

# RUBICON TECHNOLOGY, INC.

A Delaware Corporation

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Bensenville, IL 60106

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Federal EIN: 36-4419301  
SIC Code: 5065

## **2023 Annual Report** For the period ended December 31, 2023

### **ISSUER'S EQUITY SECURITIES**

#### **COMMON STOCK**

##### Common Stock

\$0.001 Par Value Per Share  
8,200,000 Shares Authorized

2,377,815 and 2,462,889 Shares Outstanding as of December 31, 2023, and December 31, 2022, respectively.

**OTCQB: RBCN**

Indicate by check mark whether the company is a shell company (as defined in Rule 405 of the Securities Act of 1933 and Rule 12b-2 of the Exchange Act of 1934):

Yes:                      No: X

Indicate by check mark whether the company's shell status has changed since the previous reporting period:

Yes:                      No: X

Indicate by check mark whether a Change in Control of the company has occurred over this reporting period:

Yes:                      No: X

**Rubicon Technology, Inc. is responsible for the content of this Annual Report. The securities described in this document are not registered with, and the information contained in this report has not been filed with, or approved by, the U.S. Securities and Exchange Commission.**

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# **RUBICON TECHNOLOGY, INC.**

**A Delaware Corporation**

## **ANNUAL REPORT**

### **Cautionary Note Regarding Forward-Looking Statements**

All statements, other than statements of historical facts, included in this Annual Report, including statements regarding our estimates, expectations, beliefs, intentions, projections or strategies for the future, results of operations, financial position, net sales, projected costs, prospects and plans and objectives of management for future operations may be “forward-looking statements” within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995. We have based these forward-looking statements on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives and financial needs. These forward looking statements can be identified by the use of terms and phrases such as “believe,” “plan,” “intend,” “anticipate,” “target,” “estimate,” “expect,” “forecast,” “prospects,” “goals,” “potential,” “likely,” and the like, and/or future-tense or conditional constructions such as “will,” “may,” “could,” “should,” etc. (or the negative thereof). Items contemplating or making assumptions about actual or potential future sales, market size and trends or operating results also constitute forward-looking statements.

Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. Before investing in our common stock, investors should be aware that the occurrence of the risks, uncertainties and events described in the section entitled “Risk Factors” in this Annual Report for the year ended December 31, 2023, could have a material adverse effect on our business, results of operations and financial condition.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, forward-looking statements are inherently subject to known and unknown business, economic and other risks and uncertainties that may cause actual results to be materially different from those discussed in these forward-looking statements. Readers are urged not to place undue reliance on these forward-looking statements, which speak only as of the date of this Annual Report. We assume no obligation to update any forward-looking statements in order to reflect any event or circumstance that may arise after the date of this Annual, other than as may be required by applicable law or regulation. If one or more of these risks or uncertainties materialize, or if the underlying assumptions prove incorrect, our actual results may vary materially from those expected or projected.

You should read this Annual Report and the documents that we reference in this Annual Report with the understanding that our actual future results, levels of activity, performance and events and circumstances may be materially different from what we expect.

Unless otherwise indicated, the terms “Rubicon,” the “Company,” “we,” “us,” and “our” refer to Rubicon Technology, Inc., and our consolidated subsidiaries.

**Part A. General Company Information**

**Item 1: The exact name of the issuer and predecessor (if any).**

The name of the issuer is Rubicon Technology, Inc.

**Item 2: The address of the issuer's principal executive offices and place of business.**

The address of the issuer: **900 East Green Street, Bensenville, IL 60106**

The issuer's telephone: **(847) 295-7000**

The issuer's website: **Rubicon Technology, Inc.'s corporate website, [www.rubicontechnology.com](http://www.rubicontechnology.com), contains general information about us and our products and services. The information contained on such website shall not be deemed incorporated by reference herein.**

Investor relations contact: **Lindsey Reynolds, Executive Officer and Director of Accounting  
900 East Green Street, Bensenville, IL 60106  
Telephone: (847) 295-7000  
[lreynolds@rubicontechnology.com](mailto:lreynolds@rubicontechnology.com)**

**Item 3: The jurisdiction(s) and date of the issuer's incorporation or organization.**

Rubicon Technology, Inc. (the "Company"), is an active Delaware Corporation and has one wholly owned subsidiary, Rubicon Worldwide LLC, doing business as Rubicon Technology Worldwide LLC. In June 2021, the operations of Rubicon DTP LLC, doing business as Direct Dose Rx ("Direct Dose"), were discontinued. During 2023, the legal entities Rubicon BP LLC and Rubicon DTP LLC were dissolved. The Company does not have any other parents, subsidiaries, or affiliated companies. The Company has not had any predecessor entities in the past five years.

Check box if principal executive office and principal place of business are the same address:

## Part B. Share Structure

### Item 4: The exact title and class of securities outstanding

As of December 31, 2023, the Company had one class of securities outstanding, Common Stock. None of the Company's Common Stock is registered under the Securities Act of 1933 (the "Securities Act"), or qualified under any state securities laws, and we have no current plans to register or qualify any of our securities.

The Company has 1,000,000 preferred undesignated shares authorized, and no shares issued or outstanding as of December 31, 2023.

Our common stock was listed on the Nasdaq Capital Market under the symbol "RBCN" until it was delisted effective December 30, 2022. On January 3, 2023, our common stock began trading on the OTCQB Capital Market under the symbol "RBCN."

The CUSIP number for our Common Stock is 78112T206.

### Item 5: Par or stated value and description of the security

The Company's Common Stock has a par value of \$0.001 per share.

Each holder of shares of Common Stock is entitled to one vote for each share of Common Stock held on all matters submitted to a vote of stockholders of the Company. The holders of Common Stock vote together as a single class. Holders of Common Stock are not entitled to any preemptive rights.

Holders of our Common Stock are entitled to receive dividends and other distributions as may be authorized and declared by the Board of Directors from time to time. Upon the voluntary or involuntary liquidation, dissolution, or winding up of the Company, holders of the Common Stock are entitled to a *pro rata* share of the net assets of the Company available for distribution in proportion to the number of shares of Common Stock held by each stockholder.

See "Risk Factors" in Item 10 of this Annual Report for a description of the provisions in the issuer's by-laws that would delay, defer, or prevent a change of control of the Company.

