

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

22-212

SAP Number

Innovation and Technology Department

Department Contract Representative	Lea Rademaker
Telephone Number	909-388-0672
Contractor	CA, Inc.
Contractor Representative	Tina Linkins
Telephone Number	304-839-9402
Contract Term	September 30, 2022- December 20, 2025
Original Contract Amount	\$1,309,578
Amendment Amount	N/A
Total Contract Amount	\$1,309,578
Cost Center	1200104048, 1200504048, 1200604048

Briefly describe the general nature of the contract: Software License Foundation Agreement, including non-standard terms, with CA, Inc., for software licenses, maintenance, and support for the total amount of \$1,309,578 for the period of September 30, 2022 through December 20, 2025.

FOR COUNTY USE ONLY

Approved as to Legal Form

Bonnie Uphold
Bonnie Uphold, Supervising Deputy County Counsel

Date 8-18-2022

Reviewed for Contract Compliance

Date _____

Reviewed/Approved by Department

Date _____



The term "Broadcom" refers to Broadcom Inc. and/or its subsidiaries.

Foundation Agreement

1. INTRODUCTION

- 1.1 This Foundation Agreement ("Foundation Agreement") between the applicable Regional CA Entity set forth in the referencing Transaction Document, a Broadcom Inc. company, ("CA"), and San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California, ("Customer"), is effective on the date set forth in the referencing Transaction Document which identifies the "Start Date" and specifies the terms and conditions agreed between the Parties as a foundation for their relationship as further defined in the applicable Modules.
- 1.2 With respect to the CA Offering, additional terms shall be included in a Module, while terms specific to each individual order from Customer or CA Partner shall be set forth in the Transaction Document(s) for such order.
- 1.3 This Foundation Agreement may incorporate any applicable Module referenced in the "Governing Contract" section of the applicable Transaction Document.

2. DEFINITIONS

- 2.1 "Agreement" means this Foundation Agreement, the applicable Module, the applicable Transaction Document, and any document incorporated expressly therein by reference.
- 2.2 "Affiliate" shall mean any person or entity which directly or indirectly owns, controls, is controlled by, or is under common control with a party, where control is defined as owning or directing more than fifty percent (50%) of the voting equity securities or a similar ownership interest in the controlled entity, or possessing the direct or indirect power to direct or cause the direction of the management and policies of an entity, whether through ownership, by management agreement, by contract, or otherwise.
- 2.3 "CA Offering" means the individual offering (such as software, services, education, software as a service or support).
- 2.4 "CA Partner" means an authorized reseller selected by the Customer.
- 2.5 "CA Software" means the computer software programs (including software programs branded as Symantec software), either provided individually or packaged as a software appliance, made generally available and licensed to a Customer under the applicable Module pursuant to the applicable Transaction Document including all versions and releases, provided as part of CA Maintenance if applicable.
- 2.6 "Confidential Information" means all nonpublic information, whether disclosed by a party or its Affiliates or their respective employees or contractors, that is designated in writing as confidential and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250) ("Regulations"). Confidential Information includes: any information, maintained in confidence by the disclosing Party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or any information that by its form, nature, content or mode of transmission would to a reasonable recipient be deemed confidential or proprietary, including, without limitation CA Offerings, Documentation, and any benchmark data and results produced.
- 2.7 "Documentation" means the technical product specifications and/or user manuals, published by CA or a CA Affiliate.
- 2.8 "Module" means the additional terms and conditions applicable to a CA Offering.
- 2.9 "Order Confirmation" means an electronic receipt, issued by CA or a CA Affiliate, confirming the Software title, version, quantity (based on metric, meter and/or model), and Support acquired.
- 2.10 "Party" or "Parties" means individually and/or collectively CA and/or the Customer.
- 2.11 "Personal Data" means any information relating to (i) an identified or identifiable person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable data protection laws), provided in connection with the Agreement.
- 2.12 "Taxes" means any applicable sales tax, value-added tax (VAT), goods and services tax (GST), consumption tax, ISS, PIS and COFINS or any other applicable taxes.
- 2.13 "Term" means the period during which the CA Offering is provided as specified in the Transaction Document.
- 2.14 "Transaction Document" or "Order Form" means a mutually agreed ordering document such as a CA quote, order form, or statement of work for the specific CA Offering licensed or purchased which is either executed or in the case of a quote and purchase order ("PO"), issuance of a PO referencing such quote which issuance constitutes acceptance of the quote and formation of contract.

3. ORDERING AND DELIVERY

- 3.1 Under the terms of this Agreement, Customer and any Customer Affiliate located within Customer's jurisdictional and geographical boundaries in the same jurisdiction as Customer, may purchase directly from CA or through a CA Partner, and CA shall provide the specific CA Offering subject to the terms of the applicable Module. All Customer Affiliates incorporated in a different jurisdiction than Customer, must sign a participation agreement with CA to adopt and adhere to the terms of this Agreement.
- 3.2 The CA Offerings, (and any hardware components if included within your Transaction Document), will be delivered either in tangible media FCA SD (FCA Shipping Dock), as defined in INCOTERMS 2010, from CA's shipping point as indicated in the Transaction Document or by electronic delivery (ESD). Customer agrees to be responsible for all customs, duties, import clearances, title, and risk of loss to any CA hardware, if included, will pass upon point of delivery to Customer's carrier at CA's shipping location. For non-US customers, title to the hardware product transfers when the product leaves the national territory of the US.
- 3.3 In the event of a payment or set off issue relating to one CA Offering, such payment issue shall not impact any other obligation to pay for any CA Offering provided to Customer.

4. CONFIDENTIALITY

- 4.1. The Parties agree that when receiving Confidential Information from the disclosing Party, that the receiving Party shall hold it in confidence and shall not disclose or use such information except as necessary to carry out the purpose of this 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., Confidential Information may be disclosed to receiving Party's employees, affiliates, agents, financial advisors, contractors and attorneys on a need-to know basis and the receiving Party shall ensure that such persons preserve and use such Confidential Information pursuant to the terms of the Agreement. CA represents that it has a good faith belief that the information it marks "Confidential" is exempt from disclosure under the Regulations.
- 4.2. If the receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other Party, it will, to the extent legally permissible, promptly notify the other Party and if requested by the other Party, tender to the other Party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving Party will then be entitled to comply with the request to the extent permitted by law.
- 4.3. For the purposes of the Agreement, Confidential Information shall exclude: (i) information which the receiving Party has been authorized in writing by the disclosing Party to disclose without restriction; (ii) information which was rightfully in the receiving Party's possession or rightfully known to it prior to receipt of such information from the disclosing Party; (iii) information which was rightfully disclosed to the receiving Party by a third Party having proper possession of such information, without restriction; (iv) information which is part of or enters the public domain without any breach of the obligations of confidentiality by the receiving Party; and (v) information which is independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information.
- 4.4. Nothing in the Agreement will (i) preclude CA from using the ideas, concepts and know-how which are developed in the course of providing any CA Offerings to Customer or (ii) be deemed to limit CA's rights to provide similar CA Offerings to other customers. Customer agrees that CA may use any feedback provided by Customer related to any CA Offering for any CA business purpose, without requiring consent including reproduction and preparation of derivative works based upon such feedback, as well as distribution of such derivative works.
- 4.5. The receiving Party agrees, upon request of the disclosing Party and the extent permitted by law, to return to the disclosing Party all Confidential Information in its possession or certify the destruction thereof.
- 4.6. In the event of a breach of this section, the disclosing Party may not have an adequate remedy at law. The Parties therefore agree that the disclosing Party may be entitled to seek the remedies of temporary and permanent injunction, specific performance or any other form of equitable relief deemed appropriate by a court of competent jurisdiction. For any Customer or CA Confidential Information that constitutes a trade secret under applicable law, the obligations of this section will continue for so long as such trade secret status is maintained by the disclosing Party. For all other Confidential Information, the foregoing obligations shall extend for five (5) years from the date of initial disclosure.

