

SERENA SOFTWARE, INC. OR ITS APPLICABLE SUBSIDIARY (“SERENA”) IS PROVIDING SOFTWARE AND SERVICES TO A CUSTOMER (“YOU” OR “YOUR”) THROUGH A SERENA AUTHORIZED DISTRIBUTOR (“DISTRIBUTOR”). THIS MASTER END USER LICENSE AGREEMENT (“AGREEMENT”) IS LEGALLY BINDING BETWEEN YOU AND DISTRIBUTOR. SERENA IS A THIRD PARTY BENEFICIARY OF THIS AGREEMENT AND THE BENEFITS OF THIS AGREEMENT INURE TO SERENA. BY EXECUTING A PURCHASE AUTHORIZATION LETTER PROVIDED TO YOU BY DISTRIBUTOR, YOU REPRESENT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT.

1.0 DEFINITIONS

- 1.1 **“CEC”** means the Central Electronic Complex, and includes CPUs, memory, channels, controllers and power supplies within the hardware, and direct access storage devices.
- 1.2 **“CPU”** means an individual central processing unit for a computing device that contains a control unit that extracts instructions from memory and decodes and executes the instructions.
- 1.3 **“Concurrent User”** means an employee of You who has been designated as a user within a group of authorized users of Software and accesses the Software at any given point in time, either directly or through another application.
- 1.4 **“Distributed Software”** means Software other than Mainframe Software.
- 1.5 **“Endpoint”** is a single physical, virtual or cloud server.
- 1.6 **“Instance”** means a single occurrence of initialization or execution of the Software on one Server.
- 1.7 **“Licensed Capacity”** means the maximum permitted use of the Software based on our capacity-based license pricing metrics that quantify, measure, and limit your use of the Software, as specified in Your order for the Software, including without limitation, Concurrent Users, Instances, Named Users, Seats and Servers.
- 1.8 **“Licensed Configuration”** means the type of hardware platform, operating system, database, location and other configuration information, as specified in Your order for the Software.
- 1.9 **“Mainframe Software”** means Software that is designated by Serena to operate on a mainframe computer (e.g., ChangeMan® SSM, ChangeMan® ZDD, ChangeMan® ZMF, StarTool®, Comparex® and Dimensions® z/OS), commercially available at the time of Your order and identified in the Purchase Authorization Letter, and any modifications, corrections and updates thereto provided by Serena as part of Maintenance.
- 1.10 **“Maintenance”** means the maintenance and technical support services for the Software, as specified in Your order for the Software.
- 1.11 **“MIPS”** means Millions of Instructions Per Second and is an industry rating given to a CEC based upon the CPUs contained within the CEC. MIPS are measured not only by the CEC executing the Mainframe Software (the “Executing CEC”), but also any additional CECs that (a) are coupled into or accessing the Executing CEC and (b) have access to a direct access storage device in which the Mainframe Software is installed. The number of MIPS attributable to each CEC will be determined by the then current Gartner Group Rating Guide or another industry standard selected by Serena.
- 1.12 **“Named User”** is a form of Licensed Capacity and means a single employee of You who has been designated as an authorized user of the Software and accesses the Software using a single computer at any given point in time, either directly or through another application.
- 1.13 **“Seat”** means an employee of You who has been authenticated by Your LDAP server and accesses the Software at any given point in time, either directly or through another application.
- 1.14 **“Server”** means a single server on which an Instance of the Software is installed.
- 1.15 **“Software”** means Serena’s software products in object code form that are commercially available at the time of Your order and identified in Your Purchase Authorization Letter, including any modifications, corrections and updates provided by Serena in connection with Maintenance. The term “Software” includes Mainframe Software.
- 1.16 **“Territory”** means the country or countries in which You have a license to use the Software, as specified in Your order for the Software; or, if no Territory is specified, the country from which Your order has been issued.
- 1.17 **“User Documentation”** means the user’s guide, installation guides, or on-line documentation applicable to the Software.

