

Last Updated April 18, 2018

SOFTWARE as a SERVICE AGREEMENT

PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY BEFORE CLICKING THE "CREATE CONTRACT" BUTTON WHICH CONSTITUTES YOUR BINDING CONSENT TO THIS AGREEMENT. THIS SOFTWARE AS A SERVICE AGREEMENT (THE "AGREEMENT") IS BETWEEN RUBICON GLOBAL, LLC ("RUBICON"), AND YOU ("YOU" OR "YOUR" MEANS THE LEGAL ENTITY IDENTIFIED IN THE REGISTRATION PROCESS THAT YOU ARE AUTHORIZED TO REPRESENT AND WHICH RECEIVES THE SUBSCRIPTION SERVICES (AS DEFINED BELOW)).

IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, PLEASE DO NOT CLICK THE "CREATE CONTRACT" BUTTON.

BY CLICKING THE "CREATE CONTRACT" BUTTON, OR BY RECEIVING THE SUBSCRIPTION SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND REPRESENT AND WARRANT TO RUBICON THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND THAT YOU ARE AT LEAST 18 YEARS OF AGE. YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO BIND TO THIS AGREEMENT THE LEGAL ENTITY THAT IS RECEIVING THE SUBSCRIPTION SERVICES. IF YOU DO NOT HAVE LEGAL AUTHORITY TO BIND THE LEGAL ENTITY, YOU MUST NOT CLICK THE "CREATE CONTRACT" BUTTON.

THE TERMS OF THIS AGREEMENT MAY BE AMENDED, SUPPLEMENTED OR MODIFIED AT ANY TIME BY RUBICON, IN ITS SOLE DISCRETION, EFFECTIVE AS FOLLOWS: (a) Rubicon will post the revised version of this Agreement on the Rubicon website located at [www.rubiconglobal.com](http://www.rubiconglobal.com); (b) Rubicon will implement an acceptance process requiring you to click "CREATE CONTRACT" to the amended, supplemented or modified Agreement; or (c) Rubicon may provide such other notice as Rubicon may elect in its sole discretion (in each case, a "Rubicon Amendment"). If any future Rubicon Amendments implemented pursuant to subsections (a) or (c) above are unacceptable to you, or cause you to no longer be in compliance with this Agreement, you may terminate this Agreement in accordance with Section 6.4 below. As applicable, your (i) continued receipt of the Subscription Services following the implementation by Rubicon of changes to this Agreement (as described above); (ii) failure to terminate this Agreement in accordance with Section 6.4; or (iii) clicking "CREATE CONTRACT" to the amended, supplemented or modified Agreement, shall conclusively demonstrate your consent to the Rubicon Amendment (in either event, the "Amendment Effective Date"). Except as set forth in this paragraph, no amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of yours and of Rubicon.

1. Registration and Submission of an Order.

Receipt and use of the Subscription Services requires your advanced registration and the submission of an Order. You agree that you must register with Rubicon prior to, and submit an Order contemporaneous with, clicking the "CREATE CONTRACT" button, and prior to receipt and use of the Subscription Services. Otherwise you will not be able to receive and use the Subscription Services. You agree to keep your registration information accurate and complete and promptly update your registration data with Rubicon as necessary to keep it accurate, current and complete. Rubicon may provide you with account and product validation number(s), if any, and issue you a confidential site (Internet protocol) address and passwords. Enabling others to use your product number(s), validation number(s), or passwords, is strictly prohibited.

2. Definitions.

Capitalized terms used and not otherwise defined in this Agreement shall have the following meanings:

2.1 "Content" means all data, imagery, information and other content (a) transmitted by you or on your behalf through the System; (b) provided by you or on your behalf for use in connection with the Subscription Services; or (c) otherwise processed or stored by Rubicon or its contractors on your behalf pursuant to this Agreement.

2.2 "Documentation" means the then-current, commercially available user manuals, training materials and technical manuals relating to the Subscription Services provided to you by Rubicon pursuant to this Agreement.

2.3 "Effective Date" means the earlier of (a) the date you click "CREATE CONTRACT"; or (b) the date you begin using or receiving the Subscription Services.

2.4 "Equipment" means the computer equipment which has been formally approved by Rubicon to be used in conjunction with the Subscription Services, and which is purchased by you from Rubicon.