5. FEES

- 5.1 To the extent permitted by law, Customer shall issue and provide CA a purchase order ("PO"), or a series of POs, for the full term and total fees that are due contemporaneously with the execution of each Transaction Document.
- 5.2 Unless an alternative date of payment is set out on the Transaction Document, payment is due upon CA's due date as specified on the invoice. Customer agrees to pay Taxes in addition to the fees when such payments are due. Customer (a) may only withhold tax as required by law, subject to the application of any reduced rate allowed in an income tax treaty or otherwise, (b) shall request all documentation required for the reduction of withholding tax, and (c) shall provide proof of payment of the withholding tax for credit relative to the applicable invoice(s).
- 5.3 If indicated on the Transaction Document, Customer may pay initial payment due on or before the due date (as stated in the applicable Transaction Document) through a same day fed wire. For other payments required by Customer, CA, or CA Partner, will send Customer an invoice containing updated wire transfer information at least thirty (30) days prior to each respective due date or as otherwise agreed to between Customer and the CA Partner. CA reserves the right to change credit or payment terms at CA's discretion if Customer's or CA Partner's financial condition or previous payment history so warrant.
- 5.4 A Customer issued PO may be used to accept terms of a Transaction Document in place of a signature on the Transaction Document itself as long as Customer references a Transaction Document including the appropriate reference number if applicable.

- 5.5 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.
- 5.6 Failure to timely remit payment of all amounts set forth in a Transaction Document, shall after written notice from CA and a reasonable opportunity to remit such payment by Customer, to the full extent permitted by applicable law, relieve CA of any and all support obligations hereunder and all Customer subscription use rights shall be suspended until payment is tendered at which time use rights and support shall recommence. Unless Customer has a bona fide dispute supported by written explanation, and agreed to by CA as bona fide, CA reserves the right to impose late fees as may be permitted by law on any past due amounts.
- 5.7 Intentionally omitted.
- 5.8 CA may assign its payment rights, or grant a security interest in, this Agreement and any Transaction Document hereunder to a third party without requiring such third party to be liable for the obligations of CA under this Agreement or Transaction Document, provided CA remains directly responsible for performance of its duties hereunder and that Customer's obligations are not otherwise affected, and provided that such third party nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- 5.9 In the event Customer orders a CA Offering through a CA Partner (or that partner's resale channel), this Foundation Agreement, excluding all of Section 5 (except Section 5.6), shall apply to Customer.

6. TITLE

- 6.1. CA retains all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all CA Offerings and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under the Agreement is exchanged between the Parties.

7. WARRANTY

- 7.1. Each Party represents and warrants that it has the legal power to enter into the Agreement.
- 7.2. CA represents and warrants that it owns or otherwise has sufficient rights to grant Customer the rights defined in any Transaction Document and/or Module.
- 7.3. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS SOLELY RESPONSIBLE FOR SELECTING CONFIGURATIONS, POLICIES AND PROCEDURES IN THE CA OFFERING(S) THAT ARE CONFIGURABLE INCLUDING, WITHOUT LIMITATION, THE SELECTION OF FILTERED CATEGORIES AND WEB APPLICATION CONTROLS, AND FOR ASSURING THAT THE SELECTION (A) CONFORMS TO CUSTOMER'S POLICIES AND PROCEDURES AND (B) COMPLIES WITH ALL APPLICABLE LAWS.
- 7.4. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ABOVE WARRANTIES AND THOSE SET FORTH WITHIN THE APPLICABLE TRANSACTION DOCUMENTS AND/OR MODULES ARE THE SOLE WARRANTIES PROVIDED BY CA. NO OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR SUITABILITY AND/OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, INCLUDING THAT THE CA OFFERING IS ERROR FREE, ARE MADE BY CA OR ITS SUPPLIERS.

8. INDEMNIFICATION

- 8.1. CA will indemnify, defend and/or, at its option, settle any third party claims that Customer's use of the specific CA Offering licensed or purchased by Customer under this Agreement infringes any valid US patent or copyright within the jurisdictions where Customer is authorized to use the CA Offering at the time of delivery provided that: (i) Customer gives CA prompt written notice thereof and reasonable cooperation, information, and assistance in connection therewith; (ii) CA shall have sole control and authority with respect to defense or settlement thereof provided that CA may not settle the claim absent Customer's written consent unless such settlement (a) includes a release of all claims pending against Customer or, (b) contains no admission of liability or wrongdoing by Customer, or (c) imposes no obligations upon Customer other than an obligation to stop using the CA Offering that is the subject of the claim; and (iii) Customer takes no action that is contrary to CA's interest. CA may, at its option and expense: (a) procure for Customer the right to continue to use the CA Offering; (b) repair, modify or replace the CA Offering so that it is no longer infringing; or (c) provide a pro-rated refund of the fees paid for the CA Offering (directly or through the CA Partner) which gave rise to the indemnity calculated against the remainder of the Term from the date it is established that CA is notified of the third party claim. If the CA Offering is CA Software, and is licensed on a perpetual basis, an amortization schedule of three (3) years shall be used for the basis of the refund calculation.
- 8.2. CA shall have no liability: (i) in the event the allegation of infringement is a result of a modification of the CA Offering except a modification by CA, (ii) if the CA Offering is not being used in accordance with CA's specifications, related documentation and guidelines, (iii) if the alleged infringement would be avoided or otherwise eliminated by the use of a CA published update or patch, or (iv) if the alleged infringement is a result of use of the CA Offerings in combination with any third party product, or (v) if the applicable fees due for the specific Transaction Document have not been paid or Customer is otherwise in breach of this Agreement. The indemnifications contained herein shall not apply and CA shall have no liability in relation to any CA Offering produced by CA at the specific direction of Customer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CA REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO CUSTOMER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

8.3. CA shall indemnify Customer 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 CA.

8.4. Customer shall indemnify CA against any claim that any data, materials, items or information supplied to CA under the Agreement infringes any US patent, copyright or trademark within the jurisdictions where CA is provided with such information.

9. LIMITATION OF LIABILITY

9.1. EXCEPT IN THE CASE OF A BREACH OF CONFIDENTIALITY, TITLE, AND OF THIRD PARTY CLAIMS ARISING UNDER THE INDEMNIFICATION SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW A) NEITHER PARTY (INCLUDING ANY OF CA’S SUPPLIERS) SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT NECESSARILY LIMITED TO, LOSS OF PROFIT, DAMAGES RELATING TO MONIES SAVED OR FEES GENERATED AND OR ANY LOSS OF CUSTOMER DATA BY USE OF ANY CA OFFERING, REGARDLESS OF WHETHER A PARTY WAS APPRISED OF THE POTENTIAL FOR SUCH DAMAGES; AND B) IN NO EVENT WILL A PARTY’S LIABILITY FOR DIRECT DAMAGES, EXCEED ONE MILLION DOLLARS (US\$1,000,000).

10. TERM & TERMINATION

10.1 This Foundation Agreement shall continue in effect for the period from June 24, 2022 through December 21, 2025, unless otherwise terminated in accordance with this section.

