

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 3.10
(ID # 15017)**

MEETING DATE:

Tuesday, June 29, 2021

FROM: ASSESSOR-COUNTY-CLERK-RECORDER:

SUBJECT: ASSESSOR-COUNTY-CLERK-RECORDER: Approve the Master Subscription Agreement with Dynatrace, LLC Without Seeking Competitive Bids and the Reseller Agreement with Insight Public Sector, Inc. for Dynatrace Software Subscription for One Year in the Amount of \$105,462 with the Option to Renew for Up to Four Additional One-Year Periods; All Districts [Total cost \$607,860; up to \$60,786 in additional compensation - 100% Department Funding]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Master Subscription Agreement with Dynatrace, LLC for Dynatrace Software Subscription without seeking competitive bids for one year with the option to renew for up to four additional one-year periods through June 7, 2026 and authorize the Chair of the Board to sign the Agreement on behalf of the County; and
2. Approve the Reseller Agreement with Insight Public Sector, Inc. for Dynatrace Software Subscription in the amount of \$105,462 for one year with the option to renew for up to four additional one-year periods for a total of \$607,860 through June 7, 2026 and authorize the Chair of the Board to sign the Agreement on behalf of the County; and
3. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel, to: (a) sign amendments that exercise the options of the agreements including modifications of the statement of work that stay within the intent of the agreement; and (b) sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total annual cost of the contracts; and
4. Direct the Clerk of the Board to retain one (1) copy of each agreement and return two (2) original copies of each agreement to the Assessor – County Clerk – Recorder's Office.

ACTION: Policy

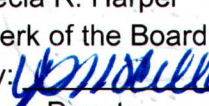

Kan Wang, Assistant Assessor-County-Clerk Recorder

6/17/2021

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Washington, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez, and Hewitt
Nays: None
Absent: None
Date: June 29, 2021
xc: ACR

Kecia R. Harper
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$105,462	\$113,154	\$607,860	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: 100% Department Funding			Budget Adjustment: No	
			For Fiscal Year: 20/21-24/25	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Assessor – County Clerk – Recorder (ACR) is the lead department for the County of Riverside Enterprise Solutions for Property Taxation (CREST) Project. The CREST Project unites the County's three property tax departments in this cooperative venture. CREST is used to capitalize on the latest information technology advancements and designs and implements a new Integrated Property Tax Management System (IPTMS) to meet the business and operational needs of the ACR, Auditor-Controller, and Treasurer-Tax Collector departments.

To monitor the CREST infrastructure and software, the ACR requires a comprehensive Application Performance Monitoring (APM) software. Dynatrace APM software provides a suite of monitoring software comprised of application discovery, tracing, and diagnostics.

Dynatrace software also offers two vital features. The Davis A1 is a powerful tool that helps identify the root cause of an issue very quickly. The other, OneAgent, allows for automated deployment by tools such as Chef, Puppet and Ansible, and adds value because it automatically discovers the technology used by each process on the host and appropriately injects the needed agent into the process. This APM Software has low maintenance cost because the installation and configuration of Dynatrace software can be done without assistance from Dynatrace.

Based on market research conducted by the ACR, the CREST Project team determined Dynatrace software to be the most suitable software solution to meet the CREST Project business needs and therefore seeks this Board's approval of this single source request to directly procure Dynatrace Software via the reseller, Insight Public Sector, Inc.

Dynatrace Software was reviewed and approved by the Technology Standards Oversight Committee (TSOC) on April 7, 2021 for one year. Additional renewal options will be submitted to TSOC for review and approval.

Impact on Residents and Businesses

Maintaining and integrating modern technologies and applications ensures continuity of services to the public and staff.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
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Additional Fiscal Information

The cost for the first year and additional one-year renewal options through June 7, 2026 of the Dynatrace software are as follows:

Description:	FY20/21	FY21/22	FY22/23	FY23/24	FY24/25	Total
One-time Costs:						
<i>Dynatrace managed digital experience monitoring (DEM) units</i>	\$6,328					\$6,328
<i>Dynatrace managed host units</i>	\$99,134					\$99,134
Optional Renewals:						
<i>Dynatrace managed digital experience monitoring (DEM) units</i>		\$6,789	\$7,265	\$7,775	\$8,317	\$30,146
<i>Dynatrace managed host units</i>		\$106,365	\$113,810	\$121,775	\$130,302	\$472,252
Total Costs	\$105,462	\$113,154	\$121,075	\$129,550	\$138,619	\$607,860

Contract History and Price Reasonableness

Based on market research conducted by the ACR, the CREST Project team determined Dynatrace software to be the most suitable software solution to meet the business needs and therefore request approval of this single source request to procure Dynatrace Software. The department submitted and received SSJ approval for Dynatrace. The cost for Dynatrace APM software aligns with other types of APM software programs.

To ensure price reasonableness of this software the Purchasing Department, on behalf of ACR, issued RFQ # ASARC-2021-RFQ-0000220. The RFQ notification was viewed by 50 vendors with a total (2) bidders submitting bid responses. Insight Public Sector was determined to be the lowest, most responsive and responsible bidder. The bids were evaluated by Purchasing and the ACR based on the vendors' ability to provide the required software and best value pricing. It is recommended that the award be made to Insight Public Sector as the lowest, most responsive and responsible bidder. As part of their Reseller Agreement, Insight Public Sector has agreed to provide a budgetary price quote for up to four (4) renewal periods; any price increases for the renewal periods will not exceed the Consumer Price Index (CPI).

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
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ATTACHMENTS:

ATTACHMENT A: Master Subscription Agreement for Dynatrace Software between County of Riverside and Dynatrace LLC



ATTACHMENT B: Reseller Agreement for Dynatrace Software between County of Riverside and Insight Public Sector, Inc.

ATTACHMENT C: TSOC Approval # PR2021-11291

ATTACHMENT D: Insight Public Sector Quote # 223427584

ATTACHMENT E: Single-Source Justification Form

	
Tina Grande, Director of Purchasing and Fleet Services	Stephanie Peltz, Principal Management Analyst
6/17/2021	6/21/2021

	
Gregory L. Priamos, Director County Counsel	Jim Smith, Chief Information Officer
6/17/2021	6/17/2021

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 Tina Grande, Director of Purchasing and Fleet Services	 Stephanie Perez, Principal Management Analyst
6/17/2021	6/21/2021

 Gregory L. Priarios, Director County Counsel	 Jim Smith, Chief Information Officer
6/17/2021	6/17/2021

MASTER SUBSCRIPTION AGREEMENT**Effective Date: May 21, 2021**

This Master Subscription Agreement is entered into as of the Effective Date between Dynatrace and Customer as follows:

CUSTOMER	DYNATRACE
Entity Name: County of Riverside, a political subdivision of the State of California	Entity Name: Dynatrace LLC, a Delaware limited liability company
Company No. (if applicable):	Company No. (if applicable): N/A
Reg or Principal Office Address: 4080 LEMON ST RIVERSIDE, CA 92501	Reg or Principal Office Address: 1601 Trapelo Road, Suite 116 Waltham, MA 02451
Email Notices to: legonzalez@riversidecrest.com and ACR-Procurement@asrckrec.com	Email Notices to: legalnotices@dynatrace.com

