

**COUNTY OF EL DORADO****Purchase Contract**

Fiscal Year 2024

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EVERGREEN SERVICES TOPCO LLC
dba EXECUTECH UTAH LLC
10876 S RIVER FRONT PKWY
STE 100
SOUTH JORDAN, UT 84095

THIS NUMBER MUST APPEAR ON ALL
INVOICES, PACKAGES AND SHIPPING PAPERS

Purchase
Contract # **8388**

SUBJECT TO TERMS AND CONDITIONS ON WEBSITE

<https://www.eldoradocounty.ca.gov/County-Government/Procurement-and-Contracts/PO-Terms-and-Conditions>

For Period: 01/31/2024 To 01/30/2027

PLEASE NOTE: This Purchase Contract is for a NTE (Not To Exceed)
amount.**NTE: \$385,541.34**

PRICING, SERVICE & SOFTWARE TERMS PER QUOTE #006393

CONTRACT ADMINISTRATOR, TONIA DIGIORNO, INFORMATION TECHNOLOGIES DIRECTOR OR SUCCESSOR

MEDIA: ELECTRONIC DOWNLOAD ONLY

THIS PURCHASE ORDER IS BEING ISSUED FOR THE ACQUISITION OF SOFTWARE LICENSES, SOFTWARE MAINTENANCE, UPGRADE PROTECTION AND/OR RENEWALS OF SAME. COUNTY OF EL DORADO DOES NOT ACCEPT PHYSICAL MEDIA FOR EITHER THE INITIAL PURCHASE OF SOFTWARE LICENSES AND/OR ANY SOFTWARE MAINTENANCE AND UPDATES. SOFTWARE, MAINTENANCE AND UPGRADE PROTECTION WHEN ELECTRONICALLY DOWNLOADED ARE NOT SUBJECT TO TAXATION PER THE STATE OF CALIFORNIA, CDTFA REGULATION SECTION 1502 OF TITLE 18 OF THE CALIFORNIA CODE OF REGULATIONS. SHOULD COUNTY OF EL DORADO EVER RECEIVE PHYSICAL MEDIA OR DOCUMENTATION RELATIVE TO THIS SOFTWARE AND/OR SOFTWARE MAINTENANCE AND/OR LICENSE UPDATES, THE COUNTY SHALL BEAR THE COST OF ANY APPLICABLE TAXES RELATIVE TO THIS TRANSACTION.

RUBRIK, INC. SERVICE AGREEMENT & HARDWARE WARRANTY & SUPPORT SERVICES POLICY ARE INCORPORATED HEREIN AND MADE BY REFERENCE A PART OF THIS PURCHASE ORDER CONTRACT. EXCEPT FOR ANY REFERENCE MADE TO THE "CONFIDENTIALITY", IN RUBRIK, INC. SERVICE AGREEMENT & HARDWARE WARRANTY & SUPPORT SERVICES POLICY IN WHICH CASE THIS PURCHASE ORDER CONTRACT IS SUBJECT TO DISCLOSURE IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

EXHIBIT "A - CALIFORNIA LEVINE ACT STATEMENT" IS INCORPORATED HEREIN AND MADE BY REFERENCE A PART OF THIS PURCHASE ORDER CONTRACT.

VENDOR CONTACT:
DEAN MILLER / PHIL CASE
(916) 567-4444 / (571) 258-8705
DEAN.MILLER@EXECUTECH.COM
PHIL.CASE@RUBRIK.COM

This Purchase Contract has been signed electronically by a duly authorized representative of the County of El Dorado.

This Purchase Contract expressly limits acceptance to the terms and conditions stated herein, set forth on the website and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by the seller are objected to and hereby rejected unless otherwise stated above.



RUBRIK, INC. SERVICE AGREEMENT

This Rubrik Service Agreement (“**Agreement**”) is effective on the date last signed below (“**Effective Date**”) and is made by and between Rubrik, Inc., with its principal place of business located at 3495 Deer Creek Road, Palo Alto, CA 94304 (“**Rubrik**”) and El Dorado County, CA, with a principal place of business located at 360 Fair Ln Placerville, California 95667-4103 (“**Customer**”) (individually a “**Party**”, collectively the “**Parties**”), whereby Customer and Rubrik agree:

