

Amendment Number 1
to Centralized Contract **PT64273**

THIS AMENDMENT is made to Contract PT64273, by and between the People of the State of New York, acting by and through John C. Egan, Commissioner of General Services, whose office is on the 41st Floor, Corning Tower Building, the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "OGS" or "State"), and CA, Inc (hereinafter "Contractor"), with its principal place of business at One, CA Plaza, Islandia NY, 11749. The foregoing are collectively referred to as the "Parties."

Whereas, the Parties entered into the above-referenced Contract effective December 10, 2008 (the "Agreement") under which the Parties agreed to terms governing the acquisition of Contractor's products and services by state agencies and local governments (hereinafter "Authorized Users");

Whereas, the Parties now wish to amend the Contract to allow for the inclusion of Wily product line and eHealth product line for purchase under this Contract; and

Whereas, the Parties further wish to amend the Contract to clarify certain terms and conditions;

Therefore, in consideration of the promises, and the terms and conditions set forth in this amendment, the Parties agree to the following amendments to the Contract:

1. The Parties agree that clause 16 of the Contract is repealed and replaced in its entirety with the following language:

16. MAINTENANCE ONLY OPTION

The Contractor and OGS agree that the following Products shall not be acquired through this Contract. The Contractor and OGS agree, however, that an Authorized User who acquired software licenses for the following Products under the provisions of PT00376 prior to its expiration on June 30, 2008 may acquire maintenance for such licenses under this Contract with no additional terms and conditions. The maintenance fee shall be the same as the other distributed Products listed in Appendix F.

- (a) CA eHealth Network Performance Manager Starter Suite
- (b) CA eHealth Network Performance Manager Foundation Suite
- (c) CA eHealth Network Performance Manager Standard Suite
- (d) CA eHealth Network Performance Manager Premium Suite
- (e) CA eHealth E2E Console;
- (f) CA eHealth Remote Poller;
- (g) CA eHealth Traffic Accountant;
- (h) CA eHealth Network Performance Manager Starter Suite Development and HA License
- (i) CA eHealth Network Performance Manager Foundation Suite Development and HA License



- (j) CA eHealth Network Performance Manager Standard Suite Development and HA License
- (k) CA eHealth Network Performance Manager Premium Suite Development and HA License

2. The Parties agree that clause 11 of the Contract is hereby replaced in its entirety with the following language:

11. ENTIRE AGREEMENT

This Contract, any referenced appendices and amendments hereto constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by Contractor and OGS, with the approval of the Attorney General and the Comptroller for the State of New York. Licensees shall not have the authority to modify the terms of the Contract, except as to better and more advantageous pricing, better and more advantageous payment terms or better and more advantageous delivery terms for a particular procurement than those set forth herein.

3. The Parties agree that Appendix B, clause 40 of the Contract is hereby replaced in its entirety with the following language:

40. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer an Authorized User for a particular procurement: (1) better and more advantageous pricing; (2) better and more advantageous payment terms; and (3) better and more advantageous delivery terms. In such event, a copy of such terms shall be furnished in writing to the Authorized User(s) and Commissioner, or designee, by the Contractor at the time of such offer. The Contractor and Authorized User may jointly request that OGS approve other terms and conditions than those set forth in the Contract for a particular procurement. Contractor shall submit a written statement to OGS detailing why such other terms and conditions are better and more advantageous for the Authorized User and identify if there are areas where such other terms and conditions would conflict with the existing terms and conditions. Such other terms and conditions shall have no force and effect absent written approval by the Commissioner, or designee.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or



modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

4. This Agreement and Amendment #1 constitutes the entire agreement of the Parties with respect to the subject matter hereof, and any further amendment or addendum must also be in writing executed by authorized representatives of the Parties. Except as set forth in this Amendment #1, all terms and conditions of the Contract shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed on the date set for the below, effective on the date set forth above, and the persons signing represent and warrant that they are duly authorized to sign on behalf of the respective parties.

CA, INC.

By: Maria Speciale
Name: Maria Speciale
Title: Manager, Sales Accounting
Date: 10/13/09

Federal Id. Number _____

STATE OF NEW YORK, OFFICE OF
GENERAL SERVICES

By: Donald R. Greene
Name: Donald R. Greene
Title: Assistant Director
Date: 11/5/09

APPROVED AS TO FORM
NYS ATTORNEY GENERAL

NOV 06 2009

Lorraine I. Remo
LORRAINE I. REMO
ASSOCIATE ATTORNEY
APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General



