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## 1.0 DEFINITIONS

- 1.1 **“Concurrent User”** means an employee of You 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 **“Instance”** means a single occurrence of initialization or execution of the Software on one Server.
- 1.3 **“Licensed Capacity”** means the maximum permitted use of the Software based on capacity-based pricing metrics that quantify, measure, and limit Your use of the Software, as specified in Your order for the Software, including without limitation, Concurrent Users, Instances, Named Users, Seats, Endpoints and Servers.
- 1.4 **“Maintenance”** means the maintenance and technical support services for the Software identified in Your order and provided by Serena pursuant to this Agreement.
- 1.5 **“Named User”** is a form of Licensed Capacity and means a single employee of You who has been designated as an authorized user of the Software and accesses the Software using a single computer at any given point in time, either directly or through another application.
- 1.6 **“Seat”** means a single employee of You who has been authenticated by Your LDAP server and accesses the Software at any given point in time, either directly or through an application.
- 1.7 **“Server”** means a single server on which an Instance of the Software is installed.
- 1.8 **“Endpoint”** means a single physical, virtual, or cloud server.
- 1.9 **“Software”** means Serena’s software products in object code form that are commercially available at the time of Your order, and any modifications, corrections and updates provided by Serena in connection with Maintenance.
- 1.10 **“Territory”** means the country or countries in which You have a license to use the Software, as specified in Your order for the Software; or, if no Territory is specified, the country from which Your order has been issued.
- 1.11 **“User Documentation”** means the user’s guide, installation guides, or on-line documentation applicable to the Software.

## 2.0 GRANT OF LICENSE AND USE OF SOFTWARE

- 2.1 **License Grant.** Subject to the terms and conditions of this Agreement, Serena grants to You a perpetual, non-exclusive license to use the Software within the Territory, in accordance with the User Documentation and in compliance with the authorized Licensed Capacity.
- 2.2 **Usage Rights.** You may only use the Software and the User Documentation for Your internal business operations and to process Your data. You will not (a) permit any third parties or non-licensed entities to use the Software or the User Documentation; (b) permit any Concurrent User, Named User, or Seat to use or access the Software from a location outside the Territory; (c) process or permit to be processed any data that is not Your data; (d) use the Software in the operation of a service bureau, or hosted or subscription service; (e) sublicense, rent, or lease the Software or the User Documentation to a third party; or (f) perform, publish, or release to any third parties any benchmarks or other comparisons regarding the Software or User Documentation. You will not make simultaneous use of the Software on multiple, partitioned, or virtual computers without first procuring the number of licenses to be simultaneously used by You from Serena. You will not permit a third party outsourcer to use the Software to process data on Your behalf without Serena’s prior written consent.
- 2.3 **License Keys.** You acknowledge that the Software may contain one or more license keys that will enable the functionality of the Software and third party software embedded in or distributed with the Software. You 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, You will not use the previous license key to enable the Software. At Your request, Serena will reissue a replacement license key to enable the Software in accordance with the original order, provided that the request is made during a Maintenance period, You certify that all evidence of the original license key has been deleted and destroyed and You are in compliance with the terms of this Agreement.
- 2.4 **Archival Copies.** You may make one copy of the Software for back-up and archival purposes only, and You may make a reasonable number of copies of the User Documentation for Your internal use. All copies of Software and User Documentation must include all copyright and similar proprietary notices appearing on or in the originals. Serena reserves the right to revoke permission to reproduce copyrighted and proprietary material if it reasonably believes that You have failed to comply with its obligations.
- 2.5 **Licensed Capacity.** Serena licenses Software based on Licensed Capacity for different types of usage, including, without limitation, Concurrent Users, Named Users, Seats, Servers, and other types of usage as described in Section 8. 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 employee of You to access and use the Software using a single computer at any point in time. A Seat license allows a single employee of You who has been authenticated by Your LDAP server to access and use the Software, provided that the number of Your employees 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, as applicable will be required for each user of such application. Regardless of usage type, You will immediately notify Serena in writing of any increase in use beyond the Licensed Capacity and will provide Serena with such information as may be reasonably requested by Serena to verify Your use and deployment of the Software. Any additional Licensed Capacity must be licensed pursuant to an additional order and this Agreement, and additional Software license and Maintenance fees will be based on Serena's then-current list price.

