



## CA Master Agreement (“CAMA”)

This CAMA is entered into by the CA entity (“CA”) and customer entity (“Customer”) identified on the relevant order form (“Order Form”) and shall commence on the effective date of the Order Form on which this CAMA is first referenced.

Customer’s right to use CA Software (defined below) identified in the Order Form and obtain maintenance and support (“Maintenance”, as detailed at <http://www.ca.com/licenseagreement>) is subject to Customer’s compliance with the terms and conditions of this CAMA, the relevant Specific Program Documentation for Customer’s Maintenance (“Maintenance SPD”), CA Support Policy and Terms (applicable at the time of order) and the applicable Order Form (collectively, these documents are referred to as the “Agreement”). The Order Form identifies the specific CA Software and Maintenance, as well as the Maintenance SPD and the Specific Program Document for the CA Software (“Licence SPD”) which are located at <http://www.ca.com/licenseagreement>. The applicable Specific Program Documentation will be those that are in effect at the effective date of the applicable Order Form and shall remain binding upon both Customer and CA for that CA Software and Maintenance unless otherwise agreed.

**1. License.** Subject to Customer’s compliance with the terms and conditions of the Agreement and the relevant Licence SPD, including but not limited to payment of applicable fees for CA Software (defined below) and Maintenance obtained hereunder, CA makes available to Customer in the country or region specified in the Order Form in the Section entitled “Territory” a license granted by CA Europe Sarl to use the CA software identified on the Order Form and any fixes, patches, updates, upgrades or other software provided to Customer as part of Maintenance (“CA Software”). A breach of Customer’s obligations, or the use restrictions, under the relevant Licence SPD shall constitute a breach by Customer of its obligations under the Agreement. For the purposes of the Agreement, “Affiliate” shall mean any entity for which Customer holds greater than a fifty percent (50%) interest or, controls the board of such entity by force of law or contract but only for so long as Customer maintains that interest.

**2. Payment of Fees.** Customer agrees to pay the fees for CA Software and/or Maintenance specified on the Order Form or such other ordering document as otherwise agreed between Customer and CA. Payment obligations are non-cancellable and fees paid are non-refundable except as expressly provided herein. Unless otherwise provided in the Order Form, all payments shall be made without deduction or set off and are due within thirty (30) days from date of invoice. Customer agrees to pay any applicable VAT, sales tax, import and custom duties and any other applicable taxes (collectively “Taxes”) in addition to the fees. 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 if fees are not paid by the due date. If Customer’s account is thirty (30) days or more overdue, in addition to any of its other rights or remedies, CA reserves the right to suspend Maintenance to Customer, without liability, until such amounts are paid in full. Where the Customer disputes the validity of an invoiced amount, Customer must notify CA in writing, specifying in reasonable detail, the basis of the dispute. CA agrees to investigate such matter and where the dispute is valid, correct the invoiced amount.

**3. Maintenance and Support.** If included in Customer’s license from CA, or if Customer elects to purchase Maintenance for CA Software in addition to the warranty support (as described below), if any, provided with such CA Software, the Order Form identifies the type of Maintenance purchased for each CA Software program, and the duration of such Maintenance (the “Maintenance Term”) and the applicable fees for Maintenance. CA will provide the level of support as detailed for each such category in the specific Maintenance SPD, which can be found at <http://www.support.ca.com>. Warranty support and the term thereof provided by CA, if any, is described in Section 5 below and any additional or different terms and conditions governing warranty support are set forth in the applicable Maintenance SPD. To the extent that warranty support is provided by CA, it is included in the license fee for CA Software and thus is not separately designated as Maintenance on the Order Form.

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**4. Documentation.** For purposes of this Agreement, “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 clients which can be found at <http://www.support.ca.com>. Customer may make a reasonable number of copies of and internally distribute Documentation solely for Customer’s internal business purposes however Customer may not modify such Documentation without the prior written approval of CA. Any copies or partial copies Customer makes must bear all copyright and any other attribution notices of the licensor of the CA Software as contained in the materials copied or otherwise notified to Customer in the Licence SPD. Such Documentation is deemed to be confidential and proprietary to the licensor of the same.

