

RightNow Technologies Standard Terms and Conditions

Software License and Services Agreement with Customer

INTRODUCTION

This Agreement applies to the purchase of Software or Services by Customer. It should be read in conjunction with the Order Confirmation, which identifies the products or services that Customer is purchasing. Parts of this Agreement may not apply to a particular Customer.

PART ONE – DEFINITIONS

1. DEFINED TERMS

In this Agreement:

“Agreement” means this agreement and any appendix

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

“Database” means a database of questions and answers constructed through use of the Software.

“Documentation” means user documentation provided electronically by RightNow for use with the Software.

“Hosting Services” means the services provided by RightNow to Customer under the Hosting Service Level Appendix.

“Hosting Service Level Appendix” means the terms and conditions of the Hosting Service, being an appendix to this Agreement.

“Interface” means a set of configuration files accessed via a unique URL, which is designed to give Customer an opportunity to permit others to view all or a discrete subset of a Database.

“Order Confirmation” means a document provided by RightNow and signed by Customer detailing the software and services provided by RightNow, and includes any attached statement of work, or appendix.

“Professional Services” means the training, consulting, software development and other professional services identified on an Order Confirmation, but does not include the Software, the Support Services or the Hosting Services.

“Support Services” means the provision of upgrades and Software support.

“Software” means the object code version of the proprietary computer software identified on an Order Confirmation and any subsequent revisions or modifications thereto furnished to Customer by RightNow.

“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 – LICENSE AND SUPPORT

2. LICENSE GRANT

(a) This Part Two shall apply only if the parties have agreed that RightNow shall license Software or provide Software support and maintenance to Customer. RightNow grants Customer an object code-only, non-exclusive, non-transferable (except as provided in Section 20) license to use the Software and the Documentation solely for Customer’s internal business purposes and subject to the terms of this License Agreement.

(b) Customer may copy the Software, in whole or in part, only as necessary in connection with (i) Customer’s installation thereof under this Agreement and (ii) Customer’s backup copies maintained for archival or emergency restart purposes. Customer may also copy the Documentation only for its authorized use of the Software.

3. LIMITATIONS ON USE

(a) Customer shall not (i) sell, rent, lease, sublicense or otherwise transfer or distribute any copies of the Software or Documentation to any third parties; (ii) modify, translate, reverse engineer, decompile, or disassemble the Software (except to the extent applicable law specifically permits such activity) or modify the Documentation; (iii) create derivative works based upon the Software or Documentation; (iv) alter, destroy or otherwise remove any proprietary notices (including the ‘Powered By RightNow’ link or labels on or embedded within the Software or Documentation; or (v) create, or cause the creation of additional Interfaces into a Database without RightNow’s written approval.

(b) Customer may use the Software to construct such number of Databases only as listed in the Order Confirmation.

(c) Customer shall (i) ensure that the maximum number of Authorized Users does not exceed the number specified in the Order Confirmation; (ii) comply with the usage limits listed in the Order Confirmation.

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

4. NO SPAMMING

(a) Customer may not use the Software to send Unsolicited Commercial Email (“UCE”) to any person. For the purposes of this 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 fourteen (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 one (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.

5. SUPPORT SERVICES

(a) RightNow shall provide to Customer the Support Services described on the Order Confirmation. However, RightNow is under no obligation to provide support to Customer if Customer is not using the then-current major release or the immediately prior major release.

(b) The Support Services are provided for the term set forth in Order Confirmation.

(c) This paragraph (c) applies only if Customer purchases a license from RightNow that requires Customer to pay an annual support fee in order to receive Support Services. If Customer, having elected not to continue to receive support, subsequently wishes to resume receipt of support, Customer shall be liable to pay RightNow the lesser of (i) the cumulative annual support fees that would have been payable to RightNow but for Customer’s discontinuation of support; and (ii) RightNow’s then current license fee for a license of that type.

6. LICENSE TERM AND TERMINATION

(a) The license granted hereunder, starts and ends on the dates identified in the Order Confirmation.

(b) Either party may terminate the license if the other breaches any material term and such breach is not cured within 30 days of written notice thereof. Upon expiration or termination of a license, Customer’s rights under Part Two of this Agreement shall cease and Customer agrees to destroy the Software together with all copies, modification, and merged portions in any form. Sections 15, 16, 17 and 20 shall survive the expiration or termination of the terminated license.

