BEFORE YOU SIGN THE PURCHASE AUTHORIZATION LETTER ("PAL") AS AN AUTHORIZED REPRESENTATIVE OF THE PURCHASING ENTITY OR INDIVIDUAL ("CUSTOMER"), CAREFULLY READ THIS MASTER LICENSE AND SUPPORT AGREEMENT. BY EXECUTING THE PAL, YOU REPRESENT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS MASTER LICENSE AND SUPPORT AGREEMENT ON BEHALF OF CUSTOMER AND TO BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS MASTER LICENSE AND SUPPORT AGREEMENT. UPON YOUR EXECUTION OF THE PAL, THIS MASTER LICENSE AND SUPORT AGREEMENT SHALL CONSTITUTE A LEGAL AND BINDING AGREEMENT BETWEEN CUSTOMER AND SERENA SOFTWARE, INC. OR ITS APPLICABLE SUBSIDIARY ("SERENA"). IF YOU HAVE ANY QUESTIONS REGARDING THIS MASTER LICENSE AND SUPPORT AGREEMENT, YOU MAY CONTACT SERENA LEGAL SERVICES AT +1.650.481.3400 OR WRITE TO SERENA SOFTWARE, INC., ATTENTION: LEGAL SERVICES, 2345 NW AMBERBROOK DRIVE, SUITE 200, HILLSBORO, OR 97006 USA ANY USE OF THE SOFTWARE OTHER THAN PURSUANT TO THE TERMS OF THIS MASTER LICENSE AND SUPPORT AGREEMENT IS A VIOLATION OF U. S. AND INTERNATIONAL COPYRIGHT LAWS AND CONVENTIONS.

1.0 DEFINITIONS

1.1 **"Concurrent User"** means an employee of Customer who has been designated as a user within a group of authorized users of the Software and accesses the Software at any given point in time, either directly or through an application.

1.2 **"Endpoint"** is a single physical, virtual or cloud server.

1.3 "**Instance**" means a single occurrence of initialization or execution of the Software on one Server.

1.4 **"Licensed Capacity"** means the maximum permitted use of the Software based on capacity-based pricing metrics identified in the Order Instrument, including, without limitation, Concurrent Users, Named Users, Seats, Instances and Servers.

1.5 **"Maintenance"** means the maintenance and technical support services for the Software identified in the Order Instrument and provided by Serena pursuant to this Agreement.

1.6 **"Named User"** means a single employee of Customer 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.

1.7 **"Order Instrument"** means (a) a purchase order, credit card order or other document that has sufficient details for Serena to fulfill Customer's order and has been accepted by Serena; (b) a Purchase Authorization Letter that has been signed or otherwise accepted by Customer and accepted by Serena ("PAL"); or (c) a Software license schedule that has been signed by Customer and Serena ("Software License Schedule").

1.8 **"Seat"** means a single employee of Customer who has been authenticated by Customer's LDAP server and accesses the Software at any given point in time, either directly or through an application.

1.9 **"Server"** means a single server on which an Instance of the Software is installed.

1.10 **"Software"** means Serena's software products, in object code form, that are commercially available at the time of Customer's order and identified on the Order Instrument, and any modifications, corrections and updates provided by Serena in connection with Maintenance.

1.11 **"Territory"** means the country identified in the PAL or Software License Schedule or, if not identified, the country in which Customer acquired the Software.

1.12 **"User Documentation"** means the user's guide, installation guides, and/or on-line documentation that is applicable to the Software. User Documentation does not include marketing materials or responses to requests for proposals.

2.0 GRANT OF LICENSE AND USE OF SOFTWARE

2.1 **License Grant**. Subject to the terms and conditions of this Agreement, Serena grants to Customer 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**. Customer may only use the Software and/or the User Documentation for its internal business operations and to process Customer's data. Customer shall 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 in this Section 2.2; (c) process or permit to be processed any data that is not Customer's 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. Customer shall 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 the Customer. Customer shall not permit any third party outsourcer to install the Software outside of a Customer facility or otherwise use or access the Software to process data on Customer's behalf without Serena's prior written consent, which consent may be conditioned upon the Software being under Maintenance and the payment of Serena's then-prevailing consent to process fee.

