



## CA MANAGED SERVICES PROVIDER AGREEMENT

### 1. Definitions

1.1 "Agreement" means collectively, this agreement and each Order Form.

1.2 "Authorized User" means an individual employee, contractor or agent of Service Provider that accesses the CA Software on behalf of Service Provider as permitted herein.

1.3 "CA" means CA, Inc. having its principal place of business at One CA Plaza, Islandia, New York 11749.

1.4 "CA Software" means the generally available, object code software as described in the Order Form, including any upgrades or updates of the same released by CA during the Subscription Term, and any Documentation provided hereunder.

1.5 "Confidential Information" means any and all information disclosed by either party (the "Disclosing Party") to the other (the "Receiving Party"), which is marked "confidential" or "proprietary" or which should reasonably be understood by the Receiving Party to be confidential or proprietary, including, but not limited to, this Agreement, and any information that relates to business plans, services, marketing or finances, research, product plans, pricing, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, and algorithms of the Disclosing Party.

1.6 "Documentation" means any published technical manuals, including any updates thereto, relating to the use of the CA Software made generally available by CA.

1.7 "End User" means an unaffiliated, third party customer of Service Provider that receives Managed Services for such third party's internal business purposes from Service Provider.

1.7.1 "Public Sector or Government End User" means any country, state, county, city or local government bodies or agencies, including judiciaries, legislatures and departments created and or funded by any of the foregoing governmental funds. With respect to the United States government, a Public Sector End User means the United States federal government, including legislative, judicial and executive branches, any US Government agency or corporation that was formed by and is currently existing and operating pursuant to an act of Congress, as well as any US Government owned contractor operated facility.

1.8 "Error" means the failure of the CA Software to substantially perform the functionality set forth in the Documentation.

1.9 "Intellectual Property" means any intellectual property or proprietary rights, including but not limited to copyright rights, moral rights, trademarks (including logos, slogans, trade names, service marks), patent rights (including patent applications and disclosures), know-how, inventions, rights of priority, and trade secret rights, recognized in any country or jurisdiction in the world.

1.10 "Managed Services" means the services provided by a Service Provider to End Users using the CA Software and Service Provider's intellectual capital and/or additional services supplied by Service Provider.

1.11 "Order Form" means one or more ordering documents, which shall contain, among other items, the: (1) Subscription Effective Date; (2) CA Software; (3) professional services and education; (4)

Maintenance; (5) Fees; and (6) signatures of authorized representatives of the parties.

1.12 "Operations Center" or "OC" is the datacenter location where Service Provider installs the CA Software to run the Managed Services.

1.13 "Perpetual License" means a Subscription License identified in the Order Form as perpetual. Service Provider may use the CA Software listed as Perpetual Licenses for a perpetual Subscription Term. Service Provider will be separately responsible for the maintenance fees for any Perpetual Licenses. No license is perpetual unless all applicable fees are paid in full.

1.14 "Service Provider" means the entity identified in the applicable Order Form which incorporates this Agreement.

1.15 "Service Provider End User Agreement" means the terms and conditions of the Service Provider pursuant to which an End User has access to CA Software for Managed Services including access to the functionality of the CA Software.

1.16 "Subscription License" means the right to use the CA Software on a single unit of Supported Equipment as set out in the Order Form for the Subscription Term.

1.17 "Subscription Term" means the duration that the Service Provider may use the CA Software, as identified on an Order Form, and any subsequent renewals, if any.

1.18 "Subscription Quantity" means the quantity of Subscription Licenses purchased by Service Provider.

1.19 "Supported Equipment" shall mean Service Provider's server, network device or other hardware or software solution that (a) used for internal business purposes and (b) monitored or supported using the CA Software.

1.20 "Territory" means anywhere in the world but always excluding any countries which CA is prohibited from exporting its products to as prescribed by US export law.

### 2. Software

2.1 Appointment. CA appoints Service Provider as a MSP within the Territory. Subject to the terms and conditions of the applicable Order Form, CA makes available to Service Provider a non-exclusive, non-transferable, non-sublicenseable right to access and use the CA Software in accordance with the Documentation to provide Managed Services to End Users in the designated OC for Supported Equipment within the Territory described on the Order Form. This authorization includes use of the CA Software by Authorized Users, provided that Service Provider shall be responsible for all use by such Authorized Users.

