

Sample RightNow Technologies Master Cloud Services Agreement with Customer

This Master Agreement (“Agreement”) is between RightNow Technologies, Inc. (“RightNow”), a Delaware corporation, and Customer. It should be read together with each Order Form. Parts of this Agreement may not apply to a particular Customer.

PART ONE – SUBSCRIPTION SERVICES.

- 1. Access to the Subscription Services.** RightNow grants Customer a right to receive the Subscription Services.
 - 1.1. The Software is located on servers that are controlled by RightNow. Customer may access the Software, but has no right to receive a copy of the object code or source code to the Software.
 - 1.2. Customer must have a high speed Internet connection, and hardware and software that is compatible with the Subscription Services, as set out in the Documentation. None of these things are RightNow’s responsibility.
 - 1.3. RightNow regularly upgrades and updates the Subscription Services. This means that the Subscription Services are continually evolving. Some of these changes will occur automatically, while others may require Customer to schedule and implement the changes. The changes may also mean that Customer needs to upgrade its equipment in order to make efficient use of the Subscription Services. RightNow will provide Customer with advance notification in this case.
 - 1.4. RightNow recognizes that Customer may have legitimate business reasons for not upgrading to a new version of the Subscription Services as soon as the version becomes available. However, RightNow will not support old versions indefinitely. RightNow has policy that sets out what happens when old versions reach end-of-life (to view the current policy, click on this link). When an old version used by Customer is at end-of-life, RightNow may remove Customer’s access to that version and upgrade Customer to a new version.
 - 1.5. RightNow solely owns the intellectual property in the Software (except for third party components) and the Documentation.
- 2. Conditions of Use.** The Subscription Services provided to Customer are non-exclusive, non-transferable (except as provided in Section 17.4), and are for Customer’s internal business use only. Customer’s right to use the Subscription Services is conditional upon the following. Customer may not:
 - 2.1. transfer to any other person any of its rights to use the Subscription Services;
 - 2.2. sell, rent or lease the Subscription Services;
 - 2.3. make the Subscription Services available to anyone who is not an “Authorized User”. An Authorized User is an employee of Customer, or of a person to whom Customer has outsourced services, who is authorized to access the Software as either a named or concurrent user;
 - 2.4. create any derivative works based upon the Subscription Services or Documentation;
 - 2.5. copy any feature, design or graphic in, or reverse engineer the Software;
 - 2.6. access the Subscription Services (i) in order to build a competitive solution or to assist someone else to build a competitive solution; or (ii) if Customer is an employee of a RightNow competitor;
 - 2.7. use the Subscription Services in a way that violates any criminal or civil law;
 - 2.8. load test the Subscription Services in order to test scalability; or,
 - 2.9. exceed the usage limits listed in the Order Form.
- 3. Customer Data.**
 - 3.1. Customer must provide all data for use in the Subscription Services, and RightNow is not obliged to modify or add to the Customer Data. Customer is solely responsible for the content and accuracy of the Customer Data.
 - 3.2. The Customer Data belongs to Customer, and RightNow makes no claim to any right of ownership in it.
 - 3.3. RightNow must keep the Customer Data confidential in accordance with Section 13 of this Agreement.
 - 3.4. RightNow must use the Customer Data strictly as necessary to carry out its obligations under this Agreement, and for no other purpose. However, RightNow:
 - 3.4.1. may observe and report back to Customer on Customer’s usage of the Subscription Services, and make recommendations for improved usage of the Subscription Services;
 - 3.4.2. may identify trends and publish reports on its findings provided the reports include data aggregated from more than one customer site and do not identify Customer; and,
 - 3.4.3. must ensure that the data center containing the Customer Data meets the following physical and electronic security requirements: (i) single point of entry; (ii) main access monitored with additional access for emergency purposes only; (iii) surveillance cameras in facility; (iv) access validation with identity check; (v) access only to persons on RightNow approved access list; (vi) log-in validation; (vii) creation of accounts only as verified by RightNow or sub-contracted hosting provider; (viii) access to servers via encrypted means; and, (ix) servers running behind secure firewall.
 - 3.5. RightNow must comply with the principles of the EU Data Protection Directive 95/46 and the Telecoms Data Protection Directive as amended (“the Directives”) and any successor legislation, in relation to any “personal data” received by or originating from Customer and Customer clients, to the extent that the Directives apply to “data processors”.
 - 3.6. RightNow must take reasonable technical and organizational measures to keep personal data secure and to protect it against accidental loss or unlawful destruction, alteration, disclosure or access; and, must deal with the information only in accordance with Customer’s instructions, provided they are reasonable and lawful.
 - 3.7. RightNow must back up Customer Data once in each 24-hour period.

