

CA EUROPE Sarl (“CA”)

MSP LICENSE TERMS (“Terms”)

These Terms are applicable to partners who purchase CA Software obtained from a CA affiliate (“Local CA”) for the purpose of providing a managed service offerings to its End Users (defined below). By using the CA Software, the Partner (defined below) confirms that it has read and agreed to the Terms. Unless otherwise stated, the Terms supersede any other license agreement of the CA Software including any license embedded in the CA Software which shall not apply to Partner.

1. CA Europe s.a.r.l. (“CA”) licenses to Partner the CA software program(s) set out on the order form with Local CA under the following terms and conditions and License SPD (defined below). These Terms shall override all but sections 1-4 of the applicable License SPD.
2. In the event of any conflict between these Terms and the applicable License SPD (as defined below), these Terms shall control.
3. **Definitions:**
 - 3.1 **“Authorized Users”** means Partner’s employees and independent contractors and employees and independent contractors of End User (but excluding any outsourcer, facilities management providers or application service provider).
 - 3.2 **“CA Software”** means the program(s) licensed pursuant to these Terms, and any fixes, patches, updates, upgrades, or other software provided to Partner as part of Support (as defined below).
 - 3.3 **“Documentation”** means the documentation, technical product specifications, user manuals, and/or guidelines published by CA or any CA group company that is made generally available with CA Software.
 - 3.4 **“End User”** means an unaffiliated, third-party customer of Partner domiciled within EMEA that receives Managed Services for such third party’s internal business purposes from Partner and whose name and address have been stated in the applicable order form or for Subscription Licences has been stated in reports provided to Local CA.
 - 3.5 **“License SPD”** means the Specific Program Documentation for the CA Software located at <http://www.ca.com/licenseagreement> or referred to in the order form with Local CA.
 - 3.6 **“Maintenance”** means the provision of new Releases made available while on active Support or new Versions if applicable to the generally available CA Software licensed by Partner and provided by Local CA.
 - 3.7 **“Managed Services”** means the services provided by Partner to End Users using the CA Software and Partner’s intellectual capital and/or additional services supplied by the Partner.
 - 3.8 **“Partner”** means the legal entity being granted the license to use the CA Software under these Terms, also referred to as Customer or Licensee.
 - 3.9 **“Perpetual Licence”** means a license to use CA Software for an indefinite period.
 - 3.10 **“Release”** means a general available release of a CA software product, which may contain minor new software product functionality, code, or compatibility and incorporates all previous fixes (if any exist) since the last Version. Typically, a Release requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by CA for a particular product, a Release is tied to the preceding Version and is typically designated by a number to the right of the decimal point such as 1.1, 1.2, 1.3, etc.
 - 3.11 **“Subscription License” or “UMF License”** (Usage and Maintenance Fee) means a license to use CA Software for a specific period of time which shall include Support from Local CA unless otherwise stated in the order form from Local CA.
 - 3.12 **“Support”** means the provision of technical support and Maintenance purchased from Local CA provided for a particular CA Software, as further defined in the applicable order form from Local CA.
 - 3.13 **“Territory”** means the territory specified in the applicable order form from Local CA, in the section entitled “Territory”.
 - 3.14 **“Version”** means a release of a CA Software product that contains major changes in software product functionality, code, or compatibility and incorporates the previous release (if one has occurred), fixes and service Packs (if they have occurred). Typically, a Version requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by CA Europe for a particular product, a Version is designated by the number to the left of the decimal point such as 1.0, 2.0, 3.0, etc.

4. Licensing terms

- 4.1 **License Grant.** The license granted to Partner is a limited, non-exclusive, non-transferable and Territory wide license to use the CA Software in object form and solely for providing Managed Services offering to End User(s). Partner's use of the license shall extend to use by Partner and Partner's Authorized Users. Use of the CA Software by Authorized Users shall at all times remain Partner's responsibility and liability. Partner may use the CA Software for the operation of End User's internal data processing. Partner may transfer such CA Software to new hardware, site or location within the Territory upon prior written notice to Local CA entity from which Partner purchased the CA Software. The licensing model for each CA Software program is set forth in the applicable License SPD for that CA Software.
- 4.2 **Use Prohibitions.** Except as expressly authorized by these Terms, Partner may not: (a) copy, reproduce, distribute or disclose the CA Software, provided that Partner may make a reasonable number of copies of the CA Software for bona fide "cold standby" disaster recovery, backup and archival purposes and may use such copy for reasonable testing and in the event of a bona fide disaster recovery event. Maintaining copies of the CA Software in a "hot standby" environment or further or additional use of the CA Software for disaster recovery, backup or archival purposes shall be subject to payment by Partner of the applicable fees to Local CA; (b) modify, unbundle, or create derivative works of the CA Software; (c) rent, sell, lease, assign, transfer or sublicense the CA Software or use the CA Software to provide hosting, service bureau, on demand or for the benefit of a third party (other than as authorized herein); (d) remove any proprietary notices, labels, or marks on or in any copy of the CA Software or Documentation or any CA Software or materials in which the CA Software or Documentation or portions thereof are embedded; (e) use the CA Software in any manner that exceeds or is broader than the uses licensed to Partner; or (f) reverse assemble, decompile, reverse engineer or otherwise translate the CA Software, except to the extent specifically permitted by applicable law without the possibility of contractual waiver. All rights not specifically granted hereunder are expressly reserved.
- 4.3 **Redeployment Rights.** Upon cessation of providing Managed Services to a specific End User, the Partner may redeploy any Subscription Licences used to provide Managed Services for such End User to provide Managed Services to another End User for the then-remaining duration of the term of a Subscription Licence. For Perpetual Licences the Partner shall not have a redeployment right.

