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11.7 **Warranty.** During the Evaluation Period, the following language shall replace Section 6.0 of this Agreement (Warranty). **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SERENA PROVIDES THE SOFTWARE AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF COURSE OF DEALING, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, AND OF LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT, CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT. THE**

ENTIRE RISK AS TO THE QUALITY OF OR ARISING OUT OF USE THE SOFTWARE, IF ANY, REMAINS WITH LICENSEE. TO THE EXTENT THAT THIS WARRANTY IS INCONSISTENT WITH THE LOCALITY WHERE LICENSEE USES THE SOFTWARE, THE WARRANTY SHALL BE DEEMED TO BE MODIFIED TO BE CONSISTENT WITH SUCH LOCAL LAW.

11.8   **Limitation of Liability.** During the Evaluation Period, the following language shall replace Section 8.0 of this Agreement (Limitation of Liability). **DURING THE EVALUATION PERIOD, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SERENA BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER IN CONTRACT OR TORT, INCLUDING DIRECT, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF SERENA, EVEN IF SERENA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. LICENSEE'S SOLE RECOURSE IN THE EVENT OF ANY DISSATISFACTION WITH OR DAMAGE FROM THE SOFTWARE IS TO STOP USING IT. NOTWITHSTANDING THE ABOVE, IN NO EVENT SHALL SERENA'S LIABILITY UNDER THIS AGREEMENT OR WITH RESPECT TO LICENSEE'S USE OF THE SOFTWARE EXCEED US$10.00.**

11.9   **Maintenance and Enhancements.** Serena shall not be required to provide M&E to Licensee during the Evaluation Period.

12.0   GENERAL

12.1   **Effective Date**. This Agreement shall take effect upon the earlier of the date that the last party executes this Agreement or delivery of the Software to Licensee.

12.2   **Entire Agreement**. The terms and conditions of this Agreement apply to all Order Instruments submitted hereunder.   This Agreement and any Schedules hereto supersede in full all previous agreements and understandings of any nature whatsoever, oral or written, between the parties relating to the Software and User Documentation and constitute the entire agreement between the parties relating to the Software and User Documentation.

12.3   **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 control and without negligence of such party including, by way of illustration and not limitation, action or inaction of 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 and other natural disaster ("Force Majeure Event"). The party affected by such Force Majeure Event shall take action to minimize the consequences of any such Force Majeure Event. A party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall give to the other party prompt written notice of the facts which constitute such Force Majeure Event, when it arose, and when it is expected to cease.

12.4   **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.

12.5   **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 each party.

12.6   **Notice**. All notices, statements, and reports, required or permitted by this Agreement shall be in writing, addressed to the party to be notified and deemed to have been effectively given and received when: (i) received if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested; (ii) when transmitted by facsimile, provided a 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 12.6; or (iii) sent if delivered personally or sent by express courier service and receipt is confirmed by the sender. Notices shall be addressed as follows:

If to Serena:
Attention: Legal Counsel to the Serena address listed on the Order Instrument

If to Licensee:
Attention: Legal Counsel to the address listed on the Order Instrument

A change of address for notice purposes may be made by the same notice procedure.

12.7   **Export Restrictions**. Licensee acknowledges that the Software and certain Confidential Information (collectively "Technical Data") are subject to United States export controls, including the Export Administration Regulations, 15 C.F.R. Parts 730-744. Licensee shall comply strictly with all requirements of the U.S. export control laws and regulations with respect to all such Technical Data, and in no event will Licensee export the Software to any country that is not a member of either the Universal Copyright Convention or the Berne Convention. Without limiting the generality of the foregoing obligation, Licensee hereby expressly agrees that, without the prior written authorization of Serena and the United States Government, Licensee shall not, and shall cause its representatives to agree not to, (i) 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 the United States export controls, or (ii) disclose any such Technical Data to any national of any country when such disclosure is restricted or prohibited by the United States export controls.

12.8   **Choice of Law; Jurisdiction**. Subject to the Rider referenced in Section 12.14, both Serena and Licensee consent to the application of the laws of the country in which Licensee acquired the licensed Software to govern, interpret, and enforce all of Licensee and Serena's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of laws principles. The parties expressly agree that the Uniform Computer Information Transactions Acts ("UCITA") (as adopted or amended from time to time) shall not apply to this Agreement or the goods or services to be delivered hereunder. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The parties expressly waive any right to a jury trial regarding disputes related to this Agreement.