10.2 This Foundation Agreement and/or applicable Module(s) and/or the applicable Transaction Document may be terminated by either Party (a) upon a material breach by the other Party, provided that, in each instance of a claimed breach: (i) the non-breaching Party notifies the breaching Party in writing of such breach; and (ii) the breaching Party fails to either cure such breach within thirty (30) days (or such other period as mutually agreed by the Parties) from receipt of such notice; (b) upon insolvency of the other Party, if permitted by law. The foregoing notwithstanding, any breach by Customer of licenses and/or rights granted pursuant to this Agreement shall constitute an incurable material breach by Customer; and, CA may immediately terminate all of Customer’s use rights and licenses, (subscription-based, perpetual, access and use), upon written notice to Customer, and Customer must either: a) delete all full or partial copies of the CA Software and SaaS instances from all computing or storage equipment, and verify such deletion in a statement signed by the CIO or a duly authorized representative and sent to usage.reporting@broadcom.com, or b) return to CA all full or partial copies of the CA Software. Such termination shall not relieve Customer from its obligations as set forth within the related Transaction Document.

10.3 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 Foundation Agreement or the Agreement. Excepting for termination based on CA’s uncured material breach, all fees are non-cancellable and nonrefundable unless a prorated refund applies. In the event of termination by CA for an uncured material breach by Customer, all fees due shall immediately become payable.

10.4 Customer may terminate this Agreement provided that Customer also terminates each and all other agreements (direct or indirect or whether or not related to this Agreement) under which Customer may procure any CA offering (but in all cases excluding any hardware offerings and associated support contracts therefor) together with each and all Transaction Documents (or any order forms or other ordering documents) in effect between the Parties as of the date of termination (collectively, for purposes of this section, the “Agreement”), without cause and without further charge or expense at any time, immediately upon written notice to CA sent to usage.reporting@broadcom.com. On or after the termination date, with the exception of any fully paid-up Perpetual Licenses if the termination is effective after the initial Term, Customer must either: a) delete all full or partial copies of the CA Software from all computing or storage equipment, and verify such deletion in a statement signed by the CIO or a duly authorized representative and sent to usage.reporting@broadcom.com, or b) return to CA all full or partial copies of the CA Software. Once Customer’s verification or the CA Software copies are received, CA will pay Customer, or CA Partner, a pro-rata refund of any License, SaaS and/or Support fees Customer or CA Partner pre-paid (“Refund Fees”) in accordance with the paragraph below. Refund Fees will be calculated on the number of months remaining in the Term (which for the purposes of this calculation will be deemed to commence from the date Customer’s verification or the CA Software copies are received) of the Transaction Document eligible for the refund. If the CA Software is licensed under a Perpetual License, Customer, or CA Partner as appropriate, will receive a pro-rated refund of the License Fee paid to CA only if notice of termination is issued during the initial Term of the applicable Transaction Document.

10.5 Notwithstanding the foregoing paragraph, if the Agreement is terminated without cause, neither Party shall have further obligations under the Agreement, except that the Parties shall remain bound by the obligations within the Survival section of this Foundation Agreement. Refund Fees will be paid within sixty (60) days to Customer (or CA Partner who will process the invoicing or reimbursement of fees to Customer as appropriate and under the commercial terms between the CA Partner and Customer), from the date Customer’s verification or the CA Software copies are received, and any unpaid fees reflecting the CA offerings delivered prior to the termination date shall become immediately due.

11. GOVERNING LAW AND DISPUTE RESOLUTION

11.1. Choice of Law; Venue. Depending on the Regional CA Entity that is a Party to this Agreement, the exclusive governing law, and jurisdiction shall be as set forth below; except for any action related to non-payment, which may be brought in any court of competent jurisdiction:

Regional CA Entity	Governing Law	Jurisdiction	Arbitration Organization, Rules, and Seat
CA, Inc.	State of California	State Courts located in San Bernardino County, California	N/A

The Agreement will not be governed by the following, the application of which is hereby expressly excluded: (a) the conflict of law rules of any jurisdiction, (b) the United Nations Convention on Contracts for the International Sale of Goods, and (c) the Uniform Computer

Information Transactions Act, as enacted in any jurisdiction. The Parties further agree to accept service of process in accordance with the rules/procedures of the arbitral body or relevant court (as applicable), except that the Parties hereto irrevocably waive any objection that service of process must conform to the Hague Service Convention or other applicable law or treaty regarding service of process.

11.2. Dispute Resolution. Any dispute, claim or controversy arising out of relating to the Agreement (“Dispute”) shall be resolved as provided in this Section.

11.2.1. Informal Dispute Resolution. Save for Disputes relating to unpaid amounts, before initiating any formal proceeding relating to a Dispute, the Parties shall meet as frequently and as often as they reasonably deem necessary to negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within thirty (30) days of initiating the discussions, then each Party shall appoint one (1) senior executive who is not directly involved on a day-to-day basis with the subject matter of the Agreement, and those senior executives shall negotiate the matter in good faith. A formal proceeding relating to a Dispute shall not be commenced until the earlier of: (i) the good faith determination by one of the appointed senior executives that 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. Nothing in this paragraph shall 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 injunctive remedies deemed reasonably necessary to protect its interests.

11.2.2. Intentionally omitted.

11.3. In any formal action or proceeding arising from a Dispute or relating to non-payment, the prevailing Party shall be entitled to recover its costs and reasonable attorneys’ fees from the other Party as awarded by a court of competent jurisdiction.

12. GENERAL TERMS

12.1. Amendments. The terms of the Agreement may only be amended by mutual written agreement executed the person(s) authorized to do so on behalf of both Parties.

12.2. Force Majeure. Except for payment obligations and obligations pertaining to non-disclosure, notwithstanding any contrary provision in the Agreement, neither Party will be liable for any action taken, or any failure to take any action required to be taken, in the event and to the extent that the taking of such action or such failure arises out of causes beyond a Party’s control, including, without limitation, war, civil commotion, act of God, pandemic, epidemic, strike or other stoppage (whether partial or total) of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal).

12.3. Order of Precedence. Any conflict or inconsistency among or between the terms and conditions of the documents comprising the Agreement shall be resolved according to the following order of precedence, from the document with the greatest control to the least: (1) the Transaction Document; (2) CA’s global Data Processing Addendum (DPA) to the extent one is in place between the Parties, (3) the applicable Specific Program Documentation or SaaS Listing, (4) the relevant Module; (5) this Foundation Agreement. Notwithstanding this Order of Precedence, any terms that may appear on a Customer’s purchase order that vary from the Agreement (including without limitation pre-printed terms) shall be deemed null and void.

12.4. Independent Contractors. The Parties expressly agree that the relationship between them is that of customer-independent contractor.

12.5. Customer acknowledges and agrees that CA will process Personal Data as part of the provision of the CA Offerings in accordance with, and for the purposes defined in, CA’s Privacy Policy available at <https://www.broadcom.com/privacy> including: (i) management of Customer relationship; (ii) sales administration (e.g. management of products and services, ordering and invoicing, contract management, technical support renewal management); (iii) CA products/services related communications including technical support information such as new versions or updates; (iv) management of branded products and services entitlement; (v) marketing of branded products and services; (vi) development of threat intelligence resources aiming at ensuring and improving the ability of networks and systems to resist unlawful or malicious actions compromising the security of information and services accessible via such networks and systems; (vii) development and enhancement of branded products and services; (viii) compliance with applicable laws and regulations (all of the above being defined as CA Processing). Customer hereby authorizes CA to make necessary transfers of Personal Data and that any CA Affiliates and subcontractors may process such Personal Data for the purposes of providing the CA Offering contemplated under the Agreement, CA is responsible for the obligations under the Agreement even if CA uses a third party contractor or subprocessors. In the event that Personal Data of Customer is transferred from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of the data protection laws of the foregoing territories (“Restricted Transfers”), CA complies with the provisions of the General Data Protection Regulation (“GDPR”), and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, with respect to such Restricted Transfers. Where CA is a processor for Customer under the GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, CA’s processing shall be subject to and in accordance with CA’s global Data Processing Addendum (“DPA”), including the relevant Standard Contracting Clauses (SCC) for international data transfers incorporated in it, located at: <https://www.broadcom.com/privacy>. Where a CA Partner processes Personal Data on behalf of the Customer under the GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, the CA Partner shall be responsible for entering into a relevant data processing agreement with Customer. Customer has been advised that during the term of the Agreement CA will collect Personal Data and process it as a Controller pursuant to the Privacy Policy and to the extent permitted by GDPR, and/or the Swiss Federal Data Protection Act and/or other applicable local legislation, including for the purposes of CA Processing (as defined above).

12.6. Assignment. Neither Party shall assign the Agreement or any of its rights or delegate any of its duties under the Agreement, either by operation of law, agreement, or any other process, without the prior written consent of the other Party, except that CA shall have the right to assign the Agreement or any of its rights or delegate any of its duties under the Agreement at any time to any CA Affiliate(s), or to a successor in interest of all or substantially all of the business to which the Agreement relates, provided that CA provides Customer with

thirty (30) days' prior written notice of such assignment, or if legally prohibited from providing prior notice, within thirty (30) days after the effective date of the assignment, and Customer has the right to terminate this Agreement, if required by applicable law. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assigns. Any attempted assignment in violation of this section shall be null and void.

- 12.7. Import Export. Customer acknowledges that the CA Offering(s) is subject to control under U.S. law, including the Export Administration Regulations and agrees to comply with all applicable import and export laws and regulations. Customer agrees that the CA Offering(s) will not be exported, re-exported or transferred in violation of U.S. law or used for any purpose connected with chemical, biological or nuclear weapons or missile applications, nor be transferred or resold, if Customer has knowledge or reason to know that the CA Offering(s) are intended or likely to be used for such purpose.
- 12.8. Legal Compliance. Both parties shall comply with applicable federal, state, local laws, regulations and ordinances, and all other applicable laws and regulations in the performance of this agreement and use of any CA Offering. CA may suspend performance if Customer is in violation of applicable laws, regulations, or ordinances.
- 12.9. Critical Applications. The CA Offerings are not fault tolerant and use of the offerings is prohibited for on-line control equipment in hazardous environments requiring fail-safe performance, such as the operation of aircraft navigation or aircraft communications systems, air traffic control, life support systems, human implantation, nuclear facilities or systems, weapons systems, or any other application where failure of the offering could lead to death, personal injury, or severe physical or environmental damage.
- 12.10. Announcements. Neither Party may issue press releases relating to the Agreement without approving the content with the other Party. Either Party may include the name and logo of the other Party in lists of customers or vendors in accordance with the other Party's standard guidelines.
- 12.11. Notice. Any notice required or permitted by the Agreement shall be given in writing, will refer to the Agreement and will be personally delivered or sent by a reputable overnight courier service (e.g., FedEx, UPS, DHL, etc.), or registered or certified mail (return receipt requested) to the other Party's legal department at the address set forth in the Agreement, or such other address as is provided by notice as set forth herein. Notices shall be deemed effective upon confirmation of delivery.
- 12.12. Headings. The section headings used herein are for information purposes only and shall not affect the interpretation of any provision of this Agreement.
- 12.13. Validity. In the event any term or provision of the Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.
- 12.14. Third Parties. This Agreement shall not create any rights in favor of, or any obligations owed by, any third party unless otherwise expressly defined in any Module. The Parties agree that any action arising from this Agreement shall solely be brought by Customer or CA.
- 12.15. Survival. Sections pertaining to Dispute Resolution, Choice of Law, Confidentiality, Title, Warranty, Limitation of Liability, Termination, and Import Export shall survive termination of this Foundation Agreement.
- 12.16. Entire Agreement. The Agreement and all documents incorporated by reference therein shall comprise the entire agreement as pertaining to the subject matter thereof and all other prior representations, proposals, and other such information exchanged by the Parties concerning the subject matter is superseded in their entirety by the Agreement. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, San Bernardino County and CA have each caused this contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY



 Curt Hagman, Chairman, Board of Supervisors

Dated: **SEP 13 2022**

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

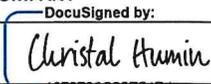


 Lynna Monell
 Clerk of the Board of Supervisors
 of San Bernardino County

Version Number: 04112022 Agreement Number: 00336421.0

CA, INC. A BROADCOM INC. COMPANY

DocuSigned by:

 By 

 (Authorized signature - sign in blue ink)

Name Christal Humin
(Print or type name of person signing contract)

Title Finance Analyst
(Print or Type)

Dated: 7/28/2022

Deputy

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
County Counsel Date _____	Date _____	Date _____

1. INTRODUCTION

- 1.1 This Module for CA Software ("Software Module") between the applicable Regional CA Entity set forth in the referencing Transaction Document, a Broadcom Inc. company, ("CA"), and Customer, ("Customer"), is effective on the date set forth in the referencing Transaction Document, and specifies the terms and conditions which apply to CA Software that CA will license to Customer and the Support that applies.
- 1.2 This Software Module incorporates by reference the terms of the Foundation Agreement effective on the date set forth in the referencing Transaction Document between CA and Customer (or CA Partner). Any capitalized terms used in this Software Module shall have the meanings given in the Foundation Agreement unless otherwise provided herein.

2. DEFINITIONS

- 2.1 "Authorized End Users" means Customer, Customer Affiliate(s) and their employees and independent contractors (but excluding any outsourcer, facilities management provider, managed service provider, or application service provider unless Customer explicitly takes full responsibility and liability for such party's act and omissions) that are bound by terms and conditions no less restrictive than those contained herein and are acting on behalf of Customer and not a third party.
- 2.2 "Authorized Use Limitation" or "Meter" means the quantity of the CA Software licensed in accordance with the License Metric specified in the Transaction Document.
- 2.3 "Distributed Software" means the CA Software designated as distributed that is generally used for independent usage across individuals systems or hardware based on the License Metric in a decentralized form of computing.
- 2.4 "Hardware" means the CA provided physical hardware device or server.
- 2.5 "License Metric" means the specific criteria for measuring the usage of the CA Software (such as MIPS, CPUs, tiers, servers, or users).
- 2.6 "Mainframe" means CA Software designated as mainframe that is generally used for a large capacity processor that provides links to users through less powerful devices such as workstations or terminals based on the License Metric in a centralized form of computing.
- 2.7 "Perpetual License" means a license to use CA Software for an indefinite period subject to compliance with the Agreement.
- 2.8 "Subscription" or "UMF" (Usage and Maintenance Fee) license means a license to use CA Software for a specific period of time which shall include Support unless otherwise stated in a Transaction Document.
- 2.9 "Support" (which may also be referred to as "Maintenance") means technical support for the CA Software. Support may also contain "Content Updates" provided by CA for use with the Software intended to be updated, including, but not limited to, data, signatures, definitions, rules, policies, and URLs used by the CA Licensed Software, and may include content produced as a result of Customer's use of the CA Software.
- 2.10 "Territory" means the location indicated on the Transaction Document where Customer is authorized to install the CA Software.

3. SOFTWARE OFFERING & OBLIGATIONS

- 3.1 Subject to the Customer's compliance with the Agreement, CA grants the Customer a limited, nonexclusive, non-transferable license, for the Term to:
 - 3.1.1 Install and deploy the CA Software in the Territory up to the Authorized Use Limitation.
 - 3.1.2 Permit Authorized End Users to remotely use the CA Software for Customer's and Customer Affiliates' internal business wherever located. Customer hereby expressly agrees that a breach by an Authorized End User of the Agreement shall be considered to be a breach by and the responsibility of the Customer.
 - 3.1.3 Make a reasonable number of copies of the CA Software for disaster recovery "cold standby", backup and archival purposes. Use of such copies is limited to testing Customer's disaster recovery procedures and effectiveness and as is necessary during any reasonable period subsequent to the occurrence of an actual disaster during which Customer cannot operate the CA Software.
 - 3.1.4 Relocate CA Software to a new Customer location within the Territory upon prior written notice.
- 3.2 The CA Software may be provided under terms and conditions, use Meter(S) and model(S) set forth within Specific Program Documentation ("SPD") or Product Use Rights supplement identified in applicable Transaction Document(s) ("Order Forms"). The CA Software's specifications, Product Use Rights 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). The SPD and/or Product Use Rights form an integral part of applicable Transaction Document and are incorporated by reference. If the applicable version of the Software is not specifically listed within the applicable Transaction Document, the SPD and/or Product Use Rights for the most recent prior version shall apply.
- 3.3 The grant of license is contingent upon Customer's compliance with the following obligations set out under this provision and Customer agrees that it shall not: (i) provide, sub-license or transfer the CA Software or its results/outputs other than to Authorized End Users, (ii)

make any use of the CA Software for which it has not paid, (iii) cause or permit de-compilation, reverse engineering, or otherwise translate all or any portion of the CA Software; (iv) modify, unbundle, or create derivative works of the CA Software and/or Documentation; (v) rent, sell, lease, assign, transfer or sublicense the CA Software to provide hosting, service bureau, on demand or outsourcing services for the benefit of a third party; (vi) remove any proprietary notices, labels, or marks on or in any copy or version of the CA Software or Documentation; (vii) claim any rights in the CA Software other than its right to use, (viii) export or use the CA Software in violation of US or other applicable laws and regulations, or (ix) use the CA Offerings for any prohibited end use, such as for nuclear technology applications, missile, or other military guidance systems and biological weaponry, or major radiation exposure field applications. Any right that is not granted to Customer under this Software Module, the Foundation Agreement or a Transaction Document is reserved to CA. Customer may not use the Software in an electronic communications network that is used wholly or mainly for the provision of publicly available electronic communications services ("Public Network") in a manner that violates the rights to privacy or freedom of expression as outlined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (collectively, "International Human Rights Standards"), of any individual user who directly accesses the Internet or otherwise transmits data through a Public Network, provided the foregoing shall not limit use of the Software in a Public Network to restrict, monitor, collect or process data accessed or transmitted by individual users based upon exceptions to the rights of privacy or freedom of expression that are recognized by International Human Rights Standards. In order to better understand and meet its customers' needs, CA may collect, use, analyze and retain Customer's metadata, system topography information, and/or operations data and, in a confidential and anonymous manner, aggregate such data with similar usage data of other CA customers.

3.4 Customer agrees to provide verified reports and records reasonably requested by CA to verify Customer's compliance with the Authorized Use Limitation and License Metric defined in the Transaction Document. These reporting and verification obligations remain in effect during the Term of the CA Offering and for twelve (12) months thereafter. Customer agrees that, upon thirty (30) days' prior written notice, CA or an independent third party may audit Customer's compliance with the Foundation Agreement, Software Module and the Transaction Document, remotely or at Customer's facilities. Customer shall cooperate in good faith with such audit, which CA agrees will be confidential, and commercially reasonable in nature and time. If Customer's self-verification or CA's audit reveals any unpaid or unlicensed use, CA shall provide written notification to Customer and within thirty (30) days of such written notification, Customer shall order at CA's then-current list price, a sufficient number of such CA Offering and any applicable Support to cover its past or current use in excess of the Authorized Use Limitation and License Metric. If an audit reveals an underpayment of ten percent (10%) or more of total fees owed for the review period, Customer will also reimburse CA for its reasonable audit expenses.

3.5 If the CA Software is provided to Customer for evaluation purposes Section 3.1 (License Grant) is replaced with the following:

3.5.1 CA grants to Customer a non-exclusive, temporary, royalty-free, non-assignable license to use the CA Software solely for internal non-production evaluation subject to the applicable SPD and/or Product Use Rights supplement. Such evaluation license shall terminate (i) on the end date of the pre-determined evaluation period or (ii) sixty (60) days from the date of initial installation of the CA Software, if no such evaluation period is pre-determined ("Evaluation Term"). Customer is solely responsible to take appropriate measures to back up its system and take other measures to prevent any loss of files or data. The Software may contain an automatic disabling mechanism that prevents its use after a certain period of time. Upon expiration of the Evaluation Term, Customer must cease use of the CA Software and uninstall or destroy all copies of the software. CA shall accept no liability for Customer's use of the CA Software for evaluation purposes. All other terms and conditions of this Agreement shall otherwise apply to Customer's evaluation of the software.

THE SOFTWARE PROVIDED FOR EVALUATION MAY NOT BE TRANSFERRED AND IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. THE ACCOMPANYING SOFTWARE DOCUMENTATION IS PROVIDED FOR THE PURPOSE OF DESCRIBING THE SOFTWARE; CA DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, OR OTHER CA COMMITMENTS, OBLIGATIONS, OR LIABILITIES, IN SUCH SOFTWARE.

4. HARDWARE OFFERING AND OBLIGATIONS

4.1 The Hardware provided to Customer pursuant to a Transaction Document is to be used only with the CA Software that is pre-installed or delivered for installation. Subject to Customer's compliance with this Agreement, CA permits Customer to use the Hardware solely with the CA Software preinstalled or delivered for installation in support of Customer's internal business operations.

4.2 Certain Hardware requires Customer to register a service tag prior to use in the location Customer intends to use the Hardware ("Geographic Use Location"). In the event Customer wishes to change Customer's Geographic Use Location, Customer may do so at no additional cost but must contact CA support to re-register the Hardware tag. Any change to the Geographic Use Location and/or any service request that requires CA to obtain additional information and/or validate information to acknowledge and approve warranty service entitlements may result in a delay in providing warranty service entitlements.

4.3 CA will provide a replacement unit for any Hardware that fails to operate in accordance to published configuration and technical specifications within the first three (3) business days after installation, provided that such installation must be completed within thirty (30) days from the date of shipment. Failure to operate does not include cosmetic or other defects that do not directly affect the Hardware's performance. Units which fail to operate must be identified as such by either a CA technical support engineer or an authorized CA representative. A new, like-model replacement unit will be shipped using commercially reasonable means to ship the replacement Hardware. CA will aim to ship within five (5) business days from receipt of notification of product failure, subject to product availability. Delivery is dependent on destination and may be impacted by delays in customs that are beyond the control of CA or its carriers. Customer is responsible for reading and complying with the return instructions included with the replacement Hardware. CA shall not be responsible

for any software, firmware, information or data provided by Customer or a third party that is contained in, stored on, or integrated with, any hardware component returned to CA for repair or replacement, whether or not under warranty.

4.4 If Hardware is provided to Customer for evaluation, Customer will: (i) safeguard and protect the Hardware, (ii) not loan the Hardware to a third-party, (iii) not allow any lien to be imposed upon the Hardware, and (iv) be responsible for any damage to the Hardware beyond normal wear, including replacement cost if the Hardware is stolen or lost.

5. SUPPORT OFFERING

5.1 If Support is purchased as set forth within a Transaction Document, CA will provide Customer with purchased Support in accordance with the guidelines at: <https://casupport.broadcom.com> or <https://www.symantec.com/support-center/policies>, for CA and Symantec branded offerings respectively. If a renewal fee for Maintenance is identified on a Transaction Document, then CA may automatically invoice Customer for such renewal unless CA receives not less than thirty (30) days written notice from Customer prior to the anniversary of the applicable Term that such Maintenance is not desired.