1. DEFINITIONS.

- 1.1 “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “control” means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
- 1.2 “**Business Contact Data**” means the names, email addresses, telephone numbers and all other business-related information of each Party’s personnel, that may be collected or exchanged between the Parties in the ordinary course of maintaining the business relationship, such as contract management, sales and ordering, and business development.
- 1.3 “**Customer Data**” means Customer’s content and application data uploaded by or on behalf of Customer to the Rubrik Service for backup and recovery.
- 1.4 “**Customer Personal Data**” means Customer Data that is Personal Data owned or controlled by Customer and which Rubrik, a Rubrik Affiliate or subcontractor may process in the course of providing the Rubrik Service.
- 1.5 “**Documentation**” means the Rubrik Licensing Guide available to Customer at the Rubrik Site, and the Rubrik Service user guides available to Customer within the Rubrik Service user-interface and on the Rubrik support portal.
- 1.6 “**Downtime**” means, either: (i) a scheduled period of time for maintenance and upgrade activity during which the Rubrik Service is not available to Customer; or (ii) unannounced periods of time for emergency maintenance and upgrade activity during which the Rubrik Service is not available to Customer.
- 1.7 “**Non-Rubrik Application**” means web-based, offline, mobile, or other software that originates from Customer or a third party and interoperates with the Rubrik Service.
- 1.8 “**Order**” means the purchase order or other agreed upon legally binding document placed by Customer which specifies the Subscription Period, quantities, and description of the Rubrik Service, Support Services and/or Professional Services purchased by Customer from a Rubrik authorized reseller (“**Reseller**”).
- 1.9 “**Personal Data**” means (i) any information relating to an identified or identifiable natural person; and/or (ii) any information that identifies, relates to, describes, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Unless prohibited or specifically governed by applicable Data Protection Laws (as defined in the Data Processing Addendum (“**DPA**”)), Personal Data shall not include information or data that is anonymized, de-identified and/or compiled on a generic basis and which does not name or identify a specific person.
- 1.10 “**Professional Services**” means the implementation, configuration, and training services purchased by Customer under an Order.
- 1.11 “**Rubrik Service**” means the Rubrik cloud-based SaaS offering purchased by Customer as specified in an applicable Order. The Rubrik Service includes Rubrik offline software components described in the Documentation (if applicable) and all updates, copies, modifications, and derivative works thereof. The Rubrik Service excludes Free Trials and Non-Rubrik Applications.
- 1.12 “**Rubrik Site**” means the Rubrik legal page at <https://www.rubrik.com/legal>.
- 1.13 “**Term**” means the period of time from the Effective Date until the last Subscription Period expires.

2. ACCESS GRANT.

- 2.1 **Right to Use the Rubrik Service.** Subject to Customer's compliance with the terms and conditions of this Agreement and Customer's payment of all fees due, for the duration of the applicable Subscription Period, Rubrik grants Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as may be expressly permitted herein) revocable, right to access and use the Rubrik Service in accordance with the Documentation, solely for Customer's internal business purposes, limited to the quantities and any other limitations set forth in the applicable Order. To the extent that use of the Rubrik Service requires Customer to install Rubrik software components, for the duration of the Subscription Period, Rubrik grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to use the object code form of such software solely for Customer's internal business purposes in accordance with the Documentation and in connection with Customer's use of the Rubrik Service. Customer may use the Rubrik Service for the benefit of its Affiliates, and Affiliates may use the Rubrik Service for their own benefit, limited to the quantities and any other limitations as set forth in the applicable Order and subject to compliance with all terms of this Agreement. Customer guarantees that each Affiliate will fully perform its obligations hereunder, and Customer is responsible for any breach of this Agreement by its Affiliates. Rubrik will use commercially reasonable efforts to provide consistent site availability for the Rubrik Service during the applicable Subscription Period in accordance with Exhibit A (Rubrik Service Level Agreement). Notwithstanding anything to the contrary in this Agreement, any use of the Rubrik Service by Customer or its users in breach of the Acceptable Use Policy ("**AUP**") or applicable law or that threatens the security, integrity or availability of the Rubrik Service (in Rubrik's reasonable judgment) may result in the immediate suspension of Customer's access to the Rubrik Service; however, Rubrik will use commercially reasonable efforts to provide Customer with notice and an opportunity to remedy such breach or threat prior to such suspension. During the applicable Subscription Period, Rubrik will provide Support Services purchased under an applicable Order to Customer as set forth in Rubrik's then-current support terms found at the Rubrik Site.
- 2.2 **Subscription Period; Term of Agreement.** Subject to Section 3 (Customer Obligations) Customer may use the Rubrik Service for the duration of Customer's subscription specified in the applicable Order ("**Subscription Period**"). If Customer does not renew the subscription to the Rubrik Service on or before the Subscription Period renewal date, Customer's right to use the Rubrik Service terminates and the Rubrik Service will no longer operate. The Agreement will remain in effect for the Term.
3. **CUSTOMER OBLIGATIONS.** Customer's use of the Rubrik Service is subject to the AUP found at the Rubrik Site. Customer will not, nor will Customer assist others to: (i) copy or distribute the Rubrik Service or Documentation (except for a reasonable number of copies of the Documentation for internal use) or modify, encumber, enhance or create any derivative works of the Rubrik Service or Documentation, including without limitation, customization, translation or localization; (ii) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or the underlying ideas, algorithms, structure, sequence and organization of the Rubrik Service; (iii) sell, license, sublicense, rent, lease, lend or transfer the Documentation or Rubrik Service or provide, disclose or use the Rubrik Service or Documentation for the benefit of any third party, including but not limited to timesharing or service bureau purposes; (iv) remove, alter or obscure any patent, copyright, trademark or other proprietary notices on the Rubrik Service or Documentation; (v) publish or disclose to any third party any technical features or specifications, performance, functionality, or benchmark tests, or comparative or competitive analyses relating to the Rubrik Service and Free Trials unless expressly authorized in writing in advance by Rubrik; (vi) access or use the Rubrik Service or Documentation to promote, distribute, sell, or support any product or service competitive with Rubrik; (vii) violate or circumvent any technological restrictions in the Rubrik Service; (viii) use the Rubrik Service for any purpose or in any manner not authorized by this Agreement (including, without limitation, for any purpose competitive with Rubrik); (ix) use the Rubrik Service in violation of any applicable local, federal, or other laws and regulations; or (x) host, support, use or otherwise deploy the Rubrik Service as a service on behalf of any unaffiliated third party without Rubrik's express written agreement. Customer must promptly notify Rubrik of any unauthorized use of or access to the Rubrik Service purchased by Customer. Customer is responsible for using a key management system for secure storage of Customer's encryption keys. Customer acknowledges and agrees that Rubrik is unable and has no obligation to recover Customer's access credentials or encryption keys ("**Credentials**") if lost by the Customer. Customer acknowledges the loss of such Credentials by Customer may result in the loss of access to Customer Data. Customer is responsible for maintaining the confidentiality of all usernames and passwords required for its use of and access to the Rubrik Service and for all activities conducted in connection therewith.
4. **PROPRIETARY RIGHTS.**
- 4.1 **Customer Data.** As between Rubrik and Customer, Customer owns Customer Data. Customer grants to Rubrik, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Customer Data, as reasonably necessary for Rubrik to provide the Rubrik Service in accordance with this Agreement. Subject to

