



1. INTRODUCTION

- 1.1. By purchasing or using the Software as a Service (“SaaS”) from CA or an Authorized CA Partner, the end user (“Customer”), on behalf of itself and its Authorized Users, agrees to these terms and conditions (“SaaS Terms”) with CA, Inc., located at 520 Madison Avenue, 22nd Floor, New York, NY 10022, Tel: 800 225 5224 (“CA”) to govern Customer’s use of the SaaS. These SaaS Terms shall be deemed in effect at the time that SaaS is made available to Customer pursuant to an order from an Authorized CA Partner.

2. DEFINITIONS

- 2.1. “Access” means use of the SaaS remotely by an Authorized User.
- 2.2. “Affiliate” with respect to Customer, means any legal entity which Customer directly or indirectly Controls.
- 2.3. “Agreement” means these SaaS Terms for the applicable SaaS, and any document incorporated expressly therein by reference.
- 2.4. “Authorized CA Partner” means an entity having a valid, current authorization from CA to market, offer and resell to Customer the right to use the SaaS. Customer may find information regarding authorized CA Partners here: www.ca.com/partners.
- 2.5. “Authorized Use Limitation” means the limitation on usage of SaaS as measured by the Billing Metric specified in the Transaction Document.
- 2.6. “Authorized Users” means Customer, its employees and independent contractors and/or its Affiliates or as otherwise defined in the SaaS Listing, that access and use SaaS provided that they are bound by terms and conditions no less restrictive than those contained in the Agreement and solely to the extent that they are acting on behalf of Customer or its Affiliates.
- 2.7. “Billing Metric” means the metric for billing SaaS to Customer as defined in the SaaS Listing (e.g., users, transactions, etc.).
- 2.8. “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, SaaS, Documentation, and any benchmark data and results produced.
- 2.9. “Control” means ownership or control of greater than fifty percent (50%) of an entity’s shares or control the board of such entity by force of law or contract, or the equivalent. “Customer Data” means any information provided by Authorized Users in the course of using the SaaS and stored in connection with SaaS.
- 2.10. “Customer Data” means any information provided by Authorized Users in the course of accessing and using SaaS and stored in connection with SaaS.
- 2.11. “Documentation” means the documentation, technical 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 for SaaS.
- 2.12. “Force Majeure Event” means an event that arises out of causes beyond a Party’s reasonable 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) and/or delays or outages caused by an internet service provider or independent (not a Party’s subcontractor) hosting facility.
- 2.13. “Non-Production” means any Customer deployed environment that is not Production such as development, test, staging, demonstration, or training environments.
- 2.14. “Parties” means individually, and or collectively, CA and or Customer.
- 2.15. “Production” means the “live” environment of SaaS that Customer uses as their primary business environment.
- 2.16. “SaaS” means the online version of the CA software and/or type of online service defined in the Transaction Document and made available to Authorized Users via a website.
- 2.17. “SaaS Listing” means the operating parameters, data and data center location(s), applicable audit standards, availability standards and any other details for the specific SaaS Offering as published or made available by CA.
- 2.18. “SaaS Support” means support of the SaaS Offering so it operates materially in accordance with the Documentation.
- 2.19. “Scheduled Downtime” means planned downtime of SaaS availability for periodic and required maintenance events, including but not limited to, upgrades and updates to the SaaS and data center infrastructure where CA provides notice to Customer at least 72 hours in advance.
- 2.20. “Service Level Availability” (SLA) means the levels measured during Production as specified in the SaaS Listing which may vary according to each SaaS Offering and its component capabilities.



- 2.21. "Security Breach" means access to Customer Data by an unauthorized person or entity.
- 2.22. "Subscription Term" means the initial or renewal period of the subscription to a SaaS Offering as set out in the Transaction Document.
- 2.23. "Transaction Document" means the ordering document entered into by CA and an Authorized CA Partner on Customer's behalf for Customer's use of SaaS. The Transaction Document shall specify the applicable CA Software, SaaS Features, and Subscription Term for the applicable SaaS authorized by CA for Customer's use.
- 2.24. "Trial Period" means the period of time that Customer accesses and uses SaaS for evaluation or trial set out in the Transaction Document. If no time is indicated then the period shall be set for thirty (30) days from the effective date of the Transaction Document. For avoidance of doubt, only a Transaction Document which explicitly states that it is for trial or evaluation by the Customer shall be considered a trial use.

3. SAAS OFFERING

- 3.1. CA provides Customer a non-transferable and non-exclusive right for Customer and its Authorized Users to access and use SaaS during the Subscription Term in accordance with the Agreement. CA may utilize subcontractors in the provision of such SaaS so long as such subcontractors are bound to contractual terms no less protective of Customer's rights provided hereunder and provided further that any use of subcontractors in the operation of any applicable data center is subject to the same security controls and audits as if performed by CA employees. The Parties understand and agree that CA remains fully liable under the terms of the Agreement for any breach caused by a subcontractor of CA.
- 3.2. Customer acknowledges and agrees that in order for Customer to access and use SaaS, Customer is required to maintain minimum requirements such as operating system versions, browsers etc., as stated in the Documentation. If required, information about updates to minimum requirements will be provided to Customer during the Subscription Term.
- 3.3. If CA provides software to Customer to enable or to optimize SaaS during the Subscription Term, such software will be listed in the Transaction Document. Such software is specifically provided to Customer to help Customer utilize certain applications and web services that may be available through SaaS. In such cases, CA provides Customer, during the Subscription Term, a non-transferable and non-exclusive right to use such software solely in connection with SaaS and for the sole purpose of allowing Customer's applications or web services to utilize SaaS. The grant of rights for such software is contingent upon Customer's compliance with the following obligations: Customer agrees, that neither it nor Authorized Users shall: (i) access or use any portion of the software not expressly authorized in the Transaction Document or the Documentation; (ii) cause or permit de-compilation, reverse engineering, or otherwise translate all or any portion of the software; (iii) modify, unbundle, or create derivative works of the software and/or Documentation; (iv) rent, sell, lease, assign, transfer or sublicense the software or use the 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 or version of the software or Documentation; (vi) use the software beyond the rights granted. Any installation of agents or software of any kind will be required to be removed at the end of the Subscription Term and either returned to CA or Customer will be required to certify destruction or deletion of such items.
- 3.4. If SaaS is provided on a trial basis, Customer agrees to access and use SaaS solely for trial and evaluation purposes during the Trial Period, in accordance with the usage restrictions set forth in the Transaction Document. At the end of the Trial Period, Customer's right to access and use SaaS automatically expires and Customer agrees to cease accessing and using SaaS and to de-install any agents or copies of software provided as part of the SaaS and certify to CA in writing that all copies or partial copies of any such software have been deleted from Customer's computer libraries and/or storage devices and destroyed. If Customer desires to continue its use of SaaS beyond the Trial Period, Customer may enter into a Transaction Document and pay the applicable fees. DURING TRIAL PERIODS, CUSTOMER AGREES TO ACCESS AND USE SUCH SAAS ON AN AS IS BASIS AND AGREES THAT CA PROVIDES NO WARRANTIES, SLAS OR INDEMNITIES ARISING OUT OF SUCH ACCESS AND USE. ANY DATA ENTERED OR CONFIGURATION OF THE SAAS DURING THE TRIAL PERIOD WILL NOT BE STORED OR AVAILABLE AFTER THE TRIAL PERIOD.