2.2 Extent of Appointment. Subject to the terms and conditions of the applicable Order Form and payment of applicable fees stated therein, for the Subscription Term, Service Provider may market itself as a "CA Authorized Service Provider," but *solely* in connection with provision of the Managed Services and only during the Subscription Term. Service Provider may provide demonstrations of the Managed Services to End Users or prospective End Users that may include a demonstration of the functionality provided in the CA Software.

2.3 Subscription Quantity. Service Provider shall ensure that its usage of the CA Software is restricted to the Subscription Quantity and that in the event that the number of required Subscription Licenses exceeds the Subscription Quantity, then Service Provider shall order additional Subscription Licenses in the process as set forth in Section 3.3.

2.4 Restrictions. Service Provider will not, and will not allow any third party to (a) modify, copy, or otherwise reproduce the CA Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the code used in the CA Software; (c) provide, lease or lend the CA Software to any third party except as expressly authorized hereunder; (d) remove any proprietary notices or labels displayed on the CA Software; (e) modify or create a derivative work of any part of the CA Software; (f) use the CA Software for any unlawful purpose or (h) create public Internet "links" to or from the CA Software, (g) permit the access or distribution of the CA Software to End Users or "frame" or "mirror" any of CA's content which forms part of the CA Software. In addition to the foregoing, Service Provider acknowledges that the CA Software is not intended for use in connection with any high risk, or strict liability activity (including, without limitation, air or space travel, power plant operation, life support or medical operations) and that CA makes no warranty and shall have no liability in connection with any use of the CA Software in such situations to the maximum extent allowed by law. In addition, Service Provider agrees that CA Software that is NOT intended to be used to any Public Sector or Government End User without prior written permission of CA, which may include additional requirements or flow down clauses and/or certifications, as required or applicable to provide the CA Software. In the event Service Provider End User is deemed to be a Public Sector or Government End User by CA, the transition provisions in 8.4a and b will apply and Service Provider agrees to be responsible for all costs and expense associated with said transition.

2.5 Service Provider Obligations. Service Provider represents and warrants that it shall:

- (a) make commercially reasonable efforts to provide technical support to End Users in a professional and workmanlike manner in accordance with industry standards,
- (b) make commercially reasonable efforts to secure the CA Software, related passwords and Documentation, and
- (c) not make any representations, warranties or create obligations or liabilities on behalf of CA.

### 3. Fees, Duration & Payment

3.1 Fees. The fees payable by Service Provider to CA are those stated in each Order Form. Fees will be payable net thirty (30) days from date of CA invoice. CA reserves the right to change such fees or to institute new fees at any time. Service Provider will be notified in advance of the effective date of changes in fees or new fees via electronic mail. Such changes or new fees will become effective upon the later of Service Provider's next billing cycle or 30 days from the date of notice; however such revised fees will not affect the prices for CA Software specified on the Order Form during its then current Subscription Term.

3.2 Reports. Service Provider shall be responsible for preparing reports that shall include, without limitation, information detailing the usage of the CA Software (including without limitation, the number of servers or devices monitored with the CA Software and any metrics under which the Subscription Licenses are measured as stated in the Order Form). Unless otherwise stated in the Order Form, the reports shall be delivered quarterly to CA on the tenth (10<sup>th</sup>) business day following the end of the preceding quarter (or the preceding business day, if such date would fall on a weekend

or holiday). Where specified in the Order Form, Service Provider shall also include in its reports a list of End Users and the usage, locations and details for each End User. Reports shall be delivered to [usagereporting@ca.com](mailto:usagereporting@ca.com) or via such other mechanism as may be provided by CA.

3.3 Overage. In the event that during any month Service Provider has exceeded the Subscription Quantity, Service Provider's report shall be deemed a request for an order for such additional Subscription Licenses that are required to remain in compliance with the Agreement and Service Provider shall execute an Order Form for such additional Subscription Licenses. Such additional Subscription Licenses shall remain in effect and billed at the rates set forth in the initial Order Form through to the end of the then current Subscription Term. During the Subscription Term, the Subscription Quantity may not be lowered below the number ordered in the initial Order Form. Failure to comply with this Section 3 shall be deemed a material breach of the Agreement.