the limited licenses granted herein, Rubrik acquires no right, title or interest in or to any Customer Data. Customer shall be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data.

- 4.2 **Rubrik Service.** As between Rubrik and Customer, Rubrik and its licensors retain all rights, title, and interest in and to the Rubrik Service, Documentation, Support Services and Professional Services, including all copies, modifications, and derivative works thereof and all intellectual property rights therein. Rubrik grants to Customer a worldwide, non-exclusive, non-transferable, non-sublicensable right to use the Support Services and/or Professional Services solely for Customer's use with the Rubrik Service during the applicable Subscription Period. This Agreement does not grant Customer any rights not expressly set forth herein. Customer may elect to provide suggestions, requests for enhancements or functionality, or other feedback to Rubrik relating to the operation of the Rubrik Service ("**Feedback**"). If Customer, in its sole discretion, provides Feedback, Customer hereby grants Rubrik a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into its products and services any Feedback as it sees fit without obligation or restriction of any kind. Customer can access any notice and attribution files for any applicable open-source software distributed with, hosted with, provided with or otherwise made use of with the Rubrik Service on the Rubrik support portal.
5. **ORDERS; FEES.** Customer will purchase the Rubrik Service, Support Services and/or Professional Services from a Reseller pursuant to a separate agreement between Customer and such Reseller ("**Partner Agreement**"). Customer shall pay the Reseller all amounts due and owing under an Order (along with all taxes, tariffs, and duties) in accordance with the Partner Agreement. The Partner Agreement is between Customer and Reseller and is not binding on Rubrik. In the event Customer places an Order in a third-party cloud marketplace in which Rubrik has agreed to participate, Customer is responsible for payment of all fees (along with all taxes, tariffs and duties) in accordance with the terms of the Order placed in such cloud marketplace.
6. **VERIFICATION.** During the Term and for a period of one (1) year thereafter, Rubrik (or its independent third-party auditors) has the right, upon reasonable notice, to reasonably audit Customer's relevant systems and records to confirm Customer's compliance with this Agreement. Rubrik may conduct no more than one (1) audit per twelve (12) month period and Customer shall reasonably cooperate with Rubrik (or its independent third-party auditors) for such audit. Rubrik shall conduct such audit during Customer's regular business hours and in a way designed to minimize business disruption. If an audit discloses Customer has installed, accessed, used, or otherwise permitted use of or access to the Rubrik Service in a manner that is not expressly permitted by this Agreement, Customer agrees to promptly reimburse the applicable Reseller, or Rubrik, for any unpaid fees for such use or access to the Rubrik Service.
7. **FREE TRIALS.**
- 7.1 **Free Trial Use.** Rubrik may provide the Rubrik Service to Customer at no charge specifically for trial purposes ("**Free Trial**"). Subject to Customer's compliance with this Section 7 (Free Trials), Rubrik grants Customer a limited, personal, non-exclusive, non-transferable, non-assignable, revocable right to use the Free Trial solely for internal, non-commercial evaluation purposes for thirty (30) days from Customer's access to the Free Trial, unless otherwise specified by Rubrik in writing in its sole discretion ("**Trial Term**"). In the event the Free Trial is not yet generally available and is provided to Customer in beta or other pre-release format, Customer acknowledges, as a condition of its use: (i) such Free Trial is under development and not at the level of performance or compatibility of generally available products; (ii) may not operate correctly, may contain errors, bugs, and design flaws; (iii) may be modified by Rubrik prior to being made generally available; (iv) may not be made available for general release; and (v) Customer agrees to use reasonable efforts to notify Rubrik of any bugs or problems it encounters during the Free Trial.
- 7.2 **Restrictions.** Customer assumes all risk in uploading or storing any Customer Data into a Free Trial, and Rubrik shall have no liability with regard thereto, including for any loss or corruption of Customer Data. Upon expiration or termination of the Trial Term, Customer shall have no right to access or use the Free Trial. Customer shall securely delete all Customer Data from the Free Trial upon termination or expiry of the Trial Term. In relation to any Free Trials, Rubrik shall have no liability under this Agreement (or any legal or equitable theory) in excess of one thousand dollars (US \$1000) for losses, costs or damages of any kind.
8. **CONFIDENTIALITY.** Customer and Rubrik may disclose Confidential Information to each other during the Term. "**Confidential Information**" means all nonpublic proprietary business and technical information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") which is in tangible form and labeled "confidential" or the like, or that reasonably should be understood to be confidential given the circumstances of disclosure and the nature of the information. Confidential Information includes, but is not limited to, the Rubrik Service, Documentation,

Free Trials, strategic roadmaps, product plans, product designs and architecture, technology and technical information, security processes, security audit reviews and business and marketing plans. Confidential Information will not include information that: (i) was already in Receiving Party's possession without confidentiality obligations; (ii) is rightfully received by Receiving Party without confidentiality obligations; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information as supported by documents and other competent evidence; or (iv) is in the public domain without breach of a confidentiality obligation by the Receiving Party as supported by documents and other competent evidence. The Receiving Party will protect Confidential Information received from the Disclosing Party using the same degree of care as it uses to protect its own similar confidential materials, but in no event using less than reasonable care. The Receiving Party will disclose Confidential Information only to its employees, Affiliates, alliance partners or contractors who have a need to know for purposes of this Agreement and who are under a written obligation of confidentiality no less protective than this Agreement. Each Party may also disclose Confidential Information, including the terms and conditions of this Agreement, in confidence to its legal counsel, accountants, auditors, banks and financing sources, and their advisors. Confidential Information may be disclosed in response to a subpoena or order of a court or governmental agency or to the extent required by applicable law, provided however, that if not otherwise prohibited, the Receiving Party will notify the Disclosing Party promptly of such disclosure to enable the Disclosing Party to seek an appropriate protective order. The Parties' obligations with respect to Customer Personal Data are set forth in Section 9 (Security; Protection of Personal Data). Upon expiration or termination of this Agreement for any reason, the Receiving Party will, upon request, return or destroy the Disclosing Party's Confidential Information. Notwithstanding the foregoing, the Receiving Party may retain copies of Disclosing Party's Confidential Information stored electronically on data archives or back-up systems or to comply with the laws or regulations applicable to the Receiving Party, provided that such copies shall at all times be subject to the terms of this Agreement while in Receiving Party's possession or control.

9. **SECURITY; PROTECTION OF PERSONAL DATA.** Rubrik will implement and maintain commercially reasonable administrative, physical and technical safeguards and measures designed to address the security, confidentiality and availability of Customer Data in the Rubrik Service as more fully set forth in the Data Security Schedule and the DPA, both of which are available at the Rubrik Site.
10. **PROFESSIONAL SERVICES AND PROFESSIONAL SERVICES WARRANTY.** Customer may place an Order for Professional Services. Professional Services may be performed by Rubrik or subcontractors acting on Rubrik's behalf. In regard to Professional Services, Rubrik warrants that: (i) it and its personnel have the necessary knowledge, skills, experience, qualifications and resources to provide and perform the Professional Services; and (ii) the Professional Services will be performed in a professional and workmanlike manner in accordance with industry standards. As a condition to Rubrik providing Professional Services hereunder, Customer shall: (a) provide good faith cooperation and access to such information, facilities, and equipment as may be reasonably required in order to provide the Professional Services; and (b) provide such personnel assistance as may be reasonably requested from time to time. If, through no fault or delay by Customer, or any failure by Customer or Customer's representatives to perform in accordance with this Section 10 (Professional Services and Professional Services Warranty), the Professional Services do not conform to the foregoing warranty, and Customer notifies Rubrik within ten (10) days of Rubrik's completion of the Professional Services, Rubrik will re-perform the non-conforming portion(s) of the Professional Services at no additional cost to Customer. Unless otherwise agreed upon by the Parties in writing, the obligation of Rubrik to provide Professional Services to the Customer expires the earlier of: (i) completion of the Professional Services; or (ii) six (6) months from the date Rubrik accepts the applicable Order for the Professional Services. Credit for any unused Professional Services will not be transferable to any other services.
11. **WARRANTIES AND DISCLAIMER.**
 - 11.1 **Rubrik Service Warranty.** Rubrik warrants to Customer during the applicable Subscription Period ("**Warranty Period**") that the Rubrik Service will conform in all material respects to the applicable Documentation ("**Rubrik Service Warranty**").
 - 11.2 **Remedy; Exclusions.** Rubrik's sole obligation under the Rubrik Service Warranty, and Customer's exclusive remedy, is to use commercially reasonable efforts to correct the non-conformity during the Warranty Period. If Rubrik is not able to correct the non-conformity in the Rubrik Service such that it complies with the Rubrik Service Warranty, Rubrik will process a refund of the unused, prepaid fees for such non-conforming Rubrik Service via the applicable Reseller and Customer's right to use the Rubrik Service for which the refund was processed terminates. Customer's obligation is to provide all information reasonably requested to enable Rubrik to cure any such deficiencies. The foregoing warranties do not apply to the Rubrik Service: (i) that is installed, operated, maintained, stored or used improperly, or in any manner not in accordance with the Documentation, this Agreement or Rubrik's written instructions; (ii) that is

