

KaizenOps Terms of Service and Privacy

Updated March 1, 2018

I. Introduction

We at CA, Inc. (“we”, “us”, “CA”) welcome you to the KaizenOps service and website (the “Service”). These terms of use (the “Terms”) set forth the legally binding terms and conditions, which are applicable to your use of the Service. Please be reminded that the Terms constitute an agreement between you and us and define the rights and responsibilities that you have with respect to the Service. Therefore, we encourage you to carefully familiarize yourself with the Terms.

Your use of the Service constitutes your acceptance of the Terms, whether you purchase the Service, whether we grant you a free trial of the Service, or whether you are an unregistered visitor accessing, browsing or using portions of the Service that do not require an account. Consequently, if you do not agree with the Terms, or do not understand them, please do not use the Service.

From time to time, we may modify or amend the Terms. If we do so, we will post any such modifications or changes in the Service. If you continue to use the Service following such a posting, you accept any such change or modification.

We wish to remind you that you are solely responsible for any and all software, binary code, source code, data, text, images, audio, video, ideas, and other content (“Content”) that you provide to the Service, regardless of the form or manner in which you provide it. Similarly, your use of, or reliance on, any material or content available in or from the Service is at your own risk.

We will not, under any circumstance, be liable in any way for any Content, including, but not limited to, any errors or omissions in any material or Content, or any loss or damage of any kind that you incur as a result of your use of, or your acting in reliance on, any material or Content posted, e-mailed, transmitted, or otherwise made available in the Service.

We may, but have no obligation to:

- Monitor, or moderate any material or content posted in the Service;
- Remove any material or content from the Service; and
- Restrict access to any part of the Service at any time in our sole discretion and without advance notice.

II. Description of the Service and Trial Terms

The Service is a virtual assistant for SREs that can cut time to mitigation. Building on your existing monitoring tools, the Service utilizes machine learning to deliver insights across tools to resolve problems.

Unless explicitly stated otherwise, use of the Service shall require a paid subscription to the Service. From time to time, we may advertise free trials of the Service on our website. If you register on our website for a free trial, we will make our Service available to you on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered to use the Service (fifteen (15) calendar days from the date of registration unless otherwise stated), or (b) the start date of any subscription for the Service that you purchase. Any Content that you provide to the Service, and any customizations made within the Service by or for you, during your free trial of the Service may be permanently lost unless you purchase a subscription to the

Service or export such Content before the end of the trial period. For avoidance of doubt, you are only permitted one (1) free trial and may not register multiple accounts in order to obtain successive free trials.

III. Registration

These Terms govern the use of the Service, and by registering with the Service you agree:

- That you are of a legal age to form a binding agreement with us;
- That, if you are entering into the agreement embodied by these Terms on behalf of a corporation or other legal entity, you represent that you have the authority to bind such entity, its affiliates, and all users who access the Service through your account to these Terms, in which case the terms “you” or “your” shall refer to such entity, its affiliates, and users associated with it.
- To provide true, accurate, current and complete information about yourself as prompted by the registration process;
- To maintain and promptly update the information provided during registration to keep it true, accurate, current, and complete; and
- That if you provide any information that is untrue, inaccurate, outdated, or incomplete, or if we have reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, we may terminate your user account and refuse current or future use of the Service.

IV. User Rights and Account Administration

Subject to these Terms, we grant you a non-exclusive, non-transferable and non-sub-licensable right to use the Service for your own personal and/or internal purposes and only as set forth in these Terms.

Users of the Service are granted use and access rights in the Service based on their status. When you register to the Service and make the required payment(s) using an appropriate payment method associated with you or an organization that you represent, you become an “Owner” of an account in the Service, which enables you to access features and functionality of the Service. Moreover, from time to time we may change the Service, including any access control functionalities therein, which may result in changes to access controls in the Service. You hereby acknowledge and approve such changes.

V. Prices and Payment

Use of the Service is priced according to the current list of prices available in the Service, presented at the time of payment, or made available through a partner program, each as may be amended from time to time. We accept payments. All prices and methods of payment are subject to change. If any charges are not received from you by the due date, then such charges may accrue late interest at the maximum rate permitted by law. You agree to reimburse us for all expenses (including reasonable attorneys’ fees) incurred by us to collect any amount that is not paid when due. All fees owed by you in connection with the Service are exclusive of, and you shall pay, all sales, use, excise and other taxes assessed upon, withheld or incurred in connection with the Service or your order of the Service. If any amount owed by you to us under these Terms for the Service is overdue, we may suspend or terminate your use of the Service until you have paid such amounts in full. You agree to pay any and all applicable charges for the use of the Service to us in accordance with the price list in force at the time of each due date.

If we offer a free trial of the Service, we may request that you enter your payment information when you register for the free trial. If you have not initiated a paid subscription to the Service by the end of the free trial period (fifteen (15) calendar days from the date of registration unless otherwise stated), we may automatically

charge your payment account for your first month of use of the Service in accordance with the current list of prices or restrict your access to the Service and/or certain features of the Service.

The Service is billed in advance for a period of one month starting on the initial payment date and is non-refundable. Unless you request to downgrade or terminate your current Service plan, your current Service plan will automatically renew each month, and we will charge your payment account for your current Service plan in accordance with the current list of prices. If you choose to upgrade or downgrade your selected Service plan or otherwise change Service plan features, we will automatically charge the applicable new rate on your next billing cycle. If you are participating in one of our partner programs, we may provide you with an alternative billing arrangement for the Service as set forth in the terms and conditions for your partner program.

VI. User Content and Intellectual Property

a) User Content

You acknowledge and agree that you are solely responsible for the Content that you provide to the Service and any and all activity (including, but not limited to, providing Content to the Service) that occurs under your account (even if such activity is performed by someone else using your account), and that you have all rights necessary to provide all Content provided to the Service through your account (“Your Content”). You further acknowledge and agree that Your Content and your other activities in connection with the Service do not, and will not, violate, infringe, or misappropriate any third party’s intellectual property right, right of privacy or publicity, or other personal or proprietary right, nor does Your Content contain any matter that is defamatory, obscene, unlawful, threatening, abusive, tortious, offensive or harassing.

b) Intellectual Property

(i) General

We respect your right to ownership of Your Content - you own Your Content. Unless specifically permitted by you or as otherwise set forth herein, your use of the Service does not grant us the license to use Your Content for our commercial, marketing or any other similar purpose. Nevertheless, you grant us the right and license to use Your Content as required to provide the Service to you, including but not limited to reproducing, adapting, modifying, publishing, and/or distributing Your Content as required to provide the Service to you.

Intellectual property laws in the United States and in other countries protect the Service. Aside from Your Content, these Terms confer only the right to use the Service, while these Terms and the specified license(s) are in effect and they do not convey any rights of ownership in or to the Service. All right, title and interest, including without limitation any copyright, patent, trade secret or other intellectual property right related to the Service, including, but not limited to, the look and feel thereof, will remain our sole property. Any services provided to you under these Terms, and other data or materials that are prepared in the performance of such services hereunder, and all right, title and interest in the foregoing, will belong to us. Without limiting the foregoing, you may not duplicate, copy, or reuse any portion of the webpage, source code, binary code, visual design, functionality, user interface, or any other elements of the Service without expressed written permission from us.

By providing us with suggestions or feedback about the Service, you thereby grant to us a worldwide, non-exclusive, sub-licensable, assignable, royalty-free, perpetual, paid-up, irrevocable right (including moral rights) and license to use such suggestions or feedback (and all related rights) for any purpose permitted by

applicable law, including but not limited to improving and adding new features to the Service. You further represent that you are legally entitled to grant the above license and rights.

(ii) Copyright Infringement

For information regarding the Digital Millennium Copyright Act and our policy please see our DMCA Notice [<https://www.ca.com/us/legal/dmca-notice.html>].

(iii) User Communities

CA may establish one or more user communities, forums, discussion boards, blogs, portals, or other repositories (each a “User Community”) to facilitate the sharing of Content among CA and users of the Service. CA may make Content within a User Community (such Content being “Community Content”) available to users under license terms identified within the Community. When you post or otherwise provide Your Content within a User Community, such content becomes Community Content (“Your Community Content”).

You hereby grant to CA a worldwide, non-exclusive, sub-licensable, assignable, royalty-free, perpetual, paid-up, irrevocable right (including moral rights) and license to use Your Community Content (and all related rights) for any purpose permitted by applicable law, including but not limited to improving and adding new features to the Service. You further represent that you are legally entitled to grant the above license and rights. For avoidance of doubt, the above grant includes, but is not limited to, the right and license to: (1) reproduce, prepare derivative works of, publicly display, publicly perform, sublicense, and distribute Your Community Content and the derivative works thereof; and (2) make, have made, use, offer to sell, sell, import, export, sublicense, and otherwise transfer embodiments of Your Community Content and the derivative works thereof.

VII. Maintenance and Support

From time to time, we may also provide support services, but you hereby acknowledge that we have no obligation to provide or continue such support services. If we choose to provide any support services to you, your use of such support services will be governed by our policies then in force. By providing us with any technical or other information in connection with the Service or any support services, you thereby grant to us a worldwide, non-exclusive, sub-licensable, assignable, royalty-free, perpetual, paid-up, irrevocable right (including moral rights) and license to use such information for our business purposes, including but not limited to providing support for the Service and developing features for the Service and other CA product offerings.

VIII. Privacy and Security

Your privacy and the protection of personal data about you are very important to us. For a detailed description of how we collect and use personal data about you, please see our Privacy Statement [<http://www.ca.com/privacy>] and familiarize yourself with the choices you can make about the way in which we collect and use personal data about you.

In addition to what is stated in the Privacy Statement, you agree to:

- Respect the privacy of other users;

- Not engage in unauthorized collection of any user’s Content or information, and/or not otherwise access the Service by automated means (including, but not limited to, so-called bots or scrapers) without an authorization from us;
- Not reveal any personal data related to another individual, including, but not limited to, a person’s address, phone number, e-mail address, social security number, credit card number or other financial information, health information, or any information that may otherwise be used to track, contact or impersonate another individual; and
- Not provide any false personal data to us or create any user account for anyone other than yourself without such person’s permission.

Moreover, by using the Service, you consent and agree to the collection and use of certain information about you and your use of the Service (“Usage Information”) in accordance with our Privacy Statement and applicable laws and regulations related to personal data. Usage Information may include, but is not limited to, meta-data and operations data related to Your Content and your use of the Service. You hereby grant to us a worldwide, non-exclusive, sub-licensable, assignable, royalty-free, perpetual, paid-up, irrevocable right (including moral rights) and license to use such Usage Information (and all related rights) for any purpose permitted by applicable law, including but not limited to improving and adding new features to the Service. You further represent that you are legally entitled to grant the above license and rights.

Please be reminded that you must protect any passwords or other credentials associated with your account(s) for the Service, and you hereby acknowledge that you take full responsibility for any use of your account(s). You hereby acknowledge that you bear the full and sole responsibility for adequate security, protection and backup of Your Content. We disclaim any liability to you for any unauthorized access to or use of any of Your Content, or any corruption, deletion, destruction, or loss of any of Your Content.

IX. Export Requirements

You acknowledge that the Service and all Content obtained from the Service is subject to control under U.S. law, including but not limited to the Export Administration Regulations (15 CFR 730-774), and you agree to comply with all applicable import and export laws and regulations and further agree that the Service and Content obtained from the Service will not be exported, re-exported, imported or otherwise transferred in violation of U.S. or applicable foreign law or used for any purpose connected with chemical, biological or nuclear weapons or missile applications.

You represent that you are not a citizen of or located in any U.S. embargoed country or region on the U.S. OFAC (Department of Treasury) sanction list, including (as of April 2015) Cuba, Iran, North Korea, Sudan, Syria and Crimea; are not on a U.S. government prohibited user list posted by the Department(s) of Commerce, State and Treasury; and will not use the Service or content obtained from the Service for purposes prohibited by U.S. law. You agree that you will not access, download, use, transfer, post, resell or export the Service or Content obtained from the Service in violation of U.S. export laws or regulations, or in violation of any applicable local laws or regulations, including but not limited to providing the Service or Content obtained from the Service to anyone in a U.S. embargoed country or region or to anyone on a U.S. prohibited user list.

You also acknowledge that all postings of encryption code are controlled under Section 740.13(e) of the Export Administration Regulations (“EAR”) 15 C.F.R. Parts 730-772 and that you understand and comply with your obligations under the EAR including the procedures described in: https://www.bis.doc.gov/index.php/forms-documents/doc_view/334-encryption-export-controls-75-fed-reg-36-482-june-25-2010.

If you are a U.S. Government end user, CA is licensing the Service and Content obtained from the Service to you as a "Commercial Item" as that term is defined in the U.S. Code of Federal Regulations (see 48 C.F.R. § 2.101), and the rights we grant to you are the same as the rights we grant to all others under these Terms.

Further information on U.S. government prohibited user lists can be found on the applicable government agency websites including <http://www.bis.doc.gov> and <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>.

X. General

(i) The Service is Available "AS-IS"

YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR OWN RISK. YOU UNDERSTAND AND AGREE THAT THE SERVICE IS PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND WE PROVIDE NO SERVICE LEVEL AGREEMENTS OR WARRANTIES OF ANY NATURE. WITHOUT LIMITING THE FOREGOING, OUR WE, AND ALL OF OUR AFFILIATES, DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT WITH RESPECT TO THE SERVICE. WE MAKE NO WARRANTY AND DISCLAIM ALL RESPONSIBILITY AND LIABILITY FOR THE COMPLETENESS, ACCURACY, AVAILABILITY, TIMELINESS, SECURITY OR RELIABILITY OF THE SERVICE OR ANY CONTENT THEREON. WE WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY HARM TO YOUR COMPUTER SYSTEM, LOSS OF DATA, OR OTHER HARM THAT RESULTS FROM YOUR ACCESS TO OR USE OF THE SERVICE. MOREOVER, YOU AGREE THAT WE DO NOT HAVE RESPONSIBILITY OR LIABILITY FOR THE DELETION OF, OR THE FAILURE TO STORE OR TO TRANSMIT, ANY MATERIAL OR CONTENT AND OTHER INFORMATION MAINTAINED IN THE SERVICE. WE MAKE NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE SERVICE OR OUR REPRESENTATIVES, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