2.3 **License Keys**. The Software will contain one or more license keys to enable the functionality of the Software. Customer may only access and use the Software with license keys issued by Serena, and shall not attempt to modify, tamper with, reverse engineer, reverse compile, or disassemble any license key. If Serena issues a new license key for the Software, Customer shall not use the previous license key to enable the Software. At Customer's request, Serena will reissue a replacement license key to enable the Software in accordance with the original Order Instrument, provided that the request is made during a Maintenance period, Customer certifies that all evidence of the original license key has been deleted and destroyed, and Customer is in compliance with this Agreement.

2.4 **Archival Copies**. Customer may make one copy of the Software for back-up and archival purposes only. Customer may make a reasonable number of copies of the User Documentation for Customer's 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 **Licensed Capacity**. Serena licenses Software based on Licensed Capacity for different types of usage, including, without limitation, Concurrent Users, Endpoints, Named Users, Seats, Servers, and such other types of usage as described in Section 12. 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 single 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 Customer 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 the application. Customer shall immediately notify Serena in writing of any increase in use beyond the Licensed Capacity and provide Serena with such information as may be reasonably requested by Serena to verify Customer's use and deployment of the Software. If Customer's access and use of the Software exceeds its Licensed Capacity, Customer will be required to purchase additional licenses and Maintenance at Serena's then-current list price.

2.6 **Third Party Software**. Customer acknowledges 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 Serena may deliver with the Software shall apply to Customer's use of such Third Party Software. All Third Party Software vendors shall be deemed third party beneficiaries under this Agreement. Customer 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.

2.7 **Open Source Software**. Customer acknowledges 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.

3.0 TITLE
3.1 **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. Customer agrees that it will not, and shall not authorize others to, 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 to the extent required for Customer's use the Software as provided herein, Serena grants no express or implied rights under this license to any of Serena's patents, copyrights, trade secrets, trademarks or other intellectual property rights.

4.0 ORDERS; DELIVERY.
4.1 **Orders**. Customer may purchase the Software and/or Maintenance by submitting an Order Instrument to Serena and paying all applicable fees set forth in the Order Instrument. All Software, User Documentation and Maintenance shall be exclusively governed by the terms of this Agreement, and the terms and conditions specified in this Agreement shall be incorporated into all Order Instruments. Terms and conditions of any purchase order or other order document issued by Customer in connection with this Agreement shall not be binding upon Serena and shall not modify the terms of this Agreement. In the event of any conflict between the terms of this Agreement and any Purchase Authorization Letter or Software License Schedule, the terms of such Purchase

Authorization Letter or Software License Schedule shall prevail.
4.2 **Delivery.** Serena, in its discretion, will deliver all Software and/or User Documentation either (a) by physical delivery, in which case F.O.B. Origin, freight allowed, shall apply or (b) by electronic means, in which case Serena's obligation to deliver the Software and/or User Documentation is completed at such time as Serena makes the Software available on a specific Serena server and gives Customer a method of accessing and downloading the Software and/or User Documentation.

5.0 PAYMENT TERMS; TAXES
5.1 **Invoice and Payment**. Upon receipt of an Order Instrument and delivery of the Software and/or commencement of a Maintenance period, Customer shall be invoiced for applicable Software license and/or Maintenance fees. Subject to credit approval, payment is due within thirty (30) days from date of invoice. Late payments shall bear a charge of the lesser of 1.5% per month or the maximum rate permitted by applicable law. If credit is not approved, Customer may be required to pay in full before delivery of the Software and/or User Documentation to Customer. Except as expressly provided herein, all payment obligations are non-cancelable and all sums paid are non-refundable. Customer agrees to reimburse Serena for any fees or charges related to any procurement and/or invoicing system that Customer requires Serena to utilize for the submission of quotations, orders and/or invoices under this Agreement, including without limitation, any electronic and/or third party service.
5.2 **Taxes and Duties**. Amounts payable under this Agreement are payable in full without deduction and are net of taxes and customs duties. Customer shall be responsible for the payment of all taxes (including, without limitation, sales, use, privilege, ad valorem, excise tax, any VAT, or other withholdings imposed on this transaction) and customs duties paid or payable, however designated, levied, or based on amounts payable or on Customer's use or possession of the Software under this Agreement, but exclusive of United States federal, state, and local taxes based on Serena's net income.
5.3 **Installation and Training**. Unless otherwise specified, fees set forth in an Order Instrument do not include installation and training fees.
5.4 **Audit**. Customer shall maintain accurate business records relating to its use and deployment of the Software. Serena shall have the right, not more than once every twelve (12) months and upon ten (10) business days prior written notice, to verify Customer's compliance with its obligations under this Agreement by auditing Customer's business records and Customer's use and deployment of the Software within Customer's information technology systems. Serena and/or a public accounting firm selected by Serena shall perform the audit during customer's regular business hours and comply with Customer's reasonable safety and security policies and procedures. Any agreement Customer may require the public accounting firm to execute shall not prevent disclosure of the audit results to Serena. Customer shall reasonably cooperate and assist with such audit. Customer shall, upon demand, pay to Serena all license and Maintenance fees for any unauthorized deployments and/or excess usage of Software products disclosed by the audit. License fees for such unauthorized deployments and/or excess usage shall be invoiced to and paid by Customer at Serena's then-current list price, and applicable Maintenance fees shall be applied retroactively to the entire period of the unauthorized and/or excess usage. Serena shall be responsible for its own costs and expenses in conducting the audit, unless the audit indicates that Customer has exceeded its Licensed Capacity or otherwise exceeds its license restrictions, such that the then-current list price of non-compliant Software deployment exceeds five percent (5%) of the total then-current list price of the Software actually licensed by Customer, in