repaired, altered or modified other than by Rubrik or its authorized service provider; or (iii) where the issue is caused by any failure of third-party software or cloud services not supplied by Rubrik.

- 11.3 **Disclaimer of Warranties.** EXCEPT AS PROVIDED UNDER SECTIONS 10 (PROFESSIONAL SERVICES AND PROFESSIONAL SERVICES WARRANTY) and SECTION 11 (WARRANTIES AND DISCLAIMER) IN THIS AGREEMENT, AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, RUBRIK AND ITS LICENSORS DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. RUBRIK DOES NOT WARRANT AGAINST LOSS OR INACCURACY OF DATA, THAT THE OPERATION OF THE RUBRIK SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE RUBRIK SERVICE WILL BE COMPATIBLE WITH ANY THIRD-PARTY SOFTWARE OR HARDWARE. RUBRIK, ITS SUPPLIERS AND LICENSORS ARE NOT LIABLE OR RESPONSIBLE FOR ANY WARRANTIES, EXPRESS OR IMPLIED, PROVIDED BY A RESELLER OR OTHER THIRD PARTY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, FREE TRIALS ARE PROVIDED AND LICENSED TO CUSTOMER ON AN "AS IS" BASIS, AND ALL WARRANTIES AND INDEMNITIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS.

12. INDEMNIFICATION.

- 12.1 **Indemnification by Rubrik.** Rubrik agrees to defend or settle, at Rubrik's expense, a third-party claim or cause of action against Customer alleging with specificity that, standing alone, the Rubrik Service or its use: (i) infringes a U.S. copyright or patent of such third party; or (ii) infringes all inventive aspects of a U.S. patent of such third party ("**Claim**") and to pay damages finally awarded against Customer by a court of competent jurisdiction or as agreed to in a settlement. Rubrik's obligations hereunder do not apply with respect to any Claim that arises out of: (a) any unauthorized use, reproduction or distribution of the Rubrik Service; (b) providing industry standard functionality; (c) the Rubrik Service being modified after delivery without Rubrik's prior written authorization; or (d) Customer's continued use of the allegedly infringing Rubrik Service after Rubrik modified the Rubrik Service to be non-infringing. If any Claim arises, Rubrik may, at its sole option and expense: (A) replace or modify the affected Rubrik Service to make it non-infringing; (B) procure a license for Customer's continued use of the affected Rubrik Service; or if Rubrik determines (in its sole discretion) that (A) and (B) are not commercially viable, terminate Customer's rights thereto, in which case Rubrik will process a pro-rated refund for the applicable prepaid unused fees for such Rubrik Service covering the remainder of the applicable Subscription Period via the applicable Reseller. This Section 12.1 (Indemnification by Rubrik) states Customer's sole and exclusive remedy, and Rubrik's sole liability, with respect to infringement of third-party intellectual property rights.
- 12.2 **Customer Indemnity.** Customer agrees to defend and indemnify Rubrik from and against any loss, damage, or cost arising from a third-party claim that Customer's provision or use of Customer Data violates a third party's rights.
- 12.3 **Indemnification Process.** As a condition of receiving indemnity as described in this Section 12 (Indemnification), the Party seeking the indemnity will provide the other Party with: (i) prompt written notice of the claim, provided, however, that the failure to give such notice shall not relieve the indemnifying Party of its obligations hereunder except to the extent that the indemnifying Party is prejudiced by such failure; (ii) complete control over the defense and settlement of the claim, provided that the indemnifying Party will not settle any claim without the other Party's prior written permission if the settlement fails to unconditionally release the indemnified Party from all liability pertaining to the claim (such permission not to be unreasonably withheld, delayed or conditioned); and (iii) reasonable assistance in connection with the defense and settlement of the claim.

13. LIMITATION OF LIABILITY.

- 13.1 **Disclaimer of Consequential Damages.** EXCEPT FOR CUSTOMER'S VIOLATION OF RUBRIK'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA OR THE COST OF COVER, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, INDEMNITY OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT, THIS EXCLUSION WILL NOT APPLY TO THE EXTENT THE EXCLUSION IS PROHIBITED BY LAW.

13.2 **Limitation of Liability.** EXCEPT FOR (A) DAMAGES ARISING FROM A BREACH BY CUSTOMER OF SECTION 8 (CONFIDENTIALITY), OR FROM CUSTOMER'S BREACH OF SECTION 2.1 (SOFTWARE LICENSE) OR BREACH OF SECTION 3 (USE RESTRICTIONS) OF THIS AGREEMENT, (B) INDEMNIFICATION OBLIGATIONS UNDER SECTION 12 (INDEMNIFICATION), AND (C) DAMAGES ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, IN NO EVENT WILL THE TOTAL, CUMULATIVE AND ENTIRE LIABILITY OF EITHER PARTY AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE RUBRIK PRODUCTS FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION SHALL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY OR ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN BUT WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

14. TERMINATION.

14.1 **Termination for Cause.** Any Orders placed pursuant to this Agreement are non-cancellable and non-refundable, except as provided for herein. Notwithstanding the foregoing, a Party may terminate this Agreement if the other Party: (i) materially breaches this Agreement and such breach is not cured within thirty (30) days of such Party's receipt of written notice describing the breach; or (ii) becomes insolvent, admits in writing of its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, becomes subject to control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding.

14.2 **Post-Termination Obligations.** Upon expiration or termination of this Agreement, including if Customer does not renew its applicable Subscription Period on or before the renewal date, Customer will no longer have access to the Rubrik Service, except as set out herein. Upon expiration or termination, Customer will uninstall any Rubrik software components and destroy the Documentation. For a period of thirty (30) days after such termination or expiration, upon Customer's prior written request, Rubrik will allow Customer limited access to retrieve any Customer Data remaining on the Rubrik Service, subject to Customer's compliance with the AUP. After such thirty (30) day grace period, Customer will have no further rights or access to the Rubrik Service, and Customer's Rubrik Service instance, including any Customer Data, will be permanently deleted by Rubrik. The terms of this Agreement shall remain in full force and effect for the period of any post-termination access to the Rubrik Service by Customer.

14.3 **Surviving Provisions.** Upon expiration or termination of this Agreement, the following sections will survive: Sections 1 (Definitions), 4 (Proprietary Rights), 5 (Orders; Fees), 6 (Verification), 7.2 (Restrictions), 8 (Confidentiality), 11.3 (Disclaimer of Warranties), 12 (Indemnification), 13 (Limitation of Liability), 14.2 (Post-Termination Obligations) 15 (General).

15. GENERAL.

15.1 **Independent Contractors.** The Parties are independent contractors under this Agreement, and nothing herein shall authorize one Party to have, or hold itself out as having, any right or authority to incur any obligation on behalf of the other Party.

15.2 **Business Contact Data.** Each Party may use the Business Contact Data of the other Party for the purposes of the business relationship, consistent with applicable data protection laws and internal policies. Unless otherwise prohibited by applicable data protection laws, the receiving Party may transfer such data to, or access such data from, any country in which such Party or its Affiliates conduct business relating to this Agreement. Each Party will use reasonable and appropriate security measures to protect such Business Contact Data, and each Party undertakes to notify its personnel of the other Party's proposed use of such data and other purposes as set out in the using Party's global data privacy policy. Customer may access Rubrik's privacy policy at the Rubrik Site.

15.3 **Assignment.** Neither Party will assign any of its rights or delegate any of its obligations under this Agreement, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed; except that either Party may, upon written notice to the other Party, assign this Agreement and its rights and obligations to any successor by way of merger, consolidation, or the acquisition of all or substantially all of its assets or voting securities. Any purported assignment in violation of the foregoing is void and of no force or effect. Subject to the foregoing restrictions, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.

