

**RightNow Technologies Master
Services Agreement with Customer**

This Master Agreement is entered into by and between RightNow Technologies, Inc. ("RightNow") with offices at 136 Enterprise Blvd., Bozeman, Montana 59718 and Customer. It should be read in conjunction with each Order Form, which identifies the products or services that Customer is purchasing. Parts of this Master Agreement may not apply to a particular Customer.

PART ONE – DEFINITIONS

1. DEFINED TERMS

In this Master Agreement:

"Authorized User", unless otherwise stated in an Order Form, means a specified (named) employee of Customer, or of a person to whom Customer has outsourced services, each of whom is able to access the Software functionality described in the Order Form.

"Content" means any text, pictures, sound, graphics or other data stored in a Database.

"Database" means a database constructed through use of the Hosting Services.

"Documentation" means user documentation provided electronically by RightNow for use with the Hosting Services.

"Effective Date" means the date upon which Customer first executes an Order Form under this Agreement.

"Hosting Services" means the hosted solution offering identified in an Order Form, and any subsequent revisions or modifications thereto furnished to Customer by RightNow.

"Hosting Term" means the period, identified on the Order Form, during which Customer is entitled to receive the Hosting Services

"Master Agreement" means this agreement and any appendix.

"Order Form" means a document provided by RightNow and signed by Customer that describes the Services and includes any attached statement of work, or appendix and any special conditions that apply to the license.

"Professional Services" means the training, consulting, development and other professional services identified on an Order Form, but does not include the Hosting Services or the Support Services.

"Services" means the Hosting Services, Professional Services and Support Services

"Software" means the software whose functionality is described in the Order Form, and that is hosted by RightNow and made available to Customer via the Hosting Services.

"Support Services" means the provision of upgrades and technical support.

"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.

PART TWO – HOSTING AND SUPPORT SERVICES

2. GRANT

(a) This Part Two shall apply only if the parties have agreed that RightNow shall provide the Hosting Services to Customer. This Agreement is a Master Agreement under which Customer may purchase the Hosting Services for internal use, using an Order Form. Upon execution of the Order Form, RightNow grants Customer an object code-only, non-exclusive, non-transferable (except as provided in Section 26(d)) right to use the Hosting Services and the Documentation solely for Customer's internal business purposes and subject to the terms of this Master Agreement.

(b) Customer's right to use the Hosting Services shall continue for the Hosting Term.

(c) Customer shall be responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Hosting Services, and for paying all third party access charges incurred while using the Hosting Services.

(d) Customer expressly authorizes RightNow (i) to observe and report back to Customer on Customer's usage of the Hosting Services, and to make recommendations for improved usage of the Hosting Services; and (ii) to identify trends and publish reports on its findings provided the reports include data aggregated from more than one customer site and do not identify the Customer.

3. LIMITATIONS ON, AND CONDITIONS OF USE

(a) Customer shall not (i) sell, rent, lease, sublicense or otherwise transfer or distribute to any third parties any rights to the Hosting Services; (ii) modify, or translate the Hosting Services or Documentation; (iii) create derivative works based upon the Hosting Services or Documentation; (iv) alter, destroy or otherwise remove any proprietary notices (including the 'Powered By RightNow' link) or labels embedded within the Hosting Services or Documentation; (v) reverse engineer the Hosting Services or access the Hosting Services in order to build a competitive product; (vi) copy any aspect of the Hosting Services or Software, including without limitation any feature, design, or graphic in the Hosting Services or the Software.

(b) Customer shall comply with the usage limits listed in the Order Form.

(c) Customer acknowledges that (i) the Hosting Services, Software and Documentation and all right, title and interest therein (including without limitation any copyright, patent, trade secret or other intellectual property right) are the sole property of RightNow and its suppliers and that Customer receives no rights, title or interests therein except as expressly set forth in this Agreement.

(d) Customer shall provide RightNow with written notice of expected unusual page or survey usage as soon as practicable after becoming aware of such likely usage, but in any case no later than 7 days after becoming so aware.

(e) Customer shall not, without RightNow's written consent, subject the Hosting Services to load testing in order to test the scalability of the Hosting Services.

4. DATABASE CONTENT

(a) Customer will supply all of the Content, and RightNow will have no obligation to supplement, modify, alter, review, monitor, screen or edit any of the Content at any time. RightNow acknowledges that the Content is the property of Customer, and that RightNow shall have no proprietary interest therein.