2.6 **Third Party Software.** You acknowledge that software provided by third party vendors ("Third Party Software") may be embedded in or delivered with the Software. The terms of this Agreement and such other terms that Serena may deliver with the Software will apply to Your use of such Third Party Software. All Third Party Software vendors will be deemed third party beneficiaries under this Agreement. You may only use the Third Party Software with the Software, and You 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.** You acknowledge that certain portions of the Software may be delivered with notices and open source licenses from communities and third parties that govern the use of those portions of the Software. This Agreement will not alter any of the rights and obligations under these open source licenses, except that the disclaimer of warranties and limitation of liability set forth in this Agreement shall apply to all portions of the Software.

2.8 **Evaluation License.** This Section 2.8 applies if Serena has provided the Software to You for evaluation purposes. Serena grants to You a thirty (30) day, limited license solely for the purpose of internal evaluation. You are strictly prohibited from using the Software for any production purpose or any purpose other than the sole purpose of determining whether to purchase a commercial license for the Software that You are evaluating. Serena is not obligated to provide maintenance or support for the evaluation Software. YOU ACKNOWLEDGE THAT SOFTWARE PROVIDED FOR EVALUATION MAY (A) HAVE LIMITED FEATURES; (B) FUNCTION FOR A LIMITED PERIOD OF TIME; OR (C) HAVE OTHER LIMITATIONS NOT CONTAINED IN A COMMERCIAL VERSION OF THE SOFTWARE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SERENA IS PROVIDING THE EVALUATION SOFTWARE TO YOU "AS IS", AND SERENA DISCLAIMS ANY AND ALL WARRANTIES (INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND STATUTORY WARRANTIES OF NON-INFRINGEMENT), LIABILITIES, AND INDEMNIFICATION OBLIGATIONS OF ANY KIND. In the event of any conflict between this Section 2.8 and any other provision of this Agreement, this Section 2.8 will prevail and supersede such other provision with respect to Software licensed to You for evaluation purposes.

3.0 **TITLE.** Serena retains all right, title and interest in and to the Software and User Documentation and all copies, improvements, enhancements, modifications, and derivative works of the Software and User Documentation, including, without limitation, all patent, copyright, trade secret, trademarks and other intellectual property rights. You agree that You will not copy (except as expressly permitted herein), make modifications to, translate, disassemble, decompile, reverse engineer, otherwise decode or alter, or create derivative works based on the Software or User Documentation. Except to the extent required for Your use of 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 **AUDIT.** You will 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 Your compliance with the obligations under this Agreement by auditing Your business records and Your use and deployment of the Software within Your information technology systems. Serena and/or a public accounting firm selected by Serena shall perform the audit during Your regular business hours and comply with Your reasonable safety and security policies and procedures. Any agreement You may require the public accounting firm to execute shall not prevent disclosure of the audit results to Serena. You will reasonably cooperate and assist with such audit. You will, 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 You at Serena's then-current list price, and applicable Maintenance fees shall be applied retroactively to the period of the unauthorized and/or excess usage. You will pay interest on the license and the Maintenance fees for the time period of the unauthorized and/or excess usage, the rate of interest being the lesser of 1.5% per month or the maximum allowed by law. Serena shall be responsible for its own costs and expenses in conducting the audit, unless the audit indicates that You have exceeded Your Licensed Capacity or otherwise exceed Your 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 You, in which event You will, upon demand, reimburse Serena for all reasonable costs and expenses of the audit.

## 5.0 LIMITED WARRANTY

5.1 **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 delivery of the Software. If the Software does not operate as warranted and You have provided written notice of the non-conformity to Serena within the ninety (90) day warranty period, Serena will at its option (a) repair the Software; (b) replace the Software with software of substantially the same functionality; or (c) terminate the license for the

nonconforming Software and refund the applicable license 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 You or on Your behalf; (c) combining the Software with products, software or devices not provided by Serena; or (d) computer hardware malfunctions, unauthorized repair, accident, or abuse.

