

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 12th day of February, 2019 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the State of California, ("COUNTY"), and Daptiv Solutions LLC., a Washington Limited Liability Company, whose corporate address is at 1111 Third Ave., Suite 700, Seattle, WA 98101, ("CONTRACTOR").

RECITALS

WHEREAS, COUNTY desires to license software as a service of CONTRACTOR'S software called Daptiv PPM ("Subscription Service") as well as installation, training, data conversion services ("Professional Services"), from CONTRACTOR, as set forth in the COUNTY's Request for Proposal (RFP) 18-063, dated July 3, 2018; and

WHEREAS, CONTRACTOR provided a Response to COUNTY's RFP No 18-063, dated August 14, 2018, in which it offered certain software license, installation, training, and software maintenance of Software by CONTRACTOR, along with professional services from CONTRACTOR, as a solution to meet the stated needs of the COUNTY; and

WHEREAS, COUNTY and CONTRACTOR desire to enter into this Agreement for the license and access to the Service, and for maintenance and support of the Subscription Service.

NOW, THEREFORE, for and in consideration of the promises herein, and for other good and valuable consideration, the parties agree as follows:

WITNESSETH**I. DOCUMENTS CONSTITUTING AGREEMENT**

This Agreement includes COUNTY's RFP No 18-063, and CONTRACTOR's Response to RFP No 18-063, and these documents are incorporated by this reference.

II. DEFINITIONS

The following terms used throughout this Agreement shall be defined as follows:

Change Control Process:

Process used by the Information Services Division of COUNTY's Internal Services Department (ISD) to inform staff of new or updated production use systems.

License:

The meaning assigned to the term "License" as defined in Section III-A of this Agreement and the rights and obligations which it creates under the laws of the United States of America and the State of California including without limitation, copyright and intellectual property law.

Monies:

The terms "Monies", "Charges", "Price", and "Fees" will be considered to be equivalent.

Public Records:

Public Records includes any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics.

Supplier:

The terms "Supplier", "Vendor", and "Daptiv Solutions, LLC" all refer to CONTRACTOR and are considered to be equivalent throughout this Agreement.

Documentation:

The documentation relating to the Subscription Service, and all manuals, reports, brochures, sample runs, specifications and other materials comprising such documentation provided by CONTRACTOR in connection with the Subscription Service pursuant to this Agreement.

User:

The terms "User", "Customer" and "Licensee" all refer to COUNTY and are considered to be equivalent throughout this Agreement.

III. OBLIGATIONS OF THE CONTRACTOR

A) SUBSCRIPTION SERVICES

1) GRANT OF LICENSE

1 CONTRACTOR grants to COUNTY and COUNTY accepts a non-exclusive, non-
2 transferable, worldwide right during the Term to access the Subscription Service and permit
3 the number of individual users specified in the Order to use the Subscription Service solely
4 for the COUNTY's own internal business purposes ("Authorized Users"). Unless otherwise
5 specified, the term "quantity" as used in the Order Invoice refers to the number of
6 Authorized Users that are permitted to access the associated Subscription Service.

7 2) OWNERSHIP

8 The parties acknowledge and agree that, as between CONTRACTOR and
9 COUNTY, title and full ownership of all rights in and to the Subscription Service,
10 Documentation, and all other materials provided to COUNTY by CONTRACTOR under the
11 terms of this Agreement shall remain with CONTRACTOR. COUNTY will take reasonable
12 steps to protect trade secrets of the Subscription Service and Documentation. Ownership
13 of all copies is retained by CONTRACTOR. COUNTY may not disclose or make available
14 to third parties the Subscription Service or Documentation or any portion thereof.
15 CONTRACTOR shall own all right, title and interest in and to all corrections, modifications,
16 enhancements, programs, and work product conceived, created or developed, alone or
17 with COUNTY or others, as a result of or related to the performance of this Agreement,
18 including all proprietary rights therein and based thereon. Except and to the extent
19 expressly provided herein, CONTRACTOR does not grant to COUNTY any right or license,
20 express or implied, in or to the Subscription Service and Documentation or any of the
21 foregoing. The parties acknowledge and agree that, as between CONTRACTOR and
22 COUNTY, full ownership of all rights in and to all COUNTY data, whether in magnetic or
23 paper form, including without limitation printed output, are the exclusive property of
24 COUNTY.

25 3) POSSESSION, USE AND UPDATE OF SOFTWARE

26 COUNTY agrees that only COUNTY will use the Subscription Service for its own
27 internal purposes. CONTRACTOR may, at reasonable times, inspect COUNTY's premises
28 and equipment to verify that all of the terms and conditions of this license are being

1 observed. CONTRACTOR may create, from time to time, updated versions of the
2 Subscription Service and Documentation and CONTRACTOR shall make such Updates
3 available to COUNTY. All Updates shall be licensed under the terms of this Agreement.
4 COUNTY agrees to follow the prescribed instructions for updating Subscription Service and
5 Documentation provided to COUNTY by CONTRACTOR.

