

### 1. INTRODUCTION

- 1.1 This Foundation Agreement (“Foundation Agreement”) between CA, Inc., located at One CA Plaza, Islandia, NY 11749 (“CA”), and \_\_\_\_\_ located at \_\_\_\_\_, \_\_\_\_\_ (“Customer”), is effective \_\_\_\_\_ 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 The Foundation Agreement may incorporate any Module that is attached hereto or signed separately by the Parties.
- 1.3 Modules attached to this Foundation Agreement is/are as follows:

### 2. DEFINITION

- 2.1 “Affiliate” with respect to Customer means any legal entity in which the Customer directly or indirectly Controls.
- 2.2 “Agreement” means this Foundation Agreement, the applicable Module and applicable Transaction Document, and any document incorporated expressly therein by reference.
- 2.3 “CA Offering” means the individual offering (such as software, services, software as a service etc.) made available by CA as defined in the Module and/or Transaction Document.
- 2.4 “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, and any benchmark data and results produced.
- 2.5 “Control” means ownership or control of greater than 50% of an entity’s shares or control the board of such entity by force of law or contract, or the equivalent.
- 2.6 “Documentation” means the documentation, technical product specifications and/or user manuals, published by CA or any entity within CA group of companies (each a CA entity) that is made generally available with CA Offerings.
- 2.7 “Module” means the additional terms and conditions applicable to the CA Offering.
- 2.8 “Parties” means individually and or collectively CA and or the Customer.
- 2.9 “Term” means, with respect to each Transaction Document, the period during which the CA Offering is provided, licensed or granted.
- 2.10 “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 may purchase and CA shall provide the specific CA Offering in a Module signed by the Parties. This Agreement does not entitle Customer’s Affiliates that is a separate legal entity in a jurisdiction different from Customer to directly purchase any CA Offering from CA, unless such Affiliate signs a participation agreement with CA to adopt and adhere to the terms for this Agreement.
- 3.2 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. 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.
- 3.3 The CA Offering will be delivered either by electronic delivery (ESD) or in tangible media carriage paid to (CPT), as defined in INCOTERMS 2010, from CA’s shipping point as indicated in the Transaction Document. 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.
- 3.4 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. CONFIDENTIAL INFORMATION

- 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 permitted under the 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, and the receiving Party shall use Confidential Information only for the purposes described in the Agreement. Confidential Information may be disclosed to receiving Party’s employees, agents, financial advisors, contractors and attorneys on a need-to know basis and the receiving Party shall ensure that such persons maintain 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 CA software (including code) and Documentation, the material terms of the Agreement, and Customer's and/or CA's Confidential Information expressly designated in writing as perpetually confidential, the obligations of this section are perpetual and shall survive termination. 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, all payments shall be made without deduction or set off and are due thirty (30) days from receipt of CA's invoice, which shall be deemed received no more than three (3) days from the invoice date as issued by CA. Customer agrees to pay any applicable VAT, GST, sales tax, and any other applicable taxes (collectively the Taxes) in addition to the fees when such payments are due.
- 5.2 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. CA may charge interest of one per cent (1%) per month compounded for the entire overdue period or the maximum amount allowed by law unless Customer has a bona fide dispute supported by written explanation. If Customer's account is sixty (60) days or more overdue, CA reserves the right with prior written notice to withhold performance of its obligations under the Agreement, without liability, until such amounts are paid in full.

## 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.

## 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. CA may, at its option and expense: (i) procure for Customer the right to continue to use the CA Offering; (ii) repair, modify or replace the CA Offering so that it is no longer infringing; or (iii) provide a pro-rated refund of the fees paid for the CA Offering 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. 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. 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.
- 8.5 The above indemnities are contingent upon: (i) the indemnified Party providing prompt notice of any claim of infringement and assistance in the defense thereof, (ii) the indemnifying Party's sole right to control the defense or settlement of any such claim, provided that the settlement does not require a payment or admission of liability on the part of the other Party, and (iii) the indemnified Party not taking any actions or failing to take actions that hinder the defense or settlement process as reasonably directed by the indemnifying Party.

## 9. LIMITATION OF LIABILITY

EXCEPT IN THE CASE OF A BREACH OF TITLE, INFRINGEMENT OF CA'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY, AND OF THIRD PARTY CLAIMS ARISING UNDER THE INDEMNIFICATION SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW NEITHER PARTY (INCLUDING ANY OF CA'S SUPPLIERS) SHALL BE LIABLE FOR A) 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 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, EXCEED THE FEES PAID AND OR OWED FOR THE THEN CURRENT INITIAL OR RENEWAL TERM FOR WHICH THE CUSTOMER HAS PROCURED THE CA OFFERING OR AS FURTHER DEFINED IN THE MODULE.

## 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; or (b) upon insolvency of the other Party, if permitted by law.
- 10.3 In the event Customer elects to terminate a Transaction Document for convenience prior to the expiration of the then current term, then Customer may terminate upon thirty (30) days prior written notice to CA subject to and in consideration of payment of all committed fees payable under such Transaction Document, whether due before or after the date of termination, which shall become immediately due and payable to CA on such termination. For any licenses of CA software that were not perpetual, Customer agrees to delete all copies of such software from its systems, including copies stored for archival or storage purpose and either destroy or return them to CA.
- 10.4 Termination of this Foundation Agreement will not result in termination of any Transaction Document and such terms shall survive until such time the Transaction Document expires or is otherwise terminated.
- 10.5 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. Upon termination for any reason, Customer shall pay CA any committed fees and expenses under the applicable Transaction Document whether due before or after the date of termination which shall become immediately due and payable to CA on such termination. All fees are non-cancellable and non-refundable unless a pro rated refund applies as provided in the applicable Module.

## 11. DISPUTE RESOLUTION

- 11.1 Any dispute, controversy or claim arising out of the Agreement or the interpretation thereof (a "Dispute") shall be resolved as provided in this section. Prior to the initiation of formal dispute resolution procedures, the Parties shall first meet as often, and for such duration and as promptly as the Parties reasonably deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute. If Customer and CA are unable to resolve the Dispute within thirty (30) days after the referral of the Dispute to them, then each Party will appoint one (1) senior executive who is not involved on a day-to-day basis with the subject matter of the Agreement and will negotiate the matter in good faith in an effort to resolve the Dispute without the necessity of any formal proceedings.
- 11.2 Formal proceedings for the resolution of a Dispute may not be commenced until the earlier of: (i) the good faith determination by the appointed senior executives that amicable 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. The provisions of paragraphs (i) and (ii) will not 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 equitable rights or injunctive remedies deemed reasonable necessary to protect its interests.