5.2 If Content Updates are included as part of Maintenance, Customer is granted the right to receive and use Content Updates as and when they are made generally available, for the Maintenance term, and only for the quantity, indicated on the applicable Transaction Document(s). This Agreement does not otherwise give Customer the right to obtain or use Content Updates, and any unauthorized access to or use of Content Updates is deemed a breach of this Agreement. Upon expiration or termination of the Maintenance Term, Customer must uninstall any Software component that facilitates the receipt of Content Updates and use of Content Updates after expiration or termination of the Maintenance term is a material breach of this License Agreement.

5.3 Software Updates/Upgrades, as provided pursuant to guidelines, may only be obtained for the Authorized Use Limitation or quantity indicated in the applicable Transaction Document. Any Software Updates/Upgrades to an existing license do not modify or alter Customer's Authorized Use Limitation or quantity. If Customer is permitted to transfer its licenses to a different Licensed Software title, then Customer may receive a new Transaction Document on the condition that Customer cease using the replaced Licensed Software prior to use of such replacement Licensed Software. Software Updates/Upgrades are subject to the then-current version of this agreement.

6. THIRD PARTY TERMS

6.1 In the event that the CA Software contains third-party software components, additional terms, notices and/or information that may be applicable to such third-party software components may be found in the Documentation accompanying the CA Software (e.g., a user manual, user guide, or readme.txt or notice.txt file), and/or at <https://techdocs.broadcom.com/us/productcontent/recommended-reading/certified-device-lists/ca-software-third-party-terms.html> for Symantec branded offerings they may be found at <https://www.symantec.com/enterprise-legal>.

7. SOFTWARE PERFORMANCE WARRANTY

7.1 For Distributed Software. CA warrants that the Distributed Software as defined in the Transaction Document will operate materially in accordance with the applicable specifications set forth within the Documentation for a period of ninety (90) days after delivery of the CA Software subject to Customer's compliance with the Agreement.

7.2 For Mainframe Software. CA warrants that the Mainframe Software will operate materially in accordance with the applicable specifications set forth within the Documentation for the Term, subject to Customer's compliance with the Agreement.

8. SOFTWARE PERFORMANCE WARRANTY REMEDY

8.1 If CA has breached either warranty set forth in the section entitled: Performance Warranty, Customer's remedy is for CA to, in consultation with Customer, to either (i) use reasonable efforts consistent with industry standards to cure the defect, or (ii) replace the CA Software(s) with one that materially complies with the Documentation, or (iii) terminate the license and provide a prorata refund of the license fees paid and or Support fees. To Customer or CA Partner (wherefrom the non-compliant CA Offering was procured). If option (iii) applies, the pro-rata refund shall be calculated on the number of months left remaining on the Term of the applicable Transaction Document or if the CA Software is licensed under Perpetual License, using (only for purposes of a refund calculation) an amortization schedule of three (3) years. The above warranty remedies are CA's sole obligation and Customer's sole and exclusive remedy for the breach of the above warranty.

8.2 Warranty remedies are conditioned upon (i) any error or defect reported is reasonably reproducible by CA, (ii) the CA Software is not modified and is being used in accordance with CA Documentation, and (iii) the breach is not attributable in whole or in part to any non-CA product(s) or service(s).

9. HARDWARE PERFORMANCE WARRANTY

CA warrants that the Hardware shall be substantially free from material defects in material and workmanship under normal authorized use and service and will substantially conform to the written documentation accompanying the Hardware for twelve (12) months from date of shipment (the "Hardware Warranty Period"). Any third party hardware that is (a) not manufactured by CA; (b) not embedded within the CA Offerings manufactured by CA; or (c) identified as separate items on CA's price list or quotes shall be subject exclusively to the manufacturer's warranty for such third party hardware.

10. HARDWARE PERFORMANCE WARRANTY REMEDY

Upon confirmation of a defect or failure of a Hardware, or component and depending on the then-current Geographic Use Location of the Hardware, Customer's sole and exclusive remedy for defective Hardware, or component thereof, if notified within the Hardware Warranty

Period, shall be for CA to arrange for, at its sole option and discretion, to: (i) repair or replace the defective Hardware, or component thereof, with either a new or refurbished replacement Hardware, or component, as applicable; (ii) provide onsite repair services for any defective Hardware, or component; or (iii) repair or replace any defective Hardware returned to CA through CA's Returned Merchandise Authorization Services process for Hardware. The instructions on how to submit a request are detailed at <https://www.symantec.com/support-center/policies>, or successor URL. Any repaired parts or components or replacement parts or components provided by CA pursuant to any Hardware warranty service shall be warranted only for ninety (90) days, provided, however, that Customer's warranty for such part or component may become void due to improper installation or other damage to such parts or components. Customer must remove all data from Hardware before returning it to CA. All defective Hardware, or any component thereof, which has been replaced, shall become the property of CA. All defective Hardware, or any component thereof, which has been repaired, shall remain Customer's property. THE FOREGOING IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND CA'S SOLE AND EXCLUSIVE LIABILITY FOR CA'S BREACH OF THIS LIMITED WARRANTY.

11. INTENTIONALLY OMITTED.

1. INTRODUCTION

- 1.1 This Module for Software as a Service ("SaaS Module") between the applicable Regional CA Entity set forth in the referencing Transaction Document, a Broadcom Inc. company, ("CA"), and Customer, ("Customer"), is effective on the date set forth in the referencing Transaction Document, and specifies the terms and conditions which apply to SaaS that CA will provide to Customer.
- 1.2 This SaaS Module incorporates by reference the terms of the Foundation Agreement effective on the date set forth in the referencing Transaction Document between CA and Customer (or CA Partner). Any capitalized terms used in this SaaS Module shall have the meanings given in the Foundation Agreement unless otherwise provided herein.

2. DEFINITIONS

- 2.1 "Authorized Use Limitation" or "Meter" means the limitation on usage of SaaS as measured by the Billing Metric specified in the Transaction Document.
- 2.2 "Authorized Users" means Customer, its employees and independent contractors and/or Customer 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 Customer Affiliates.
- 2.3 "Billing Metric" means the metric for billing SaaS to Customer as defined in the SaaS Listing (e.g., users, transactions, etc.).
- 2.4 "Customer Data" means any information provided by Authorized Users or Customer authorizes access to in the course of accessing and using SaaS.
- 2.5 "Data Center Region" means a geographic region that is served by one or more hosting facilities for CA SaaS. CA Data Center Regions are set out in the SaaS Listing.
- 2.6 "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.
- 2.7 "Non-Production" means any Customer deployed environment that is not Production such as development, test, staging, demonstration, or training environments.
- 2.8 "Production" means the "live" environment of SaaS that Customer uses as their primary business environment.
- 2.9 "SaaS", "SaaS Offering", "Online Service" means the version of the CA software and/or type of service defined in the Transaction Document and made available to Authorized Users via the Internet.
- 2.10 "SaaS Listing" or "Service Description" 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. SaaS Listings may define provisioning and management processes applicable to the SaaS Offering, types and quantities of system resources (such as storage allotments), functional and technical aspects of the SaaS, as well as a catalogue of available service requests. SaaS listings are available at <https://www.broadcom.com/support/whyca/saas/saas-resources> while the Service Descriptions are available at <https://www.symantec.com/enterprise-legal>.
- 2.11 "SaaS Support" means support of the SaaS Offering so it operates materially in accordance with the Documentation.
- 2.12 "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.
- 2.13 "Service Level Availability" (SLA) means the targeted availability levels measured in the Production environment, as specified in the SaaS Listing which may vary according to each SaaS Offering and its component capabilities.
- 2.14 "Security Breach" means access to Customer Data by an unauthorized person or entity.
- 2.15 "Subscription Term" means the initial or renewal period of the subscription to a SaaS Offering as set out in the Transaction Document.
- 2.16 "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 Subject to the Customer's compliance with the Agreement, CA provides Customer a nontransferable and non-exclusive right for Customer and its Authorized Users to access and use SaaS for the Customer's internal business use during the Subscription Term in accordance with the Agreement.
- 3.2 If CA provides software to Customer to enable or to optimize SaaS (e.g. plug-ins), CA provides Customer, during the Subscription Term, a non-transferable and non-exclusive right to use such software solely in connection with 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) provide, sub-license or transfer the CA Software or its results/outputs other than to Authorized End Users; (ii) make any use of the CA Software for which it has not paid; (iii) cause or permit de-compilation, reverse engineering, or otherwise translate all or any portion of the software; (iv) modify, unbundle, or create derivative works of the software and/or Documentation; (v) 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; (vi) remove any proprietary notices, labels, or marks on or in any copy or version of the software or Documentation; (vii) claim any rights in the CA Offering other than its right to use; (viii) export or use the CA Offering in violation of US or other applicable laws and regulations, or (ix) use the CA Offerings for any prohibited end use, such as for nuclear technology applications, missile, or other military guidance systems and biological weaponry, or major radiation exposure field applications. Any installation of agents or software of any kind will be required to be returned or destroyed at the end of the Subscription Term. All rights in and to the software described herein, not expressly granted to Customer, are expressly reserved by CA.
- 3.3 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. FEES