6 4) DELIVERY OF SUBSCRIPTION SERVICE AND MATERIALS

7 COUNTY shall not rent, lease, license, distribute, sell, transfer, or assign this
8 license, the Subscription Service, or the Documentation, or any of the information
9 contained therein other than COUNTY data, to any other person or entity, whether on a
10 permanent or temporary basis, and any attempt to do so will constitute a breach of this
11 Agreement. No right or license is granted under this Agreement for the use or other
12 utilization of the licensed programs, directly or indirectly, for the benefit of any other person
13 or entity, except as provided in this Agreement.

14 5) RESTRICTIONS ON USE:

15 COUNTY shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or
16 otherwise commercially exploit or make available to any third party the Subscription
17 Service or the Documentation in any way; (ii) modify or make derivative works based upon
18 the Subscription Service or the Documentation; (iii) create Internet "links" to the
19 Subscription Service or "frame" or "mirror" any Documentation on any other server or
20 wireless or Internet-based device; (iv) send spam or otherwise duplicative or unsolicited
21 messages in violation of applicable law; (v) send or store infringing, obscene, threatening,
22 libelous, or otherwise unlawful or tortious material, including material harmful to children or
23 material that violates third party privacy rights; (iv) send or store material containing
24 software viruses, worms, Trojan horses or other harmful computer code, files, scripts,
25 agents or programs; (vii) interfere with or disrupt the integrity or performance of the
26 Subscription Service or the data contained therein, including but not limited to COUNTY
27 Data; (viii) attempt to gain unauthorized access to the Subscription Service or its related
28 systems or networks; (ix) reverse engineer or access the Subscription Service in order to

1 (a) build a competitive product or service, (b) build a product using similar ideas, features,
2 functions or graphics of the Subscription Service, or (c) copy any ideas, features, functions
3 or graphics of the Subscription Service.

4 8) INTELLECTUAL PROPERTY, TRADEMARK AND COPYRIGHT

5 CONTRACTOR retains ownership of the Subscription Service, any portions or copies
6 thereof, and all rights therein. CONTRACTOR reserves all rights not expressly granted to
7 COUNTY. This License does not grant COUNTY any rights in connection with any
8 trademarks or service marks of CONTRACTOR, its suppliers or licensors. All right, title,
9 interest and copyrights in and to the Subscription Service and the accompanying
10 Documentation and any copies of the Subscription Service are owned by CONTRACTOR,
11 its suppliers or licensors. All title and intellectual property rights in and to the content which
12 may be accessed through use of the Subscription Service are the property of the
13 respective content owner and may be protected by applicable copyright or other intellectual
14 property laws and treaties. This License grants COUNTY no rights to use such content.

15 B) SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

16 1) ACCESS

17 Commencing on the latter of the Effective Date of this Agreement or the
18 **Subscription Term Start** Date in the Order, CONTRACTOR shall make available to
19 COUNTY the unique instance of the CONTRACTOR Subscription Service for use by the
20 number of Authorized Users specified under the terms of this Agreement.

21 2) TRAINING

22 CONTRACTOR will conduct "train-the-trainer" training of COUNTY staff at a
23 COUNTY-designated location and at a time approved in writing by COUNTY, as
24 specified in CONTRACTOR's Response to RFP No 18-063.

25 3) DOCUMENTATION

26 Upon request, CONTRACTOR shall make available to COUNTY Documentation,
27 which shall consist of electronic media files. CONTRACTOR shall provide new
28 Documentation corresponding to all new Upgrades. COUNTY may print additional copies

1 of all documentation. All Documentation shall be used by COUNTY only for the purposes
2 identified within this Agreement.

3 C) SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

4 CONTRACTOR's Service Level Agreement policy and Customer Response Policy which are
5 incorporated herein, are also attached as Exhibit 3.

6 D) ADDITIONAL SYSTEM MAINTENANCE SERVICES BY CONTRACTOR

7 CONTRACTOR may provide additional maintenance services ("Additional Maintenance and
8 Support Services" or "Additional Maintenance Services") at an additional charge. Charges will be
9 as identified in Section VII-F of this Agreement; or, if not included in this Agreement, charges will
10 be at current prices in effect at the time goods or services are provided. Any Additional
11 Maintenance and Support Services requested by COUNTY and determined by CONTRACTOR to
12 be billable by CONTRACTOR must be identified as a chargeable service prior to the service being
13 performed and must be approved in writing in advance by COUNTY's Contract Administrator.

14 Additional Maintenance Services include, but are not limited to, the following:

15 1) ADDITIONAL TRAINING

16 Initial administrator and report generation training is included in the initial
17 implementation. Additional training at a County facility is available upon request by
18 COUNTY at an additional charge under the terms of this Agreement. Requests for
19 additional training will be reviewed by CONTRACTOR and must be requested in writing in
20 advance by COUNTY's Contract Administrator. Charges will be at rates identified in this
21 Agreement.

22 2) DATA AND SYSTEM CORRECTIONS

23 Data Corrections include any corrective actions accomplished by CONTRACTOR
24 on-site or via VPN which are necessary due to COUNTY errors or unauthorized source
25 code or data access by COUNTY. Unauthorized access to the data is defined as any
26 COUNTY editing of data through other than normal system usage as defined in
27 Documentation. Unauthorized access to source code is defined as any COUNTY access
28 whatsoever to system source code. Services provided by CONTRACTOR are not billable

when they result from errors caused by Subscription Service or instruction provided by CONTRACTOR.

