

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

Cr. No. 04-837 (ILG)

COMPUTER ASSOCIATES  
INTERNATIONAL, INC.,

Defendant.

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**DEFERRED PROSECUTION AGREEMENT**

The defendant COMPUTER ASSOCIATES INTERNATIONAL, INC. (“CA”), by its undersigned attorneys, pursuant to authority granted by its Board of Directors in the form of a Board Resolution (a copy of which is attached hereto as Exhibit A), and the United States Attorney’s Office for the Eastern District of New York (the “Office”), hereby enter into this Deferred Prosecution Agreement (the “Agreement”). Except as specifically provided below, and in accordance with the provisions specified in paragraphs 22 and 24 below, this Agreement shall be in effect for a period of 18 months.

**Information**

1. The United States will file an Information in the United States District Court for the Eastern District of New York charging CA with (a) securities fraud in violation of Title 15, United States Code, Section 78j(b) (Count 1), and (b) obstruction of justice in violation of Title 18, United States Code, Section 1512(c)(2) (Count 2) (the “Information”).

Acknowledgment of Violation of Law and Acceptance of Responsibility

2. CA accepts and acknowledges that, as set forth in detail in the Information (a copy of which is attached hereto as Exhibit B) and the Stipulation of Facts (attached hereto as Exhibit C), both of which are incorporated herein by reference, through the conduct of certain CA executives, officers and employees during the relevant time period, CA:

(a) filed and caused to be filed for certain of CA's fiscal periods materially false and misleading financial reports and other documents with the Securities and Exchange Commission (the "SEC"), and made other materially false and misleading public statements and omissions, in connection with the purchase and sale of CA securities, relating to improper accounting practices employed at CA involving the accelerated recognition of revenues associated with multiple backdated software license agreements; and

(b) obstructed an investigation being conducted by a grand jury sitting in the Eastern District of New York, with the assistance of the Federal Bureau of Investigation (the "FBI"), involving accounting and financial fraud at CA (the "Grand Jury Investigation"), and an investigation being conducted by the SEC involving accounting and financial fraud at CA (the "SEC Investigation").

3. CA accepts and acknowledges full responsibility for the conduct set forth in the Information and in the Stipulation of Facts by entering into this Agreement and by, among other things: (a) the remedial actions that CA has taken to date (described in paragraph 4 below); (b) CA's continuing commitment of full cooperation with the Office, the FBI and the SEC (collectively, the "Investigative Entities"); (c) CA's agreement to fulfill all of the undertakings CA has made in this Agreement, including to

pay \$225,000,000 in restitution to compensate former and current CA shareholders for losses caused by the conduct set forth in the Information and the Stipulation of Facts; (d) CA's agreement to comply in the future with Federal criminal laws, including Federal securities laws; and (e) CA's issuance of up to 5.7 million shares of CA Common Stock and payment of cash, at a total cost to CA to date of approximately \$163 million, to compensate present and former CA shareholders in connection with the following cases brought in the United States District Court for the Eastern District of New York, In re Computer Associates Class Action Securities Litigation, 98 Civ. 4839 (TCP), In re Computer Associates 2002 Class Action Securities Litigation, 02 Civ. 1226 (TCP), Ambler v. Computer Associates, 02 Civ. 6281 (TCP), and Federman v. Artzt, et. al, 03 Civ. 4199 (TCP).

4. CA represents that its Board of Directors and current senior management have taken numerous remedial actions in response to the misconduct at CA that has been discovered by the Grand Jury Investigation, the SEC Investigation and an internal investigation conducted by CA (described in paragraph 5 below). These remedial actions have included:

(a) terminating CA officers and employees who were responsible for the improper accounting, inaccurate financial reporting, and obstruction of justice set forth in the Information and Stipulation of Facts;

(b) terminating CA officers and employees who refused to cooperate with CA's internal investigation or who otherwise took steps to obstruct or impede that investigation; and

(c) appointing new management, including, but not limited to, an Interim Chief Executive Officer, a new Chief Operating and Chief Financial Officer, a new Head of Worldwide Sales, and a new General Counsel.

Continuing Obligation of Cooperation

5. In late-July 2003, CA, through its Audit Committee, retained the law firm of Sullivan & Cromwell LLP (“S&C”) to conduct an internal investigation into CA’s accounting and financial practices. In December 2003, CA’s internal investigation was expanded to include an inquiry into whether any of CA’s officers and employees obstructed or failed to cooperate with the Grand Jury Investigation and the SEC Investigation. CA’s internal investigation was conducted with the assistance of a forensic accounting team from PricewaterhouseCoopers (“PwC”) and involved more than 100 interviews and the review of hundreds of thousands of pages of documents and e-mails. CA has shared with the Investigative Entities the results of its internal investigation, including documents that might otherwise have been withheld under the attorney-client privilege and the work-product doctrine. CA acknowledges and understands that its prior, ongoing and future cooperation are important and material factors underlying the Office’s decision to enter into this Agreement, and, therefore, CA agrees to continue to cooperate fully and actively with the Investigative Entities and with any other agency of the government designated by the Office (“Designated Agencies”) regarding any matter about which CA has knowledge or information.

6. During the term of this Agreement, CA agrees that its continuing cooperation shall include, but not be limited to, the following:

(a) Completely and truthfully disclosing all information in its possession to the Investigative Entities about which the Investigative Entities may

inquire, including but not limited to all information about activities of CA, present and former members of CA's Board of Directors, and CA's officers, employees, and agents;

(b) Assembling, organizing and providing all documents, records, and other evidence in CA's possession, custody, or control as reasonably may be requested by any of the Investigative Entities or Designated Agencies;

(c) Not asserting, in relation to the Investigative Entities, any claims of attorney-client privilege or attorney work-product doctrine as to any documents, records, information or testimony requested by the Investigative Entities related to: (i) factual internal investigations concerning the conduct set forth in the Information and the Stipulation of Facts; or (ii) legal advice given contemporaneously with, and related to, such conduct. Such materials are referred to hereinafter as the "Confidential Materials." By producing the Confidential Materials pursuant to this Agreement, CA does not intend to waive the protection of the attorney-client privilege or the attorney work-product protection, or any other privilege applicable, as to third parties. The Investigative Entities will maintain the confidentiality of the Confidential Materials pursuant to this Agreement and will not disclose them to any third party, except to the extent that any Investigative Entity determines, in its sole discretion, that disclosure is otherwise required by law or would be in furtherance of the discharge of its duties and responsibilities.

(d) Using its reasonable best efforts to make available its present and former officers and employees to provide information and/or testimony as requested by the Investigative Entities or any of the Designated Agencies, including sworn testimony before a grand jury or in court proceedings, as well as interviews with

law enforcement authorities. Cooperation under this paragraph shall include identification of witnesses who, to CA's knowledge and information, may have material information concerning the conduct set forth in the Information and the Stipulation of Facts.

(e) Providing testimony or information necessary to identify or establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence in any criminal or other proceeding as requested by the Investigative Entities or any of the Designated Agencies, including information and testimony concerning the conduct set forth in the Information and Stipulation of Facts.

(f) With respect to any information, testimony, documents, records or physical evidence provided by CA to the Investigative Entities, any of the Designated Agencies or a grand jury, other than Confidential Materials, CA consents to any and all disclosures of such materials to such Designated Agencies as the Office, in its sole discretion, deems appropriate. With respect to any such materials that constitute "matters occurring before the grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, CA further consents to: (i) any order sought by the Office permitting such disclosures; and (ii) the Office's ex parte or in camera application for such orders; and

(g) Providing active assistance, including assistance by S&C and PwC, in connection with any investigation, criminal prosecution, civil trial or other legal proceeding brought by the Investigative Entities, including any proceeding seeking to obtain disgorgement (or other similar relief) of compensation (including compensation received pursuant to any CA stock option or similar plan) from any present or former CA

officer or employee. CA and its Board of Directors will fully support efforts by the Investigative Entities to obtain disgorgement of compensation from any present or former CA officer or employee who engaged in any improper conduct while employed at CA. To the extent permitted by applicable law, CA may be entitled to apply as a victim, on behalf of itself and/or its present or former shareholders, for an award of some or all of the amount of any such disgorged compensation obtained by the Investigative Agencies from such present and former CA officers or employees.

7. CA agrees that, following the expiration of this Agreement as specified in paragraph 24 below, CA will continue to fulfill the cooperation obligations set forth in paragraph 6 above in connection with any investigation, criminal prosecution or civil proceeding brought by any of the Investigative Entities relating to or arising out of the conduct set forth in the Information and the Stipulation of Facts. CA's obligation to cooperate is not intended to apply in the event that CA is a defendant in any such proceeding.

#### Payment of Restitution to CA Shareholders

8. In addition to CA's payment of compensation to current and former CA shareholders in connection with the civil litigation described in paragraph 3 above, CA agrees to pay an additional \$225,000,000 for purposes of restitution to current and former CA shareholders who suffered losses because of the conduct of certain former CA officers and employees set forth in the Information and Stipulation of Facts, according to the following schedule: \$75,000,000 within 30 days of the date of approval by the Court of this Agreement to defer prosecution, as specified in paragraph 23 below; \$75,000,000 within one year of the date of the Court's approval of this Agreement to defer prosecution; and \$75,000,000 within 18 months of the Court's approval of this

Agreement to defer prosecution. The monies paid by CA in accordance with this paragraph shall constitute the “Restitution Fund.” In the event that the Restitution Plan (defined in paragraph 11 below) has not been approved by the Court by the date of the first payment specified above to the Restitution Fund, CA shall deposit such funds in an interest-bearing account at a financial institution under terms approved by the Office.

9. CA agrees that it will not, in connection with the monies it pays into the Restitution Fund, seek, obtain or accept any reimbursement or other payments or credits from any insurer of CA or of any of its divisions or subsidiaries.

10. CA agrees to retain and to compensate an individual or entity to administer the distribution of the proceeds of the Restitution Fund to current and former CA shareholders (the “Fund Administrator”). The Fund Administrator’s compensation will not be paid out of the Restitution Fund. CA will ensure, as a condition of retention, that the Fund Administrator agree to abide by all the terms and conditions set forth in this Agreement. The identity and terms of retention and compensation of the Fund Administrator must be approved by the Office. Within 30 days of the date of execution of this Agreement, CA will submit to the Office a proposal setting forth the identity and terms of retention and compensation of the Fund Administrator. The Office will approve or disapprove the proposed Fund Administrator within 15 days of its receipt of a proposal. If the Office disapproves the proposed Fund Administrator, CA will, within 30 days of receipt of notice of such disapproval, submit a revised proposal, which the Office will approve or disapprove within 15 days. The procedure set forth in this paragraph will continue, as necessary, until such time as the Office approves a proposed Fund Administrator.



11. Within six months of the retention of the approved Fund Administrator, the Fund Administrator will prepare and submit to the Office a plan (the “Restitution Plan”) setting forth the procedures governing the activities of the Fund Administrator, including but not limited to (a) the procedures by which present and former CA shareholders injured by the conduct set forth in the Information and Stipulation of Facts will be identified, and (b) the procedures by which the financial losses of such CA shareholders will be determined and restitution for such losses will be paid. In connection with the preparation of the Restitution Plan, CA shall assist and cooperate with the Fund Administrator. Because the restitution paid pursuant to this Agreement is not ordered as part of a judgment of conviction, the provisions of 18 U.S.C. §§ 3663 et seq. are inapplicable. The Restitution Plan must be approved by the Office and the Court. The Office will approve or disapprove the Restitution Plan within 30 days of its receipt. If the Office disapproves the proposed plan, the Fund Administrator will, within 30 days of receipt of notice of such disapproval, submit a revised plan, which the Office will approve or disapprove within 30 days. This process will continue, as necessary, until a plan is approved by the Office. Then, the Office and CA will jointly submit the approved Restitution Plan to the Court for its approval. If the Court rejects the approved Restitution Plan, the procedure set forth in this paragraph will be repeated until such time as the Court approves a Restitution Plan.

#### Corporate Reforms

12. CA agrees to add new independent directors to its Board of Directors and to undertake corporate governance reforms such that, by December 31, 2005, CA will have:

(a) in addition to former SEC Commissioner Laura Unger, added a minimum of two new independent directors to CA's Board of Directors, so that no less than two-thirds of the members of CA's Board of Directors will be independent directors;

(b) established a Compliance Committee of the Board of Directors (the "Compliance Committee"), either as a separate committee or as part of a reconstituted Corporate Governance and Compliance Committee or Audit and Compliance Committee, to examine CA's Internal Audit Department and the compliance functions within CA's Legal and Finance Departments, including compliance with all of the terms and conditions of this Agreement;

(c) established a new Disclosure Committee composed of the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Compliance Officer, Chief Accounting Officer and General Counsel that meets and confers, under the direction of a duly elected chairperson, prior to significant filings with the SEC and the issuance of significant press releases; and

(d) established enhanced corporate governance procedures providing for improved shareholder, community and governmental communications with CA and its Board of Directors. Such measures will include: (i) inclusion of a report of the Compliance Committee on CA's website and in each annual proxy statement mailed to CA shareholders during the term of this Agreement describing CA's efforts to comply with this Agreement and to implement the recommendations of the Independent Examiner (described below) regarding best-in-class corporate compliance and ethics programs; and (ii) adoption of procedures to ensure that all inquiries raised by

government entities, or by CA shareholders, customers, suppliers and employees, regarding compliance and ethics matters receive prompt review, including reporting of such matters, as appropriate, to the Compliance Committee and, where appropriate, the full Board of Directors.

13. By December 31, 2005, CA agrees to: (a) establish new comprehensive records management policies and procedures, as well as testing programs to ensure compliance therewith, and (b) take steps to implement best practices with respect to the recognition of software license revenue, including enhanced quarter-end contract cut-off procedures, both subject to the review of the Independent Examiner.

14. CA agrees to establish a comprehensive Compliance and Ethics Program such that, by December 31, 2005, CA will:

(a) establish a comprehensive ethics and compliance training program for all CA employees designed to minimize the possibility of future violations of the Federal securities and other laws by CA;

(b) appoint an independent, senior-level Chief Compliance Officer, after consultation with the Office, who will report directly to both the Compliance Committee and the General Counsel; and

(c) amend CA's senior executive compensation plans to add an enhanced component to CA's performance-based programs tied to the establishment and maintenance of high ethical and compliance standards throughout CA.

15. CA agrees that, by December 31, 2005, CA will reorganize its Finance Department, including, but not limited to, the appointment of a Corporate Controller, a Chief Accounting Officer, and a Financial Controller for each of CA's

primary business functions -- Direct Sales, Indirect Sales, Development and Services, or their successors. The Corporate Controller and Chief Accounting Officer will report to the Chief Financial Officer but will also communicate directly, as appropriate, with the Board of Directors and CA's external auditors. CA also agrees to begin the process of implementing, by December 31, 2005, an improved worldwide financial and enterprise resource planning ("ERP") information technology system to improve controls, eliminate errors caused by existing manual processes, and enhance CA's ability to audit its own systems. CA's implementation of the ERP system will be subject to the review of the Independent Examiner (see below), and an assessment of such implementation of the ERP system will be included in the Independent Examiner's reports issued under Paragraph 19(g) of this Agreement.

16. By December 31, 2005, CA agrees to reorganize and enhance its Internal Audit Department, including hiring at least five additional internal auditors. CA's Internal Audit Department will report to both the Audit Committee of CA's Board of Directors and CA's General Counsel.

17. By December 31, 2005, CA agrees to establish a written plan designed to ensure the improvement and ongoing effectiveness of communications with all governmental agencies engaged in inquiries or investigations relating to CA, its subsidiaries or affiliates. The plan shall address, consider and include:

(a) Regular reporting by CA's management and outside and internal counsel to the Compliance Committee and, as appropriate, the full Board of Directors regarding communications with government agencies engaged in inquiries or

investigations relating to CA, including, but not limited to, providing copies of all written communications to and from such government agencies to the Compliance Committee;

(b) Complete and prompt access for government agencies to all CA staff and management;

(c) Meetings with the Board of Directors or committees thereof upon the request of such governmental agencies engaged in inquiries and investigations of CA; and

(d) Training for CA personnel designed to improve communication and cooperation with such governmental agencies engaged in inquiries and investigations of CA.

18. By December 31, 2005, CA agrees (a) to enhance its current telephone hotline to provide a means for employees anonymously to report any potential violations of law or other misconduct, (b) to publicize within CA the existence and purpose of the hotline, and (c) to ensure all employees that no negative action will be taken against any employee who makes a report through the hotline.

#### Appointment of Independent Examiner

19. In accordance with the procedure specified in paragraph 20 below, CA agrees to retain and compensate an independent individual or entity to examine CA's compliance with this Agreement, to conduct a comprehensive review of the areas specified in subparagraphs (a) to (f) below, and to make recommendations to the Board of Directors for review and implementation, after consultation with the Office, regarding best practices in these areas (the "Independent Examiner"). The Independent Examiner will, in addition to examining CA's compliance with this Agreement:

- (a) examine CA's practices for the recognition of software license revenue;
- (b) examine CA's internal accounting controls (the Independent Examiner may, if appropriate, rely on CA's external accountant's report on the effectiveness of CA's internal accounting controls pursuant to Section 404 of the Sarbanes-Oxley Act);
- (c) examine CA's implementation of an improved ERP information technology system;
- (d) examine CA's Internal Audit Department;
- (e) examine CA's ethics and compliance policies;
- (f) examine CA's records management policies and procedures;
- (g) within six months of appointment, issue a written report to the Office, the SEC and to CA's Board of Directors making recommendations regarding best practices for the areas specified in subparagraphs (a) to (f) above; and
- (h) issue written quarterly reports to the Office, the SEC and to CA's Board of Directors on CA's compliance with this Agreement during the term of the Independent Examiner's appointment.

20. Within 30 days of the date of execution of this Agreement, CA will submit to the Office and the SEC a proposal setting forth the identity, qualifications, and proposed terms of retention of five candidates (either individuals or entities) to act as the Independent Examiner. The Independent Examiner's compensation shall not be paid out of the Restitution Fund. The Office and the SEC, within 30 days of such notice, will

jointly either (a) approve three of the candidates, or (b) require CA to propose additional candidates within 15 days. This process will continue, as necessary, until the Office and the SEC have jointly approved three candidates. Then, the Office, the SEC and CA will jointly submit the three approved candidates to the Court. The Office and the SEC may, in their discretion, make a recommendation to the Court regarding the three candidates. The Court shall select the Independent Examiner from the three approved candidates and issue an order appointing the Independent Examiner. If the Court rejects all three approved candidates, the procedure set forth in this paragraph will be repeated until such time as the Court approves an Independent Examiner. The procedures set forth in this paragraph are subject to the approval of the Court. If the Court does not approve the procedures set forth in this paragraph, the Office, the SEC and CA will agree upon a different procedure for the appointment of the Independent Examiner, and neither CA nor the Office will be relieved of any of the other terms, conditions and obligations set forth in this Agreement.

21. CA agrees that the Independent Examiner shall have reasonable access to all of CA's books and records and the ability to meet privately with CA employees. Except in respect of communications with the Office or the SEC, the Independent Examiner shall maintain the confidentiality of any non-public business and financial information of CA. At the conclusion of the Independent Examiner's engagement, subject to the approval of the Office, the Independent Examiner shall return to CA all documents reflecting or referring to non-public business and financial information of CA.

22. The Independent Examiner shall have a term of engagement of 18 months from the date of the Court's order appointing the Independent Examiner. If, at the conclusion of this 18-month period, less than all recommended reforms (to the extent deemed significant by the Office) have been substantially implemented for at least two successive quarters, or significant exceptions have been noted in the course of the Independent Examiner's most recent quarterly review under paragraph 19(h), the Office and the SEC may, in their discretion, extend the term of appointment of the Independent Examiner until such time as all recommended reforms (to the extent deemed significant by the Office) have been substantially implemented for at least two successive quarters, or no significant exceptions have been noted in the course of the Independent Examiner's most recent quarterly review. Prior to extending the term of this Agreement, the Office and the SEC will provide CA with an opportunity to be heard with respect to CA's implementation of reforms recommended by the Independent Examiner, including as to the significance of such reforms, and a reasonable opportunity to cure any exceptions noted by the Independent Examiner. Because CA's implementation of a new ERP system is projected to extend over more than 18 months from the appointment of the Independent Examiner, CA's inability to implement fully such a system shall not be a basis to extend the Independent Examiner's term or this Agreement.

#### Deferral of Prosecution

23. In consideration of CA's remedial actions to date and its commitment to: (a) accept and acknowledge responsibility for its conduct; (b) continue its cooperation with the Office, the SEC and any of the Designated Agencies; (c) make the payments specified in paragraphs 3 and 8 above; (d) comply with Federal criminal laws, including Federal securities laws; and (e) otherwise comply with all of the terms of



this Agreement, the Office shall recommend to the Court that prosecution of CA on the Information be deferred for a period of 18 months from the date of the Court's order appointing the Independent Examiner or until such time as the Independent Examiner's term of engagement is completed, whichever is later. CA shall expressly waive all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Eastern District of New York for the period during which this Agreement is in effect.

24. The Office agrees that, if CA is in compliance with all of its obligations under this Agreement, the Office will, within 30 days of the expiration of 18 months from the date of Court's order approving the appointment of the Independent Examiner or until such time as the Independent Examiner's term of engagement is completed, whichever is later, seek dismissal with prejudice as to CA of the Information filed against CA pursuant to paragraph 1 of this Agreement, and this Agreement shall expire, except as provided in paragraph 7 above. Except in the event of a breach of this Agreement, the Office will bring no additional charges against CA relating to or arising out of the matters set forth in the Information or in the Stipulation of Facts. CA and the Office understand that the Agreement to defer prosecution of CA must be approved by the Court, in accordance with 18 U.S.C. § 3161(h)(2). Should the Court decline to approve the Agreement to defer prosecution for any reason, both the Office and CA are released from any obligation imposed upon them by this Agreement, and this Agreement shall be null and void.

25. It is further understood that should the Office determine that CA has deliberately given materially false, incomplete, or misleading information pursuant to this Agreement, has committed any federal crimes subsequent to the date of this Agreement, or has otherwise knowingly, intentionally and materially violated any provision of this Agreement, CA thereafter shall be subject to prosecution for any Federal criminal violation of which the Office has knowledge. Any such prosecution may be premised on any information provided by or on behalf of CA to the Office, the FBI, the SEC or any of the Designated Agencies at any time. Moreover, CA agrees that any such prosecution relating to the allegations in the Information that are not time-barred as of the date of this Agreement may be commenced against CA in accordance with this Agreement, notwithstanding the expiration of any applicable statute of limitations between the signing of this Agreement and the expiration of this Agreement under paragraph 24. By this Agreement, CA expressly intends to and does waive any rights in this respect. Such waiver is knowing, voluntary and in express reliance on the advice of CA's counsel.

26. It is further agreed that in the event that the Office determines that CA has knowingly, intentionally and materially violated any provision of this Agreement: (a) all statements made by or on behalf of CA to the Office, the FBI, the SEC or any of the Designated Agencies, including but not limited to the Stipulation of Facts, or any testimony given by CA before a grand jury, or elsewhere, whether before or after the date of this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against CA; and (b) CA shall not assert any claim under the United States Constitution,

Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of CA before or after the date of this Agreement, or any leads derived therefrom, should be suppressed.

27. CA agrees that it shall not, through its attorneys, Board of Directors, agents, officers or employees, make any public statement, in litigation or otherwise, contradicting its acceptance of responsibility or the allegations set forth in the Information or Stipulation of Facts. Any such contradictory statement by CA, its present or future attorneys, Board of Directors, agents, officers or employees shall constitute a breach of this Agreement and CA thereafter shall be subject to prosecution as specified in paragraphs 23 to 26. The decision as to whether any such contradictory statement will be imputed to CA for the purpose of determining whether CA has breached this Agreement shall be at the sole discretion of the Office. Upon the Office's notifying CA of any such contradictory statement, CA may avoid a finding of a breach of this Agreement by publicly repudiating such statement within 72 hours after receipt of notice by the Office. This Paragraph is not intended to apply to any statement made by any current or former CA officer, director or employee who has been charged with a crime or other wrongdoing by the government or an agency thereof.