**5. Limited Warranty.** CA warrants to Customer that: (a) it has the authority to make available to Customer the rights and licenses mentioned herein in the Territory and (b) for the duration of a period equal to the warranty period set forth in the Licence SPD for the CA Software, or, if no warranty period is set forth in the Licence SPD and the CA Software are not provided under terms expressly identifying the CA Software as provided on an “as is” basis, a period of thirty (30) days following the date on the Order Form; (i) when the CA Software is used in an operating environment stated in the Documentation as supported by CA, the CA Software will materially conform to the specifications in the Documentation for such CA Software; and (ii) Maintenance shall be performed in accordance with industry standards using reasonable care and skill, and provided in accordance with CA’s then-prevailing policies. If it is established that CA has breached either of the warranties 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 or re-perform the nonconforming Maintenance; (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 provide a pro rata refund of the fees that Customer has already paid, which for license and Maintenance fees paid with respect to CA Software licensed under a subscription license, shall be calculated against the remainder of the Term from the date it is established that CA has breached the foregoing warranties or, if the CA Software was licensed under a perpetual license, a term of three years shall be used for the purposes of the license calculation. Any refund of fees paid in accordance with the warranty provisions herein will result in the termination of the license for the affected CA Software.

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) the CA Software are within a period equal to the warranty period set forth in the Licence SPD; (v) Customer has installed and is using all updates, patches and fixes made available by CA or its affiliates for the affected CA Software; (vi) Customer has complied in all material respects with the terms and conditions of the Agreement and the relevant Licence SPD (including but not limited to payment of all fees) and has materially complied with the Documentation for the affected CA Software or Maintenance; and (vii) the error or defect is due solely to an error or omission on the part of CA, its agents, Affiliates or employees.

Customer understands and agrees that third-party hardware equipment and software, supplied by CA may be provided to Customer under warranty or pursuant to other terms and conditions offered by the manufacturer or licensor of such hardware or software. Where applicable, CA will include such warranties or other terms in Documentation accompanying the relevant software or other deliverable. CA will replace the CA Software if it is damaged or lost while in transit to the Customer.

If Customer claims under this warranty section, Customer is not entitled or eligible to seek the warranty remedies from the licensor.

**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 or conditions of satisfactory quality, title and fitness for a particular purpose. CA does not warrant that the CA Software or Maintenance will meet Customer’s requirements or that use of the CA Software or Maintenance components will be uninterrupted or error-free.**

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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: (a) such warranties or conditions are limited in duration to the warranty period specified for the applicable CA Software or Maintenance; and (b) the remedy for breach of any such warranties or conditions is limited to repair or replacement of any goods found not to comply with them or the provision of Maintenance again. No warranties or conditions 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.

### 6. Limitation of Liability.

a. Except for damages caused by fraudulent misrepresentation of CA and for death or personal injury caused by the negligence or willful default of CA, subject to subsections 6.b and 6.c below, CA's liability to Customer for direct damages, loss, refunds, or liability for any cause whatsoever, except as otherwise stated in this Section 6, and regardless of the form of action will be limited to the total amount of fees paid by the Customer as stated on the applicable Order Form for the specific CA Software that caused the damage or gave rise to the cause of action. It is Customer's responsibility to take all necessary security and back-up precautions.

b. 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 equivalent to €300,000 per event or series of related events.

c. The remedies provided in the Agreement are the exclusive remedies of the parties. In no event shall CA be liable to the 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.

d. In the event that the above liability limitation is found to be invalid under applicable law, then CA and its supplier's liability for such claim shall be limited to the amount of the fees Customer has actually paid for the CA Software, Maintenance and/or Services giving rise to the claim.