3) COUNTY SITE VISITS

Site visits to COUNTY sites, as may be requested in writing by COUNTY and that are within the scope of the project services, are available for reasons such as, but not limited to, additional training on hardware or software usage. Site visits outside of the scope of project services will be reviewed by the CONTRACTOR and must be requested in writing in advance by COUNTY's Contract Administrator. Charges will be at rates identified in this Agreement.

4) CUSTOM PROGRAMMING

Requests for supplemental programming or customization of system features not covered under this Agreement are available to COUNTY. Such requests will be reviewed by CONTRACTOR and must be requested in writing in advance by the COUNTY's Contract Administrator. Charges will be at rates identified in this Agreement.

E) CONTRACTOR PROJECT COORDINATOR

Upon execution of this Agreement, CONTRACTOR shall appoint a Project Coordinator who will act as the primary contact person to interface with COUNTY for implementation, maintenance and support of Subscription Service. CONTRACTOR will notify COUNTY in writing of the Project Coordinator's name and contact information upon execution of this Agreement.

F) SYSTEM UPDATES AND NEW PRODUCTS

1) SYSTEM UPDATES

From time to time CONTRACTOR will develop and make available Updates to the Subscription Service. Updates shall be subject to the terms and conditions of this Agreement and shall be deemed licensed Subscription Service hereunder and will be made available to COUNTY at no additional charge to COUNTY. Updates will be made available to COUNTY at the discretion of CONTRACTOR but will not be unreasonably withheld.

IV. OBLIGATIONS OF THE COUNTY

1 A) COUNTY CONTRACT ADMINISTRATOR

2 COUNTY appoints its Chief Information Officer (CIO) or his designee, as COUNTY's Contract
3 Administrator with full authority to deal with CONTRACTOR in all matters concerning this
4 Agreement.

5 B) SAFEGUARDING SYSTEM SOFTWARE

6 COUNTY will follow its present practices to safeguard Subscription Service accessed by the
7 COUNTY by CONTRACTOR. A copy of COUNTY'S "Information Technology (IT) Standards and
8 Preferences" will be made available upon request.

9 C) COUNTY PROJECT MANAGER

10 Upon execution of this Agreement, COUNTY's Contract Administrator shall designate one
11 individual from ISD who will function as Project Manager ("Project Manager"). The Project
12 Manager and COUNTY personnel shall have the necessary and appropriate training and
13 experience to implement the terms of this Agreement. COUNTY acknowledges CONTRACTOR'S
14 reliance on same.

15 D) OTHER COUNTY OBLIGATIONS

16 a) Network connectivity and troubleshooting assistance.

17 b) Ability to monitor network traffic and isolate bottlenecks.

18 c) Technical assistance concerning the integration with existing COUNTY systems (if
19 applicable).

20
21 **V. TERM**

22 This Agreement shall become effective on the Effective Date for a term of three (3) years, with the
23 option for two (2) automatic additional one (1) year renewal periods, upon payment of Annual Fees
24 unless either party provides written notice of its intention not to renew to the other party at least sixty
25 (60) days prior to expiration of the commencement of the optional renewal period.
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1 **VI. TERMINATION**

2 A) NON-ALLOCATION OF FUNDS

3 The terms of this Agreement, and the services to be provided thereunder, are contingent on
4 the approval of funds by the appropriating government agency. Should sufficient funds not be
5 allocated, the services provided may be modified, or this Agreement terminated, at any time by
6 giving the CONTRACTOR thirty (30) days advance written notice.

7 B) BREACH OF CONTRACT

8 The COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in
9 the determination of the COUNTY there is:

- 10 1) An illegal or improper use of funds;
11 2) A failure to comply with any term of this Agreement;
12 3) A substantially incorrect or incomplete report submitted to the COUNTY that
13 constitutes a material breach;
14 4) Improperly performed service that constitutes a material breach.

15 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach
16 of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither
17 shall such payment impair or prejudice any remedy available to the COUNTY with respect to the
18 breach or default. The COUNTY shall have the right to demand of the CONTRACTOR the
19 repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement,
20 which in the judgment of a court of law were not expended in accordance with the terms of this
21 Agreement.

22 CONTRACTOR may, upon thirty (30) days prior written notice to COUNTY, terminate this
23 Agreement if COUNTY fails to comply with any material term or condition of this Agreement unless
24 COUNTY cures such failure within such thirty (30) day period, or other such timeframe as may be
25 mutually agreed upon in writing by the parties.
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VII. COMPENSATION/INVOICING

COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as follows:

A) IMPLEMENTATION AND TRAINING SERVICES

Software implementation shall be invoiced at the following rates. CONTRACTOR will provide Statements of Work which shall be approved by the Director of Internal Services or his/her designee.

Role	Hourly Rate
Project Manager	\$175.00
Solution Architect	\$250.00
Delivery Consultant	\$200.00
Technical Consultant – Report Development	\$175.00
Business Analyst (Technical Services)	\$175.00

In addition to the hourly rates above, training for COUNTY staff may be included in a Statement of Work. In no event shall the compensation for implementation services exceed \$200,000.