- 1. DEFINITIONS.** The following terms have the meanings set forth below, unless otherwise indicated:
- 1.1. "Account Data" means information about Customer provided to Dynatrace in connection with the creation or administration of its Dynatrace account, such as first and last name, username and email address of an Authorized User or Customer's billing contact, license administrator, security contact or similar.
 - 1.2. "Affiliate" means an entity that controls, is controlled by or is under common control with another entity, where "control" refers to ownership of more than 50% of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority of another entity.
 - 1.3. "Agreement" means this Master Subscription Agreement, together where applicable with any Order Form that incorporates it, including all referenced terms and conditions.
 - 1.4. "Applicable Privacy Laws" means, in relation to any Personal Data that is processed in the provision of the Dynatrace Offerings, the applicable legislation on the protection of identifiable individuals or households, including where applicable the General Data Privacy Regulation (Regulation (EU) 2016/679) ("GDPR"), the California Consumer Privacy Act ("CCPA") and/or other applicable data protection or national/federal or state/provincial/emirate privacy legislation in force, including where applicable, binding statutes, decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable government authorities.
 - 1.5. "Customer" means (a) the entity or organization that is listed above or on whose behalf this Master Subscription Agreement is otherwise accepted, and (b) any other entity, organization or individual deemed to be a Customer by the terms of this Master Subscription Agreement.
 - 1.6. "Customer Data" means all data submitted, stored, posted, displayed, or otherwise transmitted by or on behalf of Customer in connection with the Products.
 - 1.7. "Customer Hosted Software" means the software provided in machine-readable object code form to a Customer as identified in an Order Form, and if applicable, new releases, versions, and updates to the foregoing provided as part of Support or during the Term. Customer Hosted Software may, in Dynatrace's discretion, be offered for a perpetual or limited term.
 - 1.8. "Deliverable" means all works of authorship, formulas, algorithms, databases, scripts, modifications, configurations, logos, symbols, designs, and other inventions (whether patentable or not) that Dynatrace authors, makes, conceives, reduces to practice, delivers, develops or otherwise creates, either alone or jointly with others, while performing Professional Services.
 - 1.9. "Documentation" means the then-current technical and non-technical specifications for a Product contained in the user, system, specification, support and configuration documentation made generally available to Dynatrace customers at www.dynatrace.com, through customer portals and otherwise
 - 1.10. "Dynatrace" means the Dynatrace entity listed above.
 - 1.11. "Dynatrace Materials" means all documentation, materials, methodologies, processes, techniques, ideas, concepts, trade secrets, and know-how embodied in the Products, including Deliverables, or that Dynatrace may develop or supply in connection with the Products, Support, Professional Services or Deliverables.
 - 1.12. "Dynatrace Offerings" means the Products and Subscriptions, Support and Professional Services.

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- 1.13. "Dynatrace Properties" means the Products, Documentation, Deliverables, and Dynatrace Materials, including all copies, portions, extracts, selections, arrangements, compilations, adaptations, modifications and improvements thereof, and all derivative works of any of the foregoing.
- 1.14. "End User" means a User for whom use of or access to the Dynatrace Offerings has been obtained through a Partner.
- 1.15. "Free Use" means the use of Dynatrace Offerings, or any feature or function thereof, made available to Customer free of charge. Free Use excludes any purchased access or use.
- 1.16. "Intellectual Property Rights" means (a) patents and patent rights, rights of priority, mask work rights, copyrights, moral rights, trade secrets, know-how and any other form of intellectual or industrial property rights; (b) any other protected rights or assets and any licenses and permissions in connection therewith; (c) trademarks, trade names, logos, service marks, designs and other designations of source; in each case (a), (b) or (c), recognized in any country or jurisdiction of the world, and whether or not registered or able to be registered and for the full period thereof, and all extensions and renewals thereof, and all applications for registration in connection with the foregoing.
- 1.17. "Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- 1.18. "Open Source Software" means any open source, community, or other free code or libraries of any type, including, without limitation, any code which is generally made available on the internet without charge, such as, for illustrative purposes only, any code licensed under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or other licenses approved by the Open Source Initiative.
- 1.19. "Order Form" means each Dynatrace order form, product schedule, quote or other order document which identifies the Dynatrace Offerings ordered by Customer and is agreed between Dynatrace and Customer. An Order Form may include an SOW.
- 1.20. "Partner" means an entity that has entered into an Order Form with Dynatrace that includes a limited right to resell the Dynatrace Offerings (directly or through a second tier Partner) to a specified End User or Customer, without rights of further resale.
- 1.21. "Personal Data" means any information that by itself or in combination does or can identify a specific individual or as defined in the Applicable Privacy Laws.
- 1.22. "Platform Usage Terms" means the supplemental terms and conditions applicable to the use of specific Dynatrace Offerings, the current version of which is available at <https://www.dynatrace.com/company/trust-center/customers/> or referenced in an Order Form.
- 1.23. "Products" means the Customer Hosted Software and the SaaS Subscription.
- 1.24. "Professional Services" means any implementation, training, consulting, performance analysis or other professional services, provided by Dynatrace as set forth in an Order Form or in a SOW.
- 1.25. "Restricted Information" means any confidential or personal information that is protected by law and that requires the highest level of access control and security protection, whether in storage or in transit. Restricted Information includes, but is not limited to: (a) government-issued identification numbers, including social security numbers or other tax identification numbers, driver's license numbers, passport numbers or other state-issued identification numbers, (b) unencrypted passwords or other authentication credentials or the combination of a username or email address along with a password or security question that would permit access to an online account, (c) protected health information, or any electronic protected health information (or other information subject to the HIPAA and HITECH Acts), (d) credit, debit or payment card information, financial or bank account information, or other information subject to PCI security standards, (e) data relating to a person under the age of 13 years old or subject to the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501-6505, (f) data that is subject to regulatory or contractual handling requirements under the Gramm-Leach-Bliley Act, and (g) data classified as "special category data" (or similar term) under Applicable Privacy Laws, including racial or ethnic origin, political opinions, religious beliefs, trade union membership, physical or mental health or condition, sexual orientation, genetic data, biometric data, or the commission or alleged commission any crime or offense about residents of Switzerland or any member country of the European Union.
- 1.26. "Statement of Work" or "SOW" means a written description of the Professional Services to be provided to Customer.
- 1.27. "SaaS Subscription" means the hosted services provided by or on behalf of Dynatrace to Customer including the electronic reports, analyses, and statistical and performance-related information generated by the SaaS Subscription.
- 1.28. "Subscription" means the access to or use of Products and any related managed service provided by Dynatrace, premium Support and/or maintenance for Products licensed for a perpetual term, provided for by an Order Form.
- 1.29. "Support" means the updates for supported Product versions and technical support services generally made available from time to time to Dynatrace customers, as specified in the Dynatrace online support policies and the applicable Order Form.

- 1.30. "Term" means the initial period for Customer's access to the Subscriptions set forth in an Order Form and any Renewal Term (as defined in Section 18.2).
 - 1.31. "Third-Party User" is a third-party contractor or vendor designated by Customer as a User as permitted under Section 4.
 - 1.32. "Subsidiary" means a subsidiary which is greater than fifty (50%) percent owned by a party.
 - 1.33. "Users" means Customer or its Subsidiary's employees and Third-Party Users (as defined in Section 4), if applicable, for whom Subscriptions have been purchased or for whom Trial Access or Free Use has been obtained.
- 2. AGREEMENT; ORDER OF PRECEDENCE.** The Agreement governs the use by Customer and its Users of the Dynatrace Offerings. Customer may authorize its Affiliates to execute Order Forms and/or SOWs incorporating this Master Subscription Agreement; when accepted by Dynatrace, the Affiliate becomes a Customer hereunder with respect to such Order Forms. Each Order Form that incorporates this Master Subscription Agreement will constitute a separate Agreement and govern its own subject-matter and not any other subject-matter of this Master Subscription Agreement. In the event of a conflict between an Order Form and this Master Subscription Agreement, this Master Subscription Agreement will take precedence, except for (a) any matter that this Master Subscription Agreement expressly permits to be established or modified in an Order Form or SOW, or (b) any specific provision in an Order Form or SOW that expresses an intent to supersede a specified provision in this Master Subscription Agreement.
- 3. PARTNER TRANSACTIONS.**
- 3.1 Customer agrees that the terms of this Master Subscription Agreement (excluding terms relating to delivery of and payment for the Dynatrace Offering) and the applicable Platform Usage Terms (together, the "Resale Terms") govern the access to and use by Customer of any Dynatrace Offering acquired from a Partner. Dynatrace is entitled to enforce the Resale Terms directly against Customer with respect to such access and use. Dynatrace is not responsible for any acts, omissions, or other products or services provided by Partner. Partner is not authorized to modify the Resale Terms or make any commitment for Dynatrace, and Dynatrace is not bound by any obligations to Customer with respect to any Dynatrace Offering acquired from a Partner other than as set forth in the Resale Terms.
 - 3.2 Customer's access to and use of Dynatrace Offerings acquired from a Partner is determined by the Order Form between Partner and Dynatrace identifying the Customer as the End-User. The amount paid or payable by the Partner for Customer's access to and use of the Dynatrace Offerings will be deemed the amount paid or payable by Customer under the Agreement for the purpose of Section 17 (Limitation of Liability).
- 4. THIRD-PARTY USERS.** Customer may designate one or more Third-Party Users as required to facilitate Customer's permitted use of the Products, provided that use and access by any Third-Party User must be under obligation of non-disclosure consistent with Section 16 (Confidentiality), solely for Customer's or its Subsidiary's internal business operations and benefit, and otherwise subject to the terms of the Agreement. Customer accepts responsibility for the acts or omissions of such Third-Party Users as if they were its own and agrees to enforce (and to assist Dynatrace in enforcing) the terms of the Agreement against Third-Party Users. Dynatrace shall have no direct or indirect obligation or liability to any Third-Party User.
- 5. LICENSE GRANT.** The license and use rights in the Product granted hereunder are subject to compliance by Customer and its Users with the Agreement and may be suspended or terminated as set forth in Sections 8 (Pricing, Invoicing and Payments) or 18 (Term and Termination). Customer acknowledges and agrees that its purchase of Products under the Agreement is not conditioned or contingent on the delivery of any specific future modules, features, functionalities, upgrades or enhancements ("Future Products") or any statements by Dynatrace, whether oral or written, regarding Future Products. Persons who are or who may become Dynatrace's direct competitors are prohibited from accessing or using the Dynatrace Offerings, except with Dynatrace's prior written consent, and any such access or use may be terminated by Dynatrace without notice.
- 5.1. **Customer Hosted Software.** Dynatrace grants Customer, during the Term, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) for its Users to install and use the Customer Hosted Software solely by Customer and its Users within the territory, scope, type of use, limitations on deployment and as otherwise set forth in the applicable Order Form and for which Customer has paid the applicable fees to process Customer Data for Customer's internal business purposes, in accordance with the Documentation and the Agreement. Customer may reproduce the Customer Hosted Software and Documentation as reasonably necessary to support its authorized use of the Customer Hosted Software, and for backup and archival purposes, provided such copies include the Dynatrace trademarks, trade names, logos, and notices present on the Customer Hosted Software and Documentation.
 - 5.2. **SaaS Subscription.** Dynatrace grants Customer, during the Term, a limited, non-exclusive, non-transferable right for its Users to access and use the SaaS Subscription including, without limitation, the reports and statistical data generated for Customer through its use of the SaaS Subscription, solely by Customer and its Users within the territory, scope, type of use, limitations on deployment and as otherwise set forth in the applicable Order Form and for which Customer has paid the applicable fees to process Customer Data for Customer's internal business purposes, in accordance with the Documentation and the Agreement.
 - 5.3. **Trial Access; Other Free Use.**

- 5.3.1. If a Customer is provided trial access to the Products ("Trial Access"), Customer may access the Products as Free Use during a fifteen (15) day period, unless otherwise extended by Dynatrace (the "Trial Period"). Trial Access is for the sole and exclusive purpose of enabling Customer to evaluate a prospective purchase of Products and not to be deployed as part of Customer's business processes. Certain features may not be available for use during the Trial Period. Unless earlier terminated, Trial Access will automatically time-out at the end of the Trial Period without further notice. Dynatrace may make other Free Use available to Customer in its sole discretion from time to time.
- 5.3.2. All Free Use, including Trial Access, is subject to the terms and conditions of the Agreement; supplemental terms and conditions made available by Dynatrace may also apply and are incorporated herein by this reference. In the event of a conflict between this Section and any other portion of the Agreement, this Section shall control. Free use is provided to Customer without charge, subject to certain limits, and otherwise as described in the Documentation. Usage over the limits established by Dynatrace for Free Use requires Customer's purchase of additional Products, resources or services. Customer agrees that Dynatrace, in its sole discretion and for any or no reason, may terminate Customer's access to the Free Use or any part thereof without prior notice, and Customer agrees that Dynatrace will not be liable to Customer or any third party for such termination. Customer is solely responsible for exporting Customer Data, if applicable, from the Products subject to Free Use prior to termination or expiration of its access to Free Use.
- 5.3.3. NOTWITHSTANDING THE SECTIONS BELOW CAPTIONED "MUTUAL WARRANTIES" AND "LIMITED WARRANTIES AND REMEDIES", TRIAL ACCESS AND OTHER FREE USE IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. DYNATRACE SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO SUCH ACCESS OR USE UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE DYNATRACE'S LIABILITY SHALL NOT EXCEED \$1,000.00. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THE AGREEMENT TO DYNATRACE AND ITS AFFILIATES FOR ANY BREACH BY CUSTOMER OF THE AGREEMENT OR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE PRODUCTS UNDER THIS SECTION 5.3.
- 5.4. **Open Source Software.** Notwithstanding the foregoing license grants, the Agreement is not meant to change or supersede the terms of any Open Source Software license applicable to any portion of the Products or any component provided with the Products. To the extent that the terms of any such license conflict with the terms set forth herein, the terms of such Open Source Software license will prevail.
- 5.5. **Government Customer and End-User Rights.** U.S federal government End-Users acknowledge and agree that Dynatrace Offerings are "commercial items" as defined in Federal Acquisition Regulation (FAR) 2.101, and any agreement between Dynatrace and Partner or its End-User as Customer is a commercial-item subcontract governed by FAR 52.244-6 or 52.212-5(e) as applicable; only the mandatory flow-down clauses of FAR 52.244-6 or 52.212-5(e) apply to Dynatrace unless further FAR and FAR Supplement clauses are specifically identified and are accepted by Dynatrace in writing. For all United States federal government Customers and End-Users, the terms of this standard commercial software license customarily provided to the public govern, as provided by FAR 12.212, Defense FAR Supplement (DFARS) 227.7202-1 and 227.7202-3, or other applicable laws and regulations. No other license to the Product is valid or enforceable unless (and solely to the extent) specifically agreed to in writing by Dynatrace. For all other government entities, license to the Products is offered only under this license; no other license to the Products is valid or enforceable unless (and solely to the extent) specifically agreed to in writing by Dynatrace.
6. **SUPPORT.** Dynatrace will provide Support for Products, subject to the payment of any applicable fees as specified in the Order Form.
7. **PROFESSIONAL SERVICES.**
 - 7.1. **Statements of Work.** Dynatrace will provide the Professional Services identified in an Order Form, which may be further described in one or more SOWs. Each SOW may include, without limitation: (a) a description of the scope and type of Professional Services; (b) the location where the Professional Services will be performed; (c) any Deliverables; (d) the schedule for performance and delivery of Deliverables; and (e) additional fees, out of pocket expenses and payment terms applicable to the Professional Services.
 - 7.2. **Deliverables.** Dynatrace retains all Intellectual Property Rights in the Deliverables and other works prepared by Dynatrace under the Agreement. Subject to Customer's compliance with the Agreement, Dynatrace hereby grants Customer a limited, non-exclusive, non-transferable, license to use the Deliverables, solely for its internal business purposes as necessary to Customer's related use of the applicable Product. Notwithstanding any other provision of the Agreement, nothing herein will be construed to assign or transfer any Intellectual Property Rights in the Dynatrace Materials or Deliverables, and to the extent Dynatrace Materials are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables. Training sessions may not be recorded without Dynatrace's prior written consent.
 - 7.3. **Non-Solicitation.** During the term of any Professional Services engagement and for twelve (12) months thereafter,

Customer agrees to the extent permitted by law that it will not, directly or indirectly, solicit for employment or employ any Dynatrace employee who is identified by Customer as a result of or in connection with the Professional Services; provided, however, that (a) non-directed newspaper or internet help wanted advertisements and search firm engagements shall not be considered solicitations hereunder, and (b) the restrictions of this clause shall not apply with respect to Dynatrace employees that initiate contact with Customer.

8. PRICING, INVOICING, AND PAYMENTS.

- 8.1. **Pricing and Invoicing.** Prices for the Dynatrace Offerings are set forth in the applicable Order Form; fees may be invoiced in advance or otherwise as specified in the Order Form. Customer may use up to the purchased consumption amount set forth in an Order Form as provided therein; additional charges will apply for additional purchases or usage in excess of the purchased consumption. Except as provided under the Agreement, Orders may not be cancelled or reduced during the Term.
- 8.2. **Payments.** Unless otherwise specified in an Order Form, Customer will pay Dynatrace the amounts set forth on any invoice issued pursuant to the Agreement in the specified currency within thirty (30) days of the date of the invoice. Payment obligations for all Dynatrace Offerings are non-cancelable, and fees are non-refundable except as otherwise provided in the Agreement. Unless otherwise provided in an Order Form, SOW or California law, Dynatrace may impose a late payment charge not to exceed the maximum rate allowed by law. If Customer fails to pay any fee due under an Order Form or the Agreement, without limiting any of its other rights or remedies, Dynatrace may suspend performance until Dynatrace receives all past due amounts from Customer. Should Dynatrace be forced to commence legal action to collect fees owed, Dynatrace is entitled to recover its attorneys' fees and other direct costs of collection. Customer understands that one or more invoices may be issued under each Order Form, that multiple Order Forms may be executed under this Master Subscription Agreement, that Customer shall have no right to set-off, deduct from or reduce payments owed under any Order Form in respect of any claim against or obligation of Dynatrace whatsoever, and that Customer's obligation to pay for Dynatrace Offerings ordered under one Order Form is separate from, and not contingent on delivery or performance of Dynatrace Offerings ordered under any other Order Form. In the event of a good faith dispute for payment on any invoice, Customer will, within fifteen (15) days of receipt of the invoice, notify Dynatrace in writing of the dispute and the parties will use commercially reasonable efforts to resolve such dispute. Undisputed amounts remain payable as provided herein and in the relevant Order Form. The existence of a dispute shall not delay, limit or restrict Dynatrace's rights to collect such amounts or enforce its right to payment.
- 8.3. **Purchase Order(s).** Customer may provide a purchase order (which must be signed by Customer to be valid) or the number or copy of its purchase order, to Dynatrace for Customer's administrative convenience. On request, Dynatrace will reference the purchase order number on its invoices, provided the purchase order references the Order Form and is received reasonably prior to the date of the invoice. Customer acknowledges that Dynatrace has the right to issue an invoice and collect payment without a corresponding purchase order. The terms and conditions stated in any purchase order delivered in connection with an Order Form (or an invoice thereunder) shall have no force or effect.
- 8.4. **Delivery.** Products are made available by electronic delivery. Products are deemed to be delivered and accepted on issuance of the license key or when electronic notice is sent that the purchased Products are available.
- 8.5. **Renewals.** Fees for any Renewal Term are subject to a fee increase of not more than a seven percent (7%) increase (or such higher percentage as is indicated by applying a generally accepted national consumer price index for the relevant period) from the annual fee level for the relevant Subscription in the immediately prior term. Fees for renewal of promotional or one-time priced Subscriptions will be at Dynatrace's applicable list price in effect at the time of the applicable renewal. Renewal fee increases will be effective, and the initial invoice amount will be due and payable, at the start of the Renewal Term. Notwithstanding anything to the contrary, any renewal that has decreased in units, term or otherwise from the prior Subscription will result in re-pricing at renewal without regard to the prior term's pricing.
9. **TAXES AND DUTIES.** Customer will pay all sales, seller's use, VAT, GST, or similar taxes ("Transaction Taxes") due under the Agreement, except for taxes based on Dynatrace net income, unless Customer provides Dynatrace with a properly completed exemption certificate. Transaction Taxes will be separately stated on a Dynatrace invoice. Except as specifically identified in an Order Form, all prices are exclusive of all taxes, duties, withholdings and other governmental assessments.

If Customer is required to pay any such taxes to taxing authorities, directly or through withholding obligations, Customer will deduct the amount of such taxes from any amounts due to Dynatrace hereunder and promptly pay that amount to the relevant taxing authority. Customer will provide Dynatrace with documentation evidencing the payment or withholding of any such taxes to the proper taxing authorities.

10. CUSTOMER RESPONSIBILITIES.

- 10.1 Customer will (a) be responsible for Users' compliance with the Agreement (including contractual usage limitations) and Documentation; (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Products, and providing any required notices to, and receiving any required consents and authorizations from, Users and persons whose Personal Data may be included in Account Data or Customer Data; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Products or Deliverables, and promptly notify Dynatrace of any such unauthorized use or access; and (d) ensure use

of the Dynatrace Properties is only in accordance with the Agreement, the Documentation, and all applicable laws and government regulations, including without limitation Applicable Privacy Laws.

- 10.2 **Restrictions.** Customer will not: (a) make any Product or Deliverable available to anyone other than Customer or Users, or use any Product or Deliverable for the benefit of anyone other than Customer as permitted by the Agreement; (b) reverse engineer, decompile, disassemble or otherwise attempt to derive or gain access to the object code, source code or other operational mechanisms or the underlying ideas, methodologies or algorithms of the Dynatrace Properties (except and to the extent such restriction is specifically prohibited by applicable law without the possibility of waiver, and then on prior written notice to Dynatrace); (c) modify, adapt, translate, copy or create derivative works based on any element of the Dynatrace Properties; (d) sell, resell, license, sublicense, distribute, make available, rent, lease, publish, assign, or otherwise commercially exploit or transfer its rights to use any Product or Deliverable to any third party, including as part of a managed services offering, service bureau, outsourcing offering, software as a service, cloud or other technology or service (unless such managed services are expressly authorized by a separately executed agreement between the parties); (e) use the Product to store or transmit Malicious Code; (f) attempt to gain unauthorized access to any Product or its related systems or networks, including through direct or indirect penetration testing; or (g) access or use any Product or Deliverable in order to (1) copy or re-use ideas, features, functions or graphics, (2) develop, offer or build a product or service that competes with any Dynatrace Offering, (3) perform or publish benchmarks or competitive analyses, or (4) determine whether Dynatrace Properties are within the scope of any patent.

11. OWNERSHIP.

- 11.1. **General.** Customer acknowledges and agrees that this is not an agreement for custom development or "work for hire", and as such, Customer will not acquire any ownership rights in the Dynatrace Properties.
- 11.2. **Dynatrace Properties; Feedback.** As between Dynatrace and Customer, all right, title and interest, including all worldwide Intellectual Property Rights, in and to the Dynatrace Properties belong to and are retained solely by Dynatrace or its licensors, as applicable. Customer hereby agrees that Dynatrace shall have the unrestricted, transferrable, worldwide, fully paid, royalty-free right and license to use, practice and exploit any and all evaluations, ideas, feedback and suggestions made by Customer to Dynatrace regarding the Dynatrace Properties (collectively, "Feedback") including the right to use and exploit all Intellectual Property Rights in the Feedback.
- 11.3. **Customer Data.** As between Dynatrace and Customer, all right, title and interest in the Customer Data and all Intellectual Property Rights therein, belong to and are retained solely by Customer. Customer hereby grants to Dynatrace a limited, non-exclusive, royalty-free, worldwide license to use the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Dynatrace to provide the Dynatrace Offerings to Customer, or as otherwise authorized by Customer in writing. Customer agrees that Dynatrace may monitor and collect data from Customer's use of the Dynatrace Offerings for license compliance, to improve Dynatrace's current and future offerings, to prevent fraud and illegal activity, and if aggregated and not identifying Customer or any individual, for industry analysis, benchmarking, and analytics.

12. WARRANTIES.

- 12.1. **Mutual Warranty.** Each party represents, warrants and covenants that: (a) it has the full power and authority to enter into the Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; and (b) its acceptance of and performance under the Agreement will not breach any agreement with any third party or any obligation owed by it to any third party.
- 12.2. **Limited Warranties and Remedies.** The following limited warranties apply only to the extent that Customer has purchased the applicable Dynatrace Offering:
- 12.2.1. **Dynatrace Products.** Dynatrace warrants that the Products will operate substantially in compliance with the applicable Documentation during the Term, provided that the Products have been properly installed and always used as described in the applicable Documentation and have not been modified or added to other than by Dynatrace. If the Product does not perform as warranted, Dynatrace will undertake, at its sole option and as Customer's exclusive remedy for breach of this warranty, to (a) correct the non-conformance, (b) replace the Customer Hosted Software, or (c) if Dynatrace determines that it is not commercially reasonable or possible to correct a material non-conformity within a reasonable time from receipt of written notice from Customer detailing the warranty claim, the Order Form for the affected Product will be cancelled and Dynatrace will refund any unused prepaid fees for the affected Product.
- 12.2.2. **Professional Services.** Dynatrace will use commercially reasonable efforts to perform the Professional Services and deliver the Deliverables according to the specifications, if any, set forth in the relevant Order Form and SOW. If Dynatrace fails to do so and Customer notifies Dynatrace within thirty (30) days of the date the Professional Services were performed, Dynatrace will undertake at its sole option and as Customer's exclusive remedy for breach of this warranty, to (a) re-perform the non-conforming Professional Services, or (b) if Dynatrace determines that re-performance is not commercially reasonable, the SOW for the affected Professional Services will be cancelled and Dynatrace will refund to Customer any pre-paid fees corresponding to the affected Professional Services.

- 12.3. **WARRANTY DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED ABOVE IN SECTION 12.1

AND 12.2, DYNATRACE DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT FACTORS SUCH AS CHANGES TO CUSTOMER'S MONITORING PROFILE, NETWORK ISSUES, VERSIONS OF CUSTOMER APPLICATIONS, CORRUPTED, INCOMPLETE AND/OR INTERRUPTED DATA RECEIVED BY DYNATRACE FROM CUSTOMER'S SITE(S), MAY HAVE A MATERIAL IMPACT ON THE ACCURACY, RELIABILITY, AVAILABILITY AND/OR TIMELINESS OF RESULTS, AND DYNATRACE SHALL NOT BE RESPONSIBLE FOR ANY SUCH FACTORS. DYNATRACE DOES NOT WARRANT THAT: (A) THE USE OF ANY DYNATRACE PRODUCT OR DELIVERABLES WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE PRODUCTS OR DELIVERABLES OR ANY INFORMATION OBTAINED THROUGH THE PRODUCTS OR DELIVERABLES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) ANY STORED CUSTOMER DATA WILL BE ACCURATE OR RELIABLE; OR (D) THE PRODUCTS OR DELIVERABLES WILL BE UNINTERRUPTED, ERROR-FREE OR VIRUS-FREE, OR THAT ERRORS OR DEFECTS THEREIN WILL BE CORRECTED. DYNATRACE IS NOT RESPONSIBLE FOR THE IMPACT ON THE ACCURACY, RELIABILITY, AVAILABILITY AND/OR TIMELINESS OF RESULTS OF FACTORS OUTSIDE ITS REASONABLE CONTROL, INCLUDING CHANGES TO CUSTOMER'S MONITORING PROFILE, CUSTOMER NETWORK ISSUES, VERSIONS OF CUSTOMER APPLICATIONS, CORRUPTED, INCOMPLETE AND/OR INTERRUPTED DATA RECEIVED FROM CUSTOMER'S SITE(S) OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DYNATRACE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

13 DYNATRACE INDEMNITY.

- 13.1. **IP Claims.** Dynatrace, at its expense, will defend Customer and its Affiliates and their respective officers, directors and employees (the "Customer Indemnified Parties") from and against all actions, proceedings, claims and demands by a third party (a "Third-Party Claim") alleging that the Product or Deliverable received by Customer under the applicable Order Form, as of the delivery date, infringes any copyright or misappropriates any trade secret and will pay all damages, costs and expenses, including attorneys' fees and costs (whether by settlement or final award) incurred by the Customer Indemnified Parties directly from any such Third-Party Claim. Together with the mitigation obligations set forth below, this represents Dynatrace's entire liability, and Customer's sole and exclusive remedy, for infringement of any intellectual property or proprietary rights by any Dynatrace Product, Deliverable or otherwise. Notwithstanding anything to the contrary in this Agreement, the foregoing obligations will not apply with respect to a claim of infringement that arises out of (a) infringing or illegal Customer Data; (b) use of the Dynatrace Product in combination with any software, hardware, network, technology or system not supplied by Dynatrace where the alleged infringement relates to such combination; (c) any modification or alteration of the Product other than by Dynatrace; (d) Customer's continued use of the Product after Dynatrace notifies Customer to discontinue use because of an infringement claim; (e) use of the Product other than as authorized under the Agreement; or (f) failure to implement an update, upgrade or bug fix that Dynatrace has provided at no charge where such implementation may avoid infringement.
- 13.2. **Mitigation.** If any Third-Party Claim which Dynatrace is obligated to defend has occurred, or in Dynatrace's determination, is likely to occur, Dynatrace may, at its option: (a) obtain for Customer the right to continue using the Product; (b) replace or modify the Product so that it avoids such claim; or (c) if such remedies are not reasonably available, terminate Customer's license for the infringing Product or Deliverable and provide Customer with a refund of any unused fees Customer prepaid to Dynatrace for the infringing Product or Deliverable, provided however that with respect to infringing Products licensed to Customer for a perpetual term, such refund is pro-rated equally over a thirty-six (36) month period from the date of delivery of such Product. If such termination materially affects Dynatrace's ability to meet its remaining obligations under the relevant Order Form then Dynatrace may, at its option and upon written notice, terminate the Order Form, in whole or in part, and refund such other unused fees prepaid to Dynatrace for Dynatrace Offerings terminated.
- 14 **CUSTOMER INDEMNITY.** Customer will, at its expense, defend Dynatrace, its Affiliates, and their respective officers, directors and employees (the "Dynatrace Indemnified Parties") from and against any and all Third-Party Claims which arise out of or relate to a claim or threat that the Customer Data infringes, misappropriates or violates any third party's privacy or Intellectual Property Rights. Customer will pay all damages, fines, costs and expenses, including attorneys' fees and costs (whether by settlement or award of by a final judicial judgment) incurred by the Dynatrace Indemnified Parties from any such Third-Party Claim.
- 15 **INDEMNIFICATION PROCEDURES.** Either Party's respective indemnification obligations (each an "Indemnifying Party") are conditioned upon: (a) being promptly notified in writing of any Third-Party Claim, (b) having the sole and exclusive right to control the defense and settlement of the Third-Party Claim, and (c) the Dynatrace or Customer Indemnified Parties (as applicable the "Indemnified Party") providing all reasonable assistance (at the Indemnifying Party's expense and reasonable request) in the defense of such Third-Party Claim. In no event will an Indemnified Party settle any claim without the Indemnifying Party's prior written approval. The Indemnified Party may, at its own expense, engage separate counsel to advise it regarding a Third-Party Claim and to participate in the defense of the Third-Party Claim, subject to the Indemnifying Party's right to control the defense and settlement.

16 CONFIDENTIALITY.

- 16.1. **Definition of Confidential Information.** "Confidential Information" means any and all non-public information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") in any form or medium, whether oral, written, graphical or electronic, pursuant to the Agreement, that is designated confidential or proprietary, or that a reasonable person should understand is confidential or proprietary. Confidential Information includes, but is not limited to: the terms of the Agreement, information related to either party's technology, products, know-how, trade secrets, whether or not patentable or copyrightable, security reports, specifications, customers, business plans, pricing information, promotional and marketing activities, finances and other business affairs, Dynatrace Properties and anything else created or developed by Dynatrace in connection with the Agreement and the Dynatrace Offerings. Customer will not remove or destroy any proprietary markings or restrictive legends placed upon or contained in the Dynatrace Properties. The foregoing notwithstanding, Confidential Information excludes business contact information such as job/position title; department, team or functional group name; business telephone, mobile or fax numbers; and business email addresses.
- 16.2. **Nondisclosure Obligations.** The Receiving Party will not use the Confidential Information of the Disclosing Party for any purpose other than as necessary to fulfill its obligations or to exercise its rights under the Agreement, and by Dynatrace to improve the Dynatrace Offerings (the "Purpose"). The Receiving Party will not disclose Confidential Information of the Disclosing Party to any third party; provided that the Receiving Party may disclose Confidential Information to its partners, officers, directors, employees, contractors, Affiliates, agents, advisors, or representatives ("Representatives") who need access to such Confidential Information for the Purpose and who are subject to written confidentiality obligations at least as stringent as the obligations set forth in this Section 16. Each party accepts responsibility for the actions of its Representatives and will protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but with no less than reasonable care. The Receiving Party will promptly notify the Disclosing Party upon becoming aware of a breach or threatened breach hereunder and will cooperate with any reasonable request of the Disclosing Party in enforcing its rights.
- 16.3. **Exceptions to Confidential Information.** "Confidential Information" does not include information which: (a) is known by the Receiving Party prior to receipt from the Disclosing Party, without any obligation of confidentiality; (b) becomes known to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) lawfully becomes publicly known or otherwise publicly available, except through a breach of the Agreement; or (d) is independently developed by the Receiving Party without use of or access to 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, and will notify the Disclosing party (if legally permissible) to enable the Disclosing party to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party's expense.
- 16.4. **Injunctive Relief.** The parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Disclosing Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

17 LIMITATION OF LIABILITY.

- 17.1. EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS, CUSTOMER'S BREACH OF SECTION 10.2 (RESTRICTIONS), OR EITHER PARTY'S INDEMNITY OBLIGATIONS, THE CUMULATIVE LIABILITY OF EACH PARTY AND ITS AFFILIATES WILL NOT EXCEED THREE (3) TIMES THE ANNUAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE APPLICABLE DYNATRACE OFFERING AT THE TIME THE CLAIM ARISES. FOR PRODUCTS LICENSED TO CUSTOMER FOR A PERPETUAL TERM, THE LIABILITY CAP WILL BE BASED ON AN EQUAL PRORATION OF THE PREPAID AMOUNT OVER THIRTY-SIX (36) MONTHS FROM DELIVERY OF THE PRODUCTS.
- 17.2. EXCEPT CUSTOMER'S BREACH OF SECTION 10.2 (RESTRICTIONS) OR EITHER PARTY'S BREACH OF SECTION 16 (CONFIDENTIALITY), NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, LOST PROFITS, LOSS OF DATA OR COST OF COVER, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- 17.3. THE WAIVERS AND LIMITATIONS IN THIS SECTION 17 APPLY REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY ASSERTED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY IN THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.
- 17.4. NEITHER PARTY LIMITS OR EXCLUDES ITS LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE, (B) FRAUDULENT MISREPRESENTATION, OR (C) ANY OTHER LIABILITY TO THE EXTENT THAT SUCH LIABILITY CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW.

18 TERM AND TERMINATION.

- 18.1. **Master Subscription Agreement.** This Master Subscription Agreement commences on the Effective Date and continues for a period of five (5) years thereafter, unless terminated earlier as provided in this Section.

- 18.2. **Term of Order Form; SOW.** Each Order Form or SOW incorporating this Master Subscription Agreement begins on its effective date and, unless earlier terminated under Section 18.3, continues in effect through the end date of the Term set forth therein, or for SOWs, the Service Period as defined therein. Each Subscription will renew for additional periods (the "Renewal Term") upon the written mutual agreement of both parties.
- 1.1. **Termination for Cause.** Either party may terminate this Master Subscription Agreement, or any Order Form or SOW incorporating it, in whole or in part, for cause: (a) on thirty (30) days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period (or immediately if the material breach is not capable of being remedied); or (b) immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or an assignment for the benefit of creditors. In addition, Dynatrace may terminate this Master Subscription Agreement, and/or any or all Order Forms or SOWs with Customer incorporating it, immediately on written notice in the event: (1) Customer fails to pay any amounts due hereunder, and such failure continues more than 10 days after written notice by Dynatrace thereof; or (2) Customer or its Users infringe or misappropriate Dynatrace's Intellectual Property Rights, including without limitation use of a Dynatrace Offering other than as authorized under the Agreement.
- 18.3. **Termination by Customer due to non-appropriation of funds.** The Customer's obligations for payment under this Agreement is contingent upon and limited by the availability of the Customer receiving funding from which payment can be made. In the event of non-appropriation of funds, The Customer shall immediately notify Dynatrace in writing; and the relevant Order Form shall be deemed terminated, have no further force, and effect.
- 18.4. **Other Termination.** In the event it becomes illegal for Dynatrace to perform any aspect(s) of the Agreement, then Dynatrace will be excused from performance or may suspend or terminate the Agreement to the extent necessary to comply with applicable laws, rules or regulations, without any liability for breach or termination.
- 18.5. **Effect of Termination or Expiration of Agreement.**
 - 18.5.1. **Termination or Expiration of Master Subscription Agreement.** Termination or expiration of this Agreement will not affect any existing Order Forms.
 - 18.5.2. **Termination of Order Form; SOW.** On termination or expiration of an Order Form (other than the termination by Customer under Section 18.3 above of an Order Form for Product licensed for a perpetual term), Customer's subscription or license to the Product purchased thereunder will terminate and Customer and Users will immediately cease to use the SaaS Subscription and either uninstall or destroy the Customer Hosted Software. Upon request by Dynatrace, Customer will certify in writing to Dynatrace that all copies of such Customer Hosted Software are no longer in use. Dynatrace will make any remaining Customer Data stored in the SaaS Subscription available on request by Customer in the format in which it is stored in the SaaS Subscription for up to thirty-five (35) days following the effective date of termination or expiration. After such period, Dynatrace will have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control. For the avoidance of doubt, except in the case of termination following Customer's infringement of Products as provided in Section 18.3 above, termination of one Order Form will not terminate this Master Subscription Agreement or any other Order Form or the terms incorporated therein.
 - 18.5.3. **Refund or Payment upon Termination for Cause.** If an Order Form or SOW is terminated by Customer in accordance with Section 18.3 (Termination for Cause) or by Dynatrace in accordance with Section 18.4 (Other Termination), Dynatrace will refund Customer any unused prepaid fees for the Dynatrace Offering terminated, provided however that with respect to Products licensed to Customer for a perpetual term, such refund is pro-rated equally over a thirty-six (36) month period from the date of delivery of the Product. If an Order Form or SOW is terminated by Dynatrace in accordance with Section 18.3 (Termination for Cause), Customer will immediately pay Dynatrace any unpaid fees and expenses covering the remainder of the term of such terminated Dynatrace Offering.
- 19 **SURVIVAL.** The following provisions will survive expiration or termination of the Agreement: (a) any payment obligations of Customer hereunder; (b) Section 3 (Partner Transactions), Section 7.3 (Non-Solicitation), Section 8 (Pricing, Invoicing, and Payments), Section 9 (Taxes and Duties), Section 10 (Customer Responsibilities), Section 11 (Ownership), Section 13 (Dynatrace Indemnity), Section 14 (Customer Indemnity), Section 15 (Indemnification Procedures), Section 16 (Confidentiality), Section 17 (Limitation of Liability), Section 18 (Term and Termination), Section 26 (Electronic Communication; Notices), Section 29 (Governing Law), and (c) any rights (including surviving perpetual licenses) or obligations which are expressed to, or by their nature will, survive. The expiry or termination of the Agreement does not affect any rights which accrued before the date of expiry or termination.
- 20 **LICENSE COMPLIANCE.** Customer agrees that Dynatrace tracks and records usage of Customer's purchased consumption units, licenses, subscriptions and services. Customer will, without prejudice to other rights of Dynatrace, address any non-compliance identified by Dynatrace by promptly paying additional fees at Dynatrace's then-current list price and any reinstatement charges for lapsed Subscriptions.
- 21 **INDEPENDENT CONTRACTORS.** The parties are independent contractors and will so represent themselves in all regards.

22 FORCE MAJEURE. Excluding payment obligations, If either Party is unable to comply with any provision of the Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such Party shall not be held liable for such failure to comply. Customer payment obligations are excused under this Section only to the extent payments are entirely prevented by the force majeure event.

23 ASSIGNMENT. Neither party may transfer or assign this Master Subscription Agreement, or any Order Form or agreement incorporating it, in whole or in part, without the other's prior written consent. A transfer or assignment upon a change of control, through a merger, consolidation, reorganization, operation of law or otherwise, will be deemed a transfer or assignment for purposes of the Agreement that requires the other party's prior written consent. Notwithstanding the foregoing, Dynatrace may, without Customer's consent assign this Master Subscription Agreement or any Order Form or agreement incorporating it, to any of its Affiliates, or to an entity who acquires all or substantially all of its business or assets, or in connection with a change in control of Dynatrace (through merger, consolidation, reorganization, operation of law or otherwise). Any assignment in violation of this Section will be void *ab initio* and of no effect. Subject to the foregoing, the Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.

24 COMPLIANCE WITH LAWS.

- 24.1. Dynatrace will comply with all laws and regulations applicable to its provision of the Dynatrace Offering. However, Dynatrace is not responsible for compliance with any laws or regulations that apply to Customer or Customer's industry that are not otherwise applicable to Dynatrace (e.g., Dynatrace does not determine whether Customer Data includes information subject to any specific law or regulation).
- 24.2. Customer must comply with all laws and regulations applicable to its use of the Dynatrace Offerings, including laws related to privacy, data protection and confidentiality of communications. Customer is responsible for providing notice and obtaining all necessary rights for Dynatrace to provide the Products and Deliverables, implementing and maintaining privacy protections and security measures for components that Customer provides or controls, and for determining whether the Products and Deliverables are appropriate for storage and processing of information subject to any specific law or regulation.

25 DATA PRIVACY AND SECURITY.

25.1. General.

- 25.1.1. Dynatrace has implemented and will maintain and follow appropriate technical and organizational measures intended to protect Personal Data against accidental, unauthorized, or unlawful access, disclosure, damage, alteration, loss, or destruction. Customer will ensure that all Account Data is current and accurate throughout the applicable order Term, will limit Personal Data in Account Data to only the information necessary to create and administer its customer account and in no event include Restricted Information. Customer is responsible for its configuration of data privacy settings in the Products as described in the Documentation, its secure use of the Products and Deliverables, including securing its account authentication credentials, protecting the security of Customer Data and Personal Data when in transit to and from the SaaS Subscription or Dynatrace and taking any appropriate steps to securely encrypt or backup any Customer Data and Personal Data uploaded to the SaaS Subscription or otherwise provided to Dynatrace.
- 25.1.2. If Dynatrace becomes aware of any unlawful access to any Personal Data stored on Dynatrace equipment or in a Dynatrace facility, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Personal Data (each a "Security Incident"), Dynatrace will notify Customer of the Security Incident without undue delay (provided that such notification may be delayed as required by a law enforcement agency) and take commercially reasonable steps to comply with its obligations under Applicable Privacy Laws pertaining to responding to a Security Incident. Dynatrace's obligation to report or respond to a Security Incident under this Section is not an acknowledgement by Dynatrace of any fault or liability with respect to the Security Incident. Customer must notify Dynatrace without undue delay, about any possible misuse of its accounts or authentication credentials or any security incident related to the SaaS Subscription.
- 25.1.3. Customer acknowledges that use of the Dynatrace Offerings does not require and is not intended for the collection, storage, or other processing of Restricted Information; therefore, Customer agrees not to provide Restricted Information to Dynatrace. Failure to comply with this requirement will be deemed cause for termination under Section 18.3(B) in Dynatrace's sole discretion. If Restricted Information is inadvertently provided, Dynatrace will treat it in the same way as it treats Personal Data under the Agreement. Customer will use reasonable efforts to restrict the inclusion of other Personal Data in Customer Data. The Documentation provides further information on data privacy settings in the Products.

25.2. Data Processing Agreement. To the extent Dynatrace processes any Personal Data on Customer's behalf that is subject to the GDPR, and the parties have not executed a separate data processing agreement that complies with Article 28 of the GDPR, the terms of the Data Processing Agreement (GDPR), located at <https://www.dynatrace.com/company/trust-center/customers/>, are incorporated by reference and shall apply.

25.3. CCPA. To the extent Dynatrace receives personal information on Customer's behalf that is subject to the CCPA,

Dynatrace: (a) certifies that it understands and will comply with its obligations as a service provider under the CCPA, and (b) will not: (1) sell such personal information, or (2) retain, use, or disclose such personal information other than for the specific business purpose of performing the services for Customer as contemplated under the Agreement or as otherwise permitted by the CCPA.

Customer is responsible for ensuring its compliance with the requirements of the CCPA in its use of the services, Products and Deliverables Dynatrace provides to Customer and its own processing of personal information.

The terms used in this Section 25.3 and not otherwise defined in the Agreement have the meanings given under the CCPA.

- 26 ELECTRONIC COMMUNICATION; NOTICES.** Dynatrace may use electronic means to communicate with Customer related to its performance of obligations under the Agreement, including but not limited to notices posted in the Product and Support portal, online Documentation, in-product chat, RSS subscriptions to be notified of updates and email. For the purpose of the Agreement, Customer consents to receive communications from Dynatrace in an electronic form and agrees that all terms and conditions, agreements, notices, disclosures and other communications that Dynatrace provides to Customer electronically constitute a written communication. Either party may give notice by written communication, sent by first class postage prepaid mail or nationally recognized overnight delivery service, to the other party's address as specified in the Agreement. Customer may send notices to Dynatrace at 1601 Trapelo Road, Suite 116, Waltham, MA 02451, Attention: General Counsel, with a copy to legalnotices@dynatrace.com. Dynatrace may send notices to Customer at the address set forth above. If Dynatrace requires an email address from Customer, Customer is responsible for providing and updating its most current email address for the purpose requested. Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section.
- 27 CUSTOMER REFERENCE.** Customer agrees that Dynatrace may reference Customer as a Dynatrace customer, subject to Customer's trademark and logo usage guidelines provided by Customer, and that occasionally, after Customer review, Dynatrace may issue a press release and case study.
- 28 INSURANCE.** Without limiting or diminishing Dynatrace's obligation to indemnify in Section 13 of this Master Subscription Agreement, Dynatrace shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds. Additional Insureds coverage only applies to the Commercial General Liability, Vehicle and Umbrella lines of coverage.
- 28.1** Workers' Compensation: If Dynatrace has employees as defined by the State of California, Dynatrace shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.
- 28.2** Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, , products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Dynatrace's performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.
- 28.3** Vehicle Liability: If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then Dynatrace shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.
- 28.4** General Insurance Provisions - All lines:
- 28.4.1** Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- 28.4.2** Dynatrace shall cause Dynatrace's insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to

such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Dynatrace shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section.

28.4.3 It is understood and agreed to by the parties hereto that the Dynatrace's insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

28.4.4 If, during the term of this Agreement or any extension thereof, there is a material change in the scope of Professional Services; or, there is a material change in the equipment, to the extent applicable, to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement upon written notice, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the Dynatrace has become inadequate.

28.4.5 The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

28.5 Cyber Liability: Dynatrace shall procure and maintain for the duration of the contract insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work hereunder by Dynatrace, its agents, representatives, or employees. Dynatrace shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data. Dynatrace shall procure and maintain cyber liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Dynatrace in this Agreement and shall include, but not limited to, claims involving, including but not limited to infringement of trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

29 GOVERNING LAW. The Agreement will be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of law principles. The parties hereby consent to the personal and exclusive jurisdiction of the federal and state courts of the State of California. If any provision of the Agreement is contrary to and in violation of an applicable law of California, such provision will be considered null and void to the extent that it is contrary to such law, but all other provisions of the Agreement will remain in effect. The parties agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the Agreement.