2.5 "Intellectual Property Rights" means, on a world-wide basis, any and all (a) rights associated with works of authorship, including without limitation, copyrights, copyrightable rights, moral rights and mask work rights; (b) trademark, service mark and trade name rights and any similar rights recognized under applicable law; (c) rights in confidential information and trade secret; (d) patents and patentable rights; (e) all rights with respect to inventions, discoveries, improvements, know-how, formulas, algorithms, processes, technical information and other technology; (f) all other intellectual and industrial property rights of every kind or nature, whether arising by operation of law, contract, license or otherwise; and (g) all international, national, foreign, state and local registrations, applications for registration and any renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisions, reissues, substitutions and reexaminations), all goodwill associated therewith, and all benefits, privileges, causes of action and remedies relating to any of the foregoing (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations relating thereto; and to settle and retain all proceeds from any such actions).

2.6 "Marks" means your trademarks, service marks or trade names.

2.7 "Order(s)" means the order completed by you during the registration process described in Section 1 above. Each Order shall specify the Subscription Services being subscribed for, the licensing parameters, the Equipment, the term of the Order, and the applicable fees and other charges.

2.8 "Professional Services" means implementation, consulting and training services, including without limitation, technical services to facilitate setup and deployment of the Subscription Services specified in a Statement of Work.

2.9 "Rubicon Software" means Rubicon's proprietary software programs used by Rubicon to provide the Subscription Services (including, without

limitation, all source code, object code, designs, copyrightable works, ideas, inventions, technology and other Intellectual Property Rights therein), as modified, enhanced or replaced by Rubicon from time to time. For the avoidance of doubt, Rubicon Software does not include the Content.

2.10 "Statement of Work" means a document executed by both you and Rubicon that describes the Professional Services to be performed by Rubicon pursuant to the Professional Services Terms (as defined in Section 3.5), including without limitation, the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference this Agreement and be sequentially numbered.

2.11 "Subscription Services" means Rubicon's proprietary, web-based services set forth in an Order which are provided to you on a subscription basis and enable use of the Rubicon Software through the System.

2.12 "System" means the Rubicon Software and the server grade computers and related networks maintained by or on behalf of Rubicon and its third party providers to host the Rubicon Software and provide the Subscription Services to you, all as hereafter modified, enhanced or replaced by Rubicon.

2.13 "Third Party Offerings" means services delivered or performed by third parties independently of the Subscribed Services, or other online, web-based CRM, ERP, or other business application subscription services, and any associated offline products provided by third parties, that interoperate with the Subscription Services.

2.14 "Work Product" means any software, data, documentation, graphics, text, code, inventions, pictures, audio, video, animations, enhancements, improvements, methods, processes, works of authorship, work-flow methods or other deliverables or any portions of the foregoing that Rubicon creates, whether alone or jointly, while performing Professional Services or any other services hereunder. Work Product excludes: (a) the Subscription Services; (b) the System; (c) any generic routines or code that have general application to the Rubicon Software or System; and (d) all modifications, alterations, derivative works and enhancements to the foregoing, and all copies thereof.

3. Services.

3.1 Subscription Services.

Subject to the terms and conditions set forth herein, including without limitation, your payment of all applicable fees, Rubicon hereby agrees to provide you the Subscription Services, and in connection therewith, Rubicon hereby grants you during the term of the applicable Order a non-exclusive, non-transferable, non-sublicensable, limited right and license to (a) access and use the Subscription Services subject to the licensing parameters specified in the applicable Order, solely for your internal use; (b) to transmit and receive Content to and from the System; and (c) use the Documentation in connection with such rights. The rights granted to you pursuant to any Order shall terminate upon the termination or expiration of this Agreement or the applicable Order for any reason. All rights not expressly granted to you are reserved by Rubicon and its licensors.

3.2 Limitations.

You shall not: (a) access or use any portion of the Subscription Services or System except as expressly authorized pursuant to an Order; (b) cause or

permit decompilation, reverse assembly or reverse engineering of all or any portion of the Subscription Services or System; (c) copy any ideas, features, functions or graphics of the Subscription Services or System or modify or make derivative works based upon the Subscription Services or System; (d) delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on or in the Subscription Services, System or Documentation; or (e) directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the Subscription Services or System, or any portion thereof, for third party use, third party training, facilities management or time-sharing, or use as an application service provider or service bureau. Without limiting the foregoing, you may not use the Subscription Services or System to: (i) send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity or performance of the Subscription Services, System or the data contained therein; or (iii) attempt to gain unauthorized access to the Subscription Services or System.

### 3.3 Support.

You will be responsible for providing first line maintenance and support to your authorized end users in connection with the Subscription Services. Rubicon will allow up to two (2) qualified employees of yours who have been trained on use of the Subscription Services (the "Designated Employees") to contact Rubicon with technical questions or issues with respect to the Subscription Services and to report System outages or failures. Rubicon shall respond to the technical support questions from the Designated Employees and commence the process of responding to System or Subscription Services outages or failures in accordance with Rubicon's standard procedures. The Designated Employees shall assist Rubicon in analyzing and resolving issues with the Subscription Services and System, including by providing Rubicon with access to the Equipment. Rubicon is under no obligation to provide functional updates, enhancements or upgrades to the Subscription Services or System by any time certain.

