



# Capital Expenditure Request (CER) Worksheet

<b>Date:</b>	2/2/2021
<b>Department:</b>	Radiology
<b>Manager:</b>	Jeff Richmond
<b>Capital Description:</b>	OS Refresh

PROJECT EXPENSE:	
Total Project <b>Budget:</b> Includes equipment, interfaces, shipping, installation, facility modifications, etc.	\$52,180
Total Project <b>Cost:</b> Includes equipment, interfaces, shipping, installation, facility modifications, etc.	\$52,180
Total Project <b>Variance:</b>	0

**NEED:**

*Check all that apply:*

- Necessary to meet regulatory requirements, patient care is jeopardized without
- Equipment upgrade, enhances productivity
- New service, business development

*Have you?*

- Involved affected employees?
- Involved affected physicians?

**Equipment:**

**Function:** Online and Archive Storage move to Customer Supplied Storage  
Server software upgrade to enable the upgrade of the RIS/PACS system

**Benefit:**  
Server software upgrade to enable the upgrade of the RIS/PACS system. Storage is full on current LTS and unable to expand. DCMH will purchase the new Hardware and Unity will install the RIS/PACS software once the operating system has been refreshed.

**Additional Operating Costs:** *\*\*\*(Please identify additional costs such as additional staff time and training, supplies, maintenance agreements, etc.)*

**Life Expectancy:** 5 to 7 years

**PURCHASE:****Is the equipment available through the hospital's purchasing agreements?**

- Yes  
 No -- Justification: Professional services from vendor

**Vendor Comparison:**

	<b>Vendor 1</b>	<b>Vendor 2</b>	<b>Vendor 3</b>
Vendor Name	Merge Unity		
Vendor Address	71 South Wacker Drive, Chicago, Illinois 60606		
Vendor Contact	Teri Rutherford Laos		
Vendor Phone	877-446-3743		
Price	\$52,180		
Additional Costs			
Vendor reputation	good		
Vendor previously used	yes		
Equipment reputation	good		
Price protection period			
Service availability – including bio-med arrangements	In house		
Ongoing service and repairs			
Warranty	NA		
Installation and down time	1 day		
Demonstration date			

Vendor Selected:

Merge Unity

Criteria:

Professional services. Hardware will be purchased and maintained by DCMH.

**\*\*\* Please attach copy of research, price quotations and other supporting documentation.**

**SALES ORDER**

Delta County Memorial Hospital  
1501 E 3rd Street  
Delta, CO 81416, US

**Quoted By:** Teri Rutherford Laos  
**Price Valid Until:** 3/30/2021  
**Document Date:** 1/25/2021  
**Document Number:** Q-24120-4

**1. PROJECT SUMMARY**

<b>OS Refresh - Delta County Memorial Hospital</b>		<b>\$36,880.00</b>
<b>Online and Archive Storage move to Customer Supplied Storage - Delta County Memorial Hospital</b>		<b>\$15,300.00</b>

<b>Balance Due</b>	USD 52,180.00
<b>Shipping and Handling</b>	USD 42.23
<b>Annual Support Services Fees for 1st Renewal Term</b>	USD 0.00
<b>Taxes</b>	Taxes will be reflected on invoice

**Note: Refer to Exhibit A for Product List.**

**Payment schedule for the balance due is as follows:**

<b>Software/Hardware/Third Party Products/ Bundled Solutions/Professional Services</b>	50% due upon Effective Date. 50% due net 60 days from Effective Date.
<b>Support</b>	Billed annually in advance, due and payable first day of the Support Services Renewal Term.

The payment terms set forth above shall apply to this Sales Order, regardless of terms in any other agreement between parties.

**2. EXECUTION**

This Sales Order is governed by and subject to the Terms and Conditions of Sales Order attached hereto as Exhibit B and made part hereof.