3.4 Subscription Terms. Unless otherwise stated in the applicable Order Form: (a) the initial Subscription Licenses will begin and continue for the initial Subscription Term set forth in the applicable Order Form; (b) any Subscription Quantity added to the Subscription License after the beginning of the Subscription Term will continue for the duration of that Subscription Term, except as otherwise set forth herein; (c) pricing for such additional Subscription Quantity will be the same as that for the Subscription License, prorated for the remainder of the then-current Subscription Term; and (d) all Subscription Licenses will automatically renew for additional Subscription Term(s) of equal in length to the initial Subscription Term at the then current CA price on the date of renewal unless either party gives the other party notice of non-renewal at least ninety (90) days prior to the end of the relevant Subscription Term.

3.5 Payment. Fees will be billed in advance as specified in the applicable Order Form. Service Provider will pay amounts due and properly invoiced within the period specified on the invoice.

3.6 Termination for Non-Payment. In the event that Service Provider's account is 10 days or more overdue or it fails to comply with Section 3.2, in addition to any of its other rights or remedies, CA reserves the right to terminate the applicable Order Form, this Agreement, and/or access to the CA Software.

3.7 Overdue Payments. Any late payments will accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

3.8 Delivery and Title. All CA Software shall be delivered either on tangible media or by electronic delivery. In the event of electronic delivery, no tangible personal property will be delivered. The obligation to deliver the CA Software to Service Provider shall be complete upon transmission of the CA Software by electronic delivery to Service Provider. At that time and place, all risk of loss of the copy of the CA Software shall pass to Service Provider. Such electronic delivery may not automatically provide for an exemption from applicable sales or use tax. The CA Software shall be delivered either by electronic delivery ("ESD") or if CA requires in tangible media CPT, as defined in INCOTERMS 2010, from CA's shipping point. CA agrees to be responsible for all customs duties and clearances and title to any CA hardware if included will pass upon point of delivery to carrier at CA's shipping location.

3.9 Taxes. All fees listed in the Order Form(s) are exclusive of any taxes. Service Provider will be responsible for all taxes, including sales or use taxes, imposed on such amounts, excluding taxes on CA's net income.

3.10 Billing and Contact Information. Service Provider will maintain complete and accurate billing and contact information with CA at all times.

3.11 Audit. CA may audit Service Provider's use of the CA Software subject to reasonable notice. If an audit reveals that Service Provider has underpaid fees to CA, Service Provider shall be invoiced for such fees. Such audit shall be at CA's expense unless fees have been underpaid by 5% or more, in which case Service Provider shall pay for all expenses associated with the audit and fees due. Service Provider agrees to retain all relevant business records to justify compliance with the Agreement for a period of three (3) years from the date of any expiration or termination.

#### 4. Proprietary Rights

4.1 Ownership. CA, or its suppliers, owns all rights, including Intellectual Property rights, in the CA Software, any materials relating thereto, and any modifications, enhancements, customizations, updates, revisions or derivative works thereof, and all results of consulting services, whether made pursuant to this Agreement or a separate statement of work. No transfer of ownership will occur under this Agreement. All rights not expressly granted to Service Provider are reserved by CA.

4.2 Feedback. Service Provider, from time to time, may submit comments, information, questions, data, ideas, description of processes, or other information provided to CA ("Feedback"). For any and all Feedback, Service Provider grants to CA a non-exclusive, worldwide, perpetual, irrevocable license to use, exploit, reproduce, incorporate, distribute, disclose, and sublicense any Feedback in its products and CA Software. Service Provider represents that it holds all intellectual or proprietary rights necessary to grant to CA such license, and that the Feedback will not violate the personal, proprietary or intellectual property rights of any third party.

#### 5. Confidentiality and Security

5.1 Confidential Information. Each party hereby agrees that it will not use or disclose any Confidential Information received from the other party other than (i) to perform its obligations under this Agreement or receive the benefit of the Subscription or (ii) as otherwise expressly permitted under the terms of this Agreement or (iii) as expressly authorized in writing by the other party. Each party will use the same degree of care to protect the other party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. Neither party will disclose the other party's Confidential Information to any person or entity other than its officers, principals, employees and subcontractors who need access to such Confidential Information in order to effect the intent of the Agreement and who are bound by confidentiality terms no less restrictive than those in the Agreement.