### 3.4 System Availability.

Rubicon will use commercially reasonable efforts to enable access to the Subscription Services with no more than approximately one (1) hour of down time per day. Rubicon reserves the right to perform maintenance of the Subscription Services and System as needed and, except in the event of emergency maintenance, will schedule such maintenance before or after 8:00 AM - 5:00 PM Monday-Friday (excluding holidays) U.S. Eastern Time. You acknowledge and agree that certain portions of the Subscription Services, including without limitation, data storage, hosting, and System hardware management, may be provided by third party service providers. Rubicon will provide ongoing management of the System, located at the third party provider's location, in accordance with Rubicon's agreement with the third party provider(s), in order to maintain the best practical availability of the Subscription Services. Rubicon may change its third party data hosting provider to another hosting provider, in Rubicon's sole discretion, from time to time.

### 3.5 Professional Services.

If requested and as available, Rubicon will provide you with Professional Services pursuant to mutually agreeable Statements of Work in accordance with the Professional Services Terms attached hereto as Exhibit A ("Professional Services Terms").

### 3.6 Provisioning of the Subscription Services.

Rubicon may update the functionality and user interface of the Subscription Services from time to time in its sole discretion as part of its ongoing improvement of the Subscription Services. You agree that your subscription to the Subscription Services is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Rubicon regarding future functionality or features.

### 4. Equipment.

The Equipment available for purchase under this Agreement and the fees and charges therefor shall be set forth in the Orders. Title to all Equipment purchased hereunder and risk of loss or damage pass to you upon delivery to the carrier at the place of shipment. Delivery will be made in accordance with the terms of the Order for such Equipment, subject to conditions beyond Rubicon's control. Rubicon assumes no liability for delays in or failure of delivery. Notwithstanding anything herein to the contrary, you acknowledge and agree that Rubicon (a) is not responsible for installation of the Equipment; and (b) shall not be responsible for providing you with maintenance services for the Equipment. You may obtain installation and maintenance services for the Equipment, if any such services are available, from the manufacturer of the Equipment or third parties.

### 5. Your Obligations.

#### 5.1 Resources.

Except as expressly set forth herein, you and your end users shall be solely responsible for providing all resources, equipment and software at your or their respective facilities which are necessary to access the System and/or receive the Subscription Services. You and your end users must provide all equipment and licenses necessary to access and use the Internet, and pay all fees associated with such access and use. To the extent Rubicon's provision of the Subscription Services requires data, documents, information or materials of any nature to be furnished, in whole or in part, by you or your employees, agents, contractors, representatives or authorized users, you will cause such employees, agents, contractors, representatives and authorized users to furnish such data, documents and information in a manner which permits Rubicon to perform the Subscription Services as contemplated herein.

#### 5.2 Third-Party Web Sites, Products and Services.

The Subscription Services may rely on or require that you access Third Party Offerings. If you elect to use the Subscription Services with Third Party Offerings, you agree that: (a) your use of Third Party Offerings must at all times comply with the terms of service governing such offerings; and (b) Rubicon has the right to export and import Content to and from such Third Party Offerings for purposes of delivering the Subscription Services purchased by you. Your or your user's use of third party websites must at all times comply with the terms of service governing such websites. You understand and agree that the availability of the Subscription Services, or certain features and functions thereof, is dependent on the corresponding availability of Third Party Offerings or specific features and functions of Third Party Offerings. Rubicon will not be liable to you or any third party in the event that changes in Third Party Offerings cause the unavailability of the Subscription Services or any feature or function thereof. Rubicon may also refer you to third party service providers that offer Third Party Offerings. Rubicon does not make any representations or warranties regarding any such Third Party Offerings, whether or not such Third Party Offerings or services are designated by Rubicon as "certified," "approved," "recommended"

or otherwise, or the services are provided by a third party that is a member of a Rubicon partner program. To the extent that Rubicon requires that you grant Rubicon authorizations, passwords or other user credentials to a Third Party Offering ("Rubicon Access Codes") to retrieve Content or to enable interoperability with the Subscription Services, you shall promptly provide such Rubicon Access Codes.

#### 5.3 Compliance with Laws.

You will comply with all applicable laws, rules and regulations relating to your or your authorized user's receipt or use of the Subscription Services. Without limiting the foregoing, you will be solely responsible for determining the extent to which the design or provision of the Subscription Services is subject to any privacy laws or regulations ("Privacy Laws") or the oversight of any regulatory agency charged with the enforcement thereof ("Regulatory Oversight"). To the extent that the design and operation of the Subscription Services is subject to any Privacy Laws or Regulatory Oversight, you will specify any procedures to be taken by Rubicon during the customization and provision of the Subscription Services to cause the Subscription Services to be in compliance with such Privacy Laws and Regulatory Oversight. You shall not export the Subscription Services, System or Documentation in violation of U.S. Department of Commerce export administration regulations.

#### 5.4 Activity.

Rubicon will provide you access to the Subscription Services by issuance to you of a confidential site (I.P.) address and passwords. You are responsible for maintaining the confidentiality of such address and passwords and any activity that transpires through the use of such address and passwords. You shall: (a) notify Rubicon immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to Rubicon immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Content that is known or suspected by you; and (c) not impersonate another Rubicon client or user or provide false identity information to gain access to or use of the Subscription Services.

#### 5.5 Use of the Internet.

You understand and acknowledge that the Internet and communications over it may not be secure, and that connecting to it provides the opportunity for unauthorized access to computer systems, networks, and all data stored therein. The information and data transmitted through the Internet (including, without limitation, the Content) or stored on any equipment through which Internet information is transmitted may not remain confidential and Rubicon makes no representation or warranty regarding privacy, security, authenticity, non-corruption or destruction of any such information. Use of any information transmitted or obtained over the Internet is at your own risk and Rubicon shall be responsible to you for any adverse consequence or loss whatsoever from use of the Internet.

#### 5.6 Integrated Third Party Software.

Certain software libraries and other third party software integrated into the Rubicon Software are free software and licensed under the terms of the GNU General Public License (GPL), the GNU Library/Lesser General Public License (LGPL), the Apache License Version 2.0, the Sun Microsystems, Inc. Binary Code License Agreement, the Oracle Technology Network Development and Distribution License, and the Common Public License, and other applicable open source licenses. You may obtain a complete machine-readable copy of the source code for such free software under the terms of the appropriate license

agreement listed in this Section 5.6 without charge except for the cost of media, shipping, and handling, upon written request to Rubicon. All free software is distributed to you WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. A copy of the free software is included with the Subscription Services. Rubicon disclaims on behalf of all individuals or entities that distributed such free software to Rubicon (the "Contributors") all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose; and Rubicon excludes on behalf of all such Contributors (i) all liability for damages, including direct, indirect, special, incidental and consequential damages, such as lost profits; and (ii) any provisions which differ from this Agreement which are offered by any particular Contributor alone and not by any other party.

6. Prices; Ordering; Payment.

6.1 Invoicing and Payment.

Except as otherwise specified in an Order or Statement of Work: (a) you shall pay to Rubicon all fees, charges and expenses due and owing pursuant to an Order or Statement of Work in U.S. dollars to the address designated on the invoice within thirty (30) days following Rubicon's invoice date; (b) the fees for the Subscription Services shall be due annually, in advance (rather than within thirty (30) days following Rubicon's invoice date as specified in subsection (a) above), the first payment commencing on the effective date of the applicable Initial Order Term, and the fees for any Order Renewal Term shall be paid in advance on the Order renewal date; and (c) all payment obligations are non-cancellable, non-refundable and non-contingent. You may not set-off any amounts owing to you against any payments owing to Rubicon hereunder. Payments which are not received when due shall bear interest at the lesser of the maximum amount chargeable by law or one and a half percent (1 1/2%) per month commencing with the date payment was due. In addition, in the event you fail to timely pay any fees or charges when due, Rubicon may, in its discretion, suspend or terminate any Subscription Services or other services hereunder in accordance with Section 6.3. You will continue to be charged for all Subscription Services and other services during any period of suspension.

6.2 Taxes and Duties.

Excluding taxes based on Rubicon's net income, you are liable and responsible for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, and all duties and customs fees relating to your receipt or use of the Subscription Services, whether or not Rubicon invoices you for such taxes, duties or customs fees, unless you timely provides Rubicon with a valid tax exemption or direct pay certificate showing that you are exempt from such payments. If you are required to pay any such taxes, duties or customs fees, you shall reimburse Rubicon for such amounts in accordance with Section 6.1, and you further agree to indemnify, defend and hold harmless Rubicon for any such taxes, duties and customs fees and any related costs, interest and penalties paid or payable by Rubicon with respect thereto.

7. Term and Termination.

7.1 Term.

The term of this Agreement ("Term") shall commence on the Effective Date and shall continue until terminated in accordance with the provisions hereof. Either you or Rubicon may terminate this Agreement upon written notice to the

other party in the event no Order or Statement of Work is outstanding hereunder.