2.0 GRANT OF LICENSE AND USE OF SOFTWARE

- 2.1 **License Grant.** Subject to the terms and conditions of this Agreement, Distributor grants to You a perpetual, non-exclusive license to use the Software within the Territory, in accordance with the User Documentation and in compliance with the authorized Licensed Capacity.
- 2.2 **Usage Rights.** You may only use the Software and the User Documentation for Your internal business operations and to process Your data. You will not (a) permit any third parties or non-licensed entities to use or access the Software or the User Documentation except as expressly permitted under this Section 2.2; (b) permit any Concurrent User, Named User or Seat to use or access the Software from a location outside of the Territory except as expressly permitted under this Section 2.2; (c) process or permit to be processed any data that is not Your data; (d) use the Software in the operation of a service bureau or hosted or subscription service; (e) sublicense, rent, or lease the Software or the User Documentation to a third party; or (f) perform, publish, or release to any third parties any benchmarks or other comparisons regarding the Software or User Documentation. You will not make simultaneous use of the Software on multiple, partitioned, or virtual computers without first procuring the number of licenses to be simultaneously used by You. You will not permit a third party outsourcer to use the Software to process data on Your behalf without Distributor’s prior written consent.

- 2.3 **License Keys.** The Software will contain one or more license keys to enable the functionality of the Software. You may only access and use the Software with license keys provided by Distributor, and if a new license key is issued, You will not use the previous license key to enable the Software.
- 2.4 **Archival Copies.** You may make one copy of the Software for back-up and archival purposes only, and You may make a reasonable number of copies of the User Documentation for Your internal use. All copies of Software and User Documentation must include all copyright and similar proprietary notices appearing on or in the originals.
- 2.5 **Relocation of Mainframe Software.** You may relocate the Mainframe Software from one CPU to another CPU, provided that You (a) give prior written notice to Distributor, including the location, model numbers, and serial numbers of the CPUs within the CECs; (b) do not otherwise change the Licensed Configuration or exceed the then-current Licensed Capacity in connection with such relocation; (c) agree in writing to uninstall and discontinue all use of the Mainframe Software with the originally licensed CPU; and (d) are current on Maintenance with respect to such relocated Mainframe Software.
- 2.6 **Licensed Capacity (Distributed Software).** Distributor licenses Software based on Licensed Capacity for different types of usage, including, without limitation, Concurrent Users, Named Users, Seats, Servers, and such other types of usage as described in Section 6. A Concurrent User license allows multiple Concurrent Users to share access to and use the Software, provided that the number of Concurrent Users accessing the Software at any point in time does not exceed the total number of licensed Concurrent Users. A Named User license allows a Named user to access and use the Software using a single computer at any point in time. A Seat license allows a single Seat to access and use the Software, provided that the number of employees of You accessing the Software at any point in time does not exceed the total number of licensed Seats. A Server license allows for a single Instance of the Software to be accessed and used on the applicable server. If an application accessing the Software is a multiplexing, database, or web portal application that permits users of such application to access the Software or data processed by the Software, a separate Named User, or Seat license will be required for each user of such application. You will immediately notify Distributor in writing of any increase in use beyond the Licensed Capacity and will provide Distributor with any reports reasonably requested by Distributor to verify Your use and deployment of the Software. If Your access and use of the Software exceeds Your Licensed Capacity, You will be required to purchase additional licenses and Maintenance from Distributor at Distributor's then-current list price.