- 15.4 **Export Controls and Trade Laws.** Customer will comply with all applicable export laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Without limiting the foregoing, Customer agrees that it will not export, re-export, download, or otherwise transmit Rubrik Confidential Information or the Rubrik Service: (i) to any country or region subject to a U.S. embargo or comprehensive trade sanctions; (ii) to any individual or entity identified on any U.S. Government restricted party lists (including the Consolidated Sanctions, Specially Designated Nationals, Denied Persons, Entity, or Unverified Lists); or (iii) to any end user with knowledge or reason to know that the Rubrik Service or such Confidential Information will be used for nuclear, chemical, or biological weapons proliferation, or for missile-development purposes.
- 15.5 **Enhancement Data.** Rubrik may collect data generated by the Rubrik Service, including usage and capacity metrics, performance characteristics and anomalies, and administrative user actions within the Rubrik Service (collectively, “**Enhancement Data**”). Rubrik uses Enhancement Data to improve and secure the Rubrik Service and for internal analytical purposes. For clarity, Enhancement Data does not include Customer Data.
- 15.6 **Third Party Beneficiaries.** Nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any terms of this Agreement.
- 15.7 **U.S. Federal Government Users.** This Section 15.7 (U.S. Federal Government Users) applies only if Customer is a U.S. Federal Government Customer. The Rubrik Service and Documentation are “commercial” computer software and documentation and are licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g., FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to Rubrik’s applicable expenses associated with the cost of audit specified in Section 6 (Verification) of this Agreement. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in this Agreement is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C §516. All other terms remain in effect as written.
- 15.8 **Customer Reference.** During the Term of the Agreement, Rubrik may include Customer in lists of Rubrik customers for sales and marketing purposes, provided that such listings do not include any Customer-specific project information. Customer may send an email to Rubrik at stories@rubrik.com with its trademark and logo usage guidelines, if applicable, or if Customer does not wish to be referred to as a Rubrik customer.
- 15.9 **Anti-corruption.** Each Party will comply with all applicable laws relating to anti-corruption or anti-bribery, including but not limited to the U.S. Foreign Corrupt Practices Act, as amended, the UK Bribery Act 2010, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Rubrik’s employees, agents, Resellers or subcontractors in connection with this Agreement and that Customer will use reasonable efforts to promptly notify Rubrik should Customer learn of any violation of this restriction.
- 15.10 **Severability.** In the event that any provision of this Agreement is declared by a court of competent jurisdiction to be illegal, void or unenforceable, such provision will be limited or eliminated to the extent necessary so that the remainder of this Agreement shall continue in full force and effect.
- 15.11 **Nonwaiver.** The failure of Customer or Rubrik to enforce any provision of this Agreement will not be construed as a waiver of such provision or of any other provision of this Agreement.
- 15.12 **Force Majeure.** Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement to the extent caused by circumstances beyond the reasonable control of the Party including (without limitation) pandemics, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, internet service provider failures or delays, denial of services attacks or other similar causes, war, terrorism, governmental action, labor conditions, earthquakes, volcanic eruptions or material shortages.
- 15.13 **Integration; Order of Precedence.** The parties agree that this Agreement applies only to Orders placed after the Effective Date and constitutes the entire agreement between Customer and Rubrik and supersedes any and all prior agreements or communications between the Parties with regards to the subject matter hereof and such Orders. This Agreement may not be amended or modified except by a writing that specifically refers to this Agreement and is signed by an authorized representative of both Customer and Rubrik. The terms of this Agreement shall supersede and control over any conflicting or additional terms and conditions of any Order placed after the Effective Date, purchase order

acknowledgement, confirmation or other document issued by or on behalf of Customer, and terms and conditions in such documents are of no force or effect.

- 15.14 **Ambiguities and Notices.** Customer and Rubrik have participated in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party. Any notices under this Agreement shall be delivered in writing. For Rubrik, notices shall be sent to legal@rubrik.com.
- 15.15 **Governing Law; Dispute Resolution.** The United Nations Convention of Contracts for the International Sale of Goods (1980) is hereby excluded in its entirety from application to this Agreement. Nothing in this Section 15.15 (Governing Law; Dispute Resolution) will limit or restrict either Party from seeking injunctive or other equitable relief from a court of competent jurisdiction. (a) If Customer is domiciled in any location outside Europe, this Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A., without applying conflict of law principles. With respect to all disputes and actions arising from or related to this Agreement, the Parties irrevocably consent to exclusive jurisdiction and venue in the state and federal courts located in Santa Clara County. (b) If Customer is domiciled in Europe, this Agreement shall be governed by and construed in accordance with the laws of England and Wales, without applying conflict of law principles. Any and all disputes arising from or related to this Agreement will be settled by confidential and binding arbitration in London, England, administered by the London Court of International Arbitration (LCIA) under the LCIA Rules. The number of arbitrators shall be one. The Parties agree to each nominate one arbitrator with substantial experience in resolving complex technology contract disputes, who will be chosen from the appropriate list of LCIA arbitrators.
- 15.16 **Electronic Signature.** The Parties expressly agree that this Agreement may be signed electronically. In the event of a dispute where the law is unclear as to the treatment of electronic signatures, the U.S. Electronic Signatures in Global and National Commerce Act (“**ESIGN**”) controls.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed and delivered by their respective authorized signing officers, effective as of the Effective Date.

Rubrik, Inc.

Authorized Signature:

By: Dean Miller
Dean Miller (Aug 14, 2024 15:49 PDT)
Name: Dean Miller
Title: Procurement Manager
Date: 08/14/2024

El Dorado County

Authorized Signature:

By: Laura Schwartz
Laura Schwartz (Aug 20, 2024 09:52 PDT)
Name: Laura Schwartz
Title: Assistant CAO / Purchasing Agent
Date: 08/20/2024

EXHIBIT A
RUBRIK SERVICE LEVEL AGREEMENT

This Rubrik Service Level Agreement (“**SLA**”) sets out the terms governing Rubrik’s Service Level Agreement for the Rubrik Service and forms part of the Agreement. Capitalized terms not defined herein are as defined in the Agreement.