### 7. Termination.

a. **Termination by Customer.** Customer may terminate this Agreement upon thirty (30) days' prior written notice to CA if CA commits a material breach of its obligations under this Agreement, other than its obligations under the Sections entitled “Limited Warranty” and “Indemnification” and fails to either (i) cure that breach within the thirty (30) day period or (ii) make substantial progress to Customer's reasonable satisfaction to cure such breach and implement a plan that cures such breach within sixty (60) days of the breach notice.

b. **Termination by CA.** In addition to termination under the Sections entitled “Limited Warranty” and “Indemnification”, CA may terminate this Agreement upon thirty (30) days' prior written notice to Customer if: (i) Customer commits a material breach of Customer's obligations under this Agreement or the relevant Licence SPD and Customer fails to (i) cure that breach within the thirty (30) day period; or, (ii) make substantial progress to CA's reasonable satisfaction to cure such breach and implement a plan that cures such breach within sixty (60) days of the breach notice; provided that such notice and opportunity to cure shall not be required if such breach is reasonably incapable of cure and CA may terminate the Agreement immediately in such event, or (ii) if Customer becomes insolvent or if bankruptcy or receivership proceedings are initiated by or against Customer other than for the purposes of solvent reconstruction. Material breach may include, but is not limited to, any breach that adversely and materially affects intellectual property rights of CA Europe Sarl and/or its licensors; failure to pay fees due and payable; or breach of Customer's confidentiality obligations. If Customer breaches Customer's obligations under the Agreement, CA shall have the right to withhold its own performance hereunder.

c. **Effect of Termination.** Any termination hereunder shall not release either party from any liability that, as of the date of termination, had already accrued or is attributable to a period prior to such termination, nor shall

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termination preclude either party from pursuing any rights or remedies it may have under law or in equity with respect to any breach of this Agreement. In the event of termination of the Agreement by either party of a particular CA Software product or Maintenance or all such products and services (i) all applicable amounts due or to become due hereunder will immediately be due and payable to CA (subject only to any setoff to which Customer may be entitled with respect to a pro rata refund by CA pursuant to the Section entitled “Limited Warranty” or the Section entitled “Indemnification”); (ii) all applicable subscription licenses made available hereunder shall immediately be revoked, and (iii) Customer shall no longer be entitled to receive any applicable Maintenance hereunder. Further, if CA terminates the Agreement for cause as a result of Customer’s breach of intellectual property rights of CA Europe Sarl and/or its licensors, breach of Customer’s confidentiality obligations hereunder, or failure to pay the license fees for the applicable license, any and/or all applicable perpetual licenses made available hereunder shall also immediately be revoked. Immediately following termination for any reason, Customer shall certify to CA in writing that all copies and partial copies of applicable CA confidential and proprietary information in Customer’s possession or control and any applicable CA Software for which Customer’s license grant has been revoked, have been deleted from all computers and storage devices (including any backup or archival copies), have been returned to CA or destroyed, and are no longer in use by Customer, Customers Affiliates, or any other party to whom Customer granted access to such information.

**d. Termination or Expiration of Maintenance.** If Customer has a license to use CA Software and a separate right to receive Maintenance, and Customer either terminates or fails to renew such Maintenance for any reason, Customer may continue to use the CA Software for the duration of the CA Software license term but will not be entitled thereafter to receive any Maintenance for the CA Software nor shall Customer be entitled to any refund of any license or Maintenance fee. For as long as this Agreement remains in effect, Customer may subsequently reinstate Maintenance for that CA Software, if CA still makes such Maintenance generally available, by paying to CA a fee equal to one hundred and fifty percent (150%) of CA’s then-prevailing Maintenance fee for each year for which Maintenance fee was not paid, so that the CA Software can be updated to include the bug fixes, patches and updates made during the time when Customer was not an active Maintenance subscriber.