- 2.7 **Licensed Capacity (Mainframe Software).** The Licensed Capacity is based on the total MIPS and/or CPUs within the CECs in which the Software has been installed and/or is operating, and is not limited to one or more logical partitions or other measure of sub-capacity applicable to the licensed CPUs within the CEC(s). If at any time You exceed its Licensed Capacity (*i.e.*, the total MIPS or CPUs within the CECs in which the Software has been installed and/or is operating exceeds the applicable number of MIPS or CPUs authorized under the Licensed Capacity), then You must obtain a license for any increase in Licensed Capacity, and You agree to pay to Distributor additional Software license fees, which will be based on Distributor's then-current list price.
- 2.8 **Third Party Software.** You acknowledge that software provided by third party vendors ("Third Party Software") may be embedded in or delivered with the Software. The terms of this Agreement and such other terms that Distributor may deliver with the Software shall apply to Your use of such Third Party Software. All Third Party Software vendors will be deemed third party beneficiaries under this Agreement. You may only use the Third Party Software with the Software, and may not use the Third Party Software on a stand-alone basis or use or integrate it with any other software or device.
- 2.9 **Open Source Software.** You acknowledge that certain portions of the Software may be delivered with notices and open source licenses from communities and third parties that govern the use of those portions of the Software. This Agreement will not alter any of the rights and obligations under these open source licenses, except that the disclaimer of warranties and limitation of liability set forth in this Agreement shall apply to all portions of the Software.
- 2.10 **Evaluation License.** This Section 2.10 applies if Distributor has provided the Software to You for evaluation purposes. Distributor grants to You a thirty (30) day, limited license solely for the purpose of internal evaluation. You are strictly prohibited from using the Software for any production purpose or any purpose other than the sole purpose of determining whether to purchase a commercial license for the Software that You are evaluating. Distributor is not obligated to provide maintenance or support for the evaluation Software. YOU ACKNOWLEDGE THAT SOFTWARE PROVIDED FOR EVALUATION MAY (A) HAVE LIMITED FEATURES; (B) FUNCTION FOR A LIMITED PERIOD OF TIME; OR (C) HAVE OTHER LIMITATIONS NOT CONTAINED IN A COMMERCIAL VERSION OF THE SOFTWARE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, DISTRIBUTOR IS PROVIDING THE EVALUATION SOFTWARE TO YOU "AS IS". DISTRIBUTOR AND SERENA EXPRESSLY DISCLAIM ALL OTHER WARRANTIES (INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND STATUTORY WARRANTIES OF NON-INFRINGEMENT), LIABILITIES, AND INDEMNIFICATION OBLIGATIONS OF ANY KIND. In the event of any conflict between this Section 2.10 and any other provision of this Agreement, this Section 2.10 will prevail and supersede such other provision with respect to Software licensed to You for evaluation purposes.
- 2.11 **Audit.** You shall maintain accurate business records relating to its use and deployment of the Software. Distributor or Serena shall have the right, not more than once every twelve (12) months and upon ten (10) business days prior written notice, to verify Your compliance with Your obligations under this Agreement by auditing Your business records and Your use and deployment of the Software within Your information technology systems. Distributor, Serena and/or a selected public accounting firm shall perform the audit during Your regular business hours and comply with Your reasonable safety and security policies and procedures. Any agreement You may require the public accounting firm to execute shall not prevent disclosure of the audit results to Distributor and Serena. You shall reasonably cooperate and assist with such audit. You shall, upon demand, pay all license and Maintenance fees for any unauthorized deployments and/or excess usage of Software products disclosed by the audit. You will be responsible for the cost of the audit if the audit indicates that You have exceeded Your Licensed Capacity or otherwise exceeded Your license restrictions.

3.0 TITLE. Serena retains all right, title and interest in and to the Software and User Documentation and all copies, improvements, enhancements, modifications, and derivative works of the Software and User Documentation, including, without limitation, all patent, copyright, trade secret, trademarks and other intellectual property rights. You agree that You will not copy (except as expressly permitted herein), make modifications to, translate, disassemble, decompile, reverse engineer, decode or alter, or create derivative works based on the Software or User Documentation. Except as otherwise provided, neither Distributor nor Serena grants any express or implied rights under this license to any of Serena's patents, copyrights, trade secrets, trademarks or other intellectual property rights.