- 4. Subscription Services Warranties.** RightNow warrants that: (i) the Subscription Services will function substantially as described in the Documentation; and (ii) RightNow owns or otherwise has the right to provide the Subscription Services to Customer under this Agreement. The remedies set out in this Section 4 are Customer's exclusive remedies for breach of either warranty.
- 4.1. If the Subscription Services do not function substantially in accordance with the Documentation, RightNow must, at its option, either (i) modify the Subscription Services to conform to the Documentation; or (ii) provide a workaround solution that will reasonably meet Customer's requirements. If neither of these options is commercially feasible, either party may terminate the relevant Order Form under this Agreement, in which case RightNow shall refund to Customer all fees pre-paid to RightNow under the relevant Order Form for unused Subscription Services.
- 4.2. If the normal operation, possession or use of the Subscription Services by Customer is found to infringe any third party U.S. intellectual property right or RightNow believes that this is likely, RightNow must, at its option, either (i) obtain a license from such third party for the benefit of Customer; (ii) modify the Subscription Services so that they no longer infringe; or (iii) if neither of these options is commercially feasible, terminate the relevant Order Form under this Agreement, in which case RightNow shall refund to Customer all fees pre-paid to RightNow under the relevant Order Form for unused Subscription Services.
- 4.3. However, RightNow has no warranty obligations for:
- 4.3.1. the extent that Software has been modified by Customer or any third party, unless the modification has been approved in writing by RightNow;
- 4.3.2. a version of the Subscription Services that has passed its end-of-life date (see Section 1.4); or,
- 4.3.3. problems in the Subscription Services caused by any third party software or hardware, by accidental damage or by other matters beyond RightNow's reasonable control.

PART TWO – PROFESSIONAL SERVICES.

- 5. Professional Services Warranties.** RightNow warrants that (i) the Work Product will substantially conform to the Statement of Work; and (ii) the Professional Services will be performed with reasonable skill, care and diligence. The remedies set out in this Section 5 are Customer's exclusive remedies for breach of either warranty.
- 5.1. If the Professional Services do not conform to the Statement of Work or are not performed with reasonable skill, care and diligence, RightNow shall re-perform the Professional Services to the extent necessary to correct the defective performance.
- 6. Customer's Responsibilities.** Customer must provide RightNow with all information, access, and full good faith cooperation reasonably necessary to enable RightNow to deliver the Professional Services, and must do anything that is identified in the Statement of Work as Customer's responsibility. If Customer fails to do this, RightNow will be relieved of its obligations to the extent that the obligations are dependent upon Customer's performance.
- 7. Intellectual Property Ownership.** RightNow solely owns the intellectual property in the Work Product. Upon payment in full of any amounts due for Professional Services, Customer shall have a non-exclusive, non-transferable (except as provided in Section 17.4) right to use the Work Product for Customer's internal business purposes. This right shall continue for so long as, and be subject to the same terms and conditions as the right to use the Subscription Services.

PART THREE – GENERAL.

- 8. Term of Agreement.** This Agreement start on the date that Customer signs an Order Form and ends when RightNow no longer is obliged to provide Customer with Subscription Services or Professional Services under any Order Forms.
- 9. Payments.** Customer must pay the fees listed in the relevant Order Form.
- 9.1. Customer must pay a finance charge on any overdue payment of one and one-half percent (1-1/2%) for each month or portion of a month that the payment is overdue, or the highest interest rate permitted by applicable law, whichever is the lower. Interest shall compound monthly. The fees do not include any taxes, and Customer shall pay any sales, use, value added or other taxes or import duties (other than corporate income taxes payable by RightNow) due as a result of any amounts paid to RightNow. Customer shall bear all of RightNow's costs of collection of overdue fees, including reasonable attorneys' fees.
- 9.2. If Customer initially purchases Subscription Services for a term, and subsequently orders additional product, the purchase price for the additional product shall be pro-rated so that the added subscriptions terminate on the same day as the initial subscription.
- 10. Termination and Suspension.**
- 10.1. Either party may terminate rights granted under a particular Order Form if the other breaches any material term of the Order Form (including a material term of this Agreement insofar as it applies to the Order Form) and the breach is not cured within 30 days of written notice. Customer's breach of Section 2.9 of this Agreement shall be considered a material breach.
- 10.2. Instead of terminating rights granted to a Customer under an Order Form, RightNow may suspend the provision of Subscription Services to Customer for a period of up to 45 days. At any time during that period, RightNow may terminate the rights granted to Customer.
- 10.3. Sections 2.4, 2.5, 3.3, 7, 9, 11, 12, 13, 14, 15 and 17 continue after this Agreement ends.
- 10.4. If RightNow terminates an Order Form under this Agreement because of non-payment by Customer, all unpaid fees for the remainder of the Subscription Term immediately fall due for payment.
- 10.5. Upon termination of Customer's Subscription Service, RightNow must promptly provide Customer with all Customer Data in comma separated value (CSV) format. However, RightNow may retain Customer Data in backup media for an additional period of up to 12 months, or longer if required by law.

11. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SUBSCRIPTION SERVICES, WORK PRODUCT AND PROFESSIONAL SERVICES ARE PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND RIGHTNOW DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. RIGHTNOW DOES NOT WARRANT THAT THE USE OF THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.
12. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SUBSCRIPTION SERVICES, SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE CUSTOMER'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SUBSCRIPTION SERVICES OR WORK PRODUCT. EACH PARTY'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND RELATED TO THE RELEVANT ORDER FORM SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE BY CUSTOMER TO RIGHTNOW UNDER SUCH RELEVANT ORDER FORM DURING THE 24 MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THIS LIMITATION ON LIABILITY WAS AND IS AN EXPRESS PART OF THE BARGAIN BETWEEN RIGHTNOW AND CUSTOMER AND WAS A CONTROLLING FACTOR IN THE SETTING OF THE FEES PAYABLE TO RIGHTNOW. HOWEVER, THERE IS NO LIMITATION ON DIRECT LOSS, CLAIM OR DAMAGES ARISING AS A RESULT OF AN INFRINGEMENT OF RIGHTNOW'S INTELLECTUAL PROPERTY RIGHTS, OR A BREACH OF SECTION 13 OF THIS AGREEMENT, OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS.
13. **Confidentiality.**
 - 13.1. The Subscription Services, Software, Documentation and Work Product contain valuable trade secrets that are the sole property of RightNow, and Customer agrees to use reasonable care to prevent other parties from learning of these trade secrets. Customer must take reasonable care to prevent unauthorized access to or duplication of the Subscription Services, Software, Documentation, and Work Product.
 - 13.2. The Customer Data may include valuable trade secrets that are the sole property of Customer. RightNow must take reasonable care to prevent other parties from learning of these trade secrets.
 - 13.3. Sections 13.1 and 13.2 do not apply to any information that (i) is now, or subsequently becomes, through no act or failure to act on the part of receiving party (the "Receiver"), generally known or available; (ii) is known by the Receiver at the time of receiving such information, as evidenced by the Receiver's records; (iii) is subsequently provided to the Receiver by a third party, as a matter of right and without restriction on disclosure; or (iv) is required to be disclosed by law, provided that the party to whom the information belongs is given prior written notice of any such proposed disclosure.
14. **Indemnification by RightNow.** RightNow must indemnify and hold harmless Customer, its affiliates, directors and employees from any damages finally awarded against Customer (including, without limitation, reasonable costs and legal fees incurred by Customer) arising out of any third party suit, claim or other legal action alleging that the use of the Subscription Services, Documentation or Work Product by Customer infringes any copyright, trade secret or United States patent, ("Legal Action"). RightNow must also assume the defense of the Legal Action.
 - 14.1. However, RightNow shall have no indemnification obligations for any Legal Action arising out of: (i) a combination of the Subscription Services, Software or Work Product with software or products not supplied, or approved in writing by RightNow; (ii) any repair, adjustment, modification or alteration to the Subscription Services by Customer or any third party, unless approved in writing by RightNow; or (iii) any refusal by Customer to install and use a non-infringing version of the Subscription Services, or Work Product offered by RightNow under Section 4.2(ii). Section 4.2(ii) and this Section 14 state the entire liability of RightNow with respect to any intellectual property infringement by the Subscription Services, Software or Work Product.
 - 14.2. Customer must give written notice to RightNow of any Legal Action no later than 30 days after first receiving notice of a Legal Action, and must give copies to RightNow of all communications, notices and/or other actions relating to the Legal Action. Customer must give RightNow the sole control of the defense of any Legal Action, must act in accordance with the reasonable instructions of RightNow and must give RightNow such assistance as RightNow reasonably requests to defend or settle such claim. RightNow must conduct its defense at all times in a manner that is not adverse to Customer's interests. Customer may employ its own counsel to assist it with respect to any such claim. Customer must bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with RightNow or its counsel, or because RightNow fails to assume control of the defense. Customer must not settle or compromise any Legal Action without RightNow's express written consent. RightNow shall be relieved of its indemnification obligation under Section 14 if Customer materially fails to comply with Section 14.2.
15. **Indemnification by Customer.** Customer must indemnify and hold harmless RightNow, its affiliates, directors, and employees from any damages finally awarded against RightNow (including, without limitation, reasonable costs and legal fees incurred by Customer) arising out of any third party suit, claim or other legal action (including but not limited to any governmental investigations, complaints and actions) in connection with the Customer Data, including, without limitation, any action for infringement of any trademark, copyright, trade secret, right of publicity or privacy (including defamation), patent or other proprietary right with respect to the Customer Data ("Legal Claim").
 - 15.1. RightNow must give written notice to Customer of any Legal Claim no later than 30 days after first receiving notice of a Legal Claim, and must give copies to Customer of all communications, notices and/or other actions relating to the Legal Claim. RightNow must give Customer the sole control of the defense of any Legal Claim, must act in accordance with the reasonable instructions of Customer and must give Customer such assistance as Customer reasonably requests to defend or settle such claim. Customer must conduct its defense at all times in a manner which is not adverse to RightNow's interests. RightNow may employ its own counsel to assist it with