5.2 Exceptions. The restrictions set forth in Section 5.1 will not apply to any Confidential Information that the receiving party can demonstrate (a) was known to it prior to its disclosure by the disclosing party; (b) is or becomes publicly known through no wrongful act of the receiving party; (c) has been rightfully received from a third party authorized to make such disclosure without restriction; (d) is independently developed by the receiving party; (e) has been approved for release by the disclosing party's prior written authorization; or (f) has been disclosed by court order or as otherwise required by law, provided that the party required to disclose the information provides prompt advance notice thereof, to the extent practicable, to enable the disclosing party to seek a protective order or otherwise prevent such disclosure.

5.3 Injunctive Relief. The parties agree that a breach of Section 5.1 may cause irreparable damage which money cannot satisfactorily remedy and therefore, the parties agree that in addition to any other remedies available at law or hereunder, the disclosing party will be entitled to seek injunctive relief for any threatened or actual disclosure by the receiving party.

6. **Evaluation or Demonstration CA Software**. From time to time, Service Provider may accept copies of CA's product(s) for evaluation or demonstration for use in non-production environments by executing a no-cost Order Form. By accepting CA product(s) on such a basis, Service Provider accepts the CA product(s) as is and waives all express and implied warranties and conditions during the evaluation period. Either Party upon notice to the other may cancel the evaluation period with immediate effect. Upon termination or expiration of the evaluation period, Service Provider shall either execute an Order Form covering the evaluated CA product(s) or return to CA the CA product(s).

#### 7. Support and Services

7.1 Service Provider First Level Support. In the event that Service Provider has entered into an agreement with an End User to provide any support on the CA Software, Service Provider shall provide first level support for the CA Software substantially similar to the level of support provided by CA to Enterprise Customers, set forth at the following web site: <https://support.ca.com> under Technical Support Policies and Terms. Service Provider shall ensure that members of its technical staff complete sufficient training regarding the CA Software as necessary to provide first level support to End Users. CA shall not have any obligation to provide first level support to End Users.

7.2 Second Level Support and Maintenance. CA shall provide Service Provider with second level support as described in this section, and "Maintenance" as described below for CA Software properly licensed to Service Provider and in return for payment by Service Provider of the maintenance fees set forth in the applicable Order Form (or purchase of any CA Software Subscriptions that includes annual Maintenance) and provided that Service Provider follows CA's standard procedures for provision of support. Service Provider's payment of the fee each year shall entitle Service Provider to the following "Maintenance" benefits: (i) the provision of second level telephone support and assistance from CA respecting the use and operation of the CA Software as well as error fixes and (ii) the provision of new releases and enhancements of the CA Software running on new operating systems provided the same are developed and released by CA generally and delivered at no extra charge to CA's other licensees who have active maintenance plans. Service Provider is not entitled to second level support from CA or provision of other Maintenance benefits for End Users not under an annual maintenance plan.

Service Provider and CA agree to make any and all reasonable attempts to share or communicate, incident or problem resolution related information that will support future enhancements to the CA Software set-up, installation, configuration, help files or make other such reasonable enhancements to support related End User self-service infrastructure, to reduce Incident volumes to both Service Provider and CA through the mutual improvement of End User experience. CA will not provide information outside the scope of the direct relationship between Service Provider and CA.

7.3 Consulting Services. Any consulting services, training or other requirements not expressly stated in this Agreement or in an Order Form and statement of work signed by the parties are outside the scope of this Agreement and only will be provided for additional fees. In the event any work product or code is created in the provisioning of consulting services, CA shall retain all rights,

title and license in such work product or code provided that it shall be licensed to Service Provider under the same terms as the CA Software. Fees for such items are payable as specified in the applicable Order Form and unless otherwise specified will be paid upon receipt of invoice. For the purposes of computing daily rates, CA's standard workday in the applicable geography shall apply (e.g. 8 hours in North America). Changes in any statement of work will be effective only if a change request is signed by the parties.