It is the mutual intent of both Parties that this Sales Order constitutes a project separate and independent from any other executed or contemplated order(s). The fees due Merge Healthcare for this Sales Order are separate from any other executed or contemplated order(s), and the payment terms hereof are not intended to be dependent upon or otherwise coincide with performance criteria of any other executed or pending order(s). There are no products or services in this Sales Order that are interrelated or interdependent in terms of design, technology or function or are essential to the functionality of a product in any other executed or contemplated order(s).

Merge Healthcare Solutions Inc. and Delta County Memorial Hospital have caused this Sales Order to be executed by its authorized representatives, effective as of the latter date below ("Effective Date").

**Merge Healthcare Solutions Inc.:**

**Delta County Memorial Hospital**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Unless otherwise set forth as a line item on this Sales Order, travel and living expenses relative to Services will be invoiced in accordance with applicable provisions of the Agreement governing this Sales Order, or in the absence of such provision, in accordance with IBM travel policy.

**Please submit executed proposal via email to whists@us.ibm.com**

Customer Billing Address: Delta County Memorial Hospital  
1501 E 3rd St  
Delta, Colorado 81416-2815

Customer Shipping Address: Delta County Memorial Hospital  
1501 E 3rd Street  
Delta, CO 81416

Customer: By signing above, you are acknowledging that the above-listed billing and shipping addresses are correct for this order. If any changes are necessary please indicate below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please indicate whether this address change should be made  to the Customer account or  for this order only.

If you have an existing Merge Support contract, adding new applications or upgrading software or equipment may change your ongoing Support pricing.

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MERGE HEALTHCARE CONFIDENTIAL INFORMATION. Disclosure of this document to any third party is forbidden without the express written permission of Merge Healthcare.

Exhibit A

Product List

ITEM #	QTY	PART #	DESCRIPTION #	NET PRICE
<b>OS Refresh - Delta County Memorial Hospital</b>				
1	1	HW-UPAX-00150	MERGE UNITY, FAXING, 2 PORT, FOIP EXISTING CUSTOMER - UPGRADE	\$880.00
2	16	PS-UPAX-00002	MERGE UNITY, PROFESSIONAL SERVICE DAY - ACUTE	\$28,800.00
3	32	PS-UPAX-00009	MERGE UNITY, PROJECT MANAGEMENT HOUR	\$7,200.00
<b>Total OS Refresh - Delta County Memorial Hospital</b>				<b>\$36,880.00</b>
<b>Online and Archive Storage move to Customer Supplied Storage - Delta County Memorial Hospital</b>				
4	7	PS-UPAX-00002	MERGE UNITY, PROFESSIONAL SERVICE DAY - ACUTE	\$12,600.00
5	12	PS-UPAX-00009	MERGE UNITY, PROJECT MANAGEMENT HOUR	\$2,700.00
<b>Total Online and Archive Storage move to Customer Supplied Storage - Delta County Memorial Hospital</b>				<b>\$15,300.00</b>

**EXHIBIT B****TERMS AND CONDITIONS OF SALES ORDER**

These Terms and Conditions are attached to the foregoing Sales Order (the "**Sales Order**") issued by Merge Healthcare Solutions Inc., a Delaware corporation and an IBM company, with an office located at 71 South Wacker Drive, 20th Floor, Chicago, Illinois 60606 USA ("**Merge**") regarding the licensing of certain of Merge's proprietary software and/or the purchase and sale of related products and services. These Terms and Conditions, together with the Sales Order to which they are appended, constitute the "**Agreement**", which is entered into as of the Effective Date between Merge and the customer to whom the Sales Order is issued as identified in the Sales Order ("**Customer**"), and this Agreement shall govern the transactions set forth in the Sales Order. In the event terms of the Sales Order conflict with these Terms and Conditions, terms of the Sales Order shall control.