1. SERVICE COMMITMENT.

1.1 During the applicable Subscription Period, Rubrik will use commercially reasonable efforts to maintain a service login availability to the Rubrik Service of 99.9% per each calendar month (the “**Service Commitment**”). Customers can view Rubrik’s current uptime status at <https://status.rubrik.com>. The Service Commitment does not include Downtime. The Rubrik Service uptime is calculated as the total number of minutes the Rubrik Service is available to Customer in the applicable month divided by the total number of minutes that month, minus Downtime. For clarity, for the purpose of calculating Service Credits, calendar months are calculated based on U.S. Pacific Time Zone. In the event the Rubrik Service does not meet the Service Commitment, Customer shall become entitled to the Service Credit specified in the table set out below, after submitting a written claim for such Service Credit as outlined in Section 3 (Claiming a Service Credit), provided that Customer is in compliance with the terms of the Agreement. Provision of a Service Credit by Rubrik is Customer’s sole and exclusive remedy for any failure by Rubrik to meet the Service Commitment.

1.2 The Service Commitment does not apply to: (i) Free Trials; (ii) unavailability caused by any unauthorized action or lack of action when required from Customer, or anyone authorized by Customer, or otherwise resulting from Customer’s failure to follow appropriate security practices; (iii) unavailability caused by factors outside Rubrik’s reasonable control, including but not limited to a Force Majeure event or failure of a cloud service provider; (iv) unavailability that results from the use of services or software not provided by Rubrik, including, but not limited to, issues resulting from inadequate bandwidth or related to third-party software or services; and (v) Customer’s violation of the Agreement, including the AUP.

2. SERVICE CREDITS.

<u>Monthly Service Login Availability Percentage</u>	<u>Service Credit</u>
Less than 99.9% but greater than or equal to 99.0%	3 days of additional Rubrik Service
Less than 99.0% but greater than or equal to 95.0%	7 days of additional Rubrik Service
Less than 95.0%	30 days of additional Rubrik Service

Service Credits shall be provided as an additional number of days to the Subscription Period of the affected portion of the Rubrik Service, applied upon renewal of the applicable Subscription Period, without any additional fees payable by Customer. Rubrik shall not in any circumstances be obligated to pay any money or issue any refund to the Customer.

3. CLAIMING A SERVICE CREDIT. In order to receive a Service Credit, Customer must submit a claim by raising a support case with Rubrik’s support team within thirty (30) days after the end of the calendar month during which the Service Commitment was not met, detailing the calendar month for which Customer is claiming the Service Credit together with the dates and times of when the Service Commitment was not met. Rubrik may require Customer to provide further information to support its claim for a Service Credit. If Customer fails to provide such information, Rubrik may reject Customer’s request for a Service Credit. If Rubrik finds that Customer is eligible for a Service Credit, it will notify Customer of the same within a reasonable time period of receiving all requested information from Customer. The aggregate maximum number of Service Credits that can be issued to Customer shall not exceed two (2) months of Rubrik Service in any single year during a Subscription Period.

CONTRACT AMENDMENT ROUTING SHEET

Date Prepared: 08/06/2024

Need Date: 08/20/2024

PROCESSING DEPARTMENT:

Department: CAO - Procurement and Contracts
Dept. Contact: James Jakubowski
Phone: 530-621-5834
Department: James
Head Signature: Jakubowski

Digitally signed by James
Jakubowski
Date: 2024.08.06 10:21:47
-07'00'

CONTRACTOR:

Name: Evergreen Services dba
Address: 10876 S RIVER FRONT PKWY STE 100
SOUTH JORDAN UT 84095
Phone: 916-567-4444

Org Code: 1040000

Project String
(if applicable): _____

CONTRACTING DEPARTMENT: CAO - P&C for Information Technologies

Service Requested: REVIEW OF UPDATED SERVICE AGREEMENT WITH REQUESTED CHANGES MADE TO SECTION 15.13

Description: RUBRIK, INC. SERVICE AGREEMENT

Contract Term: 3 years Contract Value: \$385,000

COUNTY COUNSEL: (must approve all contracts and MOU's)

Approved: ☒ Disapproved: ☐ Date: 08/14/2024 By: Janeth SanPedro
Approved: ☐ Disapproved: ☐ Date: _____ By: _____

Digitally signed by Janeth
SanPedro
Date: 2024.08.14 08:24:35 -07'00'

Approved as to form. See comments on previously approved version. - jds

COUNSEL -- PLEASE FORWARD TO HR AND RISK MANAGEMENT -- THANKS!

HR APPROVAL:

Compliance with Human Resources requirements? Yes: ☐ No: ☐

Compliance verified by: _____

RISK MANAGEMENT APPROVAL: (all contracts & MOU's except boilerplate grant funding contracts)

Approved: ☐ Disapproved: ☐ Date: _____ By: _____
Approved: ☐ Disapproved: ☐ Date: _____ By: _____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____
Approved: ☐ Disapproved: ☐ Date: _____ By: _____
Approved: ☐ Disapproved: ☐ Date: _____ By: _____

PLEASE EMAIL SIGNED DOCUMENT TO:

THANK YOU!