#### 7.2 Orders.

Unless otherwise specified in an Order, the initial term of each Order shall be thirty-six (36) months (the "Initial Order Term"). When you submit your Order you must indicate whether you would like the Order to automatically renew for additional successive terms. If you elect for the Order to automatically renew, upon expiration of the Initial Order Term, the Order shall automatically renew for successive thirty-six (36) month terms (each a "Order Renewal Term") unless either (a) you change your automatic renewal selection and give written notice of such non-renewal to Rubicon; or (b) Rubicon gives you written notice of non-renewal at least ten (10) days prior to the expiration of the applicable Initial Order Term or then-current Order Renewal Term, as the case may be. For purposes of clarification, the liquidated damages specified in Section 7.6 shall apply to the Initial Order Term, or the then-current Order Renewal Term, as the case may be.

#### 7.3 Termination.

Either you or Rubicon may terminate this Agreement or the applicable Order or Statement of Work if the other party breaches this Agreement or such Order or Statement of Work, as applicable, and fails to correct the breach within thirty (30) days following receipt of written notice from the non-breaching party. In addition, Rubicon may terminate this Agreement immediately if you file for bankruptcy, become insolvent, or make an assignment for the benefit of creditors, or if a trustee is set up to administer a substantial portion of your assets or business.

#### 7.4 Suspension of Services.

In the event (a) you fail to timely pay any fees when due; or (b) Rubicon believes, upon advice of counsel, that any element of the Subscription Services, or your receipt or use thereof, violates any applicable law, rule or regulation, Rubicon may in its sole discretion suspend or terminate any Subscription Services and other services immediately without notice.

#### 7.5 Termination by you.

In the event a Rubicon Amendment is implemented pursuant to subsections (a) or (c) of the preamble of this Agreement, you may terminate this Agreement by providing thirty (30) days' prior written notice to Rubicon of such termination, provided such notice is provided prior to the earlier of (a) five (5) days following the Amendment Effective Date; or (b) your continued receipt of the Subscription Services following the Amendment Effective Date.

#### 7.6 Effect of Termination.

Upon termination of this Agreement or an Order or Statement of Work for any reason, all payment obligations shall become immediately due and owing and you shall immediately cease using the applicable Subscription Services and return all Documentation to Rubicon. In addition, in the event this Agreement or any Order is terminated early, before completion of the applicable term, for any reason other than due to Rubicon's breach, you shall pay to Rubicon (in addition to any other amounts due under this Agreement) as liquidated damages on the effective date of such termination, (a) any non-refundable costs incurred by Rubicon in connection with such termination including, but not limited to, hardware costs and licensing fees paid to third party licensors; and (b) fifty percent (50%) of the remaining subscription fees paid to use and access the Subscription Services that would have been charged for the then remaining term of the Agreement or Order(s),



as applicable, all of which shall be immediately accelerated. You acknowledge and agrees that (i) the payment of such fees does not constitute a penalty, but is due to the difficulty in estimating actual damages for early termination; (ii) such fees are a reasonable estimate of the amounts required to fairly compensate Rubicon in such events; and that (iii) such fees have taken into consideration Rubicon's cost savings due to the termination of this Agreement and the present value of accelerated payments. Upon termination of this Agreement, you shall also return to Rubicon or destroy all copies of Rubicon's Trade Secrets and Confidential Information in every form. Upon request of Rubicon, you agree to certify in writing to Rubicon that you have performed the foregoing obligations. The preamble, and Sections 2, 5, 6, 7.6, 8.3, 8.4, and 9-12 shall survive any termination of this Agreement in accordance with their respective terms. In the event of any termination hereunder, you shall not be entitled to any refund of any payments made by you.

#### 8. Representations and Warranties.

8.1 Services Warranty. Provided that you notify Rubicon of the non-conformance within the warranty period, and subject to the limitations set forth herein, Rubicon warrants that the Subscription Services will be provided substantially in accordance with the applicable Documentation for a period of ninety (90) days from the date such Subscription Services are first provided. No specific result from the provision of Subscription Services is assured or guaranteed. In the event of any breach of the foregoing warranty, Rubicon shall, at its option and as your sole and exclusive remedy, (a) re-perform the Subscription Services which were not performed as warranted at no additional charge; or (b) in the event Rubicon is unable to re-perform such Subscription Services after exercising commercially reasonable efforts to do so, refund the fees paid to Rubicon for the Subscription Services which were not performed as warranted. Notwithstanding the foregoing, Rubicon shall have no obligation to provide the warranty services described in this Section 8.1 if: (i) the performance failure is at least partially attributable to your deviation from applicable operating instructions or failure to perform your obligations set forth in this Agreement; or (ii) your or any other person or entity (other than Rubicon) has modified the Subscription Services. Rubicon does not warrant that the Subscription Services will operate in conjunction with Equipment that is neither provided by nor formally approved by Rubicon.

