

## MASTER LICENSE AGREEMENT

IMPORTANT: READ THIS MASTER LICENSE AGREEMENT CAREFULLY. IT CONSTITUTES A BINDING AGREEMENT BETWEEN THE PURCHASING ENTITY OR INDIVIDUAL (THE "LICENSEE") AND MERANT INC. ("MERANT"). IF A LICENSEE IS AN ENTITY, YOU ACKNOWLEDGE THAT YOU ARE BINDING THE ENTIRE ENTITY, AND REPRESENT THAT YOU HAVE THE AUTHORITY TO DO SO, OR IN THE EVENT THAT YOU DO NOT HAVE THE AUTHORITY, YOU SHALL BE PERSONALLY LIABLE FOR ANY DAMAGES RESULTING FROM A BREACH OF THIS LICENSE AGREEMENT. THE MERANT PRODUCTS IN THIS PACKAGE (OR THAT HAVE BEEN ELECTRONICALLY DOWNLOADED) INCLUDE COMPUTER SOFTWARE, PRINTED MATERIALS, ELECTRONIC DATA AND DOCUMENTATION OF MERANT (COLLECTIVELY, THE "SOFTWARE"). BY EITHER OPENING THE SEALED SOFTWARE PACKAGE OR BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, LICENSEE AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF LICENSEE AGREES WITH THE TERMS OF THIS AGREEMENT LICENSEE MAY INSTALL THE SOFTWARE BY INDICATING YOUR ACCEPTANCE OF THE TERMS OF THE MASTER LICENSE AGREEMENT DURING INSTALLATION OF THE SOFTWARE. IF THESE TERMS AND CONDITIONS ARE NOT ACCEPTABLE TO YOU, DO NOT INSTALL OR USE ANY PORTION OF THE SOFTWARE, AND EITHER CONTACT MERANT AT 1-503-443-1601 OR RETURN THE ENTIRE MEDIA PACKAGE TO THE DEALER FROM WHOM YOU OBTAINED THE SOFTWARE AND YOUR MONEY WILL BE REFUNDED.

### 1.0 DEFINITIONS

- 1.1 **"Purchasing Instrument"** means a purchase order, a credit card order, a check, or any other means by which Licensee indicates to Merant that it is either licensing the Software for an indefinite term, increasing its Licensed Capacity, or changing its Licensed Configuration in such a way that additional charges are due. Whether a Purchasing Instrument is acceptable and valid shall be determined by Merant in its sole discretion. The terms and conditions specified in this Agreement apply to all Purchasing Instruments. In the case of conflict, the terms of the Agreement shall prevail over the terms of the Purchasing Instrument.
- 1.2 **"Schedule"** means Software License Schedule signed by Licensee and Merant that reflects the Software product and subsequent upgrades (increase in licensed capacity) licensed by Licensee. A Schedule shall also include a Purchase Authorization Letter, which is a document issued by Merant and is either signed by Licensee or is referenced by Licensee in its Purchasing Instrument. A Purchase Authorization Letter shall also reflect the Software product and subsequent upgrades licensed by Licensee. The terms and conditions specified in this Agreement apply to all Schedules, unless explicitly otherwise specified in such Schedule. In the case of conflict, the terms of the Schedule shall prevail over the terms of this Agreement.
- 1.3 **"Order Instrument"** means either a Purchasing Instrument accepted by Merant or Schedule as applicable.
- 1.4 **"Licensed Capacity"** means the CEC(s), MIPS, Seat(s), Agent(s), Users, Connection(s), Server(s) (including but not limited to application, database and main servers) and any other licensing measure added in the future, as applicable, for which the Licensee is licensed to use the Software under this Agreement, and the applicable Order Instrument. The applicable licensing measures as referenced above for each Software product may change to reflect new industry conventions.
- 1.5 **"Licensed Configuration"** means the hardware platform type, operating system, database type, the Web Services Platform, and any other configuration type added in the future, as applicable, for which the Licensee is licensed to use the Software under this Agreement, and the applicable Order Instrument(s). The applicable configuration for each Software Product may change to reflect new industry conventions.
- 1.6 **"Software"** means Software products that are licensed by Licensee under this Agreement and the applicable Order Instrument, including any modifications, corrections, updates, improvements, derivatives or enhancements thereto provided hereunder.
- 1.7 **"User Documentation"** means the user's guide, installation guides and/or on-line documentation provided with the Software. User Documentation does not include marketing materials or responses to requests for proposals.

