

Specific Program Document (“License SPD”)

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2. **Program Name: CA NetQoS NetVoyant**

3. **Specified Operating Environment**

The CA Software's specifications and specified operating environment information may be found in the Documentation accompanying the CA Software, if available (e.g., a user manual, user guide, or readme.txt or notice.txt file). “Documentation” means (a) with respect to CA Software: only standard specifications, user documentation, and technical manuals and guides provided with the CA Software (some or all of which may be in English only) and (b) with respect to Maintenance and warranty support: CA's external policies covering the scope and nature of Maintenance and warranty support available to CA customers can be found at <http://www.support.ca.com>.

4. **Licensing Model**

The CA Software is licensed by the number of Devices specified in the order form (the “Authorized Use Limitation”). “Device” means a network-connected device that is managed by the CA Software and uses an Internet Protocol (“IP”) address, including but not limited to IP and hybrid telephony devices, routers, appliances, hubs, physical servers, single-flow interfaces, and physical machines. Endpoint devices used solely as IP telephones are not considered to be Devices, unless the CA Software is specifically licensed by the number of phones. For the purposes of CA NetQoS Unified Communication Monitor only, endpoint devices used solely as IP telephones are considered to be Devices. When the Authorized Use Limitation is “Device”, the calculation with respect to the number of Licenses is determined as follows:

1. For network-connected devices, in non-virtual server environments, for any device with up to five (5) IPflow interfaces, count the number of devices. For any device with greater than five (5) IPflow interfaces, count the total number of IPflow interfaces. Divide the number of IPflow interfaces by five (5) and round up to the next whole number.

2. For network-connected devices, in non-virtual server environments, for any device with up to two hundred (200) ports, count the number of devices. For any device with greater than two hundred (200) ports, count the total number of ports. Divide the number of ports by two hundred (200) and round up to the next whole number.

For avoidance of doubt, when a single network-connected device, in non-virtual environments, has greater than five (5) IPflow interfaces and greater than two hundred (200) ports, the device is included in the license count that results in the highest number of licenses. For example, a device with fifty (50) IPflow interfaces and six hundred (600) ports would be included in the license count based upon the number of IPflow interfaces ($50/5 = 10$ licenses while $600/200 = 3$ licenses).

5. **Licensing terms**

5.1. License grant. The license granted to Customer is a limited, non-exclusive, non-transferable and territory wide license. The “Territory” is specified in the applicable order form, in the section entitled

“Territory”. Customer’s use of the license shall extend to use by Customer and Customer’s Authorized End Users. “Authorized End Users” means Customer and Customer’s Affiliate’s employees and independent contractors (but excluding any outsourcer, facilities management providers or application service provider). Use of the CA Software by Authorized End Users shall at all times remain Customer’s responsibility and liability. Customer may use the CA Software for the operation of Customer’s Affiliate’s internal data processing where an “Affiliate” shall mean any entity for which Customer holds greater than a fifty percent (50%) interest or, by force of law or contract but only for so long as Customer maintains that interest. Customer may transfer such CA Software to new hardware, site or location within the Territory upon prior written notice to CA and such transfer might be subject to the payment of additional fees to the local CA entity from which Customer has purchased the CA Software.

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6.2. Applicable Law. Both Customer and CA consent to the application of the same laws as are applicable to the contract through which Customer purchased the license of the CA Software to govern, interpret and enforce this License SPD without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this License SPD.

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6.3.1. CA’s liability shall, regardless of the reason for the liability, be unlimited in cases of death or bodily injury or injury of health and damages caused by gross negligence or willful default of CA or the grossly negligent or willful default of CA’s legal representatives or persons whom CA occupies with the performance of its contractual obligations and in cases of liability under the Product Liability Act.

6.3.2. In case of slight negligence CA shall, regardless of the reason for the liability, only be liable, if and to the extent of a violation of an obligation which is essential for the execution of this Agreement

("Kardinalpflicht"). In this case, CA's liability to Customer will be limited to damages which have been foreseeable and which can typically arise in connection with this Agreement.

Further to the above CA's liability to the Customer for indirect, special and consequential damages (including, without limitation, loss of profits, loss of business, loss of opportunity or loss of goodwill) shall be limited to damages which have been foreseeable and which can typically arise in connection with this Agreement

6.3.3. It is the parties' understanding that the foreseeable damages that can typically arise in connection with the licenses made available in this Agreement in the meaning of section 6.3.2 above will not exceed the total amount of fees paid by the Customer solely for the specific CA Software that caused the damage or gave rise to the cause of action, with the exclusion of any Maintenance fees.

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6.3.5. The parties agree the limitations and exclusions herein are fair and reasonable in all the circumstances of the Agreement.

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6.4.2. If the defect cannot be cured within a reasonable period of time or if the rectification of the defect or replacement has finally failed, Customer shall have the right

(i) in case of a subscription license to have the fees agreed reasonably reduced and/or terminate immediately for cause, if the legal or statutory requirements are met;

(ii) in case of a perpetual license, at its option, (1) to rescind from the Agreement or have the fees agreed in the applicable order form reduced and (2) claim damages or to claim reimbursement of futile expenditures. The right to claim damages or futile expenditures shall be subject to the limitations of liability set forth above in section 6.3.

6.4.3. In case of a perpetual license the warranty claims stated herein shall become time-barred within 1 year after delivery of the CA Software.

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