B) SOFTWARE SUBSCRIPTION FEES:

Software Subscription fees for the initial three (3) year term of this Agreement shall be as follows:

Product Name	Annual Rate
Daptiv PPM Enterprise User Subscription (minimum 500 Users)	\$395.00
Daptiv PPM Enterprise User Subscription (minimum 300 Users)	\$495.00
Daptiv PPM Portfolio Manager Subscription	\$795.00
Daptiv PPM Manager Subscription	\$595.00
Daptiv PPM Team Member Subscription	\$395.00
Daptiv PPM Timesheet Subscription	\$225.00
Daptiv Connect-Platform	\$5,000.00
Daptiv Active Directory Connector	\$3,000.00

The COUNTY may increase the number of user subscriptions throughout the agreement as

needed. Additional user subscriptions will modify quantity of user subscriptions above and will be pro-rated through the next renewal date.

Upon each of the optional one-year extensions, CONTRACTOR may increase the annual Software Subscription rates by up to 3%.

C) OPTIONAL PREMIER SUPPORT

The COUNTY may purchase additional Premier Support as described in Exhibit 3 after the implementation services above are completed.

D) TOTAL CONTRACT AMOUNT

In no event shall the compensation for all services performed under this Agreement exceed **\$650,000.00** during the initial three (3) year term of this Agreement. If the first one-year extension is executed, the total compensation for the entire four (4) year term of this Agreement shall not exceed \$876,500. If the second one-year extension is executed, the total compensation for the entire possible five (5) year term of this Agreement shall not exceed \$1,100,000. It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

E) INVOICING

CONTRACTOR shall submit invoices (which must reference the provided contract number), either electronically or via mail to the County of Fresno ISD, Accounts Payable, 333 W. Pontiac Way, Clovis, CA 93612 or Accounts Payable (ISDBusinessOffice@FresnoCountyCA.gov). COUNTY will pay CONTRACTOR within forty-five (45) days of receipt of an approved invoice, by mail addressed to CONTRACTOR's remittance address at Daptiv Solutions LLC., 1111 Third Ave., Suite 700, Seattle, WA 98101.

VIII. INDEPENDENT CONTRACTOR:

In performance of the work, duties and obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the

1 CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an
2 independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,
3 employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no
4 right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its
5 work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify
6 that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

7 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and
8 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

9 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right
10 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely
11 liable and responsible for providing to, or on behalf of, its employees all legally-required employee
12 benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all
13 matters relating to payment of CONTRACTOR'S employees, including compliance with Social Security
14 withholding and all other regulations governing such matters. It is acknowledged that during the term of
15 this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to
16 this Agreement.

17 18 **IX. CONFIDENTIALITY**

19 A Party receiving Information (defined below) of the other will not disclose such Information other
20 than to persons in its organization who have a need to know and who will be required to comply with this
21 Section. The Party receiving Information will not use such Information for a purpose inconsistent with the
22 terms of this Agreement. "Information" means the Subscription Service, Documentation and all
23 information and intellectual property related thereto (including, but not limited to all databases provided
24 to COUNTY by CONTRACTOR whether created by CONTRACTOR or its third party licensors such as,
25 without limitation, the mapping product databases) as well as information related to the business of
26 CONTRACTOR or COUNTY. Information will not include: (i) information publicly known prior to
27 disclosure; (ii) information coming into the lawful possession of the recipient without any confidentiality
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obligation; and (iii) information required to be disclosed pursuant to regulatory action or court order, provided adequate prior written notice of any request to disclose is given to the Party whose information is to be disclosed. Each Party will exercise at least the same degree of care to safeguard the confidentiality of the other's Information as it does to safeguard its own proprietary confidential information, but not less than a reasonable degree of care.

X. MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

XI. NON-ASSIGNMENT

Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party (which shall not be unreasonably withheld, delayed or conditioned).

XII. WARRANTY, LIMITATION ON LIABILITY, AND HOLD HARMLESS

Each party represents and warrants to the other that it is duly authorized to execute this Agreement and perform the obligations set forth herein. CONTRACTOR represents and warrants that: (i) it shall make the Subscription Services available according to the SLA and CRA; and (ii) any Professional Services performed pursuant to an SOW shall be performed (1) in accordance with the delivery schedule, if any (2) with a high degree of care and that it possesses the requisite competence, skills and training for its assigned role, and (3) in a diligent, workmanlike and professional manner.

EXCEPT AS EXPLICITLY SET FORTH IN THIS SECTION, THE SUBSCRIPTION SERVICES AND ANY COMPANY TRAINING, INSTRUCTION AND SUPPORT OR OTHER PROFESSIONAL SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED

1 WARRANTY OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR
2 SATISFACTORY RESULTS ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY
3 APPLICABLE LAW BY CONTRACTOR, ITS SUPPLIERS AND ITS LICENSORS.