4.0 LIMITED WARRANTY

4.1 Performance Warranty. Distributor warrants that the Software, as delivered by Distributor and when used in accordance with the User Documentation and the terms of this Agreement, will substantially perform in accordance with the User Documentation for a period of ninety (90) days from the date of delivery of the Software (the "Warranty Period"). The Warranty Period for Mainframe Software is six (6) months. If the Software does not operate as warranted and You have provided written notice of the non-conformity to Distributor within the Warranty Period, Distributor will at its option (a) repair the Software; (b) replace the Software with software of substantially the same functionality; or (c) terminate the license for the nonconforming Software and refund the applicable license fees received by Distributor for the nonconforming Software. The foregoing warranty specifically excludes defects in or non-conformance of the Software resulting from (a) use of the Software in a manner not in accordance with the User Documentation; (b) modifications or enhancements to the Software made by You or on Your behalf; (c) combining the Software with products, software or devices not provided by Distributor; or (d) computer hardware malfunctions, unauthorized repair, accident, or abuse.

4.2 Disclaimers. THE WARRANTIES SET FORTH IN THIS SECTION 4 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. DISTRIBUTOR AND SERENA EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND STATUTORY WARRANTIES OF NON-INFRINGEMENT. NEITHER DISTRIBUTOR NOR SERENA WARRANTS THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. THE REMEDIES SET FORTH IN THIS SECTION 4 ARE YOUR SOLE AND EXCLUSIVE REMEDIES AND THE SOLE AND EXCLUSIVE LIABILITY OF DISTRIBUTOR OR SERENA REGARDING FAILURE OF ANY SOFTWARE TO FUNCTION OR PERFORM AS WARRANTED IN THIS SECTION 4.

4.3 Country Specific Terms. If You are in Austria or Germany, the following is inserted at the beginning of this Section: "The warranty period is twelve months from the date of delivery. The limitation period for consumers in any action for breach of warranty is the statutory period. The warranty for Software covers (a) the functionality of the Software in its normal use and (b) the Software's conformity to its specifications. The limitations and exclusions specified in Sections 4 and 5 will not apply to damages caused by Distributor's intentional misconduct or intentional or gross negligence."

5.0 LIABILITY AND REMEDY

5.1 Limitation. IN NO EVENT WILL DISTRIBUTOR, SERENA, OR SERENA'S THIRD PARTY VENDORS BE LIABLE TO YOU 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 DISTRIBUTOR, SERENA, OR SERENA'S THIRD PARTY VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS LIMITED BY APPLICABLE LAW, AND REGARDLESS OF THE BASIS FOR YOUR CLAIM, THE MAXIMUM LIABILITY OF DISTRIBUTOR, SERENA OR SERENA'S THIRD PARTY VENDORS UNDER THIS AGREEMENT WILL BE THE AMOUNT YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5.2 Country Specific Terms. If You are in Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden or Switzerland, the following replaces the terms of this Section 5 in its entirety:

"Except as otherwise provided by mandatory law, Distributor's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Agreement, or due to any other cause related to this Agreement, is limited to the compensation of only those damages and losses proven and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if Distributor is at fault) or of such cause, for a maximum amount equal to the amount You paid for the Software. The above limitation shall not apply to damages for bodily injuries (including death) or damages to real property or tangible personal property for which Distributor is legally liable."

If You are in France or Belgium, the following replaces the terms of this Section 5 in its entirety:

"Except as otherwise provided by mandatory law, Distributor's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proven and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if Distributor is at fault, as assessed in a final judgment by a court of law), for a maximum amount equal to the charges You paid for the Software that has caused the damages. The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Distributor is legally liable."

If You are in any of the countries listed above, the following applies:

"UNDER NO CIRCUMSTANCES WILL DISTRIBUTOR, SERENA, OR ANY OF SERENA'S SOFTWARE DEVELOPERS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: LOSS OF, OR DAMAGE TO, DATA; INCIDENTAL OR INDIRECT DAMAGES, OR ANY ECONOMIC CONSEQUENTIAL DAMAGES; LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT CAUSED THE DAMAGES; OR LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS."

If You are in the United Kingdom, the following applies:

“For the purposes of this Section, a “Default” means any act, statement, omission, or negligence on the part of Distributor in connection with, or in relation to, the subject matter of an Agreement in respect of which Distributor is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default. Circumstances may arise where, because of a Default, You are entitled to recover damages from Distributor. This Section sets forth the extent of Distributor’s liability and Your sole remedy. Distributor will accept unlimited liability for (a) death or personal injury caused by the negligence of Distributor; (b) any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section; and (c) subject always to the items for which Distributor is not liable below, for physical damage to Your tangible property resulting from the negligence of Distributor. Except as provided in the foregoing, Distributor’s entire liability for actual damages for any one Default will not in any event, except as provided above, exceed the greater of 75,000 GBP, or 100% of the amount You paid for the Software of the last purchase only directly relating to the Default.”