12.9   **Injunction**. In the event of a material breach of this Agreement and/or Order Instrument(s) hereunder, money damages may not be an adequate remedy for Serena, and therefore in addition to other remedies, Serena shall be entitled to seek injunctive relief, including an injunction ordering the return of the Software to Serena, and the deletion of the Software from Licensee's system.

12.10   **Amendment.** This Agreement may only be modified or supplemented by a written document executed by an authorized representative of each party.   The terms and conditions of an agreement executed in writing between the parties with respect to Software product(s) shall supersede the terms and conditions of any license delivered with such Software Product(s).

12.11   **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 include, but are not limited to all provisions herein relating to payment of fees, proprietary rights, confidentiality, non-disclosure, indemnification, limitation of liability, dispute resolution, third party terms (as applicable), title and ownership of Software, and all General provisions (Section 12.0).

12.12 **Headings**. The headings and subheadings in this Agreement are provided for convenience only and will not control the interpretation of the Agreement.

12.13 **Independent Contractors**. The parties specifically acknowledge and agree that, in the exercise of their rights and the performance of their duties under this Agreement, they are and will be independent contractors. Neither party will bind or attempt to bind the other party to any contract or other obligation. Neither party will represent to any third party that it is authorized to act on behalf of, or bind, the other party.

12.14 **Country Specific Terms**. If due to local law Serena may not enforce the prohibitions in the second sentence of Section 3.1 herein, it shall be replaced with the following: Licensee 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, otherwise decode or alter, or create derivative works based on the Software without Serena's express written consent, except to the extent expressly permitted by mandatory provisions of applicable law (including national laws implementing Directive 91/250/EEC on the legal protection of computer programs) in order to gain certain information for certain limited purposes specified in such laws, provided that Licensee shall not exercise its rights under such laws, unless and until the Licensee has first requested the required information from Serena in writing, and Serena, at its sole discretion, has not complied with Licensee's request within a commercially reasonable period of time.

Additional exceptions to the terms and conditions of this Agreement due to licensing under local law, are attached in a Rider entitled "Country Specific License Terms Rider to the Master License Agreement" and incorporated by reference herein.

12.15 **Software Specific Definitions.**

Mainframe Software:
"MIPS" means Millions of Instructions Per Second and is an industry rating given to Central Electronic Complex ("CEC") depending upon the processor inside the CEC box. MIPS are measured not only by the CEC upon which the Software is executing ("Executing CEC") but also any additional CECs coupled into or accessing the Executing CEC that have access to the Direct Access Storage Device ("DASD") in which the Software is installed. The number of MIPS attributable to each CEC shall be determined by the then current Gartner Group Rating Guide or if same is no longer available, then such other standard as may be selected by Serena.

Distributed Software:
"Registered Seat" is defined as an authorized user of Licensee, who requires one (1) license regardless of location, application or computer accessed by such user. A Registered Seat is also defined as a computer managed by the Software Product where such Software Product is resident without an associated authorized user.

"Named User" is a single individual who has been authorized to use the licensed Software. Such User can access the Software on only one machine at a time.

"Concurrent User" means an individual who may access the licensed Software at any given point in time. The User can access the Software for only one machine at a time, unless otherwise authorized.

Distributed Software is typically licensed on the basis of Registered Seats, Users or Agents and at least one (1) server, as applicable.

12.16 **Software Product Specific Terms and Conditions**. The following software products shall also be subject to the following terms and conditions:

Serena® ChangeMan® DS: The Software is licensed on the basis of Registered Seats, Communication Agents, Integration Agents, End Point Agents and at least one Main Server. Each Registered Seat of the Software allows Licensee to either appoint a Named User or use a Communication Agent. A Named User is defined as a user who is registered to use the Software. Each Named User requires one (1) license to enable the user to manage or perform changes to the application code with the Software. One license is required regardless of the location of such Named User, the computer used by such Named User, or the application code being managed or changed by such Named User. A Communication Agent is defined as a component of Software resident on a computer used for storing or managing application code. A Communication Agent enables the Named Users and the Main Server upon which the licensed Software resides to interact with the computer storing or managing application code. An Integration Agent allows licensed Software to integrate with third party application software, provided Licensee has a license with such third party for the referenced integration. The identity of such 3rd party software is specified herein as applicable. If SAP integration is elected, Licensee will have the capability to manage changes imported and exported between identified SAP systems. An End Point Agent allows software assets deployed from the Software to be received by a geographically remote server where the use and execution of such software assets will be limited to end-users.

