

## PROFESSIONAL SERVICES AGREEMENT

**THIS PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **ZIVARO, INC.**, a Colorado corporation, whose address is 990 S. Broadway Street, Suite 300, Denver Colorado 80209 (“Contractor”), jointly “the parties.”

### RECITALS

**WHEREAS**, the City is desirous of engaging a third party reseller of data storage services to aid the City in technology needs; and

**WHEREAS**, the Contractor has agreed to provide those services under the terms and conditions as set out below.

IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

The recitals set forth above are incorporated herein.

1. **DEFINITIONS.** Whenever used herein, any schedules, exhibits, order forms, or addenda to this Agreement, the following terms shall have the meanings assigned below unless otherwise defined therein. Other capitalized terms used in this Agreement are defined in the context in which they are used.
  - 1.1 “**Acceptance**” means the Deliverable demonstrates to the City's reasonable satisfaction that the Deliverable conforms to and operates in all material respects according to the Acceptance Criteria, and if required, has successfully completed Acceptance Testing in all material respects, and for Deliverables not requiring Acceptance Testing that the Deliverable reasonably conforms in all material respects to the Acceptance Criteria or the City's requirements.
  - 1.2 “**Acceptance Certificate**” means a written instrument by which the City promptly notifies Contractor that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.
  - 1.3 “**Acceptance Criteria**” means functionality and performance requirements determined by the City and set forth on the Order Form or Statement of Work for the applicable Product or service, based upon the Specifications, which must be satisfied prior to City's Acceptance of a Deliverable, or the System. City and Contractor shall agree upon written Acceptance Criteria in the Order Form for the applicable Product or service.
  - 1.4 “**Acceptance Date**” means the date on which the City issues an Acceptance Certificate for the System or a Deliverable.

- 1.5 **"Acceptance Test"** means the evaluation and testing method, procedures, or both, that are set forth in the Order Form for the applicable Product or Service and are used to determine whether or not the System or a Deliverable requiring Acceptance Testing performs in accordance with the Acceptance Criteria.
- 1.6 **"Agreement"** means this Professional Services Agreement between City and Contractor, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference between the City and Contractor, Contract Number 202263433.
- 1.7 **"Deliverable"** means the Products or services or documents or tangible work products described in an Order Form or Statement of Work to be provided to the City by Contractor or the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor's work that is intended to be delivered to the City by Contractor under this Agreement.
- 1.8 **"Documentation"** means, collectively: (a) all materials published or otherwise made available to City by Contractor that relate to the functional, operational and/or performance capabilities of the services; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by Contractor, including marketing materials that describe the functional, operational and/or performance capabilities of the services; (c) any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by City, and the responses thereto from Contractor, and any document which purports to update or revise any of the foregoing; (d) work set out in a Statement of Work; and (e) the results of any Contractor "Use Cases Presentation", "Proof of Concept" or similar type presentations or tests provided by Contractor to City or as required to be produced by Contractor subject to the terms of this Agreement. .
- 1.9 **"Effective Date"** means the date on which this Agreement is fully approved and signed by the City as shown on the Signature Page for this Agreement. The Effective Date for Services may be set out in an order form or similar exhibit.
- 1.10 **"Equipment"** means any hardware, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus, to be provided to the City by Contractor under this Agreement.
- 1.11 **"Error"** means any defect, problem, condition, bug, or other partial or complete inability of a Product to operate in accordance with the applicable Specifications.
- 1.12 **"Intellectual Property Rights"** includes without limitation all right, title, and interest in

and to all (a) Patent and all filed, pending, or potential applications for Patent, including any reissue, reexamination, division, continuation, or continuation in part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights arising under the common law, state law, and federal law; (c) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work, under common law, state law, and federal law; and (d) proprietary indicia, trademarks, trade names, symbols, logos, and/or brand names under common law, state law, and federal law.

- 1.13 **"Order Form"** means a quote in the form attached hereto as an Exhibit, setting forth certain Products and/or services to be provided pursuant to this Agreement. Any reference to an "Order Form" in this Agreement includes Products and/or services purchased by City pursuant to Contractor's online ordering process. As applicable, Statement of Work may be synonymous with Order Form in this Agreement.
- 1.14 **"Product(s)"** means software, Equipment, and supplies delivered, or to be delivered, pursuant to an Order Form.
- 1.15 **"Project Manager"** means the individual who shall serve as each party's point of contact with the other party's personnel as provided in this Agreement.
- 1.16 **"Specifications"** means the most current cumulative statement of capabilities, functionality, and performance requirements for the Products or Services as set out in the Acceptance Criteria, Order Forms, Documentation, Contractor's representations, Contractor's proposal, Statement of Work, and the City's Request for Proposals.
- 1.17 **"Subcontractor"** means any third party engaged by Contractor to aid in performance of the work or the Service. Contractor shall provide to the City upon request a list of Subcontractors providing material services to the Service.
- 1.18 **"Third Party"** means persons, corporations and entities other than Contractor, City or any of their employees, contractors or agents.

## **2. RIGHTS AND LICENSE IN AND TO DATA**

- 2.1 The parties agree that as between them, all rights in and to City Data shall remain the exclusive property of City, and Contractor has a limited, nonexclusive license to access and use City Data as provided in this Agreement solely for the purpose of performing its obligations hereunder.
- 2.2 This Agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Agreement.

**3. DATA PRIVACY**

- 3.1 Contractor will use City Data only for the purpose of fulfilling its duties under this Agreement and for City's sole benefit and will not share City Data with or disclose it to any Third Party without the prior written consent of City or as otherwise required by law. By way of illustration and not of limitation, Contractor will not use City Data for Contractor's own benefit and, in particular, will not engage in "data mining" of City Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by City.
- 3.2 Contractor will provide access to City Data only to those Contractor employees, contractors and Subcontractors ("Contractor Staff") who need to access the City Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to the City Data, Contractor Staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the City Data they will be handling.
- 3.3 Contractor may provide City Data to its agents, employees, assigns, and Subcontractors as necessary to perform the work, but shall restrict access to Confidential Information to those agents, employees, assigns, and Subcontractors who require access to perform their obligations under this Agreement. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractor has access to any Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the City upon execution of the nondisclosure provisions if requested by the City.

**4. COMPLIANCE WITH APPLICABLE LAWS AND CITY POLICIES.** Contractor will comply with all applicable laws in performing the services under this Agreement. Any Contractor personnel visiting City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. City will provide copies of such policies to Contractor upon request.

**4. WARRANTIES, REPRESENTATIONS AND COVENANTS** Contractor represents and warrants that.

- 4.1 The services will conform to applicable specifications, and operate and produce results substantially in accordance with the Documentation and the Exhibits

attached hereto, and will be free from deficiencies and defects in materials, workmanship, design and/or performance during the Term of this Agreement;

- 4.2 All technology related services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;
- 4.3 Contractor has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to the software and Services free and clear from all liens, adverse claims, encumbrances and interests of any Third Party;
- 4.4 There are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any Third Party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;
- 4.5 The service will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any Third Party;
- 4.8 Third Party Warranties and Indemnities. Contractor will assign to City all Third Party warranties and indemnities that Contractor receives in connection with any products provided to City. To the extent that Contractor is not permitted to assign any warranties or indemnities through to City, Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of City to the extent Contractor is permitted to do so under the terms of the applicable Third Party agreements.
- 4.9 Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Agreement.
- 4.10 Delivery of Products shall not be construed to represent Acceptance nor shall Delivery of Products relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor.

## **5. CONFIDENTIALITY**

- 5.1 Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all City Data, unless the City Data are publicly available. Contractor shall not, without prior written approval of the City, use, publish, copy, disclose to any third party, or permit the use by any third party of any City Data, except as otherwise stated in this Agreement, permitted by law, or approved in writing by the City. Contractor shall provide for the security of all Confidential Information in

accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information, attached to this Contract as an Exhibit if applicable; (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI; (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI; and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and in accordance with the HIPAA Business Associate Agreement attached to this Agreement as an Exhibit if applicable.