### 2.0 GRANT AND USE OF SOFTWARE

- 2.1 **License Grant.** Merant hereby grants Licensee a non-exclusive license to only use the object code of those Software products and related User Documentation described in the applicable Order Instruments, for use only in the country that the Software was acquired in, for the Licensed Capacity and Licensed Configuration designated in the applicable Order Instrument. The license fees for such Software shall be based on the then-current prices.
- 2.2 **Internal Use.** The Software shall be used only for Licensee's own business and all data processed by the Software must be the property of Licensee. Licensee shall not (i) permit any third parties or non-licensed entities to use the Software, (ii) process or permit to be processed the data of any other party besides Licensee, (iii) use the Software in the operation of a service bureau, (iv) sublicense, rent, or lease the Software to a third party, (v) perform, publish or release to any third parties any benchmarks or other comparisons regarding the Software or (vi) make simultaneous use of Distributed Software on multiple computing machines without payment of the applicable license fees. In the event Licensee elects to use an outsourcer to process data on its behalf, Licensee agrees to notify Merant in writing in advance and to enter into a Consent to Process arrangement with Merant and its outsourcer.
- 2.3 **Keys and Codes.** With respect to Mainframe Software, Licensee acknowledges that the Software contains codes to restrict access to nominated CEC identifications. Licensee shall have the right to use the Mainframe Software only on the CEC designated by type, capacity rating, serial number, and location as specified in the code provided by Merant. With respect to Distributed Software, Licensee acknowledges that the Software contains keys that will enable the Software and third party software embedded in or distributed with the Software. Licensee shall have the right to use the Distributed Software only with the keys provided by Merant. Licensee agrees not to attempt to modify, tamper with, reverse engineer, reverse compile or disassemble the keys or codes. Upon Licensee's use of a new key or code for the Software, Licensee represents and warrants that it will not use the superceded key or code to access the Software.
- 2.4 **Archival Copies.** Licensee may make a reasonable number of back-up and archival copies of the Software as needed for Licensee's permitted use under this Agreement. Licensee may copy the User Documentation for Licensee's internal use of the Software. All copies of Software and User Documentation must include all copyright and similar proprietary notices appearing on or in the originals. Copies of the Software may be stored offsite provided that all persons having access to the Software are made subject to Licensee's obligations under this Agreement and that Licensee takes all reasonable steps required to fulfill these obligations. Merant reserves the right to withdraw permission to reproduce copyrighted and proprietary material, at its discretion, whenever it reasonably believes that this privilege is being used in a way detrimental to its interest or if the above instructions are not being properly followed to protect its copyright or other proprietary rights.
- 2.5 **Disaster Recovery.** Licensee may temporarily use the Software at other than the designated site or CEC during an emergency situation or during disaster recovery, contingent upon Licensee giving Merant prior written notice that such use will be undertaken by Licensee. Production use of the Software shall be only at the alternate site or CEC at any given time during the emergency situation or disaster recovery, and, in no event, shall such use of the Software pursuant to this Section 2.5 exceed sixty (60) days. Immediately following any period of emergency use, all production copies of the Software at the emergency-use site shall be destroyed or returned to the authorized site, and Licensee shall send Merant certification within thirty (30) days of the end of such emergency that the Software has been destroyed or returned to the authorized site.
- 2.6 **Movement of Software.** Subject to the provisions set forth herein, Licensee may: (a) with respect to Mainframe Software based licenses, relocate licensed MIPS from one licensed location to another licensed location; or (b) with respect to Distributed Software, relocate the Software to a different CPU or Licensee location. When relocating such Software, (i) Licensee agrees not to modify the Licensed Configuration or exceed the Licensed Capacity licensed to date; and (ii) the licensed Software must no longer be operational at the original site. If Licensee relocates the Software, Licensee must notify Merant in writing prior to such relocation, provide Merant with the location address, the Licensed Capacity, the Licensed Configuration, and warrant to Merant in writing that all copies of the Software at the previous site or CEC have

been destroyed or transferred. In addition, for Mainframe Software, said notification will also include the model number(s) and serial number(s) of the CPU(s) within the CEC(s).