### Item 6: The number of shares or total amount of the securities outstanding for each class of securities authorized

The company is authorized to issue 8,200,000 shares of Common Stock at \$0.001 par value.

	December 31, December	
	2023	31, 2022
Number of shares authorized	8,200,000	8,200,000
Number of shares outstanding	2,377,815	2,462,889
Freely tradeable shares (public float) <sup>(1)</sup>	1,269,815	1,265,840
Number of stockholders of record	14	13

Notes:

- (1) The number of shares freely tradable may include shares held by stockholders owning 10% or more of our Class A Common Stock. These stockholders may be considered "affiliates" within the meaning of Securities Act Rule 144, and their shares may be "control shares" subject to the volume and manner of sale restrictions under Securities Act Rule 144.

As of December 31, 2023, and 2022, there were 892 and 918 beneficial stockholders owning at least 100 shares of the Company's Common Stock, respectively.

**Item 7: The name and address of the transfer agent.**

Transfer agent information: **Equiniti Trust Company, LLC**  
**6201 15<sup>th</sup> Avenue, Brooklyn, NY 11219**  
**Telephone: (917) 589-4994**

Equiniti Trust Company, LLC is registered under the Securities Exchange Act of 1934 (the “Exchange Act”) and regulated by the SEC.

**Issuer Purchases of Equity Securities**

	<u># of Shares Purchased</u>	<u>Avg. \$/Share</u>
Three months ended		
March 31, 2023		\$
<i>Repurchase shares – T. Brog</i>	52,624 <sup>(1)</sup>	1.94
June 30, 2023		
<i>Repurchase shares – T. Brog</i>	4,969 <sup>(1)</sup>	1.94
<i>Repurchase shares – M. Mikolajczyk</i>	27,481 <sup>(2)</sup>	2.04
September 30, 2023	—	—
December 31, 2023	—	—
<b>Year ended December 31, 2023</b>	<b>85,074</b>	<b>\$ 1.98</b>

- (1) On February 20, 2023, the Company entered into a Confidential Separation Agreement and General Release with Mr. Brog, which stated that Mr. Brog was entitled to receive, among other things, a payment of \$112,000 for the assignment to the Company by Mr. Brog of 57,593 shares of common stock of the Company, par value \$0.001 per share, held by Mr. Brog. As of March 31, 2023, 52,624 of those shares had been assigned to the Company. The balance of the shares was assigned in the second quarter of 2023.
- (2) On June 30, 2023, the Company entered into a Confidential Separation Agreement and General Release with Mr. Mikolajczyk, in connection with Mr. Mikolajczyk’s resignation as a member of the Board. Pursuant to that agreement, Mr. Mikolajczyk was entitled to receive a payment of \$56,092 for the assignment to the Company by Mr. Mikolajczyk of 27,481 shares of common stock of the Company, par value \$0.001 per share, held by Mr. Mikolajczyk.

## **Part C. Business Information**

**Item 8: The nature of the issuer's business; Item 9: The nature of products and services offered; Item 10: The nature and extent of the issuer's facilities.**

Rubicon Technology, Inc. is an active Delaware corporation and was incorporated on February 7, 2001. Our common stock was listed on the Nasdaq Capital Market under the symbol "RBCN" until it was delisted effective December 30, 2022. On January 3, 2023, our common stock began trading on the OTCQB Capital Market under the symbol "RBCN." During 2022, the Board of Directors determined that the voluntary delisting of the Company's common stock from the Nasdaq Capital Market was in the best interests of the Company and its stockholders. The decision of the Board of Directors was based on careful review of several factors, including the benefits to the Company of eliminating the expenses of being listed on the Nasdaq Capital Market and the costs associated with it, as well as eliminating the demands on management's time of complying with the Nasdaq listing standards. On March 10, 2023, the Company commenced filing with the SEC post-effective amendments to various registration statements on Form S-3 (File Nos. 333-167272 and 333-192536) and Form S-8 (File Nos. 333-147552, 333-180211 and 333-213025) to remove from registration any and all securities registered but unsold under each of the registration statements as of the date of the relevant post-effective amendment. On March 28, 2023, the Board of Directors determined that the voluntary deregistration from the reporting requirements under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), was in the best interests of the Company and its stockholders. Further, in March of 2023, the Company filed a Form 15 with the SEC to suspend the Company's reporting obligations under Section 15(d) of the Exchange Act. Upon the filing of the Form 15, the Company's obligation to file periodic reports with the SEC, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, was suspended immediately.

The Company's fiscal year end is December 31. The Company has not been in bankruptcy, receivership, or any similar proceedings.

Rubicon currently consists of one subsidiary, Rubicon Worldwide LLC, doing business as Rubicon Technology Worldwide LLC ("RTW"). In June 2021, the operations of Rubicon DTP LLC, doing business as Direct Dose Rx ("Direct Dose"), were discontinued. During 2023, the legal entities Rubicon BP LLC and Rubicon DTP LLC were dissolved.

### **Overview: Our Business**

RTW is an advanced materials provider specializing in monocrystalline sapphire for applications in optical and industrial systems. Sapphire is a desirable material for high-performance applications due to its hardness and strength, transparency in the visible and infrared spectrum, thermal conductivity, thermal shock resistance, abrasion resistance, high melting point and chemical inertness. As a result, it is ideally suited for extreme environments in a range of industries where material durability is just as important as optical clarity. We believe that we continue to have a reputation as one of the highest quality sapphire sources in the market. We provide optical and industrial sapphire products and materials in a variety of shapes and sizes.

In June 2021, the operations of Direct Dose Rx were discontinued. The costs associated with such closure were not material. Direct Dose Rx revenue and expenses are currently not material to the consolidated financial information of the Company and therefore there is limited disclosure relating specifically to it.

We manage our operations and ship from our facility located in Bensenville, Illinois. During the second quarter of 2023, the Company decided to no longer produce or fabricate its own products. As part of this decision the Company sold its warehouse and manufacturing facility and all its fixed assets (see "The nature and extent of the issuer's facilities"). This decision also resulted in a significant reduction in overhead and headcount (see "Management's discussion and analysis of financial condition and results of operations").