## 8. Term & Termination

8.1 Term. This Agreement commences on the first day of the applicable Subscription Term and will terminate when (a) all Subscription Terms and any renewals thereof entered into pursuant to the Agreement have expired or been terminated or (b) this Agreement is otherwise terminated as provided for herein.

8.2 Termination for Inactivity or Convenience. If Service Provider has not placed any Order Forms for new Subscription Licenses for a period of six months, the parties agree that either party can terminate the Agreement for convenience. The parties agree that current End Users will terminate their Managed Services when the Subscription Term expires.

8.3 Termination for Cause. Either party may terminate the Agreement (a) for cause upon thirty (30) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period or (b) either party ceases to do business as an operating concern or (c) becomes financially insolvent, makes an assignment for the benefit of creditors, or files for bankruptcy which is not dismissed within sixty (60) days following the filing. In addition, CA may terminate this Agreement immediately for any failure of Service Provider to pay amounts due by it that are ten (10) days or more past due.

8.4 Effect of Termination. Upon termination of this Agreement the due dates of all outstanding invoices to Service Provider will automatically be accelerated so that they become due and payable on the effective date of termination. Termination will not relieve Service Provider of the obligation to pay any fees due or payable to CA prior to the effective date of termination, including any other fees or payments that Service Provider has committed to under the Agreement. All rights granted hereunder shall immediately terminate and Service Provider shall return or destroy all CA Software and Confidential Information in its possession. Upon termination for any reason, if an End User desires to continue using the CA Software, then Service Provider agrees (a) to reasonably cooperate to assist in the transfer of the End User's relationship directly to CA or another authorized Service Provider selected by CA and (b) in no event shall such transfer give rise to any claims for compensation by the Service Provider.

8.5 Return of Materials. All Confidential Information, designs, drawings, formulas or other data, financial information, business plans, literature, and sales aids of every kind will remain the property of the disclosing party. No later than 30 days after termination, each party will prepare all such items in its possession for shipment to the other at the disclosing party's expense. The receiving party will not make or retain any copies of any confidential information.

## 9. Warranties

9.1 Authority. Each party represents to the other that it is a valid legal entity and is in good standing or validly existing under the laws of the state of its incorporation and residence. Each party represents that it has all the requisite legal power and authority to execute, deliver and perform its obligations under the Agreement; that the execution, delivery and performance of the Agreement has been duly authorized; that the Agreement is enforceable in

accordance with its terms; that no approval, authorization or consent of any governmental or regulatory authorities is required to be obtained or made in order for it to enter into and perform its obligations under the Agreement.

9.2 Warranty. During the first thirty (30) days from the effective date of the Order Form for CA Software or from the date of the provision of consulting services, as applicable, CA warrants that (i) when the CA Software is 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; and (ii) consulting services shall be performed in accordance with industry standards using reasonable care and skill, and provided in accordance with CA's then-prevailing policies. If it is established that CA has breached either of the warranties above, CA's only obligation and Service Provider's exclusive remedy shall be for CA to, at its option, (1) use reasonable efforts to cure the defect in the CA Software or re-perform the nonconforming consulting services; (2) replace the CA Software with CA Software that materially conforms to the specifications in the Documentation; or (3) terminate this Agreement and provide a pro rata refund of fees paid in advance by Service Provider, which for license and Maintenance fees, shall be calculated against the remainder of the Subscription Term stated in the applicable Order Form from the date it is established that CA has breached the foregoing warranties (for Perpetual Licenses, a term of three years shall be used for this calculation); or for fees separately identified and paid for CA professional services, the refund shall be calculated based on the deliverables provided and CA services performed prior to the occurrence of the nonconforming CA services under the applicable ordering document. This warranty and the remedies offered are applicable only if: (i) the reported error or defect is reasonably reproducible by CA; (ii) Service Provider reports the alleged breach with reasonable specificity in writing within thirty (30) days from its occurrence; (iii) Service Provider provides CA with reasonable assistance in the diagnosis and remedy of the applicable breach; (iv) the CA Software or CA Services are within the warranty period; (v) Service Provider or End User, as applicable, has installed and are using all updates, patches and fixes released by CA for the affected CA Software; (vi) Service Provider or End User has complied in all material respects with the terms and conditions of the Agreement (including but not limited to payment of all fees) or Service Provider End User Agreement and have materially conformed to the Documentation for the affected CA Software, Maintenance or CA Services; and (vii) the error or defect is due solely to an error or omission on the part of CA, its agents or employees. Service Provider understands and agrees that third-party hardware equipment and software, supplied by CA may be provided to Service Provider under warranty or pursuant to other terms and conditions offered by the manufacturer or licensor of such hardware or software.