**1. DEFINITIONS.** "**Business Day**" means any day except Saturdays, Sundays and Merge holidays (with a calendar of such holidays being available to Customer at Customer's request). "**Confidential Information**" means information of a Party ("**Disclosing Party**") that the other Party ("**Receiving Party**") receives in connection with this Agreement, which based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential to Disclosing Party, including, without limitation, the Software, Documentation, pricing of Products and Services, provisions of this Agreement and information that is defined as a 'trade secret' under applicable law ("**Trade Secret**"). "**Content**" means and consists of all data, software, and information that Customer or its Authorized Users provides, authorizes access to, or inputs to the Products or Services. "**Documentation**" means user and system administrator guides and manuals and similar documentation generally supplied by Merge assist licensees in the use of the licensed Software. "**First Productive Use**" means, as to the applicable Software, the date that Customer first uses the Software as a method of transmitting and/or processing live data or information for use in a clinical care or commercial setting or otherwise uses the Software for commercial purposes; provided that if Customer has delayed the first use of the Software as set forth above, First Productive Use shall be deemed to have occurred when the Software was installed and first able to process live data in a production environment. "**Hardware**" means the computers, workstations and other devices required to run or use the Software, modality equipment, and/or other equipment that Customer may be purchasing through Merge as specified in the Sales Order. "**Merge Hardware**" means Hardware manufactured by Merge and sold to Customer as set forth in the Sales Order. "**Merge Products**" means Merge Software and Merge Hardware. "**Merge Software**" means Software that is proprietary to Merge and is licensed to Customer as set forth in the Sales Order. "**Party**" means Merge or Customer; "**Parties**" means Merge and Customer. "**Products**" means Hardware and Software. "**Professional Services**" means installation, implementation, integration, configuration, consulting, training and other professional services offered by Merge to Customer. "**Services**" means Professional Services and Support Services. "**Software**" means the software identified in the Sales Order and provided by Merge hereunder, including Updates thereto that Merge provides to Customer. "Software" is the standard version of the applicable software product at the release level current as of the date of the Sales Order and is provided in object or executable code form. "**Support Services**" means the technical support and maintenance of the Products as set forth on Merge's website at <https://www.ibm.com/downloads/cas/P2NR9O76>. "**Third-Party Product**" means a product other than a Merge Product that is identified on the Sales Order as 'Third-Party Hardware', 'Third-Party Software', 'Third-Party Product', or with the name of a Third-Party Vendor. "**Third-Party Vendor**" means a third party vendor from which Merge obtains Third-Party Products. "**Update**" means a version the Merge Software and/or Documentation that is from time-to-time released and that may include updates, modifications, bug fixes, corrections, and feature enhancements to the Merge Software and Documentation. Updates do not include new Merge products or modules that are marketed and priced separately by Merge or releases that materially increase the functionality of the Software. Whether a software release constitutes an Update is in Merge's sole discretion

**2. SOFTWARE LICENSE; OTHER PRODUCT SPECIFIC TERMS.** In the event this Sales Order provides Customer a license to Merge Software to be installed on-premises locally on Customer's systems, then subject to all terms of this Sales Order, Merge grants to Customer a non-exclusive, non-sublicensable, non-transferable license as set forth in the Sales Order in conjunction with the restrictions, terms and conditions set forth in the Special Terms for Local On-Premises Software Installations, as set forth on Merge's website at: <https://www.ibm.com/downloads/cas/ONBMLA8G>. Terms for Merge's cloud-based solutions, if applicable) are set forth on other exhibits to this Sales Order.

**3. PAYMENT; DELIVERY**

**3.1. Payment.** Fees for Products and Services (collectively, "**Fees**") are set forth in the Sales Order. Customer shall pay *Merge's fees on the dates specified in the Sales Order*, and if no date is specified in the Sales Order, Customer shall pay *Merge's invoices within thirty (30) days after the date of invoice. Unless otherwise agreed to in writing, all monetary sums are expressed in and shall be paid in U.S. Dollars. Overdue balances may be assessed interest at the rate of one- and-one- half percent (1.5%) per month, but not more than that allowed by law, and in no event shall this interest provision be construed as a grant of permission for any delay of payment.* Non-payment by Customer shall be deemed a material breach of this Agreement, and in the event any payment or invoice becomes overdue, Merge reserves the right, in addition to its other remedies, to suspend delivery and provision of and access to Products or Services until the account is brought current.

