

## **1. INTRODUCTION**

- 1.1 This Foundation Agreement (“Foundation Agreement”) between the applicable Regional CA Entity set forth in the referencing Transaction Document, a Broadcom Inc. company, (“CA”) and your organization (“Customer”), is effective on the date set forth in the referencing Transaction Document which identifies the “Start Date” and specifies the terms and conditions agreed between the Parties as a foundation for their relationship as further defined in the applicable Modules.
- 1.2 With respect to the CA Offering, additional terms shall be included in a Module, while terms specific to each individual order from Customer or CA Partner shall be set forth in the Transaction Document(s) for such order.
- 1.3 This Foundation Agreement may incorporate any applicable Module referenced in the “Governing Contract” section of the applicable Transaction Document.

## **2. DEFINITIONS**

- 2.1 “Agreement” means this Foundation Agreement, the applicable Module, the applicable Transaction Document, and any document incorporated expressly therein by reference.
- 2.2 “Affiliate” shall mean any person or entity which directly or indirectly owns, controls, is controlled by, or is under common control with a party, where control is defined as owning or directing more than fifty percent (50%) of the voting equity securities or a similar ownership interest in the controlled entity.
- 2.3 “CA Offering” means the individual offering (such as software, services, education, software as a service or support).
- 2.4 “CA Partner” means an authorized reseller selected by the Customer.
- 2.5 “CA Software” means the computer software programs, either provided individually or packaged as a software appliance, made generally available and licensed to a Customer under the applicable Module pursuant to the applicable Transaction Document including all versions and releases, provided as part of CA Maintenance if applicable.
- 2.6 “Confidential Information” means any information, maintained in confidence by the disclosing Party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or any information that by its form, nature, content or mode of transmission would to a reasonable recipient be deemed confidential or proprietary, including, without limitation, CA Offerings, Documentation, the Agreement, CA provided pricing, and any benchmark data and results produced.
- 2.7 “Documentation” means the technical product specifications and/or user manuals, published by CA or a CA Affiliate.

- 2.8 “Module” means the additional terms and conditions applicable to a CA Offering.
- 2.9 “Party” or “Parties” means individually and/or collectively CA and/or the Customer.
- 2.10 “Personal Data” means any information relating to (i) an identified or identifiable person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable data protection laws), provided in connection with the Agreement.
- 2.11 “Taxes” means any applicable sales tax, value-added tax (VAT), goods and services tax (GST), consumption tax, ISS, PIS and COFINS or any other applicable taxes.
- 2.12 “Term” means the period during which the CA Offering is provided as specified in the Transaction Document.
- 2.13 “Transaction Document” means a signed mutually agreed ordering document such as a CA order form, or statement of work for the specific CA Offering licensed or purchased.

### **3. ORDERING AND DELIVERY**

- 3.1 Under the terms of this Agreement, Customer and any Customer Affiliate incorporated in the same jurisdiction as Customer, may purchase directly from CA or through a CA Partner, and CA shall provide the specific CA Offering subject to the terms of the applicable Module. All Customer Affiliates incorporated in a different jurisdiction than Customer, must sign a participation agreement with CA to adopt and adhere to the terms of this Agreement.
- 3.2 Autorenewal. The Transaction Documents, and/or transactions through a CA Partner under this Foundation Agreement and the applicable Module(s), shall be automatically renewed for successive one (1) year terms thereafter (each a “Renewal Term”) unless either Party provides the other Party with written notice of non-renewal forty-five (45) days prior to the end of the initial Term or the Renewal Term. CA will invoice Customer, or CA Partner, as applicable, at least thirty (30) days prior to the expiration of the initial Term or the Renewal Term.
- 3.3 The CA Offerings, (and any hardware components if included within your Transaction Document), will be delivered either in tangible media FCA SD (FCA Shipping Dock), as defined in INCOTERMS 2010, from CA’s shipping point as indicated in the Transaction Document or by electronic delivery (ESD). Customer agrees to be responsible for all customs, duties, import clearances, title, and risk of loss to any CA hardware, if included, will pass upon point of delivery to Customer’s carrier at CA’s shipping location.
- 3.4 In the event of a payment or set off issue relating to one CA Offering, such payment issue shall not impact any other obligation to pay for any CA Offering provided to Customer.

#### **4. CONFIDENTIALITY**

- 4.1 The Parties agree that when receiving Confidential Information from the disclosing Party, that the receiving Party shall hold it in confidence and shall not disclose or use such information except as necessary to carry out the purpose of this Agreement. The receiving Party shall treat the disclosing Party's Confidential Information confidentially and in the same manner as it treats its own proprietary and/or confidential information, which shall not be less than a reasonable standard of care. Confidential Information may be disclosed to receiving Party's employees, affiliates, agents, financial advisors, contractors and attorneys on a need-to know basis and the receiving Party shall ensure that such persons preserve and use such Confidential Information pursuant to the terms of the Agreement.
- 4.2 The receiving Party shall be permitted to disclose Confidential Information in connection with a judicial or administrative proceeding to the extent that such disclosure is required under applicable law or court order, provided that the receiving Party shall, where reasonably possible, give the disclosing Party prompt and timely written notice of any such proceeding and shall offer reasonable cooperation in any effort of the disclosing Party to obtain a protective order.
- 4.3 For the purposes of the Agreement, Confidential Information shall exclude: (i) information which the receiving Party has been authorized in writing by the disclosing Party to disclose without restriction; (ii) information which was rightfully in the receiving Party's possession or rightfully known to it prior to receipt of such information from the disclosing Party; (iii) information which was rightfully disclosed to the receiving Party by a third Party having proper possession of such information, without restriction; (iv) information which is part of or enters the public domain without any breach of the obligations of confidentiality by the receiving Party; and (v) information which is independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information.
- 4.4 Nothing in the Agreement will (i) preclude CA from using the ideas, concepts and know-how which are developed in the course of providing any CA Offerings to Customer or (ii) be deemed to limit CA's rights to provide similar CA Offerings to other customers. Customer agrees that CA may use any feedback provided by Customer related to any CA Offering for any CA business purpose, without requiring consent including reproduction and preparation of derivative works based upon such feedback, as well as distribution of such derivative works.
- 4.5 The receiving Party agrees, upon request of the disclosing Party, to return to the disclosing Party all Confidential Information in its possession or certify the destruction thereof.
- 4.6 In the event of a breach of this section, the disclosing Party may not have an adequate remedy at law. The Parties therefore agree that the disclosing Party may be entitled to seek the remedies of temporary and permanent injunction, specific performance or any other form of equitable relief deemed appropriate by a court of competent jurisdiction. For any Customer or CA Confidential Information that constitutes a trade secret under applicable law, the obligations of this section will continue for so long as such trade secret status is maintained by the disclosing Party. For all other

Confidential Information, the foregoing obligations shall extend for five (5) years from the date of initial disclosure.