We have significant NOL carryforwards. Under federal tax laws, we can carry forward and use our NOLs to reduce our future U.S. taxable income and tax liabilities until such NOL carryforwards expire in accordance with the Internal Revenue Code of 1986, as amended (the "IRC"). Our NOL carryforwards provide a benefit to us, if fully utilized, of significant future tax savings. However, our ability to use these

tax benefits in future years will depend upon the amount of our federal and state taxable income. If we do not have sufficient federal and state income in future years to use the benefits before they expire, we will permanently lose the benefit of the NOL carryforwards. Our ability to use the tax benefits associated with our NOL carryforwards is dependent upon our generation of future taxable profits and our ability to successfully identify and consummate suitable acquisitions or investment opportunities.

On December 18, 2017, the Company entered into a Section 382 Rights Agreement with American Stock Transfer & Trust Company, LLC, as Rights Agent (the "Rights Agreement") in an effort to protect stockholder value by attempting to diminish the risk that the Company's ability to use its net NOLs to reduce potential future federal income tax obligations may become substantially limited. The Company's ability to utilize its NOLs may be substantially limited if the Company experiences an "ownership change" within the meaning of Section 382 of the Internal Revenue Code of 1986, as amended (the "IRC"). The Rights Agreement is intended to act as a deterrent to any person acquiring beneficial ownership of 4.9% or more of the Company's outstanding common stock without the approval of the Company's Board of Directors (the "Board").

In August 2022, Janel Corporation ("Janel") completed a tender offer to acquire 1,108,000 shares or 45% of our outstanding common stock at a price per share of \$20.00. The tender offer was made pursuant to the terms and conditions set forth in a Stock Purchase and Sale Agreement, dated as of July 1, 2022, between the Company and Janel (the "Purchase Agreement"). The terms and conditions provided that, immediately after the consummation of the tender offer, the Company pay a cash distribution to all stockholders of \$11.00 per share. This cash distribution was made in August 2022 and totaled approximately \$27.1 million. As part of completing the Purchase Agreement, the Company took into consideration the impact it would have on the NOL carryforwards and determined that the transaction would not result in any impairment. Rubicon is continuing to evaluate opportunities to utilize the NOL carryforwards. As part of the transaction, the Board approved Amendment No. 2 to the Rights Agreement dated as of December 18, 2017, between the Company and American Stock Transfer & Trust Company, LLC, regarding the Company's ability to utilize its U.S. net operating loss ("NOL") carryforwards (the "Rights Agreement"). This amendment extended the final expiration date of the Rights Agreement to September 1, 2025.

### **Industry Overview**

Sapphire is utilized in optical and industrial applications. It is used for windows and optics for aerospace, sensor, medical, semiconductor, instrumentation, electronics, and laser applications due to its wide-band transmission, superior strength, chemical and scratch resistance, and high strength-to-weight ratio.

The markets for high-quality sapphire products are very competitive and have been characterized by rapid technological change. The products we sell must meet certain demanding requirements to succeed in the marketplace. Although we are a well-established sapphire provider, we face significant competition from other established providers of similar products as well as from new and potential entrants into our markets.

### **Products and Customers**

We provide optical and industrial sapphire products in various shapes and sizes. These optical sapphire products are qualified and used in equipment for a wide variety of end markets and high-performance applications, including defense and aerospace, specialty lighting, instrumentation, sensors and detectors, semiconductor process equipment, electronic substrates, medical and laser applications.

Our principal customers have been defense subcontractors, industrial manufacturers, fabricators, and resellers. A substantial portion of our sales have been to a small number of customers. In 2023, our top customers (each 10% or greater in revenues) accounted for, in the aggregate, approximately 56% of our revenues from continuing operations. In 2022, our top six customers (each 10% or greater of our revenues) accounted for, in the aggregate, approximately 72% of our revenue from our continuing operations. Although we are attempting to diversify and expand our customer base, we expect our sales to continue to be concentrated among a small number of customers. We also expect that our significant customers may change from time to time due to various factors. No other customer accounted for 10% or more of our sapphire revenues during 2023 or 2022 other than those referred to above.



### **Suppliers**

We use third parties to provide materials and finishing functions for our products, including the slicing, and polishing of our remaining sapphire crystal inventory. These types of services are only available from a limited number of third parties. Our ability to successfully outsource these functions will substantially depend on our ability to develop, maintain, and expand our strategic relationship with these third parties.

### **Employees**

During the second quarter of 2023, the Company decided to no longer produce or fabricate its own products. As part of this decision there was a reduction in the number of warehouse, manufacturing, and related administrative staff. As a result, headcount as of December 31, 2023, was comprised of 3 full time employees, down from 12 as of December 31, 2022. None of our employees are represented by unions. We consider our employee relations to be good.

### **Facilities**

All of our sapphire operations and certain of our executive functions were located in our 30,000 square-foot facility at the property commonly known as 900 East Green Street, Bensenville, IL 60106 that we purchased in September 2018. During the second quarter of 2023, the Company decided to no longer produce or fabricate its own products. Future sales of the Company are being fulfilled with existing inventory manufactured in-house and outsourced products. As part of this decision, on June 16, 2023, Rubicon Technology BP LLC, whose sole member, and manager is the Company, sold this property for a total cash consideration of \$2,974,000. The sale of the property was closed on September 14, 2023. As part of the sale, the Company leased back approximately 6,000 square feet of the property to continue its operations (see Note 1 – Summary of Significant Accounting Policies). The Company recognized a gain of approximately \$747,000 on the sale of the property. In 2023, the Company sold its manufacturing and fabrication equipment and recorded gains of approximately \$352,000. Also in 2023, the Company sold consumables and some of its non-essential inventory for net proceeds of approximately \$920,000 and recorded a gain of \$796,000 related to those sales.

On September 19, 2022, the Company completed the sale of a parcel of land located in Batavia, Illinois pursuant to the terms and conditions of the agreement of sale, dated as of February 7, 2022. The selling price for the property was \$722,000. The Company realized net proceeds of approximately \$600,000 after the payment of real estate taxes, brokerage and legal fees, transfer taxes and other expenses.

### **Legal Proceedings**

From time to time, we, our subsidiaries and/or our directors and officers may be named in claims arising in the ordinary course of business. Management believes that there are no pending legal proceedings involving us or any of our subsidiaries that will, individually or in the aggregate, have a material adverse effect on our consolidated results of operations or financial condition. There are no outstanding material matters as of December 31, 2023, and through the date of this filing.

### **Material agreements**

Exhibit 3 to this Annual Report provides a list of material agreements.

### **Risk factors**

*You should carefully read the risk factors set forth below, together with the financial statements, related notes and other information contained in this Annual Report. Our business is subject to a number of important risks and uncertainties, some of which are described below. The risks described below, however, are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also impair our business operations. Any of these risks may have a material adverse effect on our business, financial condition, results of operations and cash flows. Please refer to the discussion of “forward-looking statements” on page one of this Annual Report in connection with your consideration of the risk factors and other important factors that may affect future results described below.*

### **We have incurred significant losses in prior periods and may incur losses in the future.**

We have incurred significant losses in prior periods and may incur significant losses in the future. These losses may have an adverse effect on our ability to attract new customers or retain existing customers.

We have incurred net losses of \$0.02 million, \$0.7 million, \$1.1 million, \$1.1 million, and \$17.8 million in 2023, 2021, 2020, 2019 and 2017, respectively. Although we recorded net income of \$0.9 million and \$1.0 million in 2022 and 2018, respectively, there can be no assurance that we will achieve profitability in future periods.

During the second quarter of 2023, the Company decided to no longer produce or fabricate its own products. As part of this decision the Company sold its warehouse and manufacturing facility and all its fixed assets (see “The nature and extent of the issuer’s facilities”). This decision also resulted in a significant reduction in overhead and headcount (see “Management’s discussion and analysis of financial condition and results of operations”). This reduction in headcount and overhead should mitigate the risk of significant losses.

**We are exploring, evaluating, and may begin to implement certain strategic alternatives with a goal of providing greater value to our stockholders. There can be no assurance that we will be successful in identifying additional strategic alternatives or implementing any strategic alternative, or that any strategic alternative will yield additional value for stockholders.**

Our management and the Board of Directors are continuing to review strategic alternatives with the goal of providing greater value to our stockholders. These alternatives could result in, among other things, modifying or eliminating certain aspects of our operations, seeking additional financing, selling the business, making investments, effecting a merger, consolidation, or other business combination, partnering or other collaboration agreements, or potential acquisitions or recapitalizations, in one or more transactions.

There can be no assurance that our continued exploration of strategic alternatives will result in the identification of additional alternatives or that any transaction will be completed. The process of exploring strategic alternatives may be costly, time-consuming, distracting to management and disruptive to our business operations. If we are unable to effectively manage the process, our business, financial condition, and results of operations could be adversely affected. We also cannot provide assurance that any potential transaction, investment or other alternative identified, evaluated, and consummated, will provide greater value to our stockholders than that reflected in the current stock price. Any potential transaction or investment would be dependent upon a number of factors that may be beyond our control, including, among other factors, market conditions, industry trends and the availability of financing to us on reasonable terms.

**We may acquire other businesses, products, or technologies; if we do, we may be unable to integrate them with our business effectively or at all, which may adversely affect our business, financial condition, and operating results.**

If we find appropriate opportunities and have adequate funding, we may acquire other businesses, product lines or technologies. However, if we acquire a business, product line or technology, the process of integration may produce unforeseen operating difficulties and expenditures and may absorb significant attention of our management that would otherwise be available for the ongoing development of our business. Further, the acquisition of a business may result in the assumption of unknown liabilities or create risks with respect to our existing relationships with suppliers and customers. If we make acquisitions, we may issue shares of stock that dilute other stockholders, expend cash, incur debt, assume contingent liabilities, or create additional expenses related to amortizing intangible assets, any of which may adversely affect our business, financial condition, or operating results.

**If we are unable to raise additional capital when needed, we may not be able to execute the acquisition of other businesses.**

We may require additional capital to fund operations and investments in other opportunities. We may finance future cash needs through public or private equity offerings, debt financings, corporate collaborations, or licensing arrangements. Additional funds may not be available when we need them on terms that are acceptable to us, or at all. If adequate funds are not available, we may be required to delay, reduce the scope of or eliminate one or more of these opportunities. To the extent that we raise additional funds by issuing equity securities, our stockholders may experience dilution, and debt financing, if available, may involve restrictive covenants. To the extent that we raise additional funds through corporate collaborations or licensing arrangements, it may be necessary to relinquish some rights to our technologies or our new products, or grant licenses on terms that may not be favorable to us. We may seek to access

the public or private capital markets whenever conditions are favorable, even if we do not have an immediate need for additional capital at that time. In evaluating whether and how to raise capital, the Company will consider the impact it may have on the ability to utilize its tax attributes in the future. As a result, the Company may be limited as to the amount of equity it can issue without impairing its tax attributes. In evaluating whether and how to raise capital, the Company will consider the impact it may have on the ability to utilize its tax attributes in the future. As a result, the Company may be limited as to the amount of equity it can issue without impairing its tax attributes.

We believe our existing cash and cash equivalents, and interest thereon, will be sufficient to fund our projected operating requirements for at least the next twelve months. However, if our success in generating sufficient operating cash flow or our use of cash in the next twelve months were to significantly, adversely change, we may not have enough funds available to continue operating at our current level in future periods. A limitation of funds available may raise concerns about our ability to continue to operate. Such concerns may limit our ability to obtain financing and some customers may not be willing to do business with us.

**We rely on third parties for certain material and finishing steps for our products, including the slicing, and polishing of our sapphire crystal.**

In order to reduce product costs and improve cash flow, we use third parties for the majority of our material needs and all of the finishing functions for our products, including the slicing and polishing of our sapphire crystal inventory. These types of services are only available from a limited number of third parties. Our ability to successfully outsource these functions will substantially depend on our ability to develop, maintain, and expand our strategic relationship with these third parties. Any impairment in our relationships with the third parties performing these functions, in the absence of a timely and satisfactory alternative arrangement, could have a material adverse effect on our business, results of operations, cash flow and financial condition. In addition, we do not control any of these third parties or the operation of their facilities, and we may not be able to adequately manage and oversee the third parties performing our finishing functions. Accordingly, any difficulties encountered by these third parties that result in product defects, delays, or defaults on their contractual commitments to us could adversely affect our business, financial condition, and results of operations. In addition, their facilities may be vulnerable to damage or interruption from natural disasters, inclement weather conditions, power loss, acts of terrorism and similar events. A decision to close a facility without adequate notice as a result of these or other unanticipated problems at the facility could result in lengthy interruptions in their services to us; and any loss or interruption of these services could significantly increase our expenses, cause us to default on our obligations to our customers and/or otherwise adversely affect our business. Furthermore, the outsourcing of material needs and finishing steps, such as slicing and polishing of wafers, may not continue to be available at reasonable prices or on commercially reasonable terms, or at all.