6.0 SOFTWARE PRODUCT SPECIFIC TERMS

- 6.1 **Serena® Business Manager (“SBM”) and TeamTrack®.** SBM and TeamTrack are licensed on the basis of Servers and Seats. Each SBM Seat allows a designated Seat to use and participate in all activities and functionality of Serena Business Manager that pertain to workflow applications to which the Seat has been granted access at runtime, including the workflow, workflow roles, transition items, sending and receiving notifications, creating reports, and creating dashboards. A Seat is required for each managed administrator of SBM. Existing SBM Named User, Concurrent User and Requestor licenses remain valid unless converted. A Server license allows execution of a single Instance of the Software on a single Server. Existing Named User and Concurrent User licenses are for use on a single Server unless otherwise specified in writing by the parties. A “Requestor” is a user who is permitted to submit issues and view status only. You may allow a third party to use the Requestor license, subject to Your indemnification of Distributor and Serena against any claims that may arise from such use of the Software by such third party. You may transfer Named User licenses to accommodate personnel changes, provided that such transfers do not result in sharing of Named User licenses. You may change from time to time the employees who are designated to use the Software under a Named User or Seat license, provided that the number of users does not exceed the total number of licensed Named Users or Seats, as applicable and such use complies with the Agreement.
- 6.2 **Serena® Service Manager (“SSM”).** SSM is licensed on the basis of Seats and Concurrent Users. Each SSM license may use and participate in all activities and functionality of SBM that pertain to workflow applications to which the SSM license has been granted access at runtime, including the workflow, workflow roles, transition items, sending and receiving notifications, creating reports, and creating dashboards. Each SSM license includes one SBM Connect for SharePoint User license. You may access the Service Request Center functionality installed with SSM only to the extent You have purchased a requisite number of Serena Request Center licenses.
- 6.3 **Serena® Service Manager Content (“SSM Content”).** SSM Content is licensed on the basis of Seats and Concurrent Users. Each SSM Content license allows for You to use Your existing SBM license to fully access the application content contained in the SSM solution file; otherwise, Your existing SBM users are authorized solely to submit and update tickets in the SSM application. Each SSM Content license purchased includes one SBM Connect for SharePoint Seat license. You may access the Service Request Center functionality installed with SSM only to the extent You have purchased a requisite number of Serena Request Center licenses.
- 6.4 **Serena® Request Center (“SRC”).** SRC is licensed on the basis of Seats. You may access and use the SSM functionality installed with SRC only to the extent You have purchased a requisite number of SSM licenses.
- 6.5 **Serena® Release Vault (formerly Serena® Dimensions® Deploy).** Serena Release Vault is licensed based on Endpoints, Named Users, and Connectors. A Connector license is needed for each LPAR where Release Vault will be accessed. You are authorized to use only the following features of the Software: Version Management, Projects, Build Management, Deployment, Ant and Cruise Control Integrations, Baseline Creation, Design Parts, Request Management, the Dimensions Windows client, the Dimensions web client, the Dimensions Windows Explorer add-in, the Dimensions administration console, all agents (except z/OS and z/Linux), all APIs, and web services.
- 6.6 **Serena® Release Control (formerly Serena® Application Release Management/ARM).** Serena Release Control is licensed based on Connectors, Endpoints and Seats. A Release Control Connector is needed for each LPAR where Release Control will be accessed. Subject to the terms of this Agreement, Serena grants You a perpetual, non-exclusive license to use and modify the Release Control Software in accordance with the User Documentation, and in compliance with the authorized Licensed Capacity. Subject to the terms of this Agreement, Serena grants You a license to perform and deploy the Release Control Software solely as incorporated within Serena’s software product known as Serena Business Manager, and solely for Your internal business operations. You may not sell, rent, lease, or otherwise distribute or disclose the Software or any modification thereof to any third party whatsoever. To the extent that You modify the Release Control Software or create derivative works of such, Serena grants You a non-exclusive, non-transferable license to use such modification or derivative works at no additional charge, subject to such limitations set forth in this Agreement.
- 6.7 **Serena® ChangeMan® ZMF Client Pack.** Each seat of the ChangeMan ZMF Client Pack allows one Serena ChangeMan ZDD license and one Eclipse Plug-In License.
- 6.8 **Authorized Use of Products.** You acknowledge that the authorized use for each Software product set forth in this Section 6.0 is a form of Licensed Capacity. If Your access and use of the Software exceeds its Licensed Capacity, You will be required to purchase additional licenses and Maintenance at Serena’s then-current list price.