Should Licensee move from the current operating system to a different operating system (e.g., from NT to Unix or NT to Solaris with no change in the number of Main Severs licensed), Licensee shall notify Serena in writing prior to such changes to obtain new keys to enable such change at no additional cost.

Serena® ChangeMan® ECP: The Software is licensed on the basis of Registered Seats. A Registered Seat is defined as an authorized user of Licensee. A registered user accesses the Software via either a client or a Web browser to connect to appropriate Servers. Seats licensed herein for purposes of approving changes in Serena® ChangeMan® DS are limited to approvals only. Licensee may purchase additional Seats, Server(s) and /or connections for additional license fees.

 Serena® ChangeMan® Mover: Upon payment of the applicable license fees (and maintenance fees, as applicable) for Mover, Serena grants Licensee a license to install and use the Software for up to the number of administrative databases for which Licensee has paid license fee for use of the Software in connection with each such administrative database. Additional administrative database and/or user licenses for each administrative database can be added for additional license fees.

Serena® Collage: Upon payment of the applicable license fees (and maintenance fees, as applicable) for the Software, Serena grants Licensee the right to use the Software on the number of administrative databases for which Licensee has paid license fees, and which is accessible by up to the number of authorized Named or Concurrent Users for which Licensee has paid license fees for use of the Software in connection with each such administrative database. Additional administrative database and/or User licenses for each administrative database can be added for additional license fees.

Serena® Collage® Migration Express: Upon payment of the applicable license fees (and maintenance fees, as applicable) for Collage, if Licensee has a current license for Collage 1.5 or NetObjects Authoring Server 2000 (NAS 2000), Serena grants Licensee a license to use Collage Migration Express for the sole purpose of migrating Licensee's Published Site to a format compatible with Collage.

Serena® ChangeMan® Dimensions Z/OS. Such Software is licensed per LPAR and may be licensed on a Named User and/or Concurrent User basis. Upon payment of the applicable license fees (and maintenance fees, as applicable) for such Software, Serena grants Licensee the right to use the Software for up to the number of LPARs and the number of authorized Named Users and/or Concurrent Users for which Licensee has paid license fees (and maintenance fees, as applicable).

Serena® ChangeMan® Dimensions Connect for Remedy. Such Software is licensed per base database. Upon payment of the applicable license fees, Serena grants Licensee the right to use the Software with the number of base databases for which Licensee has paid license fees. As used in this Section, a "base database" means a single database partition or schema, implemented to contain one or more products, which provides a partition of user permissions and viewing rights. The Software may only be used with Serena ChangeMan Dimensions. Integration or use in connection with any other software product is prohibited.

Serena® ChangeMan® Dimensions and Serena® ChangeMan® Professional. Such Software may be licensed on a Concurrent User basis. Upon payment of the applicable Concurrent User license fees (and maintenance fees, as applicable) for the Software, Serena grants Licensee the right to use the Software for up to the number of authorized Concurrent Users for which Licensee has paid license fees (and maintenance fees, as applicable). If Issue Management is licensed on a stand-alone basis,

Licensee has no additional license rights to other functionality of Dimensions. If Licensee subsequently uses the additional functionality of Dimensions, in addition to Issue Management, Licensee shall be subject to license and maintenance fees for both from the effective date of initial usage.

Serena® Tracker Connect for Remedy. Such Software is licensed per base database. Upon payment of the applicable license fee for the Software, Serena grants Licensee the right to use the Software with the number of base databases for which Licensee has paid license fees. As used in this Section, a "base database" means a single database partition or schema, implemented to contain one or more products, which provides a partition of user permissions and viewing rights. The Software may only be used with Tracker. Integration or use in connection with any other software product is prohibited.