## 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) the relevant Module; (3) this Foundation Agreement. Notwithstanding this Order of Precedence, a Customer issued purchase order shall not modify the terms of the documents indicated herein.
- 12.4 **Independent Contractors.** The Parties expressly agree that the relationship between them is that of customer-independent contractor.
- 12.5 **Customer Data.** If Customer transfers any personal data to CA as a requirement pursuant to any CA Offering, then Customer represents that (i) it is duly authorized to provide personal data to CA and it does so lawfully in compliance with relevant legislation, (ii) CA and any entity within the CA group of companies (each a "CA entity") or its subcontractors can process such data for the purposes of performing its obligations and (iii) CA may disclose such data to any CA entity and its subcontractors for this purpose and may transfer such data to countries outside of the country of origin. CA, Inc. is Safe Harbour certified and the CA Entities have committed to comply with relevant data protection/privacy legislation.
- 12.6 **Assignment.** If CA assigns or sells or otherwise transfers its rights to a business or product line or substantially all of its assets and provided such Party agrees to perform the obligations under the Agreement, then CA may transfer its rights and obligations under the Agreement upon written notice to Customer. Except as permitted herein, neither Party may transfer, whether by operation of law or otherwise, the Agreement without prior written consent of the other Party, and consent shall not be unreasonably withheld. Attempts to transfer in contravention of this section shall be deemed null and void. The Agreement shall be binding on the Parties hereto and their respective successors and assigns.
- 12.7 **Import Export.** Customer acknowledges that the CA Offering(s) is subject to control under U.S. law, including the Export Administration Regulations (15 CFR 730-774) 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 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 **Counterparts.** This Foundation Agreement, any Module and any Transaction Document as applicable may be signed in any number of counterparts and each part shall be considered part of the whole and valid, legally binding document.
- 12.10 **Notice.** All notices hereunder shall be delivered to the other Party identified in the Agreement either personally, via certified mail, facsimile or overnight courier. If delivered personally, notice shall be deemed effective when delivered; if delivered via facsimile, notice 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.
- 12.11 **Headings.** The section headings used herein are for information purposes only and shall not affect the interpretation of any provision of this Agreement.
- 12.12 **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.
- 12.13 **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.
- 12.14 **Choice of Law.** The laws of the State of New York (excluding its conflict of laws provisions) shall govern the construction and enforceability of the Agreement. The Parties agree that any action arising under or relating to the Agreement shall lie within the exclusive jurisdiction of the State and Federal Courts located in Suffolk County, New York. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.
- 12.15 **Survival.** Sections pertaining to Confidentiality, Title, Limitation of Liability, Termination, and Import Export shall survive termination of this Foundation Agreement.
- 12.16 **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.



12.17 **Signature.** The Parties have caused this Foundation Agreement to be executed by their duly authorized representatives as identified below.

**Customer**

**CA, Inc.**

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

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

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

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

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

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

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

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

**1. INTRODUCTION**

- 1.1. This Module for CA Software (“Software Module”) between CA, Inc., located at One CA Plaza, Islandia, NY 11749 (“CA”), and \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_ (“Customer”), effective \_\_\_\_\_ 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 \_\_\_\_\_ between CA and Customer. Any capitalized terms used in this Software Module shall have the meanings given in the Foundation Agreement unless otherwise provided herein.

**2. DEFINITION**

- 2.1. “Access” means use of CA Software remotely by an Authorized End User.
- 2.2. “Authorized End Users” means Customer, Affiliate and their employees and independent contractors (but excluding any outsourcer, facilities management providers, managed service provider, or application service provider) 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.
- 2.3. “Authorized Use Limitation” means the quantity of the CA Software licensed in accordance with the License Metric specified on the Transaction Document.
- 2.4. “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 this Module pursuant to the applicable Transaction Document including all Versions, Releases, provided as part of Support if applicable.
- 2.5. “Distributed” means the CA Software designated as distributed that is generally used for independent usage across individuals systems or hardware based on the Licensed Metric in a decentralized form of computing.
- 2.6. “License Metric” means the specific criteria for measuring the usage of the CA Software (such as MIPS, CPUs, tiers, servers, or users).
- 2.7. “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 Licensed Metric in a centralized form of computing.
- 2.8. “Maintenance” means the provision of new Releases made available while on active Support or new Versions if applicable to the generally available CA Software licensed by Customer.
- 2.9. “Perpetual License” means a license to use CA Software for an indefinite period subject to compliance with the Agreement.
- 2.10. “Release” means a general available release of a CA software product, which may contain minor new software product functionality, code, or compatibility and incorporates all previous fixes (if any exist) since the last Version. Typically, a Release requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by CA for a particular product, a Release is tied to the preceding Version and is typically designated by a number to the right of the decimal point such as 1.1, 1.2, 1.3, etc.
- 2.11. “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.
- 2.12. “Support” means the provision of technical support and Maintenance provided for a particular CA Software as further defined on the Transaction Document.
- 2.13. “Territory” is the location indicated on the Transaction Document where Customer is authorized to install the CA Software.
- 2.14. “Version” means a release of a CA Software Product that contains major changes in software product functionality, code, or compatibility and incorporates the previous release (if one has occurred), fixes and service Packs (if they have occurred). Typically, a Version requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by CA for a particular product, a Version is designated by the number to the left of the decimal point such as 1.0, 2.0, 3.0, etc.

**3. SOFTWARE OFFERING & OBLIGATIONS**

- 3.1. CA grants the Customer a limited, non-exclusive, non-transferable license, for the Term:
  - 3.1.1. install and deploy the CA Software in the Territory up to the Authorized Use Limitation.
  - 3.1.2. permit its Authorized End Users Access to the CA Software for Customer’s and 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'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. 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.

3.4. The grant of license is contingent upon Customer's compliance with the following obligations set out under this provision: Customer agrees, that it shall not: (i) access or use any portion of the CA Software not expressly authorized in the Transaction Document or the Documentation of the CA Software; (ii) cause or permit de-compilation, reverse engineering, or otherwise translate all or any portion of the CA Software; (iii) modify, unbundle, or create derivative works of the CA Software and/or Documentation; (iv) rent, sell, lease, assign, transfer or sublicense the CA Software or use the CA Software to provide hosting, service bureau, on demand or outsourcing services for the benefit of a third party; (v) remove any proprietary notices, labels, or marks on or in any copy of the CA Software or Documentation; (vi) use the CA Software beyond the Authorized Use Limitation.

3.5. CA reserves the right, on notice to the Customer, to conduct an audit remotely or onsite of Customer and/or its Affiliates facilities to verify Customer's compliance with the terms of the Agreement. CA agrees that such audit shall be conducted during regular business hours at Customer's offices and CA shall endeavor to conduct such audit so as not to interfere unreasonably with Customer's activities and/or use an independent third party to conduct the audit subject to terms of non-disclosure if required.

3.6. All rights not specifically granted hereunder are expressly reserved.

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

4.1. If Support is purchased as defined in the Transaction Document, CA will provide Customer with technical support for the CA Software to operate according to the Documentation, help desk support and Maintenance for the CA Software based on Support guidelines as described on <http://www.support.ca.com>.

4.2. In order to initiate an issue, Customer will provide CA sufficient information so that CA can provide assistance to Customer in a timely manner.

4.3. CA will provide a minimum of twelve months prior written notice to Customer if CA ceases to provide new Versions or Releases for a CA Software product.

