to use such Deliverable or (b) replace or modify the Deliverable so as to make it non-infringing and substantially comparable in functionality. If after using commercially reasonable efforts Serena is unable to do either (a) or (b) above, such Deliverable will be returned to Serena and Serena’s sole liability will be to refund to Client the amount paid to Serena for such Deliverable or applicable portion thereof. Notwithstanding the foregoing, Serena shall have no liability for any infringement claim arising from (a) use of a Deliverable other than in accordance with applicable documentation or instructions provided by Serena; (b) modification of any Deliverable other than by Serena; (c) the use or combination of any Deliverable with products, materials, or software not supplied by Serena; (d) information supplied by Client to Serena that is included in the Deliverable or in the Services creating such

Deliverable; or (e) Client's use of a superseded version of the Deliverable if the infringement could have been avoided by using a newer version of the Deliverable provided by Serena.

6.2 In the event that any willful misconduct or negligence of either party or its employees during the performance of Services on Client's premises causes (a) loss, damage to, or destruction of physical property of the other party or third parties; or (b) death or injury to any person, then such party shall indemnify, defend, and hold the other party harmless from and against any and all resulting claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees), resulting from such misconduct or negligence.

7. **Warranty.** Serena warrants, for a period of thirty (30) days from the date of performance, that the Services described in a SOW were performed in a good and workmanlike manner and in accordance with generally accepted industry standards. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. **Limitation of Liability.** IN NO EVENT SHALL SERENA BE LIABLE TO CLIENT OR ANY OTHER PARTY FOR (A) ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR (B) LOSS OF DATA; LOSS OF PROFITS; BUSINESS INTERRUPTION; OR SIMILAR DAMAGES OR LOSS, EVEN IF SERENA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS LIMITED BY APPLICABLE LAW AND EXCLUDING SERENA'S LIABILITY TO CLIENT UNDER SECTION 6 (INDEMNIFICATION), AND REGARDLESS OF THE BASIS FOR CLIENT'S CLAIM, SERENA'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID FOR THE SERVICES GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. **Affiliates.** "Affiliate" means any present or future entity that, directly or indirectly controls, or is controlled by, or is under common control with Serena or Client, as applicable. Any Affiliate of a party may enter into a separate SOW with the other party upon the terms and conditions of the SOW and this Agreement. Serena and Client shall each

be responsible for performance of and compliance with the terms of this Agreement by their respective Affiliates. Serena shall invoice Client or its Affiliate, as indicated in the SOW, for Services provided to such Affiliate in accordance with the SOW and this Agreement. If Client's Affiliate fails to pay such invoice as and when due, Client shall pay such overdue invoice to Serena upon demand.

10. **Miscellaneous.** This Agreement will be governed in accordance with the substantive laws of California without giving effect to its conflict of laws provisions. Client acknowledges that the Deliverables may be subject to, and Client agrees to comply with, applicable U. S. export laws and regulations. Client agrees that while Serena is performing Services and for one (1) year thereafter, Client shall not solicit nor offer employment to any Serena personnel performing the Services, and that any breach of the foregoing will obligate Client to pay Serena an amount equal to the annual base salary of the person whom Customer solicits or hires. Serena shall ensure that its personnel, while on Client's premises, follow all reasonable instructions and regulations that are provided to Serena prior to the performance of the Services. Serena is an independent contractor and will not be deemed an employee or agent of Client. All notices hereunder will be provided to the signatory at the address below, unless otherwise specified herein or in an SOW. This Agreement, including any SOWs, contains the complete agreement between the parties relating to the Services and supersedes any previous or contemporaneous agreement, proposal, commitment, representation, or other communication, whether oral or written. This Agreement may be executed in multiple counterparts (including facsimile copies), all of which taken together will be deemed a single original instrument. All notices will be in writing and will be deemed to have been duly given upon personal delivery three (3) days after being mailed by registered or certified mail and will be sent to the addresses set forth below, with a copy to each party's corporate headquarter address, Attn: General Counsel. Neither this Agreement or any SOW is assignable by Customer without the prior written consent of Serena. Neither party is responsible for its inability to perform due to causes beyond such party's reasonable control. Notwithstanding any termination of this Agreement, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such termination will survive, including but not limited to, Sections 2, 4, 5, 6, 8, and 10.

Serena Software, Inc.

By:

Name:

Title:

Date:

Address: 2345 NW Amberbrook Drive, Suite 200
Hillsboro, OR 97006-6969

[Client]

By:

Name:

Title:

Date:

Address: