



## CAPE App-services

End User License Agreement (EULA)

### General information

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## 1. General

This End-User License Agreement ("Agreement") governs the terms and conditions upon which Licensee has obtained a license regarding CAPE App-services through CAPE Partner or CAPE Systems Integration BV (here after referred to as CAPE) directly, as the case may be. CAPE and Licensee shall herein refer to each as a "Party" and collectively as the "Parties". Each Order shall reference this Agreement, thereby incorporating the terms and conditions of this Agreement.

## 2. Definitions

All capitalized terms used in this Agreement that are not otherwise defined herein, shall have the meaning shown below, for both singular and plural forms. Unless otherwise specified, any reference in this Agreement to a section or other subdivision is a reference to a section or subdivision of this Agreement.

1. "App-services" means Licensee's Application software. It means all software, products and services provided by CAPE Groep. Including but not limited to widgets or services.
2. "Claim" has the meaning given to it in section 9 Indemnification.
3. "Confidential Information" has the meaning given to it in section 4.1 Confidential Information.
4. "Documentation" means the documentation provided by CAPE to assist users in the use of CAPE App-services describing the operational functionality of (elements of) CAPE App-services, including user and system administrator guides and manuals, found in the CAPE App-services product.
5. "DPA" has the meaning given to it in section 8.4 Data Protection.
6. "End-of-Life-Date" has the meaning given to it in section 3.7 End-of-life.
7. "Feedback" means any suggestions, enhancement requests, recommendations, corrections or other feedback provided by Customer, its Affiliates, and/or Users relating to the features or operation of CAPE App-services and Documentation or services.
8. "Incident" has the meaning given to it in section 8.6 Incident Management and Breach Notification.
9. "Licensee Data" means any monitoring information, including but not limited to, application logging, application data, system metrics which is submitted or created in the CAPE App-services Configuration.
10. "Legal Notices" has the meaning given to it in section 10.7 Notices.
11. "Losses" has the meaning given to it in section 9 Indemnification.
12. "Order Document" means an ordering document provided by CAPE and signed by Licensee, which details, amongst other things, the subscription or other services to be provided by CAPE, the applicable usage limitations and the price payable by Licensee for CAPE and related services, and the term for which the CAPE Application(s) and any related services are provided.
13. "Representatives" has the meaning given to it in section 4.1 Confidential Information.
14. "Security Breach" has the meaning given to it in section 8.6 Incident Management and Breach Notification.
15. "Subscription Term" means the term for the recurring/ongoing services, such as subscription items, as set forth in the relevant Order Form.
16. "Update" means a modification made by CAPE to CAPE App-services and provided to Licensee under the terms and conditions of this Agreement. Updates shall not include any version, option or future products provided by CAPE not included in the subscription as set forth in the relevant Order Form.
17. "Upgrade" means a new, major software release of CAPE App-services whose primary purpose is to add new functionality or enhance the performance of CAPE App-services, which is identified by an increment in the first two (2) numbers of the software version. Notwithstanding the foregoing, an Upgrade will not include new software or modules (whether or not branded as CAPE App-services software) that CAPE markets and prices separately.
18. "Users" means individuals who are authorized by Licensee to use CAPE App-services and have been supplied passwords by Licensee (or by CAPE at Licensee's request). Users consist of any employee of Licensee or its Affiliates and any independent contractor of Licensee or its Affiliates.
19. "EULA" means this End User License Agreement.

## 3. Access

### 3.1 Access

CAPE shall (a) provide Licensee with (access to) CAPE App-services and related services, specified on an Order Document, pursuant to this Agreement, and (b) use commercially reasonable efforts to make CAPE App-services available 24 hours a day, 7 days a week, save for: (i) planned downtime (of which CAPE will give advance electronic notice as provided in the Documentation and/or applicable service level agreement); and (ii) any unavailability caused by circumstances beyond the reasonable control of CAPE as set forth in section 10.10 Force Majeure. Support will be provided in accordance with the service level determined in the applicable Order Document and as set forth in the applicable service level agreement. Any conflict between the terms and conditions set forth in this Agreement, the applicable service level agreement and any Order Document shall be resolved in favor of this Agreement, unless explicitly agreed otherwise in writing. Licensee agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by CAPE regarding future functionality or features.

### 3.2 License grant

Subject to the terms and conditions of this Agreement, and in consideration for the payment of the subscription fees set forth on the applicable Order Document, CAPE hereby grants to Licensee and its Affiliates, solely during the Subscription Term of the applicable Order Form, a non-exclusive, non-transferable (except as set forth in section 10.4 Assignment) license to access and use CAPE App-services solely for Licensee's internal business purposes. This license is restricted to use by Licensee and its Affiliates, and its Users and does not include the right to use CAPE App-services on behalf of any third party. Furthermore, this license is subject to the limitations set forth on the applicable Order Document, including but not limited to: apps, users, storage or other designated metric. Licensee and its Affiliates obtain a right to use and access CAPE App-services only, and therefore have no right to receive a copy of the source code of CAPE App-services. Licensee is responsible for procuring and maintaining the network connections that connect Licensee to CAPE App-services. Licensee agrees: (i) that only authorized Users are permitted to use CAPE App-services; (ii) that it is responsible for authorized Users' actions or failures to act in connection with activities contemplated under this Agreement; and (iii) to otherwise take all commercially reasonable steps to protect CAPE App-services and the Documentation from unauthorized use and/or access.

### 3.3 Feedback

Notwithstanding anything to the contrary in this Agreement, Licensee hereby agrees that all intellectual property rights in the Feedback, and all other ownership in any ideas, modifications, enhancements, improvements, or any other suggestion specifically relating to CAPE App-services, are hereby assigned to CAPE and shall be the sole and exclusive property of CAPE. All Feedback shall be treated as CAPE Confidential Information.

### 3.4 License restrictions

Notwithstanding anything set forth in this Agreement to the contrary, Licensee may not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute its rights to any other person or otherwise commercially exploit CAPE App-services in any other way than explicitly allowed under this Agreement; (ii) make CAPE App-services available to anyone who is not a User; (iii) create any derivative works based upon CAPE App-services or Documentation; (iv) copy any feature, design or graphic, or reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of CAPE App-services; (v) access or let anyone access CAPE App-services in order to build a competitive solution or to assist someone else to build a competitive solution; (vi) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (vii) send, upload, store or otherwise transmit, display or distribute any unlawful, infringing, tortious, obscene, threatening, abusive, harassing,

defamatory, vulgar, libelous, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable material, including but not limited to children or material that violates third party privacy rights or infringes any proprietary rights or intellectual property rights; (viii) interfere with or disrupt the integrity or performance of CAPE App-services or the data contained therein; (ix) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; and/or (x) use CAPE App-services in a way that violates any criminal, public or civil law.

### **3.5 Affiliates**

Subject to the terms of the Order Document, Licensee may make CAPE App-services available to its Affiliates provided that all licensing restrictions are complied with in each instance by each such Affiliate and that Licensee shall be liable for any breach of the terms and conditions of this Agreement by any of its Affiliates.

### **3.6 Licensee Responsibility**

Licensee is and remains responsible for: (i) all activities conducted under its User logins and for its Users' compliance with this Agreement; (ii) maintaining up-to-date hard-/software that is compatible with CAPE App-services, as set out in the Documentation; (iii) a high-speed/broadband internet connection of good quality and reliability to access CAPE App-services; (iv) scheduling, implementing and/or installing changes for Updates and Upgrades of CAPE App-services, as well as for upgrading of Licensee's equipment in order to make efficient use of CAPE App-services; and (v) providing all information, access and good faith cooperation reasonably necessary to enable CAPE to meet its obligations under this Agreement and/or an Order Document (if Licensee fails to do so, CAPE will be relieved from its obligations under such agreement to the extent that such obligations are dependent upon Licensee's performance or cooperation).

### **3.7 End-of-life**

CAPE App-services setup contains multiple components. CAPE will only support the current major release and the one (1) prior major releases of the agents.

## 4. Confidentiality

### 4.1 Confidential Information

Either party may, from time to time, deliver to the other certain non-public information including formulas, flow charts, diagnostic routines, business information, forecasts, financial plans and data, balance sheet information, customer information, marketing plans, hardware, software and unannounced product information ("Confidential Information"). Confidential Information shall also include the Application Model, Licensee Data and any other information disclosed by a Party to the other Party, in whatever form, including visually and orally, and designated in writing as proprietary or confidential, or which – to a reasonable person familiar with the disclosing Party's business and the industry in which it operates – is of a proprietary or confidential nature. During the term of this Agreement and following three (3) years after its termination, each Party will not disclose any such Confidential Information except as set forth herein. The receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity except to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving Party and who are bound by a duty of confidentiality no less protective of the disclosing Party's Confidential Information than this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event, shall less than reasonable care be used. The Parties expressly agree that the terms of this Agreement are Confidential Information and Licensee further agrees that it shall not use the services for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the services and will not publicly post any analysis or reviews of the services without CAPE prior written approval. A receiving Party shall promptly notify the disclosing Party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights.

### 4.2 Exclusions

Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing Party, without any obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that, where legally permitted to do so, it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

### 4.3 Injunctive Relief

Notwithstanding any other provision of this Agreement, both Parties acknowledge that any use of the disclosing Party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, in addition to any other remedy which the disclosing Party may be entitled hereunder, at law or equity, the disclosing Party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.



## 5. Warranties; Disclaimer

### 5.1 General

Each Party represents and warrants that: (i) it has the legal power to enter into and perform under this Agreement; and (ii) it will comply with all laws and regulations in the performance of this Agreement. CAPE has implemented and will maintain during the term of this Agreement security measures reasonably designed to protect the confidentiality, security and availability of the Customer Data.

### 5.2 App-services warranties

CAPE warrants that: (i) CAPE App-services will function substantially as described in the Documentation; and (ii) CAPE owns or otherwise has secured the right to provide CAPE App-services to Licensee and its Affiliates under this Agreement.

5.2.1 Notwithstanding any service level arrangements between the Parties, if CAPE App-services does not function substantially in accordance with the Documentation, CAPE must, at its option and at its own expense, either (a) modify CAPE App-services to conform to the Documentation, or (b) provide a workaround solution that will reasonably meet Licensee's requirements. If neither of these options is commercially feasible, either Party may terminate the relevant Order Document under this Agreement, in which case CAPE shall refund to Licensee all fees pre-paid to CAPE under the relevant Order Document for the period in which CAPE App-services will remain unused by Licensee.

5.2.2. However, CAPE makes no warranties: (i) to the extent that CAPE App-services has been modified by Licensee, its Affiliates or any third party, unless such modification has been approved by CAPE in writing; (ii) for a version of CAPE App-services that has passed its End-of-Life-Date; or (iii) for errors, omissions, problems, malfunctions, faults, etc. in CAPE App-services caused by any third-party software or hardware, by accidental damage or by other matters beyond CAPE reasonable control.

### 5.3 No Other Warranty

CAPE not represent that CAPE App-services will be error-free, or that it will meet licensee's requirements, or that it will be able to correct all reported defects or errors in CAPE App-services, or that the overall system that makes CAPE App-services available (including but not limited to the internet, other transmission networks, and licensee's local network and equipment) will be free of viruses or other harmful components, or that the use of CAPE App-services will be uninterrupted or error free. CAPE makes no warranty regarding features or services provided by third parties. The warranties stated in section 5 (warranties) above are the sole and exclusive warranties offered by CAPE, there are no other warranties or conditions, express or implied, statutory or otherwise, including without limitation, those of merchantability, fitness for a particular purpose or non-infringement of third-party rights. licensee assumes all responsibility for determining whether CAPE App-services are accurate or sufficient for licensee's purposes, as well as the selection of CAPE App-services and documentation necessary to achieve licensee's intended results, and for the use and results of CAPE App-services.

## 6. Limitations of liability

### 6.1 Consequential damage exclusion

Neither party will be liable to the other party or any third party for loss of profits or for any special, indirect, incidental, consequential or exemplary damages (including without limitation, damages for loss of business profits, loss of goodwill, business interruption) in connection with the use or performance of CAPE App-services, or the use or performance of any other obligation under this agreement, even if it is aware of the possibility of the occurrence of such damages.

### 6.2 Limitation of liability

Each party's total liability for any direct loss, cost, claim or damages of any kind related to the agreement, the application and/or relevant order document/form shall not – in any event, or multiple, related subsequent events – exceed the amount of the fees paid or payable by licensee to CAPE under the applicable order document during the twelve (12) months prior to the event(s) giving rise to such loss, cost, claim or damages.

### 6.3 Exclusions

However, nothing in this section 6 shall have the effect of limiting a party's liability for (a) personal injury or death caused by the negligence of the other party, (b) its indemnity obligations, (c) gross negligence or willful misconduct, (d) breach of a party's confidentiality obligations, or (e) infringement of the other party's intellectual property rights.

## 7. Term and Termination

### 7.1 Term

This Agreement will commence on the date Licensee has duly executed and returned this Agreement to CAPE, and will continue in effect until otherwise terminated in accordance with section 6.2 (Termination) below. The Subscription Term shall be set forth on the Order Document. Unless otherwise expressly provided in the applicable Order Document, the Subscription Term shall automatically renew for additional terms of one (1) year each unless either Party notifies the other Party in writing at least sixty (60) days prior to the then current expiration date that it has elected not to renew. The per-unit pricing during any automatic renewal Subscription Term will be the same as that during the immediately prior Subscription Term, unless CAPE has given Licensee written notice of a pricing increase at least ninety (90) days prior to the end of the then current Subscription Term, in which case the pricing increase will be effective upon subscription renewal and thereafter. Any such pricing increase will not exceed 5% of the subscription pricing in the immediately prior subscription term, unless the pricing in the prior Subscription Term was designated in the relevant Order Document as promotional or one-time.

### 7.2 Termination

Notwithstanding the foregoing, either Party may terminate this Agreement or any Order Document immediately (a) in the event of a material breach of this Agreement or any such Order Document by the other Party that is not cured within thirty (30) days of written notice from the other Party; or (b) if the other Party ceases doing business or is the subject of a bankruptcy or insolvency proceeding, that is not dismissed within sixty (60) days of filing. Termination or expiration of an Order Document shall not be deemed a termination of this Agreement. Either Party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other Party for any reason, if at such time there are no outstanding Order Documents then currently in effect. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Order Form and SOW, including but not limited to sections 4 Confidentiality, 5 Warranties; Disclaimer, 6 Limitations of liability, 8 Ownership; Licensee data; data protection; security, 9 Indemnification, 10.5 Disputes, 10.7 Notices, 10.14 Non-Solicitation of Employees and 10.16 Waiver and Severability.

### 7.3 Effect of Termination

Upon any termination or expiration of this Agreement or any applicable Order Document, CAPE shall no longer provide CAPE App-services as applicable to Licensee and Licensee shall promptly cease and cause its Users to promptly cease using CAPE App-services. Licensee shall pay CAPE for all fees that had accrued prior to the termination or expiration date. CAPE also reserves the right to suspend Licensee's access to CAPE App-services at any time, without having to terminate this Agreement or an Order Document, if Licensee is more than sixty (60) days late with respect to any undisputed payments due hereunder. Except as expressly provided herein, termination of this Agreement by either Party will be a non-exclusive remedy for breach and will be without prejudice to any other right or remedy of such Party. Upon termination or expiration of this Agreement, each Party shall promptly return or destroy all Confidential Information of the other Party in its possession, provided, however, Licensee may retrieve all Licensee Data as set forth in section 8.7 Data Portability.

## 8. Ownership; Licensee data; data protection; security

### 8.1 Ownership CAPE App-services

Licensee acknowledges and agrees that as between CAPE and Licensee, all right, title and interest in and to CAPE App-services and Documentation, and including all modifications and configurations, all CAPE App-services data and Confidential Information, and all of CAPE App-services proprietary technology, including without limitation, all software, products, processes, algorithms, user interfaces, knowhow, techniques, designs and other tangible or intangible technical material or information made available to Licensee by CAPE in providing CAPE App-services and Documentation and all derivatives thereof are and shall remain CAPE or its licensors'. The CAPE name and logo, and the product names associated with CAPE App-services are trademarks of CAPE or third parties, and no right or license is granted to use them. During the term of this Agreement, CAPE grants to Licensee a limited, worldwide, non-exclusive, non-transferable (except as set forth in section 10.4 Assignment), royalty-free right to use, display, transmit, and distribute the CAPE App-services data solely in connection with Licensee's permitted use of the CAPE App-services Application(s) and Documentation. CAPE shall have the right to collect, use and distribute aggregated information, analysis, statistics and other data generated by CAPE App-services and Documentation (or derived from Licensee's use of CAPE App-services and Documentation) provided, however, that CAPE shall not disclose any such data unless such data is in an anonymized, aggregated form that would not permit a third party to identify the data as associated with Licensee or any of its Users.

### 8.2 Ownership of Licensee Data

Licensee retains ownership of all right, title and interest in and to all Licensee Data. During the term of this Agreement, Licensee hereby grants to CAPE a limited, worldwide, non-exclusive, non-transferable (except as set forth in section 10.4 Assignment), royalty-free right to use, store, display, transmit, and distribute Licensee Data and the Application Model solely as necessary to provide its services to Licensee, and for no other purpose whatsoever.

### 8.3 Licensee Data

Licensee is solely responsible for the accuracy, integrity and quality of Licensee Data for use in CAPE App-services. CAPE shall not modify or add to the Licensee Data and CAPE shall not make any claim for any right of ownership in the Licensee Data.

### 8.4 Data Protection

Each Party to this Agreement warrants that it shall (seek to) comply at all times with its obligations under data protection laws and regulations applicable to the Parties in connection with the provision and consummation of the services hereunder, such as, but not limited to the EU Data Protection Directive 95/46/EC as implemented in local laws and regulations in the relevant jurisdiction, US federal privacy laws (e.g. the Health Insurance Portability and Accountability Act (HIPAA) and Judicial Redress Act), and the South African Protection of Personal Information Act 2013 (POPI) (individually and collectively referred to as the "DPA"). Unless expressly stated otherwise, (a) Licensee and/or its Affiliates is and shall remain the data controller of the Licensee Data (which, for the purposes of this Agreement, may include personal data / personally identifiable information it uploads, stores or provides as part of the services under this Agreement, as the case may be), and (b) CAPE is a service provider to Licensee that is and shall remain the data processor of the same, as defined in the DPA. In this respect CAPE will: (i) act, as a data processor, only on and comply with Licensee's instructions in relation to the processing of Licensee Data as given and varied from time to time by Licensee; (ii) take appropriate technical and organizational security measures, taking into account both the state of technologies and the costs of

implementation, against unauthorized or unlawful processing or further processing of Licensee Data, and against accidental loss or destruction of, and damage to Licensee Data; (iii) at the request of Licensee, inform Customer of the general scope of security measures taken; and (iv) keep Licensee Data confidential in accordance with the applicable contractual confidentiality obligations. Notwithstanding anything to the contrary, to provide the services in the most efficient manner, CAPE reserves the right to use suppliers and subcontractors including for processing, hosting and storage purposes, which Licensee accepts, whereby CAPE remains responsible for the quality of the services under this Agreement, and the suppliers' and subcontractors' compliance with the DPA as it applies to data processors. In this respect Licensee consents that Licensee Data may be processed, hosted and stored from locations either in the United States (by default for customers domiciled in the United States, Canada or a country in Central or South America or the Caribbean) or Europe (by default for customers domiciled elsewhere than in the aforementioned countries), in accordance with the above requirements.

## **8.5 Organization Level Security Measures**

CAPE commits to embed security in company processes and standard operating procedures by adopting a representative subset of the ISO 27001 Information Security Framework.

## **8.6 Incident Management and Breach Notification**

CAPE evaluates and responds to incidents that create suspicion of unauthorized access to or handling of Licensee Data ("Incident"). CAPE is informed of such Incidents and, depending on the nature of the activity, defines escalation paths and response teams to address those Incidents. CAPE will work with Licensee and, where necessary, with outside law enforcement to respond to the Incident. The goal of the Incident response will be to restore the confidentiality, integrity, and availability of the services, and to establish root causes and remediation steps. For purposes of this section 8.7, means the misappropriation of Licensee Data located on CAPE systems that compromises the security, confidentiality or integrity of such information. CAPE will inform Licensee within 36 hours if CAPE determines that Licensee Data has been subject to a Security Breach (including by a CAPE employee) or any other circumstance in which Licensee is required to provide a notification under applicable law, unless otherwise required by law. CAPE will promptly investigate the Security Breach and take reasonable measures to identify its root cause(s) and prevent a recurrence. As information is collected or otherwise becomes available, unless prohibited by law, CAPE will provide Licensee with a description of the Security Breach, the type of data that was the subject of the breach, and other information Licensee may reasonably request concerning the affected persons. The Parties agree to coordinate in good faith on developing the content of any related public statements or any required notices for the affected persons and/or the relevant data protection authorities.

## **8.7 Data Portability**

At all times during the subscription term and at the latest until thirty (30) days have passed following the earliest of (a) termination of this Agreement or (b) the expiration of the last term under an Order Document, data will be accessible for licensee. After such period, CAPE will have no further obligation to store and/or make available the Licensee Data and may delete the same, except as may be required by law.

## **8.8 Legally Required Disclosures**

Except as otherwise required by law, CAPE will promptly notify Licensee of any subpoena, judicial, administrative or arbitral order of an executive or administrative agency or other governmental authority that it receives and which relates to Licensee Data. At Licensee's request, CAPE will provide Licensee with reasonable information in its possession that may be responsive to such demand and any assistance reasonably required for Licensee to respond to said demand in a timely manner. Licensee acknowledges that CAPE has no responsibility to interact directly with the entity making the demand.

## 9. Indemnification

### 9.1 CAPE Indemnification

Subject to section 9.3 Indemnification Procedure below, CAPE will indemnify, defend and hold Licensee and its Affiliates harmless from and against any claim, demand, suit, action or proceeding (collectively, a "Claim"), and will pay any costs, liabilities, losses, and expenses (including but not limited to, reasonable attorneys' fees) awarded against Licensee either in judgment or settlement agreed to by CAPE in writing (collectively, "Losses"), arising out of or in connection with an allegation by a third party against Licensee or any of its Affiliates that the use of CAPE App-services and Documentation as permitted hereunder infringes any intellectual property right or constitutes a misappropriation of a trade secret of a third party. Excluded from CAPE above indemnification obligations are claims to the extent arising from: (i) use of CAPE App-services and Documentation in violation of this Agreement or applicable law; (ii) continued use by Licensee of CAPE App-services and Documentation after CAPE has notified Licensee in writing to cease the use of CAPE App-services and Documentation; (iii) any claim relating to any third-party products or services or Licensee Data; (iv) modifications to CAPE App-services and Documentation made other than by CAPE (where the claim would not have arisen but for such modification); (v) the combination, operation, or use of CAPE App-services with software or equipment which was not provided by CAPE, to the extent that Licensee's liability for such claim would have been avoided in the absence of such combination, operation, or use; or (vi) compliance by CAPE with Licensee's custom requirements or specifications if and to the extent such compliance with Licensee's custom requirements or specifications resulted in the infringement. If Licensee's use of CAPE App-services becomes enjoined, CAPE shall at its sole option, either: (i) procure, at no cost to Licensee, the right to continue using CAPE App-services; (ii) modify CAPE App-services to render it non-infringing; or (iii) if, in CAPE reasonable opinion, neither (i) nor (ii) above are commercially feasible, immediately terminate this Agreement (and Licensee's rights to use CAPE App-services), and refund to Licensee fees paid for CAPE App-services on a pro rata basis for the remainder of the then-current Subscription Term. The rights and remedies granted to Licensee under this section 9.1 CAPE entire liability, and Licensee's exclusive remedy, with respect to any claim or infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

### 9.2 Licensee Indemnification

Subject to section 9.3 Indemnification Procedure below, Licensee will indemnify, defend and hold CAPE and its Affiliates harmless from and against any Claim and shall pay all Losses incurred which arise out of any allegation by a third party against CAPE or any of its Affiliates that arises out of or results from (a) a claim alleging that the Licensee Data, or any use thereof, infringes the intellectual property rights or proprietary rights or others, or negatively impacts (protection of) the privacy of individuals, or otherwise has caused harm to a third party, or (b) Licensee's breach of section 2 (Access) above or violation of any applicable law or regulations.

### 9.3 Indemnification Procedure

The indemnified Party shall: (i) promptly notify the indemnifying Party in writing of any claim, suit, action, or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying Party to solely control the defense of any Claim and all negotiations for settlement, provided that the indemnifying Party shall not settle any Claim that imposes a financial obligation or admission of liability or guilt on the indemnified Party without the indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim, at the indemnifying Party's cost, however the indemnified Party shall bear all costs of engaging its own counsel.

## 10. General provisions

### 10.1 Export Compliance

CAPE App-services and other technology and services CAPE may make available to Licensee, and all derivatives thereof, may be subject to export laws and regulations of the United States, United Kingdom, European Union and other jurisdictions. Each Party represents that it is not named on any denied-party list. Furthermore, Licensee shall not permit Users to access or use CAPE App-services and other technology and services CAPE may make available to Licensee, and all derivatives thereof, in an embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any applicable export law or regulation.

### 10.2 Anti-Corruption

Licensee agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift or anything of value from any of CAPE employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Licensee learns of any violation of the above restriction, Licensee will use reasonable efforts to promptly notify CAPE legal and business conduct department at [info@CAPEGroep.nl](mailto:info@CAPEGroep.nl).

### 10.3 Entire Agreement and Order of Precedence

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understanding, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto and is binding upon the Parties and their permitted successors and assigns. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the Parties. The Parties agree that any term or condition stated in Licensee's purchase order or in any other Licensee order documentation (excluding Order Documents) is void, even if the order is accepted by CAPE. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) this Agreement, (2) the applicable Order Document, (3) the applicable service level agreement, and (4) the Documentation.

### 10.4 Assignment

Either Party may assign this Agreement, and all Order Documents, as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. Except as expressly stated in this Agreement, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void. CAPE may use independent contractors or subcontractors to assist in the delivery of services, provided, however, that CAPE shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their compensation.

### 10.5 Disputes

The Parties shall attempt in good faith to resolve any claim or dispute concerning the Agreement prior to the commencement of litigation.