**8. Indemnification.** If a third party claims that CA Software, alone and not in combination with other programs or equipment, infringe that party’s US registered patent or copyright rights or similar laws in a jurisdiction where Customer is authorized to use the CA Software, CA will defend Customer against such claim at its expense and pay all costs, damages, and attorney fees that a court of competent jurisdiction finally awards or that are included in a settlement approved by CA; provided that, Customer promptly notifies CA in writing of the claim, allows CA to control the defense and any related settlement negotiations, reasonably cooperates with CA in the preparation of such defense and negotiations, and was an active Maintenance subscriber as of the date on which the claim is filed. If such a claim is made or appears likely to be made, CA may take action to enable Customer to continue to use the CA Software, modify it so that it is non-infringing, or replace it with non-infringing CA Software that is at least functionally equivalent. If CA determines that none of these alternatives are reasonably feasible, Customer’s license to use the CA Software may be terminated and Customer agrees to return the CA Software to CA upon its written request. CA will then give Customer a pro rata refund of the fees Customer has already paid for the CA Software, which shall be calculated against the remainder of the Term from the date it is established that CA is notified in writing of the third party claim or, if the CA Software was licensed under a perpetual license, a term of three years shall be used for the purposes of the refund calculation. This is CA’s sole and exclusive obligation to Customer and Customer’s sole remedy regarding any claim of intellectual property infringement. CA shall have no liability under this Section if: (i) the allegation of infringement arises from or relates to the unauthorized modification of the CA Software; (ii) the CA Software is not being used in accordance with the terms and conditions of the Agreement and the relevant Licence SPD or in conformance with the Documentation, (iii) CA has announced that it no longer supports such CA Software, (iv) the alleged infringement could have been avoided by the use of an update or patch made available by CA, or (v) the alleged infringement is a result of use of the CA Software with any non-CA supplied third party product.

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**9. Ownership and Proprietary Information.** Title to, ownership of, and all rights in the intellectual property, including but not limited to patents, copyrights, trademarks, and trade secrets in the CA Software and Documentation, any derivative works thereof, and any goodwill accruing from the use of such CA Software and Documentation, belong exclusively to and shall remain with CA Europe Sarl and/or its licensors. Customer shall not make available or disclose such intellectual property to any third parties except as expressly permitted by this Agreement.

**10. Confidentiality.** “Confidential Information” means all information that is either marked as confidential or that a reasonable person would deem to be confidential based on the circumstances (including the source of the information) and industry practices. By way of illustration, CA Confidential Information includes, but is not limited to, CA Software, Documentation, technical data and information, methodologies and related documents, training materials, product plans and roadmaps, market strategies, business models, pricing and personnel data. Customer and CA agree to: (a) maintain in confidence the disclosing party’s Confidential Information to the same extent that the receiving party maintains its own proprietary information of similar kind and value; (b) not disclose the other party’s Confidential Information to any third party other than the receiving party’s authorized personnel who have a need to know such Confidential Information in connection with this Agreement, except as expressly permitted herein or otherwise with the disclosing party’s prior written approval; and (c) not use such Confidential Information for any purpose except those permitted by this Agreement. Notwithstanding the foregoing, (a) each party may provide or permit access to the disclosing party’s Confidential Information to the receiving party’s attorneys, independent accountants and financial advisors for the sole purpose of enabling such attorneys, independent accountants and financial advisors to provide advice to the receiving party, and (b) CA may provide or permit access to Customers Confidential Information to its contractors or agents who have a need to know such Confidential Information to assist CA with the activities contemplated or required of it by this Agreement; provided that in each such case the third party to whom Confidential Information is being disclosed is subject to obligations of confidentiality and non-use with respect to such Confidential Information substantially similar to the obligations of confidentiality and non-use set forth in this Section 10.

The obligations set forth in this Section 10 shall not apply with respect to any portion of such Confidential Information which: (a) is publicly disclosed by the disclosing party, either before or after it becomes known to the receiving party; (b) was known to the receiving party, without any obligation to keep it confidential, prior to when it was received from the disclosing party; (c) is subsequently disclosed to the receiving party by a third party that is lawfully in possession thereof and without obligation to keep it confidential; (d) has been published by a third party or otherwise enters the public domain through no fault of or breach of the obligations of the receiving party; or (e) has been independently developed or acquired by the receiving party. Moreover, the receiving party shall have the right to disclose any Confidential Information provided hereunder if, in the reasonable opinion of the receiving party’s legal counsel, such disclosure is necessary to comply with a court order or applicable law or regulation; provided that where reasonably possible, the receiving party shall notify the disclosing party sufficiently prior to making such disclosure so as to allow the disclosing party adequate time to take whatever action the disclosing party may deem to be appropriate to protect the confidentiality of the Confidential Information. For Confidential Information pertaining to CA Software and/or intellectual property of CA Europe Sarl and/or its licensors, the obligations set forth above are indefinite. For all other Confidential Information, such obligations shall continue for five (5) years from the date of initial disclosure.