## **5 FEES**

- 5.1 Unless an alternative date of payment is set out on the Transaction Document, payment is due upon CA's due date as specified on the invoice. Customer agrees to pay Taxes in addition to the fees when such payments are due. Customer (a) may only withhold tax as required by law, subject to the application of any reduced rate allowed in an income tax treaty or otherwise, (b) shall request all documentation required for the reduction of withholding tax, and (c) shall provide proof of payment of the withholding tax for credit relative to the applicable invoice(s).
- 5.2 If indicated on the Transaction Document, Customer may pay initial payment due on or before the due date (as stated in the applicable Transaction Document) through a same day fed wire. For other payments required by Customer, CA, or CA Partner, will send Customer an invoice containing updated wire transfer information at least thirty (30) days prior to each respective due date or as otherwise agreed to between Customer and the CA Partner.
- 5.3 A Customer issued purchase order may be used to accept terms of a Transaction Document in place of a signature on the Transaction Document itself as long as Customer references a Transaction Document including the appropriate reference number if applicable.
- 5.4 In the event a payment due date falls on a weekend or a holiday the payment shall be payable by Customer to CA on the business day immediately prior to such date.
- 5.5 If any portion of Customer's account that is not subject to a bona fide dispute between the parties is overdue to CA or the CA Partner, CA reserves the right, with ten (10) business days prior written notice, to withhold performance of its obligations under the Agreement, without liability, until such amounts are paid in full.
- 5.6 During the Term, CA may increase the fees hereunder for the CA Offerings up to 5% annually by providing Customer with advance notice including through pricing notices posted at the CA support website no less than ninety (90) days prior to such changes taking place but in no event will CA purport to effect a price change while in any particular calendar year (i.e., price changes will only be effective on January 1 of the year following that in which notice was provided).
- 5.7 CA may assign its payment rights, or grant a security interest in, this Agreement and any Transaction Document hereunder to a third party without requiring such third party to be liable for the obligations of CA under this Agreement or Transaction Document, provided CA remains directly responsible for performance of its duties hereunder and that Customer's obligations are not otherwise affected.
- 5.8 In the event Customer orders a CA Offering through a CA Partner (or that partner's resale channel), this Foundation Agreement, excluding all of Section 5 (except Section 5.5), shall apply to Customer.

## **6 TITLE**

- 6.1 CA retains all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all CA Offerings and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under the Agreement is exchanged between the Parties.

## **7 WARRANTY**

- 7.1 Each Party represents and warrants that it has the legal power to enter into the Agreement.
- 7.2 CA represents and warrants that it owns or otherwise has sufficient rights to grant Customer the rights defined in any Transaction Document and/or Module.
- 7.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ABOVE WARRANTIES AND THOSE SET FORTH WITHIN THE APPLICABLE TRANSACTION DOCUMENTS AND/OR MODULES ARE THE SOLE WARRANTIES PROVIDED BY CA. NO OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR SUITABILITY AND/OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, INCLUDING THAT THE CA OFFERING IS ERROR FREE, ARE MADE BY CA OR ITS SUPPLIERS.

## **8 INDEMNIFICATION**

- 8.1 CA will indemnify, defend and/or, at its option, settle any third party claims that Customer's use of the specific CA Offering licensed or purchased by Customer under this Agreement infringes any valid US patent or copyright within the jurisdictions where Customer is authorized to use the CA Offering at the time of delivery provided that: (i) Customer gives CA prompt written notice thereof and reasonable cooperation, information and assistance in connection therewith; (ii) CA shall have sole control and authority with respect to defense or settlement thereof; and (iii) Customer takes no action that is contrary to CA's interest. CA may, at its option and expense: (a) procure for Customer the right to continue to use the CA Offering; (b) repair, modify or replace the CA Offering so that it is no longer infringing; or (c) provide a pro-rated refund of the fees paid for the CA Offering (directly or through the CA Partner) which gave rise to the indemnity calculated against the remainder of the Term from the date it is established that CA is notified of the third party claim. If the CA Offering is CA Software, and is licensed on a perpetual basis, an amortization schedule of three (3) years shall be used for the basis of the refund calculation.
- 8.2 CA shall have no liability: (i) in the event the allegation of infringement is a result of a modification of the CA Offering except a modification by CA, (ii) if the CA Offering is not being used in accordance with CA's specifications, related documentation and guidelines, (iii) if the alleged infringement would be avoided or otherwise eliminated by the use of a CA published update or patch, (iv) if the alleged infringement is a result of use of the CA Offerings in combination with any third party product, or (v) if the applicable fees due for the specific Transaction Document have not been paid or Customer is otherwise in breach of this Agreement. The indemnifications contained herein shall not apply and CA shall have no liability in relation to any CA Offering produced by CA at the specific direction of Customer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE

FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CA REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO CUSTOMER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

- 8.3 Each Party shall indemnify the other against all damages, fees, (including reasonable attorney's fees) fines, judgments, costs and expenses finally awarded as a result of a third party action alleging a bodily injury or death which arises under the Agreement, provided that such liabilities are the proximate result of gross negligence or intentional tortuous conduct on the part of the indemnifying Party.
- 8.4 Customer shall indemnify CA against any claim that any data, materials, items or information supplied to CA under the Agreement infringes any US patent, copyright or trademark within the jurisdictions where CA is provided with such information.

## **9 LIMITATION OF LIABILITY**

- 9.1 EXCEPT IN THE CASE OF A BREACH OF CONFIDENTIALITY, TITLE, AND OF THIRD PARTY CLAIMS ARISING UNDER THE INDEMNIFICATION SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW A) NEITHER PARTY (INCLUDING ANY OF CA'S SUPPLIERS) SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT NECESSARILY LIMITED TO, LOSS OF PROFIT, DAMAGES RELATING TO MONIES SAVED OR FEES GENERATED AND OR ANY LOSS OF CUSTOMER DATA BY USE OF ANY CA OFFERING, REGARDLESS OF WHETHER A PARTY WAS APPRISED OF THE POTENTIAL FOR SUCH DAMAGES; AND B) IN NO EVENT WILL A PARTY'S LIABILITY FOR DIRECT DAMAGES, EXCEED TWO TIMES THE AMOUNTS PAID BY CUSTOMER FOR THE CA OFFERING THAT GAVE RISE TO THE BREACH IN THE TWELVE MONTHS PRIOR TO THE DATE SUCH BREACH OCCURRED.

## **10. TERM & TERMINATION**

- 10.1 This Foundation Agreement shall continue in effect unless otherwise terminated in accordance with this section.
- 10.2 This Foundation Agreement and/or applicable Module(s) and/or the applicable Transaction Document may be terminated by either Party (a) upon a material breach by the other Party, provided that, in each instance of a claimed breach: (i) the non-breaching Party notifies the breaching Party in writing of such breach; and (ii) the breaching Party fails to either cure such breach within thirty (30) days (or such other period as mutually agreed by the Parties) from receipt of such notice; (b) upon insolvency of the other Party, if permitted by law. The foregoing notwithstanding, any breach by Customer of licenses granted pursuant to this Agreement shall constitute an incurable material breach by Customer; and, CA may immediately terminate said licenses upon written notice to Customer. Such termination shall not relieve Customer from its obligations as set forth within the related Transaction Document.

10.3 Termination does not release either Party from any liability which, at the time of such termination, had already accrued to the other Party or which is attributable to a period prior to such termination, nor preclude either Party from pursuing any rights or remedies it may have under law or in equity with respect to any breach of this Foundation Agreement or the Agreement. Excepting for termination based on CA's uncured material breach, all fees are non-cancellable and non-refundable unless a prorated refund applies. In the event of termination by CA for an uncured material breach by Customer, all fees shall immediately become due and payable.