Serena® TeamTrack®: The Software is licensed on the basis of "Server/Instance(s)" and "Users", and includes the User Documentation. A Named User license permits an identified and single individual person to access the Software. A Concurrent User license allows multiple individuals to share each license for the Software access, provided that the number of individuals that access the Software at any given time does not exceed the number of licensed Concurrent Users. A Requestor license enables the individual to submit issues and view status only.   Managed Administrators are responsible for the administration of certain portions of the Software system such as particular tables, workflows, projects, users and groups. Managed Administrators do not manage themselves nor are they responsible for other Managed Administrators. Each Server/Instance license allows execution of a single Instance of the Software on a single Server. Named and Concurrent User licenses are for use with a single computer Server and Instance(s) unless otherwise specified in writing hereunder by the parties.

Licensee may not circumvent the Server/Instance and User license limitations through "multiplexing," or other similar hardware or software tools which pool or aggregate Software access. For example and regardless of the number of tiers of software or hardware in Licensee's system, a separate User license must be purchased for each user's access to the Software.

Notwithstanding the permitted use as defined in Section 2.0 herein, Licensee may allow a third party to use the Requestor component of the Software, subject to Licensee's indemnification of Serena herein against any damages that arise from misuse of the Software, including but not limited to the Requestor license(s), by such third party. Licensee is responsible for such third party's compliance with the terms and conditions of this License Agreement. Licensee may transfer "Named" User licenses to accommodate personnel and/or hardware changes, provided that such transfers do not have the effect of sharing User licenses.

Serena® TeamTrack® PL: Upon payment of the applicable license fees, Serena grants Licensee a license to install and use such Software, User Documentation and any modified versions and derivatives of the Software made by Licensee on the number of servers and for the number of authorized users for which Licensee has paid fees. "An authorized user" as used herein, means a single individual who has been designated to use the referenced Software and/or any modified versions or derivatives thereto made by Licensee. Thus, Licensee must obtain a license for any individuals using modified versions or derivatives of the referenced Software. Licensee may use the Documentation only to support Licensee's use of the Software. Licensee may modify the documents contained in the licensed Software for use only in the execution of Licensee's internal business, provided that Licensee reproduce Serena's copyright notice in any copies of such modified versions. Any use of the Software, Documentation or any modifications or derivative works thereof in your external business with your customers is not covered by this Agreement and requires a separate license. Licensee shall not resell or distribute to any third party any modification, adaptation, translation or derivative work of the referenced Software, Documentation, or any part thereof.

Serena® RTM: The Software is licensed on the basis of "Users." A Named User license permits an identified and single individual person to access the Software. A Concurrent User license allows multiple individuals to share each license for Software access, provided that the number of individuals that access the Software at any given time does not exceed the number of licensed Concurrent Users.

Country Specific License Terms Rider to the Master License Agreement

AMERICAS

ARGENTINA: Choice of Law; Jurisdiction (Section 12.8) The following exception is added to this section:
Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL: Choice of Law; Jurisdiction (Section 12.8): The following exception is added to this section:
Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

CANADA: Choice of Law; Jurisdiction (Section 12.8): The phrase "the laws of the country in which Licensee acquired the licensed Software " in the Choice of Law Section" is replaced by the following: the laws in the Province of Ontario

PERU: Limitation of Liability (Section 8.1): The following is added at the end of this section:
In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by Serena's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA. General (Section 12.0): The following is added to this Section: As Section 12.17: "U.S. Government Rights: Any Software product acquired by Licensee under this Agreement for or on behalf of the U.S. Government, its agencies and instrumentalities is "commercial software" as defined by the FAR. Use , duplication, and disclosure by the U.S. Government is subject to the restrictions set forth in this Agreement. The manufacturer is Serena Software, Inc. 2755 Campus Drive, 3rd Floor, San Mateo, CA 94403.

Choice of Law; Jurisdiction (Section12.8): The phrase "the laws of the country in which Licensee acquired the licensed Software" in this Section is replaced by the following: the laws of the State of California, United States of America, excluding its principles of conflict of law, applicable to contracts executed in and performed within that State and Puerto Rico.

ASIA PACIFIC

AUSTRALIA: Limited Warranty (Section 6.4): The following is added at the end: The warranties specified in this Section are in addition to any rights Licensee may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability (Section 8.1) : The following is added: Where Serena is in breach of a condition or warranty implied by the Trade Practices Act 1974, Serena's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Choice of Law; Jurisdiction (Section 12.8): The phrase "the laws of the country in which Licensee acquired the licensed Software" in this Section is replaced by the following: the laws of the State or Territory in which Licensee acquired the licensed Software.