In order to allow Licensee to move the Software as provided by this Section 2.6, Merant shall provide Licensee with the ability to obtain a key or code that will allow Licensee to use the Software in the new location. During regular Maintenance & Enhancement (M&E) hours, as specified in Section 10.0, Merant shall provide Licensee with a permanent key or code upon Licensee's written or e-mail notification of the information required by this Section 2.6. Outside of regular M&E hours, Licensee shall be able to contact Merant, such as via beeper, so that Licensee may obtain a temporary key or code. Such temporary key or code shall contain an expiration date. Merant shall provide Licensee with a permanent key or code to replace the temporary key or code upon Licensee's written or e-mail notification of the information required by this Section 2.6.

- 2.7 **Additional Licensed Capacity.** If Licensee exceeds its Licensed Capacity, additional Licensed Capacity must be licensed. Licensee, without demand, is required to immediately notify Merant in writing of any change in Licensed Capacity and to pay any upgrade, maintenance and enhancements, or other fees as may apply, failing which Merant may terminate this License without refund or credit. Additional Licensed Capacity shall be licensed at the then current rates. Licensing of additional Licensed Capacity shall require payment of additional license and M&E fees, and shall be evidenced by execution of an Order Instrument to reflect the new capacity.
- 2.8 **Modification of Licensed Configuration.** If Licensee modifies the Licensed Configuration for which it is licensed, there may be additional charges due. Licensee, without demand, is required to immediately notify Merant in writing of any change in the configuration and to pay any upgrade, maintenance and enhancements, or other fees as may apply, failing which Merant may terminate this License without refund or credit. Any charges associated with modifying the Licensed Configuration shall be charged at the then current rates. The new Licensed Configuration may require payment of additional license and M&E fees, and shall be evidenced by Licensee's execution of an Order Instrument to reflect the new Licensed Configuration.
- 2.9 **Audit.** Licensee hereby agrees that Merant shall have the right, not more than twice every twelve (12) months and upon reasonable notice and during regular business hours, itself and/or through a certified public accounting firm, to conduct inquiries, or cause an audit and/or inspection, to be made of the applicable records and/or facilities in order to verify Licensee's compliance with the terms of the Agreement. Merant and/or its auditor shall comply with Licensee's reasonable safety and security policies and procedures, and execute a non-disclosure agreement with commercially reasonable terms. Licensee shall reasonably cooperate and assist with such audit. Licensee shall reimburse Merant for all costs connected with the inspection if such inspection shows that Licensee has exceeded its Licensed Capacity, is operating the Software in other than its Licensed Configuration, or otherwise exceeds its license restrictions. In addition, to cure the unauthorized usage, Licensee shall license additional Licensed Capacity at Merant's then prevailing list price to cover the unauthorized usage, and pay any charges due for operating the Software in other than the Licensed Configuration. In addition, Licensee agrees to pay back M&E fees for the period of unauthorized usage and pay interest on the purchase price for the time period of the unauthorized usage, the rate of interest being the lesser of 1.5% per month or the maximum allowed by law. This Section 2.9 does not in any way limit Merant's rights or prevent Merant from pursuing any other remedies available to it at law, in equity, or under this Agreement including termination under Section 5.2.
- 2.10 **Yearly Confirmation of Licensed Capacity and Licensed Configuration.** In addition to other notifications required herein, Licensee shall annually confirm Licensed Capacity and Licensed Configuration. For Mainframe Software, Licensee shall annually confirm to Merant, ninety (90) days prior to the anniversary date of the License, the amount of MIPS used ("used," defined herein, shall mean the total MIPS capacity of the CEC(s) in which the Software is executing) and also verify the CEC(s) and the location of the CEC(s). For Distributed Software, Licensee shall annually confirm to Merant, ninety (90) days prior to the anniversary date of the License, the Licensed Capacity, the Licensed Configuration and the location(s) where the Software is currently installed.
- 2.11 **Third Party Terms.** Depending on the Software licensed, software provided by third-party vendors may be embedded in or delivered with the Software ("Third Party Software"). The terms of this Agreement as well as any others that may be specified by Merant shall apply to such Third Party Software. In the event of conflict, the terms specified in such attachment shall take precedence. Third party software and its API's shall be used only with licensed Software and shall not be used on a stand-alone basis or used or integrated with any other software.

