SUBSCRIPTION AGREEMENT

THE AGREEMENT GOVERNS THE ACQUISITION, ACCESS AND USE OF DYNATRACE OFFERINGS, INCLUDING TRIAL ACCESS OR FREE USE, AND ACCESS OR USE OBTAINED THROUGH A DYNATRACE-AUTHORIZED PARTNER.

CUSTOMER ACCEPTS AND AGREES TO THE TERMS BELOW BY (1) CLICKING AN "I ACCEPT" OR "I AGREE" OR SIMILAR BUTTON OR CHECKBOX TO INDICATE ACCEPTANCE, (2) EXECUTING OR OTHERWISE ACCEPTING AN ORDER FORM OR OTHER DOCUMENT THAT REFERENCES THIS SUBSCRIPTION AGREEMENT, (3) ACCESSING OR USING THE DYNATRACE OFFERINGS ON AN UNPAID BASIS, INCLUDING BUT NOT LIMITED TO TRIAL ACCESS, FREE USE, SPECIAL OFFERS, OR OTHER PROOF OF CONCEPT USE, OR (4) ACCESSING OR USING DYNATRACE OFFERINGS OBTAINED THROUGH A PARTNER.

The Agreement is effective between Customer and Dynatrace as of the date of the last signature on an Order Form incorporating this Subscription Agreement, or if not signed, on Customer's acceptance of the Agreement.

1.   DEFINITIONS. The following definitions shall apply unless otherwise stated:

1.1   "Account Data" means data about Customer provided to Dynatrace in connection with the administration of the Customer's Dynatrace account, or as necessary for Customer to use the Dynatrace Offerings. For example, first and last name, username, and email address of a User, or other customer-provided contact, license consumption data, and billing information.

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 each Order Form that incorporates this Subscription Agreement, including all attachments and referenced terms and conditions.

1.4   "Customer" means (a) in the case of an individual accepting the Agreement in such individual's capacity, such individual; (b) the entity or organization listed on an Order Form or on whose behalf the Agreement is otherwise accepted; and (c) any other entity or organization deemed to be a Customer by the terms of this Subscription Agreement.

1.5   "Customer Data" means data that is ingested into, and processed by, the Dynatrace Platform from Customer's data sources, and the data insights generated by the Dynatrace Platform for the benefit of Customer, excluding Dynatrace Materials. For example, the Customer's monitoring data and the underlying root cause of a Customer system performance problem.

1.6   "Data Protection Law" means all data protection laws and regulations applicable to the processing of Customer Personal Data under the Agreement.

1.7   "Documentation" means the then-current technical and non-technical specifications applicable to the Dynatrace Platform contained in the user, system, specification, support and configuration documentation made generally available to Dynatrace customers.

1.8   "Dynatrace" means the Dynatrace entity specified in the Order Form. If no Order Form applies, Dynatrace means the Dynatrace entity, if any, organized in the country where the Customer is headquartered, or if no such entity exists, Dynatrace LLC, a Delaware limited liability company.

1.9   "Dynatrace Materials" means all trainings, dashboards, presentations, report templates or other templates, documentation, materials, methodologies, processes, techniques, ideas, concepts, trade secrets, know-how, works of authorship, formulas, algorithms, databases, scripts, configurations, logos, symbols, designs, and other inventions embodied in the Dynatrace Platform and/or that Dynatrace develops or supplies in connection with the Dynatrace Offerings, including all copies, portions, modifications and improvements thereof, and all derivative works of any of the foregoing. Dynatrace Materials do not include Customer Data.

1.10   "Dynatrace Offerings" means the Dynatrace Platform, Support, Professional Services, and Dynatrace Materials.

1.11   "Dynatrace Platform" (may be referred to as "Product/s") means the Dynatrace software intelligence platform products, capabilities and services as identified in an Order Form, the Documentation, and any updates to

the platform provided as part of Support or during the Term. The Dynatrace Platform may be provided in the form of software in object-code, and/or cloud and hosted services provided by or on behalf of Dynatrace and in the form of electronic reports, analyses, and statistical and performance-related information.