7.0 MAINTENANCE

- 7.1 **Maintenance Period (Distributed Software).** If You elect to purchase Maintenance with the Software, the Maintenance period will commence upon the initial delivery of the Software and continue for a period of one year thereafter. The Maintenance period, at

Your option, may be renewed pursuant to a subsequent order and upon Distributor's acceptance of the Purchase Authorization Letter, shall be non-cancelable. Before such renewal, Distributor may require You to provide a report on Your use and deployment of the Software. Such report must be certified by Your officer and must specify, with respect to the Software: (a) the type and amount of Licensed Capacity; (b) the version; and (c) the license serial number. Maintenance fees will be based on the then-current list price.

- 7.2 **Maintenance Period (Mainframe Software).** You must purchase initial Maintenance, which will commence upon delivery of the Software and continue for the period, as specified in Your order. If no period is specified, the initial Maintenance period will be one year. You may renew Maintenance pursuant to a subsequent order. Before such renewal, You must provide Distributor with a report on Your use and deployment of the Software. Such report must be certified by Your officer and must specify, with respect to Your Software: (a) the total MIPS capacity of the Executing CECs and other CECs; (b) the identification of the CECs, including the model numbers and serial numbers of the CPUs within the CECs; and (c) the location of the CECs. Maintenance fees will be based on the then-current list price.
- 7.3 **Support Coordinators.** Maintenance will consist of support services provided to one (1) designated support coordinator of Yours (and one backup coordinator) per Your location, by telephone, facsimile, email and World Wide Web site. Support is available during normal business hours in the applicable location within the Territory, Monday through Friday, excluding nationally observed holidays. Emergency support is available outside of these hours via pager service accessible through the main support telephone number.
- 7.4 **Additional Licensed Capacity.** In the event that You purchase additional Licensed Capacity for the Software prior to the annual anniversary date of the Maintenance period, You must pay applicable Maintenance fees based on Distributor's then-current list price. Unless otherwise agreed, Maintenance fees will apply from the effective date of such additional Licensed Capacity and continue for a period of one (1) year thereafter.
- 7.5 **New Releases.** During a current Maintenance period, Distributor will provide You with one copy of any new release of the Software, which may include generally available error corrections, modifications, maintenance patch releases, enhancements (unless priced separately by Distributor and generally not included with new licenses for the Software at that time), and the revised User Documentation, if applicable. Notwithstanding the foregoing, stand-alone error corrections that are not part of a new release will not be independently supported but will be incorporated into the next release of the Software. If You install a new release of the Software, You may continue to use the previous version of the Software for a reasonable period of time, not to exceed ninety (90) days, in order to assist You in the transition to the new release, provided that the new release and the previous version are installed on the same CPU. Once You complete the transition to the new release of the Software, You shall discontinue use of the previous version of the Software.
- 7.6 **Supported Releases.** Support will be provided for the immediately preceding release of the Software for a period of twelve (12) months following the discontinuance of such Software or the date on which the new release becomes generally available, provided that You have paid applicable Maintenance fees and incorporated all Maintenance patch releases for the release of the Software.
- 7.7 **Reinstatement of Maintenance.** If You allow Maintenance to expire, You may, at a later date, renew Maintenance by paying all applicable fees at Distributor's then-current rates, which may include, without limitation, reinstatement fees, annual Maintenance fees, and license update fees.