- 5.2 The Receiving Party agrees to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own similar Confidential Information and not to directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow any Third Party to have access to any Confidential Information without prior written permission from the disclosing party. However: (a) either party may disclose Confidential Information to its employees and authorized agents who have a need to know; (b) either party may disclose Confidential Information if so required to perform any obligations under this Agreement; and (c) either party may disclose Confidential Information if so required by law (including court order or subpoena). Nothing in this Agreement shall in any way limit the ability of City to comply with any laws or legal process concerning disclosures by public entities. Contractor acknowledges that any responses, materials, correspondence, documents or other information provided to City are subject to applicable state and federal law, including the Colorado Open Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.
- 5.3 The Receiving Party will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement. The Receiving Party shall not disclose City Data or Confidential Information to Subcontractors unless such Subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.
6. **COLORADO OPEN RECORDS ACT.** The parties understand that all the material provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. In the event of a request to the City for disclosure of such information, the City shall advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its documents which it marked as proprietary or confidential

material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

**7. DELIVERY AND ACCEPTANCE:**

- 7.1 Right to Perform Acceptance Testing. Prior to Accepting Deliverables, the City shall have the right to perform Acceptance Testing to evaluate the Deliverable(s) to ensure they meet Acceptance Criteria, if any, set forth on the applicable Order Form or Statement of Work. Contractor shall cooperate with the City in the development of Acceptance Criteria that shall be codified in the applicable Order Form or Statement of Work that will set forth the location, date, and other specifications of the Acceptance Testing, if any. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.
- 7.2 After an Acceptance Test and if at any time the Service does not conform, the City will notify Contractor in writing within sixty (60) days and will specify in reasonable detail the identified failures and possible reasons for failure. Contractor will, at its expense, repair or replace the nonconforming product within fifteen (15) days after receipt of the City's notice of deficiency.
- 7.3 If the City issues an Acceptance Certificate for an "Acceptance with Exception(s)" the City will list the exception(s) and the date for Contractor's correction of the Error(s). If Error(s) are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the City will issue an Acceptance Certificate.
- 7.4 If a Deliverable fails a second or subsequent Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the Deliverable.
- 7.2 If the City is not satisfied with the Contractor's performance of the technology related services described in the Statement of Work, the City will so notify Contractor within thirty (30) days after Contractor's performance thereof. Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the technology related service in its

sole discretion. In the event that City finally rejects any technology related service, Contractor will refund to City all fees paid by City with respect to such technology related service.

7.3 The Contractor warrants that during the term of this Agreement that the Service and any associated components will not materially diminish during the subscription Term.

8. **TERM**: The term of the Agreement is from August 1, 2022 through September 15, 2025.

9. **COMPENSATION AND PAYMENT**:

9.1 Fee: The fees for the technology related services is described in the attached Pure as a Service Product guide and Pricing (the “Fees”). The Fees shall be paid pursuant to the City’s Prompt Payment Ordinance.

9.2 Reimbursement Expenses: The fees specified above include all expenses, and no other expenses shall be separately reimbursed or incurred hereunder for the provision of the Service(s).

9.3 Invoicing: Contractor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City’s Prompt Payment Ordinance.

9.4 Maximum Agreement Liability:

9.4.1 Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed ONE MILLION ONE HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$1,175,000) (the “Maximum Agreement Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in the attached Exhibits. Any services performed beyond those in the attached Exhibits are performed at Contractor’s risk and without authorization under the Agreement.

9.4.2 The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.



10. **STATUS OF CONTRACTOR:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

11. **TERMINATION:**

11.1 The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

11.2 Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

11.3 Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement and shall refund to the City any prepaid cost or expenses.

12. **EXAMINATION OF RECORDS AND AUDITS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.

13. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any

breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

**14. INSURANCE:**

14.1 General Conditions: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

14.2 Proof of Insurance: Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

- 14.3 Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- 14.4 Waiver of Subrogation: For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
- 14.5 Subcontractors and Subconsultants: Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.
- 14.6 Workers' Compensation and Employer's Liability Insurance: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- 14.7 Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.
- 14.8 Automobile Liability: Contractor shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- 14.9 Technology Errors & Omissions including Cyber Liability: Contractor shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall be kept in force, or a Tail policy placed, for three (3) years.

**15. DEFENSE AND INDEMNIFICATION:**

- 15.1 Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees ("Indemnified Parties") for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its

Subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

- 15.2 Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
  - 15.3 Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
  - 15.4 Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
  - 15.5 Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Service, software, or work product provided by Contractor under this Agreement (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.
  - 15.6 This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
16. **COLORADO GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. (2003).
  17. **TAXES, CHARGES AND PENALTIES:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.
  18. **ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any

assignment or subcontracting without such consent will be ineffective and void and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, Subcontractor or assign.

19. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.
20. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.
21. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** Except for the functional requirements provided in response to an RFP and/or any subsequent enhancement of the SOW or other implementation documentation that may be developed after execution of this Agreement, the Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.
22. **SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.
23. **CONFLICT OF INTEREST:**
  - 23.1 No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.
  - 23.2 The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of

interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

24. **NOTICES**: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Chief Information Officer or Designee  
201 West Colfax Avenue, Dept. 301  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

25. **DISPUTES**: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.
26. **GOVERNING LAW; VENUE**: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District. Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

27. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.
28. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**: Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Contractor from City facilities or participating in City operations.
29. **LEGAL AUTHORITY**: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.
30. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
31. **ORDER OF PRECEDENCE**: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.
32. **SURVIVAL OF CERTAIN PROVISIONS**: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
33. **INUREMENT**: The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.
34. **TIME IS OF THE ESSENCE**: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

35. **FORCE MAJEURE**: Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or software from suppliers, default of a Subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, Contractors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.
36. **PARAGRAPH HEADINGS**: The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.
37. **CITY EXECUTION OF AGREEMENT**: This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.
38. **COUNTERPARTS OF THIS AGREEMENT**: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.
39. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
40. **ADVERTISING AND PUBLIC DISCLOSURE**: The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.
42. **PAYMENT OF CITY MINIMUM WAGE**: Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not



limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

43. **EXHIBITS**; The Exhibits listed below are incorporated herein by reference.

**ATTACHED EXHIBITS**

**EXHIBIT A-Service product Guide and Pricing**

**EXHIBIT B End User Agreements**

**EXHIBIT C-CERTIFICATE OF INSURANCE**

**Contract Control Number:** TECHS-202263433-00  
**Contractor Name:** Zivaro, Inc.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

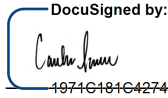
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

TECHS-202263433-00  
Zivaro, Inc.

By:  \_\_\_\_\_  
1974G181G42743G...

Name: Carolina Palacios  
(please print)

Title: Director of Contracts  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

## Exhibit A

# Pure as-a-Service Product Guide

This Pure as-a-Service Product Guide (“**Product Guide**”) describes the Pure as-a-Service Subscription purchased by the End User from Pure or Partner, as identified in the applicable Quote.

1. **Block Subscriptions.** Pure shall deploy Service Infrastructure as applicable to provide Pure as-a-Service for block Workloads only (each a “Block Subscription”) as described below, where the actual IOPS/TiB may vary based on End User’s actual workload characteristics. Pure will provide required incremental Service Infrastructure upgrades, at no additional cost if the Block Subscription is not performing consistent with the applicable service description.

1.1 **Ultra Block.** Designed for mission-critical, I/O intensive, very low latency workloads. Service Infrastructure deployed is designed to deliver 2,000 IOPS/TiB under the following workload characteristics: 70/30 read/write; DRR = 4:1; block size = 16k; concurrency = 60%; and without any replication configurations enabled.

1.2 **Premium Block.** Designed for mission critical, low latency workloads. Service Infrastructure deployed is designed to deliver 1,000 IOPS/TiB under the following workload characteristics: 70/30 read/write; DRR = 4:1; block size = 16k; concurrency = 60%; and without any replication configurations enabled.

1.3 **Performance Block (includes Pure as-a-Service delivered via Public Cloud).** Designed for mission-critical, low latency workloads.

1.4 **Capacity Block.** Capacity optimized block storage service for Tier-2 workloads.