10.4 Customer may terminate this Agreement as well as any and all other agreements under which Customer may procure any CA offering together with each and all Transaction Documents (or any order forms or other ordering documents) in effect between the Parties as of the date of termination (collectively, for purposes of this section, the "Agreement"), without cause and without further charge or expense at any time, immediately upon written notice to CA sent to usagereporting@ca.com. On or after the termination date, with the exception of any fully paid-up Perpetual Licenses if the termination is effective after the initial Term, Customer must either: a) delete all full or partial copies of the CA Software from all computing or storage equipment, and verify such deletion in a statement signed by a Vice-President or a duly authorized representative and sent to usagereporting@ca.com, or b) return to CA all full or partial copies of the CA Software. Once Customer's verification or the CA Software copies are received, CA will pay Customer, or CA Partner, a pro-rata refund of any License, SaaS and/or Support fees Customer or CA Partner pre-paid ("Refund Fees") in accordance with the paragraph below. Refund Fees will be calculated on the number of months remaining in the Term of the applicable Transaction Document. If the CA Software is licensed under a Perpetual License, Customer, or CA Partner as appropriate, will receive a pro-rated refund of the License Fee paid to CA only if notice of termination is issued during the initial Term of the applicable Transaction Document.

10.5 Notwithstanding Section 10.4, if the Agreement is terminated without cause, neither Party shall have further obligations under the Agreement, except that the Parties shall remain bound by the obligations within the Survival section of this Foundation Agreement. Refund Fees will be paid within sixty (60) days to Customer (or CA Partner who will process the invoicing or reimbursement of fees to Customer as appropriate and under the commercial terms between the CA Partner and Customer), from the termination date, and any unpaid fees reflecting the Services (defined as may be applicable: software license, SaaS, maintenance and professional services for purposes of this section) delivered prior to the termination date shall become immediately due.

**11. GOVERNING LAW AND DISPUTE RESOLUTION**

11.1 Choice of Law; Venue. Depending on the Regional CA Entity that is a Party to this Agreement, the exclusive governing law, jurisdiction, designated arbitral body, arbitration rules and seat shall be as set forth below; except for any action related to non-payment, which may be brought in any court of competent jurisdiction:

Regional CA Entity	Governing Law	Jurisdiction	Arbitration Organization, Rules, and Seat
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CA, Inc. 1320 Ridder Park Drive, San Jose, CA 95131	State of California	State and/or Federal Courts located in Santa Clara County, California	The American Arbitration Association (“AAA”); AAA Commercial Arbitration Rules; Seat of arbitration in California.
CA Europe Sarl Route de la Longeraie 9, 1110 Morges Switzerland	Switzerland	State and/or Federal Courts located in République et canton de Genève, Switzerland	International Chamber of Commerce (“ICC”); ICC Rules of Arbitration; Seat of arbitration in Geneva.
CA Programas de Computador, laws of Brazil; the exclusive jurisdiction of the State located in São Paulo, SP, Brazil Av. Dr. Chucri Zaidan, 1.240 –27 <sup>th</sup> Floor, Morumbi Corporate – Golden Tower –Vila São Francisco –São Paulo – SP–ZIP Code 04711-130, enrolled with the CNPJ/MF under no. 08.469.511/0001-69	Brazil	State Courts located in São Paulo, SP, Brazil	The American Arbitration Association Commercial Arbitration Rules; Seat of arbitration in Sao Paolo.
CA (Singapore) Pte Ltd., Collyer Quay, Singapore 049318 SG	Singapore	Courts of Singapore	The Arbitration Rules of (a) the Singapore International Arbitration Centre; Seat of arbitration in Singapore.

The Agreement will not be governed by the following, the application of which is hereby expressly excluded: (a) the conflict of law rules of any jurisdiction, (b) the United Nations Convention on Contracts for the International Sale of Goods, and (c) the Uniform Computer Information Transactions Act, as enacted in any jurisdiction. The Parties further agree to accept service of process in accordance with the rules/procedures of the arbitral body or relevant court (as applicable), except that the Parties hereto irrevocably waive any objection that service of process must conform to the Hague Service Convention or other applicable law or treaty regarding service of process.

11.2 Dispute Resolution. Any dispute, claim or controversy arising out of relating to the Agreement (“Dispute”) shall be resolved as provided in this Section.

11.2.1 Informal Dispute Resolution. Save for Disputes relating to unpaid amounts, before initiating any formal proceeding relating to a Dispute, the Parties shall meet as frequently and as often as they reasonably deem necessary to negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within thirty (30) days of initiating the discussions,

then each Party shall appoint one (1) senior executive who is not directly involved on a day-to-day basis with the subject matter of the Agreement, and those senior executives shall negotiate the matter in good faith. A formal proceeding relating to a Dispute shall not be commenced until the earlier of: (i) the good faith determination by one of the appointed senior executives that resolution through continued negotiation of the matter does not appear likely; or (ii) thirty (30) days following the date that the Dispute was first referred to the appointed senior executives. Nothing in this paragraph shall be construed to prevent a Party from instituting formal proceedings to the extent necessary to avoid the expiration of any applicable limitations period or to pursue injunctive remedies deemed reasonably necessary to protect its interests.

11.2.2 Arbitration. Except as set forth in this paragraph, any Dispute shall be resolved by confidential arbitration. The place of the arbitration, governing law and applicable rules shall be as set forth in Section 11.1 (Choice of Law; Venue). The arbitral tribunal shall consist of three (3) arbitrators: one selected by each Party, and the third to be agreed upon by the Parties (and if agreement cannot be reached, designated by the arbitral body), which third arbitrator shall be the Chairperson. The language of the arbitration shall be English. The dispute shall be finally settled within twelve (12) months after constitution of the arbitral tribunal. The Parties agree to request a written explanation/opinion in connection with any award. Judgment on the award rendered by the arbitrators may be enforced in any court having jurisdiction thereof. Notwithstanding anything to the contrary in this paragraph, either Party may: (i) apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory injunctive relief; or (ii) seek redress in any court of competent jurisdiction in order to enforce its intellectual property rights or protect Confidential Information. The Parties shall have a right to appeal an arbitral award to a court of competent jurisdiction in order to set aside the award.

11.3 In any formal action or proceeding arising from a Dispute or relating to non-payment, the prevailing Party shall be entitled to recover its costs and reasonable attorneys' fees from the other Party.

## **12. GENERAL TERMS**

12.1 Amendments. The terms of the Agreement may only be amended by mutual written agreement of the Parties.

12.2 Force Majeure. Except for payment obligations and obligations pertaining to non-disclosure, notwithstanding any contrary provision in the Agreement, neither Party will be liable for any action taken, or any failure to take any action required to be taken, in the event and to the extent that the taking of such action or such failure arises out of causes beyond a Party's control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal).

12.3 Order of Precedence. Any conflict or inconsistency among or between the terms and conditions of the documents comprising the Agreement shall be resolved according to the following order of precedence, from the document with the greatest control to the least: (1) the Transaction Document; (2) CA's global Data Processing Addendum (DPA) to the extent one is in place between

the Parties, (3) the applicable Specific Program Documentation or SaaS Listing, (4) the relevant Module; (5) this Foundation Agreement. Notwithstanding this Order of Precedence, any terms that may appear on a Customer's purchase order that vary from the Agreement (including without limitation pre-printed terms) shall be deemed null and void.