4. ORDERING AND DELIVERY

Customer agrees that its authorization to use SaaS is based upon, and subject to, the order made on its behalf by an Authorized CA Partner as reflected by the Transaction Document. The Authorized Use Limitation shall be as set out on the Transaction Document. The Authorized Use Limitation and associated fees shall be as set out on the Transaction Document. CA will make SaaS available to Customer only upon, and in accordance with, CA's execution of the Transaction Document. Any terms that may appear on a Customer's purchase order (including without limitation pre-printed terms), or as part of Customer's order with an Authorized CA Partner, that conflict or vary from the terms and conditions of this Agreement shall not apply to the SaaS and shall be deemed null and void. Unless otherwise stated, CA will monitor Customer's SaaS usage. In the event Customer exceeds the Authorized Use Limitation, the overage will be treated as an order for excess use and Customer will be billed for the overage at the rates stated in the applicable Transaction Document. The overage will be included in the Authorized Use Limitation for the remainder of the Subscription Term. Customer agrees that the purchase of any SaaS is not contingent on CA providing any future features or functionalities. In addition, Customer may order any service catalogue items which may be listed on the applicable Transaction Document or on the CA Support site (<http://support.ca.com>) ("CA Support Site") and by: entering into a separate Transaction Document for same; opening a ticket on the CA Support Site; submitting an order at the site listed on the Transaction



Document, and/or if applicable; enter into an agreement for professional services. Customer shall pay any associated fees arising out of any such order.

5. CONFIDENTIAL INFORMATION

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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 SaaS to Customer or (ii) be deemed to limit CA's rights to provide similar SaaS to other customers. Customer agrees that CA may use any feedback provided by Customer related to any SaaS 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.
- 5.5 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.
- 5.6 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 SaaS functionality (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.

6. FEES & RENEWAL

- 6.1 The Parties acknowledge and agree that all terms governing the fees, payments, payment schedules, pricing and discounts for the applicable SaaS procured by Customer under this Agreement are solely between Customer and its chosen Authorized CA Partner.
- 6.2 If Customer is deficient or overdue in its payment obligations to an Authorized CA Partner by sixty (60) days or more, CA reserves the right with prior written notice to withhold performance of its obligations under the Agreement, without liability, until such amounts are paid to the Authorized CA Partner in full.
- 6.3 SaaS shall automatically renew for successive one (1) year periods, at the renewal rate set out on the Transaction Document or as invoiced for subsequent Subscription Term, unless and until either Party provides the other with written notice of its intention not to renew at least ninety (90) days prior to the expiration of the Subscription Term. Expiration or termination of any particular SaaS Offering shall not impact the validity of any other SaaS Offering Customer may be subscribing to.
- 6.4 CA may update, improve, modify or add new functionality to SaaS during the Subscription Term for optimization of SaaS as necessary in order to maintain performance and/or fix any issues during the Subscription Term. In the event any update will materially change either the administrator or user experience, CA will provide Customer reasonable prior notice (not less than 30 days) and will provide a preview site where Customer can observe such changes where applicable, provided however, that CA may make a change with shorter or no notice if the change is required by law or to fix a security vulnerability.

7. CUSTOMER DATA

- 7.1 Customer exclusively owns all rights, title and interest in and to all Customer Data which may include personally identifiable information. 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 and support of SaaS.



- 7.2 CA will collect, modify and analyse meta data and/or operations data which does not contain any Customer Data, such as system log files and transaction counts which relate to system utilization and performance statistics, all as deemed necessary by CA.
- 7.3 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 fully recoverable beyond the last restoration archive point, the frequency of which is described in the SaaS Listing.
- 7.4 Customer may access reports and/or information through SaaS until the end of the Subscription Term. All reports and other output will be produced in standard readable format (e.g., CSV, XML) and transmitted according to the transmission protocols used by the SaaS Offering for such transmissions. Any specific reports or data requested by Customer at the end of the Subscription Term that is not available through SaaS or produced in customized formats will be charged based on the scope of the request. Such fees will be agreed in writing between Customer and CA.
- 7.5 Data availability, retention and destruction post expiration or termination of the applicable SaaS Offering will be as follows:
 - i. Customer Data will be available to Customer during the Subscription Term and may be retained by CA for a period of no more than sixty (60) days from the effective date of expiration or termination.
 - ii. A record of Customer Data required to support audits of the billing transactions that occurred during the Subscription Term will be retained in accordance with CA's data retention policies for such activities and in accordance with the Agreement, including, without limitation, Article 8 (Security) of these SaaS Terms. All other Customer Data will be deleted from all Production and Non-Production Environments within sixty (60) days of such date.