which event Customer shall, upon demand, reimburse Serena for all reasonable costs and expenses of the audit.

6.0 TERMINATION

6.1 **Default; Bankruptcy**. Serena may at its option suspend accepting further Order Instruments, terminate one or more pending Order Instruments, or terminate this Agreement if (a) Customer fails to pay any amount when due under this Agreement and does not cure such non-payment within ten (10) days of receipt of written notice of non-payment; (b) Customer materially breaches this Agreement and does not cure such breach within thirty (30) days of receipt of written notice of such breach; (c) subject to provisions of applicable bankruptcy and insolvency laws, Customer becomes the subject of any involuntary proceeding relating to insolvency and such petition or proceeding is not dismissed within sixty (60) days of filing; or (d) Customer becomes the subject of any voluntary or involuntary petition pursuant to applicable bankruptcy or insolvency laws, or request for receivership, liquidation, or composition for the benefit of creditors and such petition, request or proceeding is not dismissed within sixty (60) days of filing.

6.2 **Effect of Termination**. Upon termination of this Agreement, Customer shall immediately discontinue use of, and uninstall and destroy all copies of, the Software. Within ten (10) days following termination, Customer shall certify to Serena in a writing signed by an officer of Customer that all Software has been uninstalled from Customer's computer systems and destroyed.

7.0 LIMITED WARRANTY

7.1 **Performance Warranty**. Serena warrants that the Software, as delivered by Serena 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 initial delivery of the Software. If the Software does not operate as warranted and Customer has provided written notice of the non-conformity to Serena within the ninety (90) day warranty period, Serena shall 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 and Maintenance fees received by Serena 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 or on behalf of Customer; (c) combining the Software with products, software or devices not provided by Serena; or (d) computer hardware malfunctions, unauthorized repair, accident, or abuse.

7.2 **Disclaimers**. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND SERENA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND STATUTORY WARRANTIES OF NON-INFRINGEMENT. SERENA DOES NOT WARRANT THAT THE SOFTWARE OR MAINTENANCE SHALL MEET CUSTOMER'S REQUIREMENTS OR THAT USE OF THE SOFTWARE SHALL BE UNINTERRUPTED OR ERROR FREE. THE REMEDIES SET FORTH IN THIS SECTION 7 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SERENA'S SOLE AND EXCLUSIVE LIABILITY REGARDING FAILURE OF ANY SOFTWARE TO FUNCTION OR PERFORM AS WARRANTED IN THIS SECTION 7.

8.0 INDEMNIFICATION

8.1 **Infringement**. Serena shall defend any claim against Customer that the Software 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 shall indemnify Customer against any and all damages finally awarded against the Customer by a court of final appeal, or agreed to in settlement by Serena and attributable to such claim, so long as Customer (a) provides Serena prompt written notice of the claim; (b) provides Serena all reasonable assistance and information to enable Serena to perform its duties under this Section 8; (c) allows Serena sole control of the defense and all related settlement negotiations; and (d) has not compromised or settled such claim. If the Software is found to infringe, or if Serena determines in its sole opinion that it is likely to be found to infringe, then Serena may, at its option (a) obtain for Customer the right to continue to use the Software; (b) modify the Software to be non-infringing or replace it with a non-infringing functional equivalent, in which case Customer shall stop using any infringing version of the Software; or (c) terminate Customer's rights and Serena's obligations under this Agreement with respect to such Software and refund to Customer the unamortized portion of the Software license fee paid for the Software based on a five year straight-line depreciation schedule commencing on the date of delivery of the Software. The foregoing indemnity shall not apply to any infringement 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 or on behalf of Customer; (c) combination, use, or operation of the Software with products not provided by Serena; or (d) use of an allegedly infringing version of the Software if the alleged infringement could be avoided by the use of a different version of the Software made available to the Customer.