respect to any such claim. RightNow must bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with Customer or its counsel, or because Customer fails to assume control of the defense. RightNow must not settle or compromise any Legal Claim without Customer's express written consent. Customer shall be relieved of its indemnification obligation under Section 15 if RightNow materially fails to comply with Section 15.1.

16. Publicity.

- 16.1. RightNow may list Customer as a customer and use Customer's logo on RightNow's website, on publicly available customer lists, and in media releases.

17. Miscellaneous.

- 17.1. This Agreement together with the Order Form represent the entire agreement of the parties, and supersede any prior or current understandings, whether written or oral. If there is a conflict between the Agreement and an Order Form, the Order Form will prevail.
- 17.2. This Agreement may not be changed or any part waived except in writing by the parties.
- 17.3. This Agreement will be governed by the laws of Montana (excluding its choice of law rules). The parties consent to the exercise of exclusive jurisdiction by the state or federal courts in the State of Montana for any claim relating to this Agreement.
- 17.4. Customer must not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of RightNow. RightNow may not withhold such consent in the case of an assignment by Customer of its rights and obligations to an entity that has acquired all, or substantially all of Customer's assets, or to an assignment that is part of a genuine corporate restructure. Any assignment in breach of this Section is void.
- 17.5. Customer must not export or re-export, directly or indirectly, any Subscription Services, Documentation or confidential information to any countries outside the United States except as permitted under the U.S. Commerce Department's Export Administration Regulations.
- 17.6. The Subscription Services and Documentation provided to the U.S. Government are "Commercial Items", as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", within the meaning of 48 C.F.R. 12.212 or 48 C.F.R.227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein, as provided in FAR 12.212, and DFARS 227.7202-1(a), 227.7202-3(a), 227.7202-4, as applicable.

PART FOUR – DEFINITIONS.

18. Glossary.

- 18.1. "Customer Data" means any electronic information stored in the Software database.
- 18.2. "Documentation" means user documentation provided electronically by RightNow for use with the Subscription Services, as periodically updated.
- 18.3. "Order Form" means a document provided by RightNow and signed by Customer that describes RightNow's service offering.
- 18.4. "Professional Services" means the training, consulting, development and other professional services identified on an Statement of Work, but does not include the Subscription Services.
- 18.5. "Statement of Work" means a document provided by RightNow and signed by Customer that describes the Professional Services to be provided by RightNow to Customer.
- 18.6. "Software" means the software whose functionality is described in the Order Form.
- 18.7. "Subscription Services" means the hosted customer experience solutions identified in an Order Form, and any modifications periodically made by RightNow, but does not include the Professional Services.
- 18.8. "Subscription Term" means the period of time during which RightNow is required to provide Customer with the Subscription Services.
- 18.9. "Work Product" means object code, source code, flow charts, documentation, information, reports, test results, findings, ideas and any works and other materials developed by RightNow in providing the Professional Services to Customer.