### 3.0 TITLE

- 3.1 **Title.** Title and full ownership rights to the Software and User Documentation furnished under this Agreement shall remain with Merant and the respective owners, as applicable. 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. Licensee acknowledges that the Software and User Documentation contain proprietary information and trade secrets of Merant. Except as otherwise expressly provided, Merant grants no express or implied rights under this license to any Merant patents, copyrights, trademarks, or other intellectual property rights. Licensee acknowledges that the Software and all copies of it, regardless of the form or media in which the original or copies may exist, are the sole and exclusive property of Merant and the respective owners.
- 3.2 **Assignment.** Licensee's rights in and to the Software and User Documentation as a result of this Agreement shall not be transferred, assigned, licensed, or pledged, by operation of law or otherwise (collectively "Assignment"), without Merant's prior written consent, and any prohibited Assignment shall be null and void. If Merant grants its consent for any Assignment, Licensee shall pay Merant's then current assignment fee. Currently, the assignment fee is fifteen percent (15%) of the current license for each applicable Software Product(s) licensed hereunder.
- 3.3 **Delivery.** Merant, in its discretion, will deliver all Software either (i) by physical delivery, in which case F.O.B. Origin, freight allowed, shall apply or (ii) by electronic means, in which case Merant's obligation to deliver the Software is completed at such time as Merant makes the Software available on a specific Merant server and gives Licensee a method of accessing and downloading Software. No title to Software (or any intellectual property rights therein) or its media is transferred to Licensee.

### 4.0 PAYMENT; PRICES

- 4.1 **Invoice and Payment.** Upon shipment of the Software, receipt of an Order Instrument or issuance of a license upgrade, Licensee shall be invoiced for the license or upgrade fee, and M&E fees as applicable. Subject to credit approval, payment is due thirty (30) days from receipt of invoice. For past due invoices, Licensee may be assessed a charge of the lesser of 1.5% per month on such late payments or the maximum allowed by law until the amount past due is paid in full. If credit is not approved, Licensee may be required to pay in full before any Software is shipped or license upgrade is issued to Licensee.
- 4.2 **Preprinted Terms Not Binding.** The preprinted terms and conditions of any Purchasing Instruments or other ordering document issued by Licensee in connection with this Agreement shall not be binding to Merant and shall not be deemed to modify this Agreement.
- 4.3 **Taxes and Duties.** Amounts payable under this Agreement are payable in full without deduction and are net of taxes and customs duties. In addition to such amounts, Licensee shall pay sums equal to 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 under this Agreement or on Licensee's use or possession of the Software under this Agreement, but exclusive of United States federal, state, and local taxes based on Merant's net income.
- 4.4 **Installation and Training.** Unless otherwise specified, fees set forth in an Ordering Instrument do not include installation fees or training fees. On-site consulting by Merant is subject to execution of a separate client services agreement and/or related schedule, as applicable.