(b) RightNow shall (i) treat the Content confidentially in accordance with Section 23 of this Agreement; (ii) use the Content strictly as necessary to carry out its obligations hereunder, and for no other purpose whatsoever; (iii) permit RightNow's employees and agents to access the Hosting Services on a need to know basis only; and (iv) require such employees and agents to treat the Content confidentially.

(c) Customer is prohibited from storing, distributing or transmitting any unlawful material through the Hosting Services provided hereunder. Examples of unlawful material include, but are not limited to, threats of physical harm, child pornography and copyrighted, trademarked and other proprietary material used without proper authorization. Customer may not post, upload, or otherwise distribute copyrighted material as a result of the Hosting Services provided hereunder without the consent of the copyright holder. The storage, distribution, or transmission of unlawful materials could subject Customer to criminal as well as civil liability, in addition to the actions further outlined in this Agreement.

(d) Customer agrees to indemnify, defend and hold harmless RightNow, its affiliates, officers, agents, directors, and employees, against any and all claims, actions, proceedings, expenses, damages and liabilities (including but not limited to any governmental investigations, complaints and actions) and reasonable attorneys' fees arising out of, or in connection with the Content (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 Content). RightNow will give Customer prompt notice of any claim for which it is seeking indemnification, and will allow Customer to control the defense and settlement of such claim.

5. CONTENT LICENSE

Customer hereby grants to RightNow a non-exclusive, royalty-free, worldwide license (a) to reproduce, distribute, publicly perform, publicly display and digitally perform the Content and (b) to use Customer's trademarks, service marks, tradenames, logos or other commercial or product designations (collectively, the "Marks") via the Hosting Services, strictly to the extent necessary to comply with this Agreement.

6. NO SPAMMING

(a) Customer may not use the Hosting Services to send Unsolicited Commercial Email ("UCE") to any person. For the purposes of this Master Agreement, UCE includes any email that is sent by, or at the request of Customer, to a person with whom Customer has no prior business relationship or who has not consented to receiving the communication, and any other email communication that violates any law prohibiting the transmission of spam.

(b) Without limiting the foregoing, Customer may not (i) do anything that has the effect of concealing the identity of Customer or any person sending the email; (ii) send or cause to be sent any UCE to a person unless such communication also provides the recipient with a visible and user friendly means of opting out of future communications; or (iii) engage in any activity that is reasonably likely to lead to complaints of UCE.

(c) No later than 14 days after receiving a request from RightNow, Customer shall provide RightNow with the names and contact details of a primary and backup contact who will be responsible for responding to any complaints about UCE.

(d) RightNow will promptly notify Customer of any complaint that RightNow receives from a third party concerning alleged transmission of UCE by Customer in violation of paragraph (a). Customer will investigate the complaint and notify RightNow within 1 business day (or such further period as agreed in writing by the parties) of action that Customer has taken in response to the complaint. If the complaint has not been resolved, Customer will provide RightNow with written updates of the status of the complaint at such reasonable intervals as required in writing by RightNow.

7. SECURITY

RightNow shall ensure that all hosted environments meet the following physical security requirements:

- a) Single point of entry to hosting areas;
- b) Main access monitored with additional access for emergency purposes only;

- c) Surveillance cameras in facility;
- d) Access validation with identity check;
- e) Access only to persons on RightNow approved access list.

RightNow shall also ensure that all hosted environments meet the following electronic security conditions:

- f) Log-in validation;
- g) Creation of accounts only as verified by RightNow or sub-contracted hosting provider;
- h) Access to servers via encrypted means;
- i) Servers running behind secure firewall.

8. DATA PROTECTION FOR EU DATA

(a) This Section 8 applies to personal data concerning persons who reside in a country which is a member of the European Union (EU).

(b) RightNow will 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”.

(c) Definitions used in this clause shall have the same meanings as in such Directives.

(d) In particular and without limitation (in accordance with Article 17 of the Data Protection Directive) in relation to personal data of which Customer is the “data controller” and which RightNow “processes”: (i) RightNow warrants that RightNow has in place now and will on a continuing basis take all reasonable technical and organizational measures to keep such personal data secure and to protect it against accidental loss or unlawful destruction, alteration, disclosure or access; and (ii) RightNow will deal with the information only in accordance with Customer’s instructions, provided they are reasonable and in accordance with the law.