**11. General.**

- a. Nothing in this Agreement affects any statutory rights of Customer that cannot be waived or limited by contract.
- b. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

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- c. Customer agrees that 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 agrees to export, re-export or import CA Software only in compliance with such laws and controls.
- d. Customer agrees to allow CA and its affiliates to store and use Customer’s contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to CA’s affiliates, and to contractors, business partners, and assignees of CA and of its affiliates for uses consistent with their collective business activities, including communicating with Customer (for example, for processing orders, for promotions, and for market research). Customer represents that (i) Customer is duly authorized to provide personal data to CA and Customer 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 and (iii) CA may disclose such data to any CA Entity and its subcontractors for the purpose of satisfying its obligations to Customer and for marketing other CA products or services to Customer 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.
- e. Each party shall be excused from performance of its obligations under this Agreement (except the obligations to make payment when due) to the extent that it is prevented as a result of delays caused by an act of God, earthquake, fire, flood, hurricane, severe weather or other natural disaster, war, civil disturbance, terrorist attacks, riots, strikes, lockouts, court order, internet or communication problems, power failures, or unauthorized access or theft.
- f. The CA Software shall be delivered either by electronic delivery (“ESD”) or in tangible media as CA deems appropriate. In the event of ESD, no tangible personal property will be delivered. The obligation to deliver the CA Software to Customer shall be complete upon transmission to Customer by ESD. At that time and place, all risk of loss of the copy of the CA Software shall pass to Customer. In the event of delivery on tangible media, the CA Software shall be shipped “Carriage Paid To” (CPT), as defined in INCOTERMS 2010, from CA’s shipping location. CA agrees to pay shipment and insurance charges and, in addition, to be responsible for all customs, duties and clearance. Title (to the extent that it passes) and risk of loss to all CA Software passes to Customer from the point of handing over to the carrier at CA’s shipping location.
- g. This Agreement will not create any right or cause of action for any third party, nor will CA be responsible for any third party claims against Customer, except as permitted by the Sections entitled “Limitation of Liability” and “Indemnification” above. The parties agree that the rights and obligations under this Agreement shall be owed exclusively to each other as provided herein and that the only persons by which, or against which, any action may be taken under the Agreement shall be limited to Customer and CA. This Agreement shall not create any rights in favour of, or any obligations owed by, any third party.
- h. Any conflict or inconsistency among or between the terms and conditions of the documents comprising this Agreement shall be resolved according to the following order of precedence, from the document with the greatest control to the least: (1) the Order Forms; (2) the relevant Maintenance SPD; (3) the MA; (4) the applicable CA Support Policy & terms; (5) the Documentation for the relevant CA Software.
- i. The laws of England and Wales shall govern the construction and enforceability of the Agreement. The parties agree that any action arising under or relating to the Agreement or the CA Software shall lie within the exclusive jurisdiction of the English Courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.
- j. The Agreement and the documents referred to herein represent the entire agreement between CA and Customer with respect to this subject matter, and all other agreements, proposals, purchase orders, representations and other understandings concerning this subject matter, whether oral or written between the parties are superseded in their entirety by this Agreement. No alteration or modification of this Agreement will be valid unless made in writing and signed by the parties. In the event a purchase order is used, any terms thereon shall not apply.



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k. Customer may not assign the Agreement, the use of any CA Software or Customer’s rights and obligations under the Agreement without the prior written consent of CA. The Agreement shall be binding on the parties and all of their respective successors and assigns. CA may assign the Agreement by written notice to Customer.

l. Customer agrees to furnish CA with such information and access to Customer’s facilities and Customer’s Affiliates’ facilities and records as CA may reasonably request in order to verify Customer’s compliance with the Agreement. Such examination right shall survive the termination of this Agreement for a period of three (3) years.