1.12 "Intellectual Property Rights" means patents and patent rights, rights of priority, mask work rights, copyrights, moral rights, trade secrets, know-how, trademarks, trade names, logos, service marks, designs and other designations of source, any other form of intellectual, industrial property, proprietary or other protected rights in connection therewith, recognized in the world, whether or not registered, for the full period thereof, and all extensions and renewals thereof, and all applications for registration in connection with the foregoing.

1.13 "Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

1.14 "Order Form" means each Dynatrace order form, product schedule, quote or other order document which incorporates this Subscription Agreement and identifies the Dynatrace Offerings ordered by Customer and agreed to between Dynatrace and Customer. An Order Form may include an SOW.

1.15 "Personal Data" means any information that by itself or in combination does or can identify a specific individual or as defined in the Data Protection Law.

1.16 "Professional Services" means any implementation, training, consulting, performance analysis or other professional services provided by Dynatrace as set forth in an Order Form or SOW.

1.17 "Restricted Information" means any confidential or Personal Data 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 Data Protection Law, 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.

1.18 "Service Period" means the stated period of time that Professional Services are to be provided to Customer as set forth in an Order Form.

1.19 "Subsidiary" means a subsidiary which is greater than fifty (50%) percent owned by a party.

1.20 "Support" means the updates for supported versions of the Dynatrace Platform generally made available from time to time, and technical support services other than Professional Services, provided by Dynatrace in connection with the Dynatrace Platform.

1.21 "Term" means the initial subscription period to the Dynatrace Platform and Support as set forth in an Order Form together with any renewal of that subscription period (each a "Renewal Term").

1.22 "Third-Party User" is a third-party contractor or vendor designated by Customer as a User in accordance with Section 3.

1.23 "Usage Data" means data and related analysis about deployment, configuration, operation, use, maintenance, and support of the Dynatrace Offerings, and the technology the Customer monitors using the Dynatrace Platform. For example, features or capabilities of the Dynatrace Offering being utilized or consumed, configuration of the Dynatrace Offering, and performance and diagnostic state of the Dynatrace Offering.

1.24 "Users" means Customer or its Subsidiary's employees and Third-Party Users authorized by Customer to use the Dynatrace Offerings.

2. **AGREEMENT AND ORDER OF PRECEDENCE.** The Agreement governs Customer's and its Users' use of the applicable Dynatrace Offerings. Each Order Form that incorporates this Subscription Agreement constitutes a separate Agreement and governs its own subject-matter and not any other Agreement. In the event of a conflict between an Order Form and this Subscription Agreement, this Subscription Agreement will take precedence, except as otherwise stated.

3. **THIRD PARTIES AND PARTNERS.**

3.1 **Third-Party Users**. Customer may designate one or more Third-Party Users as required to facilitate Customer's permitted use of the Dynatrace Platform solely for Customer's or its Subsidiary's internal business operations and benefit, subject to the following. Each Third-Party User must be subject to non-disclosure obligations consistent with Section 9 (Confidentiality) and shall otherwise comply with the terms of the Agreement. Customer accepts responsibility for the acts and omissions of such Third-Party Users and agrees to enforce (and 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.

3.2 **Partners**. "<u>End User</u>" means a User for whom use of or access to the Dynatrace Offerings has been obtained through a third party ("<u>Partner</u>") who has a limited right to resell the Dynatrace Offerings (directly or through a second-tier partner or marketplace). The terms of this Subscription Agreement (excluding terms relating to delivery of and payment for the Dynatrace Offering) and as applicable, the Platform Usage Supplement available at https://www.dynatrace.com/company/trust-center/customers/ (together, the "<u>Resale End User Terms</u>") govern the use of any Dynatrace Offering by or for the benefit of an End User. By its use of the Dynatrace Offering, such End User agrees to and is bound by the Resale End User Terms, which are incorporated by reference into the contract for such resale transaction as if such End User was a Customer hereunder. Dynatrace is, and both End User and Partner hereby acknowledge and appoint Dynatrace as, a third-party beneficiary of the Resale End User Terms. Dynatrace is providing the Dynatrace Offerings in reliance on its status as a third-party beneficiary to the Resale End User Terms, and Dynatrace shall be entitled to enforce the Resale End User Terms directly against the End User. Dynatrace is not responsible for any acts, omissions, products or services provided by Partner. Partner is not authorized to modify the Resale End User Terms or make any commitment for Dynatrace, and Dynatrace is not bound by any obligations to End User other than as set forth in the Resale End User Terms. End User's access to and use of Dynatrace Offerings is determined by the Order Form between Partner and Dynatrace identifying the End User. The amount paid or payable by the Partner for End User's use of the Dynatrace Offerings will be deemed the amount paid or payable by Customer under the Agreement for the purpose of Section 16 (Limitation of Liability). For purposes of this Section, Dynatrace means Dynatrace LLC or its designated Affiliate.

4. **SOFTWARE LICENSE AND SUPPORT.**

4.1 **Dynatrace Platform**. During the Term, and subject to Customer's compliance with the Agreement, Dynatrace grants Customer a limited, non-exclusive, non-transferable, non-sublicensable right and license solely for Customer and its Users to, as applicable, install, access and use the Dynatrace Platform for Customer's internal business purposes, in accordance with the Documentation, subject to the territory, scope, type of use, and limitations on deployment and as otherwise stated in the applicable Order Form. Customer may reproduce software provided in object code and the Documentation as reasonably necessary to support its authorized use of the Dynatrace Platform, and for backup and archival purposes, provided Customer does not remove any Dynatrace proprietary markings and notices.

4.2 **Support.** Dynatrace will provide Support for the Dynatrace Platform in accordance with the support levels and fees identified in the applicable Order Form and the Dynatrace online support and service level policies.

5. **PROFESSIONAL SERVICES.**

5.1 **Statements of Work**. During the Service Period, Dynatrace will provide the Professional Services identified in an Order Form, which may be further described in SOWs attached to the Order Form. 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) the schedule for performance; and (d) any applicable additional fees, out of pocket expenses, and payment terms.

5.2 **Use of Dynatrace Materials.** During the Term and/or Service Period, and subject to Customer's compliance with the Agreement, Dynatrace grants Customer a limited, non-exclusive, non-transferable, non-

sublicensable license to use the Dynatrace Materials that Dynatrace may provide to Customer in connection with the Professional Services or otherwise to be used solely for Customer's internal business purposes by Customer and its Users in connection with its subscription to the Dynatrace Platform. Training sessions may not be recorded without Dynatrace's prior written consent.

6. OWNERSHIP AND OTHER RIGHTS.

6.1 **Dynatrace Offerings**. This is not an agreement for custom development or "work for hire." Dynatrace Offerings are licensed, not assigned, to Customer. Except for the limited licenses set forth herein, Customer shall not acquire any rights, title or interest in the Dynatrace Offerings, and Dynatrace or its licensors, as applicable, shall retain all ownership, including without limitation, Intellectual Property Rights, in the Dynatrace Offerings.

6.2 **Customer Data**. As between the parties, Customer shall retain all ownership, including without limitation, Intellectual Property Rights, in the Customer Data. Customer 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 agreed by Customer in writing.

6.3 **Feedback and Usage Data**. At its option, Customer may provide feedback or suggestions about the Dynatrace Offerings to Dynatrace ("Feedback"). Customer grants to Dynatrace and its Affiliates a non-exclusive, worldwide, royalty-free, fully paid, sublicensable, perpetual, and irrevocable right and license to use, modify, distribute, and commercialize the Feedback without restriction or obligation. Dynatrace may monitor and collect Usage Data to improve Dynatrace's current and future offerings, and if aggregated and not identifying Customer or any individual, for industry analysis, benchmarking, and analytics.

7. PAYMENT.

7.1 **Pricing**. Prices for the Dynatrace Offerings are set forth in the applicable Order Form.

7.2 **Invoicing and Payments.** Unless otherwise stated in an Order Form, fees are invoiced in advance and Customer shall pay Dynatrace the amounts invoiced in the specified currency within thirty (30) days of the invoice date. If Customer fails to pay any fee when due, without limiting any of its other rights or remedies, Dynatrace may impose a late payment charge not to exceed the maximum rate allowed by law, and/or 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 reasonable attorneys' fees and direct costs of collection. Multiple Order Forms may be executed under this Subscription Agreement and multiple invoices may be issued under each Order Form. Customer shall have no right to set-off or reduce payments owed under any Order Form without Dynatrace's prior written consent. 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 of payment on an invoice, within fifteen (15) days of receipt of the invoice, Customer will notify Dynatrace in writing of the dispute and the parties will use commercially reasonable efforts to resolve such dispute. Undisputed amounts remain payable by Customer. The existence of a dispute shall not restrict Dynatrace's rights to collect such amounts or enforce its right to payment.

7.3 **Purchase Orders.** Upon request for Customer's administrative convenience, Dynatrace will reference Customer's purchase order/reference number ("PO") on its invoices, provided the PO references the Order Form, is received reasonably prior to the date of the invoice, and is not conditioned on the PO being signed by Customer. The terms stated in any Customer PO shall have no force or effect. Dynatrace has the right to issue an invoice and collect payment without a corresponding PO.

7.4 **Delivery**. Dynatrace shall make the Dynatrace Platform available by electronic delivery, and acceptance is deemed to occur upon issuance of the license key or when electronic notice is sent that the purchased items are available.

7.5 **Renewal Term Pricing**. Fees for each Renewal Term are subject to a price increase which will be effective upon the commencement of the applicable Renewal Term, and unless otherwise agreed, shall not exceed the "Uplift Cap". The Uplift Cap is applied to the highest annualized fee level, unit prices, and minimum annual commitment (if any) in the immediately preceding subscription term. The applicable Uplift Cap is determined as follows: (a) 1-year Renewal Term, eight percent (8%); (b) 2-year Renewal Term, nine percent (9%); or (c) 3-year Renewal Term, ten percent (10%). Notwithstanding the foregoing, any renewal that has decreased in

units, volume, term, minimum annual commitment, or otherwise from its immediately preceding subscription term will result in re-pricing at renewal and the Uplift Cap will not apply.

7.6   **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 Transaction 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.

8.   CUSTOMER RESPONSIBILITIES.

8.1   Customer is responsible for: (a) the accuracy, quality and legality of Customer Data; (b) the means by which Customer acquired Customer Data; and (c) obtaining all necessary rights to use the Customer Data in connection with the Dynatrace Offerings, including without limitation, any required notices and consents in connection with any Personal Data included in Customer Data.

8.2   Customer will ensure that all Account Data is current and accurate.

8.3   Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer provides or controls. Customer is responsible for: (a) its configuration of data privacy settings as described in the Documentation; (b) its secure use of the Dynatrace Offerings, including securing its account authentication credentials; (c) protecting the security of Customer Data when in transit to and from the Dynatrace Platform or Dynatrace; and (d) taking any appropriate steps to securely encrypt or backup any Customer Data.

8.4   Customer assumes sole responsibility for determining whether the Dynatrace Offerings are appropriate for storage and processing of any Customer Data subject to any specific law or regulation, and for results obtained from the Dynatrace Platform. Notwithstanding the foregoing: (a) Customer acknowledges that the Dynatrace Offerings do not require and are not intended for the collection, storage, or other processing of Restricted Information; (b) Customer agrees not to provide Restricted Information to Dynatrace; and (c) Customer will use reasonable efforts to provide other Personal Data to Dynatrace only as necessary.