- 12.4 Independent Contractors. The Parties expressly agree that the relationship between them is that of customer-independent contractor.
- 12.5 If Customer transfers any Personal Data to CA as a requirement pursuant to any CA Offering, then Customer represents that it is duly authorized to provide personal data to CA and it does so lawfully in compliance with applicable legislation. Customer hereby authorizes CA to make necessary transfers of Personal Data and CA, and any CA Affiliates and subcontractors, may process such Personal Data for the purposes of providing the CA Offering contemplated under the Agreement. CA shall not transfer such Personal Data except lawfully, in compliance with applicable data protection laws and in accordance with CA's statement and terms set out at <http://www.ca.com/us/data-transfers.aspx>. Notwithstanding, in the event that Personal Data of Customer is transferred from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of the data protection laws of the foregoing territories ("Restricted Transfers"), CA complies with the provisions of Art. 44 – 46 GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, with respect to such Restricted Transfers. In the event CA is acting as a data processor for Customer under the GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, CA's processing shall be subject to and in accordance with CA's global Data Processing Addendum <https://www.ca.com/us/legal/privacy/data-transfers.html?intcmp=footernav> ("DPA"). Where a CA Partner processes Personal Data on behalf of the Customer under the GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, the CA Partner shall be responsible for entering into a relevant data processing agreement with Customer.
- 12.6 Assignment. Neither Party shall assign the Agreement or any of its rights or delegate any of its duties under the Agreement without the prior written consent of the other Party, except that CA shall have the right to assign the Agreement or any of its rights or delegate any of its duties under the Agreement at any time to any CA Affiliate(s), or to a successor in interest of all or substantially all of the business to which the Agreement relates. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assigns. Any attempted assignment in violation of this section shall be null and void.
- 12.7 Import Export. Customer acknowledges that the CA Offering(s) is subject to control under U.S. law, including the Export Administration Regulations and agrees to comply with all applicable import and export laws and regulations. Customer agrees that the CA Offering(s) will not be exported, re-exported or transferred in violation of U.S. law or used for any purpose connected with chemical, biological or nuclear weapons or missile applications, nor be transferred or resold, if Customer has knowledge or reason to know that the CA Offering(s) are intended or likely to be used for such purpose.

- 12.8 Announcements. Neither Party may issue press releases relating to the Agreement without approving the content with the other Party. Either Party may include the name and logo of the other Party in lists of customers or vendors in accordance with the other Party's standard guidelines.
- 12.9 Notice. Any notice required or permitted by the Agreement shall be given in writing, will refer to the Agreement and will be personally delivered or sent by a reputable overnight courier service (e.g., FedEx, UPS, DHL, etc.), electronic transmission (email) or registered or certified mail (return receipt requested) to the other Party's legal department at the address set forth in the Agreement, or such other address as is provided by notice as set forth herein. Notices shall be deemed effective upon electronic confirmation; and if delivered via certified mail or overnight courier, notice shall be deemed effective upon confirmation of delivery.
- 12.10 Headings. The section headings used herein are for information purposes only and shall not affect the interpretation of any provision of this Agreement.
- 12.11 Validity. In the event any term or provision of the Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.
- 12.12 Third Parties. This Agreement shall not create any rights in favor of, or any obligations owed by, any third party unless otherwise expressly defined in any Module. The Parties agree that any action arising from this Agreement shall solely be brought by Customer or CA.
- 12.13 Survival. Sections pertaining to Dispute Resolution, Choice of Law, Confidentiality, Title, Warranty, Limitation of Liability, Termination, and Import Export shall survive termination of this Foundation Agreement.
- 12.14 Entire Agreement. The Agreement and all documents incorporated by reference therein shall comprise the entire agreement as pertaining to the subject matter thereof and all other prior representations, proposals, and other such information exchanged by the Parties concerning the subject matter is superseded in their entirety by the Agreement.

**1. INTRODUCTION**

- 1.1 This Module for CA Software (“Software Module”) between the applicable Regional CA Entity set forth in the referencing Transaction Document, a Broadcom Inc. company, (“CA”) located at address stated above, and Customer, (“Customer”), effective on the date set forth in the referencing Transaction Document specifies terms and conditions which apply to CA Software that CA will license to Customer and the Support that applies.
- 1.2 This Software Module incorporates by reference the terms of the Foundation Agreement effective on the date set forth in the referencing Transaction Document between CA and Customer (or CA Partner). Any capitalized terms used in this Software Module shall have the meanings given in the Foundation Agreement unless otherwise provided herein.

**2. DEFINITIONS**

- 2.1 “Authorized End Users” means Customer, Customer Affiliate(s) and their employees and independent contractors (but excluding any outsourcer, facilities management provider, managed service provider, or application service provider unless Customer explicitly takes full responsibility and liability for such party’s act and omissions) that are bound by terms and conditions no less restrictive than those contained herein and are acting on behalf of Customer and not a third party.
- 2.2 “Authorized Use Limitation” means the quantity of the CA Software licensed in accordance with the License Metric specified in the Transaction Document.
- 2.3 “Distributed Software” means the CA Software designated as distributed that is generally used for independent usage across individuals systems or hardware based on the License Metric in a decentralized form of computing.
- 2.4 “License Metric” means the specific criteria for measuring the usage of the CA Software (such as MIPS, CPUs, tiers, servers, or users).
- 2.5 “Mainframe” means CA Software designated as mainframe that is generally used for a large capacity processor that provides links to users through less powerful devices such as workstations or terminals based on the License Metric in a centralized form of computing.
- 2.6 “Perpetual License” means a license to use CA Software for an indefinite period subject to compliance with the Agreement.
- 2.7 “Subscription” or “UMF” (Usage and Maintenance Fee) license means a license to use CA Software for a specific period of time which shall include Support unless otherwise stated in a Transaction Document.
- 2.8 “Support” (which may also be referred to as “CA Maintenance” or “CA Support”) means technical support for the CA Software.
- 2.9 “Territory” means the location indicated on the Transaction Document where Customer is authorized to install the CA Software.

**3. SOFTWARE OFFERING & OBLIGATIONS**

- 3.1 CA grants the Customer a limited, non-exclusive, non-transferable license, for the Term to:

- 3.1.1 Install and deploy the CA Software in the Territory up to the Authorized Use Limitation.
  - 3.1.2 Permit Authorized End Users to remotely use the CA Software for Customer's and Customer Affiliates' internal business wherever located. Customer hereby expressly agrees that a breach by an Authorized End User of the Agreement shall be considered to be a breach by and the responsibility of the Customer.
  - 3.1.3 Make a reasonable number of copies of the CA Software for disaster recovery "cold standby", backup and archival purposes. Use of such copies is limited to testing Customer's disaster recovery procedures and effectiveness and as is necessary during any reasonable period subsequent to the occurrence of an actual disaster during which Customer cannot operate the CA Software.
  - 3.1.4 Relocate CA Software to a new Customer location within the Territory upon prior written notice.
- 3.2 The CA Software may be provided under terms and conditions set forth within Specific Program Documentation ("SPD") identified in applicable Transaction Document(s) ("Order Forms"). 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).
- 3.3 The grant of license is contingent upon Customer's compliance with the following obligations set out under this provision and Customer agrees that it shall not: (i) provide, sub-license or transfer the CA Software or its results/outputs other than to Authorized End Users, (ii) make any use of the CA Software for which it has not paid, (iii) claim any rights in the CA Software other than its right to use, (iv) modify the CA Software, (v) export or use the CA Software in violation of US or other applicable laws and regulations, or (vi) use the CA Offerings for any prohibited end use, such as for nuclear technology applications, missile, or other military guidance systems and biological weaponry, or major radiation exposure field applications. Any right that is not granted to Customer under this Software Module, the Foundation Agreement or a Transaction Document is reserved to CA. In order to better understand and meet its customers' needs, CA may collect, use, analyze and retain Customer's metadata, system topography information, and/or operations data and, in a confidential and anonymous manner, aggregate such data with similar usage data of other CA customers.
- 3.4 Upon request by CA, Customer agrees to provide records reasonably requested by CA to verify its compliance with the Authorized Use Limitation defined in the Transaction Document during the period in which Customer is licensed to use the Software and for a period of twelve (12) months after expiration including certified copies of statements or records as applicable. Such reports will be based on the License Metric indicated on the Transaction Document. Customer agrees to allow CA, or an independent third party, to conduct an audit remotely or onsite at Customer's facilities within thirty (30) days of CA providing written notice solely for the purpose of verifying compliance