### 5.0 TERM AND TERMINATION

- 5.1 **Term.** Unless stated otherwise in a Schedule, the term of each Software license shall continue for an indefinite term, subject to the terms and conditions herein, unless or until terminated.
- 5.2 **Termination.** Except as otherwise provided in this Agreement, in the event that Licensee, or any of its officers, agents, outsourcers, authorized users or employees violates any provision of this Agreement and/or any Schedule hereto, Merant may terminate such license(s), as applicable upon notice to Licensee. If Merant determines that the violation is capable of cure and Licensee does not cure such violation within thirty (30) days of receipt of the written notice, Merant has the right to terminate the applicable license(s) by delivering to Licensee notice of termination. If Merant determines that such violation is not capable of cure, then Merant can terminate the applicable license(s) immediately by delivering written notice to Licensee of Merant's intent to terminate the applicable license(s).
- 5.3 **Effect of Termination.** Upon termination of license(s), Licensee will immediately cease using the applicable Software. In addition, within thirty (30) days after termination, Licensee shall destroy the Software and User Documentation, and all copies thereof, and certify in writing that they have been destroyed or, upon request by Merant, return to Merant the Software and User Documentation in the form provided by Merant, and all copies thereof. In addition, Licensee shall supply written certification that the Software has been deleted from all computer systems and all related documentation has been destroyed.

## **6.0 LIMITED WARRANTY**

- 6.1 **Warranty.** Merant warrants the media on which both the Mainframe and Distributed Software is delivered shall be free from material physical defects for a period of six (6) months after delivery. If such a defect is found, Merant will provide a replacement. In addition, for Mainframe Software, Merant warrants that for a period of one (1) year after delivery, the Mainframe Software shall substantially perform in accordance with the applicable User Documentation. For Distributed Software, Merant warrants that for a period of six (6) months after delivery, the Distributed Software shall substantially perform in accordance with the applicable User Documentation. Unless otherwise provided in the agreement that accompanies such Third Party Software, the warranty provided by Merant herein shall extend to any Third Party Software embedded in or delivered with the Software. Merant's sole obligation and liability under this Section shall be to correct or replace the Software in any manner or method determined by Merant, at Merant's own cost and expense, provided written notice is given to Merant. If Merant is unable to cure the warranty nonconformance within a reasonable time, then Merant's sole obligation and liability, and Licensee's exclusive remedy during the initial expressed warranty term, shall be termination of the license for the nonconforming Software and a refund of the license fee received by Merant for the nonconforming Software. During an extension of the warranty term pursuant to Section 10.7, the amount refunded shall be any prepaid M&E accrued but not yet earned for the nonconforming Software.
- 6.2 **Warranty Conditions.** The warranty specified in Section 6.1 shall not be effective and Merant shall have no obligation or liability to Licensee if: (i) the Software is not used in accordance with Merant's specified User Documentation for the Software; (ii) the Software shall have been altered, modified, or revised by or on behalf of Licensee; (iii) Licensee's computer hardware malfunctions; (iv) Licensee uses the Software with any computer hardware or software that is not approved or recommended by Merant as compatible with the Software in the most recent publicly available User Documentation for such Software; or (v) for any other cause that is not related to a defect in the Software.
- 6.3 **No High-Risk Activities.** Software licensed hereunder is not fault tolerant and is not designed, manufactured or intended for use in hazardous environments requiring fail-safe performance (including, without limitation, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems), in which the failure of the Software could lead directly or indirectly to death, personal injury, or severe physical or environmental damage. Merant and respective owners of Software licensed hereunder disclaim any express or implied warranty of fitness for High Risk Activities.
- 6.4 **Limitation. EXCEPT FOR THE LIMITED WARRANTY AS PROVIDED IN SECTION 6.1, THE SOFTWARE, USER DOCUMENTATION AND M&E ARE PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS AND LICENSEE MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR FROM JURISDICTION TO JURISDICTION.**