8.5   Customer will use commercially reasonable efforts to prevent unauthorized access to or use of the Dynatrace Offerings, and promptly notify Dynatrace of any such unauthorized use or access. Customer must notify Dynatrace without undue delay about any possible misuse of its accounts or authentication credentials or any security incident related to the Dynatrace Offerings.

8.6   Customer will not make any Dynatrace Offering available to anyone other than Customer or Users, or use any Dynatrace Offering for the benefit of anyone other than Customer. Customer will not sell, resell, sublicense, distribute, transfer, or otherwise commercially exploit its rights to use any Dynatrace Offering to or for 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 separate executed agreement between the parties). Customer will not provide access to the Dynatrace Offerings to Dynatrace's direct competitors except with Dynatrace's prior written consent.

8.7   Customer will not (a) 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 Offerings (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); (b) modify, adapt, translate, copy or create derivative works based on any element of the Dynatrace Offerings; (c) use the Dynatrace Platform to store or transmit Malicious Code; (d) attempt to gain unauthorized access to the Dynatrace Platform or its related systems or networks, including through direct or indirect penetration testing; or (e) access or use any Dynatrace Offerings in order to (i) copy or re-use ideas, features, functions or graphics, (ii) create or distribute a product or service that competes with any Dynatrace Offering, (iii) perform or publish benchmarks or competitive analyses, or (iv) determine whether Dynatrace Offerings are within the scope of any patent.

9. CONFIDENTIALITY.

9.1 **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") pursuant to the Agreement, in any form or medium, whether oral or written, that is designated confidential or proprietary, or that a reasonable person should understand is confidential or proprietary. Confidential Information includes without limitation: 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, and the Dynatrace Offerings. Customer will not remove or destroy any proprietary markings or restrictive legends contained in the Dynatrace Offerings.

9.2 **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 (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. 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.

9.3 **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 or legal process but only after it notifies the Disclosing party (if legally permissible) to enable the Disclosing party to seek a protective order or otherwise contest required disclosure, at the Disclosing Party's expense.

9.4 **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.

10. DATA PRIVACY AND SECURITY.

10.1 Dynatrace has implemented and will follow appropriate technical and organizational measures intended to protect Personal Data against accidental, unauthorized, or unlawful access, disclosure, damage, alteration, loss, or destruction.

10.2 If Dynatrace becomes aware of any unlawful access to any Customer 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 Customer 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 Data Protection Law 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.

10.3 **Data Processing Agreement.** To the extent Dynatrace processes any Personal Data on Customer's behalf that is subject to the Data Protection Law, and the parties have not executed a separate data processing agreement that complies with such Data Protection Law, the Data Processing Agreement located at https://www.dynatrace.com/company/trust-center/customers/ is incorporated by reference and shall apply.

11. WARRANTIES.

11.1 **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.

11.2 **Limited Warranties and Remedies**. The following limited warranties apply only to the extent that Customer has purchased the applicable Dynatrace Offering:

11.2.1 **Dynatrace Platform**. Dynatrace warrants that the Dynatrace Platform will operate substantially in compliance with the applicable Documentation during the Term, provided that the purchased items have been properly installed and/or configured, used as described in the Documentation, and have not been modified or added to other than by Dynatrace. If the Dynatrace Platform does not perform as warranted and Customer notifies Dynatrace within thirty (30) days, Dynatrace will undertake at its sole option and as Customer's exclusive remedy, to (a) correct the non-conformance; or (b) replace the non-conforming item, provided that if Dynatrace determines that it is not commercially reasonable or possible to correct or replace a material non-conformity within a reasonable time from receipt of written notice from Customer detailing the warranty claim, the affected subscription will be cancelled and Dynatrace will refund any unused prepaid fees for the affected subscription.

11.2.2 **Professional Services**. Dynatrace will use commercially reasonable efforts to perform the Professional Services and provide the accompanying Dynatrace Materials 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 to (a) re-perform the non-conforming Professional Services; or (b) if Dynatrace determines that re-performance is not commercially reasonable, the affected Professional Services will be cancelled and Dynatrace will refund to Customer any pre-paid fees corresponding to the affected Professional Services.