**2. Unified Fast File and Object Subscriptions (UFFO).** Pure shall deploy Service Infrastructure as applicable to provide Pure as-a-Service for file and object Workloads only (each, a “UFFO Subscription”) as described below, where the actual IOPS/TiB may vary based on End User’s actual workload characteristics. Pure will provide required incremental Service Infrastructure upgrades, at no additional cost if the UFFO Subscription is not performing consistent with the applicable servicedescription.

**2.1 Ultra UFFO.** Designed to deliver ultra file and object Workload performance read and write. Service Infrastructure deployed is designed to deliver 96MB/TiB read and 35MB/TiB write performance under the following workload characteristics: 100% read or 100% write, DRR = 1.5:1, block size = 512KiB and with NFSv3.

**2.2 Premium UFFO.** Designed to deliver high performance file and object Workload read and write. Service infrastructure deployed is designed to deliver 43MB/TiB read and 15MB/TiB write performance under the following workload characteristics: 100% read or 100% write, DRR = 1.5:1, block size = 512KiB and with NFSv3.

**3. Love Your Pure As-A-Service Guarantee.** Except for Pure as-a-Service purchased through a Public Cloud Provider, the first Pure as-a-Service subscription purchased by End User comes with a 30-day “money back” guarantee, under which End User can receive a full refund for Pure as-a-Service, provided (a) End User must have performed a good-faith installation of the Product and enabled the Pure1® phone home feature, and (b) End User must notify Pure within 30 days of receipt of the Product to elect for a refund, and must (i) cease use of Pure as-a-Service, and (ii) if applicable, return the Service Infrastructure within 10 days of such notice, in like new condition (other than normal wear and tear). Pure will pay the shipping

costs for returns in accordance with Pure's reasonable instructions. Refunds will be processed within 30 days following the later of (1) End User's final use of Pure as-a-Service or (2) Pure's receipt of the returned Service Infrastructure. Pure reserves the right to charge reasonable refurbishing fees for damage to the Service Infrastructure while under End User's control. If End User has conducted an evaluation of Pure as-a-Service, then End User has had an opportunity to evaluate Pure as-a-Service and is not eligible for this guarantee.

**4. Included With All Subscriptions.** All Pure as-a-Service Subscriptions include the services and commitments described below.

**4.1 RACI.** All Subscriptions are delivered pursuant to the [Pure as-a-Service RACI](#), unless otherwise set forth in the Quote.

**4.2 Pure as-a-Service Included Services.** All Subscriptions include the services described in the [Pure as-a-Service Included Services Description](#).

**4.3 Zero Planned Downtime Commitment.** All Subscriptions are delivered with zero Planned Downtime and therefore End User may be entitled to a Downtime Credit equal to 100% of the monthly charges on any System that experiences Planned Downtime.

**4.4 99.99% Uptime Commitment.** Pure uses commercially reasonable efforts to provide the Subscription with an Uptime Commitment of 99.99% availability.

**4.5 Uptime Commitment.** The Uptime Commitment is calculated on a monthly basis, based on 24 hours in a day, 7 days in a week as follows:

Uptime Percentage =  $\frac{(\text{Total Minutes in a Month}) - (\text{Downtime Minutes})}{(\text{Total Minutes in a Month})}$

**4.6 Failure to Satisfy Uptime Commitment.** End User may be entitled to a Downtime Credit if Pure fails to satisfy the Uptime Commitment based on the table below:

Monthly Uptime	Downtime Per Month (Minutes)	Downtime Credit
<99.99%	4.4	10%
<99.95%	21.9	25%
<99.9%	43.8	100%

**4.7 Application of Downtime Credits.** Downtime Credits can only be applied: (a) to invoices issued subsequent to when the Downtime Credit was earned, and (b) to the affected System. Downtime Credits shall not: (i) be applied to anything other than as described in this Guide or the Agreement; (ii) combined with any other incentive or discount offered by Pure; and (iii) be issued case or a cas rebate in lieu of a credit, even if the Subscription is not being renewed. Pure or Partner consolidates all consumption and downtime data applicable to the final quarter of the Subscription, and issues a final invoice that applies all Downtime Credits earned through the expiration or termination of the applicable Service Term.

**4.8 Limitation on Downtime Credits.** Each Downtime Credit is earned only to the extent a System experiences a Severity-1 Issue (as defined in Pure's Customer Support Guide) and the root cause for the Severity-1 issue is Pure System at Fault. Downtime Credits are not earned due to (a) any performance issues due to batch, maintenance, or data migration work; (b) issues arising out of any equipment, software, or any other technology neither owned nor supplied by Pure; or (c) issues arising outside of Pure's reasonable control.

Notwithstanding anything to the contrary in this Product Guide, the

Terms of Use, or the Agreement, under no circumstances shall the aggregate Downtime Credits Pure issues exceed 10% of the amounts invoiced by Pure in the most recent 12-month period for the applicable Subscription.

**4.9 Process and Documentation for Downtime Credits.** End User is responsible for initiating any claim for a Downtime Credit, and providing any documentation reasonably requested by Pure in order to be eligible to earn a Downtime Credit.

## **5. Dark Sites and Non-Returnable Faulty Drives.**

**5.1 Dark Sites.** End User may be subject to Government or corporate security policies (collectively, the “Dark Site Security Policies”) such that connectivity to Pure1® is not possible. End User may purchase the PAAS-DARK-SITEMETERING SKU, such that in lieu of being connected to Pure1®, End User personnel shall provide telemetry logs (the “Logs”) on a monthly basis identifying the following information regarding End User’s daily usage: (a) average collected totals for daily amount consumed; (b) effective data reduction ratio for each day, (c) system utilization information to assess if there is need for more capacity and (d) any other information reasonably requested by Pure. If End User fails to provide the Logs, then Pure may exercise any of the following options: (i) demand payment equivalent to 100% utilization of Pure as-a-Service (e.g., 100% utilization of the Service Infrastructure) by End User for any and all periods that Pure1® is not enabled in excess of four days during any 30-day period; or (ii) suspension or termination of Pure as-a-Service, provided that Pure shall notify End User prior to any such suspension or termination.

**5.2 Non-Returnable Faulty Drives.** End User may be unable to return faulty SSDs. Therefore, End User may purchase the PAAS-



FAULTY-DRV-RETN SKU, permitting the End User to retain any faulty SSDs that Pure replaces. End User acknowledges and agrees that if End User fails to remove any information or data stored on any returned Service Infrastructure: (a) Pure is not liable to End User; and (b) Pure has the right to destroy that information or data.

6. **General Terms.** This Product Guide supplements the Pure End User Agreement (or other written agreement covering the same subject matter executed by Pure) for the applicable Subscription purchased by End User. Capitalized terms not specifically defined in these Terms have the same meaning as in the End User Agreement. Pure reserves the right to update this Guide from time to time, as noted by the “Last Updated” date below.



**DENVER**  
THE MILE HIGH CITY

# TECHNOLOGY SERVICES

## EXHIBIT A

The City and County of Denver is partnering with Zivaro, Inc. for the purposes of on-demand storage services. Supplier shall provide minimum discounts of 41% off list price for hardware and 13% off list price for services. The City and Supplier reserve the right to negotiate higher discounts on an order by order basis. Through this agreement, the City will have access to hundreds of products and services provided by Zivaro. A sample of the price list is provided below.

The entire price list can be found at:

<https://www.purestorage.com/docs.html?item=/type/pdf/subtype/doc/path/content/dam/pdf/en/naspo/naspo-valuepoint-participating-state-pricelist.pdf>.