with the Foundation Agreement, Software Module and the Transaction Document. CA agrees that the audit will be confidential, and commercially reasonable in nature and time.

#### **4. SUPPORT OFFERING**

- 4.1 If CA Maintenance is purchased as set forth within a Transaction Document, CA will provide Customer with CA Maintenance in accordance with the guidelines at: <http://www.support.ca.com>. If a renewal fee for CA Maintenance is identified on a Transaction Document, then CA may automatically invoice Customer for such renewal unless CA receives not less than thirty (30) days written notice from Customer prior to the anniversary of the applicable Term that such CA Maintenance is not desired.

#### **5. THIRD PARTY TERMS**

- 5.1 In the event that the CA Software contains third-party software components, additional terms, notices and/or information that may be applicable to such third-party software components may be found in the Documentation accompanying the CA Software (e.g., a user manual, user guide, or readme.txt or notice.txt file), and/or at <https://support.ca.com/prodinfo/tptterms>.

#### **6. PERFORMANCE WARRANTY**

- 6.1 For Distributed Software. CA warrants that the Distributed Software as defined in the Transaction Document will operate materially in accordance with the applicable specifications set forth within the Documentation for a period of ninety (90) days after delivery of the CA Software subject to Customer's compliance with the Agreement.
- 6.2 For Mainframe Software. CA warrants that the Mainframe Software will operate materially in accordance with the applicable specifications set forth within the Documentation for the Term, subject to Customer's compliance with the Agreement.

#### **7. PERFORMANCE WARRANTY REMEDY**

- 7.1 If CA has breached either warranty set forth in the section entitled: Performance Warranty, Customer's remedy is for CA to, in consultation with Customer, to either (i) use reasonable efforts consistent with industry standards to cure the defect, or (ii) replace the CA Software(s) with one that materially complies with the Documentation, or (iii) terminate the license and provide a pro-rata refund of the license fees paid and/or Support fees to Customer or CA Partner (wherefrom the non-compliant CA Offering was procured). If option (iii) applies, the pro-rata refund shall be calculated on the number of months left remaining on the Term of the applicable Transaction Document or if the CA Software is licensed under Perpetual License, using (only for purposes of a refund calculation) an amortization schedule of three (3) years. The above warranty remedies are CA's sole obligation and Customer's sole and exclusive remedy for breach of the above warranty.
- 7.2 Warranty remedies are conditioned upon (i) any error or defect reported is reasonably reproducible by CA, (ii) the CA Software is not modified and is being used in accordance with CA Documentation, and (iii) the breach is not attributable in whole or in part to any non-CA product(s) or service(s).

- 8. AUTORENEWAL.** The Transaction Documents, and/or transactions through a CA Partner under this Module shall be automatically renewed for successive one (1) year terms thereafter (each a “Renewal Term”) unless either Party provides the other Party with written notice of non-renewal forty-five (45) days prior to the end of the initial Term or the Renewal Term. CA will invoice Customer, or CA Partner, as applicable, at least thirty (30) days prior to the expiration of the initial Term or the Renewal Term.
- 9.** During the Term, CA may increase the fees hereunder for the CA Offerings up to 5% annually by providing Customer with advance notice including through pricing notices posted at the CA support website no less than ninety (90) days prior to such changes taking place but in no event will CA purport to effect a price change while in any particular calendar year (i.e., price changes will only be effective on January 1 of the year following that in which notice was provided).

**1. INTRODUCTION**

- 1.1. This Module for Software as a Service (“SaaS Module”) between the applicable Regional CA Entity set forth in the referencing Transaction Document, a Broadcom Inc. company, (“CA”) located at address stated above, and your organization, (“Customer”) effective on the date set forth in the referencing Transaction Document specifies terms and conditions which apply to SaaS that CA will provide to Customer.
- 1.2. This SaaS Module incorporates by reference the terms of the Foundation Agreement effective on the date set forth in the referencing Transaction Document between CA and Customer (or CA Partner). Any capitalized terms used in this SaaS Module shall have the meanings given in the Foundation Agreement unless otherwise provided herein.

**2. DEFINITIONS**

- 2.1 “Authorized Use Limitation” means the limitation on usage of SaaS as measured by the Billing Metric specified in the Transaction Document.
- 2.2 “Authorized Users” means Customer, its employees and independent contractors and/or Customer Affiliates or as otherwise defined in the SaaS Listing, that access and use SaaS provided that they are bound by terms and conditions no less restrictive than those contained in the Agreement and solely to the extent that they are acting on behalf of Customer or Customer Affiliates.
- 2.3 “Billing Metric” means the metric for billing SaaS to Customer as defined in the SaaS Listing (e.g., users, transactions, etc.).
- 2.4 “Customer Data” means any information provided by Authorized Users in the course of accessing and using SaaS and stored in connection with SaaS.
- 2.5 “Data Center Region” means a geographic region that is served by one or more hosting facilities for CA SaaS. CA Data Center Regions are set out in the SaaS Listing.
- 2.6 “Force Majeure Event” means an event that arises out of causes beyond a Party’s reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal) and/or delays or outages caused by an internet service provider or independent (not a Party’s subcontractor) hosting facility.
- 2.7 “Non-Production” means any Customer deployed environment that is not Production such as development, test, staging, demonstration, or training environments.
- 2.8 “Production” means the “live” environment of SaaS that Customer uses as their primary business environment.

- 2.9 “SaaS” or “SaaS Offering” means the version of the CA software and/or type of service defined in the Transaction Document and made available to Authorized Users via the Internet.
- 2.10 “SaaS Listing” means the operating parameters, data and data center location(s), applicable audit standards, availability standards and any other details for the specific SaaS Offering as published or made available by CA. SaaS Listings may define provisioning and management processes applicable to the SaaS Offering, types and quantities of system resources (such as storage allotments), functional and technical aspects of the SaaS, as well as a catalogue of available service requests. These listings are available at <http://www.ca.com/us/lpg/saas-knowledge-is-power.aspx>.
- 2.11 “SaaS Support” means support of the SaaS Offering so it operates materially in accordance with the Documentation.
- 2.12 “Scheduled Downtime” means planned downtime of SaaS availability for periodic and required maintenance events, including but not limited to, upgrades and updates to the SaaS and data center infrastructure where CA provides notice to Customer at least 72 hours in advance.
- 2.13 “Service Level Availability” (SLA) means the targeted availability levels measured in the Production environment, as specified in the SaaS Listing which may vary according to each SaaS Offering and its component capabilities.
- 2.14 “Security Breach” means access to Customer Data by an unauthorized person or entity.
- 2.15 “Subscription Term” means the initial or renewal period of the subscription to a SaaS Offering as set out in the Transaction Document.
- 2.16 “Trial Period” means the period of time that Customer accesses and uses SaaS for evaluation or trial set out in the Transaction Document. If no time is indicated, then the period shall be set for thirty (30) days from the effective date of the Transaction Document. For avoidance of doubt, only a Transaction Document which explicitly states that it is for trial or evaluation by the Customer shall be considered a trial use.