28. CA agrees that the decision whether conduct and/or statements of any individual will be imputed to CA for the purpose of determining whether CA has knowingly, intentionally and materially violated any provision of this Agreement shall be in the sole discretion of the Office, provided, however, that the statements of any former officer, director or employee of CA shall not be attributed to CA such purpose. Should the Office determine that CA has committed a knowing, intentional and material breach

of any provision of this Agreement, the Office shall provide written notice to CA, addressed to its General Counsel, Kenneth V. Handal, Esq., One Computer Associates Plaza, Islandia, New York 11749, and to CA's counsel, Robert J. Giuffra, Jr., Esq., Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004, or to any successor that CA may designate, of the alleged breach and provide CA with a two-week period from the date of receipt of such notice in which to make a presentation to the Office, or its designee, to demonstrate that no breach has occurred, or, to the extent applicable, that the breach was not knowing, intentional or material, or has been cured. Upon request by CA, the Office may agree in writing to extend this two-week period, including to provide CA with an opportunity to cure any breach of this Agreement. The parties to this Agreement expressly understand and agree that should CA fail to make a presentation to the Office, or its designee, within the two-week period (or other period agreed to by the Office), the Office may conclusively presume that CA is in knowing, intentional and material breach of this Agreement. The parties further understand and agree that the exercise of discretion by the Office or its designee under this paragraph is not subject to review in any court or tribunal outside the United States Department of Justice.

29. Except to the extent permitted by the Office, CA agrees that, if it sells or merges all or substantially all of its business operations as they exist as of the date of this Agreement to or into a single purchaser or group of affiliated purchasers during the term of this Agreement, CA shall include in any contract for sale or merger a provision binding the purchaser/successor to CA's obligations described in this Agreement.

30. It is understood that this Agreement is binding on CA and the United States Attorney's Office, but specifically does not bind any other Federal agencies, any state or local law enforcement agencies, any licensing authorities, or any regulatory authorities. However, if requested by CA or its attorneys, the Office will bring to the attention of any such agencies, including but not limited to any licensing authorities, the Agreement, the cooperation of CA and its compliance with its obligations under this Agreement, and any corporate reforms specified in this Agreement. It is the intent of the parties to this Agreement that the Agreement does not confer or provide any benefits, privileges or rights to any individual or other entity other than the parties hereto, and that nothing in the Agreement shall be construed as acknowledging that the Agreement, including the Information or the Stipulation of Facts and the evidence underlying the Agreement, the Information or the Stipulation of Facts, shall be admissible in any proceeding other than a proceeding brought by the Office. Moreover, CA may raise defenses and/or assert affirmative claims in any civil proceedings brought by private parties as long as doing so does not otherwise violate any term of this Agreement.

31. CA and the Office agree that, upon filing of the Information in accordance with paragraph 1 hereof, this Agreement (including its attachments) shall be publicly filed in the United States District Court for the Eastern District of New York.

32. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between CA and the Office. No modifications or additions to this Agreement

shall be valid unless they are in writing and signed by the Office, CA's attorneys, and a duly authorized representative of CA.

Dated: Brooklyn, New York  
September 22, 2004

ROSLYNN R. MAUSKOPF  
United States Attorney  
Eastern District of New York

By: \_\_\_\_\_  
David B. Pitofsky  
Principal Deputy Chief, Criminal Division

\_\_\_\_\_  
Eric O. Corngold  
Chief, Business & Securities Fraud Unit

AGREED AND CONSENTED TO BY:

\_\_\_\_\_  
Lewis S. Ranieri  
Chairman of the Board  
Computer Associates International, Inc.  
Defendant

\_\_\_\_\_  
Robert J. Giuffra, Jr., Esq.  
Sullivan & Cromwell LLP  
Counsel to Defendant

**SO ORDERED:**

\_\_\_\_\_  
THE HONORABLE I. LEO GLASSER  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF NEW YORK