Product Name	Product Description	List Price	Product Type	Discount	Price
5/TB/MO RENEWAL	5/TB/MO RENEWAL	\$200.00	Service	13%	\$174.00
10TB m10R2 to m20R2 DarkSite L1/L2 1MO 24/7 PRM	10TB m10R2 to m20R2 Darksite 1 Month 24/7 Pure1 Premium Maintenance and Support, 4 Hour delivery, 24/7 Support	\$440.00	Service	13%	\$382.80
10TB m10R2 to m20R2 DarkSite L1/L2 1MO 24/7 PRM,GOLD	10TB m10R2 to m20R2 Darksite 1 Month Evergreen Gold Subscription, 4 Hour delivery, 24/7 Support	\$440.00	Service	13%	\$382.80
10TB m10R2 to m20R2-ACCL-FF-UPS,1MO,ADV	10TB m10R2 to m20R2 1 Month Pure1 Advanced Maintenance and Support, NBD Delivery, 24/7 Support	\$370.00	Service	13%	\$321.90
10TB m10R2 to m20R2-ACCL-FF-UPS,1MO,ADV,GOLD	10TB m10R2 to m20R2 1 Month Evergreen Gold Subscription, NBD Delivery, 24/7 Support	\$370.00	Service	13%	\$321.90
10TB m10R2 to m20R2-ACCL-FF-UPS,1MO,ADV,SILVER	10TB m10R2 to m20R2 1 Month Evergreen Silver Subscription,NBD Delivery, 24/7 Support	\$370.00	Service	13%	\$321.90
10TB m10R2 to m20R2-ACCL-FF-UPS,1MO,BAS	10TB m10R2 to m20R2 1 Month Pure1 Same Business Day Shipment Maintenance and Support, 24/7 Support	\$360.00	Service	13%	\$313.20
10TB m10R2 to m20R2-ACCL-FF-UPS,1MO,BAS,GOLD	10TB m10R2 to m20R2 1 Month Evergreen Gold Subscription, Same Business Day Shipment, 24/7 Support	\$360.00	Service	13%	\$313.20
10TB m10R2 to m20R2-ACCL-FF-UPS,1MO,BAS,SILVER	10TB m10R2 to m20R2 1 Month Evergreen Silver Subscription, Same Business Day Shipment, 24/7 Support	\$360.00	Service	13%	\$313.20
10TB m10R2 to m20R2-ACCL-FF-UPS,1MO,PRM	10TB m10R2 to m20R2 1 Month Pure1 Premium Maintenance and Support, 4 Hour Delivery, 24/7 Support, DSE capable	\$400.00	Service	13%	\$348.00
10TB m10R2 to m20R2-ACCL-FF-UPS,1MO,PRM,GOLD	10TB m10R2 to m20R2 1 Month Evergreen Gold Subscription, 4 Hour Delivery, 24/7 Support	\$400.00	Service	13%	\$348.00
10TB m10R2 to m20R2-ACCL-FF-UPS,1MO,PRM,SILVER	10TB m10R2 to m20R2 1 Month Evergreen Silver Subscription, 4 Hour Delivery, 24/7 Support	\$400.00	Service	13%	\$348.00
10TB m20 to m50 DarkSite L1/L2 1MO 24/7 PRM	UPG Flex 10TB m20 to m50 Darksite 1 Month 24/7 Pure1 Premium Maintenance and Support, 4 Hour delivery, 24/7 Support	\$528.00	Service	13%	\$459.36
10TB m20 to m50 DarkSite L1/L2 1MO 24/7 PRM,GOLD	UPG Flex 10TB m20 to m50 Darksite 1 Month Evergreen Gold Subscription, 4 Hour delivery, 24/7 Support	\$528.00	Service	13%	\$459.36
10TB m20 to m50 DarkSite L1/L2 1YR 24/7 PRM	UPG Flex 10TB m20 to m50 DarkSite L1/L2 1 Year 24/7 Pure1 Premium Maintenance and Support, 4 Hour delivery, 24/7 Support	\$26,680.00	Service	13%	\$23,211.60
10TB m20 to m50 DarkSite L1/L2 3YR 24/7 PRM	UPG Flex 10TB m20 to m50 DarkSite L1/L2 3 Year 24/7 Pure1 Premium Maintenance and Support, 4 Hour delivery, 24/7 Support	\$66,700.00	Service	13%	\$58,029.00
	UPG Flex 10TB m20 to m50 1 Month Pure1 Advanced Maintenance and Support,				

# END USER AGREEMENT

Effective Date: April 30, 2020

THIS END USER AGREEMENT (“**AGREEMENT**”) APPLIES TO THE HARDWARE, SOFTWARE, OR SUBSCRIPTION SERVICES, INCLUDING ANY HARDWARE OR SOFTWARE COMPONENTS THEREOF (COLLECTIVELY, “**PRODUCTS**”) AND PURE-BRANDED PROFESSIONAL SERVICES (“**SERVICES**”) THAT THE CITY AND COUNTY OF DENVER (“**END USER**”) OBTAINS FROM PURE STORAGE, INC. (“**PURE**”) OR FROM ANY THIRD PARTY AUTHORIZED BY PURE TO RESELL THE PRODUCTS AND SERVICES.

## 1. SOFTWARE LICENSE.

**1.1. Software License.** Subject to End User’s compliance with the terms and conditions of this Agreement, Pure grants to End User, and any third party that End User authorizes to perform services involving the Product solely for End User’s benefit, a nontransferable, nonexclusive, perpetual license to use and execute the Pure software provided with, or incorporated in, the Pure hardware (the “**Software**”), in executable object code format only, and solely for use in accordance with the applicable Product documentation and Product SKU description. Pure may make Software updates and new releases available for installation by the End User and such updates will be subject to the terms of this Agreement.

**1.2. Subscription Services.** Software that is offered by Pure subject to permissions and/or limitations identified in the applicable SKU, schedule or quote for a specified period of time is provided to End User under the terms of Pure’s [Subscription Services Addendum](#), incorporated herein by reference.

## 2. PRODUCT RESTRICTIONS AND TITLE.

**2.1. Restrictions.** End User will not directly or indirectly (i) reproduce, modify, distribute, assign, disclose or make available any portion of the Products (or any related documentation) to any third party (except as otherwise authorized herein); (ii) rent, lease or sublicense the Products, unless otherwise authorized by Pure in writing; (iii) reverse engineer, decompile, or disassemble any portion of the Products, or otherwise attempt to decrypt, extract or derive source code for, or any algorithms or data structures embodied within, any portion of the Products (except to the extent the foregoing restriction is expressly prohibited by applicable law); (iv) use the Products to develop a similar product or service; (v) transfer or copy the Software to, or use the Software on, any other product or device, including any second-hand or grey market hardware that End User has not purchased from Pure or a Pure authorized reseller; or (vi) publish or disclose to any third party any technical features, performance or benchmark tests, or comparative or competitive analyses relating to the Products, except for internal use by the End User or as may be authorized by Pure in writing. End User will remain fully and primarily responsible to Pure for compliance with this Agreement if End User permits any third party to access the Products. Any future release, update, or other addition to functionality of the Products made available by Pure to End User shall be subject to the terms and conditions of this Agreement, unless Pure expressly states otherwise. End User shall preserve and shall not remove, obscure or alter any copyright labels required by law or other proprietary notices in the Products or related documentation.

**2.2. Title.** As between Pure and End User, title to Pure hardware purchased by End User will transfer to End User. Except as provided in the foregoing sentence, Pure and its suppliers shall exclusively retain all right, title and interest, in all intellectual property rights, including patent, trademark, trade name and copyright, whether registered or not registered, in and to the Products and related documentation. Pure and its suppliers reserve all rights not expressly granted herein, and no other license or other implied rights of any kind

are granted or conveyed. In the event that items of software code provided with the Products are subject to “open source” or “free software” licenses, nothing herein limits End User’s rights under, or grants rights that supersede, the applicable license therefor.

## 3. PRE-RELEASE PRODUCTS AND FEEDBACK.

**3.1. Pre-Release Products.** If mutually agreed by the parties, Pure may make available to End User beta or pre-release versions of the Products (“**Pre-Release Products**”). End User acknowledges that the Pre-Release Products (i) are not at the level of performance or compatibility of final, generally available products; (ii) may not operate correctly; (iii) may be modified prior to being made generally available; (iv) may not be made available for general release; and (v) may not be used in a production environment. End User agrees to notify Pure of any bugs or problems in the Pre-Release Products.

**3.2. Feedback.** End User may provide feedback to Pure regarding the use, operation, performance, and functionality of the Products and Pre-Release Products, including identifying potential errors and improvements (collectively, “**Feedback**”). End User grants to Pure a perpetual, irrevocable, worldwide, sublicenseable, fully paid-up and royalty-free right to modify and use the Feedback in any manner, provided that Feedback is anonymized and does not identify End User.