### **3. SAAS OFFERING**

- 3.1 CA provides Customer a non-transferable and non-exclusive right for Customer and its Authorized Users to access and use SaaS during the Subscription Term in accordance with the Agreement.
- 3.2 If CA provides software to Customer to enable or to optimize SaaS (e.g. plug-ins), CA provides Customer, during the Subscription Term, a non-transferable and non-exclusive right to use such software solely in connection with SaaS. The grant of rights for such software is contingent upon Customer’s compliance with the following obligations: Customer agrees, that neither it nor Authorized Users shall: (i) cause or permit de-compilation, reverse engineering, or otherwise translate all or any portion of the software; (ii) modify, unbundle, or create derivative works of the software and/or Documentation; (iii) rent, sell, lease, assign, transfer or sublicense the software or use the software to provide hosting, service bureau, on demand or outsourcing services for the

benefit of a third party; (iv) remove any proprietary notices, labels, or marks on or in any copy or version of the software or Documentation. Any installation of agents or software of any kind will be required to be returned or destroyed at the end of the Subscription Term. All rights in and to the software described herein, not expressly granted to Customer, are expressly reserved by CA.

- 3.3 If SaaS is provided on a trial basis, Customer agrees to access and use SaaS solely for trial and evaluation purposes during the Trial Period, in accordance with the usage restrictions set forth in the Transaction Document. At the end of the Trial Period, Customer's right to access and use SaaS automatically expires and Customer agrees to cease accessing and using SaaS and to de-install any agents or copies of software provided as part of the SaaS and certify to CA in writing that all copies or partial copies of any such software have been deleted from Customer's computer libraries and/or storage devices and destroyed. If Customer desires to continue its use of SaaS beyond the Trial Period, Customer may enter into a Transaction Document and pay the applicable fees. DURING TRIAL PERIODS, CUSTOMER AGREES TO ACCESS AND USE SUCH SAAS ON AN AS IS BASIS AND AGREES THAT CA PROVIDES NO WARRANTIES, SLAS OR INDEMNITIES ARISING OUT OF SUCH ACCESS AND USE. ANY DATA ENTERED OR CONFIGURATION OF THE SAAS DURING THE TRIAL PERIOD WILL NOT BE STORED OR AVAILABLE AFTER THE TRIAL PERIOD.

#### **4. FEES, RENEWAL & TERMINATION**

- 4.1 The Authorized Use Limitation and associated fees shall be as set out on the Transaction Document. CA, directly or through CA Partner, reserves the right to invoice Customer for any use of the SaaS in excess of the Authorized Use Limitation. Customer agrees that the purchase of any SaaS is not contingent on CA providing any future features or functionalities.
- 4.2 SaaS shall automatically renew for successive one (1) year periods, at the renewal rate set out on the CA or the CA Partner's Transaction Document or as invoiced for subsequent Subscription Term, unless and until either Party provides the other with written notice of its intention not to renew at least ninety (90) days prior to the expiration of the Subscription Term. Expiration or termination of any particular SaaS Offering shall not impact the validity of any other SaaS Offering Customer may be subscribing to.

#### **5. CUSTOMER DATA**

- 5.1 Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer Data shall be considered to be Confidential Information under the Agreement. Customer Data will be stored and processed in the applicable Data Center Region. CA shall not access Customer's user accounts, or Customer Data, except in response to SaaS or technical issues where Customer requests or consents to such access in consultation with CA.
- 5.2 CA will collect, modify and analyze metadata and/or operations data which does not contain any Customer Data, such as system log files and transaction counts which relate to system utilization and performance statistics, all as deemed necessary by CA.
- 5.3 Customer may access Customer Data, reports and/or information through SaaS until the end of the Subscription Term. After the end of the Subscription Term, CA will destroy all Customer Data.

- 5.4 In case of a Force Majeure Event, Customer acknowledges and agrees that Customer Data may not be fully recoverable beyond the last restoration archive point, the frequency of which is described in the SaaS Listing.
- 5.5 Customer agrees not to provide any health, payment card or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless it is a supported feature in the Documentation of the applicable SaaS Offering.
- 5.6 If Customer transfers any Personal Data to CA as a requirement pursuant to any CA Offering, then Customer represents that it is duly authorized to provide personal data to CA and it does so lawfully in compliance with applicable legislation. Customer hereby authorizes CA to make necessary transfers of Personal Data and CA, and any CA Affiliates and subcontractors, may process such Personal Data for the purposes of providing the CA Offering contemplated under the Agreement. CA shall not transfer such Personal Data except lawfully, in compliance with applicable data protection laws and in accordance with CA's statement and terms set out at <http://www.ca.com/us/data-transfers.aspx>. Notwithstanding, in the event that Personal Data of Customer is transferred from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of the data protection laws of the foregoing territories ("Restricted Transfers"), CA complies with the provisions of Art. 44 – 46 GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, with respect to such Restricted Transfers. In the event CA is acting as a data processor for Customer under the GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, CA's processing shall be subject to and in accordance with CA's global Data Processing Addendum <https://www.ca.com/us/legal/privacy/data-transfers.html?intcmp=footernav> ("DPA"). Where a CA Partner processes Personal Data on behalf of the Customer under the GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, the CA Partner shall be responsible for entering into a relevant data processing agreement with Customer.

## **6. SECURITY**

- 6.1 CA will maintain and administer a security policy with physical and technical safeguards designed to protect the security, integrity and confidentiality of the Customer Data. CA runs security background checks on all operations staff. CA shall adhere to and subject such policies and practices to an audit under the compliance criteria defined in the applicable SaaS Listing. A copy of CA's audit reports and certifications can be found at <https://www.ca.com/us/why-ca/saas/compliance-audit-reports.html>.
- 6.2 CA is not responsible for unauthorized access, alteration, theft or destruction of Customer Data arising from Customer's own or its Authorized Users' actions or omissions in contravention of the Documentation. Customer's ability to recover any lost data resulting from CA's misconduct is limited to restoration by CA from the most recent back-up.

6.3 In the event that CA has determined that a Security Breach will or is likely to cause harm to the Customer or an Authorized User, CA will, as promptly as practicable but in no event later than as required by law, provide Customer with notice of the Security Breach. After initial notification, CA will keep Customer updated at periodic intervals on the steps taken by CA to investigate the Security Breach including providing a reasonably detailed incident report, including measures to be taken by the Customer to minimize potential damages. Such report will be provided promptly following completion of the report. The Parties understand and agree that if CA is prevented by law or regulation from providing such notice(s) and/or reports within the time frames, such delay shall be excused.