## **7.0 INDEMNITY**

- 7.1 **Indemnity.** Merant shall indemnify, hold harmless and defend Licensee against suits based on any claim that the use of the Software by Licensee under this Agreement infringes on any United States patent right or United States copyright, provided Merant is promptly notified in writing of any such suit or claim against Licensee, and further provided that Licensee permits Merant to have sole control of the defense, compromise, or settlement of the same, and gives Merant all available information, reasonable assistance, and authority to enable Merant to do so. **THIS SECTION 7.0 SETS FORTH MERANT'S SOLE OBLIGATION AND LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SOFTWARE OR USER DOCUMENTATION.**
- 7.2 **Indemnity Conditions.** This indemnity shall not apply to any infringement arising out of: (i) the alteration or modification of the Software by or on behalf of Licensee; (ii) use of the Software which is not authorized herein or use of the Software that is not in accordance with the most recent publicly available User Documentation; (iii) the use of the Software with any computer hardware or software not approved or recommended by Merant as compatible with the Software in the most recent publicly available User Documentation for such Software; or (iv) the use of other than the latest version of the Software, if such infringement could have been avoided by the use of the latest version.
- 7.3 **Options.** In the event that one or more of the Software Products are held, or reasonably believed by Merant, to infringe any third party's patent rights or copyrights, Merant will have the option, in its sole discretion, to (i) modify the Software to be non-infringing; (ii) obtain a license to continue using the infringing Software, or (iii) terminate the license for the infringing Software and refund any prepaid M&E accrued but not yet earned for the infringing Software.

## **8.0 LIMITATION OF LIABILITY**

- 8.1 **EXCEPT AS EXPLICITLY SET FORTH BELOW, MERANT SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT TO LICENSEE OR ANY OTHER PARTY FOR ANY DIRECT, GENERAL, PUNITIVE SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, RESULTING FROM THE FAILURE OF THE SOFTWARE TO PERFORM, THE USE OR THE POSSESSION OF THE SOFTWARE OR USER DOCUMENTATION BY LICENSEE, LICENSEE'S LOSS OF DATA AND/OR LOSS OF REVENUE, OR ACTS OR OMISSIONS BY MERANT, EVEN IF MERANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MERANT'S LIABILITY TO LICENSEE UNDER SECTION 6.1 (THE SPECIFIED REFUND LIABILITY) AND SECTION 7.1 (INDEMNIFICATION LIABILITY) SHALL BE CONSIDERED DIRECT DAMAGES AND SHALL BE EXCLUDED FROM THE ABOVE LIMITATION OF DIRECT DAMAGES.**

**SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO LICENSEE.**

## **9.0 NONDISCLOSURE; DUPLICATION**

- 9.1 **Confidential Information.** The Software and User Documentation are copyrighted material under the laws of the United States and international treaty provisions. Notwithstanding the copyright, the Software, User Documentation, and other data and software delivered pursuant to this Agreement and applicable Ordering Instrument contain trade secrets and confidential information of Merant ("Confidential Information"). Licensee agrees to maintain all Confidential Information in strict confidence

for Merant. Licensee agrees not to disclose or duplicate, nor allow to be disclosed or duplicated, any Confidential Information, in whole or in part, except as permitted in this Agreement. Licensee shall take all reasonable steps necessary to ensure that the Confidential Information is not made available or disclosed by Licensee or by its employees, agents or authorized users to any other person, firm, or corporation. Licensee agrees that all authorized persons having access to the Confidential Information shall observe and perform under this nondisclosure covenant. Licensee agrees to immediately notify Merant of any unauthorized access to or possession of the Confidential Information.

- 9.2 **Reproduction of Proprietary Materials Limitation.** Merant reserves the right to withdraw permission to reproduce copyrighted and proprietary material, at its discretion, whenever it reasonably believes that this privilege is being used in a way detrimental to its interest or if the above instructions are not being properly followed to protect its copyright and proprietary rights. No permission is granted to use trademarks and service marks of Merant apart from the incidental appearance of such marks in the titles, text, and illustrations of the named publications.