5. General Terms.

- 5.1 **Export Rules.** Partner agree that the CA Software is subject to export controls of the United States of America and import controls of any other country in which the CA Software may be used. Partner agree to export, re-export or import CA Software only in compliance with such laws and controls
- 5.2 **Applicable Law.** Both Partner and CA consent to the application of the same laws as are applicable to the contract through which Partner purchased the license of the CA Software to govern, interpret and enforce these Terms without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms.
- 5.3 **Limitation of Liability.**
- 5.3.1 Except for death or personal injury caused by the negligence or willful default of CA, and subject to 5.3.3, CA's liability to Partner for direct damages, loss or liability for any cause whatsoever, except as otherwise stated in this Section 5.3, and regardless of the form of action will be limited to the total amount of fees paid by the Partner solely for the specific CA Software that caused the damage or gave rise to the cause of action, with the exclusion of any Support fees.
- 5.3.2 THE REMEDIES PROVIDED IN THESE TERMS ARE THE EXCLUSIVE REMEDIES OF THE PARTIES. IN NO EVENT SHALL CA BE LIABLE TO PARTNER OR ANY OTHER PARTY, WHETHER IN CONTRACT OR TORT, OR OTHERWISE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR UNFORESEEABLE LOSS, DAMAGE OR EXPENSE, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF OPPORTUNITY, LOSS OR CORRUPTION OF DATA, HOWEVER ARISING, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES BEING INCURRED.
- 5.3.3 The parties agree the limitations and exclusions herein are fair and reasonable in all the circumstances of these Terms.
- 5.4 **Warranty.**
- 5.4.1 CA warrants to Partner that: (a) it has the authority to grant Partner the rights and licenses mentioned herein and (b) for the period of ninety (90) after delivery of the CA Software and subject to the CA Software being used in an operating environment stated in the Documentation as supported by CA, the CA Software will materially conform to the specifications in the Documentation for such CA Software. If it is established that CA has breached the warranty in subsection (b) above, CA's only obligation and Partner's exclusive remedy shall be for CA to, at its option, (1) use reasonable efforts to cure the defect

in the CA Software; (2) replace the CA Software with CA Software that materially conforms to the specifications in the Documentation; or (3) terminate the CA Software license and arrange a pro rata refund of the fees that Partner has paid under the applicable order form. The pro-rata refund shall be calculated on the number of months left remaining on the term of a Subscription License for the applicable CA Software, or if the CA Software is licensed under a Perpetual License, using (only for purposes of a refund calculation) an amortization schedule of three years. Any refund of fees paid in accordance with the warranty provisions herein will terminate the license of the affected CA Software.

5.4.2 This warranty and the remedies offered are applicable only if: (a) the reported error or defect is reasonably reproducible by CA; (b) Partner reports the alleged breach with reasonable specificity in writing within thirty (30) days from its occurrence; (c) Partner provides CA with reasonable assistance in the diagnosis and remedy of the applicable breach; (d) Partner has installed and is using all updates, patches and fixes made available by CA for the affected CA Software; (e) Partner has complied in all material respects with these Terms and the applicable License SPD and has materially complied with the Documentation for the affected CA Software; and (f) the error or defect is due solely to an error or omission on the part of CA, its agents, affiliates or employees.

5.4.3 These warranties are Partner's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, the implied warranties of satisfactory quality, non-infringement and fitness for a particular purpose. CA does not warrant that the CA Software will meet Partner's requirements or that use of the CA Software will be uninterrupted or error-free. Some states or jurisdictions do not allow the exclusion of certain express or implied warranties, so the above exclusion may not apply to Partner. If permitted by applicable law: such warranties are limited in duration to the warranty period specified for the subject CA Software. No warranties of any kind apply after that period. Some states or jurisdictions do not allow such limitations so to that extent the foregoing limitation may not apply to Partner. If Partner claims under this warranty section, Partner is not entitled or eligible to seek for the same warranty remedies from any other party under any another warranty provision.

5.5 **Ownership and Proprietary Information.** Title to, ownership of, and all rights in the intellectual property, including but not limited to patents, copyrights, trademarks, and trade secrets in the CA Software and Documentation, any derivative works thereof, and any goodwill accruing from the use of such CA Software and Documentation, belong exclusively to and shall remain with CA and/or its licensors. Partner shall not make available or disclose such intellectual property to any third parties except as expressly permitted by these Terms, and shall take appropriate action, including by instruction or agreement with Partner's employees who are permitted access to such information, to satisfy Partner's obligations hereunder.

5.6 **Assignment.** Partner may not assign the Terms, the use of any CA Software or Partner's rights and obligations under these Terms without the prior written consent of CA. These Terms shall be binding on the parties and all of their respective successors and assigns. CA may assign these Terms and its rights or interest in the CA Software and any license granted by written notice to Partner.

5.7 **Termination.** CA may terminate these Terms as well as revoke the license hereby granted in the event of a breach by Partner and/or End Users of these Terms and/or the License SPD and/or the order form under which Partner has purchased the CA Software and/or applicable Support.

6. Third Party Information and Terms

If the CA Software contains third-party software components, and the third-party licensor requires incorporation of specific license terms and conditions for such software into this CA license, those third-party software components and their specific terms and conditions, which are incorporated by this reference, are set forth in the Third Party Terms document located at <https://support.ca.com/prodinfo/tpterms>.