8. SECURITY

- 8.1 CA will maintain and administer a security policy with physical and technical safeguards designed to protect the security, integrity and confidentiality of the Customer Data. CA shall adhere to and subject such policies and practices to an audit under the compliance criteria defined in the applicable SaaS Listing. Upon written request, Customer may review the specific audit reports (such as SSA16 report) subject to Customer designating a security officer or similar individual who has executed a security non-disclosure agreement with CA prior to such review. All data will be stored at all times at the data center location(s) noted on the SaaS Listing.
- 8.2 CA will not be responsible for any unauthorized access, alteration, theft or destruction of Customer Data, unless caused as a result of CA's negligence or intentional misconduct, in which case CA's only obligation and Customer's exclusive remedy is for CA to use commercially reasonable efforts to restore the Customer Data from the most recent back-up. CA is not responsible for unauthorized access, alteration, theft or destruction of Customer Data arising from Customer's own or its Authorized Users' actions or omissions in contravention of the Documentation.
- 8.3 CA shall comply with the applicable European Union member states' implementation of the Directive 95/46/EC ("Directive") governing the processing of personal data as defined in the Directive. CA, Inc. is Safe Harbour certified and will continue with this program whilst it is available or until CA adopts another legally recognized vehicle for such data transfers.
- 8.4 In the event that CA has determined that a Security Breach will or is likely to cause harm to the Customer or an Authorized User, CA will, within five (5) working days, provide Customer with notice of the Security Breach. After initial notification, CA will keep Customer updated at periodic intervals on the steps taken by CA to investigate the Security Breach including providing a reasonably detailed incident report, including measures to be taken by the Customer to minimize potential damages. Such report will be provided promptly but no later than thirty (30) days following completion of the report. The Parties understand and agree that if CA is prevented by law or regulation from providing such notice(s) and/or reports within the time frames, such delay shall be excused.
- 8.5 During the Subscription Term, CA will permit Customer through an independent third party agreed in advance with CA, to audit CA's SaaS operations within the applicable data center the SaaS Offering is provided to Customer, solely to verify CA's compliance with the SaaS Listing concerning security and solely at Customer's expense. Any such audit shall be conducted not more than once annually, upon at least thirty (30) days prior written notice and subject to the independent third party having executed a non-disclosure agreement with CA 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. In the event an external audit determines that CA fails to meet the standards defined in the SaaS Listing, CA will review and if it agrees with such determination it will have the opportunity to submit a plan to address any issues and CA will do so within thirty (30) days from receipt of notice from the Customer, or if CA does not agree with the determination the Parties will enter into discussions to resolve the issues. If audits require time and operations interruption, then Customer may be required to pay for costs and expenses as mutually agreed by the Parties.

9. SAAS SUPPORT

- 9.1 Upon the start of the Subscription Term, CA will send an email to Customer's technical contact, identified on the Transaction Document, providing information to connect and access SaaS.
- 9.2 The Customer shall be provided with SaaS Support during the Subscription Term. To access SaaS Support, Customer may utilize the CA support website, or other site or notification mechanism as CA may designate from time to time.



- 9.3 For any SaaS Support requests, Customer should be prepared to provide to support personnel all pertinent information, in English, including but not limited to, Customer number or site identification number, incident severity, SaaS Offering, SaaS environment (Production or Non-Production), 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 re-created.
- 9.4 Upon receiving Customer's technical contact information, SaaS Support will be provided in a timely and professional manner by qualified support engineers. SaaS Support shall consist of:
- i. Access to CA support website (currently: <http://support.ca.com>) for 24x7x365 online support and access to CA software product and Documentation, incident severity description with response and resolution objectives listed, global user communities and regional user groups, Frequently Asked Questions, samples, webcast recordings and demos, usage tips, technical updates and HYPER notifications, as such are made available by CA.
 - ii. Access to CA help desk and the ability to open and manage support incidents via CA support online or by telephone.
 - iii. Production environment support: 24x7 for severity 1 incidents; normal business hours for severities 2- 4.
 - iv. If applicable to the SaaS Offering, Non-Production environment support: Normal business hours for incidents of all severities.
 - v. Interactive remote diagnostic support allowing CA support engineers to troubleshoot an incident securely through a real-time browser-based remote control feature for support issues which may be resident in Customer's software or systems.
- 9.5 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 type of SaaS Offering provided and where indicated on the Transaction Document or in the SaaS Listing. Any additional support requirements are by prior written agreement of CA.
- 9.6 During the Subscription Term, if Customer requests specific scripts, connectors or customizations in order to optimize usage of SaaS, Customer may request CA to provide such services. Such services will be provided through a professional services agreement with CA for a separate fee, or as mutually agreed by the Parties.