9. DATA BACKUP

RightNow shall cause hosted data to be backed up once in each 24 hour period.

10. SERVICE LEVEL OBJECTIVES

(a) RightNow adheres to the following service objectives:

(i) Downtime not to exceed 0.5% in any calendar month. For the purposes of this Agreement, “Downtime” shall mean any interruption in the provision of Hosting Services to Customer attributable to RightNow or a sub-contractor of RightNow, but excluding scheduled interruptions in respect of which Customer has received at least 24 hours notice, and any interruption caused by a widespread or catastrophic failure of the internet, the telephone or the power supply, or by an act of force majeure; and (ii) no more than 20 hours of scheduled maintenance per year

(b) It shall be a material breach of this Agreement if Downtime exceeds 0.9% more than twice in any calendar year.

11. SUPPORT SERVICES

RightNow shall provide to Customer the Support Services described on the relevant Order Form. However, RightNow is under no obligation to provide support to Customer if Customer is using a version of the Software after 24 months from the general availability release date of such Software version.

12. HOSTING SERVICES WARRANTY

(a) RightNow warrants to Customer that: (1) the Hosting Services will function substantially as described in the Documentation; (2) RightNow owns or otherwise has the right to provide the Hosting Services to Customer under this Master Agreement.

(b) If there is a material breach of the above warranties, RightNow’s entire liability and Customer’s exclusive remedy shall be: (1) if the Hosting Services do not function substantially in accordance with the applicable Documentation, RightNow shall, at its option, (i) promptly modify the Hosting Services to conform to the Documentation; or (ii) promptly provide a reasonable workaround solution which will reasonably meet Customer’s requirements. If neither of the foregoing is commercially feasible, either party may terminate the relevant Order Form under this Master Agreement, in which case RightNow shall refund to Customer all Hosting Services fees paid to RightNow under the relevant Order Form less an amount for use assuming straight line depreciation over the Hosting Term; (2) if the normal operation, possession or use of the Software by Customer is found to infringe any third party U.S. intellectual property right or RightNow believes that the Software is likely to do so, RightNow may, at its option, (i) obtain a license from such third party for the benefit of Customer; (ii) modify the Hosting Services so that they no longer infringe; or (iii) if neither of the foregoing is commercially feasible, terminate the relevant Order Form under this Master Agreement, in which case RightNow shall refund to Customer all Hosting Services fees paid to RightNow under the relevant Order Form less an amount for use assuming straight line depreciation over the Hosting Term.

(c) The remedies set forth above shall be Customer’s sole and exclusive remedies. RightNow shall have no obligation hereunder for any Hosting Services or Software that have been modified by Customer or any third party or any Software version in use by Customer after 24 months from general availability release date of such Software version. RightNow shall have no obligation hereunder for errors, damage or problems caused by any third party software, by accidental damage or by other matters beyond RightNow’s reasonable control.

13. RENEWAL OF HOSTING TERM

At any time during the Hosting Term, RightNow may notify Customer in writing of the fees that will apply at the expiration of the Hosting Term in order to continue the Hosting Services for an additional Hosting Term. In the absence of any agreement to the contrary, Customer shall be deemed to have accepted the notified pricing for the additional Hosting Term if Customer continues to use the Hosting Services after the later of:

- (a) the expiration of the Hosting Term;
- (b) the date that is thirty days after receipt of the notice

PART THREE – PROFESSIONAL SERVICES

14. DELIVERY OF PROFESSIONAL SERVICES

This Part Three shall apply only if the parties have agreed that RightNow shall deliver Professional Services to Customer. RightNow shall provide the Professional Services in accordance with the relevant Order Form.

15. PROFESSIONAL SERVICES WARRANTY

(a) RightNow warrants to Customer that (i) the Work Product shall substantially conform to any specification or statement of work detailed in the relevant Order Form; and (ii) the Professional Services will be performed with reasonable skill, care and diligence.

(b) If there is a material breach of the above warranty, RightNow’s entire liability and Customer’s exclusive remedy shall be if the Professional Services do not conform to the relevant Order Form or are not performed with reasonable skill, care and diligence, RightNow shall re-perform the Professional Services to the extent necessary to correct non-conformity.