**Our gross margins could fluctuate as a result of changes in our product mix and other factors, which may adversely impact our operating results.**

We anticipate that our gross margins will fluctuate from period to period as a result of the mix of products that we sell in any given period. We are working to increase sales of higher margin products and introduce new differentiated products at lower costs. There can be no assurance that we will be successful in improving our gross margin mix. If we are not successful, our overall gross margin levels and operating results in future periods would be adversely impacted. Increased competition and the adoption of alternatives to our products, more complex engineering requirements, lower demand and other factors may lead to a further downward shift in our product margins, leading to price erosion and lower revenues for us in the future.

**The markets in which we operate are very competitive, and many of our competitors and potential competitors are larger, more established, and better capitalized than we are.**

The markets for selling high-quality sapphire products are very competitive and have been characterized by broad advancements and changes in technological capabilities. This competition could result in increased pricing pressure, reduced profit margins, increased sales and marketing expenses, and failure to increase, or the loss of, market share or expected market share, any of which would likely seriously harm our business, operating results, and financial condition.

**The average selling prices of sapphire products have historically been volatile and in recent years sapphire product prices have been increasingly depressed.**

Historically, our industry has experienced volatility in product demand and pricing. However, in the last five years, the sales prices for our sapphire products have trended downward due to an over-supply of products in the market. In some countries, government programs support sapphire producers who would otherwise be unprofitable; in such circumstances, sapphire may be sold at prices below cost for an extended period, depressing market prices, to the detriment of our gross margins. This has, in the past, had a significant adverse impact on our profitability and results of operations. Moreover, changes in average selling prices of our products as a result of competitive pricing pressures, increased sales discounts, and new product introductions by our competitors, could have a significant impact on our profitability. Although we attempt to optimize our product mix, reduce costs and pass along certain increases in costs to our customers in order to lessen the effect of decreases in selling prices, we may not be able to successfully do so in a timely manner or at all, and our results of operations and business may be harmed.

**We depend on a few customers for a major portion of our sales and our results of operations would be adversely impacted if they reduce their order volumes.**

Historically, we have earned, and believe that in the future we will continue to earn, a substantial portion of our revenue from a small number of customers. In 2023, our top customers (each 10% or greater in revenues) accounted for, in the aggregate, approximately 56% of our revenues from continuing operations. In 2022, our top six customers (each 10% or greater of our revenues) accounted for, in the aggregate, approximately 72% of our revenue from our continuing operations. A loss of one of our major customers or having a major customer significantly reduce its volume of business with us, could result in materially reduced revenues and profitability unless we are able to replace such demand with other orders promptly. We expect to continue to be dependent on our major customers, the number and identity of which may change from period to period.

We generally sell our products on the basis of purchase orders. Thus, most of our customers could cease purchasing our products with little or no notice and without penalties. In addition, delays in product orders could cause our quarterly revenue to vary significantly. Several factors could cause our customers to cancel or defer orders, including interruptions to their operations due to a downturn in their industries, natural disasters, delays in manufacturing their own product offerings into which our products are incorporated, securing other sources for the products that we manufacture or developing such products internally.

**If we are unable to retain certain existing personnel, our business could be harmed.**

Our success depends on our continued ability to retain our personnel. The inability to retain necessary personnel could harm our ability to obtain new customers and could adversely affect our business and operating results. In addition, the loss of the services, or distraction, of our senior management for any reason could adversely affect our business, operating results, and financial condition.

**Our NOL carryforwards may expire or could be substantially limited if we experience an ownership change as defined in the IRC or if changes are made to the IRC.**

We have significant NOL carryforwards. Under federal tax laws, we can carry forward and use our NOLs to reduce our future U.S. taxable income and tax liabilities until such NOL carryforwards expire in accordance with the IRC. Our NOL carryforwards provide a benefit to us, if fully utilized, of significant future tax savings. However, our ability to use these tax benefits in future years will depend upon the amount of our federal and state taxable income. If we do not have sufficient federal and state income in future years to use the benefits before they expire, we will permanently lose the benefit of the NOL carryforwards. Our ability to use the tax benefits associated with our NOL carryforwards is dependent upon our generation of future taxable profits and our ability to successfully identify and consummate suitable acquisitions or investment opportunities.

Additionally, Section 382 and Section 383 of the IRC provide an annual limitation on our ability to utilize our NOL carryforwards, as well as certain built-in losses, against the future U.S. taxable income in the event of a change in ownership, as defined under the IRC. While we have implemented a stockholder's right plan to protect our NOL carryforwards, there is no assurance that we will not experience a change in ownership in the future as a result of changes in our stock ownership, and any such subsequent changes

in ownership for purposes of the IRC could further limit our ability to use our NOL carryforwards.

Under the recently enacted Tax Cut and Jobs Act, NOLs generated on or after January 1, 2018, could be limited to 80% of taxable income. If other changes were made to the IRC, they could impact our ability to utilize our NOLs. Accordingly, any such occurrence could adversely affect our financial condition, operating results, and cash flows.