30 EXPORT CONTROLS. Customer agrees to comply with applicable U.S. Government, EU and UN export and re-export laws, regulations and requirements. Customer further certifies that it will not export or re-export any software that may be subject to such laws, regulations and requirements, to any location, or to any end-user, or for any end-use, without first obtaining any export license, permit or other approval that may be required. Without limiting the foregoing, Customer specifically agrees that it will not export or re-export any software subject to export and re-export laws to (a) any Group E country listed in SUPPLEMENT NO. 1 TO PART 740 – COUNTRY GROUPS and the Crimea Region of Ukraine, or (b) any company, entity or person listed as a party of concern found here http://2016.export.gov/ecr/eg_main_023148.asp, or (c) for any end-use related to the development, production or use of nuclear, chemical or biological weapons or missiles.

31 ANTI-CORRUPTION. The parties agree to:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption;
- (b) not engage in any activity, practice or conduct which would constitute an offence under applicable laws, statutes and regulations relating to anti-bribery and anti-corruption;
- (c) have and shall maintain in place throughout the Term its own policies and procedures, including adequate procedures under applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, to ensure compliance with these laws and will enforce them where appropriate;
- (d) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received in connection with the performance of the Agreement; immediately notify the other party in writing if a foreign public official becomes an officer or employee of the party or acquires a direct or indirect interest in the party;
- (e) for the purpose of this Section 31 (Anti-Corruption), the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with applicable laws, statutes and regulations relating to anti-bribery and anti-corruption. For the purposes of this

Section 30 (Anti-Corruption), a person associated with a party includes any subcontractor of the party.

- 32 DISPUTES.** The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.
- 33 MISCELLANEOUS.** The Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes any other agreements, discussions, proposals, representations or warranties, written or oral, with respect to the subject matter hereof. Any other terms stated in any purchase order delivered to Dynatrace in connection with an Order Form or invoice thereunder shall have no effect. Each party acknowledges that it has reviewed and accepted the terms of the Agreement and agrees that contractual ambiguities are not to be construed in favor of or against any party based on its role in drafting the Agreement. 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. Failure or delay by either party in exercising any right or remedy will not constitute a waiver. If any provision of the Agreement will be declared invalid, the entire Agreement will not fail on its account, and that provision will be severed, with the balance of the Agreement continuing in full force and effect. The Agreement may only be amended in writing signed by both parties.
- 34 COUNTERPARTS & ELECTRONIC SIGNATURES.** This Agreement may be signed in multiple counterparts, each of which will be considered an original, and all of which will be considered one and the same document. This Agreement may be executed by facsimile or electronic (whether digital or encrypted) signature. Each Party represents and warrants on its own behalf that the individual signing this Agreement on its behalf is fully authorized to sign on behalf of and bind it, and that it has the power and authority to enter into it. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party to this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17, for executing this Agreement. The parties further agree that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

Agreed and accepted by:
COUNTY OF RIVERSIDE, a political subdivision
 of the State of California


 Authorized Signature

Karen Spiegel

Name

Chair Board of Supervisors

Title

JUN 29 2021
 Date

Agreed and accepted by:
DYNATRACE LLC, a Delaware limited liability company

DocuSigned by:

 Authorized Signature

Nicole Heideman

Name

Managing Counsel, Americas

Title

May 21, 2021 | 16:18:33 EDT

Date

FORM APPROVED COUNTY COUNSEL

BY  **RYAN D YABKO** **6/10/21** **DATE**

ATTEST:
 KECIA R. HARPER, Clerk
 By  **DEPUTY**

AGREEMENT #ASARC-PO-0003007-05/26

for

Dynatrace Managed DEM Units and Dynatrace Managed Host Units

between

COUNTY OF RIVERSIDE

and

INSIGHT PUBLIC SECTOR, INC.

This Agreement is entered between the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"), and INSIGHT PUBLIC SECTOR, INC., an Illinois corporation (herein referred to as "RESELLER"), for the purchase of Dynatrace Managed DEM Units and Dynatrace Managed Host Units, which shall be effective upon full execution by both parties based on RESELLER's response to RFQ # ASARC-2021-RFQ-0000220 for Dynatrace Software. The parties agree as follows:

1. Description of Services:

1.1. COUNTY will purchase **Dynatrace Managed DEM Units and Dynatrace Managed Host Units** products through the RESELLER. Terms and conditions between the COUNTY and the Manufacturer of the products are governed by Dynatrace "MSA" General Terms and Conditions.

2. Period of Performance:

2.1. This Agreement is for an initial one-year subscription purchase in the amount of One Hundred Five Thousand Four Hundred Sixty-One Dollars and One Cent (\$105,461.01). This Agreement shall be effective upon full execution by both parties and shall expire after the product is received, accepted and installed by the County. The Agreement may be renewed for up to four additional one-year subscription periods through May 10, 2026 via a written amendment executed by both COUNTY and Reseller. Pricing for years two through five will be provided by the RESELLER to the COUNTY prior to the renewal. Annual increases shall not exceed the Consumer Price Index – All Consumers, All Items – Greater Los Angeles, Riverside and Orange County areas and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3. Compensation

3.1. The COUNTY shall pay the RESELLER for products provided by Insight Public Sector, Inc. incurred in accordance with the terms of this Agreement. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount (as set forth in section 2 above) and shall have no obligation to purchase any specified amount of services or products.

4. Hold Harmless/Indemnification:

- 4.1. RESELLER shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services, or acts or omissions, of RESELLER, its officers, employees, subcontractor, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. RESELLER shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.
- 4.2. With respect to any action or claim subject to indemnification herein by RESELLER. RESELLER shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes RESELLER indemnification to Indemnitees as set forth herein.
- 4.3. RESELLER obligation hereunder shall be satisfied when RESELLER has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

5. Termination:

- 5.1. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice served upon the RESELLER stating the extent and effective date of termination.
- 5.2. COUNTY may, upon five (5) days written notice terminate this Agreement for RESELLER default, if RESELLER refuses or fails to comply with the terms of this Agreement or fails

to make progress that may endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3. RESELLER rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by RESELLER; or in the event of RESELLER unwillingness or inability for any reason whatsoever to perform the terms of this Agreement.

6. Alteration or Changes to the Agreement

6.1. The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

7. Notices

7.1. All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

Assessor-County Clerk-Recorder
Attention: Irene Maese
6221 Box Springs
Riverside, CA. 92507

RESELLER

Insight Public Sector, Inc.
Attention: Jesse Moralez
6820 S. Harl Ave.
Tempe, AZ 85283-4318

8. Insurance:

8.1. Without limiting or diminishing the RESELLER'S obligation to indemnify or hold the COUNTY harmless, RESELLER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their

respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If the RESELLER has employees as defined by the State of California, the RESELLER shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of RESELLER'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. General Insurance Provisions - All lines:

- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- 2) The RESELLER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at

the election of the County's Risk Manager, RESELLER'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

- 3) RESELLER shall cause RESELLER'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. RESELLER shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.
- 4) It is understood and agreed to by the parties hereto that the RESELLER'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- 5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to

be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the RESELLER has become inadequate.

- 6) RESELLER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.
- 8) RESELLER agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

9. Disputes:

- 9.1. The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. The RESELLER shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

10. Force Majeure:

- 10.1. If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

11. General:

- 11.1. This Agreement, including any attachments or exhibits, constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral

or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

11.2. The following documents are attached to and incorporated into this Agreement:

11.2.1. Attachment A: Insight Public Sector, Inc. Quote

11.2.2. Attachment B: Master Subscription Agreement (MSA)

11.3. This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

11.4. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and any terms or conditions set forth in any of the attachments, purchase order(s), or other document relating to the transactions contemplated by this Agreement, the terms and conditions set forth in this Agreement shall prevail.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

By: Karen S. Spiegel
Karen Spiegel, Chair
Board of Supervisors

Dated: JUN 29 2021

INSIGHT PUBLIC SECTOR, INC.

By: Michael L. Walker
Michael Walker
Assistant Secretary IEI

Dated: 5/26/21

ATTEST:

Kecia Harper

Clerk of the Board

By: [Signature]
Deputy

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By: [Signature]
Ryan Yabko
Deputy County Counsel

Dated: 6/11/21