16. CUSTOMER’S RESPONSIBILITIES

Customer shall provide RightNow with all information, access, and full good faith cooperation reasonably necessary to facilitate the provision of the Professional Services, and shall do any thing that is identified in the relevant Order Form as the Customer’s responsibility. If Customer fails or delays in its performance of any of the foregoing, RightNow shall be relieved of its obligations hereunder to the extent that such obligations are dependent upon such performance.

17. OWNERSHIP OF INTELLECTUAL PROPERTY

Customer acknowledges that RightNow is the exclusive owner of the Work Product. Upon payment in full of any amounts due for Professional Services, Customer shall have an object code-only, non-exclusive, non-transferable (except as provided in Section 26(d)) right to use the Work Product for Customer’s internal business purposes, which right shall continue for so long as, and be subject to the same terms and conditions as the right to use the Hosting Services.

PART FOUR – GENERAL

18. TERM

This Part Four applies to any transaction that occurs under this Master Agreement. This Agreement shall expire on the later of the following dates:

- (a) 2 years after the Effective Date;
- (b) the date when both parties have completed all of their obligations under all Order Forms.

19. PAYMENTS AND RENEWALS

(a) Customer shall pay RightNow the fees listed in the relevant Order Form. Unless expressly provided to the contrary in the relevant Order Form, all fees payable under this Master Agreement shall be paid net 30 days from the invoice date. Customer shall pay a finance charge on any overdue payment hereunder of one and one-half per cent (1-1/2%) for each month or portion thereof that such payment is overdue, or the highest interest rate permitted by applicable law, whichever is the lower. Interest shall compound monthly. Such 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) based on or due as a result of any amounts paid to RightNow hereunder. Customer shall bear all of RightNow’s costs of collection of overdue fees, including reasonable attorneys’ fees.

(b) Notwithstanding Section 19(a), if Customer purchases Services from an authorized RightNow reseller, Customer shall make all payments due in connection therewith to the reseller, and not to RightNow. However, RightNow is under no obligation to carry out its obligations under this Master Agreement or the Order Form if RightNow has not received payment in full from the reseller.

(c) In the event the Customer exceeds usage limits referred to in Section 3(b), in addition to any other remedies, RightNow may invoice Customer for the excess usage at RightNow’s then current list price, and shall be entitled to be paid the invoiced amount.

20. TERMINATION AND SUSPENSION

(a) Termination for Cause. Either party may terminate rights granted under a particular Order Form if the other breaches any material term of that Order Form (including the terms set out in this Master Agreement insofar as they apply to the Order Form) and such breach is not cured within 30 days of written notice thereof. Breach of Section 3(b) of this Agreement shall be deemed to be a material breach. Upon expiration or termination of rights granted under a particular Order Form, Customer’s rights under Part Two of this Master

Agreement shall cease and RightNow shall cease to provide the Hosting Services.

(b) Suspension. In lieu of terminating rights granted to a Customer under an Order Form, RightNow may suspend the provision of Hosting Services to Customer for a period not exceeding 45 days. At any time during that period, RightNow may terminate the rights granted to Customer.

(c) Continuation. Sections 4(b), 17, 19, 21, 22, 23, 24 and 26 shall survive the expiration or termination of this Master Agreement.

(d) This paragraph (d) applies if Customer purchases the Hosting Services on terms that require the making of periodic payments for the Hosting Term. If RightNow terminates an Order Form under this Master Agreement because of non-payment by Customer, all unpaid monthly fees for the remainder of Hosting Term shall immediately fall due for payment.

21. WARRANTY DISCLAIMER

EXCEPT AS EXPRESSLY PROVIDED IN THIS MASTER AGREEMENT, THE HOSTING SERVICES, SUPPORT 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 HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

22. LIMITATION OF LIABILITY

(a) NEITHER PARTY SHALL BE LIABLE UNDER THIS MASTER AGREEMENT TO THE OTHER OR ANY THIRD PARTY 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 THE POSSIBILITY THEREOF. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE HOSTING SERVICES, SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE CUSTOMER'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE HOSTING SERVICES OR WORK PRODUCT.

(b) EXCEPT AS PROVIDED HEREAFTER, EACH PARTY'S TOTAL LIABILITY FOR ANY LOSS, COST, CLAIM OR DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE RELEVANT ORDER FORM MADE UNDER THIS MASTER AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE BY CUSTOMER TO RIGHTNOW UNDER SUCH RELEVANT ORDER FORM DURING THE 24 MONTHS PRIOR TO 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 HEREUNDER. NOTHING IN THIS SECTION 22(B) SHALL APPLY TO LIMIT CUSTOMER'S LIABILITY TO RIGHTNOW IN CONNECTION WITH AN INFRINGEMENT OF RIGHTNOW'S INTELLECTUAL PROPERTY RIGHTS, OR TO LIMIT EITHER PARTY'S LIABILITY TO THE OTHER IN CONNECTION WITH AN INFRINGEMENT OF SECTION 23 OF THIS MASTER AGREEMENT.