**We are dependent on information technology, and disruptions, failures or security breaches of our information technology infrastructure could have a material adverse effect on our operations. In addition, increased information technology security threats and more sophisticated computer crime pose a risk to our systems, networks, products, and services.**

We rely on information technology networks and systems, including the Internet and cloud services, many of which are managed by third parties, to securely process, transmit and store electronic information of financial, marketing, legal and regulatory nature to manage our business processes and activities. Although we have implemented enhanced controls around our information technology systems, these systems may be susceptible to damage, disruptions, or shutdowns due to failures during the process of upgrading or replacing software, databases, power outages, hardware failures, telecommunication failures, user errors, natural disasters, terrorist attacks or other catastrophic events. If any of our significant information technology systems suffer severe damage, disruption or shutdown, and our disaster recovery and business continuity plans do not effectively resolve the issues in a timely manner, our product sales, financial condition and results of operations may be materially and adversely affected, and we could experience delays in reporting our financial results, or our operations may be disrupted, exposing us to performance failures with customers. In addition, cybersecurity threats, such as computer viruses, attacks by computer hackers or other cybersecurity threats pose a risk to the security of our systems and networks and the confidentiality, availability, and integrity of our data. There can be no assurance that our security controls and safeguard measures taken to improve our cybersecurity protection will be sufficient to mitigate all potential risks to our systems, networks, and data. Potential consequences of a cybersecurity attack include disruption to systems, corruption of data, unauthorized release of confidential or otherwise protected information, reputational damage, and litigation with third parties. The amount of insurance coverage we maintain may be inadequate to cover claims or liabilities related to a cybersecurity attack.

**The economic impact of pandemics or other public health emergencies, including the resurgence of COVID-19 or emergence of new COVID-19 variants, could adversely affect our financial condition, results of operations and ability to operate.**

The COVID-19 pandemic and governmental and other measures aimed at containing its spread have had a significant impact on global economic activity. Pandemics and other public health emergencies, including the resurgence of COVID-19, could have an adverse macroeconomic impact, which may have a negative impact on our business. They may also have an impact on the Company's limited number of full-time employees, which could impact our ability to maintain normal business operations for an extended period of time.

The COVID-19 pandemic and the measures taken by many countries in response adversely affected and could in the future materially adversely impact the Company's business, results of operations, financial condition, and stock price. Following the initial outbreak of the virus, the Company experienced disruptions to its manufacturing, supply chain and logistical services provided by outsourcing partners, resulting in temporary supply shortages that affected sales worldwide. The Company is heavily reliant on domestic and foreign supply chains to operate its businesses. Pandemics and other public health emergencies, including the resurgence of COVID-19, may limit and restrict our access to necessary products that are required for us to operate.

The Company monitors for potential health crises and will take appropriate actions in accordance with the recommendations and requirements of relevant authorities in the event that any public health emergency should occur, including the resurgence of COVID-19 or the emergence of new COVID-19 variants.

To the extent pandemics or other public health emergencies, including the resurgence of COVID-19 or emergence of new COVID-19 variants adversely affects the Company's business, results of operations, financial condition, and stock price, it may also have the effect of heightening many of the other risks previously described.

## **RISKS RELATED TO OWNERSHIP OF OUR COMMON STOCK:**

**The trading price of our common stock has been and will likely continue to be volatile due to various factors, some of which are beyond our control, and each of which could adversely affect our stockholders' value.**

Our common stock was listed on the Nasdaq Capital Market under the symbol "RBCN" until it was delisted effective December 30, 2022. On January 3, 2023, our common stock began trading on the OTCQB Capital Market under the symbol "RBCN." Factors related to our Company and our business, as well as broad market and industry factors, may adversely affect the market price of our common stock, regardless of our actual operating performance. Such factors that could cause fluctuations in our stock price include, among other things:

- changes in financial guidance or estimates by us, by investors or by any financial analysts who might cover our stock or our industry;
- our ability to meet the performance expectations of financial analysts or investors;
- general market and economic conditions; and
- the size of the public float of our stock.

**Our certificate of incorporation, bylaws and Delaware law may discourage takeovers and business combinations that our stockholders might consider in their best interests.**

Several provisions in our certificate of incorporation and bylaws, as amended, as well as anti-takeover provisions of Delaware law, may have the effect of delaying, deterring, preventing, or rendering more difficult a change in control of Rubicon that our stockholders might consider in their best interests. These provisions include:

- a classified Board of Directors;
- a tax benefit preservation plan designed to preserve our ability to utilize our net operating losses as a result of certain stock ownership changes, which may have the effect of discouraging transactions involving an actual or potential change in our ownership;
- granting to the Board of Directors sole power to set the number of directors and to fill any vacancy on the Board of Directors, whether such vacancy occurs as a result of an increase in the number of directors or otherwise;
- limitations on the ability of stockholders to remove directors;
- the ability of our Board of Directors to designate and issue one or more series of preferred stock without stockholder approval, the terms of which may be determined at the sole discretion of the Board of Directors;
- prohibition on stockholders from calling special meetings of stockholders;
- prohibition on stockholders from acting by written consent;
- establishment of advance notice requirements for stockholder proposals and nominations for election to the Board of Directors at stockholder meetings; and
- a requirement that any action taken by the Company or any stockholder that would result in a stockholder owning greater than 49% (an "Above 49% Stockholder") of the outstanding shares of common stock, would require the approval of a majority of stockholders of the common stock, excluding such Above 49% Stockholder and any entity or person(s) affiliated with such Above 49% Stockholder;
- a clarification that the changes effected in the Third Amended and Restated Bylaws of the Company can only be amended by the approval of stockholders holding greater than 75% of the outstanding shares of Common Stock.

These provisions may prevent our stockholders from receiving the benefit from any premium to the market price of our common stock offered by a bidder in a takeover context. Even in the absence of a takeover

attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock if they are viewed as discouraging takeover attempts in the future.

The foregoing provisions of our certificate of incorporation and bylaws, as amended, may also make it difficult for stockholders to replace or remove our management. These provisions may facilitate management entrenchment that may delay, deter, render more difficult, or prevent a change in our control, which may not be in the best interests of our stockholders.

**We are subject to litigation risks, including securities class action litigation, which may be costly to defend.**

All industries, including ours, are subject to legal claims, including securities litigation. When the market price of a stock declines significantly, due to factors such as trends in the stock market in general, broad market and industry fluctuations or operating performance, holders of that stock have sometimes instituted securities class action litigation against the company that issued the stock. This sort of litigation can be particularly costly and may divert the attention of our management and our resources in general. We have been subject to securities class action litigation in the past, as disclosed in our previous filings with the SEC. Due to the inherent uncertainty of the litigation process, the resolution of any particular legal claim or proceeding (including by settlement) could have a material effect on our business, financial condition, results of operations or cash flows. Further, uncertainties resulting from the initiation and continuation of securities or other litigation could harm our ability to obtain credit and financing for our operations and to compete in the marketplace.