## 9.3 DISCLAIMER OF ALL OTHER WARRANTIES.

**THESE WARRANTIES ARE THE EXCLUSIVE WARRANTIES PROVIDED HEREUNDER TO SERVICE PROVIDER AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CA DOES NOT WARRANT THAT CA'S SOFTWARE OR MAINTENANCE WILL MEET SERVICE PROVIDERS' OR ITS END USER'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 SERVICE PROVIDER. IF PERMITTED BY APPLICABLE LAW: (A) SUCH**

**WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD SPECIFIED FOR THE SUBJECT SOFTWARE(S) OR MAINTENANCE; AND (B) THE REMEDY FOR BREACH OF ANY SUCH WARRANTIES IS LIMITED TO REPAIR OR REPLACEMENT OF ANY GOODS FOUND NOT TO COMPLY WITH THEM OR THE PROVISION OF SERVICES AGAIN. 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 SERVICE PROVIDER.**

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

## **10. Indemnification**

**10.1 CA Indemnification.** CA agrees to indemnify Service Provider against any losses or damages finally awarded against Service Provider incurred in connection with a third party claim alleging that the Service Provider's use of the unaltered CA Software infringes or misappropriates any U.S. patent or a third party's copyright in a jurisdiction where Service Provider is authorized to use the CA Software, provided that Service Provider (a) provides prompt written notice of such claim to CA, (b) grants CA the sole right to defend such claim, and (c) provides to CA all reasonable assistance. In the event of a claim or threatened claim under this Section by a third party, CA may, at its sole option, (i) revise the CA Software so that it is no longer infringing, (ii) obtain the right for Service Provider to continue using the CA Software, or (iii) terminate the Agreement upon 10 days notice and refund any pre-paid unused subscription fees (for Perpetual Licenses, a term of three years shall be used for this calculation). Notwithstanding the foregoing, CA shall have no liability or indemnification obligations for (a) any modification of the CA Software by any party than CA, (b) use of the CA Software in combination with any third party hardware or software (to the extent that such liability would not arise without such combination), (c) for any open source code contained within the CA Software, if any, (d) any use of the CA Software not in conformance with the Documentation or (e) any use of the CA Software after CA has provided instructions to terminate such use. THIS SECTION 10.1 REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF CA AND THE EXCLUSIVE REMEDY OF SERVICE PROVIDER FOR INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY RIGHTS.

**10.2 Indemnification by Service Provider.** Service Provider shall indemnify, defend and hold harmless CA, its officers, directors, employees, agents, successors and permitted assigns ("CA Indemnified Parties") from and against any and all damages, to the extent such damages (a) arise out of or relate to a claim that the portion of the Service Provider Managed Services or any portion thereof developed by Service Provider without the assistance of CA or any Service Provider modification of the CA Software ("Service Provider Indemnifiable Material") or any portion thereof, infringes, misappropriates, or otherwise violates any third party's Intellectual Property Rights; and/or (b) in the event that Service Provider (i) caused any personal injury and/or tangible property damage or harm to an End User or End User's computer system or privacy; and/or (ii) improperly characterizes, removes or interferes with third party software, files, data, text or code or any similar claim including, without limitation, any claim of unfair competition, commercial libel or defamation, interference with contractual relations, interference with prospective economic advantages, or any violation of the Lanham Act in the USA (as codified in 15 U.S.C. 1125) or similar state law and or (iii) causes CA Software to be operated in a manner that is inconsistent to any

regulatory, legal requirement that may cause a fine, impairment to CA Software or cause a third party action.