23. CONFIDENTIALITY.

(a) Customer acknowledges that the Hosting Services, Software, Documentation and Work Product contain valuable trade secrets that are the sole property of RightNow, and agrees to use reasonable care to prevent other parties from learning of these trade secrets. Customer will take all reasonable steps to prevent unauthorized access to or duplication of the Hosting Services, Software, Documentation, and Work Product.

(b) RightNow acknowledges that Content may include valuable trade secrets which are the sole property of Customer. To the extent that RightNow becomes aware of the Content, RightNow agrees to use reasonable care to prevent other parties from learning of these trade secrets.

(c) The obligations of this Section 23 shall not extend to any information that (i) is now, or hereafter 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 hereafter furnished 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.

24. INDEMNIFICATION

(a) Subject to Section 22(b), RightNow shall indemnify, defend and hold Customer harmless from any damages awarded against Customer (including, without limitation, reasonable costs and legal fees thereby incurred by Customer) arising out of any third party suit, claim or other legal action alleging that the use of the Hosting Services, Documentation or Work Product by Customer as permitted hereunder infringes any copyright, trade secret or United States patent, ("Legal Action"). Notwithstanding the foregoing, RightNow shall have no indemnification obligations with regard to any Legal Action arising out of: (i) combination of the Hosting 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 Hosting Services by Customer or any third party, unless approved in writing by RightNow; (iii) any breach by Customer of its obligations under this Master Agreement; or (iv) any refusal by Customer to install and use a non-infringing version of the Hosting Services, Software or Work Product offered by RightNow under Section 12(b)(2). Section 12(b)(2) and this Section 24(a) state the entire liability of RightNow with respect to any intellectual property infringement by the Hosting Services, Software or Work Product.

(b) Notice of Legal Action. Customer shall give prompt written notice to RightNow of any Legal Action within 30 days of its first knowledge thereof and shall furnish copies to RightNow of all communications, notices and/or other actions relating to any Legal Action. Customer shall give RightNow the sole control of the defense of any Legal Action, shall act in accordance with the reasonable instructions of RightNow and shall give RightNow such assistance as RightNow reasonably requests to defend or settle such claim. RightNow shall conduct its defense at all times in a manner which is not adverse to Customer's interests. Customer may employ its own counsel to assist it with respect to any such claim. Customer shall 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 shall not settle or compromise any Legal Action without RightNow's express written consent. Customer's material failure to comply with this Section 24(b) shall relieve RightNow of its indemnification obligation under Section 24(a).

25. PUBLICITY

(a) RightNow shall have the right to list Customer as a customer and use Customer logo on RightNow's website, on publicly available customer lists, and in media releases.

(b) Customer shall co-operate with RightNow on a press release announcing the RightNow/Customer business partnership within the first fifteen (15) business days after signing the Order Form and be willing to speak to press as a follow-up.

(c) Customer shall co-operate with any reasonable request by RightNow for assistance in the preparation of a case study documenting Customer's experience in using the Software. The final text of the case study shall be subject to Customer's written approval before publication.

26. MISCELLANEOUS

(a) This Agreement, including any appendices, together with the Order Form(s), represents the entire agreement of the parties, and supersedes any prior or contemporaneous understandings, whether written or oral. In the event of a conflict between the Master Agreement and an Order Form, the Order Form shall prevail.

(b) This Master Agreement may not be amended, waived or modified except as expressly provided herein or in writing by the parties.

(c) This Master Agreement will be governed by and construed in accordance with the laws of Montana (excluding its choice of law rules). The parties hereby consent to the exercise of exclusive jurisdiction by the state or federal courts in the State of Montana for any claim relating to the enforcement of, or any rights under, this Master Agreement.

(d) Customer may not assign or otherwise transfer any of its rights or obligations under this Master 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 which is part of a genuine corporate restructure. Any assignment in breach hereof is void.

(e) Customer shall not export or re-export, directly or indirectly, any Hosting 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.