- 5.2 **Disclaimers.** THE WARRANTIES SET FORTH IN THIS SECTION 5 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 WILL MEET YOUR REQUIREMENTS OR THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. THE REMEDIES SET FORTH IN THIS SECTION 5 ARE YOUR 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 5.
- 5.3 **Country Specific Terms.** If You are in Austria or Germany, the following is inserted at the beginning of this Section: "The warranty period is twelve months from the date of delivery. The limitation period for consumers in any action for breach of warranty is the statutory period. The warranty for Software covers (a) the functionality of the Software in its normal use and (b) the Software's conformity to its specifications. The limitations and exclusions specified in Sections 5 and 7 will not apply to damages caused by Serena's intentional misconduct or intentionally or gross negligence."

## 6.0 MAINTENANCE

- 6.1 **Maintenance Period.** If You elect 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 (1) year thereafter, unless otherwise stated in an order. The Maintenance period may, at Your option, be renewed pursuant to a subsequent order and, upon Serena's acceptance of the order, shall be non-cancelable. Prior to such renewal, Serena may, upon ten (10) business days written notice, require You to provide a report on Your use and deployment of the Software. Such report shall be certified by an officer of You 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 You 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. You may not decrease the Licensed Capacity covered by Maintenance during a Maintenance period or as part of the renewal of Maintenance.
- 6.2 **Support Coordinators.** Maintenance shall consist of support services provided by Serena to one designated support coordinator of You (and one backup coordinator) per 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.
- 6.3 **New Releases.** During a current Maintenance period, Serena shall provide You with one copy of any new release of the Software, which may include generally available error corrections, modifications, maintenance patch releases, enhancements (unless priced separately by 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 You install a new release of the Software, You may continue to use the previous version of the Software for up to ninety (90) days in order to assist You in the transition to the new release. Once You complete its transition to the new release of the Software, You shall discontinue use of the previous version of the Software.
- 6.4 **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 (b) the date that a new release of the Software becomes generally available, provided that You have paid applicable Maintenance fees and incorporated all Maintenance patch releases issued by Serena for the release of the Software.

## 7.0 LIABILITY AND REMEDY

- 7.1 **Limitation.** IN NO EVENT WILL SERENA OR ITS THIRD PARTY VENDORS BE LIABLE TO YOU FOR (A) ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR (B) LOSS OF DATA, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR SIMILAR DAMAGES OR LOSS, EVEN IF SERENA AND ITS THIRD PARTY VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS LIMITED BY APPLICABLE LAW, AND REGARDLESS OF THE BASIS FOR YOUR CLAIM, SERENA'S MAXIMUM LIABILITY UNDER THIS AGREEMENT WILL BE THE AMOUNT YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- 7.2 **Country Specific Terms.** If You are in Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden or Switzerland, the following replaces the terms of this Section 7 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 proven 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 amount You paid for the Software. The above limitation shall not apply to damages for bodily injuries (including death) or damages to real property or tangible personal property for which Serena is legally liable."

If You are in France or Belgium, the following replaces the terms of this Section 7 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 is limited to the compensation of only those damages and losses proven and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if Serena is at fault, as assessed in a final judgment by a court of law), for a maximum amount equal to the charges You paid for the Software that has caused the damages. The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Serena is legally liable.”

If You are in any of the countries listed above, the following applies: “UNDER NO CIRCUMSTANCES WILL SERENA OR ANY OF ITS SOFTWARE DEVELOPERS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: LOSS OF, OR DAMAGE TO, DATA; INCIDENTAL OR INDIRECT DAMAGES, OR ANY ECONOMIC CONSEQUENTIAL DAMAGES; LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT CAUSED THE DAMAGES; OR LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.”

If You are in the United Kingdom, the following applies: “For the purposes of this Section, a “Default” means any act, statement, omission, or negligence on the part of Serena in connection with, or in relation to, the subject matter of an Agreement in respect of which Serena is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default. Circumstances may arise where, because of a Default, You are entitled to recover damages from Serena. This Section sets forth the extent of Serena’s liability and Your sole remedy. 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 Your tangible property resulting from the negligence of Serena. Except as provided in the foregoing, Serena’s entire liability for actual damages for any one Default will not in any event, except as provided above, exceed the greater of 75,000 GBP, or 100% of the amount You paid for the Software of the last purchase only directly relating to the Default.