4 CUSTOMER ACKNOWLEDGES AND AGREES THAT SUBSCRIPTION SERVICES MAY BE
5 SUBJECT TO INTERRUPTION, LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE
6 USE OF INTERNET APPLICATIONS AND ELECTRONIC COMMUNICATIONS. CONTRACTOR IS NOT
7 RESPONSIBLE FOR ANY SUCH DELAYS, DELIVERY FAILURES, OR ANY OTHER DAMAGE
8 RESULTING FROM EVENTS BEYOND CONTRACTOR'S REASONABLE CONTROL, WITHOUT
9 REGARD TO WHETHER SUCH EVENTS ARE REASONABLY FORESEEABLE BY COMPANY.

10 7.4 Limitation. CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S, ITS SUPPLIERS' AND
11 LICENSORS' TOTAL AGGREGATE LIABILITY RELATING TO, ARISING OUT OF, IN CONNECTION
12 WITH, OR INCIDENTAL TO THIS AGREEMENT, WHETHER FOR BREACH OF CONTRACT, OR
13 BREACH OF WARRANTY, SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES INCURRED BY
14 CUSTOMER, UP TO THE TOTAL AMOUNT OF FEES RECEIVED BY CONTRACTOR FOR THE
15 TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY. THE EXISTENCE
16 OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT
17 ENLARGE OR EXTEND THIS LIMITATION OF DAMAGES. THE PROVISIONS OF THIS SECTION DO
18 NOT WAIVE OR LIMIT CONTRACTOR'S ABILITY TO OBTAIN INJUNCTIVE OR OTHER EQUITABLE
19 RELIEF FOR BREACH OF THIS AGREEMENT.

20 7.5 Exclusion of Certain Damages and Limitations of Types of Liability. IN NO EVENT WILL
21 CONTRACTOR BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR
22 PUNITIVE DAMAGES, OR LOST PROFITS OR LOST REVENUE ARISING OUT OF OR RELATED TO
23 THE SUBJECT MATTER OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE
24 SUBSCRIPTION SERVICE OR PROFESSIONAL SERVICES. THE FOREGOING EXCLUSION AND
25 LIABILITY LIMITATIONS APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY
26 OF SUCH DAMAGES AND EVEN IN THE EVENT OF STRICT OR PRODUCT LIABILITY.

27 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend the
28 COUNTY, its officers, agents, and employees from any and all costs and expenses (including attorney's

1 fees and costs), damages, liabilities, claims, and losses, and any and all claims, damages, costs, fees,
2 regulatory fines and penalties, and forms of legal action involving Cyber Risks, occurring or resulting to
3 COUNTY in connection with a third party claim to the extent due the gross negligence or willful misconduct
4 by CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all costs
5 and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses, and any and
6 all claims, damages, costs, fees, regulatory fines and penalties, and forms of legal action involving Cyber
7 Risks, occurring or resulting to any person, firm, or corporation who may be injured or damaged by the
8 performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under this
9 Agreement.

10 In the event of a claim of alleged infringement of patent rights, copyright, trade secret rights, or
11 intellectual property rights, to the fullest extent permitted by law, CONTRACTOR agrees to and shall
12 indemnify, save, hold harmless and defend COUNTY, including its officers, officials, agents, and
13 employees from any and all demands, costs and expenses, penalties, attorney's fees and court costs,
14 damages of any nature whatsoever (including, without limitation, injury or damage to or loss or destruction
15 of property), judgments (including, without limitation, amounts paid in settlement and amounts paid to
16 discharge judgments), liabilities, claims and losses, suits, actions or proceedings of every name, kind and
17 description occurring or resulting to COUNTY, out of or in connection with any claim that is based on the
18 infringement (or assertions of infringement) of any of patent rights, copyright, trade secret rights, or
19 intellectual property rights with respect to the Subscription Services. If, in any suit, action, proceeding or
20 claim relating to the foregoing, a temporary restraining order or preliminary injunction is granted,
21 CONTRACTOR shall make every reasonable effort to secure the suspension of the injunction or
22 restraining order. If, in any such suit, action, proceeding or claim, the Subscription Services is held to
23 constitute an infringement and its use is enjoined, CONTRACTOR shall immediately (a) pay the
24 reasonable direct out-of-pocket costs and expenses to secure a license to use such infringing work,
25 replace the infringing work or modify the same so that it becomes non-infringing, and (b) make every
26 reasonable effort to secure for the COUNTY a license, at no cost to COUNTY, authorizing COUNTY's
27 continued use of the infringing work. If CONTRACTOR is unable to secure such license within a
28 reasonable time, CONTRACTOR, at its own expense and without impairing performance requirements as

part of this Agreement, shall either replace the affected services, software, or any Equipment provided by CONTRACTOR as part of this Agreement, combination or process thereof, with non-infringing services, software, or other equipment, or modify the same so that they become non-infringing.

A party seeking indemnification hereunder shall promptly notify in writing the other party of any claim for which defense and indemnification is sought. Each party agrees that it will not enter into any settlement or compromise of any claim that: (a) results, or creates a likelihood of a result, that in any way diminishes or impairs any right or defense that would otherwise exist absent such settlement or compromise; or (b) constitutes or includes an admission of liability, fault, negligence or wrongdoing on the part of the other party without first notifying the other party in writing. Each indemnifying party has the sole right to control the defense of any claim for which it is providing indemnification hereunder with counsel mutually acceptable to the parties. The indemnified party may, at its own expense, participate in the defense of any such claim.