**4. EVERGREEN SUBSCRIPTION; INSTALLATION.** At its option, End User may purchase an innovation and support subscription for a purchased Product (“**Evergreen Subscription**”), which provides End User with additional software and hardware benefits. Under an applicable Evergreen Subscription, Pure will provide the generally available Product maintenance and technical support in accordance with the Pure Storage [Customer Support Guide](#) during the term for which End User has purchased such Evergreen Subscription. Depending on the Product or Evergreen Subscription purchased, certain benefits of the [Evergreen Storage Program Description](#) may also apply. Pure may designate support partners and authorized resellers to deliver the Evergreen Subscription in accordance with the terms of this Agreement. If End User purchases Pure-branded professional installation or other Services, such Services are provided to End User under the terms of Pure’s [Professional Services Addendum](#), incorporated herein by reference.

## 5. WARRANTY AND DISCLAIMER.

**5.1. Hardware Warranty.** Subject to this Section 5, Pure warrants that the Pure hardware will perform in substantial accordance with the corresponding Product documentation for three years from the date of shipment by Pure. The Evergreen Subscription benefits described in Section 4 extend beyond the limited warranty for the Pure hardware for the term purchased by End User.

**5.2. Software Warranty.** Subject to this Section 5, Pure warrants that the Software will perform in substantial accordance with the corresponding Product documentation for 90 days from the date of shipment by Pure. The Evergreen Subscription benefits described in Section 4 extend beyond the limited warranty for the term purchased by End User.

**5.3. Limited Warranty Process.** End User may contact Pure via email at [support@purestorage.com](mailto:support@purestorage.com) or phone at +1 (866) 244-7121 for warranty service. If a return is required, End User must obtain a return material authorization number from Pure and return the Product in secure packaging, freight prepaid, as instructed by Pure. Under the hardware warranty, Pure, at its option, either (i) will repair or replace any defective Product with Product or components of equal or greater functionality as the returned Product, or (ii) will refund the purchase price paid to Pure for such Product, reduced on a straight-line basis over a three-year life. Replacement Products or components will continue to be warranted for the remainder of the applicable warranty term. Repair, replacement or refund is the sole and exclusive remedy for breach of this warranty. Under the Software warranty, Pure will provide End User access to bug fixes and emergency patches. This warranty is provided to the original End User only and is not transferable.

**5.4. Exclusions.** The warranties herein do not cover defects or damages resulting from: (a) use of Products other than in a normal and customary manner in accordance with Pure's documentation; (b) physical or electronic abuse or misuse, accident, or neglect; or (c) alterations or repairs made to Products that are not authorized by Pure in writing. Pre-Release Products are provided without warranty or liability of any kind, for use at End User's own risk. Pure will use reasonable efforts to destroy (but have no liability for any loss or inadvertent disclosure of) data stored or remaining on a Product returned to Pure. Under this Agreement, all returned Products and components become the property of Pure.

**5.5. Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, PURE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, TO THE EXTENT WARRANTIES MAY BE DISCLAIMED UNDER APPLICABLE LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURE DOES NOT WARRANT AGAINST LOSS OR INACCURACY OF DATA OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS EXPRESSLY STATED IN SECTION 5.1, PURE PROVIDES THE PRODUCTS (INCLUDING ANY SOFTWARE) ON AN "AS IS" BASIS. THE PRODUCT IS NOT DESIGNED OR INTENDED FOR USE WHERE FAILURE OF THE PRODUCT COULD REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY, LOSS OF LIFE OR PROPERTY DAMAGE. END USER IS RESPONSIBLE FOR ENSURING THAT IT HAS APPROPRIATE DATA BACK-UP, DATA RECOVERY, AND DISASTER RECOVERY MEASURES IN PLACE.

**6. INDEMNIFICATION.** Pure will indemnify and defend End User, at Pure's expense, against any action brought by a third party against End User to the extent that the action is based upon a claim that the Products directly infringe any copyrights or U.S. patents or misappropriate any trade secrets, and Pure will pay those costs and damages finally awarded by a court of competent jurisdiction against End User in any such action that are specifically attributable to such claim or those costs and damages agreed to by Pure in a monetary settlement of such action. If End User's use of the Product is, or in Pure's opinion is likely to become, enjoined as a result of an infringement claim, Pure will, at its option and expense, either (i) procure the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing and remains functionally equivalent; or (iii) if, despite its commercially reasonable efforts, Pure is unable to do either (i) or (ii), Pure will accept return of the Product, terminate the rights herein, and pay to End User a prorated refund of the money paid to Pure for the purchase of such Product, reduced on a straight-line basis over a three-year life. Notwithstanding the foregoing, Pure will have no obligation with respect to any infringement claim based upon (a) any use of the Product that is not in accordance with this Agreement or the corresponding Product documentation; (b) any use of the Product in combination with other products, equipment, software, or data not supplied by Pure if such infringement would not

have arisen but for such combination; (c) the use of any release of the Software other than the current and immediately preceding version; or (d) any modification of the Product by any person other than Pure if such infringement would not have arisen but for such modification. This Section 6 states Pure's entire liability, and End User's sole and exclusive remedy, for infringement claims and actions. The foregoing obligations are subject to End User notifying Pure promptly in writing of such action, giving Pure sole control of the defense thereof and any related settlement negotiations, and cooperating and assisting in such defense at Pure's reasonable request and expense (including reasonable attorneys' fees).

**7. LIMITATION OF LIABILITY.** IN NO EVENT WILL PURE, ITS PARENTS, SUBSIDIARIES, AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES NOR ITS SUPPLIERS (COLLECTIVELY, THE "PURE PARTIES") BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR LOST PROFITS, LOST OR CORRUPTED DATA, OR INTERRUPTION OF BUSINESS ARISING IN CONNECTION WITH THE USE OF THE PRODUCT OR SERVICES OR IN CONNECTION WITH ANY OTHER CLAIM ARISING FROM THIS AGREEMENT, EVEN IF THE PURE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OTHER THAN PURE'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PURE PARTIES' AGGREGATE LIABILITY UNDER OR RELATING TO THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY END USER FOR PRODUCTS OR SERVICES THAT GAVE RISE TO SUCH CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

**8. PRODUCT DIAGNOSTIC REPORTING.** End User acknowledges that the Products store certain diagnostic information about the routine operations of the Product, including performance, capacity usage, data reduction ratios, configuration data, and hardware faults ("Pure1 Reports") and, when enabled by End User, periodically transmit these Pure1 Reports to Pure and authorized End User partners. End User understands and agrees that End User data stored on the Products is not accessed, transmitted or provided to Pure or any third party as part of the Pure1 Reports. Pure retains all right, title, and interest in the Pure1 Reports. End User agrees that the collection and transmission of such Pure1 Reports is necessary to facilitate any Subscription Services and certain support services under an Evergreen Subscription.

**9. CONFIDENTIAL INFORMATION.**

**9.1. Data Privacy.** End User is solely responsible for data (including personal data) managed or stored using the Products and for compliance with all applicable data privacy laws related thereto. In the event End User provides Pure with personal data in connection with the performance of this Agreement, the parties will ensure that such personal data is disclosed and handled in accordance with applicable data protection laws.

**9.2. Confidentiality.** "Confidential Information" means any nonpublic information of a disclosing party ("Discloser"), whether disclosed orally or in written or digital media, received by the receiving party ("Recipient"), that is identified as "confidential" or with a similar legend at the time of such disclosure or that Recipient knows or should have known is the confidential or proprietary information of Discloser. Pure's Confidential Information includes all non-public information relating to, or derived from, the Products and Services, including technical features, benchmark results, or performance results. Information does not constitute a party's Confidential Information if it (a) is already known by Recipient without obligation of confidentiality; (b) is independently developed by Recipient without use of Discloser's Confidential Information; (c) is publicly known without breach of this Agreement; or (d) is lawfully received from a third party without

obligation of confidentiality. Recipient shall: (i) not use or disclose any Confidential Information except as expressly authorized by this Agreement or Discloser; (ii) protect Discloser's Confidential Information using the same degree of care that it uses with respect to its own confidential information of a like nature, but in no event with safeguards less than a reasonably prudent business would exercise under similar circumstances; and (iii) limit access to Discloser's Confidential Information to its employees, affiliates, agents, or authorized representatives having a need to know and who are bound by confidentiality obligations no less protective to those contained herein. Recipient shall take prompt and appropriate action to prevent unauthorized use or disclosure of Discloser's Confidential Information. Recipient's obligations under this Section 9.2 survive termination and continue for five (5) years from the date of termination of this Agreement. All tangible materials containing Confidential Information shall remain the property of Discloser. Upon termination, Recipient shall cease any use of Confidential Information. Upon Discloser's written request, the receiving party shall promptly return (or at Discloser's option, destroy) all documents and tangible materials containing any portion of, or summarizing, Discloser's Confidential Information. At Discloser's request, an authorized representative of Recipient shall provide a certificate attesting to compliance with this section. If any Confidential Information must be disclosed to any third party by reason of legal, accounting, or regulatory requirements, Recipient shall promptly notify Discloser of the order or request and permit Discloser (at its own expense) to seek an appropriate protective order.