## **8.0 SOFTWARE PRODUCT SPECIFIC TERMS**

- 8.1 **Serena® Business Manager (“SBM”) (formerly known as Serena® TeamTrack®).** The Software is licensed on the basis of Servers, Named Users, Concurrent Users, Seats and Requestors. A Server license allows execution of a single Instance of the Software on a single server. Named User, Concurrent User and Seat licenses are for use on a single server unless otherwise specified in writing by the parties. A Regular User Seat allows each designated Regular User Seat to use and participate in all activities and functionality of SBM that pertain to workflow applications to which the Regular User Seat has been granted access at runtime, including the workflow, workflow roles, transition items, sending and receiving notifications, creating reports, and creating dashboards. A Regular User Seat is required for each managed administrator of SBM. An Occasional User Seat allows each designated Occasional User Seat to use and participate in a subset of activities of SBM that pertain to workflow applications to which the Occasional User Seat has been granted access at runtime. An Occasional User Seat is permitted to access and use SBM to submit items, obtain status of items submitted by the Occasional User Seat, A “Requestor” is a user who is permitted to submit issues and view status only. You may allow a third party to use the Requestor license, subject to Your indemnification of Serena against any claims that arise from use of the Software by such third party. You may transfer Named User licenses to accommodate personnel changes, provided that such transfers do not result in sharing of Named User licenses. You may change from time to time the employees who are designated to use the Software under a Named User or Seat license, provided that the number of users does not exceed the total number of licensed Named Users or Seats, as applicable.
- 8.2 **Serena® Service Manager.** Fifty (50) Incident Submitters are included with each Serena Service Manager Seat license. “Incident Submitters” are SBM occasional users that are authorized solely to submit, update, and complete satisfaction surveys for incidents in the Serena Service Manager Incident Management Application. “Application” is a single tab within the browser user interface. The foregoing is a form of Licensed Capacity and use of more than fifty (50) Incident Submitters with each Serena Service Manager User license will require and obligate You to pay additional license fees. The Serena Service Manager licenses purchased include up to two hundred (200) Seat licenses of SBM Connect for Sharepoint.
- 8.3 **Serena® Project Portfolio Management (“PPM”) (formerly known as Serena® Mariner®).** The Software is licensed on the basis of database Instances and Named Users, where Named User licenses are specific to one database Instance. In conformance with such licensing, Serena Project Portfolio Management provides You with the ability to deploy contents to three destinations for each database Instance: (a) a test version; (b) a production version; and (c) a development/staging version.
- 8.4 **Serena® Dimensions® Deploy™.** The Software is licensed based upon platforms (agents) and number of systems to which it will be deployed. You are authorized to use only the following features of the Software: Version Management, Projects, Build Management, Deployment, Ant and Cruise Control Integrations, Baseline Creation, Design Parts, Request Management, the Dimensions Windows client, the Dimensions web client, the Dimensions Windows Explorer add-in, the Dimensions administration console, all agents (except z/OS and z/Linux), all APIs, web services, and ALF events. You acknowledge that the foregoing authorized use is a form of Licensed Capacity and that use of features other than those set forth above will require and obligate You to pay additional license fees.
- 8.5 **Serena® Application Release Manager (“ARM”).**
- 8.5.1 ARM is licensed on the basis of MIPS, Endpoints and Servers. The Server module includes ten (10) Seat licenses. MIPS are licensed in MIPS packs of 1,000 MIPS each. Your ARM MIPS capacity shall be equal to or greater than Your licensed MIPS capacity of ChangeMan ZMF. Endpoints are licensed in packs of ten (10) Endpoints. The foregoing is a form of Licensed

- Capacity and if You use ARM to deploy to Endpoints, You are required to license such from Serena. If you exceed ten (10) Seat licenses of ARM, additional Seat licenses of ARM must be licensed at Serena's then-current price.
- 8.5.2 **License Grant.** Subject to the terms and conditions of the Agreement, Serena grants You a perpetual, non-exclusive license to use and modify the Software licensed herein within the Territory, in accordance with the User Documentation, and in compliance with the authorized Licensed Capacity. Serena also grants to You a license to perform and deploy the Software solely as incorporated within Serena's software product known as Serena Business Mashups, and solely for your internal business operations. You may not sell, rent, lease, or otherwise distribute or disclose the Software or any modification thereof to any third party whatsoever.
- 8.5.3 **Title.** To the extent that You modify the Software or creates a derivative work of the Software, Serena grants You a non-exclusive, non-transferable license to use such modification or derivative work at no additional charge, solely for Your internal business purposes, subject to such limitations set forth above and in the Agreement.
- 8.5.4 The terms of this Section 8.5 shall control over those of the Agreement as it applies to Serena's ARM Software.
- 8.6 **Serena® ChangeMan® ZMF Client Pack.** Each seat of the ChangeMan ZMF Client Pack allows one ZDD license and one Eclipse Plug-In License.