The provisions of this Section XII shall survive the termination of this Agreement.

XIII. INSURANCE

Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

A) COMMERCIAL GENERAL LIABILITY

Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

B) AUTOMOBILE LIABILITY

1 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
2 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include
3 any auto used in connection with this Agreement.

4 C) PROFESSIONAL LIABILITY

5 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.)
6 in providing services, Professional Liability Insurance with limits of not less than One Million
7 Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate

8 D) WORKER'S COMPENSATION

9 A policy of Worker's Compensation insurance as may be required by the California Labor
10 Code.

11 E) TECHNOLOGY PROFESSIONAL LIABILITY (Errors and Omissions)

12 Technology professional liability (errors and omissions) insurance with limits of not less than
13 Two Million Dollars (\$2,000,000.00) per occurrence. Coverage shall encompass all of the
14 CONTRACTOR's duties and obligations that are the subject of this Agreement. Coverage shall
15 include, but not be limited to, any and all claims, damages, costs, fees, regulatory fines and
16 penalties, or forms of legal action involving Cyber Risks.

17 F) CYBER LIABILITY

18 Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per
19 occurrence. Coverage shall include, but not be limited to, any and all claims, damages, costs,
20 fees, regulatory fines and penalties, or forms of legal action involving Cyber Risks. The cyber
21 liability policy shall be endorsed to cover the full replacement value of, damage to, alteration of,
22 loss of, theft of, ransom of, or destruction of intangible property (including but not limited to
23 information or data) that is in the care, custody, or control of CONTRACTOR.

24 For purposes of the technology professional liability insurance and the cyber liability insurance
25 required under this Agreement, Cyber Risks include, but are not limited to, (i) security breaches,
26 which include disclosure of, whether intentional or unintentional, information provided by
27 COUNTY, information provided by or obtained from any inmate, or personal-identifying information
28 relating to any inmate, to an unauthorized third party; (ii) breach of any of CONTRACTOR's

obligations under this Agreement relating to data security, protection, preservation, usage, storage, transmission, and the like; (iii) infringement of intellectual property including, but not limited to, infringement of copyright, trademark, and trade dress; (iv) invasion of privacy, including any release of private information; (v) information theft by any person or entity, whatsoever; (vi) damage to or destruction or alteration of electronic information; (vii) extortion related to CONTRACTOR's obligations under this Agreement regarding electronic information, including information provided by COUNTY, information provided by or obtained from any inmate, or personal-identifying information relating to any inmate; (viii) network security; (ix) data breach response costs, including security breach response costs; (x) regulatory fines and penalties related to CONTRACTOR's obligations under this Agreement regarding electronic information, including information provided by COUNTY, information provided by or obtained from an inmate, or personal-identifying information relating to any inmate; and (xi) credit monitoring expenses.

Additional Requirements Relating to Insurance

CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to COUNTY.

CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

Within Thirty (30) days from the date CONTRACTOR executes this Agreement,

1 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of
2 the foregoing policies, as required herein, to the County of Fresno, Chief Information Officer, 333
3 W Pontiac Way, Clovis CA 93612, stating that such insurance coverages have been obtained and
4 are in full force; that the County of Fresno, its officers, agents and employees will not be
5 responsible for any premiums on the policies; that for such worker's compensation insurance the
6 CONTRACTOR has waived its right to recover from the COUNTY, its officers, agents, and
7 employees any amounts paid under the insurance policy and that waiver does not invalidate the
8 insurance policy; that such Commercial General Liability insurance names the County of Fresno,
9 its officers, agents and employees, individually and collectively, as additional insured, but only
10 insofar as the operations under this Agreement are concerned; that such coverage for additional
11 insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by
12 COUNTY, its officers, agents and employees, shall be excess only and not contributing with
13 insurance provided under CONTRACTOR's policies herein; and that this insurance shall not be
14 cancelled or changed without a minimum of thirty (30) days advance, written notice given to
15 COUNTY.

16 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein
17 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
18 Agreement upon the occurrence of such event.

19 All policies shall be with admitted insurers licensed to do business in the State of California.
20 Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc.
21 rating of A FSC VII or better.

22 23 **XIV. AUDITS AND INSPECTIONS**

24 CONTRACTOR shall at any time during CONTRACTOR'S normal business hours, and upon prior
25 written notice of not less than 20 days, not more than once (1X) in any 12 month period, make available
26 to the COUNTY for examination all of its records and data with respect to the matters covered by this
27
28

Agreement to ensure CONTRACTOR'S compliance with the terms of this Agreement. Any such examinations or audits shall be at the COUNTY'S expense.

If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

XV. NOTICES

The persons and their addresses having authority to give and receive notices under this Agreement include the following:

COUNTY

Chief Information Officer

333 W. Pontiac Way

Clovis, CA 93612

ISDBusinessOffice@FresnoCountyCA.gov

CONTRACTOR

Daptiv Solutions LLC.