11.3 **WARRANTY DISCLAIMER.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED ABOVE, 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 OR USE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, DYNATRACE DOES NOT WARRANT THAT THE DYNATRACE OFFERINGS OR RESULTS OF THE USE THEREOF WILL: (A) OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) BE UNINTERRUPTED, ERROR-FREE OR VIRUS-FREE; (D) IDENTIFY, BLOCK, OR REMEDIATE ALL SECURITY VULNERABILTIES, THREATS, OR ATTACKS; OR (E) RENDER THE CUSTOMER ENVIRONMENT INVULNERABLE TO UNAUTHORISED ACCESS AND/OR THIRD-PARTY INTERFERENCE. IN ADDITION, DYNATRACE MAKES NO WARRANTY ABOUT ANY THIRD-PARTY PRODUCTS OR CONTENT.

12. TERM AND TERMINATION.

12.1 **Subscription Agreement**. This Subscription Agreement may be updated from time to time by Dynatrace provided that no update or modification will apply to any Order Form previously executed or agreed to by the parties.

12.2 **Order Form and SOW**. Each Order Form or SOW begins on its effective date and continues in effect through the end date of the Term or the Service Period thereof. Except as expressly provided under the Agreement, Order Forms and SOWs may not be terminated, cancelled or reduced during the Term or Service Period, payment obligations are non-cancelable, and fees are non-refundable. Each Dynatrace Platform and Support subscription will automatically renew for additional periods equal to the greater of the expiring subscription term or one (1) year unless either party gives the other written notice at least sixty (60) days before the expiration thereof. Notice to Dynatrace should be provided via email to WW-Renewals-Team@dynatrace.com with a copy to: legalnotices@dynatrace.com.

12.3 **Termination for Cause**. Either party may terminate any Order Form or SOW incorporating this Subscription Agreement, in whole or in part, for cause: (a) on thirty (30) days' written notice to the other party of a material breach thereof 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 any Order Form or SOW incorporating this Subscription Agreement immediately on written notice in the event: (a) Customer fails to pay any amounts due thereunder, and such failure continues more than ten (10) days after written notice by Dynatrace; or (b) 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.

12.4 **Effect of Termination or Expiration.**

12.4.1   Termination of one Order Form will not terminate any other Order Form or other Agreement.

12.4.2   On termination or expiration of an Order Form, Customer and Users shall immediately cease to use the applicable Dynatrace Offerings. Customer shall either uninstall or destroy all copies of software provided by Dynatrace and certify such in writing to Dynatrace upon request. With respect to any SaaS subscription, Dynatrace will make any remaining Customer Data stored in connection with the SaaS subscription available to Customer in the format in which it is stored for up to thirty (30) days following the effective date of termination or expiration. After such period, unless otherwise stated or legally prohibited, Dynatrace will have no obligation to maintain or provide any Customer Data and may delete all Customer Data in its possession or under its control.

12.4.3   If an Order Form or SOW is terminated by Customer for cause in accordance with Section 12.3, Dynatrace will refund Customer any unused prepaid fees for the Dynatrace Offering terminated. If an Order Form or SOW is terminated by Dynatrace for cause in accordance with Section 12.3, Customer will immediately pay Dynatrace any unpaid fees and reasonably incurred expenses covering the remainder of the Term/Service Period of such terminated Dynatrace Offering.

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 Dynatrace Offerings received by Customer under the applicable Order Form, as of the delivery date, infringes any copyright or misappropriates any trade secret, and Dynatrace 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 Offering. Notwithstanding anything to the contrary in the 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 Offering 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 Dynatrace Offering other than by Dynatrace; (d) Customer's continued use of the Dynatrace Offering after Dynatrace notifies Customer to discontinue use because of an infringement claim; (e) use of the Dynatrace Offering other than as authorized under the Agreement or Documentation; 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 Dynatrace Offering; (b) replace or modify the Dynatrace Offering so that it avoids such claim; or (c) if such remedies are not reasonably available, terminate Customer's license for the infringing Dynatrace Offering and provide Customer with a refund of any unused fees Customer prepaid to Dynatrace for the infringing Dynatrace Offering. 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 the terminated Dynatrace Offering.