4.4. If renewal fee of Support is defined on the Transaction Document then CA may automatically invoice Customer for such renewal of Support unless CA receives not less than thirty (30) days written notice from Customer prior to the anniversary of the applicable Term that such Support is not required.

4.5. If selected in the Transaction Document, Customer may purchase a higher tier of Support (Plus or Premier) as further defined at <http://www.support.ca.com> for additional fees for each CA Software product.

#### **5. FEES**

If indicated on the Transaction Document, Customer may pay initial payments through same day fed wire to ensure payments are made on the due date defined on the Transaction Document when entering a new Term. For other payments required by Customer, CA will send Customer an invoice containing the applicable remit to address or updated wire transfer information at least thirty (30) days prior to each respective due date. The following wire transfer routing information applies: Wells Fargo Bank, NA, ABA# 121000248, Account Name: CA, Inc. Lockbox, Account#: 2000028313816.

#### **6. THIRD PARTY TERMS**

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/tpterms>.

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

7.1. For Distributed Software. CA warrants that the CA 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.

7.2. 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.

#### **8. PERFORMANCE WARRANTY REMEDY**

8.1. 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. 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 a Perpetual License, using (only for purposes of a refund calculation) an amortization schedule of three (3) years.

8.2. Warranty remedies are conditioned upon (i) any error or defect complained of 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).

8.3. **THE ABOVE WARRANTIES ARE THE SOLE WARRANTIES PROVIDED BY CA. NO OTHER WARRANTIES, INCLUDING THAT THE CA SOFTWARE IS ERROR FREE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR SUITABILITY AND/OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY CA OR ITS SUPPLIERS.**



### 1. INTRODUCTION

- 1.1. This Module for Services and Education (“Services Module”) between CA, Inc., located at One CA Plaza, Islandia, NY 11749 (“CA”), and \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_ (“Customer”), effective \_\_\_\_\_ 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 effective \_\_\_\_\_ 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 anytime (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.

## **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 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.

8.3. EXCEPT AS SET FORTH IN THIS SECTION, NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THIRD PARTY WARRANTIES, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY AND NONINFRINGEMENT AND/OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE MADE BY CA.

#### **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 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.

#### **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.

### 1. INTRODUCTION

- 1.1. This Module for Software as a Service (“SaaS Module”) between CA, Inc., located at One CA Plaza, Islandia, NY 11749 (“CA”), and \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_ (“Customer”), effective \_\_\_\_\_ specifies terms and conditions which apply to Software as a Service that CA will provide to Customer.
- 1.2. This SaaS Module incorporates by reference the terms of the Foundation Agreement effective \_\_\_\_\_ between CA and Customer. 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. “Clarity Full Functionality User” means a User with full production access and use of the available Clarity PPM functionality.
- 2.2. “Clarity Restricted User” means a User with limited production access and the following uses of the available Clarity PPM functionality:
  - i. View any data; Create issues, risks, change requests; collaboration, participate in workflow processes, receive and respond to action items, receive notifications, enter time sheets, update task status and complete deliverables, run any reports.
- 2.3. “Clarity View Only User” means a User can only view information but cannot create or edit information except for ideas and Incidents.
- 2.4. “Customer Data” means information stored in the SaaS database.
- 2.5. “Force Majeure Event” means an event of Force Majeure as defined in the Foundation Agreement and/or delays caused by an internet service provider or hosting facility that results in data center outages resulting from causes not within CA’s control.
- 2.6. “Near Production Environment” means environments to be designed as similar to production and may be used for performance testing, training, and extra staging.
- 2.7. “Production” means the “live” environment of SaaS provided to process data on a real-time basis.
- 2.8. “Production Availability” means, for purposes of measuring the Service Level, the aggregate number of minutes during the month in which the SaaS is available for Production access and use by Customer.
- 2.9. “SaaS” means the online version of the CA software defined in the Transaction Document for access to and usage by its customers via a website(s) environment.
- 2.10. “SaaS Support” means support of the underlying CA software so it operates materially in accordance with the Documentation.
- 2.11. “Sandbox” means a development or test environment that is not Production.
- 2.12. “Sandbox Small” means a Sandbox to be used by no more than 5 concurrent users. Concurrent users comprise the number of users accessing and using the subject environment at any one point in time.
- 2.13. “Scheduled Downtime” means planned downtime of SaaS availability where CA provides notice to Customer at least 72 hours in advance.
- 2.14. “Service Level” means as described in the section entitled: Service Level Commitments.
- 2.15. “SSAE 16” means the standards used by an independent auditor that employs procedures, policies and controls of the American Institute of Certified Public Accountants Statement on Standards for Attestation Engagements (SSAE) No 16, Reporting on Controls at a Service Organization to verify and validate that the organization is following those procedures regarding control objectives, activities and control over information technology, and related processes.
- 2.16. “Subscription Term” means the period of the subscription to the SaaS as set out in the Transaction Document.
- 2.17. “Users” means the number of individuals set forth on the applicable Transaction Document authorized to access and use of SaaS by means of user identifications and passwords. An active User is counted for licensing purposes by what rights the User is authorized to access, whether or not the User has used the rights. Conversely, Users that exceed the limited authorized access rights will be counted as a different type of User. For example, a Clarity Restricted User that exceeds the use rights will be counted as a Clarity Full Functionality User. Users may include Customer and Affiliate’s employees and independent contractors for the benefit of Customer’s internal business purposes in accordance with the provisions of this Agreement.

### 3. SAAS OFFERING

- 3.1. CA shall provide SaaS to Customer during the Subscription Term directly or through a third party SaaS provider in accordance with the terms of the Agreement.
- 3.2. CA provides Customer a non-transferable and non-exclusive right to access and use SaaS for the sole purpose of supporting its internal business use. A new User may replace a former User who no longer requires access to, or use of, the SaaS.



3.3. Customer acknowledges and agrees that in order for CA to effectively provide SaaS, Customer may be required to provide necessary contact and related information, such as the names and contact information, including email addresses and telephone numbers, for technical personnel and shall not delay, prevent or interfere with CA's provision of SaaS.

#### **4. FEES & RENEWAL**

4.1. The number and type of Users for SaaS and associated fees due and payable are shall be as set out on the Transaction Document. Additional Users, or an additional SaaS offering, if available, shall require an additional Transaction Document. Unless otherwise set forth in the relevant Transaction Document (i) additional Users may be purchased only in increments of 50 Users; and (ii) such additional User subscriptions shall be coterminous with the expiration of the Subscription Term.

4.2. Any Subscription Term may be renewed upon thirty (30) days prior written notice by Customer subject to the fees indicated on the Transaction Document or otherwise the then current Subscription SaaS fees apply.

4.3. The fees for SaaS subscription are not contingent upon the delivery of any future functionality or features of any other CA software.

#### **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. CA shall not access Customer's User accounts, or Customer Data, except (i) in the course of data center business operations if required, (ii) in response to SaaS or technical issues or (iii) at Customer's specific request as reasonably required in the provision of SaaS. CA will segregate Customer's Data from other Customers data.