8.0 GENERAL

- 8.1 **Entire Agreement.** This Agreement will supersede any different, inconsistent, or preprinted terms and conditions in Your order form, purchase order, or other ordering document. This Agreement constitutes the entire agreement between You and Distributor relating to the Software and User Documentation and will supersede all previous oral and written agreements between You and Distributor with respect to the Software and User Documentation.
- 8.2 **Assignment.** You may not assign, sublicense, pledge or otherwise transfer any of Your rights to the Software or User Documentation without Distributor's prior written consent.
- 8.3 **Severability.** If any provision of this Agreement is held to be illegal or otherwise unenforceable by a court, that provision will be severed and the remainder of the Agreement will remain in full force and effect.
- 8.4 **Waiver.** The waiver of any right or election of any remedy in one instance will not affect any rights or remedies in another instance. A waiver will be effective only if made in writing and signed by an authorized representative of the applicable party.
- 8.5 **Export Restrictions.** You acknowledge that the Software and User Documentation (collectively "Technical Data") are subject to United States export controls under the U.S. Export Administration Act, including the Export Administration Regulations, 15 C.F.R. Parts 730 *et seq.* (collectively, "Export Control Laws"). You agree to comply with all requirements of the Export Control Laws with respect to the Technical Data. Without limiting the foregoing, You will not (a) export, re-export, divert or transfer any such Technical Data, or any direct product thereof, to any destination, company, or person restricted or prohibited by Export Control Laws; (b) disclose any such Technical Data to any national of any country when such disclosure is restricted or prohibited by the Export Control Laws; or (c) export or re-export the Technical Data, directly or indirectly, for nuclear, missile, or chemical/biological weaponry end uses prohibited by the Export Control Laws.
- 8.6 **UK Bribery Act.** Each party agrees to comply with the UK Bribery Act. You acknowledge and agree that You have not received, requested, been offered, agreed, paid or promised, any offer, promise or gift of any financial or other advantage from and to any person that would constitute a violation under the UK Bribery Act, or which would have influenced or secured any business or other advantage to Distributor.
- 8.7 **Governing Law; Jurisdiction; Dispute Resolution.**
This Agreement will be governed by and construed in accordance with the substantive laws of: (a) California, U.S.A. if You are in the United States or in a country not associated below with a different governing law; (b) Ontario, Canada if You are in Canada; (c) Victoria, Australia if You are in Australia; (d) Germany if You are in Germany; (e) France if You are in France; (f) Belgium if You

are in Belgium, the Netherlands, or Luxembourg; (g) the United Kingdom if You are in the United Kingdom or Italy; (h) Switzerland if You are in Switzerland, and (i) Sweden if You are in Sweden. The following courts or arbitration organizations will have jurisdiction over any disputes related to this Agreement: (a) the federal courts for the Northern District of California or the state courts in Santa Clara County, California when California or Canadian law governs; (b) the Singapore International Arbitration Center if You are in the Asia/Pacific region; (c) the courts of Munich when German law governs; (d) the courts of Paris when French law governs; (e) the courts of Brussels when Belgian law governs; (f) the courts of England and Wales when United Kingdom law governs; (g) the courts of Zurich when Swiss law governs; (h) the courts of Stockholm when Swedish law governs; (i) the Ordinary Commercial Court of the City of Buenos Aires if You are in Argentina; and (j) the court of Rio de Janeiro, RJ if You are in Brazil. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The Uniform Computer Information Transactions Act of the United States, as adopted or amended from time to time, does not apply to this Agreement or the Software.

- 8.8 **Amendment.** This Agreement may only be modified by a written document signed by an authorized representative of Distributor and by You.
- 8.9 **Survival.** Any terms of this Agreement which by their nature extend beyond the termination or expiration of this Agreement will remain in effect. Such terms will include, without limitation, all provisions herein relating to limitation of liability, third party terms, title and ownership of Software, and all general provisions.