## 9.0 GENERAL

- 9.1 **Entire Agreement.** This Agreement will supersede any different, inconsistent, or preprinted terms and conditions in Your order form, purchase order, or other ordering document. This Agreement constitutes the entire agreement between us relating to the Software and User Documentation and will supersede all previous oral and written agreements between us with respect to the Software and User Documentation.
- 9.2 **Assignment.** You may not assign, sublicense, pledge or otherwise transfer any of Your rights 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 Your control, whether by merger, share purchase, asset sale, or otherwise, shall be deemed an Assignment subject to the terms of this Section 9.2. If Serena grants its consent to any Assignment, You will, as a condition to such consent, pay to Serena upon demand Serena's then prevailing assignment fee.
- 9.3 **Marketing.** You grant Serena the right to use Your name and logo in customer lists displayed on Serena's website and other sales and marketing collateral.
- 9.4 **Severability.** If any provision of this Agreement is held to be illegal or otherwise unenforceable by a court, that provision will be severed and the remainder of the Agreement will remain in full force and effect.
- 9.5 **Waiver.** The waiver of any right or election of any remedy in one instance will not affect any rights or remedies in another instance. A waiver will be effective only if made in writing and signed by an authorized representative of the applicable party.
- 9.6 **Export Restrictions.** You acknowledge that the Software and User Documentation (collectively "Technical Data") are subject to United States export controls under the U.S. Export Administration Act, including the Export Administration Regulations, 15 C.F.R. Parts 730 *et seq.* (collectively, "Export Control Laws"). You agree to comply with all requirements of the Export Control Laws with respect to the Technical Data. Without limiting the foregoing, You will not (a) export, re-export, divert or transfer any such Technical Data, or any direct product thereof, to any destination, company, or person restricted or prohibited by Export Control Laws; (b) disclose any such Technical Data to any national of any country when such disclosure is restricted or prohibited by the Export Control Laws; or (c) export or re-export the Technical Data, directly or indirectly, for nuclear, missile, or chemical/biological weaponry end uses prohibited by the Export Control Laws.
- 9.7 **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 will be solely in accordance with the terms of this Agreement.
- 9.8 **Governing Law; Jurisdiction; Dispute Resolution.** This Agreement will be governed by and construed in accordance with the substantive laws of: (a) California, U.S.A., if You are in the United States or in a country not associated below with a different governing law; (b) Ontario, Canada if You are in Canada; (c) Victoria, Australia if You are in Australia; (d) Germany if You are in Germany; (e) France if You are in France; (f) Belgium if You are in Belgium, the Netherlands, or Luxembourg; (g) the United Kingdom if You are in the United Kingdom or Italy; (h) Switzerland if You are in Switzerland, and (i) Sweden if You are in Sweden. The following courts or arbitration organizations will have jurisdiction over any disputes related to this Agreement: (a) the federal courts for the Northern District of California or the state courts in Santa Clara County, California when California or Canadian law governs; (b) the Singapore International Arbitration Center if You are in the Asia/Pacific region; (c) the courts of Munich when German law governs; (d) the courts of Paris when French law governs; (e) the courts of Brussels when Belgian law governs; (f) the courts of England and Wales when United Kingdom law governs; (g) the courts of Zurich when Swiss law governs; and (h) the courts of Stockholm when Swedish law governs. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The Uniform Computer Information Transactions Act, as adopted or amended from time to time, does not apply to this Agreement or the Software.
- 9.9 **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.
- 9.10 **Amendment.** This Agreement may only be modified by a written document signed by an authorized representative of Serena and by You.
- 9.11 **Survival.** Any terms of this Agreement which by their nature extend beyond the termination or expiration of this Agreement will remain in effect. Such terms will include, without limitation, all provisions herein relating to limitation of liability, third party terms, title and ownership of Software, and all general provisions.