#### 8.2 Your Acknowledgment.

You acknowledge and agree that you have made your own evaluation in deciding to subscribe for the Subscription Services. The warranties provided in this Agreement extend solely to you and to no other person or entity whatsoever. Without limiting the foregoing, Rubicon is not responsible for the results that may be obtained from use of the Subscription Services.

#### 8.3 Equipment.

You acknowledge and agree that the Equipment is provided to you on an "AS IS" basis without a warranty from Rubicon.

8.4 DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, RUBICON MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE SUBSCRIPTION SERVICES, THE SYSTEM, THE EQUIPMENT, OR ANY OTHER SERVICES OR PRODUCTS PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE PROFESSIONAL SERVICES. RUBICON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR

FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. RUBICON DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES, SYSTEM, THE EQUIPMENT, OR OTHER SERVICES OR PRODUCTS ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SUBSCRIPTION SERVICES, SYSTEM, EQUIPMENT, OR OTHER SERVICES OR PRODUCTS WILL BE UNINTERRUPTED OR THAT ALL ERRORS OR ISSUES WITH THE SUBSCRIPTION SERVICES, SYSTEM, EQUIPMENT, OR OTHER SERVICES OR PRODUCTS CAN OR WILL BE CORRECTED.

9. Confidentiality.

9.1 Confidentiality.

Each party, whether that's you or Rubicon (the "Receiving Party") acknowledges that it will have access to Confidential Information and Trade Secrets of the other party (the "Disclosing Party"). For purposes of this Agreement, "Trade Secrets" means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and "Confidential Information" means information, other than Trade Secrets, that is of value to Disclosing Party and is treated as confidential. Rubicon's Trade Secrets and Confidential Information include, without limitation, the Subscription Services, the System, the Documentation and object and source code for the Rubicon Software. The Receiving Party agrees to use the Trade Secrets and Confidential Information of the Disclosing Party solely for purposes of performing its obligations or exercising its rights under this Agreement. The Receiving Party agrees to discuss the Trade Secrets and Confidential information of the Disclosing Party only with, and to transmit the Trade Secrets and Confidential Information only to, those officers, employees and consultants of the Receiving Party who have a need to know the Trade Secrets or Confidential Information for the purposes set forth herein and who have agreed in writing to treat such information as confidential on terms no less restrictive than as set forth in this Agreement. You and Rubicon acknowledge and agree that the terms of any previously executed confidentiality or nondisclosure agreements shall remain in effect with respect to the information exchanged thereunder.

9.2 Security Precautions.

The Receiving Party shall take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Trade Secrets and Confidential Information of the Disclosing Party and shall use at least the same degree of care the Receiving Party employs with respect to its own Trade Secrets and Confidential Information, but in no event less than a reasonable standard of care. The Receiving Party shall not permit unauthorized access to the Trade Secrets or Confidential Information of the Disclosing Party.

9.3 Duration and Exceptions.

With regard to Confidential Information, the obligations in this Section 9 shall continue for the Term and for a period of five (5) years thereafter. With regard to Trade Secrets, the obligations in this Section 9 shall continue for so long as such information constitutes a trade secret under applicable law, but in no event less than the Term and for a period of five (5) years thereafter. The Receiving Party's obligations with respect to Trade Secrets and Confidential Information of the Disclosing Party shall not apply to the extent such Trade Secrets or Confidential Information: (a) are previously known to the Receiving Party without restriction on disclosure;

(b) cease to be secret or confidential except by reason of a breach of this Agreement by the Receiving Party; (c) are independently developed by the Receiving Party without reference to the Trade Secrets or Confidential Information of the Disclosing Party; or (d) were received from a third party without obligations of confidence and without breach of this Agreement. In addition, the Receiving Party may disclose Trade Secrets and Confidential Information of the Disclosing Party to the extent such disclosure is required by applicable law or by any governmental authority, provided the Receiving Party notifies the Disclosing Party, if permitted by law, of the applicable legal requirements before such disclosure occurs so as to enable the Disclosing Party to obtain such protection as may be available to preserve the confidentiality of such information.

#### 10. Intellectual Property Rights.

10.1 Rubicon's Intellectual Property. Rubicon (or its licensors) retains title to the Subscription Services, System, Documentation, Content, and Work Product, and all modifications, alterations, derivative works, and enhancements thereto, and all copies thereof and Intellectual Property Rights therein. Except as specified herein, you do not acquire any rights, express or implied, in the Subscription Services, System, Documentation, Content, or Work Product, and have no right to commercialize or transfer the Subscription Services, System, Documentation, Content, or Work Product, in whole or in part. No license, right or Intellectual Property Right in any Rubicon trademark, trade name or service mark is granted pursuant to this Agreement. Upon request, you agree to execute such documents as may be reasonably requested by Rubicon to secure Rubicon's rights in and to the foregoing.