7. SOFTWARE WARRANTY

(a) RightNow warrants to Customer that: (1) the Software will function substantially as described in the Documentation for so long as Customer is entitled to receive Support Services hereunder; (2) RightNow owns or otherwise has the right to license the Software and Documentation to Customer under this Agreement; (3) on delivery, the Software will be free from any virus, time bomb, trojan horse, worm, drop dead device or other computer software code or routine designed to disable, damage or erase the Software, provided that the foregoing shall not apply if same could not have been detected by RightNow using commercially reasonable virus detection or other scanning practices;

(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 Software does not function substantially in accordance with the applicable Documentation, RightNow shall, at its option, (i) promptly modify the Software 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 this Agreement, in which case RightNow shall refund to Customer all license fees paid to RightNow hereunder less an amount for use assuming straight line depreciation over the lesser of the license term or three (3) years; (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) replace or modify the Software so that it is no longer infringing; or (iii) if neither of the foregoing is commercially feasible, terminate this Agreement, in which case RightNow shall refund to Customer all license fees paid to RightNow hereunder less an amount for use assuming straight line depreciation over the lesser of the license term or three (3) years.; (3) If the Software contains a virus or similar device, RightNow shall replace the Software with Software which is free of such defects.

(c) The remedies set forth above shall be Customer’s sole and exclusive remedies. RightNow shall have no obligation hereunder for any Software that has been modified by Customer or any third party or any Software other than the then-current release and the immediately prior release thereof. RightNow shall have no obligation hereunder for errors, damage or problems caused by failure to provide a suitable operating environment, by any third party software, by accidental damage or by other matters beyond RightNow’s reasonable control.

PART THREE – HOSTING

8. HOSTING SERVICE LEVEL APPENDIX

This Part Three shall apply only if the parties have agreed that RightNow shall provide Hosting Services to Customer. The Hosting Services are offered under the conditions set forth on Hosting Service Level Appendix, and for the term identified in the Order Confirmation.

PART FOUR – PROFESSIONAL SERVICES

9. DELIVERY OF PROFESSIONAL SERVICES

This Part Four 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 Order Confirmation.

10. 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 Order Confirmation; 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 Order Confirmation 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.

11. 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 Order Confirmation 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.

12. 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 20(d)) license to use the Work Product for Customer's internal business purposes, which license shall continue for so long as, and be subject to the same terms and conditions as the license to the Software.

PART FIVE – GENERAL

13. PAYMENTS

This Part Five applies to any transaction that occurs under this Agreement. Customer shall pay RightNow the fees listed in the Order Confirmation. Unless expressly provided to the contrary in an Order Confirmation, all fees payable under this 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.

14. WARRANTY DISCLAIMER

EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 7 OR 10 OF THIS AGREEMENT OR IN THE HOSTING SERVICE LEVEL APPENDIX, THE SOFTWARE, 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 SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

15. LIMITATION OF LIABILITY

(a) NEITHER PARTY SHALL BE LIABLE UNDER THIS 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 SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE CUSTOMER'S INTENDED RESULTS, AND FOR THE INSTALLATION, USE AND RESULTS OF THE SOFTWARE OR WORK PRODUCT.

(b) EXCEPT AS PROVIDED HEREFTER, EACH PARTY'S TOTAL LIABILITY FOR ANY LOSS, COST, CLAIM OR DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO AN ORDER CONFIRMATION MADE UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE BY CUSTOMER TO RIGHTNOW UNDER SUCH ORDER CONFIRMATION DURING THE TWENTY FOUR (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 15(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 16 OF THIS AGREEMENT.

16. CONFIDENTIALITY.

(a) Customer acknowledges that the Software, Documentation and Work Product contain valuable trade secrets which 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 Software, Documentation, and Work Product.

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

(c) The obligations of this Section 16 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.

17. INDEMNIFICATION

(a) Subject to Section 15(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 Software 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 Software with software or products not supplied, or approved in writing by RightNow; (ii) any repair, adjustment, modification or alteration to the Software by Customer or any third party, unless approved in writing by RightNow; (iii) any breach by Customer of its obligations under this Agreement; or (iv) any refusal by Customer to install and use a non-infringing version of the Software offered by RightNow under Section 7(b). Section 7(b) and this Section 17(a) state the entire liability of RightNow with respect to any intellectual property infringement by the Software.

(b) Notice of Legal Action. Customer shall give prompt written notice to RightNow of any Legal Action within thirty (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 17(b) shall relieve RightNow of its indemnification obligation under Section 17(a).

18. PUBLICITY

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

(b) 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.

19. VERIFICATION

At RightNow's request, but no more frequently than three (3) times in any twelve (12) month period, Customer shall provide RightNow with a report, in such form as required by RightNow, listing the following in connection with the Software for a specified time period: (i) the number of Authorized Users; (ii) the number of RightNow Web pages served; and (iii) the number of RightNow Metrics surveys sent or received by Customer. This Section 19 shall not apply if RightNow is providing Hosting Services to Customer.

20. MISCELLANEOUS

(a) This Agreement, including any appendices, together with the Order Confirmation, 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 Agreement and the Order Confirmation, the Order Confirmation shall prevail.

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

(c) This 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 Agreement.

(d) Customer may 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 which is part of a genuine corporate restructure.

(e) Customer shall not export or re-export, directly or indirectly, any Software, Documentation or Confidential Information to any countries outside the United States except as permitted under the U.S. Commerce Department's Export Administration Regulations.