5.2. CA operates and maintains a disaster recovery procedure. In case of a Force Majeure Event, Customer acknowledges and agrees that Customer Data may not be recoverable beyond the last restoration or archive point, and accepts responsibility for re-entry of such data.

5.3. Customer Data will be returned to the Customer at the end of the Term or at the termination of the SaaS subscription in the manner described in the SaaS Documentation.

#### **6. SECURITY**

6.1. CA shall adhere to SSAE 16 audit compliance criteria and data security procedures during the Subscription Term.

6.2. CA shall comply with CA's security policy and procedures, which policies and procedures are designed to provide and maintain commercially reasonable safeguards against the destruction, loss or alteration of, or unauthorized access to or use of the Customer Data in CA's possession or control and which safeguards are, at a minimum, no less rigorous than those maintained by CA for its own information of a similar nature.

6.3. Customer Data shall be stored pursuant to CA's data security procedures, which shall be provided to Customer upon request. Except as required herein, CA will not be responsible for any unauthorized access to, or alteration, theft or destruction of Customer Data, unless caused as a result of CA's negligence or intentional misconduct, in which case restoring or recovery of Customer Data shall be limited to the most recent back-up of Customer Data. CA is not responsible for loss of Customer Data arising from Customer's: (i) transmission of data in contravention of the User Guide; or, (ii) failure to act on any CA provided communication.

6.4. CA shall comply with the applicable EU member states' implementation of the Directive 95/46/EC ("Directive") governing the processing of personal data as defined specifically in the Directive and CA, Inc. is Safe Harbour certified.

6.5. Customer or an independent third party may audit CA's operations within the applicable data center to verify CA's compliance with the security and technical provisions defined in this Module. The audit may take place, no more than once annually, upon thirty (30) days prior written notice subject to Customer or its independent third party having executed a CA confidentiality agreement and stating the purpose and scope of the request. Such audit shall be conducted during normal business hours in a manner that does not disrupt business operations.

#### **7. INITIATION AND SUPPORT PROCESSES**

7.1. The following processes apply to the SaaS:

i. CA will send an email to Customer's technical contact, identified on the Transaction Document setting out the SaaS URL(s) and other information necessary for initial use of the SaaS. Customer shall provide information as requested within 7 days of receiving the email.

ii. Customer will utilize the CA Support website, or other site or notification mechanism as CA may designate from time to time, to notify CA of SaaS availability issues, request other in-scope technical support assistance, or for Customer's to provide feedback or approvals on requests as applicable.

#### **8. SAAS SUPPORT**

8.1. The Customer shall be provided with SaaS Support during the Subscription Term.

8.2. For any SaaS Support requests, Customer should be prepared to provide to SaaS Support personnel, all pertinent information, in English, including but not limited to, Customer number or site identification number, incident severity, SaaS/software name, area of SaaS (Production or Sandbox), incident description, and a technical contact familiar with Customer's environment or the problem to be



solved. Customer must use reasonable efforts to communicate with CA in order to verify the existence of the problem and provide information about the conditions under which the problem could be duplicated.

- 8.3. Upon receiving Customer's technical contact information, SaaS Support will be provided in a timely and professional manner by qualified support engineers as defined below:
  - i. Access to CA help desk and the ability to open and manage support incidents via CA support online or by telephone.
  - ii. Production environment support: 24x7 for severity 1 incidents; normal business hours for severities 2-4.
  - iii. Sandbox environment support: Normal business hours for incidents of all severities.
  - iv. Access to CA support website (currently: <http://support.ca.com>) for 24x7x365 online support and access to CA software product and documentation, global user communities and regional user groups, FAQs, samples, webcast recordings and demos, usage tips, technical updates and HYPER notifications, as such are made available by CA.
  - v. Interactive remote diagnostic support allowing CA support engineers to troubleshoot an incident securely through a real-time browser-based remote control feature.
  - vi. Additional support such as file storage, point in time backup, periodic file refresh and basic reporting may be available at CA's discretion according to the SaaS provided.

Any additional support requirements are only by prior written agreement with CA.

- 8.4. In order to respond to an issue raised through SaaS Support, CA may request Customer to upgrade to supported operating systems and or third party applications as required in order to properly operate and access the SaaS offering. For example, if Customer is using a version of a browser which is no longer supported, Customer will be requested to upgrade the browser application. The costs associated with any upgrades required and any such installations are not included as SaaS Support and all such costs shall be the responsibility of the Customer.

## 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.
- 9.2. Because Customer may integrate or utilize third party links to other software, hardware or other service which are associated with, or otherwise available through SaaS, Customer agrees that it and its Users shall use such third party links in their sole discretion. CA shall have no responsibility or liability with respect to such third party links used by Customer's or 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, other than to Users or as otherwise contemplated by this Agreement; (ii) send or store code that can harm or result in damage to the SaaS offering (including but not limited to malicious code and malware); (iii) wilfully 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 external end users and or to process data other than Customer's as an outsourcer, service bureau or consultant without written permission provided by CA.

## 10. WARRANTY

- 10.1. CA warrants that (i) SaaS shall perform materially in accordance with the applicable SaaS Documentation and (ii) that SaaS will be available online according to the performance levels described in the Service Levels defined in this SaaS Module.
- 10.2. EXCEPT AS EXPRESSLY SET FORTH ABOVE, TO THE EXTENT PERMITTED BY LAW, NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THIRD PARTY WARRANTIES, IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY OR SATISFACTORY QUALITY, OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY CA AND CA MAKES NO WARRANTIES HEREUNDER WITH RESPECT TO ANY HARDWARE EQUIPMENT OR THIRD PARTY SOFTWARE WHICH CA MAY USE TO PROVIDE THE SAAS.
- 10.3. Customer warrants that (i) it has the right to transmit any data or information as may be required for the purposes of accessing SaaS (ii) it will ensure compliance to the Agreement by itself and its Users and (iii) it is responsible for all activities that occur in User accounts, (iv) it shall not misuse SaaS through sending spam or otherwise duplicative or unsolicited messages or store infringing, obscene, threatening, or otherwise unlawful material that is harmful to children or violates third party privacy rights.

## 11. WARRANTY REMEDY

- 11.1. In the event of a breach of the Warranty by CA, CA may in consultation with Customer (i) use reasonable efforts consistent with industry standards to cure the defect as defined in CA Support process outlined in this SaaS Module and or (ii) Customer may exercise its rights to termination as defined under the Service Level Commitment section below and qualify for a refund as defined therein and or (iii) terminate the subscription and provide a pro-rata refund calculated on the number of months left remaining on the Term of the applicable Transaction Document. Warranty remedies are conditioned upon (i) any error or defect complained of is reasonably reproducible by CA, (ii) the breach is not attributable in whole or in part to any non-CA product(s) or service(s).