#### 10.2 License to the Content and Work Product.

Rubicon hereby grants you a perpetual, unrestricted, worldwide, royalty free (subject only to the fees provided for in this Agreement and in the applicable Statement of Work), irrevocable (except as otherwise provided herein), non-exclusive right and license to copy, use, modify and sub-license all Content and Work Product, to the same extent as if you were the owner thereof, without an obligation to account to Rubicon.

#### 10.3 License to the Marks.

You hereby grant to Rubicon the worldwide, non-exclusive limited right and license during the Term to use the Marks in connection with performance of the Subscription Services and its other obligations under this Agreement.

#### 10.4 Restricted Rights.

The Subscription Services, System, Documentation, Content, and Work Product, were developed at private expense, are commercial, and are published and copyrighted. Except as required by law or legal process, the Subscription Services, System, Documentation, Content, and Work Product, may be transferred to the U.S. government only with the prior written consent of an officer of Rubicon and solely with "Restricted Rights" as that term is defined in Federal Acquisition Regulation (FAR) 52.227-19(b)(2) (or DFAR 252.227-202.32 (c)(1) if the transfer is to a defense-related agency) or subsequent citation. If you are an agency of the United States government or licensing the Subscription Services, System, Documentation, Content, or Work Product, for operation on behalf of the United States government, the Subscription Services, System, Documentation, Content, and Work Product, are licensed to you with rights no greater than those set forth in FAR 52.227-19(c)(2) (or DFAR 252.227-7202.32 (c)(1) if you are a defense-related agency) or subsequent citation.

11. Limitation on Liability.

11.1 EXCLUSION OF DAMAGES. IN NO EVENT SHALL RUBICON OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE, DELAY OR MALFUNCTION), EVEN IF RUBICON HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

11.2 LIMITATION OF LIABILITY. RUBICON TOTAL AGGREGATE LIABILITY TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING FROM OR OUT OF THIS AGREEMENT (WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED THE FEES PAID BY YOU TO RUBICON DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO YOUR FIRST CLAIM.

11.3 EXCEPTIONS. THE FOREGOING LIMITATIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

12. Miscellaneous.

12.1 Dispute Resolution; Governing Law.

The laws of the State of Georgia shall govern this Agreement, without reference to conflicts of law rules or principles. Both you and Rubicon specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement. You hereby consent and submit to the exclusive jurisdiction and venue over any action, suit or other legal proceeding that may arise out of or in connection with this Agreement, by any state or federal court located within or about Atlanta, Georgia, USA. You shall bring any action, suit or other legal proceeding to enforce, directly or indirectly, this Agreement or any right based upon it exclusively in such courts.

12.2 Force Majeure.

Rubicon will not be liable for any loss, damage or delay resulting from any event beyond Rubicon's reasonable control (a "Force Majeure Event"), and delivery and performance dates will be extended to the extent of any delays resulting from any such Force Majeure Event. Rubicon will promptly notify you upon becoming aware that a Force Majeure Event has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement.

12.3 Assignment.

Neither party (whether such party is you or Rubicon) shall assign, transfer, or otherwise delegate any of its rights, duties, or obligations under this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the other party, which consent shall not be unreasonably withheld, and any attempted assignment (whether by operation of law or otherwise) shall be null and void; except that Rubicon may delegate any of its rights, duties, or obligations under this Agreement to one or more of its affiliates. Notwithstanding the foregoing, Rubicon may assign its rights, duties, and obligations hereunder, without your approval, to a party that succeeds to all or substantially all of Rubicon's assets or business (whether by sale, merger, operation of law or otherwise), so long as the assignee agrees in writing to be bound by the terms and conditions of this

Agreement. This Agreement shall be binding upon and shall inure to your and Rubicon's benefit and to your and Rubicon's successors and permitted assigns.

#### 12.4 Injunctive Relief.

You understand and agree that in the event of a breach or threatened breach of any of the covenants or promises contained in this Agreement, Rubicon will suffer irreparable injury for which there is no adequate remedy at law and Rubicon may seek injunctive relief enjoining said breach or threatened breach. You further acknowledge, however, that Rubicon shall have the right to seek a remedy at law as well as or in lieu of equitable relief in the event of any such breach.

#### 12.5 Independent Contractors.

Nothing in this Agreement shall be construed to create an agency, joint venture, partnership or other form of business association between you and Rubicon. You do not have the right or authority to make any contract, representation or binding promise of any nature on behalf of Rubicon and you shall not hold yourself out as having such right or authority.

#### 12.6 No Waiver.

The failure on either your part or on Rubicon's part to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future or any other right or remedy.