- 4.1 The Authorized Use Limitation and associated fees shall be as set out on the Transaction Document. CA, directly or through CA Partner, reserves the right to invoice Customer for any use of the SaaS in excess of the Authorized Use Limitation. Customer agrees that the purchase of any SaaS is not contingent on CA providing any future features or functionalities.
- 4.2 For Subscription Terms that are invoiced in advance, Customer may increase the Authorized Use Limitation or Meter amount at any time, by executing a Transaction Document for additional SaaS. If Customer's current use of a SaaS offering exceeds the Authorized User Limitation or Meter amount shown on Customer's applicable Transaction Document, then Customer, or its delegated CA Partner, must promptly submit a new order for the additional use, which will be invoiced at the then-current rates, or as mutually agreed upon by the Parties, through the current Subscription Term, and the aggregate Authorized Use Limitation or Meter amount will be the basis for any renewal of the Subscription. CA reserves the right to invoice Customer for any additional use, at the then-current rates, if a corresponding order is not promptly received.

5. CUSTOMER DATA

- 5.1 Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer Data shall be considered to be Confidential Information under the Agreement. Customer Data will be stored and processed in the Data Center Region. CA shall not access Customer's user accounts, or Customer Data, except in response to SaaS or technical issues where Customer requests or consents to such access in consultation with CA. Customer acknowledges and agrees that CA may use Customer Data to the extent necessary for the purposes of detecting, blocking, analyzing and reporting cyber-threats in the delivery of any Symantec branded offerings, including, but not limited to, the following purposes: (i) the development of threat intelligence resources aiming at improving the ability of networks and systems to resist unlawful or malicious actions compromising the security of information and services accessible via such networks and systems; and (ii) the development and enhancement of any CA Offerings.
- 5.2 CA will collect, modify and analyze metadata 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.
- 5.3 Customer may access Customer Data, reports and/or information through SaaS until the end of the Subscription Term. After the end of the Subscription Term, CA will destroy all Customer Data.
- 5.4 Customer is responsible for obtaining all approvals and consents required by any third parties to use the SaaS. CA is not in default of its obligations if it cannot provide the SaaS when approvals or consents have not been obtained or any third party otherwise validly prevents CA from providing the SaaS. Customer is responsible for its account information, passwords and other login credentials and must notify CA immediately of any known unauthorized possession or use of your credentials.
- 5.5 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.

- 5.6 Customer agrees not to provide any health, payment card or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless it is a supported feature in the Documentation of the applicable SaaS Offering.

6. SECURITY

- 6.1 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 runs security background checks on all operations staff. CA shall adhere to and subject such policies and practices to an audit under the compliance criteria defined in the applicable SaaS Listing. A copy of CA's audit reports and certifications can be found at <https://www.broadcom.com/support/why-ca/saas/complianceaudit-reports>.
- 6.2 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. Customer's ability to recover any lost data resulting from CA's misconduct is limited to restoration by CA from the most recent back-up.
- 6.3 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, as promptly as practicable but in no event later than as required by law, 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 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.

7. SAAS SUPPORT

- 7.1 Customer shall be provided with SaaS Support during the Subscription Term in accordance with the applicable CA Support Policy at <https://casupport.broadcom.com/> or as specified in the applicable Saas Listing or Service Description. 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.
- 7.2 The SaaS Release and Upgrade Policy located at: <https://docs.broadcom.com/docs/ca-saas-releaseand-upgrade-policy-for-ca-technologies>, describes CA's SaaS release and upgrade cycles, customer notices, timing, as well as other pertinent information such as version requirements for all the SaaS offerings that have published release cycles. For Symantec branded offerings, CA will aim to provide Customer with twelve (12) months' notice of the last date of an Online Service's availability. CA will provide such notification to Customer's then-current business or technical contact, and/or by publication on the applicable administrator portal for the Online Service(s). Once an Online Service is no longer available, Customer will no longer have access to or use of the Online Service.

8. MAINTENANCE AND UPGRADES

- 8.1 CA may make changes or updates to the SaaS and/or SaaS infrastructure (such as compute infrastructure, storage technology, security, technical configurations, hosting facilities within Data Center Region, etc.) that do not materially degrade the deployment and consumption of the SaaS Offering during the Subscription Term including to reflect changes in technology, industry practices, and/or patterns of system use.

9. CUSTOMER RESPONSIBILITIES

- 9.1 Customer is responsible for all activities that occur in, or are related to, user accounts including the data, information stored or transmitted when accessing SaaS. All applications residing within Customer's environment or installed on third party service provider's environments 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.
- 9.2 The SaaS Offerings do not include Customer configurations, nor policies and procedures implemented and set by Customer that are available through the SaaS Offering. Customer acknowledges and agree that it is solely responsible for selecting its configurations and assuring that the selection conforms to its policies and procedures and complies with all applicable laws and regulations in jurisdictions in which Customer is accessing the SaaS Offering(s).
- 9.3 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 Customer 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 and/or Customer Affiliates, its Authorized Users or for any act or omission of any such third party provider.
- 9.4 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) willfully 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; (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; (vii) remove or modify any program markings or any notice of CA's or its licensors' proprietary rights; (viii) perform or disclose any benchmark or performance tests on the SaaS; or (ix) perform or disclose any of the following security testing of the SaaS environments or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing or any other test or procedure not authorized in the Documentation. A breach by the Customer of its obligations under this section shall be considered a material breach of the Agreement.

10. WARRANTY

- 10.1 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.
- 10.2 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.

11. WARRANTY REMEDY

- 11.1 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 to Customer or CA Partner 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.

12. SERVICE LEVEL COMMITMENT

- 12.1 The Service Level Availability is measured against reports that CA runs 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.
- 12.2 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.
- 12.3 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; (viii) outages to remedy a security vulnerability or as required by law and (ix) 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).

1. INTRODUCTION

- 1.1. This Module for Services and Education ("Services Module") between the applicable Regional CA Entity set forth in the referencing Transaction Document, a Broadcom Inc. company, ("CA"), and Customer, ("Customer"), is effective on the date set forth in the referencing Transaction Document, and specifies the terms and conditions which apply to Services and Education that CA will provide to Customer.
- 1.2. This Services Module incorporates by reference the terms of the Foundation Agreement between CA and Customer. Any capitalized terms used in this Services Module shall have the meaning given in the Foundation Agreement unless otherwise provided herein.