## 12. SERVICE LEVEL COMMITMENT



- 12.1. The applicable SaaS offering during the applicable Term will maintain Production Availability of 99.5% on a monthly basis. If Production Availability falls below 99%, it shall be considered a minor default; and if Production Availability falls below 98%, it shall be considered a major default.
- 12.2. In the event Production Availability falls below 99%:
- i. CA will investigate missed Service Levels through determining the root cause of the issue then using commercially reasonable efforts to correct the issue and advising Customer as reasonably requested by Customer of the status of efforts being undertaken with respect to the issue;
  - ii. Provide Customer reasonable evidence to Customer that the cause of the issue is being corrected or will be corrected and
  - iii. In the event of a minor default, Customer is entitled to 2 days credit of fees for the applicable SaaS offering based on the monthly fees paid. In the event of a major default, Customer is entitled to 5 days credit of fees for the applicable SaaS offering based on the monthly fees paid. Any credits issued to Customer will be applied towards the next billing period applicable to Customer or otherwise as agreed between the parties. Except to the extent provided in section 12.3, the credits issued under this section will be the Customer's sole and exclusive remedy for the default event giving rise to the credit.
- 12.3. Subject to the provision below, in the event there are three (3) major defaults within a 3 month period of time, upon 30 days written notice to CA (which notice shall be received by CA within ten (10) business days of the third unexcused major default), Customer may terminate its subscription to SaaS without incurring any additional charges or termination fees. In the event of such termination the Customer shall be entitled to a refund of fees which have not yet been applied towards SaaS as of the effective date of termination and/or CA shall relieve Customer of its obligation to pay for any unused fees applicable in the Term. The refund herein shall be Customer's sole and exclusive remedy under this SaaS Module and CA shall have no further liability arising out of the applicable SaaS subscription, and shall not impact termination of any other Module or the Foundation Agreement.
- 12.4. The following events shall be excluded from the calculation of any Service Level defaults: (i) Force Majeure Event; (ii) outages due to Scheduled Downtime such as upgrading data center infrastructure; (iii) outages based on Customer networks or domain name server issues; (iv) Customer's configuration, scripting, coding; (v) internet outages; (vi) Customer outages requested by Customer (vii) Customer changes to its environment which hinder SaaS production and (viii) inability for Customer to log in due to use of Lightweight Directory Access Protocol (LDAP) to control authentication.



## Hardware Appliance Module

### 1. INTRODUCTION

- 1.1. This Module for the Hardware Appliance (“Hardware Appliance Module) between CA, Inc., located at One CA Plaza, Islandia, NY 11749 (“CA”), and \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_ (“Customer”), effective \_\_\_\_\_ specifies terms and conditions which apply to the Hardware Appliance which CA will provide to Customer.
- 1.2. This Hardware Appliance Module incorporates by reference the terms of the Foundation Agreement effective \_\_\_\_\_ between CA and Customer. Any capitalized terms used in this Hardware Appliance Module shall have the meanings given in the Foundation Agreement unless otherwise provided herein.

### 2. DEFINITIONS

- 2.1. “Hardware” means a single CA-supplied third party physical server or device.
- 2.2. “Hardware Appliance” means Hardware that is bundled with and operates the CA software licensed by Customer and pre-installed on the Hardware.

### 3. APPLIANCE OFFERING

- 3.1. CA shall provide the Hardware Appliance specified on the Transaction Document.
- 3.2. The terms for license and support for the underlying CA software is covered separately under the Software Module.

### 4. FEES

- 4.1. The fee for the Hardware Appliance is as specified on the Transaction Document.
- 4.2. Upon full payment of the fee, Customer will own the Hardware free of any liens or encumbrances.

### 5. WARRANTY

- 5.1. Upon the purchase of a Hardware Appliance, CA will pass through to the Customer the applicable Hardware warranty. Such warranty will be provided for a period of twelve (12) months or more depending on the type of Hardware Appliance purchased. A copy of the applicable third party support warranty coverage is available under the “Get Support” section of CA’s Support website located at <https://support.ca.com>.

### 6. WARRANTY REMEDY

- 6.1. To address a warranty issue on the Hardware, CA will provide Customer telephone assistance to access the third party Hardware support to address support issues with the Hardware.
- 6.2. Except for procuring third party warranty coverage for the Hardware as described above, the Hardware is provided on an “AS IS” basis and CA and its suppliers makes no warranties, and disclaims any and all express or implied warranties (including but not limited to warranties of merchantability or satisfactory quality or fitness for a particular purpose), with respect to the Hardware. None of the warranties specified in the Foundation Agreement or any other agreement shall apply to the Hardware.

### 7. CUSTOMER REQUIREMENTS

- 7.1. Customer is solely responsible for use of the Hardware, including assuring proper supported environment configuration, CA software installation, and operating methods in accordance with the Hardware specifications and Documentation.
- 7.2. CA will not support modifications to the Hardware nor will it support the Hardware if Customer fails to comply with the terms of the Agreement to the extent such failure causes the Hardware’s failure to perform in substantial accordance with the applicable Hardware documentation.
- 7.3. CA shall have no obligation to replace the Hardware, or provide additional hardware, in cases where future Versions or Releases (as such terms are defined in the Software Module) of the CA software require an upgrade of or addition to such Hardware.

### 1. INTRODUCTION

- 1.1. This Module for Support (“Support Module”) between CA, Inc., located at One CA Plaza, Islandia, NY 11749 (“CA”), and \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_ (“Customer”), effective \_\_\_\_\_ specifies terms and conditions which apply to the Support that CA will provide to Customer.
- 1.2. This Support Module incorporates by reference the terms of the Foundation Agreement effective \_\_\_\_\_ between CA and Customer. Any capitalized terms used in this Support Module shall have the meaning given in the Foundation Agreement unless otherwise provided herein.

### 2. DEFINITIONS

- 2.1. “CA Software” means the computer software programs either provided individually, or packaged as a software appliance, made generally available pursuant to a Transaction Document by CA and licensed by CA or its licensors to a Customer under a Software Module, including all Releases and Versions provided to Customer by CA as part of Maintenance, if applicable.
- 2.2. “Customer Data” means all electronic data or information provided by Customer to CA or provided by Customer in order to resolve a Support incident.
- 2.3. “Fix/Fixes” means any change, interim solution, recommendations, or advice that CA makes to the CA Software product, including changes made for purposes of maintaining system compatibility, error correction, improved operation and security and Workarounds that establish or help to restore material conformity to the specifications in the Documentation for such software.
- 2.4. “Maintenance” means the provision of new Releases made available while on active Support or new Versions if applicable to the generally available CA Software licensed by Customer.
- 2.5. “Release” means a general available release of CA Software, which may contain minor new software product functionality, code, or compatibility and incorporates all previous Service Packs and Fixes (if any exist) since the last Version. Typically, a Release requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by CA for a particular product, a Release is tied to the preceding Version and is typically designated by a number to the right of the decimal point such as 1.1, 1.2, 1.3, etc.
- 2.6. “Service Pack” means a set of cumulative Fixes for a particular Version or Release of the software, and typically does not contain new features or functionality. A Service Pack may be available either as a download from Support Online or as a media kit. It is generally installed as CA Software overlay (also known as a patch). Service Pack nomenclature is tied to the related Version or Release. For example, a Service Pack relating to Version 1.0 would be designated as 1.0 SP 1, 1.0 SP 2, etc., and a Service Pack for Release 2.1 would be designated as 2.1 SP1, 2.1 SP2, etc.
- 2.7. “Support” means the provision of standard technical support and Maintenance provided for a particular CA Software product as further described in this Support Module.
- 2.8. “Support Online” means web-based support available to Customers that are active on Support with the current url: support.ca.com.
- 2.9. “Version” means a release of a CA Software product that contains major changes in software product functionality, code, or compatibility and incorporates the previous release (if one has occurred), fixes and service Packs (if they have occurred). Typically, a Version requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by CA for a particular product, a Version is designated by the number to the left of the decimal point such as 1.0, 2.0, 3.0, etc.
- 2.10. “Workaround” means an interim resolution of an incident and may include specific modifications to the software to address critical problems (sometimes also called “hot fixes”). In some cases, the incident addressed by the Workaround will be permanently resolved when Customer install the next upgrade; the Workaround itself may be considered final if it materially reduces the impact of an error or defect.