**11. Limitation of Liability.** Regardless of the basis which Service Provider may be entitled to claim damages from CA or its suppliers (including but not limited to breach of contract, negligence, misrepresentation, or other contract or tort claim), Service Provider agrees that CA liability is capped at not more than, in respect of 1) damages for bodily injury (including death) and damage to real property and tangible personal property, the amount of five hundred thousand dollars (\$500,000) and 2) for any other actual direct damages, not more than the amount that Service Provider actually paid for the CA Software and/or maintenance that are the subject of the claim. This limitation of liability also applies to CA's employees, contractors, resellers and suppliers. It is the maximum amount which they, and CA, are collectively responsible.

**EXCEPT AS SET FORTH ABOVE, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL CA OR ITS SUPPLIERS BE LIABLE TO SERVICE PROVIDER OR ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, TO ANY CLAIM FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOST SAVINGS, OR LOST DATA, EVEN IF CA OR ITS SUPPLIERS HAVE BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT THE ABOVE LIABILITY LIMITATION IS FOUND TO BE INVALID UNDER APPLICABLE LAW, THEN CA AND ITS SUPPLIER'S LIABILITY FOR SUCH CLAIM SHALL BE LIMITED TO THE AMOUNT OF THE FEES SERVICE PROVIDER HAS ACTUALLY PAID FOR THE CA SOFTWARE AND/OR MAINTENANCE GIVING RISE TO THE CLAIM.**

## **12. General Provisions**

**12.1 Notices.** Except as otherwise specified in the Agreement, all notices under the Agreement will be in writing and will be delivered or sent by (a) first class mail, registered or certified, return receipt requested, postage pre-paid; or (b) an international express mail, or national express courier with a tracking system, to the address specified in the applicable Order Form. Notices will be deemed given on the day actually received by the party to whom the notice is addressed.

**12.2 Independent Contractors.** The relationship of CA and Service Provider is that of independent contractors. Neither party has any authority to act on behalf of the other party or to bind it, and in no event will the parties be construed to be partners, employer-employee, or agents of each other. The parties agree that the rights and obligations under this contract shall be owed to each other as provided herein and that the only persons by which, or against which, any action may be taken under this contract shall be limited to the Service Provider and CA. This agreement shall not create any rights in favour of, or any obligations owed by, any third party.

**12.3 Governing Law; Venue.** The validity, construction and interpretation of the Agreement will be governed by the internal laws of the State of New York, excluding its conflict of laws provisions. The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in Suffolk County, New York for any action arising hereunder.

**12.4 Survival of Terms.** The provisions of this Agreement that by their nature extend beyond the expiration or other termination of this Agreement will survive and remain in effect until all obligations are satisfied.

**12.5 Assignment.** The Agreement may not be assigned by Service Provider by operation of law or otherwise, without the prior written consent of CA, which consent will not be unreasonably withheld.

**12.6 FCPA Covenant.** Service Provider acknowledges and agrees that it and its owners, directors, officers, employees or agents have not, and will not, make, attempt to make, or promise to make payments of money or anything of value, directly or indirectly, to any government or public international organization officials, political parties, or candidates for political office, for the purpose of obtaining or retaining business or securing any improper advantage, or to any other person or entity if such payment would violate applicable laws or treaties of the country in which made or the laws of the United States of America. Service Provider agrees to comply with the terms of the CA's Code of Business Conduct, which is available at <http://files.shareholder.com/downloads/CA/461144199x0x205768/21c46f23-3035-4e34-bf92-43eca642c288/codeofconduct.pdf>.

Service Provider shall exercise due diligence in selecting its employees, agents, officers and directors and Service Provider will provide appropriate training for them and that it will monitor their activities to ensure compliance with this Agreement.

If CA has reason to believe that a breach of any of the representations and warranties set forth in this Section above has occurred or may occur, CA may withhold further delivery of products or services until such time as it has received confirmation to its satisfaction that no breach has occurred or will not occur. CA shall not be liable to Service Provider for any claim, losses or damages whatsoever related to its decision to withhold delivery under this provision.

In the event that CA concludes in its sole and absolute opinion that Service Provider has failed to meet its obligations under this section, CA may immediately terminate this Agreement by written notice to Service Provider. Service Provider shall indemnify CA and hold CA harmless from and against any claim, losses or damages whatsoever related to its breach or cancellation (or both) of the Agreement under this provision.