8.2 **Disclaimers**. THIS SECTION 8 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SERENA'S SOLE AND EXCLUSIVE LIABILITY REGARDING INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

9.0 LIMITATION OF LIABILITY. IN NO EVENT SHALL SERENA OR ITS THIRD PARTY VENDORS BE LIABLE TO CUSTOMER 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 AND ITS THIRD PARTY VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS LIMITED BY APPLICABLE LAW AND EXCLUDING SERENA'S LIABILITY TO CUSTOMER UNDER SECTION 8 (INDEMNIFICATION), AND REGARDLESS OF THE BASIS FOR CUSTOMER'S CLAIM, SERENA'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE LICENSE OR MAINTENANCE FEES PAID FOR THE SOFTWARE OR MAINTENANCE GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10.0 CONFIDENTIAL INFORMATION. For purposes of this Agreement, "Confidential Information" shall include confidential, proprietary and trade secret information of Serena contained within the Software and User Documentation, the terms and pricing of the Software and Maintenance (including any pricing proposals), and such other information (a) identified by either party as confidential at the time of disclosure or (b) that a reasonable person would consider confidential due to its nature and circumstances of disclosure ("Confidential

Information"). Confidential Information will not include information that (a) is or becomes a part of the public domain through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to receiving it from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) is independently developed by the receiving party without breaching this Agreement. Each party agrees to maintain all Confidential Information in confidence and not disclose any Confidential Information to a third party or use the Confidential Information except as permitted under this Agreement. Each party shall take all reasonable precautions necessary to ensure that the Confidential Information is not disclosed by such party or its employees, agents or authorized users to any third party. Each party agrees to immediately notify the other party of any unauthorized access to or disclosure of the Confidential Information. The receiving party agrees that any breach of this Section 10 may cause irreparable harm to the disclosing party, and such disclosing party shall be entitled to seek equitable relief in addition to all other remedies provided by this Agreement or available at law.

11.0 MAINTENANCE

11.1 **Maintenance Period**. If Customer elects to purchase Maintenance with the Software, the Maintenance period shall commence upon the initial delivery of the Software and continue for a period of one year thereafter, unless otherwise stated in an Order Instrument. The Maintenance period may, at Customer's option, be renewed pursuant to a subsequent Order Instrument and, upon Serena's acceptance of the Order Instrument, shall be non-cancelable. Prior to such renewal, Serena may, upon ten (10) business days written notice, require Customer to provide a report on Customer's use and deployment of the Software. Such report shall be certified by an officer of Customer and shall specify, with respect to the Software: (a) the type and amount of Licensed Capacity; (b) the version; and (c) the Serena license serial number. Serena shall issue an annual renewal notice to Customer at least ninety (90) days prior to the expiration of the then-current Maintenance period. Maintenance fees shall be based on the then-current list price and are subject to change without notice. Customer may not decrease the Licensed Capacity covered by Maintenance during a Maintenance period or as part of the renewal of Maintenance.

11.2 **Support Coordinators**. Maintenance shall consist of support services provided by Serena to one designated support coordinator of Customer (and one backup coordinator) per Customer 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.

11.3 **Additional Licensed Capacity**. In the event that Customer purchases additional Licensed Capacity for the Software prior to the annual anniversary date of the Maintenance period, Customer agrees to pay applicable Maintenance fees based on Serena's then-current list price. Maintenance fees shall apply from the effective date of such additional Licensed Capacity and continue for a period of one year thereafter, unless the parties agree in writing that Maintenance for the additional Licensed Capacity will be coterminous with Maintenance for Customer's existing Licensed Capacity.

11.4 **New Releases**. During a current Maintenance period, Serena shall provide Customer 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 Serena and generally not included with new licenses for the Software at that time), and 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 Customer installs a new release of the Software, Customer may continue to use the previous version of the Software for up to ninety (90) days in order to assist Customer in the transition to the new release. Once Customer completes its transition to the new release of the Software, Customer shall discontinue use of the previous version of the Software.