14. **CUSTOMER INDEMNITY**. Customer will, at its expense, defend Dynatrace, its Affiliates, licensors 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) a claim or threat that the Customer Data infringes, misappropriates or violates any third party's privacy or Intellectual Property Rights; (b) Customer's breach of Section 8 (Customer's Responsibilities); and (c) the occurrence of any of the exclusions (a) through (f) set forth above in Section 13.1 (IP Claims). 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. **LIMITATION OF LIABILITY.**

16.1 EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS, CUSTOMER'S BREACH OF SECTION 8 (CUSTOMER RESPONSIBILITIES), OR EITHER PARTY'S INDEMNITY OBLIGATIONS, THE CUMULATIVE LIABILITY OF EACH PARTY AND ITS AFFILIATES WILL NOT EXCEED THE ANNUAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE APPLICABLE DYNATRACE OFFERING AT THE TIME THE CLAIM ARISES.

16.2 EXCEPT FOR CUSTOMER'S BREACH OF SECTION 8 (CUSTOMER RESPONSIBILITIES) OR EITHER PARTY'S BREACH OF SECTION 9 (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.

16.3 THE WAIVERS AND LIMITATIONS IN THIS SECTION 16 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.

16.4 NEITHER PARTY LIMITS OR EXCLUDES ITS LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE; (B) FRAUDULENT MISREPRESENTATION OR WILLFUL MISCONDUCT; OR (C) ANY OTHER LIABILITY TO THE EXTENT THAT SUCH LIABILITY CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW.

17. **TRIAL USE.** Dynatrace may offer free or trial use of Dynatrace Offerings ("Trial Use") in its sole discretion, Trial Use is governed by this Subscription Agreement. Trial Use is for the sole and exclusive purpose of enabling Customer to evaluate a prospective purchase and shall not be deployed as part of Customer's business processes. At any time, in its sole discretion, Dynatrace may terminate or suspend all or a portion of the Trial Use without prior notice. Certain features, technical support and other support in connection with Trial Use may not be available. If applicable, Customer is solely responsible for exporting Customer Data from the Dynatrace Platform prior to termination or expiration of the Trial Use. All Trial Use is provided "AS IS" and no express or implied warranties shall apply. Dynatrace shall have no liability of any kind with respect to Trial Use unless otherwise required by applicable law, in which case Dynatrace's liability shall not exceed $1,000.00.

18. **INDEPENDENT CONTRACTORS.** The parties are independent contractors and will represent themselves accordingly in all regards.

19. **FORCE MAJEURE.** Neither party will be liable for delay or default in the performance of their respective obligations, excluding payment obligations, if the delay or default is caused by conditions beyond its

reasonable control, including but not limited to, acts of God, war, acts of terrorism (whether actual or threatened), riot or civil unrest, failure of electrical, Internet, co-location or telecommunications service, non-Dynatrace applications, denial of service or similar attacks, acts of civil or military authorities, fire, floods, weather disturbances, volcanic eruption, earthquakes, accidents, strikes or labor actions, epidemics, pandemics, quarantines, or energy crises.

20. **COMPLIANCE WITH LAWS**. Customer shall comply with all laws and regulations applicable to its use of the Dynatrace Offerings. Dynatrace shall comply with all laws and regulations applicable to its provision of the Dynatrace Offerings. 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).

21. **ASSIGNMENT.** Neither party may transfer or assign the Agreement or any Order Form, 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 that requires the other party's prior written consent. Notwithstanding the foregoing, Dynatrace may, without Customer's consent assign any Agreement or any Order Form 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.

22. **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, email, notices posted in portals, online Documentation, in-product chat, and RSS subscriptions to be notified of updates. Customer consents to receive communications in an electronic form and agrees that all 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 at the top of the Order Form. 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 change its address for notices under this Section by giving the other party notice of the change in accordance with this Section.