### 3. SUPPORT OFFERING

- 3.1. CA will provide or make available (as appropriate) to Customer Support for the CA Software product as specified in the Transaction Document.
- 3.2. If selected in the Transaction Document, Customer may purchase a higher tier of support (where available) as further defined at <http://www.support.ca.com> for additional fees for each CA Software product.

### 4. TECHNICAL SUPPORT

- 4.1. Technical Support includes online and telephone support for the CA Software to operate according to the Documentation. Such technical support in the form of Workarounds, Fixes, Service Packs and call support based on guidelines as defined further herein. Support does not include technical support at the Customer’s site.
- 4.2. CA provides technical support for the then current Version or Release of the CA Software and the immediately prior Release or Version (GA-1).



- 4.3. In order to initiate a technical support issue, Customer will provide CA sufficient information so that CA can provide assistance to Customer in a timely manner and describe the conditions under which the problem can be duplicated.
- 4.4. Customer may be requested to provide CA information in English, or in the local language if available including but not limited to, Customer number or site identification number, incident severity, software name including release, version, service pack and any other descriptive terms as requested by technical support and will include a technical contact familiar with Customer’s environment or the problem to be solved.
- 4.5. Technical support will be provided by qualified support professionals as follows:
  - i. Access to technical support 24x7x365 and the ability to open and manage support incidents via Support Online or by telephone.
  - ii. Production environment support: 24x7 for Severity 1 incidents; normal business hours for severities 2-4.
  - iii. Non production support: normal business hours Severity 2-4 applies.
  - iv. Access to Support Online for 24x7x365 online support and access to Documentation, global user communities, FAQs, samples, webcast recordings and demos, usage tips, technical updates and HYPER notifications (an option the Customer can use to receive automatic emails for critical updates or Fix), as such are made available by CA.
  - v. Interactive remote diagnostic support allowing technical support engineers to troubleshoot an incident securely through a real-time browser-based remote control feature.

**5. TECHNICAL SUPPORT GUIDELINES**

- 5.1. Technical support logs calls 24 hours a day, 7 days a week. Any technical support issue logged is addressed based on level of severity according to the Customer’s determination of the severity level. Each severity level has a differing impact on the response time. The following parameters shall be referenced by Customer when classifying each technical support issue:
  - i. “Severity 1” should be used when the Customer indicates “system down” or a product or a product-inoperative condition impacting a production environment, such as (i) production server or other mission critical systems are down; (ii) a substantial portion of mission-critical data is at a significant risk of loss or corruption; (iii) a substantial loss of service; (iv) business operations have been severely disrupted; or (v) an incident in which the CA Software causes catastrophic network or system failure or that compromises overall system integrity or data integrity when the CA Software is installed or when it is in operation (i.e. system crash or loss of system security) and significantly impacts ongoing operations in a production environment, and in each of the foregoing situations (i) through (v), no Workaround is immediately available.
  - ii. “Severity 2” should be used for a high-impact business condition possibly endangering a production environment. The software may operate but is severely restricted.
  - iii. “Severity 3” should be used for a low-impact business condition with a majority of software functions still usable; however, some circumvention may be required to allow the CA Software to operate.
  - iv. “Severity 4” should be used for (i) a minor problem or question that does not affect the software function, (ii) an error in a CA Software product Documentation that has no significant effect on operations; or (iii) a suggestion for new features or a CA Software product enhancement

5.2. CA will provide responses based on the guidelines below:

<b>Service Level Guidelines for Support</b>	
Incident Severity	Initial Response Time
<b>1</b>	1 hour
<b>2</b>	2 business hour*
<b>3</b>	4 business hours*
<b>4</b>	1 business day

\*During normal business hours as published on Support Online, based on the time from an incident’s submission online or telephonically.

**6. MAINTENANCE**

- 6.1. CA will provide Maintenance to Customer for CA Software including if available new Versions and Releases for a minimum of eighteen (18) months from the date of general release of the Release or Version of CA Software.
- 6.2. In the event CA moves a Version or Release into limited support availability, where new Versions or Releases will not be made available, then CA will provide a minimum of twelve (12) months prior written notice to Customer.
- 6.3. CA will not provide any upgrades to or installations of any third party software or applications.



## **7. LEGACY VERSION POLICY**

- 7.1. If CA determines that it will terminate support of a Version or Release, it shall provide Customer at least twelve (12) months notice that such support will no longer be available. If Customer requires support for any legacy version, it may contact CA to subscribe to an extended support service if offered by CA, for those Versions or Releases for a limited period of time for a separate fee.
- 7.2. If indicated in the Transaction Document, CA Software may be defined as “Stabilized” which indicates that new updates will not be made available for that CA Software. In such cases, CA will provide notice to Customer and may provide Customer an option to upgrade or migrate to another alternative version as applicable and appropriate.
- 7.3. If at the end of the Term, Customer wishes to renew Support for CA Software that is designated at the time of expiration as “End of Life” then it may contact CA to subscribe to an extended support service if offered by CA, for those Versions or Releases for a limited period of time for a separate fee

## **8. FEES & RENEWAL**

- 8.1. The fees for Support shall be provided in the Transaction Document and shall be determined by the level of Support selected for the applicable CA Software.
- 8.2. If renewal fee of Support is defined on the Transaction Document, then CA may automatically invoice Customer for such renewal of Support unless CA receives not less than thirty (30) days written notice from Customer prior to the anniversary of the applicable Term that such Support is not required.

### 1. INTRODUCTION

- 1.1. This Module for Education (“Education Module”) between CA, Inc., located at One CA Plaza, Islandia, NY 11749 (“CA”), and \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_ (“Customer”), effective \_\_\_\_\_ specifies terms and conditions which apply to Education that CA will provide to Customer.
- 1.2. This Education Module incorporates by reference the terms of the Foundation Agreement effective \_\_\_\_\_ between CA and Customer. Any capitalized terms used in this Education Module shall have the meanings given in the Foundation Agreement unless otherwise provided herein.