## **7 SAAS SUPPORT**

7.1 Customer shall be provided with SaaS Support during the Subscription Term in accordance with the applicable CA Support Policy at [www.support.ca.com](http://www.support.ca.com). To access SaaS Support, Customer may utilize the CA support website, or other site or notification mechanism as CA may designate from time to time.

## **8. MAINTENANCE AND UPGRADES**

8.1 CA may make changes or updates to the SaaS and/or SaaS infrastructure (such as compute infrastructure, storage technology, security, technical configurations, hosting facilities within Data Center Region, etc.) during the Subscription Term including to reflect changes in technology, industry practices, and/or patterns of system use.

## **9. CUSTOMER RESPONSIBILITIES**

9.1 Customer is responsible for all activities that occur in, or are related to, user accounts including the data, information stored or transmitted when accessing SaaS. All applications residing within Customer's environment or installed on third party service provider's environments on behalf of Customer that integrate to SaaS shall be managed and supported by Customer. Customer is also responsible for managing components that are downloaded onto their environment such as web browser based software plug-ins that extend SaaS.

9.2 As Customer may integrate or utilize third party links to other software, hardware or other services which are associated with, or otherwise available through the SaaS, Customer agrees that it and/or Customer Affiliates, its Authorized Users and anyone acting on their behalf shall use such third party links at their sole discretion. CA shall have no responsibility or liability with respect to such third party links used by Customer and/or Customer Affiliates, its Authorized Users or for any act or omission of any such third party provider.

9.3 Customer shall not: (i) make SaaS available to any third party not authorized or as otherwise contemplated by the Agreement; (ii) send or store code that can harm or result in damage to SaaS (including but not limited to malicious code and malware); (iii) willfully interfere with or disrupt the integrity of SaaS or the data contained therein; (iv) attempt to gain unauthorized access to the SaaS or its related system or networks; (v) use SaaS to provide services to third parties except as expressly

permitted by the Agreement; (vi) use SaaS in order to cause harm such as overload or create multiple agents for the purpose of disrupting operations of a third party; (vii) remove or modify any program markings or any notice of CA's or its licensors' proprietary rights; (viii) perform or disclose any benchmark or performance tests on the SaaS; or (ix) perform or disclose any of the following security testing of the SaaS environments or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing or any other test or procedure not authorized in the Documentation. A breach by the Customer of its obligations under this section shall be considered a material breach of the Agreement.

## **10. WARRANTY**

10.1 CA warrants that during the Subscription Term, the SaaS shall perform materially in accordance with the applicable Documentation subject to Customer's compliance with the Agreement. During any Trial Period, this warranty shall not apply.

10.2 Customer warrants that (i) it has the right to transmit Customer Data and any data or information as may be required for the purposes of accessing SaaS, (ii) it is responsible for all activities that occur in user accounts, and (iii) it shall not misuse SaaS by sending spam or otherwise duplicative or unsolicited messages or store infringing, obscene, threatening, or otherwise unlawful material or material that is harmful to children or violates third party privacy rights.

## **11. WARRANTY REMEDY**

11.1 If it is established that CA has breached the above warranty, CA may, at its option, (i) use reasonable efforts to cure the defect in the SaaS; (ii) replace the SaaS with SaaS that materially conforms to the specifications in the Documentation; (iii) in the event CA cannot, after commercially practicable attempts to do so, achieve the remedies in (i) or (ii), CA may terminate the subscription to the SaaS and provide a refund to Customer or CA Partner of pre-paid, unused fees calculated against the remainder of the Subscription Term as of the effective date of such termination. Customer must report the alleged breach of warranty with reasonable specificity in writing within thirty (30) days of its occurrence to benefit from this warranty and the remedies stated herein. The above warranty remedies are CA's sole obligation and Customer's sole and exclusive remedy for breach of the above warranty.

## **12. SERVICE LEVEL COMMITMENT**

12.1 The Service Level Availability is measured against reports that CA runs on a regular basis based on objective criteria. Reports are available to Customer upon request. If Customer cannot access SaaS during the Subscription Term, Customer should contact CA to receive SaaS Support.

12.2 If it is determined by Customer and confirmed by CA that SaaS is unavailable beyond the default threshold identified in the applicable SaaS Listing measured on a monthly basis during three contiguous months, then Customer has the right to elect any of the remedies specified therein.

12.3 The following events shall be excluded from the calculation of Service Level Availability: (i) Force Majeure Event; (ii) outages due to Scheduled Downtime; (iii) outages based on Customer networks

or domain name server issues; (iv) Customer's configuration, scripting, coding drafted by Customer without CA's authorization or knowledge; (v) internet outages; (vi) outages requested by Customer; (vii) Customer changes to its environment which hinder SaaS production; (viii) outages to remedy a security vulnerability or as required by law and (ix) inability for Customer to log in to SaaS service because of dependence on non-CA provided services or components (e.g., Lightweight Directory Access Protocol (LDAP) in Customer's environment).

13. **AUTORENEWAL.** The Transaction Documents, and/or transactions through a CA Partner under this Module shall be automatically renewed for successive one (1) year terms thereafter (each a "Renewal Term") unless either Party provides the other Party with written notice of non-renewal forty-five (45) days prior to the end of the initial Term or the Renewal Term. CA will invoice Customer, or CA Partner, as applicable, at least thirty (30) days prior to the expiration of the initial Term or the Renewal Term.

**1. INTRODUCTION**

- 1.1 This Module for Services and Education (“Services Module”) between the applicable Regional CA Entity set forth in the referencing Transaction Document, a Broadcom Inc. company, (“CA”) located at address stated above, and Customer, (“Customer”) effective on the date set forth in the referencing Transaction Document specifies terms and conditions which apply to Services and Education that CA will provide to Customer.
- 1.2 This Services Module incorporates by reference the terms of the Foundation Agreement between CA and Customer. Any capitalized terms used in this Services Module shall have the meaning given in the Foundation Agreement unless otherwise provided herein.

**2. DEFINITIONS**

- 2.1. “Attendees” means the participants authorized by the Customer to attend Education classes or courses or as indicated in the Transaction Document.
- 2.2. “CA Intellectual Property” means Deliverables, business processes, software, tools, databases, data, materials, information, and any derivatives or modifications thereof, which includes, without limitation any and all patents, copyrights, trademarks, trade secrets, and other intellectual property rights therein, that are either (i) owned at any time (ii) developed independently of the Services (iii) licensed from a third party.
- 2.3. “CA Personnel” means employees, sub-contractors or agents on behalf of CA that have entered into confidentiality provisions no less restrictive than defined in the Agreement.
- 2.4. “Course Materials” means any Education content provided to Customer in any media pursuant to a Transaction Document, including without limitation, all publications, courseware, training manuals and materials, user guides, web portals, or virtual labs provided by CA or a CA subcontractor.
- 2.5. “Customer Intellectual Property” means Confidential Information and any business requirements, materials, information and/or intellectual property owned or licensed that is provided by Customer, which includes, without limitation all patents, copyrights, trademarks, trade secrets, and other intellectual property rights that may be accessed or used during the provision of Services but in all cases excludes any CA Intellectual Property.
- 2.6. “Deliverables” means Packaged Work Product and/or other items provided to the Customer pursuant to an SOW.
- 2.7. “Education” means any standard or customized education offerings, training or instruction, or related services, provided by CA or a CA subcontractor in any format or location, including without limitation, (i) instructor led training, including at CA or Customer site(s), (ii) virtual training, including online classes, courses, or course catalogues and/or (iii) class room training or testing, at a CA or third party training facility.
- 2.8. “Education Funds” means a pool of funds prepaid by Customer which may be applied to purchase Education.