23. **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.

24. **GOVERNING LAW.** The Agreement will be governed by the laws of the State of Delaware 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 Delaware. If the entity selling the Dynatrace Offerings is an Affiliate of Dynatrace LLC, the Agreement will be governed by the laws of the country in which such Dynatrace Affiliate is situated, and the parties consent to the exclusive jurisdiction of the courts where such Dynatrace Affiliate is located, or in the event of multiple offices, where the head office of such Affiliate is located. The 1980 United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the Agreement. If any provision of the Agreement is contrary to an applicable law, 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.

25. **EXPORT CONTROLS.** Customer shall comply with applicable United States, EU and UN export and re-export laws, regulations and requirements ("Trade Laws"). Customer shall not export, re-export, use, or make available any software or service that may be subject to the Trade Laws, to any location, or to or on behalf of any end user, or for any end use, without first obtaining any export license, permit or other approval that may be required and providing notice of such actions to Dynatrace at legalnotices@dynatrace.com. Without limiting the foregoing, Customer shall not export or re-export any software, or use or make available any software or service, subject to the Agreement (a) to any Group E country listed in Supplement No. 1 to Part 740, Title 15, or the Crimea, Donetsk, or Luhansk region of Ukraine; (b) to any party of concern listed at

www.trade.gov/consolidated-screening-list, www.trade.gov/consolidated-screening-list, or to any party owned or controlled by any such party of concern; or (c) for any end use related to the development, production or use of nuclear, chemical or biological weapons or missiles. If, at any time during the Term or Service Period, Dynatrace is not permitted, as a result of applicable Trade Laws, sanctions or similar government restrictions, to supply the Dynatrace Offerings to Customer or receive payment from Customer's financial institution or payment processor, Dynatrace may terminate or suspend its performance under the Agreement upon written notice without penalty.

26. **ANTI-CORRUPTION.** Each party shall maintain its own policies and procedures relating to anti-bribery and anti-corruption to ensure compliance with applicable law, and will enforce them where appropriate; and will promptly report to the other party any request or demand for any undue financial or other advantage of any kind in connection with the performance of the Agreement.

27. **GOVERNMENT USE**. U.S federal government end users acknowledge and agree that: (a) Dynatrace Offerings are "commercial items" as defined in Federal Acquisition Regulation (FAR) 2.101; (b) 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; and (c) only the mandatory flow-down clauses of FAR 52.244-6 or 52.212-5(e) apply to Dynatrace unless other FAR and FAR Supplement clauses are specifically identified and accepted by Dynatrace in writing. For all U.S. 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 Dynatrace Platform 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 Dynatrace Platform is offered only under this license; no other license to the Dynatrace Platform is valid or enforceable unless (and solely to the extent) specifically agreed to in writing by Dynatrace.

28. **OPEN SOURCE**. "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. Dynatrace maintains an updated list of applicable Open Source Software online. Notwithstanding the foregoing license grants, the Agreement is not meant to modify the terms of any Open Source Software license applicable to the Dynatrace Platform, and in the event of a conflict, the terms of such Open Source Software license will prevail.

29. **SURVIVAL.** The following provisions will survive expiration or termination of the Agreement: (a) any payment obligations of Customer hereunder; (b) Section 3.2 (Partners), Section 6 (Ownership and Other Rights), Section 7 (Payment), Section 8 (Customer Responsibilities), Section 9 (Confidentiality), Section 12 (Term and Termination), Sections 13-15 (Indemnity), Section 16 (Limitation of Liability), Section 22 (Electronic Communication; Notices), Section 24 (Governing Law); and (c) any rights or obligations which are stated to, or by their nature will, survive. The expiration or termination of the Agreement does not affect any rights which accrued before the date of expiration or termination.

30. **MISCELLANEOUS.** The Agreement sets forth the entire agreement and understanding between the parties, 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 PO 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 under the Agreement 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 is 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.