## **10.6 Disputes**

This Agreement is governed by and construed in accordance with the laws of the Netherlands. All disputes arising under, out of or in any way connected with this Agreement shall be litigated exclusively in the competent court in Utrecht. The parties agree that a final judgment in any such action or proceeding shall be conclusive and binding and may be enforced in any other jurisdiction. All notices or other communications to CAPE shall be addressed to: CAPE Systems Integration B.V., Kosteweg 13, 7447 AJ, Hellendoorn, The Netherlands.

## **10.7 Notices**

Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Licensee will be addressed to the relevant billing contact designated by Licensee. All other notices to Licensee will be addressed to the relevant contact person / administrator designated by Licensee at the address stated at the beginning of this Agreement.

## **10.8 Headings**

The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

## **10.9 Relationship of the Parties**

CAPE and Licensee are independent contractors, and nothing in this Agreement shall be construed as making them partners, joint venturers, principals, agents or employees of the other, for any purposes whatsoever. No officer, director, employee, agent, affiliate or contractor retained by CAPE to perform work on Licensee's behalf under this Agreement shall be deemed to be an employee, agent or contractor of Licensee. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

## **10.10 Force Majeure**

Except for the obligation to make payments, neither Party shall be in default if failure to perform any obligation hereunder is caused solely by supervening conditions beyond the non-performing Party's reasonable control, including but not limited to civil commotion, strikes, fire, flood and governmental acts or orders of restriction, internet service provider failure or delay, or denial of service attacks. When a Party's delay or nonperformance continues for a period of thirty (30) days or more, the other Party may terminate this Agreement, the applicable Order Document without penalty. Any prepaid amounts shall be refunded on a prorated basis.

## **10.11 Insurance**

CAPE shall maintain in full force and effect during the term of any Order Document comprehensive insurance with a reputable insurance company to cover its potential liabilities under this Agreement, such as commercial general liability insurance and professional liability insurance (errors and omissions). As evidence of insurance coverage, CAPE shall deliver if requested certificates of insurance issued by that insurance company showing such policies in force during the term of this Agreement.

## **10.12 Modifications to CAPE App-services**

CAPE may make modifications to CAPE App-services or particular components of the CAPE App-services from time to time provided that such modifications do not materially degrade any functionality or features of CAPE App-services.

## **10.13 Publicity**

Licensee hereby grants CAPE a non-exclusive license solely during the term of this Agreement to list Licensee's name and display Licensee's logo in the customer section of CAPE website and to use Licensee's name and logo in CAPE customer lists but at all times only to the extent that other customers of CAPE are also listed on such list. Any other use by CAPE of Licensee's name, logo or trademark requires the prior written consent of Licensee.

## **10.14 Non-Solicitation of Employees**

During the term of this Agreement and for the twelve (12) months thereafter, neither Licensee nor CAPE, shall knowingly solicit or hire for employment or as a consultant, any employee or former employee of the other Party who has been actively involved in the subject matter of this Agreement. The foregoing restriction shall not apply to any general recruiting efforts of either Party which are not aimed specifically at the employees of the other Party.

## **10.15 No Third-Party Beneficiaries**

Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

## **10.16 Waiver and Severability**

Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

## **10.17 Counterparts**

Signatures to this Agreement transmitted by electronic mail in 'portable document format' ('.pdf'), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

## 11. Questions or additional information

If You have questions regarding these Terms of Use or wish to obtain additional information, please contact us via [www.capegroep.nl/contact/](http://www.capegroep.nl/contact/)

<b>Customer</b>	<b>For acceptance – CAPE App-services EULA</b>
"Licensee" Entity Name	
Address	
Zip/City	
Country	

Print name/title	
Order Date	
Signature	

<b>CAPE Systems Integrations B.V.</b>	<b>For acceptance – CAPE App-services EULA</b>
"Licensee" Entity Name	CAPE Systems Integrations B.V.
Address	Kosteeweg 13
Zip/City	7447 RW Hellendoorn
Country	

Print name/title	
Order Date	
Signature	