- 2.9. "Packaged Work Product" means any CA Intellectual Property developed prior to or during the Services which relates to the functionality of CA Software provided to the Customer as a Deliverable pursuant to a Statement of Work.
- 2.10. "Project Coordinator" means the individual appointed by a Party to act as a project coordinator for each Services engagement to (i) coordinate the performance of its obligations under the Agreement, (ii) act as its representative regarding the Services, and (iii) maintain primary responsibility for communication with the other Party in relation to the Services.
- 2.11. "Services Documentation" means the documentation provided to the Customer pursuant to a Services engagement, including without limitation, such documentation describing the project specifications, design, configuration, architecture and testing procedures, or installation and user guides, as applicable.
- 2.12. "Services" means the professional services provided by CA or its designated subcontractors to the Customer as set out in the relevant SOW.
- 2.13. "SOW" or "Statement of Work" means a description of Services to be provided or as referenced in the Transaction Document.

### **3. SERVICES OFFERING**

- 3.1. CA will provide the Services as agreed in an SOW or Transaction Document, on the basis of time and materials, fixed price or staff augmentation each of which will be further described in the SOW.
- 3.2. CA will determine the resources required for the provision of the Services.
- 3.3. Customer may request CA to change any particular CA Personnel assigned to the provision of the CA Services upon prior written notice provided that it can show reasonable cause for such request. CA will use reasonable efforts to replace such CA Personnel subject to parties agreeing that work schedules or time allotted for the Services may be impacted and require a change order.

### **4. EDUCATION OFFERING**

- 4.1. CA will provide Education as agreed in a Transaction Document. The Transaction Document will indicate the courses or classes ordered, the number of Attendees and the location of the Education services, if applicable. Customer is responsible for any travel costs and/or expenses incurred to attend Education.
- 4.2. CA may require the registration or pre-registration of Customer's Attendees in order to attend or access the applicable Education. Customer acknowledges that CA has (or reserves) the right to refuse entry or access to any individual that cannot authenticate their registration or authorization for such Education. Any customized educational courses will be based on the rates and expenses of the instructor providing the course or such fees as stated in the Transaction Document, as applicable.

- 4.3. If CA cancels a class, due to unforeseen circumstances, or low enrollment, CA will provide as much advance notice as possible but no less than ten (10) business days prior to the class in which case Customer may receive credit or reschedule the class to an alternative time.
- 4.4. Cancellation in writing by Customer must be provided at least ten (10) business days prior to the class. If such notice is not given CA may charge up to 100% of the fees for the class. If fees are pre-paid, no refund will be provided.

## **5. COOPERATION**

- 5.1. Each Party acknowledges that the success of the Services requires the cooperation of both Parties. Customer and CA shall each assign, where appropriate, a Project Coordinator that has requisite authority to decide day-to-day questions that may arise in relation to the Services as defined in the SOW.
- 5.2. Customer acknowledges and agrees that in order for CA to effectively perform the Services in a timely manner, Customer will cooperate with CA by making available on a timely basis (i) management decisions, information, approvals and acceptances (such as a milestone acceptance form where applicable) required by CA for the completion of the Services; (ii) appropriate access to Customer facilities, personnel, equipment, resources and systems; and (iii) any relevant information and documentation as necessary to facilitate performance of the Services. In addition to the above, Customer shall supply CA Personnel with suitable office and work space, and normal office equipment and support, adequate computer resources (including necessary rights to third party software), internet, telephone and facsimile support as necessary to perform the Services.
- 5.3. Each Party agrees to assign competent and qualified staff to participate in the performance of the Services.

## **6. FEES AND EXPENSES**

- 6.1. Customer will pay to CA the fees, expenses and other charges as provided for or as defined in the Transaction Document.
- 6.2. CA will invoice expenses that are approved by Customer in accordance with CA's expense policy, which may be provided to Customer upon request.
- 6.3. The Services are to implement the pre-existing features and functions of CA Software and do not include any customization or development activity that impacts any of the full features and benefits and underlying source code of the CA Software. Payment of license fees and/or Support fees for CA Software is not contingent upon Customer receiving the Services.
- 6.4. Customer acknowledges and agrees that it must use Education Funds within one (1) year from the effective date of the Transaction Document purchasing such funds. Any portion of Education Funds unused following such period shall expire and not be subject to any refund or credit.
- 6.5 Partners. If the CA Offering was ordered through a CA Partner or a CA Partner's reseller, Sections 6.1 and 6.2 shall not apply.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1. Customer shall retain all rights in and to Customer Intellectual Property, including all Customer Intellectual Property that may be contained in the Deliverables, and such rights shall remain vested in Customer.
- 7.2. CA shall retain all rights in and to all CA Intellectual Property and such rights shall remain vested in CA.
- 7.3. If information or materials are used by a Party in the performance of its obligations in the Agreement, such use of information or materials shall not transfer ownership of that information or materials to the other Party.
- 7.4. Customer shall have the right to modify or adapt the Deliverables excluding any Packaged Work Product as required or deemed appropriate by Customer (“Modifications”), however any such Modification shall render void any warranties or indemnities provided by CA and its licensors or subcontractors.
- 7.5. CA grants to Customer, a non-exclusive, limited, non-transferable license to use the Deliverables and Modifications for internal business purposes subject to terms of the Agreement. Where the Deliverables or Modifications are to be used in conjunction with CA Software then the license to use the Deliverables or Modifications shall be consistent with the usage limitations as set out in the license agreement for such CA Software.

## **8. WARRANTY**

- 8.1. CA warrants that (i) it will perform the Services as detailed in the applicable SOW; (ii) its instructors will provide Education in a professional workman like manner as described in a Transaction Document; and (iii) any Deliverable provided pursuant to a Transaction Document will conform to the Services Documentation for thirty (30) days from the day of delivery.
- 8.2. Customer shall provide written notice of a warranty claim within thirty (30) days of date of delivery (“Notice”) of the Services or Education claimed defective or in the case of a Deliverable, the date of delivery, that gave rise to the warranty claim. If Notice is not provided to CA that a breach occurred and/or if milestone or acceptance forms are signed by Customer, then the Deliverable, Services and/or Education will be deemed delivered in accordance with the warranty obligations.

## **9. WARRANTY REMEDY**

- 9.1. In the event of a breach by CA of the above Warranty section, Customer’s remedy, at CA’s discretion and in consultation with Customer, shall be to re-perform the Services and/or Education at no additional charge to Customer or to refund the applicable fees paid to Customer (or CA Partner), which correspond to the Services, applicable Deliverable or Education. These remedies are contingent upon the following: (i) that the Deliverable has not been modified by Customer; and (ii) that the alleged breach did not result from Customer’s failure to abide by its obligations defined in the applicable Transaction Document or for its failure to follow the Services Documentation. To the

maximum extent permitted by applicable law, the above warranty remedies are CA's sole obligation and Customer's sole and exclusive remedy for breach of the above warranty.

#### **10. CHANGE REQUEST**

Upon request by Customer or CA, the scope of Services may be adjusted through a mutually agreed change order defining the impact of any changes, including the fees or any other aspect of the provision of the Services.