11.5 **Supported Releases**. Serena will continue to support the immediately preceding release of the Software for a period of twelve (12) months following the earlier of (a) the discontinuance of the Software or (ii) the date that a new release of the Software becomes generally available, provided that Customer has paid applicable Maintenance fees and incorporated all Maintenance patch releases issued by Serena for the release of the Software.

11.6 **Reinstatement of Maintenance**. If Customer allows Maintenance to expire, Customer may, at a later date, renew Maintenance by paying the following: (a) if Customer has installed the current release of the Software but has failed to pay the applicable renewal fee on or before the ninetieth (90th) day following expiration of the Maintenance period, annual Maintenance fees at Serena's then-current rates, plus Serena's then-current reinstatement fee; or (b) if Customer has not installed the current release of the Software or has failed to pay the applicable renewal fee by the ninetieth (90th) day following expiration of the Maintenance period, annual Maintenance fees at Serena's then-current rates, plus Serena's then-current license update fee for the current release of the Software.

12.0 SOFTWARE PRODUCT SPECIFIC TERMS

12.1 **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 in accordance with Section 2.3. 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. Customer may allow a third party to use the Requestor license, subject to Customer's indemnification of Serena against any claims that nay arise from such use of the Software. Customer may transfer Named User licenses to accommodate personnel changes, provided that such transfers do not result in sharing of Named User licenses. Customer 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 this Agreement.

12.2 **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. Customer may access the Service Request Center functionality installed with SSM only to the extent it has purchased a requisite number of Serena Request Center licenses..

12.3 **Serena® Service Manager Content ("SSM Content")**. SSM Content is licensed on the basis of Seats and Concurrent Users. Each SSM Content license allows for a Customer employee

designated by Customer to use Customer's existing SBM license to fully access the application content contained in the SSM solution file; otherwise, Customer's 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. Customer may access the Service Request Center functionality installed with SSM only to the extent it has purchased a requisite number of Serena Request Center licenses. .

12.4 **Serena® Request Center ("SRC").** SRC is licensed on the basis of Seats. Customer may access and use the SSM functionality installed with SRC only to the extent it has purchased a requisite number of SSM licenses.

12.5 **Serena® Release Vault** (formerly **Serena® Dimensions® Deploy™).** Serena Release Vault is licensed based upon Enpoints, Named Users, and Connectors. A Connector license is needed for each LPAR where Release Vault will be accessed. Customer is 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.

12.6 **Serena® Release Control** (formerly **Serena® Application Release Management/ARM).** Serena Release Control is licensed on the basis of Connectors, Endpoints and Seats. A Connector license is needed for each LPAR where Release Vault will be accessed. Subject to the terms of this Agreement, Serena grants Customer 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 Customer 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 Customer's internal business operations. Customer 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 Customer modifies the Release Control Software or creates a derivative work of such, Serena grants Customer a non-exclusive, non-transferable license to use such modification or derivative work at no additional charge, subject to such limitations set forth in this Agreement.

12.7 **Serena® ChangeMan® ZMF Client Pack.** Each Seat of Serena ChangeMan ZMF Client Pack allows one Serena ChangeMan ZDD license and one Eclipse Plug-In license.

12.8 **Authorized Use of Products.** Customer acknowledges that the authorized use for each Software product set forth in this Section 12.0 is a form of Licensed Capacity. If Customer's access and use of the Software exceeds its Licensed Capacity, Customer will be required to purchase additional licenses and Maintenance at Serena's then-current list price.

13.0 GENERAL

13.1 **Independent Contractors.** The parties acknowledge and agree that each is an independent contractor. This Agreement shall not be construed to create a partnership, joint venture or agency relationship between the parties.

13.2 **Entire Agreement.** The terms and conditions of this Agreement apply to all Order Instruments submitted, all Software licensed, all User Documentation provided and all Maintenance subscribed to hereunder. This Agreement shall supersede any different, inconsistent or preprinted terms and conditions in any Customer order form, purchase order or other ordering document. This Agreement shall supersede the terms of any unsigned, clickwrap, or shrinkwrap license included in any package, media, or electronic version of the Software furnished by Serena or its resellers and any such Software shall

be licensed pursuant to the terms of this Agreement. This Agreement shall supersede all previous agreements and understandings of any nature whatsoever, oral or written, between the parties relating to the Software and User Documentation and constitutes the entire agreement between the parties relating thereto.