CAMBODIA, LAOS, and VIETNAM: Choice of Law; Jurisdiction (Section 12.8) : The phrase "the laws of the country in which Licensee acquired the licensed Software " in this Section is replaced by the following: the laws of the State of California, United States of America, excluding its principles of conflict of law.

The following is added to this Section: Arbitration. Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC.   Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

HONG KONG S.A.R. and MACAU S.A.R. of China: Choice of Law; Jurisdiction (Section 11.10) The phrase "the laws of the country in which Licensee acquired the licensed Software " in this Section is replaced by the following: the laws of Hong Kong Special Administrative Region of China.

INDIA: Limitation of Liability (Section 8.1): With respect to loss of or damage to data; special, incidental or indirect or consequential damages, the following replaces the terms with respect to same: 1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by Serena's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by Serena pursuant to, or in any way related to the subject of this Agreement, Serena's liability will be limited to the charge paid by Licensee for the individual Software that is the subject of the claim.

Choice of Law; Jurisdiction (Section 12.8), The following is added to this Section: Arbitration. Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

JAPAN: General (Section 12.0): The following is inserted at the end of Section 12.2 (Entire Agreement): Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA: Limitation of Liability (Section 8.1): The word "SPECIAL" is deleted:

NEW ZEALAND: Limited Warranty (Section 6.0): The following is added: The warranties specified in this Section are in addition to any rights Licensee may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which Serena provides, if Licensee requires the goods for the purposes of a business as defined in that Act.

Limitation of Liability (Section 8.1) : The following is added: Where Software is not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA: Prices (Section 4.1): The following is added at the end of this paragraph: All banking charges incurred in the People's Republic of China will be borne by Licensee and those incurred outside the People's Republic of China will be borne by Serena.

Choice of Law; Jurisdiction, (Section 12.8): The phrase "the laws of the country in which Licensee acquired the licensed Software" in this Section is replaced by the following: the laws of the State of California, United States of America, excluding its principles of conflict of law.   (except when local law requires otherwise).

PHILIPPINES: Limitation of Liability (Section 8.1): The portion of 8.1, 2nd line, stating "special, incidental, indirect or consequential damages" is replaced by "special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages"

Choice of Law; Jurisdiction (Section 12.8) The following is added to this section: Arbitration. Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

SINGAPORE: Limitation of Liability (Section 8.1): The word "SPECIAL" is deleted.

General (Section 12.0): Add the following to 12.2 (Entire Agreement): Subject to the rights provided to Serena, and the Limitation of Liability provisions herein, a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

TAIWAN: Limited Warranty (Section 6.4): The last subparagraph is deleted.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

Limited Warranty (Sections 6.1): 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 6.0 (including 6.1-6.4) of this Agreement. The territorial scope of the Limited Warranty is worldwide.

Limitation of Liability (Section 8.1): In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this Section in its entirety: Except as otherwise provided by mandatory law:

1. 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 (if Serena is at fault) or of such cause, for a maximum amount equal to the charges Licensee paid for the Software.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Serena is legally liable.

2. UNDER NO CIRCUMSTANCES IS SERENA OR ANY OF ITS SOFTWARE DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by Serena but also to the activities performed by its suppliers and Software developers, and represents the maximum amount for which Serena as well as its suppliers and Software developers, are collectively responsible.

Limitation of Liability (Section 8.1): In France and Belgium, the following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

1. 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 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 (if Serena is at fault), for a maximum amount equal to the charges Licensee 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 Serena is legally liable.

2. UNDER NO CIRCUMSTANCES IS SERENA OR ANY OF ITS SOFTWARE DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by Serena but also to the activities performed by its suppliers and Software developers, and represents the maximum amount for which Serena as well as its suppliers and Software developers, are collectively responsible

Governing Law; Jurisdiction (Section 12.8) : The phrase "the laws of the country in which Licensee acquired the licensed Software" is replaced by:

1) "the laws of Austria" in Albania, Armenia, Azerbeijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia;

2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna;

3) "the laws of Finland" in Estonia, Latvia, and Lithuania;

4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and

5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

Jurisdiction. 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);

2) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts;