10. CUSTOMER RESPONSIBILITIES

- 10.1 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. All applications residing within Customer environment or installed on 3rd party service providers on behalf of Customer that integrate to SaaS shall be managed and supported by Customer. Customer is also responsible for managing components that are downloaded onto their environment such as web browser based software plug-ins that extend SaaS.
- 10.2 As Customer may integrate or utilize third party links to other software, hardware or other services which are associated with, or otherwise available through the SaaS, Customer agrees that it and/or its Affiliates, its Authorized Users and anyone acting on their behalf shall use such third party links at their sole discretion. CA shall have no responsibility or liability with respect to such third party links used by Customer's and/or its Affiliates, its Authorized Users or for any act or omission of any such third party provider.
- 10.3 Customer shall not: (i) make SaaS available to any third party not authorized or as otherwise contemplated by the Agreement; (ii) send or store code that can harm or result in damage to SaaS (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 third parties except as expressly permitted by the Agreement; or (vi) use SaaS in order to cause harm such as overload or create multiple agents for the purpose of disrupting operations of a third party. A breach by the Customer of its obligations under this section shall be considered a material breach of the Agreement.

11. WARRANTY

- 11.1 CA warrants that during the Subscription Term, the SaaS shall perform materially in accordance with the applicable Documentation subject to Customer's compliance with the Agreement. During any Trial Period, this warranty shall not apply.
- 11.2 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.
- 11.3 Customer warrants that (i) it has the right to transmit Customer Data and any data or information as may be required for the purposes of accessing SaaS, (ii) it is responsible for all activities that occur in user accounts, and (iii) it shall not misuse SaaS by sending spam or otherwise duplicative or unsolicited messages or store infringing, obscene, threatening, or otherwise unlawful material or material that is harmful to children or violates third party privacy rights.

12. WARRANTY REMEDY

- 12.1 If it is established that CA has breached the above warranty, CA may, at its option, (i) use reasonable efforts to cure the defect in the SaaS; (ii) replace the SaaS with SaaS that materially conforms to the specifications in the Documentation; (iii) in the event CA cannot, after commercially practicable attempts to do so, achieve the remedies in (i) or (ii), CA may terminate the subscription to the SaaS and



provide a refund of pre-paid, unused fees calculated against the remainder of the Subscription Term as of the effective date of such termination. Customer must report the alleged breach of warranty with reasonable specificity in writing within thirty (30) days of its occurrence to benefit from this warranty and the remedies stated herein. The above warranty remedies are CA's sole obligation and Customer's sole and exclusive remedy for breach of the above warranty.

13. SERVICE LEVEL COMMITMENT

- 13.1 The Service Level Availability is measured against reports that CA conducts on a regular basis based on objective criteria. Reports are available to Customer upon request. If Customer cannot access SaaS during the Subscription Term, Customer should contact CA to receive SaaS Support.
- 13.2 If it is determined by Customer and confirmed by CA that SaaS is unavailable beyond the default threshold identified in the applicable SaaS Listing measured on a monthly basis during three contiguous months, then Customer has the right to elect any of the remedies specified therein.
- 13.3 The following events shall be excluded from the calculation of Service Level Availability: (i) Force Majeure Event; (ii) outages due to Scheduled Downtime; (iii) outages based on Customer networks or domain name server issues; (iv) Customer's configuration, scripting, coding drafted by Customer without CA's authorization or knowledge; (v) internet outages; (vi) outages requested by Customer; (vii) Customer changes to its environment which hinder SaaS production and (viii) inability for Customer to log in to SaaS service because of dependence on non CA provided services or components (*e.g.*, Lightweight Directory Access Protocol (LDAP) in Customer's environment).