**3.2. Taxes; Freight.** Unless otherwise specifically indicated on the Sales Order, Fees do not include taxes, and Customer agrees to pay all applicable taxes (excluding taxes levied against Merge's taxable income) to Merge or to the proper taxing authority, as applicable. A tax-exempt Customer shall provide an appropriate exemption certificate to Merge. Third-party charges for freight, duty and other similar charges paid by Merge shall be reimbursed by Customer..

**3.3. Delivery.** Products are delivered FOB shipping point ("**Delivery**"), with risk of loss and, when applicable, title passing to Customer at the same point. Notwithstanding the preceding sentence, Merge may, at its option, deliver Software and Documentation to Customer through an FTP or other electronic transmission or download, in which event Merge will provide Customer with a password key (the "**Key**") necessary to download the Software, and provision of the Key to Customer shall constitute Delivery of the Software.

**4. SERVICES.** In the event Customer is purchasing Merge Services under this Sales Order, then in addition to the other terms of this Sales Order, the Services Terms set forth on Merge's website at <https://www.ibm.com/downloads/cas/V10L80ZL> shall apply. *Support Services for On-Premises Installations.* For new licenses of Merge Software installed on-premises, unless otherwise provided in this Sales Order, Support Services shall begin on the effective date of this Sales Order and continue for one year thereafter (the "**Initial Support Services Term**"). Upon expiration of the Initial Support Services Term, Support Services shall automatically renew for consecutive annual periods (each of which shall be referred to as a "**Support Services Renewal Term**"), unless either Party provides the other Party with written notice, at least thirty (30) days prior to the expiration of the then-current Initial

Support Services Term or Support Services Renewal Term, of its intention not to renew Support Services. The fees for the first Support Services Renewal Term may be set forth in the Sales Order, and the annual Support Services fee is due in full at the commencement of each annual Support Services Renewal Term. Merge reserves the right to (i) immediately terminate Support Services in the event Customer is more than thirty (30) days late in payment of any Support Services Fee; and/or (ii) increase the Support Services fee for any future Support Services Renewal Term by not more than 5% (annualized), by providing Customer with advance written notice no less than forty-five (45) days prior to the expiration of the then-current Support Services Renewal Term. If applicable, Merge may readjust the dates for the terms of Support Services and issue prorated invoices so as to synchronize Customer's multiple terms for Support Services

**5. HARDWARE AND THIRD-PARTY PRODUCTS.** In the event Customer is purchasing/licensing Hardware or Third-Party Products under this Sales Order, then in addition to the other terms of this Sales Order, the Hardware/Third-Party Products Terms set forth on Merge's website at <https://www.ibm.com/downloads/cas/KZXWYVJM> shall apply.

## **6. TERM AND TERMINATION**

**6.1. Term.** The term of this Agreement shall commence as of the Effective Date and continue until terminated, as set forth below in Section 6.2 (the "Term").