1111 Third Ave. Suite 700

Seattle, WA 98101

info@change point.com

All notices between the COUNTY and CONTRACTOR provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by secure e-mail transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by secure e-mail is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the sender maintains a read-receipt of the completed

transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

PRIMARY ESCALATION CONTACT INFORMATION

The persons and their contact information that the COUNTY or CONTRACTOR can use to escalate problems or situations. These contacts are listed in Exhibit 2 and may be updated on an as-needed basis by either Party by notifying the other Party.

XVI. GOVERNING LAW

Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

XVII. DISCLOSURE OF SELF-DEALING TRANSACTIONS

This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this agreement, the CONTRACTOR changes its status to operate as a corporation.

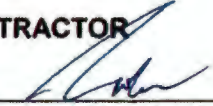
Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form* (Exhibit 1) and submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

XVIII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. In the event of any inconsistency in interpreting the documents comprising this Agreement, the inconsistency shall be resolved by giving precedence in the following order of priority: (1) the text of this Agreement (excluding COUNTY's RFP No. 18-063 and CONTRACTOR's Response thereto); (2) COUNTY's RFP No. 18-063; and (3) CONTRACTOR's Response to RFP No. 18-063.

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first
2 hereinabove written.

3
4 **CONTRACTOR**

5 
6 (Authorized Signature)

7 SCOTT MAHAN CFO
8 Print Name & Title

9 1111 3rd Ave., Ste 700

10 Seattle, WA 98101

11 Mailing Address

COUNTY OF FRESNO


Nathan Magsig
Chairman of the Board of Supervisors of
the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

12
13
14
15 By: Susan Bishop

Deputy

16 FOR ACCOUNTING USE ONLY:

17 ORG No.: 89050000

18 Account No.: 7309
19
20
21
22
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25
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1 **Exhibit 1**

2 **SELF-DEALING TRANSACTION DISCLOSURE FORM**

3 In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members
4 of a contractor's board of directors must disclose any self-dealing transactions that they are a party to
5 while providing goods, performing services, or both for the County. A self-dealing transaction is
6 defined below:

7 *"A self-dealing transaction means a transaction to which the corporation is a party and in which one or
8 more of its board members has a material financial interest"*

9 The definition above will be utilized for purposes of completing this disclosure form.

10 **INSTRUCTIONS**

11 (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.

12 (2) Enter the board member's company/agency name and address.

13 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the
14 County. At a minimum, include a description of the following:

- 15 a. The name of the agency/company with which the corporation has the transaction; and
16 b. The nature of the material financial interest in the Corporation's transaction that the
17 board member has.

18 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable
19 provisions of the Corporations Code.

20 (5) Form must be signed by the board member that is involved in the self-dealing transaction
21 described in Sections (3) and (4).
22
23
24
25

26 **(1) Company Board Member Information:**

27 Name:		Date:	
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28

Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature		Date:	
:			

Exhibit 2

(1)

COUNTY

Contact # 1:

Americo Papaleo

Information Technology Manager

Office Phone: (559) 600-5800

Email: apapaleo@FresnoCountyCA.gov

CONTRACTOR

Contact # 1:

Name: Keith DeMonbreun

Title: Enterprise Account Executive

Office Phone: 678-908-6700

Email:

keith.demonbreun@changepoint.com

(2)

COUNTY

Contact # 2:

Sheri Walden

Information Technology Division Manager

Office Phone: (559) 600-5800

Email: swalden@FresnoCountyCA.gov

Exhibit 3

Optional Premier and Report Assurance Services

Overview of Premier Services

This full set of subscription services is designed to provide you with the assistance needed to drive user optimization of the Daptiv PPM solution within your organization once the initial implementation has been completed. This service includes an annual *value assessment* designed to measure your current usage of Daptiv PPM with a documented actionable plan to provide focus and direction as you seek to gain the most value from the Daptiv PPM solution. *Optimization services* provides for consulting services each quarter to put into action the personalized value assessment and provide continuous business improvement. A *dedicated premier consultant* will coordinate your premier subscription services program throughout the term of the subscription. Access to ongoing *web based training* classes each quarter help you ramp new employees and increase the knowledge of existing employees. As part of Premier Services a *discount off of professional services list rates* which provides you with access to further consulting, optimization, training and adoption services is guaranteed for the term of the subscription. All Premier Subscription Service customers receive *priority tier 2 support*, which means that all support cases logged start at the tier 2 level. Based on the level of Premier Subscription Services selected, access to a *hosted sandbox environment*, which is a duplicate of your production environment and can be refreshed once per quarter by request, is included. This benefit also provides early access to upgrades as the Daptiv PPM sandbox is upgraded prior to the Daptiv PPM production environments.