## 10. GENERAL PROVISIONS.

**10.1. Governing Law and Venue.** This Agreement will be governed and interpreted by and under the laws of the State of Colorado, without giving effect to any conflicts of laws principles. The parties expressly consent to the personal jurisdiction and venue in the state and federal courts in Denver County, Colorado for any lawsuit filed there arising from or related to this Agreement. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**10.2. Termination.** The license in Section 1.1, and End User's rights to use the Software, will terminate immediately in the event that: (i) End User returns the Product to Pure as provided herein; or (ii) End User materially breaches any provision of this Agreement and, if capable of cure, fails to cure such breach within 30 days from the date of Pure's written notice to End User. Upon any such termination, End User shall promptly discontinue all use of the Software. Sections 2, 3.2, 5.4, 6, 7, 9, and 10 will survive any termination of this Agreement.

**10.3. Notices.** Except as specifically stated, all notices or other communications required or permitted under this Agreement shall be in writing and shall be delivered by personal delivery, certified overnight delivery such as Federal Express, or registered mail (return receipt requested) and shall be deemed given upon personal delivery or upon confirmation of receipt.

**10.4. Compliance with Laws.** The parties agree to comply with all laws applicable to the distribution and use of the Product and performance of its obligations under this Agreement.

**10.5. Severability; Waiver.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**10.6. Export.** The Products and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. End User agrees not to export, re-export, or transfer, directly or indirectly, any technical data acquired from Pure, or any products incorporating such data, in violation of applicable export laws or regulations. For purposes of Pure's compliance with applicable export laws, End User agrees to provide Pure with applicable end use information upon Pure's request.

**10.7. No Assignment.** This Agreement, and End User's rights and obligations herein, may not be assigned by End User without Pure's prior written consent, which consent will not be unreasonably withheld, and any attempted assignment in violation of the foregoing will be null and void.

**10.8. U.S. Government End Users.** The Products and related documentation are "commercial off the shelf items" as defined in FAR 2.101 and their use is subject to the policies set forth in FAR 12.211, FAR 12.212 and FAR 227.7202, as applicable.

**10.9. Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, volcanic eruption, material shortages or any other cause that is beyond the reasonable control of the party.

**10.10. Privacy.** This Agreement is subject to [Pure's Privacy Policy](#), which constitutes an integral part of this Agreement. End User is solely responsible for personal data managed or stored using the Products, and for compliance with all applicable data privacy laws related thereto.

**10.11. Entire Agreement; Modification.** This Agreement, including any terms referenced herein, is the entire agreement between the End User and Pure with respect to the subject matter hereof. Any varying or additional terms relating to the subject matter hereof in any purchase order, discussion, or other written document will be of no effect. This Agreement imposes no financial liability on the End User outside of the Agreement between the End User and the authorized Third Party reseller which has not been appropriated and encumbered therein. This Agreement, including any rights hereunder, may be extended or amended by the parties in writing.

[signature block on following page]

**IN WITNESS WHEREOF**, the parties' authorized representatives have executed this Agreement as of the Effective Date.

**PURE STORAGE, INC.**

**END USER:** \_\_\_\_\_

DocuSigned by:  
  
60D9B776960C415...

Name: Joe FitzGerald

Name:

Title: Chief Legal officer

Title:

Date: 4/29/2020

Date:

Address: 650 Castro Street, Mountain View, CA 94041

Address:

**EXHIBIT A**  
**SUBSCRIPTION SERVICES ADDENDUM**

# SUBSCRIPTION SERVICES ADDENDUM

This Subscription Services Addendum (“**Addendum**”) is applicable to the Pure-branded subscription-based hardware and/or software offerings and related services (collectively, “**Subscription Services**”), as purchased by the end user (“**End User**”) from Pure Storage, Inc. or its wholly owned affiliates (“**Pure**”) or a Pure authorized reseller (a “**Partner**”).

**1. SUBSCRIPTION LIMITS.** Subscription Services are provided and licensed based on Subscription Limits. “**Subscription Limits**” means the permissions and/or limitations identified in the applicable SKU, schedule or quote issued by a Partner or Pure and accepted by End User (“**Schedule**”). Such Subscription Limits may include, but are not limited to: (i) the specified period of time during which End User is entitled to access and use the Subscription Services (“**Subscription Term**”); (ii) identified sizing and capacity limitations (and identified units of measurement: GiB, TiB, etc.); (iii) identified number of users; (iv) identified host, VM, Instance, site, cluster, or other sub-org designation limits; (v) physical location; and (vi) inter-connectivity rights with other Pure Products or third party offerings, all as applicable to the specific Subscription Services purchased by End User.

**2. ACCESS AND USE.** Subject to the terms of this Addendum and the applicable Schedule, Pure grants to End User, and any third party that End User authorizes to perform services involving the Subscription Services solely for End User’s benefit, a nontransferable, nonexclusive, revocable right to: (i) access and use the Subscription Services, and (ii) download, install, and use, in executable object code format only, any Pure plug-in or software necessary to use such Subscription Services (“**Subscription Software**”), solely in accordance with the applicable Subscription Limits, and solely during the Subscription Term. End User will not, nor will End User allow any third party to, use the Subscription Services or Subscription Software in excess of the Subscription Limits.

**3. PURE1 DATA REQUIRED.** Pure’s “phone home” feature, known as Pure1, is an integral component of Pure’s delivery of the Subscription Services. End User acknowledges and agrees that the rates charged for Subscription Services, and End User’s compliance with the Subscription Limits, are contingent upon Pure’s receipt of Pure1 Data. Therefore, End User shall ensure that Pure1 is enabled at all times. Notwithstanding any other rights or remedies available to Pure, Pure reserves the right to any of the following remedies if Pure1 is not enabled at any time during the Subscription Term: (i) payment equivalent to 100% utilization of the Subscription Services (e.g., 100% utilization of Deployed Hardware) by End User for any and all periods that Pure1 is not enabled in excess of four days during any 30-day period; or (ii) suspension or termination of the Subscription Services, provided that Pure shall notify End User prior to any such suspension or termination..

**4. RESERVE COMMITMENT.** Depending on the Subscription Services purchased by End User, Subscription Limits may include a minimum usage commitment of the Subscription Services (a “**Reserve Commitment**”). A Reserve Commitment may be increased, if requested by End User, with no change to the Subscription Term. However, End User acknowledges and agrees that a Reserve Commitment may not be reduced at any time during the Subscription Term, as Pure’s ability to provide the flexibility associated with its Subscription Services is based on Pure’s reliance on End User’s minimum usage commitment during the Subscription Term.

**5. CLOUD SUBSCRIPTIONS.** The following terms apply to any Subscription Services that are delivered through a third-party, public cloud service provider (“**Cloud Subscriptions**”).

**5.1 Public Cloud Provider Terms.** Cloud Subscriptions may be made available for activation and use through a third-party, public-cloud service provider such as Amazon Web Services, Google Cloud, or Microsoft Azure (each, a “**Public Cloud Provider**”). By accessing or utilizing any Cloud Subscriptions, End User acknowledges and agrees that: (i) it is responsible for reviewing, consenting to, and complying with the relevant Public Cloud

Provider’s terms and conditions (the “**Public Cloud Terms**”); (ii) the Public Cloud Terms govern End User’s access to, and use of, the Public Cloud Provider’s platform, while this Subscription Services Addendum applies to End User’s access to, and use of, the Subscription Services; and (iii) to the extent a conflict arises between the Public Cloud Terms and this Subscription Services Addendum, this Subscription Services Addendum shall prevail with respect to End User’s access to and use of the Subscription Services.