**6.2. Termination.** Either party may terminate this Agreement i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement and of all Transaction Documents hereunder; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees. Merge may terminate Customer's license to use Merge Software if Customer fails to comply with the Agreement. Customer will promptly destroy all copies of the Merge Software after either party has terminated the license. Failure to pay is a material breach

**6.3. Survival.** All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement, however any Customer license to Software granted hereunder shall terminate with this Agreement

## **7. CONFIDENTIALITY**

**7.1. Obligations as to Confidential Information.** A Receiving Party shall (i) limit access and use of Disclosing Party's Confidential Information to those of Receiving Party's employees and agents that require such access and use in connection with this Agreement and who are bound by confidentiality provisions no less restrictive than those in this Agreement; (ii) not disclose Disclosing Party's Confidential Information to third parties, unless authorized under this Section 7.1; (iii) protect Disclosing Party's Confidential Information as it protects its own Confidential Information, but in any event with not less than a reasonable degree of care; and (iv) not use Disclosing Party's Confidential Information for any purpose except as required to perform its obligations hereunder or as otherwise specifically permitted hereunder. Each Receiving Party shall take appropriate action with its employees, Authorized Users, and other authorized third parties, to satisfy its obligations hereunder. The obligations set forth above in this section shall survive termination of this Agreement and continue thereafter for five (5) years following termination, except that for Confidential Information consisting of a Party's trade secrets, the Confidentiality Period shall be extended for as long as such Confidential Information remains a trade secret. Either Party may disclose the existence and general nature of this Agreement, but may not, without the prior consent of the other Party, disclose the specific terms of this Agreement.

**7.2. Exceptions.** Nothing in this Article shall prevent Receiving Party from disclosing Confidential Information to a third party to the extent that such Confidential Information is: (i) previously known to Receiving Party prior to disclosure by Disclosing Party, without any obligation of confidentiality; (ii) publicly known or becomes publicly known through no breach of this Agreement by Receiving Party; (iii) rightfully received from a third party under no confidentiality obligation with respect to the Confidential Information; or (iv) independently developed by Receiving Party without use of Disclosing Party's Confidential Information.

**7.3. Legally-Compelled Disclosure.** If any judicial, legislative or administrative body seeks to compel disclosure of Confidential Information, Receiving Party shall promptly notify Disclosing Party. Receiving Party will comply with reasonable requests of Disclosing Party to assist Disclosing Party in obtaining a protective order and to prevent or minimize the disclosure of any Confidential Information, and Receiving Party may then disclose Confidential Information only if, and to the extent, required by law.

## **8. INDEMNIFICATION**

### **8.1. Intellectual Property Infringement.**

(a) Indemnity. If a third party asserts a claim against Customer that a Merge Product acquired under the Agreement infringes a patent or copyright, Merge will defend Customer against that claim and pay amounts finally awarded by a court against Customer or included in a settlement approved by Merge, provided that Customer promptly (i) notifies Merge in writing of the claim, (ii) supplies information requested by Merge, and (iii) allows Merge to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

(b) Exclusions. Merge has no responsibility for claims based on non-Merge Products, items not provided by Merge, or any violation of law or third party rights caused by Content, or any Customer materials, designs, specifications, or use of a non-current version or release of a Merge Product when an infringement claim could have been avoided by using a current version or release.

(c) Sole Recourse. This Section 8.1 states Merge's entire liability and Customer's sole and exclusive remedy for any actual or claim of intellectual property infringement by, or with respect to, the Products and Services.

## **9. LIMITATIONS OF LIABILITY**

**9.1. Liability Limitation.** Merge's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Customer up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Product or Service that is the subject of the claim, regardless of the basis of the claim. Merge will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to Merge, its affiliates (including IBM), contractors, subprocessors, licensors and suppliers.

**9.2. Exceptions.** The following amounts are not subject to the above cap: (i) payments to third-party claimants under Merge's indemnification obligation per Section 8.1 above; and (ii) damages that cannot be limited under applicable law.

**9.3. Allocation of Risk.** The provisions of Sections 8 and 9 allocate the risks under this Agreement between Merge and Customer, and the Parties acknowledge that such provisions are a material condition for their respective entry into this Agreement.

