

## 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 confirms that Customer has 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 Database Performance

### 3. Specified Operating Environment

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

### 4. Licensing Model

The CA Software is licensed by the number of CPUs when used as a distributed product as set forth on the Order Form (the “Authorized Use Limitation”). “CPU” means a central processing unit which is the specialized integrated circuit that executes binary programs and performs most logical functions or calculations. A dual-core central processing unit is considered a single CPU. Note that because of the use of multi-core CPUs and virtual server environments, the calculation of CPUs for licensing purposes described below will not always equate to the number of physical CPUs in the environment. A virtual server environment is created where virtual machine technology (which applies to both client and server hardware) is used to enable multiple instances of an operating system(s) to run on a single computer simultaneously (“Virtual Machine Technology”). With the Authorized Use Limitation as “CPU” or “Processor”, the calculation with respect to the number of CPUs on an individual server is determined as follows:

1. For non-virtual server environments, for any server with databases monitored by the CA Software with single CPUs (including, for the avoidance of doubt, dual-core CPUs), count the number of CPUs. For any server with databases monitored by the CA Software with greater than dual-core CPUs, count all cores of the CPUs. Divide the number of cores by two (2) and round up to the next whole number.

2. For virtual server environments, for any server with single CPUs (including, for the avoidance of doubt, dual-core CPUs), count the number of CPUs. For any server with greater than dual-core CPUs, count all cores of the CPUs. Divide the number of cores by two (2) and round up to the next whole number. Determine the maximum percentage of the server CPU capacity that is allocated by the Virtual Machine Technology to any operating system instance containing databases(s) monitored by the CA Software, and multiply this percentage by the number of CPUs. Multiply the resulting number by one and a half (1.5X) and round up to the next whole number.

3. For mixed server environments, for each server perform the calculations for CPUs as set forth above in subparagraphs (1) and (2) and add these amounts together to determine the aggregate number of CPUs.



CA Systems Performance for Infrastructure Managers (formerly known as “CA System Edge”) is a separate program included in the delivery of CA Database Performance. The customers can use this program only for communication with other CA Technologies tools and/or monitoring CA Technologies Software systems only. Full functionality of the program to monitor and manage servers requires a separate license with additional fees.

## 5. Licensing terms

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

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

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

6.3.2. In case of slight negligence CA shall, regardless of the reason for the liability, only be liable, if and to the extent of a violation of an obligation which is essential for the execution of this Agreement ("Kardinalpflicht"). In this case, CA's liability to Customer will be limited to damages which have been foreseeable and which can typically arise in connection with this Agreement.

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

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

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

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

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

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6.4.4. This warranty and the remedies offered are applicable only if: (i) the reported error or defect is reasonably reproducible by CA; (ii) Customer provides CA with reasonable assistance in the diagnosis and remedy of the applicable breach; (iii) Customer has installed and is using all updates, patches and fixes made available by CA or its affiliates for the affected CA Software; (iv) Customer has complied in all material respects with the terms and conditions of the Agreement and the relevant License SPD (including but not limited to payment of all fees) and has materially conformed to the Documentation for the affected CA Software or Maintenance; and (v) the error or defect is due solely to an error or omission on the part of CA, its agents, affiliates or employees.

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6.4.6. If Customer claims 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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