## 10.0 MAINTENANCE AND ENHANCEMENTS (M&E)

- 10.1 **M&E Period.** The Maintenance & Enhancement Plan ("M&E") shall commence from the effective date of the applicable initial Order Instrument or Schedule and for subsequent annual periods beginning on the anniversary date of the applicable license, unless Licensee cancels M&E in writing, fails to pay the then current M&E fees, or otherwise breaches the Agreement and/or applicable Schedule, or if the applicable license(s) are terminated or revoked as set forth in Section 5.2 of this Agreement. M&E will be billed annually ninety (90) days prior to the expiration of the current M&E term for the applicable Software product(s). Annual M&E fees for the Software is subject to change without notice.
- 10.2 **Support Coordinators.** M&E shall consist of support provided by Merant to one (1) designated Support Coordinator of Licensee (and one backup Coordinator) per licensed Software Product and Server by telephone, facsimile, email and World Wide Web site, regarding the use and operation of the current version of the Software, and the immediately preceding version of the Software as specified in Section 10.5, in accordance with the user documentation, error investigation and updates. Support is available during normal business hours in the applicable country location Monday through Friday, excluding nationally observed holidays. For emergency support during non-business hours, contact Merant's main support number.
- 10.3 **Additional Licensed Capacity.** In the event that Licensee purchases additional Licensed Capacity or modifies its Licensed Configuration for the Software prior to the annual anniversary date, Licensee agrees to pay the then current fees for related M&E for such changes. In the case of the Mainframe Software, such M&E fees shall be prorated from the effective date of such changes to the anniversary date of Licensee's initial license for the applicable Mainframe Software. In the case of Distributed Software, such M&E fees shall apply from the effective date of such changes and continue for one (1) year thereafter.
- 10.4 **New Releases.** While subscribing to M&E, Licensee shall receive from Merant one (1) copy of any new release ("New Release") of the Software, which may include error corrections, modifications, enhancements (unless priced separately by Merant and generally not included with the Software at the time of licensing), and the revised User Documentation. Notwithstanding the above, stand-alone error corrections that are not part of a new release shall not be independently supported but shall be incorporated into the next release. If Licensee installs a New Release, Licensee may continue to use the previous version of the Software for a reasonable period of time, not to exceed ninety (90) days, in order to assist Licensee in the transition to the New Release, provided that the New Release and the previous version are installed on the same computer. Once Licensee completes its transition to the New Release of the Software, Licensee must discontinue use of the previous version of the Software.
- 10.5 **Supported Releases.** M&E will only be provided for the current release of the Software, and the immediately preceding release, for a period of twelve (12) months from the date the current release is announced as being generally available. If Merant withdraws any Software from the market, either on a temporary or permanent basis, Merant will continue to support the last release of the Software for a period of twelve (12) months from the date of withdrawal, unless otherwise required by law.
- 10.6 **Reinstatement of M&E.** If Licensee cancels M&E or allows M&E to expire, Licensee may, at a later date, subscribe to and receive the benefits of M&E, subject to payment of the following: (a) if Licensee has the current release of the Software, a fee equal to the then-current M&E fees for the applicable License Capacity and License Configuration of the Software, plus payment of back M&E fees by Licensee calculated at Merant's then current M&E fees for the applicable Licensed Capacity and Licensed Configuration prorated for the period extending back to the date of expiration of M&E; or (b) if Licensee does not have the current release of the Software, a fee equal to the then-current M&E fees for the applicable License Capacity and License Configuration of the Software, plus the then-current update fee for the current release of the Software.
- 10.7 **Limited Warranty Extension.** The LIMITED WARRANTY as specified in Section 6.0 (Limited Warranty) shall be extended, and shall remain in force throughout the duration of M&E.