#### 10. GOVERNMENTAL MATTERS; HIPAA

**10.1. U.S. Government ("Government") Restricted Rights.** The Merge Software provided under this Agreement is commercial computer software developed exclusively at private expense, and is in all respects the proprietary data belonging solely to Merge or its licensors. Products and Documentation that may be provided to the Government hereunder (by contracts or subcontract) are provided with the most restricted rights and limited rights permitted by law and regulation. Department of Defense: If the Software is acquired by or on behalf of agencies or units of the Department of Defense (DOD), then, pursuant to DOD FAR Supplement Section 227.7202 and its successors (48 C.F.R. 227.7202) the Government's right to use, reproduce or disclose the Software and any accompanying Documentation acquired under this Agreement is subject to the restrictions of this Agreement. Civilian Agency: If the Software is acquired by or on behalf of civilian agencies of the Government, then, pursuant to FAR Section 12.212 and its successors (48 C.F.R. 12.212), the Government's right to use, reproduce or disclose the Software and any accompanying Documentation acquired under this Agreement is subject to the restrictions of this Agreement.

**10.2. Export Controls.** The Parties shall comply fully with all relevant export laws and regulations, including but not limited to the U.S. Export Administration Regulations and Executive Orders.

**10.3. HIPAA.** In the event the Parties do not have a current Business Associate Agreement in force between them, then the Parties agree to the provisions of the Business Associate Addendum set forth on Merge's website at <https://www.ibm.com/downloads/cas/3JOKDN8W>, with the same force and effect as if each Party executed said **Business Associate Addendum** as of the Effective Date of the Sales Order. Customer acknowledges that compliance with HIPAA, HITECH and other privacy and security rules is not solely determined by Products and Services and is a process that involves Customer's systems, facilities and practices.

**10.4. Federal Equal Opportunity Regulations.** The Parties and their subcontractors shall abide by the requirements of 41 CFR 60–300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and against individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

**10.5 Data Processing Protection and Other Data Provisions.** Customer is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, Merge, and its contractors and subprocessors to use, provide, store and process Content in the Services, or maintenance. This includes Customer providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. Customer is responsible for adequate back-up of Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by Merge for an offering, Customer will not input, provide, or allow access to such Content unless specifically permitted in the terms of the relevant Transaction Document or unless Merge has otherwise first agreed in writing to implement additional security and other measures. In regard to the provision of technical support services, as a wholly-owned subsidiary of IBM, Merge uses and complies with the IBM Data Processing Addendum (DPA), which is set forth on IBM's website at <http://www.ibm.com/dpa>, and the applicable DPA Exhibit is set forth as Exhibit B on Merge's website at <https://www.ibm.com/downloads/cas/KO06BOLQ> and supplement the Agreement, applies to the Processing of Personal Data by Merge on behalf of Customer under the Agreement in order to provide and improve the Services and other services that utilize the same underlying technology or tools, and as otherwise set out in the Agreement, if and to the extent (i) the European General Data Protection Regulation (EU/2016/679) (GDPR), and/or (ii) any other data protection laws identified at [www.ibm.com/dpa/dpl](http://www.ibm.com/dpa/dpl) apply to personal data contained in Content. As used in this paragraph, "Content" also includes any information or data Customer may provide, make available or grant access to in connection with Merge providing Services, or maintenance.