13.3 **Assignment.** Customer has no right to assign, sublicense, pledge, or otherwise transfer any of its rights in and to the Software, User Documentation or this Agreement, in whole or in part (collectively, an "Assignment"), without Serena's prior written consent. Any Assignment without such consent shall be null and void. Any change in control of Customer, whether by merger, share purchase, asset sale, or otherwise, shall be deemed an Assignment subject to the terms of this Section 13.3. If Serena grants its consent to any Assignment, Customer shall, as a condition to such consent, pay to Serena upon demand Serena's then-current assignment fee.

13.4 **Force Majeure.** No failure, delay or default in performance of any obligation of a party to this Agreement, except payment of license fees due hereunder, shall constitute an event of default or breach of the Agreement to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the reasonable control of such party, including, without limitation, action or inaction of a governmental agency, civil or military authority, fire, strike, lockout or other labor dispute, inability to obtain labor or materials on time, flood, war, riot, theft, earthquake or other natural disaster ("Force Majeure Event"). The party affected by such Force Majeure Event shall take all reasonable actions to minimize the consequences of any Force Majeure Event.

13.5 **Severability.** If any provision of this Agreement shall be held illegal or otherwise unenforceable by a court of competent jurisdiction, that provision shall be severed and the remainder of the Agreement shall remain in full force and effect.

13.6 **Waiver.** The waiver of any right or election of any remedy in one instance shall not affect any rights or remedies in another instance. A waiver shall be effective only if made in writing and signed by an authorized representative of the applicable party.

13.7 **Notice.** All notices required by this Agreement shall be in writing, addressed to the party to be notified and deemed to have been effectively given and received (a) on the fifth business day following deposit in the mail, if sent by first class mail, postage prepaid; (b) upon receipt, if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested; (c) upon transmission, if sent by facsimile and confirmation of transmission is produced by the sending machine and a copy of such facsimile is promptly sent by another means specified in this Section 13.7; or (d) upon delivery, if delivered personally or sent by express courier service and receipt is confirmed by the sender. Notices shall be addressed to the parties based on the address stated in the applicable Order Instrument, to the attention of General Counsel. A change of address for notice purposes may be made pursuant to the procedures set forth above.

13.8 **Export Restrictions.** Customer acknowledges that the Software and certain Confidential Information (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"). Each party agrees to comply with all requirements of the Export Control Laws with respect to the Technical Data. Without limiting the foregoing, Customer shall 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.

13.9 **U. S. Government Rights**. The Software and User Documentation are deemed to be "commercial computer software" and "commercial computer software documentation" as defined in FAR Section 12.212 and DFARS Section 227.7202, as applicable. Any use, modification, reproduction, release, performance, display, or disclosure of the Software and User Documentation by the U. S. government shall be solely in accordance with the terms of this Agreement.

13.10 **UK Bribery Act.** Each party agrees to comply with the UK Bribery Act. Customer acknowledges and agrees that Customer has 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 Serena.

13.11 **Choice of Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the country in which Customer acquired the licensed Software, exclusive of any provisions of the United Nations Convention on Contracts for the International Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. Any suits concerning this Agreement shall be brought in the courts of the country where Serena has its subsidiary, unless stated otherwise. The parties expressly agree that the Uniform Computer Information Transactions Act, as adopted or amended from time to time, shall not apply to this Agreement or the Software and Maintenance provided hereunder.

13.12 **Attorneys Fees.** In the event of any dispute or litigation between the parties concerning the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs of suit, if enforceable under the relevant applicable laws.

13.13 **Amendment.** This Agreement may only be modified or supplemented by a written document executed by an authorized representative of each party.

13.14 **Survival**. Any terms of this Agreement which by their nature extend beyond the termination or expiration of this Agreement shall remain in effect until fulfilled. Such terms shall include, without limitation, all provisions relating to payment of fees, proprietary rights, confidentiality, non-disclosure, indemnification, limitation of liability, third party terms, title and ownership of Software, and all general provisions.

13.15 **Authorized Signatory**. Each party represents and warrants to the other party that its signatory to a PAL is duly authorized to sign such PAL on behalf of its respective party and to bind such party to the terms of the PAL and this Agreement.