2. DEFINITIONS

- 2.1. "CA Intellectual Property" includes Deliverables, business processes, software, tools, databases, data, materials, information, and any derivatives or modifications thereof, which includes, without limitation any and all patents, copyrights, trademarks, trade secrets, and other intellectual property rights therein, that are either (i) owned at any time (ii) developed independently of the Services (iii) licensed from a third party, or (iv) Modifications.
- 2.2. "CA Personnel" means employees, sub-contractors or agents on behalf of CA that have entered into confidentiality provisions no less restrictive than defined in the Agreement.
- 2.3. "Course Materials" means any Education content provided to Customer in any media pursuant to a Transaction Document, including without limitation, all publications, courseware, training manuals and materials, user guides, web portals, or virtual labs provided by CA or a CA subcontractor.
- 2.4. "Customer Intellectual Property" means Confidential Information and any business requirements, materials, information and/or intellectual property owned or licensed that is provided by Customer, which includes, without limitation all patents, copyrights, trademarks, trade secrets, and other intellectual property rights that may be accessed or used during the provision of Services but in all cases excludes any CA Intellectual Property.
- 2.5. "Deliverables" means Packaged Work Product and/or other items provided to the Customer pursuant to an SOW.
- 2.6. "Education" means any standard or customized education offerings, training or instruction, or related services, provided by CA or a CA subcontractor in any format or location, including without limitation, (i) instructor led training, including at CA or Customer site(s), (ii) virtual training, including online classes, courses, or course catalogues and/or (iii) class room training or testing.
- 2.7. "Packaged Work Product" means any CA Intellectual Property developed prior to or during the Services which relates to the functionality of CA Software provided to the Customer as a Deliverable pursuant to a Statement of Work.
- 2.8. "Project Coordinator" means the individual appointed by a Party to act as a project coordinator for each Services engagement to (i) coordinate the performance of its obligations under the Agreement, (ii) act as its representative regarding the Services, and (iii) maintain primary responsibility for communication with the other Party in relation to the Services.
- 2.9. "Services Documentation" means the documentation provided to the Customer pursuant to a Services engagement, including without limitation, such documentation describing the project specifications, design, configuration, architecture and testing procedures, Course Materials or installation and user guides, as applicable.
- 2.10. "Services" means the professional services or Education services provided by CA or its designated subcontractors to the Customer as set out in the relevant SOW.
- 2.11. "SOW" or "Statement of Work" means a description of Services to be provided or as referenced in the Transaction Document.

3. SERVICES OFFERING

- 3.1. CA will provide the Services as agreed in an SOW or Transaction Document, on the basis of time and materials, or retainer each of which will be further described in the SOW or Transaction Document.
- 3.2. CA will determine the resources required for the provision of the Services.
- 3.3. Customer may request CA to change any particular CA Personnel assigned to the provision of the CA Services upon prior written notice provided that it can show reasonable cause for such request. CA will use reasonable efforts to replace such CA Personnel subject to parties agreeing any impact within a change order.

4. EDUCATION OFFERING

- 4.1. CA will provide Education as agreed in a Transaction Document. The Transaction Document will indicate the courses or classes ordered, fees, the number of attendees and the location of the Education services, if applicable. Customer is responsible for any travel costs and/or expenses incurred to attend Education.

5. COOPERATION

- 5.1. Each Party acknowledges that the success of the Services requires the cooperation of both Parties. Customer and CA shall each assign, where appropriate, a Project Coordinator that has requisite authority to decide day-to-day questions that may arise in relation to the Services as defined in the SOW.

- 5.2. Customer acknowledges and agrees that in order for CA to effectively perform the Services in a timely manner, Customer will cooperate with CA by making available on a timely basis (i) management decisions, information, approvals and acceptances required by CA for the completion of the Services; (ii) appropriate access to Customer facilities, personnel, equipment, resources and systems; and (iii) any relevant information and documentation as necessary to facilitate performance of the Services. In addition to the above, Customer shall supply CA Personnel with suitable office and work space, and normal office equipment and support, adequate computer resources (including necessary rights to third party software), internet, telephone and facsimile support as necessary to perform the Services.
- 5.3. Each Party agrees to assign competent and qualified staff to participate in the performance of the Services.
- 5.4. During the provision of Services and for six (6) months thereafter, Customer shall not actively solicit for hire, nor knowingly allow its employees to solicit for hire, any employee of CA associated with the performance of Services without the prior written consent of CA. This provision shall not restrict in any way the right of Customer to solicit generally in the media for required personnel, and shall not restrict employees, contractors, or representatives of CA from pursuing on their own initiative employment opportunities from or with Customer. The parties agree that violation of this provision will subject the violating party to liquidated damages consisting of an amount equal to three (3) months' salary for each hired employee solicited in contravention of this section.

6. FEES AND EXPENSES

- 6.1. Customer will pay to CA the fees, expenses and other charges as provided for and approved pursuant to the Transaction Document and such expenses shall be in accordance with CA's expenses policy.
- 6.2. The Services are to implement the pre-existing features and functions of CA Software and do not include any customization or development activity that impacts any of the full features and benefits and underlying source code of the CA Software. Payment of license fees and/or Support fees for CA Software is not contingent upon Customer receiving the Services.
- 6.3. Partners. If the CA Offering was ordered through a CA Partner or a CA Partner's reseller, Section 6.1 shall not apply.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. Customer shall retain all rights in and to Customer Intellectual Property, including all Customer Intellectual Property that may be contained in the Deliverables, and such rights shall remain vested in Customer.
- 7.2. CA shall retain all rights in and to all CA Intellectual Property and such rights shall remain vested in CA.
- 7.3. If information or materials are used by a Party in the performance of its obligations in the Agreement, such use of information or materials shall not transfer ownership of that information or materials to the other Party.
- 7.4. Customer shall have the right to modify or adapt the Deliverables excluding any Packaged Work Product as required or deemed appropriate by Customer ("Modifications"), however any such Modification shall render void any warranties or indemnities provided by CA and its licensors or subcontractors.
- 7.5. CA grants to Customer, a non-exclusive, limited, non-transferable license to use the Deliverables and Modifications for internal business purposes subject to terms of the Agreement. Where the Deliverables or Modifications are to be used in conjunction with CA Offering then the license to use the Deliverables or Modifications shall be consistent with the usage limitations as set out in the license agreement for such CA Offering.

8. WARRANTY

- 8.1. CA warrants that (i) it will perform the Services and Education as detailed in the applicable SOW; and (ii) any Deliverable provided pursuant to a Transaction Document will conform to the Services Documentation for thirty (30) days from the day of delivery.
- 8.2. Customer shall provide written notice of a warranty claim within thirty (30) days of date of delivery ("Notice") of the Services or Education claimed defective or in the case of a Deliverable, the date of delivery, that gave rise to the warranty claim. If Notice is not provided to CA then the Deliverable, Services and/or Education will be deemed delivered in accordance with the warranty obligations.

9. WARRANTY REMEDY

- 9.1. In the event of a breach by CA of the above Warranty section, Customer's remedy, at CA's discretion and in consultation with Customer, shall be to re-perform the Services and/or Education at no additional charge to Customer or to refund the applicable fees paid to Customer (or CA Partner), which correspond to the Services, applicable Deliverable or Education. These remedies are contingent upon the following: (i) that the Deliverable has not been modified by Customer; and (ii) that the alleged breach did not result from Customer's failure to abide by its obligations defined in the applicable Transaction Document or for its failure to follow the Services Documentation. To the maximum extent permitted by applicable law, the above warranty remedies are CA's sole obligation and Customer's sole and exclusive remedy for breach of the above warranty.

10. CHANGE REQUEST

- 10.1. Upon request by Customer or CA, the scope of Services may be adjusted through a mutually agreed change order defining the impact of any changes, including the fees or any other aspect of the provision of the Services.