(ii) Links to Third Party Websites

The Service may contain links to websites owned and/or operated by third parties. Such links are provided for informational purposes only. We are not responsible for any such third party websites and do not have control over any materials or content made available therein. Our inclusion of a link to a third party website in the Service does not in any way imply our endorsement, advertising, or promotion of such websites or any materials or content made available therein. By accessing a third-party website you accept that we do not exercise any control over such websites or their content. We have no responsibility for the content or control of any third-party website. We encourage you to familiarize yourself with the terms of service applicable to any third-party website you may access.

(iii) Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE AND OUR SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, CONTRACTORS, VENDORS AND SUPPLIERS WILL NOT BE LIABLE FOR ANY DAMAGES, LOSS OR LIABILITY, INCLUDING WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, , EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS; LOSS OF MONEY; LOSS OF DATA; LOSS OF USE; LOSS OF ANTICIPATED SAVINGS; ACCRUED BUT WASTED EXPENDITURE; COST OF PROCUREMENT OF SUBSTITUE GOODS OR SERVICES; LOSS OF GOODWILL; LOSS OF TIME; OR OTHER TANGIBLE OR INTANGIBLE LOSSES, RESULTING FROM (i) YOUR ACCESS TO, USE OF, OR INABILITY TO ACCESS OR USE THE SERVICE; (ii) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY IN THE

SERVICE, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE, HARMFUL, OR ILLEGAL CONDUCT OF THE USERS OF THE SERVICE OR THIRD PARTIES; (iii) ANY CONTENT OBTAINED FROM THE SERVICE; AND (iv) UNAUTHORIZED ACCESS, USE OR ALTERATION OF ANY MATERIAL OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE. IN SOME JURISDICTIONS THE APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, OUR LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

(iv) Indemnity

You agree to indemnify and hold us harmless from any claim or demand, including attorneys' fees, made by any third party due to or arising out of your breach of these Terms, or your violation of any law or the rights of a third party. Nothing in these Terms shall be deemed to exclude or limit your liability in respect of any indemnity given by you under these Terms. We reserve the right to assume the exclusive defense and control of any matter, which is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

(v) Entire Agreement

These Terms (and an Order Form for the Service, if you execute one) are the entire agreement between you and us regarding the Service, and the Terms supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and us with respect to the Service. If you are eligible to order the Service on an Order Form and you execute an Order Form, terms on the Order Form will take precedence over any conflicting terms on this page.

(vi) Waiver and Severability

Our failure to exercise any rights under these Terms shall not constitute or be deemed a waiver or forfeiture of such rights or a waiver or forfeiture of such rights in the future. In the event that any provision of these Terms is held to be invalid or unenforceable by a court or tribunal of competent jurisdiction for any reason, the remaining provisions of these Terms will remain in full force and effect.

(vii) Governing Law and Resolution of Disputes

The laws of the State of New York (excluding its conflict of laws provisions) will apply to any dispute arising out of or relating to this Site. All proceedings shall be brought before a court of competent jurisdiction in Suffolk County, New York, including Federal Jurisdiction. The United Nations Convention on Contract for the International Sale of Goods does not apply to these Terms and is expressly excluded.

XI. Contact

The Service is operated and provided by CA, Inc., located at 520 Madison Avenue, 22nd Floor, New York, NY 10022. Technologies. If you have any questions about these Terms or the Services, please contact the kaizenOps team at <http://kaizenops.io/contact-us>.

XII. Term and Termination

The term of this Agreement will commence on the date you start accessing or using the Service (if you purchase through our website) or the date indicated on your Order Form and will continue until your access and use of the Service is terminated. All material elements of the Terms (excluding your rights to access and use the Service) shall remain in effect after your access and use of the Service is terminated. We reserve the right to discontinue offering the Service or to modify the Service at any time in our sole discretion. Notwithstanding anything contained in these Terms to the contrary, we may also, in our sole discretion, terminate or suspend your access to and/or use of the Service at any time for any reason, with or without notice to you. You may also terminate your access and use of the Service at any time. Please be aware that any such termination and/or suspension may result in the erasure of Your Content within your account.