#### 12.7 Severability.

In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

#### 12.8 Notices.

Any notices or other communications required or permitted to be given or delivered by Rubicon under this Agreement shall be undertaken by Rubicon by any means Rubicon determines in its discretion to be reasonable including, but not limited to, sending you an email notification (in which case the notice or other communication shall be deemed to be given when it is sent) or posting the notices or other communications on Rubicon's website located at [www.rubiconglobal.com](http://www.rubiconglobal.com) (in which case the notice or other communication shall be deemed to be given when posted on Rubicon's website). Any notices or other communications required or permitted to be given or delivered by you under this Agreement shall be in writing and shall be sufficiently given if delivered personally or if delivered by overnight commercial courier or by registered or certified mail, postage prepaid, return receipt requested, to Rubicon at the following address: Rubicon Global, LLC, 950 East Paces Ferry Road, Suite 1900, Atlanta, Georgia 30326. Any notice or other communication by you shall be deemed to be given when it is personally delivered or as of the date it is delivered by the commercial courier or five (5) days after being mailed by registered or certified mail, as the case may be, as herein specified. Any change of address shall be served by notice pursuant to this Section 12.8.

#### 12.9 Marketing.

You agree that Rubicon may reference your execution of this Agreement and your status as a user of the Subscription Services in marketing materials and in sales presentations. Rubicon may use your Marks in connection with such usage both during and after the Term.

12.10 Entire Agreement.

This Agreement (including any Orders, Statements of Work and attachments, which are hereby incorporated herein by reference) constitute the final and entire agreement between you and Rubicon, and supersedes all prior written and oral agreements, understandings, or communications with respect to the subject matter of this Agreement.

Exhibit A  
Professional Services Terms

These Professional Services Terms are hereby annexed to and made a part of the Master Software Services Agreement (the "Agreement") between Rubicon and you. In the event any provisions of these Professional Services Terms contradict or are inconsistent with the provisions of the Agreement, the provisions these Professional Services Terms shall prevail and govern.

1. Services. Upon your request, Rubicon will provide consultants to perform implementation, consulting and training services to the extent such Professional Services are identified in any mutually agreed upon Statement of Work more fully describing the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference the Agreement and be sequentially numbered. Any modifications to a Statement of Work shall be made by written change order, in Rubicon's standard form, executed by you and Rubicon (a "Change Order"). Each Change Order complying with this Section shall be deemed to be an amendment to the applicable Statement of Work to which it applies and shall become a part thereof.

2. Cooperation. All Professional Services will be coordinated with your designated project coordinator, as identified in each Statement of Work. You shall cooperate and provide information as is reasonably necessary or desirable for the timely completion of the Professional Services. You shall at all times make available your functional and/or information technology personnel as reasonably required or desirable for Rubicon to perform the Professional Services, and you shall timely fulfill your obligations and responsibilities set forth in each Statement of Work. To the extent required or as specified in any Statement of Work or work plan, you shall provide Rubicon with access to your facilities, software, systems, data, information and support materials to perform the Professional Services. You acknowledge that Rubicon's performance hereunder is contingent on your timely and effective performance of your responsibilities and your timely decisions and approvals. If you fail to provide required information and/or make decisions as agreed or in a reasonably expeditious and timely manner, and such failure results in a delay in delivery of any deliverables or Work Product or to the overall project, you agree to extend the time frame for delivery of the deliverable or project, as applicable, on a day for day basis and compensate Rubicon for any additional work required as a result of such delay.

3. Project Control. Rubicon shall have the sole right to supervise, manage, contract, direct, procure, perform, or cause to be performed, all Professional Services performed by it pursuant to a Statement of Work. Rubicon may subcontract all or a portion of the Professional Services to a qualified third party. In recognition that Rubicon personnel may perform similar services for third parties, this Agreement shall not prevent Rubicon from providing services or developing materials that may be perceived as competitive with those developed or provided hereunder, subject to the confidentiality provisions of the Agreement.

4. Compensation. All Professional Services will be provided by Rubicon on a time, materials and expense basis at Rubicon's then current rates, unless otherwise agreed by the parties in a Statement of Work.

5. Termination. These Professional Services Terms shall be effective as of the Effective Date of the Agreement and shall remain in effect until (a)

terminated by either you or Rubicon upon thirty (30) days prior written notice in the event no Statement of Work is outstanding; or (b) as provided in the Agreement, whichever is earlier. You shall be liable for payment to Rubicon for all Professional Services provided or performed prior to the effective date of any such termination, including any expenses incurred pursuant to the provision of such Services.

6. Additional Services. Any services performed by Rubicon your request that are outside the scope of any Professional Services described in the applicable Statement of Work shall be governed by these terms and will be billed at Rubicon's then current rates.