**11. GENERAL PROVISIONS. Parties' Relationship; No Third-Party Beneficiaries.** The Parties hereto are independent contractors to one another, and nothing herein shall be deemed to establish a partnership, joint venture or agency relationship between the Parties, and nothing in this Agreement will be construed as giving any right, remedy or claim to an entity other than the Parties, their permitted successors and permitted assigns, and persons and entities expressly indemnified hereunder. **Assignment.** Customer may not assign or transfer its interests, rights or obligations under this Agreement by written agreement, merger, consolidation, operation of law or otherwise, without the prior written consent of Merge. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective permitted successors and assigns. **Notices.** All legal notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or by a commercially recognized national courier (such as Federal Express or UPS), and notices shall be effective upon receipt by the office of the Party to which the notice is directed. Neither Party shall refuse delivery of any notice hereunder. Legal notices hereunder to the Parties shall be to such Party's address set forth on the first page of this Agreement (with legal notices to Merge being directed to the attention of its General Counsel), provided that either Party may, by written notice to the other Party, direct that notices be sent to a different address. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of law or to the United Nations Convention on Contracts for the International Sale of Goods. **Equitable Relief.** Each Party agrees that, in the event injunctive or other equitable relief is appropriate to enforce compliance with confidentiality, license or property provisions of this Agreement, then such relief shall be in addition to any other remedies available to the aggrieved Party and that the aggrieved Party shall be entitled to seek such equitable relief without the requirement of any bond or security and without the necessity of having to establish the failure of legal remedies. **Force Majeure.** Neither Party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, internet accessibility, utilities outage, inability to obtain products from a third party supplier, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control (collectively, a "**Force Majeure Event**"). The performance of the Party suffering the Force Majeure Event shall be excused and the time for performance shall be extended for the period of delay or inability to perform due to such Force Majeure Event. **Contract Construction.** This Agreement will not be presumptively construed in favor of or against either Party, including the Party that drafted the Agreement. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. **Severability.** If any term or condition of this Agreement is determined by a court of law (or arbitration proceeding to which both Parties are parties) to be invalid or unenforceable in whole or in part for any reason, this Agreement shall, to the greatest extent permitted by law, be reformed so as to be valid and enforceable consistent with the intention of the Parties as expressed herein. **No Waiver.** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or excuse is in writing signed by the Party granting such waiver or excusing such breach. No consent to or waiver of a breach shall be deemed as a consent to, waiver of, or excuse for any different or subsequent breach by such Party. **Entire Agreement.** This Agreement, including the Schedules hereto and all Sales Orders hereunder, constitutes the entire agreement



between the Parties with respect to the subject matter hereof, and supersedes all proposals, purchase orders, previous agreements, understandings, representations and any other communications (whether written or oral) between the Parties relating thereto. The terms and conditions contained in any purchase order or other purchase document issued by Customer or by any other party on Customer's behalf (collectively, "Purchase Order") shall be of no legal force or effect, even if such Purchase Order is delivered to Merge; such Purchase Order is signed or otherwise accepted by a Merge employee; and/or Merge provides Products and/or Services pursuant to such Purchase Order. **Order Independence.** This Sales Order is an order separate and independent from any other executed or contemplated order(s). Any fees due Merge for this Sales Order are separate from any other executed or contemplated order(s), and the payment terms for this Sales Order are not intended to be dependent upon or otherwise coincide with performance criteria of any other executed or pending order(s). No products or services that are the subject of this Sales Order are interrelated or interdependent in terms of design, technology or function or are essential to the functionality of a product in any other executed or contemplated order(s). **Amendment.** This Agreement may not be modified, except by a written amendment instrument that expressly refers to this Agreement and is signed by authorized representatives of each Party. **Business Contact Information.** Merge and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information of Customer, its personnel and authorized users, for example name, telephone, address, email and user IDs for business dealings with them. Where notice to or consent by the individuals is required for such processing, Customer will notify and obtain such consent. **Account Data.** "**Account Data**" is information Customer provides to Merge, other than Customer Content, about Customer or its users that Merge needs to enable Customer's use of Services or information concerning such use. Merge, its Affiliates, and their third party contractors and subprocessors may process, store and use Account Data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the Services. Merge, its contractors and subprocessors may process, store and use Account Data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the Services as described in IBM's Online Privacy Statement available at <http://www.merge.com/common/privacy.aspx>. **Execution.** This Agreement and Sales Order may be executed by the Parties in counterparts and may be executed and delivered by facsimile or by email. A signed document transmitted as an electronic document (such as a PDF) via email or other electronic means shall be afforded the same weight as a document with original ink signatures, and all such counterparts and electronic documents shall together constitute one and the same agreement