**Our Board of Directors may declare or pay any dividends to our stockholders in the foreseeable future.**

The declaration, payment and amount of any future dividends will be made at the discretion of our Board of Directors and will depend upon, among other things, the results of our operations, cash flows and financial condition, operating and capital requirements, and other factors the Board of Directors considers relevant. Historically, the Company had never declared or paid cash dividends on its common stock.

At the end of August 2022, the Company returned \$27,092,000 of capital to its stockholders. At the time of the distribution, the Company had an accumulated deficit of approximately \$331 million. The Company accounted for the distribution as a reduction of additional paid in capital.

In October of 2023, the Company made a cash distribution to its stockholders of \$2,616,000. At the time of the distribution, the Company had an accumulated deficit of approximately \$331 million. The Company accounted for the distribution as a reduction of additional paid in capital.

The Company may decide to make similar distributions or declare cash dividends in the future, but there is no assurance that the Company will do so.

## **Part D. Management structure and financial information**

### **Item 11: Company insiders (Officers, Directors, and Control Persons).**

#### **Changes in Management Structure During 2023**

On February 20, 2023, Timothy E. Brog tendered his resignation as a member of the Board. The resignation was effective upon the receipt by Mr. Brog of a settlement payment pursuant to the Separation Agreement (as defined below), which occurred on February 22, 2023. Mr. Brog's resignation as a member of the Board was not the result of any disagreements with the Company on any matters relating to its operations, policies, or practices. On February 20, 2023, the Company entered into a Confidential Separation Agreement and General Release (the "Separation Agreement") with Mr. Brog. Pursuant to the Separation Agreement, Mr. Brog was entitled to receive, among other things, a payment of \$112,000 for the assignment to the Company by Mr. Brog of 57,593 shares of common stock of the Company, par value \$0.001 per share, held by Mr. Brog. The Separation Agreement also contained a general release of claims against the Company, as well as certain other customary covenants, including covenants pertaining to non-disparagement and confidentiality.

On February 24, 2023, the Board of Directors of the Company appointed Joseph Ferrara as the Company's Executive Officer and Chief Financial Officer, effective immediately. The Board also approved an annual salary of \$200,000 for Mr. Ferrara and a bonus with terms to be agreed upon at a later date, subject to the Company's customary compensation policies. Mr. Ferrara was previously the Company's Senior Financial Consultant.

On March 3, 2023, the Board of Directors of the Company appointed Dennis Paul as an independent director. Mr. Paul will serve as a Class II director with a term expiring at the Company's 2024 Annual Meeting of Stockholders.

On April 20, 2023, John Eidinger, a Class I director whose term was set to expire at the Company 2023 Annual Meeting of Stockholders, resigned from the Board of Directors (the "Board") of Rubicon Technology, Inc. (the "Company"), effective April 20, 2023. On the same day, the Board appointed Ryan Courson as a Class I independent director whose term would expire at the Company's 2023 Annual Meeting of Stockholders. Mr. Courson was subsequently elected as a Class I director at the Company's 2023 Annual Meeting of Stockholders with a term expiring at the Company's 2026 annual meeting.

On June 15, 2023, Michael Mikolajczyk tendered his resignation as a member of the Board of Directors of the Company. The resignation was effective on June 30, 2023. Mr. Mikolajczyk's resignation as a member of the Board was not the result of any disagreements with the Company on any matters relating to its operations, policies, or practices. On the same day, the Company entered into a Confidential Separation Agreement and General Release (the "Separation Agreement") with Mr. Mikolajczyk, in connection with Mr. Mikolajczyk's resignation as a member of the Board. Pursuant to the Separation Agreement, Mr. Mikolajczyk was entitled to receive a payment of \$56,092 for the assignment to the Company by Mr. Mikolajczyk of 27,481 shares of common stock of the Company, par value \$0.001 per share, held by Mr. Mikolajczyk. On June 15, 2023, the Company entered into a Consulting Agreement with Mr. Mikolajczyk, pursuant to which Mr. Mikolajczyk would provide consulting services to the Company. The term of the Consulting Agreement commenced on July 1, 2023, and ended on January 1, 2024.

On June 13, 2023, the Board of Directors approved the reduction of the size of the Board from four members to three members and the appointment of Board member Darren Seirer as the Board's Chairman and Ryan Courson as the Chairman of the Audit Committee. Upon the effectiveness of Mr. Mikolajczyk's resignation, the members of the Board of Directors were Darren Seirer, Dennis Paul, and Ryan Courson. Mr. Courson and Mr. Paul are both independent directors. The Board determined that the reduction in the size of the Board was in the best interests of the Company and its stockholders and is consistent with the bylaws of the Company. These are the members of the Board of Directors as of the date of this Annual Report.

On October 27, 2023, Joseph Ferrara tendered his resignation as the Company's Executive Officer and Chief Financial Officer. Mr. Ferrara's resignation was not the result of any disagreements with the Company on any matters relating to its operations, policies, or practices. On the same day, the Company entered into a Separation Agreement and General Release (the "Separation Agreement") with Mr. Ferrara, in connection with Mr. Ferrara's resignation. As part of this agreement, he received a bonus payment of



\$45,000. The Separation Agreement also contained a general release of claims against the Company, as well as certain other customary covenants, including covenants pertaining to non-disparagement and confidentiality. In addition, Mr. Ferrara entered into a consulting agreement with the Company that is effective from October 27, 2023, through March 31, 2024, and will be paid \$20,000 for his consulting services.

On October 27, 2023, the Board of Directors of the Company appointed Lindsey Reynolds as the Company's Executive Officer and Director of Accounting, effective immediately. Ms. Reynolds was previously the Company's Senior Staff Accountant.

#### **A. Officers and Directors**

Class I Director:

*Ryan Courson*, 35, was appointed as an independent Class I director on April 20, 2023, and was subsequently elected at the Company's 2023 annual meeting of stockholders. His term will expire at our 2026 annual meeting. From 2014-2017, Mr. Courson served as an investor at Falcon Edge; from 2018-2020, as the CFO of Atlas and Seaspan; from 2020-2022, as the CFO of EagleView; and since 2022, as the CFO of Cornerstone.

