

Specific Program Document (“License SPD”)

1. CA Europe s.a.r.l. (“CA”) licenses to Customer the CA software program(s) listed below under the following terms and conditions. By using the CA Software, Customer confirm that Customer have read and agreed to these terms. “Customer” means the legal entity being granted the license to the CA Software under this License SPD, also referred to as “Client”, “Customer” or “Licensee”. “CA Software” means the program(s) licensed under this License SPD, and any fixes, patches, updates, upgrades, or other software provided to Customer as part of Maintenance. “Maintenance” means the maintenance and support services provided to Customer by the entity from which Customer has purchased the CA Software.

2. **Program Name: CA Service Desk Manager**

3. **Specified Operating Environment**

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

4. **Licensing Model**

- A. For the purpose of the present License SPD, "CA Software" means the CA Service Desk Manager-Full License, CA Service Desk Manager-Analyst License, or CA CMDB Manager Servers described herein in object code form and as set forth on the applicable Order Form.
- B. CA Service Desk manager-Full License and CA Service Desk Manager-Analyst License are licensed by the number of Concurrent Analyst, as specified in the Order Form (the “Authorized Use Limitation”). In CA Service Desk manager-Full License and CA Service Desk Manager-Analyst License, the authorized users are assigned various roles based upon the functions needed to accomplish designated tasks.
- C. "Concurrent Analyst", in the context of CA Service Desk Manager, means a software license that is based on the number of simultaneous (concurrent) users accessing the program. For the purpose of SDM, all roles (for example: Analyst, Manager, Administrator), and programmatic API and/or web services calls require a license. The CA Software does not prohibit additional users from access, but does log a license exception for auditing purposes. Customer is entitled to have the specified number of Concurrent Analysts access CA Service Desk Manager simultaneously.
- D. For CA Service Desk-Full License, CA Service Desk manager-Analyst License, the Client is also licensed for End-User Self Service, which is granted to the Employee and Customer roles to allow for the creation, modification, and closure of a ticket on their own behalf, but not on behalf of someone else.
- E. CA Service Desk Manager-Full License includes a limited entitlement to CA Cohesion, and use of CA Cohesion is restricted to a maximum of one hundred (100) Managed Servers. Use for additional Servers requires additional licenses for CA CMDB Managed Server. CA Service Desk Manager-Analyst License does not include the CA Cohesion entitlement.
- F. CA CMDB Managed Servers is licensed by the number of Servers.
- G. "Managed Servers" means a virtual or physical Server managed by CA Software.
- H. “Server” means a single physical or virtual computer which processes data using one or more central processing units, and which is owned, leased or otherwise controlled by Customer.

- I. CA Service Desk Manager includes a limited entitlement to CA Business Intelligence. This entitlement is restricted to use within the context of reporting for SDM only. Specifically, SDM reports created using CA Business Intelligence may access and incorporate data created by, derived from, or used by SDM or third party data sources, provided that such data facilitates or augments data for Customer's use of SDM.
- J. CA Service Desk Manager includes a limited entitlement to CA Process Management for Workflows. This entitlement is restricted to use within the context of Workflows associated with SDM only. This entitlement includes: the Service Desk Manager connector; three (3) Custom Operators; and five (5) Agents. This entitlement does not include any Premium Connectors. Multiple Orchestrators can be deployed with the constraints specified herein. There are no license limitations on the number of concurrent processes per Orchestrator.
- K. For the purpose of CA Process Management for Workflows, "Agent" means a single installation of the agent software component of the CA Process Management for Workflows on a specific operating system which can be identified as a unique host identification on a physical or virtual hardware server.
- L. For the purpose of CA Process Management for Workflows, "Connector" is the software program connecting CA Process Management for Workflows with specifically named third-party software or other CA software. For example, "CA Process Management for Workflows Connector for CA Service Desk Manager" connects CA Process Management for Workflows with CA Service Desk Manager. Each Connector may only be used to connect the CA Software with the specific named third-party software or CA software program.
- M. For the purpose of CA Process Management for Workflows, "Custom Operator" means a type of automation object within the CA Process Management for Workflows that can be created to enhance, modify, or restrict the capabilities of an existing "Connector".
- N. For the purpose of CA Process Management for Workflows, "Orchestrator" means a single installation of the Orchestrator software component of CA Process Management for Workflows on a specific operating system which can be identified as a unique host identification on a physical or virtual hardware server. This installation can be a stand-alone Orchestrator or as a node of a new or existing clustered Orchestrator.

5. Licensing terms

5.1. License grant. The license granted to Customer is a limited, non-exclusive, non-transferable and territory wide license. The "Territory" is specified in the applicable order form, in the section entitled "Territory". Customer's use of the license shall extend to use by Customer and Customer's Authorized End Users. "Authorized End Users" means Customer and Customer's Affiliate's employees and independent contractors (but excluding any outsourcer, facilities management providers or application service provider). Use of the CA Software by Authorized End Users shall at all times remain Customer's responsibility and liability. Customer may use the CA Software for the operation of Customer's Affiliate's internal data processing where an "Affiliate" shall mean any entity for which Customer holds greater than a fifty percent (50%) interest or, by force of law or contract but only for so long as Customer maintains that interest. Customer may transfer such CA Software to new hardware, site or location within the Territory upon prior written notice to CA and such transfer might be subject to the payment of additional fees to the local CA entity to which Customer has purchased the CA Software.

5.2. Type of license. The type of license Customer receives is designated in the order form for the CA Software and may include:

Perpetual License: A perpetual license to use the CA Software.