**5.2 Cloud Subscription Instances.** By activating a Cloud Subscription, End User is entitled to create as many virtual data storage instances (each, an “**Instance**”) as the Public Cloud Provider allows. Usage across all Instances is aggregated, measured against the Reserve Commitment, and used to calculate any applicable usage charges. End User is responsible for the payment of any fees associated with End User’s continued access to, and usage of, any Instance following the expiration or termination of any Subscription Term.

**5.3 Public Cloud Obligations.** In addition to End User’s obligations as set forth in the applicable Public Cloud Terms, End User acknowledges and agrees that: (i) End User is responsible for all activities that occur in its public cloud account; (ii) Pure is not responsible for any unauthorized access to End User’s public cloud account; (iii) End User is responsible for taking all appropriate action to secure, protect, and backup any and all data or content End User stores, processes, or utilizes with the Cloud Subscription (collectively, “**End User Data**”); (iv) End User is responsible for taking all appropriate action to secure and protect End User Data, including (a) utilizing any encryption to protect End User Data from unauthorized access; and (b) routinely backing-up and archiving End User Data; (v) End User is responsible for maintaining secure access to any log-in credentials or account keys made available by the applicable Public Cloud Provider; (vi) End User Data is lost and completely unrecoverable by End User, Pure, or the Public Cloud Provider upon deletion of any Instance and (vii) 7 days following the expiration or termination of the Subscription Term, neither Pure nor the Public Cloud Provider are responsible for the retrieval of any End User Data that was utilized on, or with, the Cloud Subscription.

**5.4 End User’s Public Cloud Account.** End User is responsible for ensuring that its permitted end users comply with End User’s obligations under the Pure End User Agreement, this Subscription Services Addendum, the applicable Public Cloud Terms, and all applicable laws and regulations.

**6. SUBSCRIPTION HARDWARE.** The following terms apply to any Subscription Services requiring or otherwise utilizing Pure hardware (“**Subscription Hardware**”):

**6.1 Sizing and Installation.** Pure sizes the Subscription Hardware, subject to Pure’s reasonable discretion, based on End User’s identified workload requirements, as reported by End User to a Partner or Pure (the “**Workload**”). Pure will ship the Subscription Hardware following confirmation of the datacenter’s readiness, as determined by completion of Pure’s pre-site survey. The Subscription Hardware must not be moved without Pure’s written consent, which shall not be unreasonably withheld. Notwithstanding anything to the contrary in this Addendum, End User is responsible for ensuring Pure’s access to the datacenter for all Subscription Hardware installation and maintenance services.

**6.2 Deployed Hardware.** Pure may expand, modify, substitute, replace, or remove any component of Subscription Hardware deployed to provide the Subscription Services to meet the Workload (“**Deployed Hardware**”), based on data reduction efficiencies Pure sees with similar end users across its install base. Pure will use reasonable efforts to ship additional Deployed Hardware



within 14 business days of Pure determining that additional Deployed Hardware is required to meet the Workload. Notwithstanding the foregoing, (i) shipment of additional Deployed Hardware is subject to the payment of all current and outstanding invoices for Subscription Services; and (ii) Pure may require End User to increase the Reserve Commitment if the End User's daily usage exceeds 2.5x the then-current Reserve Commitment.

**6.3 Return of Subscription Hardware.** Upon termination or expiration of the Subscription Term, End User shall (i) promptly contact Pure regarding the return of Subscription Hardware to obtain an RMA number, packaging instructions, and shipping address; (ii) promptly return the Subscription Hardware to Pure in accordance with Pure's reasonable shipping instructions; (iii) reimburse Pure for reasonable repair or reasonable replacement costs associated with any damage to the Subscription Hardware (other than normal wear and tear) while in End User's possession; and (iv) ensure that all information stored on the Subscription Hardware is removed in its entirety. Pure is not responsible for or liable to End User, or any third party, for any information remaining on the Subscription Hardware returned to Pure, and Pure has the right to delete and destroy any such information or data.

**7. SUBSCRIPTION TERM.** The start date of any Subscription Term shall be the date that Pure makes the Subscription Services available to End User. Notwithstanding the foregoing, for any Subscription Services requiring Subscription Hardware, the start date of any Subscription Term shall be: (i) 4 weeks from the Schedule acceptance date for any net-new Subscription Services, or (ii) the Schedule acceptance date, for any renewal or modification of existing Subscription Services. Upon expiration of the initial Subscription Term, the Subscription Services may renew for subsequent 12-month terms upon amendment of the underlying agreement, unless End User provides Partner and Pure written notice of its intent not to renew at least 60 days prior to the expiration of the then-current Subscription Term.

**8. AUDIT.** Pure and its independent accountants shall have the right, upon reasonable notice to End User, to examine End User's use of the Subscription Services to verify compliance with the Subscription Limits and this Addendum. If the audit identifies usage in excess of the Subscription Limits, then End User will promptly pay to Pure or a Partner, as determined by Pure, any additional fees that Pure (or a Partner) is owed hereunder, and the reasonable costs of conducting the audit.

**9. TERMINATION.** This Addendum, and End User's rights to use the Subscription Services, terminate immediately if: (i) any applicable Subscription Term expires; (ii) End User fails to make timely payments for the Subscription Services to Pure or its authorized resale partner; or (iii) End User materially breaches any provision of this Agreement and, if capable of cure, fails to cure such breach within 30 days from the date of Pure's written notice to End User. Upon any such termination, End User shall promptly: (a) discontinue all use of the Subscription Services, and (b) pay all amounts due for Subscription Services.

**9.1 Subscription Hardware.** End User shall promptly return all Subscription Hardware to Pure upon any expiration or termination of the applicable Subscription Term. Otherwise, Pure reserves the right to enter End User's premises, or the premises where the Subscription Hardware is located, to access and retrieve the Subscription Hardware.

**9.2 Cloud Subscriptions.** End User has 7 days following termination or expiration of a Subscription Term to access any remaining Instances for the sole purpose of copying any End User Data remaining on those Instances, prior to that data being permanently unrecoverable from either Pure or the Public Cloud Provider. During this 7-day period, End User is prohibited from (i) creating any new Instances; or (ii) writing any new data or connecting any virtual machines ("VMs"). End User shall be charged at the On-Demand rate for any Instances created or any new data written, or

VMs connected to any Instance during that 7-day period. End User acknowledges and agrees that following this 7-day period: (a) End User Data in the Cloud Subscription and any Instances will no longer be retrievable by End User, Pure, or the Public Cloud Provider; (b) End User is prohibited from accessing its Cloud Subscription or any Instances; and (c) to the extent End User is still accessing its Cloud Subscription or any Instance, Pure reserves the right to deactivate, and terminate any access to, that Cloud Subscription or Instance, without any liability to Pure or the Public Cloud Provider.

**10. GENERAL TERMS.** This Addendum supplements the [Pure End User Agreement](#) (or other written agreement covering the same subject matter executed by Pure) for the applicable Subscription Services purchased by End User. Capitalized terms not specifically defined in this Addendum will have the same meaning as in the End User Agreement. Pure reserves the right to update the Addendum from time to time, as noted by the "Last Updated" date below.

**11. SERVICES DESCRIPTIONS AND DEFINITIONS.** The following descriptions and definitions apply to this Addendum and any Schedules for Subscription Services:

**10.1 Pure's Data Storage-as-a-Service.** Pure provides a subscription-based, data storage-as-a-service solution, measured and billed on a consumption basis through connectivity to Pure1, in two formats: (i) Pure's Evergreen Storage Service, which is delivered through Subscription Hardware ("ES2"); and (ii) Pure's Cloud Block Store, which is delivered through a Cloud Subscription ("CBS"). Unless otherwise agreed to in the applicable Schedule: (a) Reserve Commitments are billed annually in advance for a minimum committed usage at the Reserve Rate; (b) On-Demand Used is billed at the On-Demand Rate (1) calendar-quarterly in arrears for ES2 and (2) monthly in arrears for CBS; and (c) consumption of any block workloads that include encrypted, de-duped, or pre-compressed data, or any workloads where the data reduction is less than 2:1, as determined by Pure1 ("**Encrypted Workloads**") are billed at 2.5x the Reserve Rate (1) calendar-quarterly in arrears for ES2; and (2) monthly in arrears for CBS. Pure's Data Storage-as-a-Service is available as follows:

- **Block storage-as-a-service (ES2 and CBS):** Usage, including Reserve Commitments, are metered and billed on daily average Effective Used capacity, as measured in GiBs.
- **File and object storage-as-a-service (ES2 Only):** Usage, including Reserve Commitments, are metered and billed on daily average Effective Used capacity, as measured in GiBs.