## 11.0 EVALUATION LICENSES

- 11.1 **Evaluation Term.** In the event Licensee has acquired an evaluation license for the Software, the term of the Software license granted herein shall be for an evaluation period ("Evaluation Period") of up to a maximum of thirty (30) days from delivery, unless otherwise extended by Merant, at which time this Agreement shall terminate unless Licensee enters into a license for an indefinite term as specified below. During the Evaluation Period the terms and conditions specified herein as modified in Section 11.0, Evaluation License, shall govern Licensee's use of the Software.
- 11.2 **Indefinite License Term.** If Licensee chooses to license the Software for an indefinite term, Licensee shall notify Merant of such intention via an Order Instrument and Licensee agrees to pay for such license. An Order Instrument from Licensee shall be evidence of Licensee's acceptance of the terms and conditions herein that apply to a license of indefinite term. Upon receipt by Merant of an acceptable Order Instrument and shipment by Merant of the keys and codes required by the Software pursuant thereto, the Evaluation Period shall end, the terms of this Section 11.0 shall cease to modify the terms of this Agreement, and the term of the license shall continue for an indefinite term, subject to the terms and conditions herein, unless or until terminated.
- 11.3 **Precedence.** During the Evaluation Period, the terms and conditions in this Section 11.0 take precedence over any conflicting terms elsewhere in the Agreement.
- 11.4 **Non-Effective Terms.** During the Evaluation Period, the following Sections of the Agreement shall not be effective: 2.4, 2.5, 2.6, 2.10, 4.1 and 10.0.
- 11.5 **Additional Restrictions on Use.** During the Evaluation Period, Licensee may use the Software solely for the purpose of evaluating its performance to determine whether to enter into a license agreement with Merant and Licensee shall not use the Software in any manner except to determine the benefit of Software for Licensee's system at the evaluation site. Licensee agrees not to integrate nor implement Software into production processes or production procedures until Licensee licenses the Software for an indefinite period.
- 11.6 **Termination.** During the Evaluation Period, the following language shall replace Section 5.2 of this Agreement (Termination). Either party may immediately terminate this Agreement by providing the other party with prior written notice.
- 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, MERANT 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 MERANT 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 MERANT, EVEN IF MERANT 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 MERANT'S LIABILITY UNDER THIS AGREEMENT OR WITH RESPECT TO LICENSEE'S USE OF THE SOFTWARE EXCEED US\$10.00.**

11.9 **Maintenance and Enhancements.** Merant 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 Merant:  
Attention: Legal Counsel to the Merant 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 Merant 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 Merant 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 Merant'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 Merant, and therefore in addition to other remedies, Merant shall be entitled to seek injunctive relief, including an injunction ordering the return of the Software to Merant, 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 Merant 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 Merant'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 Merant in writing, and Merant, 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 Merant.

**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 Servers licensed), Licensee shall notify Merant 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, Merant 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, Merant 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), Merant 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, Merant 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, Merant 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, Merant 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, Merant 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 Merant 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, Merant 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 Merant’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 Merant’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 Merant, Inc., 3445 NW 211th Terrace, Hillsboro, OR 97124.

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, 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 Merant is in breach of a condition or warranty implied by the Trade Practices Act 1974, Merant’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 Merant's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by Merant pursuant to, or in any way related to the subject of this Agreement, Merant'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 Merant 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 Merant.

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, 2<sup>nd</sup> 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 Merant, 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. Merant'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 Merant 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 Merant is legally liable.

2. UNDER NO CIRCUMSTANCES IS MERANT 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 Merant but also to the activities performed by its suppliers and Software developers, and represents the maximum amount for which Merant 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. Merant'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 Merant 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 Merant is legally liable.

2. UNDER NO CIRCUMSTANCES IS MERANT 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 Merant but also to the activities performed by its suppliers and Software developers, and represents the maximum amount for which Merant 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, Azerbaijan, 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 Merant 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, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, 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. Merant 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 Merant 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 Merant in connection with, or in relation to, the subject matter of an Agreement in respect of which Merant 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 Merant. This Section sets out the extent of Merant's liability and Licensee's sole remedy.

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

2. Except as provided in item 1 above, Merant'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 Merant's suppliers and Software developers. They state the maximum for which Merant and such suppliers and Software developers are collectively responsible.

#### Items for Which Merant is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is Merant or any of its suppliers or Software developers liable for any of the following, even if Merant 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: Merant 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 Merant in connection with, or in relation to, the subject matter of an Agreement in respect of which Merant 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 Merant. This Section sets out the extent of Merant's liability and Licensee's sole remedy.

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

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

2. Merant'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 Merant's suppliers and Software developers. They state the maximum for which Merant and such suppliers and Software developers are collectively responsible.

Items for Which Merant is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is Merant or any of its suppliers or Software developers liable for any of the following, even if Merant 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