13.16 **Country Specific Terms.** The following terms shall apply to the license of Software within any the following Territories, as applicable:

THE FOLLOWING ADDITIONALLY APPLIES IN EUROPE, MIDDLE EAST, AFRICA (EMEA), INCLUDING ALL MEMBER STATES OF THE EUROPEAN UNION:

Personal Data: in the European Union, the following clause applies (clause to be inserted as Section 13.10a Personal Data): Customer agrees that personal data can be processed by Serena Software, Inc. and/or its affiliates for the provision of services including, without limitation, Maintenance and product information. Customer agrees that personal data can be transferred outside the European Economic Area for such processing. Customer can, subject to Customer previously entering a Serena Non-Disclosure Agreements, review, correct, update or delete personal data previously provided by Customer.

Limited Warranty (Sections 7.1): In the European Union, the following is added at the beginning of this Section: In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the Limited Warranty provision set out in Section 7.0 of this Agreement. The territorial scope of the Limited Warranty is worldwide.

THE FOLLOWING ADDITIONALLY APPLIES IN SWITZERLAND:

Limitation of Liability (Section 9.0): In Austria and Switzerland, the following replaces the terms of this Section in its entirety: Except as otherwise provided by mandatory law: Serena'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 proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations, which excludes consequential damage, consequential harm caused by a defect, indirect damages, loss of profit, and damages arising out of or in connection with any possible interruption of business operation. Serena's liability is limited to only those damages and losses caused by fault of Serena. In any case, Serena's maximum liability under this agreement is shall be limited to the license or Maintenance fees received by Serena from the Customer for such Software or Maintenance that was causing the damage or loss. The limitations and exclusions of Serena's liability set forth herein do not apply for damages that have been caused by gross negligence or wilful misconduct of Serena; the provisions of Section 8 remain unaffected.

The limitations and exclusions of liability agreed herein apply not only to the activities performed by Serena but also to the activities performed by its suppliers and Software developers, and represent the maximum amount for which Serena as well as its suppliers and Software developers, are collectively responsible.

Jurisdiction (Section 13.11): The following exceptions are added to this section: (1) In Austria the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City).

THE FOLLOWING ADDITIONALLY APPLIES IN AUSTRIA:

Limited Warranty (Section 7.1): The following is inserted at the beginning of this Section: The Warranty Period is twelve (12) months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period. The scope of the Limited Warranty is defined exhaustively in this Section 7.

Limitation of Liability (Section 9.0): In Austria and Switzerland, the following replaces the terms of this Section in its entirety: Except as otherwise provided by mandatory law: Serena'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 proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations, which excludes consequential damage, consequential harm caused by a defect, indirect damages, loss of profit, and damages arising out of or in connection with any possible interruption of business operation. Except as otherwise provided by such mandatory national law imposing liability regardless of negligence or fault resulting from the implementation of Directive 85/374/EWG as amended from time to time, Serena's liability is limited to only those damages and losses caused by fault of Serena. In any case, Serena's maximum liability under this agreement is shall be limited to the license or Maintenance fees received by Serena from the Customer for such Software or Maintenance that was causing the damage or loss. The limitations and exclusions of Serena's liability set forth herein do not apply for damages that have been caused by gross negligence or wilful misconduct of Serena; the provisions of Section 8 remain unaffected.

The limitations and exclusions of liability agreed herein apply not only to the activities performed by Serena but also to the activities performed by its suppliers and Software developers, and represent the maximum amount for which Serena as well as its suppliers and Software developers, are collectively responsible.

Jurisdiction (Section 13.11): The following exceptions are added to this section: (1) In Austria the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City).

THE FOLLOWING ADDITIONALLY APPLIES IN GERMANY:

Limited Warranty (Section 7.1): The following is inserted at the beginning of this Section: The Warranty Period is twelve (12) months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period. The scope of the Limited Warranty and the agreed quality is defined exhaustively in this Section 7.

Limitation of Liability (Section 9.0): The following paragraph is added to this Section: In deviation of the limitation of liability set forth hereinabove, the limitations and exclusions specified in this Section will not apply to damages resulting from loss of life, physical injury and damage to health, and will not apply to damages caused by Serena intentionally or by gross fault. Customer is the sole responsible for the results of its use of the Software.

Choice of Law; Jurisdiction (Section 13.11): The wording of Section 13.11 is replaced in its entirety by the following: the law of the Federal Republic of Germany applies, exclusive of any provisions of the United Nations Convention on Contracts for the International Sale of Goods, including any amendments hereto, and without regards to the principle of the conflicts of law. The place of venue is Munich.