In no event shall CA be obligated under this Agreement to take or omit to take any action that CA believes in good faith would cause it to be in violation of any laws of the Territory or any US laws, including without limitation, the Foreign Corrupt Practices Act.

**12.7 Force Majeure.** Notwithstanding any provision contained in the Agreement, neither party will be liable to the other to the extent fulfillment or performance of any terms or provisions of the Agreement are delayed or prevented by revolution or other civil disorders; wars; strikes; labor disputes; electrical equipment or availability failure; fires; floods; acts of God; government action; or, without limiting the foregoing, any other causes not within its control and which, by the exercise of reasonable diligence, it is unable to prevent. This section will not apply to the payment of any sums due under the Agreement by either party to the other.

**12.8 Export Requirements.** Service Provider agrees that these commodities, technology or software are exported from the United States in accordance with the Export Administration Regulations. Service Provider agrees to export, re-export or import CA Software only in compliance with applicable export- and import regulations and controls. As such, in accordance with U.S. law, these commodities, technology or software may not be exported or re-exported. Diversion contrary to U.S. law is prohibited.

**12.9 Publicity.** CA may use Service Provider's name and logo in CA's marketing program including use on CA's Service Provider website, marketing literature, and in press releases as part of its

description of customers. Subject to CA trademark and usage policies found at <http://www.ca.com/us/about/content.aspx?cid=146494#section2>. Service Provider may use CA's name and logo in marketing material and such use shall be consistent with the requirements and such permission may be rescinded at CA's request for any reason.

**12.10 Data Protection.** Service Provider agrees to allow CA and its affiliates to store and use Service Provider's contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to CA and CA's affiliates, and to contractors, business partners, and assignees of CA and of its affiliates for uses consistent with their collective business activities, including communicating with Service Provider (for example, for processing orders, for promotions, and for market research). In addition, Service Provider agrees to provide End User data (including contact information) to CA for the purposes of administering the Agreement and communicating with the End User (including for the purposes of marketing and promotions and form market research). Service Provider represents that (i) Service Provider is duly authorized to provide personal data to CA and CA (including End User information) and Service Provider does so lawfully in compliance with relevant legislation, (ii) CA and any entity within the CA and CA group of companies (each a "CA Entity") or its subcontractors can process such data and (iii) CA may disclose such data to any CA Entity and its subcontractors for the purpose of satisfying its obligations to Service Provider and for marketing other CA and/or CA products or services to Service Provider and may transfer such data to countries outside of the country of origin. CA, Inc is Safe Harbor certified and the CA Entities have committed to comply with relevant data protection/privacy legislation.

**12.11 Miscellaneous.** Headings in the Agreement are for reference purposes only and will not affect the interpretation or meaning of the Agreement. If any provision of the Agreement is held by an arbitrator or a court of competent jurisdiction to be contrary to law, then the remaining provisions of the Agreement will remain in full force and effect. No delay or omission by either party to exercise any right or power it has under the Agreement will be construed as a waiver of such right or power. A waiver by either party of any breach by the other party will not be construed to be a waiver of any succeeding breach or any other covenant by the other party. All waivers must be in writing and signed by the party waiving its rights.

**12.12 Counterparts; Fax Signatures.** The Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which together constitute one and the same Agreement. The parties agree that facsimile signatures are valid signatures for enforcement of the Agreement.

**12.13 Interpretation and Additional Terms.** The Agreement, together with the Order Form(s), constitutes the entire agreement between CA and Service Provider with respect to the subject matter hereof. The Agreement supersedes all prior negotiations, agreements, and undertakings between the parties with respect to such subject matter. No modification of the Agreement will be effective unless contained in writing and signed by an authorized representative of each party. Notwithstanding applicable law, electronic communications will not be deemed signed writings. Additional Order Forms may be added to the Agreement, provided that each such Order Form is signed by both parties. Each Order Form so added shall be governed by the terms of this Agreement. No term or condition contained in Service Provider's purchase

order or similar document will apply unless specifically agreed to by CA in writing, even if CA has accepted the order set forth in such purchase order, and all such terms or conditions are

otherwise hereby expressly rejected by CA. In the event of a conflict between these Terms and Conditions and the Order Form, the Order Form will govern.