### 2. DEFINITIONS

- 2.1. “Attendees” mean the participants authorized by Customer to attend or participate in the Education offerings as indicated in the Transaction Document.
- 2.2. “Course Materials” means any Education content provided to Customer in any media form 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.
- 2.3. “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.
- 2.4. “Education Funds” means a pool of funds prepaid by Customer which may be applied to purchase Education.

### 3. EDUCATION OFFERING

- 3.1. CA shall provide the Education as agreed in a Transaction Document. The Transaction Document will specify the type of Education offering being purchased, including at a minimum, the courses or classes ordered, the quantity of Attendees, and the manner and/or location of delivery of such Education services, as applicable.
- 3.2. CA may require the registration or pre-registration of Attendees in order to attend or access the applicable Education. Customer acknowledges that CA reserves the right to refuse entry or access to any individual that cannot authenticate their registration or authorization for such Education.

### 4. FEES AND CANCELLATION

- 4.1. The Customer will pay to CA the fees, expenses and other charges as defined in the Transaction Document and acknowledges that such fees are due and payable upon execution of such Transaction Document. 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.
- 4.2. Customer may use Education Funds in one or more transactions. 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.
- 4.3. If CA cancels a class due to unforeseen circumstances, or low enrolment, 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.
- 4.5. Neither party shall be liable for any travel related fees or expenses incurred by the other party in relation to Education which such party has properly cancelled in compliance with this section.

### 5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. CA grants to Customer, a non-exclusive, non-transferable license to use the Course Materials for the internal use of the Customer, but limited to the specific Attendees and subject to terms of the Agreement. Customer shall be responsible for all use of the Education and Course Materials by its Attendees.

### 6. WARRANTY

- 6.1. If CA provides an instructor, the delivery of the Course Offering shall be provided in a professional, workman-like manner.
- 6.2. EXCEPT AS SET FORTH IN THIS SECTION, NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THIRD PARTY WARRANTIES, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR SUITABILITY AND/OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY CA.

### 7. WARRANTY REMEDY



7.1. In the event of a breach of the Warranty section, Customer's remedy shall be, at CA's discretion and in consultation with Customer, to re-perform the Education at no additional charge to Customer or to refund the applicable fees paid which relate to the specific Education, Course or Course Material. These remedies are contingent upon the alleged breach not resulting from Customer's failure to abide by its obligations as defined in the Transaction Document or to conform to the Course Materials.



## Cloud Monitoring Module

### 1. INTRODUCTION

- 1.1. This Cloud Monitoring Module for CA APM Cloud Monitor (“Cloud Monitor Module”) between CA, Inc., located at One CA Plaza, Islandia, NY 11749 (“CA”), and \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_ (“Customer”), effective \_\_\_\_\_ specifies terms and conditions which apply to the service that CA will provide to Customer.
- 1.2. This Cloud Monitor Module incorporates by reference the terms of the Foundation Agreement effective \_\_\_\_\_ between CA and Customer. Any capitalized terms used in this Cloud Monitor Module shall have the meanings given in the Foundation Agreement unless otherwise provided herein.
- 1.3. The CA APM Cloud Monitor provides a monitoring service and generates metrics and measurements to Customer for testing websites and protocols through automated pinging and or scripts created by synthetic logins from data centers located across the globe.

### 2. DEFINITIONS

- 2.1. “Availability” refers to the functioning of the CA APM Cloud Monitor set forth further under the Section on Service Levels.
- 2.2. “Monitored Objects”, includes basic which pings web sites and protocols for availability of such site or protocol as well as advanced monitoring which tests individual websites through use of scripts executing elements on the specific website.
- 2.3. “Subscription Term” means the fixed period of time defined in the Transaction Document.
- 2.4. “CA APM Cloud Monitor” means a web performance monitoring service offered by CA.
- 2.5. “CA APM Cloud Monitor Support” means technical support provided to Customer so the CA APM Cloud Monitor operates materially in accordance with the Documentation.

### 3. CLOUD MONITOR OFFERING

- 3.1. CA shall provide CA APM Cloud Monitor to Customer during the Subscription Term directly or through a third party APM Cloud Monitor provider in accordance with the terms of the Agreement.
- 3.2. During the Subscription Term, Customer may view, access and download data such as scripts, logs and configuration resulting from Monitored Objects. CA APM Cloud Monitor provides the ability to maintain a public status page designed to enable Customer to access and view performance data over time.

### 4. FEES & RENEWAL

- 4.1. The fees due and payable are shall be as set out on the Transaction Document. Any increase in the license for Monitored Objects such as change of options, or add on packs may be added through a modification of the Transaction Document as mutually agreed to by the parties.
- 4.2. Any Subscription Term may be renewed automatically unless Customer provides thirty (30) days prior written notice to opt out of renewal as long as the CA APM Cloud Monitor remains available by CA.
- 4.3. CA may with notice prior to any renewal, replace the specific CA Cloud Monitor defined in a Transaction Document with a replacement service and/or a replacement underlying software that is generally available to customers with alternative, materially similar, functionality.
- 4.4. The fees for CA APM Cloud Monitor subscription are not contingent upon the delivery of any future functionality or features of any other CA software.

### 5. INITIATION AND SUPPORT PROCESSES

- 5.1. Customer agrees to supply the information required to set up the Customer account, including name, email address and primary website address. Once the account is set up, Customer may configure and set up specifics of the Monitored Objects, the types of notifications, and the frequency of monitoring based on the option selected or licensed by Customer.
- 5.2. Customer is solely responsible to maintain the confidentiality of the user account such account name and password. If Customer knows or has reason to suspect that Customer’s account name and/or Customer’s password has been disclosed or otherwise compromised, Customer shall promptly notify CA of any such known or suspected breach of security. Customer may setup, and is responsible for, sub-accounts and Customer may set the permissible actions for each sub-account.





## **6. CA APM CLOUD MONITOR SUPPORT**

- 6.1. Customer shall be provided with CA APM Cloud Monitor Support (“CA Support”) during the Subscription Term. Any additional support requirements are only by prior signed written agreement with CA.
- 6.2. With respect to CA Support requests, Customer should be prepared to provide to personnel, all pertinent information, in English, including but not limited to, Customer number or site identification number, incident severity, the CA APM Cloud Monitor service level selected, incident description, and a technical contact familiar with Customer’s environment or the issue to be resolved. Customer shall use reasonable efforts to communicate with support in order to verify the existence of the issue and to provide information about the conditions under which the issue can be duplicated.
- 6.3. Upon receiving Customer’s technical contact information, CA Support will be provided in a timely and professional manner, including:
  - i. Access to CA help desk and the ability to open and manage support incidents via CA support online or by telephone.
  - ii. Production environment support: 24x7 for severity 1 incidents; during normal business hours for severities 2-4.
  - iii. Online support via the CA support website [www.support.ca.com](http://www.support.ca.com) is available during normal business hours; however, Customers may access the website at any time, excluding scheduled maintenance times.