Premier Subscription Service Options

I. Silver

Term of Service: 12 months

Total Price: \$9,000

Services	Q1	Q2	Q3	Q4
Value Assessment	Once during the 12 month subscription: 8 hrs total: 5 hours remote discovery & 3 hours remote write up/review			
Optimization Services*	4 hrs.	4 hrs.	4 hrs.	4 hrs.
Web Based Training*	2 seats	2 seats	2 seats	2 seats
Dedicated Premier Consultant*	10 hrs.	10 hrs.	10 hrs.	10 hrs.
Hosted Sandbox Environment	Not Available at the Silver Level			
Professional Services Discount	10% List Rate Discount on any additional Professional Services purchased during the 12 month subscription			
Priority Tier 2 Support	All support cases begin at the Tier 2 Support Level			

** Hours/Seats expire at the end of each quarter. Future allotted hours/seats can be utilized in the current quarter*

II. Gold

Term of Service: 12 months

Total Price: \$18,000

Services	Q1	Q2	Q3	Q4
Value Assessment	Once during the 12 month subscription: 32 hrs total: 3 days (24 hrs) onsite & 1 day (8 hrs) remote write up/review			
Optimization Services*	10 hrs.	10 hrs.	10 hrs.	10 hrs.
Web Based Training*	4 seats	4 seats	4 seats	4 seats
Dedicated Premier Consultant*	15 hrs.	15 hrs.	15 hrs.	15 hrs.
Hosted Sandbox Environment	One hosted sandbox environment provided during the 12 month subscription			
Professional Services Discount	15% List Rate Discount on any additional Professional Services purchased during the 12 month subscription			
Priority Tier 2 Support	All support cases begin at the Tier 2 Support Level			

** Hours/Seats expire at the end of each quarter. Future allotted hours/seats can be utilized in the current quarter.*

III. Platinum

Term of Service: 12 months

Total Price: \$50,000

Services	Q1	Q2	Q3	Q4
Value Assessment	Once during the 12 month subscription: 48 hrs total: 4 days (32 hrs) onsite & 2 days (16 hrs) remote write up/review			
Optimization Services*	40 hrs.	40 hrs.	40 hrs.	40 hrs.
Web Based Training*	10 seats	10 seats	10 seats	10 seats
Dedicated Premier Consultant*	20 hrs	20 hrs	20 hrs	20 hrs
Hosted Sandbox Environment	One hosted sandbox environment provided during the 12 month subscription			
Professional Services Discount	20% List Rate Discount on any additional Professional Services purchased during the 12 month subscription			
Priority Tier 2 Support	All support cases begin at the Tier 2 Support Level			

** Hours/Seats expire at the end of each quarter. Future allotted hours/seats can be utilized in the current quarter.*

Overview of Reporting Services

Reporting Subscription Services are designed to provide you with the ongoing assistance needed to deliver visibility to key metrics within the organization. Daptiv Reporting Assurance subscription service packages include report performance optimization, modifications, report development, requirements gathering and training in accordance with the purchased subscription level.

Reporting Assurance Subscription Service Options

IV. Silver

Term of Service: 24 months

Total Price: \$18,000

Term of Service: 36 months

Total Price: \$27,000

Services	Quarter	Annual
Business Analysis, Requirements, Modifications, Coaching and Development*	24 hours	96 hours
System Upgrade Modifications	Not Included at the Silver Level	
Training	Annual	
Report Studio Fundamentals - web based	1 seat	
Report Studio Fundamentals - classroom	1 seat	
Report Studio Advanced - classroom	Not Included at the Silver Level	
Training Webinars	1 seat	
Discount		
Customer Enablement Discount	15% List Rate Discount on any additional Customer Enablement Services (excluding other Subscription Services) purchased during the subscription period. Customer Enablement Services discounts are not cumulative.	

** Hours/Seats expire at the end of each quarter. Future allotted hours/seats can be utilized in the current quarter. Additional hours will require an additional order at the stated discount rate.*

V. Gold

Term of Service: 24 months

Total Price: \$26,000

Term of Service: 36 months

Total Price: \$39,000

Services	Quarter	Annual
Business Analysis, Requirements, Modifications and Coaching*	15 hours	60
Report Development (<i>minimum 2 reports</i>)	20 hours	80
System Upgrade Modifications	Not Included at the Gold Level	
Training	Annual	
Report Studio Fundamentals - web based	4 seats	
Report Studio Fundamentals - classroom	2 seats	
Report Studio Advanced - classroom	Not Included at the Gold Level	
Training Webinars	1 seat	
Discount		
Customer Enablement Discount	15% List Rate Discount on any additional Customer Enablement Services (excluding other Subscription	

	services) purchased during the subscription period. Customer Enablement Services discounts are not cumulative.
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** Hours/Seats expire at the end of each quarter. Future allotted hours/seats can be utilized in the current quarter. Additional hours will require an additional order at the stated discount rate.*

VI. Platinum

Term of Service: 24 months	Total Price: \$40,000
Term of Service: 36 months	Total Price: \$60,000

Services	Quarter	Annual
Business Analysis, Requirements, Modifications and Coaching*	20	80
Report Development (<i>minimum 4 reports</i>)	34	136
System Upgrade Modifications	Included	
Training	Annual	
Report Studio Fundamentals - web based	8 seats	
Report Studio Fundamentals - classroom	2 seats	
Report Studio Advanced - classroom	2 seats	
Training Webinars	2 seats	
Discount		
Customer Enablement Discount	15% List Rate Discount on any additional Customer Enablement Services (excluding other Subscription services) purchased during the subscription period. Customer Enablement Services discounts are not cumulative.	