3) in Belgium and Luxembourg, all disputes arising out of this Agreement or related to its interpretation or its execution, the law, and the courts of the capital city, of the country of Your registered office and/or commercial site location only are competent;

4) in France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris;

5) in Russia, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow;

6) in South Africa, Namibia, Lesotho and Swaziland, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg;

7) in Turkey all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey;

8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for Greece, b) Tel Aviv-Jaffa for Israel, c) Milan for Italy, d) Lisbon for Portugal, and e) Madrid for Spain; and

9) in the United Kingdom, Licensee and Serena both agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

Added to Choice of Law; Jurisdiction (Section 12.8) Arbitration. In Albania, Armenia, Azerbeijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules.

The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. Serena may, however, institute proceedings in a competent court in the country of installation.

In Estonia, Latvia and Lithuania all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AUSTRIA: Limited Warranty (Section 6.1): 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 action for breach of warranty is the statutory period as a minimum.

The warranty for Software covers the functionality of the Software for its normal use and the Software's conformity to its specifications.

The sixth sentence of Section 6.1 is revised as follows: Except as otherwise required by applicable statutory law….

GERMANY: Limited Warranty (Section 6.1): The same changes apply as those in Limited Warranty (Section 6.1) under Austria above.

Limitation of Liability (Section 8.1): The following paragraph is added to this Section: The limitations and exclusions specified in this Section will not apply to damages caused by Serena intentionally or by gross negligence.

HUNGARY: Limitation of Liability (Section 8.1) : The following is added at the end of this Section: The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: Limited Warranty (Section 6.1): The following is added to this section: Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing, all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

Limitation of Liability (Section 8.1): The following replaces the terms of this section in its entirety: For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of Serena in connection with, or in relation to, the subject matter of an Agreement in respect of which Serena is legally liable to Licensee 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 occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, Licensee is entitled to recover damages from Serena. This Section sets out the extent of Serena's liability and Licensee's sole remedy.

1. Serena will accept unlimited liability for (a) death or personal injury caused by the negligence of Serena , and (b) subject always to the Items for Which Serena is Not Liable below, for physical damage to Licensee tangible property resulting from the negligence of Serena .

2. Except as provided in item 1 above, Serena's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) EUR 125,000, or 2) 125% of the amount Licensee paid for the Software directly relating to the Default. These limits also apply to any of Serena's suppliers and Software developers. They state the maximum for which Serena and such suppliers and Software developers are collectively responsible.

Items for Which Serena is Not Liable
Save with respect to any liability referred to in item 1 above, under no circumstances is Serena or any of its suppliers or Software developers liable for any of the following, even if Serena or they were informed of the possibility of such losses:

1. loss of, or damage to, data;

2. special, indirect, or consequential loss; or

3. loss of profits, business, revenue, goodwill, or anticipated savings.

ITALY: General (Section 12.0): The following is added to this Section: Serena and Licensee (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

SLOVAKIA: Limitation of Liability (Section 8.1): The following is added to the end of the Section. The limitations apply to the extent they are not prohibited under Sections 373-386 of the Slovak Commercial Code.

UNITED KINGDOM: Limitation of Liability (Section 8.1): The following replaces the terms of this Section in its entirety:

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of Serena in connection with, or in relation to, the subject matter of an Agreement in respect of which Serena is legally liable to Licensee, 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, Licensee is entitled to recover damages from Serena. This Section sets out the extent of Serena's liability and Licensee's sole remedy.

1. Serena will accept unlimited liability for:
(a) death or personal injury caused by the negligence of Serena;

(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 Serena is Not Liable below, for physical damage to Licensee's tangible property resulting from the negligence of Serena.

2. Serena's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) 75,000 GBP, or 2) 125% of the amount Licensee paid for the Software directly relating to the Default. These limits also apply to Serena's suppliers and Software developers. They state the maximum for which Serena and such suppliers and Software developers are collectively responsible.

Items for Which Serena is Not Liable
Save with respect to any liability referred to in item 1 above, under no circumstances is Serena or any of its suppliers or Software developers liable for any of the following, even if Serena or they were informed of the possibility of such losses:

1. loss of, or damage to, data;

2. special, indirect, or consequential loss; or

3. loss of profits, business, revenue, goodwill, or anticipated savings.

09/01/2004