**10.2 Definitions for ES2 and CBS.**

- **Effective Used:** Measure of data written by a host to a storage volume, along with any snapshots and copies thereof.
- **On-Demand Used (or Burst):** The total amount of Subscription Services consumed by End User above the Reserve Commitment.
- **On-Demand Rate (or Burst Rate):** The rate applicable to usage of Subscription Services above the Reserve Commitment.
- **Reserve Rate.** The rate applicable to usage of the Reserve Commitment.

**10.3 ObjectEngine CloudDirect.** ObjectEngine CloudDirect is a subscription-based service that allows End User to store data, after deduplication and compression, up to the capacity limits identified in the Schedule. In addition to Pure's other rights and remedies hereunder, Pure may bill End User or Partner for any usage of ObjectEngine CloudDirect above the capacity limits identified in the Schedule. If ObjectEngine CloudDirect Subscription Services are purchased at the same time as ObjectEngine hardware, then the

ObjectEngine CloudDirect Subscription Services are made available to End User on the hardware shipment date.

**10.4 VM Analytics.** VM Analytics is Pure's proprietary visualization representation of the IO Path from a VM to either a Pure product or service, or a third-party provider's storage product or service, allowing the End User to identify which applications are running on End User's volumes, arrays, or Subscription Service (collectively, "**VM Analytics Data**").

**10.4(A) VM Analytics Subscriptions.** By activating a VM Analytics Subscription, End User is entitled to either (i) VM Analytics Essential, a free-of-charge VM Analytics Subscription to that is made available to each End User with its creation of a Pure1 account, and provides End Users with access to VM Analytics Data for a period no longer than the most recent 7-day rolling period; and (ii) VM Analytics Pro, a paid VM Analytics Subscription that provides End Users with VM Analytics Data going back further than the most recent 7-day rolling period. When purchasing a VM Analytics Subscription, the historical record of VM Analytics Data available to End User: (a) looks back

no earlier than the most recent rolling-seventh day of VM Analytics Data available to the End User as of the date the applicable VM Analytics Subscription starts; and (b) is more specifically set forth in the applicable Subscription Limits.

**10.4(B) VM Analytics and Third-Party Storage Products or Services.** VM Analytics may be available for products and services that are not provided by Pure (collectively, "**Third-Party Storage Products**"). Pure makes no representations or warranties, and specifically disclaims any liability with respect to the accuracy of any VM Analytics Data, interconnectivity, functionality of Pure1, or VM Analytics' ability to collect VM Analytics data from any Third-Party Storage Product. End User acknowledges and agrees that: (i) End User is exclusively responsible for securing any permissions to collect data for VM Analytics from any Third-Party Storage Product; (ii) VM Analytics Data for any Third-Party Storage Product, is provided as-is; and (c) End User exclusively responsible, and waive any claim against Pure with respect to End User's use or reliance on any VM Analytics Data for any Third-Party Storage Product.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/5/2022

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> One, Inc. dba Confluence Insurance PO BOX 300548 Denver CO 80203	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"><b>CONTACT NAME:</b> CONFLUENCE</td> </tr> <tr> <td><b>PHONE (A/C, No, Ext):</b></td> <td><b>FAX (A/C, No):</b> 303-623-7325</td> </tr> <tr> <td colspan="2"><b>E-MAIL ADDRESS:</b> CERTIFICATE@confluenceinsurance.com</td> </tr> <tr> <th colspan="2" style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td colspan="2"><b>INSURER A:</b> CONTINENTAL INS. CO.</td> <td style="text-align: center;">35289</td> </tr> <tr> <td colspan="2"><b>INSURER B:</b> NATIONAL FIRE INS. CO OF HARTFORD</td> <td style="text-align: center;">20478</td> </tr> <tr> <td colspan="2"><b>INSURER C:</b> CONTINENTAL CASUALTY</td> <td style="text-align: center;">20443</td> </tr> <tr> <td colspan="2"><b>INSURER D:</b> VALLEY FORGE INS. CO</td> <td style="text-align: center;">20508</td> </tr> <tr> <td colspan="2"><b>INSURER E:</b></td> <td></td> </tr> <tr> <td colspan="2"><b>INSURER F:</b></td> <td></td> </tr> </table>	<b>CONTACT NAME:</b> CONFLUENCE		<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b> 303-623-7325	<b>E-MAIL ADDRESS:</b> CERTIFICATE@confluenceinsurance.com		INSURER(S) AFFORDING COVERAGE		NAIC #	<b>INSURER A:</b> CONTINENTAL INS. CO.		35289	<b>INSURER B:</b> NATIONAL FIRE INS. CO OF HARTFORD		20478	<b>INSURER C:</b> CONTINENTAL CASUALTY		20443	<b>INSURER D:</b> VALLEY FORGE INS. CO		20508	<b>INSURER E:</b>			<b>INSURER F:</b>		
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<b>INSURER A:</b> CONTINENTAL INS. CO.		35289																										
<b>INSURER B:</b> NATIONAL FIRE INS. CO OF HARTFORD		20478																										
<b>INSURER C:</b> CONTINENTAL CASUALTY		20443																										
<b>INSURER D:</b> VALLEY FORGE INS. CO		20508																										
<b>INSURER E:</b>																												
<b>INSURER F:</b>																												
<b>INSURED</b> ZIVARO, INC. 3900 E. MEXICO AVENUE, SUITE 1000 Denver CO 80210																												

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	5086291169.1	06/01/2022	06/01/2023	EACH OCCURRENCE	\$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)						\$ 1,000,000	
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
B	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BUA 5086291155	06/01/2022	06/01/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	BODILY INJURY (Per person)						\$	
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000.00	Y	Y	CUE 5086291172	06/01/2022	06/01/2023	EACH OCCURRENCE	\$ 6,000,000.00
	AGGREGATE						\$ 6,000,000.00	
							\$	
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	Y	WC430406101	06/01/2022	06/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	E.L. EACH ACCIDENT							\$ 1,000,000
	E.L. DISEASE - EA EMPLOYEE							\$ 1,000,000
	E.L. DISEASE - POLICY LIMIT							\$ 1,000,000
A	PROF LIAB (TECH E&O LIAB) CYBER/NETWORK SECURITY LIAB			5086291169.1	06/01/2022	06/01/2023	EACH OCCURRENCE	\$5,000,000
	AGGREGATE						\$5,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

See ACORD 101

**CERTIFICATE HOLDER****CANCELLATION**

CITY AND COUNTY OF DENVER  DEPARTMENT OF TECHNOLOGY SERVICES 201 W. COLFAX AVE., DEPT 301 DENVER CO 80202	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE  <i>Gary Friedman</i></p>
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AGENCY CUSTOMER ID: \_\_\_\_\_

LOC #: \_\_\_\_\_



### ADDITIONAL REMARKS SCHEDULE

AGENCY One, Inc.		NAMED INSURED ZIVARO, INC.	
POLICY NUMBER BUA 5086291155, CUE 5086291172, WC430406101, 5086291169.1, 6522323			
CARRIER CNA	NAIC CODE 20508, 3528	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** 25      **FORM TITLE:** Certificate Of Liability Insurance

City Contract Number: TECHS-202263433. City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured under the General Liability and Umbrella Liability policy in accordance with all the terms, conditions and limitations of the policy as required by written contract. A Waiver of Subrogation on the General Liability, Umbrella Liability and Workers' Compensation policies apply in favor of the Certificate Holder in accordance with all terms, conditions and limitations of the policy.