Subscription License: A license to use the CA Software for a specific length of time as set forth in the applicable order form. When the license expires at the end of the applicable term, Customer, all Affiliates and Authorized End Users must stop using the CA Software if Customer has not obtained a new license.

5.3. Use Prohibitions. Except as expressly authorized by this License SPD, Customer may not: (a) copy, reproduce, distribute or disclose the CA Software, provided that Customer may make a reasonable number of copies of the CA Software for bona fide “cold standby” disaster recovery, backup and archival purposes and may use such copy for reasonable testing and in the event of a bona fide disaster recovery event. Maintaining copies of the CA Software in a “hot standby” environment or further or additional use of the CA Software for disaster recovery, backup or archival purposes shall be subject to payment by Customer of the applicable fees to CA; (b) modify, unbundle, or create derivative works of the CA Software; (c) rent, sell, lease, assign, transfer or sublicense the CA Software or use the CA Software to provide hosting, service bureau, on demand or outsourcing services for the benefit of a third party; (d) remove any proprietary notices, labels, or marks on or in any copy of the CA Software or Documentation or any CA Software or materials in which the CA Software or Documentation or portions thereof are embedded; (e) use the CA Software in any manner that exceeds or is broader than the uses licensed to Customer; or (f) reverse assemble, decompile, reverse engineer or otherwise translate the CA Software, except to the extent specifically permitted by applicable law without the possibility of contractual waiver. All rights not specifically granted hereunder are expressly reserved.

6. General Terms.

6.1. Export Rules. Customer agree that the CA Software is subject to export controls of the United States of America and import controls of any other country in which the CA Software may be used. Customer agree to export, re-export or import CA Software only in compliance with such laws and controls

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

6.3. Limitation of Liability.

6.3.1. Except in case of death or personal injury, caused by fraud, or serious- or deliberate error (persoonlijk bedrog, of grove- of opzettelijke fout), or for damages caused by fraud, or serious- or deliberate error of CA, and subject to Sections 6.3.2 and 6.3.3, CA's liability to Customer for direct damages, loss or liability for any cause whatsoever, except as otherwise stated in this Section 6.3, and regardless of the form of action will be limited to the total amount of fees paid by the Customer solely for the specific CA Software that caused the damage or gave rise to the cause of action, with the exclusion of any Maintenance fees.

6.3.2. CA's liability for damage to tangible personal or real property due to the negligence of CA shall be limited in aggregate to the sum of three hundred thousand Euro (€300,000) per event or series of related events.

6.3.3. THE REMEDIES PROVIDED IN THE AGREEMENT ARE THE EXCLUSIVE REMEDIES OF THE PARTIES. IN NO EVENT SHALL CA BE LIABLE TO CUSTOMER OR ANY OTHER PARTY, WHETHER IN CONTRACT OR TORT, OR OTHERWISE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR UNFORESEEABLE LOSS, DAMAGE OR EXPENSE, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF OPPORTUNITY, LOSS OR CORRUPTION OF DATA, HOWEVER ARISING, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES BEING INCURRED. THIS LIMITATION SHALL NOT APPLY FOR SUCH DAMAGES CAUSED BY THE GROSS NEGLIGENCE, INTENT, OR WILLFUL MISCONDUCT OF CA, BUT SOLELY TO THE EXTENT SUCH DAMAGES CANNOT BE EXCLUDED BY LAW. THIS LIMITATION SHALL NOT APPLY FOR SUCH DAMAGES CAUSED BY THE FRAUD, OR SERIOUS- OR DELIBERATE ERROR OF CA, BUT SOLELY TO THE EXTENT SUCH DAMAGES CANNOT BE EXCLUDED BY LAW.

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

6.4. Warranty.

6.4.1. CA warrants to Customer that: (a) it has the authority to grant Customer the rights and licenses mentioned herein and (b) for the period of 30 days after delivery of the CA Software and subject to the CA Software being used in an operating environment stated in the Documentation as supported by CA, the CA Software will materially conform to the specifications in the Documentation for such CA Software. If it is established that CA has breached the warranty in subsection (b) above, CA's only obligation and Customer's exclusive remedy shall be for CA to, at its option, (1) use reasonable efforts to cure the defect in the CA Software; (2) replace the CA Software with CA Software that materially conforms to the specifications in the Documentation; or (3) terminate the CA Software license and arrange a pro rata refund of the fees that Customer has paid. Any refund of fees paid in accordance with the warranty provisions herein will terminate the license of the affected CA Software.

6.4.2. This warranty and the remedies offered are applicable only if: (i) the reported error or defect is reasonably reproducible by CA; (ii) Customer reports the alleged breach with reasonable specificity in writing within thirty (30) days from its occurrence; (iii) Customer provides CA with reasonable assistance in the diagnosis and remedy of the applicable breach; (iv) Customer has installed and is using all updates, patches and fixes made available by CA for the affected CA Software; (v) Customer has complied in all material respects with the terms and conditions of this License SPD and has materially complied with the Documentation for the affected CA Software; and (vi) the error or defect is due solely to an error or omission on the part of CA, its agents, affiliates or employees.

6.4.3. THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CA DOES NOT WARRANT THAT THE CA SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT USE OF THE CA SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. IF PERMITTED BY APPLICABLE LAW: SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD SPECIFIED FOR THE SUBJECT CA SOFTWARE. NO WARRANTIES OF ANY KIND APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW SUCH LIMITATIONS SO TO THAT EXTENT THE FOREGOING LIMITATION MAY NOT APPLY TO CUSTOMER. If Customer claim under this warranty section, Customer is not entitled or eligible to seek for the same warranty remedies from any other party under any another warranty provision.

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