14. INDEMNIFICATION

- 14.1 CA will indemnify, defend and/or, at its option, settle any third party claims that Customer's use of the specific SaaS purchased by Customer under this Agreement infringes any valid US patent or copyright within the jurisdictions where Customer is authorized to use the SaaS at the time of Customer's initial subscription. CA may, at its option and expense: (i) procure for End User the right to continue to use the SaaS; (ii) repair, modify or replace the SaaS so that it is no longer infringing; or (iii) provide a pro-rated refund to the Authorized CA Partner of the fees paid on behalf of Customer for the SaaS subscription which gave rise to the indemnity calculated against the remainder of the Subscription Term from the date it is established that CA is notified of the third party claim.
- 14.2 CA shall have no liability: (i) in the event the allegation of infringement is a result of a modification of the SaaS except a modification by CA or unauthorized access of the SaaS, (ii) if the SaaS is not being used in accordance with the SaaS Features, applicable Documentation and or CA guidelines, (iii) if the alleged infringement would be avoided or otherwise eliminated by the use of a CA published update or patch for the CA Software used in the SaaS, (iv) if the alleged infringement is a result of use of the SaaS in combination with any third party product, or (v) if the applicable fees due for the specific SaaS have not been paid by Customer to its Authorized CA Partner. THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CA REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO END USER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.
- 14.3 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.
- 14.4 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.
- 14.5 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.

15. LIMITATION OF LIABILITY

- 15.1 EXCEPT IN THE CASE OF A BREACH OF TITLE, INFRINGEMENT OF CA'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY, OR A PARTY'S OBLIGATIONS 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 LIMITED TO, LOSS OF PROFIT, DAMAGES RELATING TO MONIES SAVED OR FEES GENERATED AND OR ANY LOSS OF DATA BY USE OF ANY SAAS, 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 TO CA FOR THE THEN CURRENT INITIAL OR RENEWAL SUBSCRIPTION TERM FOR WHICH THE END USER HAS PROCURED THE SAAS.

16. TERM & TERMINATION



- 16.1 The Agreement shall continue in effect for the duration of the Subscription Term unless otherwise terminated in accordance with this section.
- 16.2 The Agreement 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.
- 16.3 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 Agreement.

17. DISPUTE RESOLUTION

- 17.1 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.
- 17.2 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.
- 17.3 Disputes relating to the payments of fees, any third party products or services or otherwise relating to the terms and conditions of an order between an Authorized CA Partner and End User, shall be between End User and such Authorized CA Partner and End User agrees that it shall have no right of contribution or other claim from or against CA by reason thereof.

18. GENERAL TERMS.

- 18.1 Amendments. The terms of the Agreement may only be amended by mutual written agreement of the Parties.
- 18.2 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 a Force Majeure event.
- 18.3 Independent Contractors. The Parties expressly agree that the relationship between them is that of end user and independent contractor.
- 18.4 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 the transferee agrees to perform the obligations under this 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 to a third party other than an Affiliate of transferor 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.
- 18.5 Import Export. Customer acknowledges that the SaaS 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 SaaS will not be exported, reexported 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 SaaS is intended or likely to be used for such purpose.
- 18.6 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.
- 18.7 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.
- 18.8 Headings. The section headings used herein are for information purposes only and shall not affect the interpretation of any provision of this Agreement.



- 18.9 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.
- 18.10 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 a Transaction Document or the SaaS Features. The Parties agree that any action arising from this Agreement shall solely be brought by Customer or CA.
- 18.11 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.
- 18.12 Survival. Sections pertaining to Definitions, Confidential Information, Title, Customer Data, Customer Responsibilities, Indemnification, Limitation of Liability, Termination, and General Terms shall survive termination of this Agreement.
- 18.13 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.
- 18.14 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 SaaS Listing; (3) these SaaS Terms. Notwithstanding this order of precedence, a Customer issued purchase order shall not modify the terms of the documents indicated herein.