## **7. CUSTOMER RESPONSIBILITIES/REPRESENTATIONS**

- 7.1. Customer is responsible for all activities that occur in, or are related to, the user accounts created to and utilized in Monitored Objects, including the scripts, alerts, and all data or information which is stored or transmitted when using the CA APM Cloud Monitor.
- 7.2. Customer shall not: (i) make the CA APM Cloud Monitor available to any unauthorized third party, or beyond the purposes of this Agreement (ii) send or store data or code that can harm or result in damage to the CA APM Cloud Monitor (including but not limited to malicious code and malware); (iii) willfully interfere with or disrupt the integrity of the CA APM Cloud Monitor or the data contained therein; (iv) attempt to gain unauthorized access to the CA APM Cloud Monitor or its related system or networks; (v) use the CA APM Cloud Monitor to provide services to external end users, and/or process data other than Customer data as an outsourcer, service bureau or consultant without written permission of CA. Customer’s use of the CA APM Cloud Monitor on Monitored Objects that are not owned or controlled by Customer is at Customer’s sole risk. Customer shall indemnify CA from any and all claims, damages, fees, fines, judgments, costs and expenses incurred as a result of a third party action arising from Customer’s use of the CA APM Cloud Monitor for Monitored Objects, including, without limitation, publication of the monitoring results.

## **8. WARRANTY**

- 8.1. CA warrants that (i) the CA APM Cloud Monitor shall perform materially in accordance with the applicable Documentation and (ii) that the CA APM Cloud Monitor will be available in accordance with the “Service Levels” below.
- 8.2. EXCEPT AS EXPRESSLY SET FORTH ABOVE, TO THE EXTENT PERMITTED BY LAW, NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THIRD PARTY WARRANTIES, IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY OR SATISFACTORY QUALITY, OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY CA AND CA MAKES NO WARRANTIES HEREUNDER WITH RESPECT TO ANY HARDWARE EQUIPMENT OR THIRD PARTY SOFTWARE OR SERVICE WHICH CA MAY USE TO PROVIDE CA APM CLOUD MONITOR.
- 8.3. Customer warrants that it (i) has the right to transmit any data or information as may be required for the purposes of using the CA APM Cloud Monitor (scripts and synthetic user accounts and passwords) and (ii) will ensure compliance with the Agreement by itself and its Authorized Third Parties; and (iii) is solely responsible for all activities that occur in Customer’s accounts.

## **9. WARRANTY REMEDY**

- 9.1. In the event of a breach of the warranty by CA, CA may in consultation with Customer (i) use reasonable efforts consistent with industry standards to cure the defect as defined in the CA Support process outlined in this Cloud Monitor Module and or (ii) Customer may exercise its right of termination as defined under the Service Level Commitment section below and qualify for a refund as defined therein.

## **10. SERVICE LEVELS**

- 10.1. Service levels refer to Availability and monthly uptime.
- 10.2. If, in any calendar month, CA fails to meet the monitoring network uptime service level, then CA will refund to Customer a percentage credit of the fees for the services in that month as set forth below. Any credits issued to Customer will be applied towards the next billing period applicable to Customer or refunded if subscription fees are not due, as agreed between the parties.



Availability/ Monthly Uptime Service Levels	Percentage credit of monthly fees
99.8 to 99.5%	5%
99.4 to 98%	10%
98 to 97%	15%
97% or less	20%

10.3. Unless an exception applies as provided below, if there are three (3) failures of service levels within a 3 month period of time, upon 30 days written notice to CA (which notice shall be received by CA within ten (10) business days of the third unexcused major default), Customer may terminate its subscription to the CA APM Cloud Monitor without incurring any additional charges or termination fees. In the event of such termination, Customer shall be entitled to a refund of fees which have not yet been applied towards CA APM Cloud Monitor as of the effective date of termination and/or CA shall relieve Customer of its obligation to pay for any unused fees applicable in the Subscription Term. The refund herein shall be Customer's sole and exclusive remedy under this Cloud Monitor Module and CA shall have no further liability arising out of the applicable CA APM Cloud Monitor subscription, and shall not impact termination of any other Module or the Foundation Agreement.

10.4. The following events shall be excluded from the calculation of any Service Level defaults: (i) outages due to Customer networks or domain name server issues; (ii) scheduled down times as provided by notice by CA; (iii) outages due to Customer's configuration, scripting, coding; (iv) internet outages, including those which result in outages of the Monitored Objects or any force majeure event as defined in the Foundation Agreement.

## Exhibit A

### Bundled Options

CA APM Cloud Monitor Basic Option		CA APM Cloud Monitor Intermediate Option		CA APM Cloud Monitor Advanced Option	
Monitors	Qty	Monitors	Qty	Monitors	Qty
1-min basic	5	1-min basic	15	1-min basic	25
5-min basic	75	5-min basic	100	5-min basic	150
Advanced 5 minute [10 GB]	10	Advanced 5 minute [10 GB]	30	Advanced 5 minute [10 GB]	50
Advanced 5 minute [40 GB]	10	Advanced 5 minute [40 GB]	30	Advanced 5 minute [40 GB]	50
<b>Total</b>	<b>100</b>	<b>Total</b>	<b>175</b>	<b>Total</b>	<b>275</b>
Non Monitor		Non Monitor		Non Monitor	
	Total		Total		Total
SMS per month	500	SMS per month	1,000	SMS per month	2,000
Custom reports	25	Custom reports	50	Custom reports	100
Contacts	30	Contacts	60	Contacts	120
Store log files (days)	365	Store log files (days)	365	Store log files (days)	365
Monitoring stations	64	Monitoring stations	64	Monitoring stations	64
API Calls per day	5,000	API Calls per day	7,500	API Calls per day	10,000
API Checks per day	5,000	API Checks per day	7,500	API Checks per day	10,000
Transaction Recorder (Bad Boy)		Transaction Recorder (Bad Boy)		Transaction Recorder (Bad Boy)	
Public status health pages	Unlimited	Public status health pages	Unlimited	Public status health pages	Unlimited
Root Cause Analysis	Unlimited	Root Cause Analysis	Unlimited	Root Cause Analysis	Unlimited
Proxy Support	Unlimited	Proxy Support	Unlimited	Proxy Support	Unlimited



### Add On Options

CA Application Performance Management Cloud Monitor 1 Minute Basic 10 Pack
CA Application Performance Management Cloud Monitor 5 Minute Basic 50 Pack
CA Application Performance Management Cloud Monitor 5 Minute Advanced (10 GB) 10 Pack
CA Application Performance Management Cloud Monitor 5 Minute Advanced (20 GB) 10 Pack
CA Application Performance Management Cloud Monitor 5 Minute Advanced (40 GB) 10 Pack
CA Application Performance Management Cloud Monitor 15 Minute Advanced (5 GB) 10 Pack