Class II Director:

*Dennis Paul*, 51, was appointed as an independent Class II director on March 3, 2023. His term will expire at our 2024 annual meeting. Since 2012, Mr. Paul has served as a Founder and Managing Member of Thyra Global Management, and since 2012, he has served as a Senior Advisor at Blackstone.

Class III Director:

*Darren Seirer*, 50, was appointed as a Class III director who was re-elected at the Company's 2022 annual meeting of stockholders. His term will expire at our 2025 annual meeting. On January 1, 2023, Mr. Seirer was elected to serve on the Board of Directors of Janel Corporation and appointed to serve as President and Chief Executive Officer. Furthermore, upon the recommendation of its Nominating and Corporate Governance Committee, Mr. Seirer was also appointed to serve as the Chairman of the Board and to serve on its Nominating and Corporate Governance Committee. Previously, Mr. Seirer had been a private investor and had served as an advisor to Janel Corporation since 2021. Mr. Seirer was previously at Select Equity Group, L.P. from 1993 to 2019.

Executive officer and Director of Accounting:

*Lindsey Reynolds*, 40, was appointed as the Company's Executive Officer and Director of Accounting on October 27, 2023. Prior to the appointment, Ms. Reynolds was a senior staff accountant with Rubicon DTP LLC from 2019 to 2021, and with Rubicon Technology, Inc. thereafter. Ms. Reynolds was previously with Wellfount Pharmacy from 2014 – 2019. Ms. Reynolds also serves as an officer of Living Streams Community Church, having been appointed Treasurer in 2019.

#### **Compensation of Officers and Directors**

##### **Officers:**

The table below sets forth, the compensation earned by:

- Timothy E. Brog, who was the President, Chief Executive Officer and Acting Chief Financial Officer, during fiscal year 2022.
- Joseph Ferrara, who was the Company's Executive Officer and Chief Financial Officer from February of 2023 to October of 2023.
- Lindsey Reynolds who is the Company's current Executive Officer and Director of Accounting.

<b>Name and Principal Position</b>	<b>Year</b>	<b>Salary (\$)</b>	<b>Bonus (\$)</b>	<b>Stock Awards (\$)</b>	<b>All Other Compensation (\$)</b>	<b>Total (\$)</b>
Timothy E. Brog President, Chief Executive Officer & Acting Chief Financial Officer	2022	332,692	350,000 <sup>(1)</sup>	398,750 <sup>(2)</sup>	—	1,081,442
Joseph Ferrara Executive Officer & Chief Financial Officer	2023	132,369	45,000 <sup>(3)</sup>	—	39,421 <sup>(4)</sup>	206,790
Lindsey Reynolds Executive Officer & Director of Accounting	2023	68,445	20,000 <sup>(5)</sup>	—	—	88,425

- (1) During 2022, the Company amended Mr. Brog's executive employment agreement, whereby Mr. Brog was paid \$350,000 to reward him for his assistance in the closing of the Stock Purchase and Sale Agreement between Rubicon Technology, Inc. and Janel Corporation. As part of that same amendment, Mr. Brog waived his right to severance under his original employment agreement.
- (2) During 2022, Mr. Brog's 25,000 RSUs vested at a price of \$15.95.
- (3) During 2023, Mr. Ferrara was paid \$45,000 as part of the Separation Agreement.
- (4) During 2023, Mr. Ferrara was paid \$29,421 for work performed as a subcontractor prior to his appointment as Executive Officer & Chief Financial Officer. Additionally, per the terms of the consulting agreement dated October 27, 2023, Mr. Ferrara was owed \$10,000 as of December 31, 2023, for consulting work performed through that date. The payment was made on January 5, 2024.
- (5) During the first quarter of 2023, Ms. Reynolds was paid a \$5,000 discretionary bonus. The Board of Directors approved an additional discretionary bonus of \$15,000 for the year ended December 31, 2023, to be paid in the first quarter of 2024.

#### **Directors:**

In 2022 and through June 30, 2023, all non-employee directors received an annual fee of \$20,000 cash, payable quarterly. The Chairman of the Board and Chairman of the Audit Committee each received an annual cash retainer of \$5,000, payable quarterly.

On July 5, 2023, a resolution was passed by written consent of the Board of Directors stating that non-employee directors would receive an annual fee of \$60,000, payable quarterly, and that the Chairman of the Board and Chairman of the Audit Committee would each receive an annual cash retainer of \$5,000, payable quarterly.

The Company also has a policy reimbursing directors for travel, lodging, and other reasonable expenses incurred in connection with their attendance at Board or committee meetings or conducting Company business.

The table below sets forth the compensation of the non-employee members of the Board of Directors for 2023.

Name	Fees earned or paid in cash (\$)	Other Compensation (\$)	Total (\$)
Michael E. Mikolajczyk	15,000	20,000 <sup>(1)</sup>	35,000
Darren Seirer	32,500 <sup>(2)</sup>	—	32,500
Dennis Paul	36,505 <sup>(3)</sup>	—	36,505
Ryan Courson	36,389 <sup>(4)</sup>	—	36,389

(1) During 2023, Mr. Mikolajczyk earned \$20,000 for performing consulting work per the terms of the Consulting Agreement dated June 15, 2023.

(2) Prior to July 1, 2023, Mr. Seirer did not take payment for services on the Company's Board of Directors. Per the signed written consent of July 5, 2023, the Company accrued for Mr. Seirer \$32,500, which represents the pro rata share of the annual fee (\$30,000) and retainer for serving as Chairman of the Board (\$2,500).

(3) Mr. Paul was paid \$6,505 for services through June 30, 2023. Per the signed written consent of July 5, 2023, Mr. Paul was paid an additional \$15,000 for services through the third quarter of 2023, and an additional \$15,000 was accrued for services through December 31, 2023.

(4) For services by Mr. Courson through June 30, 2023, the Company accrued \$3,889. Per the signed written consent of July 5, 2023, the Company accrued for Mr. Courson \$32,500, which represents the pro rata share of the annual fee (\$30,000) and retainer for serving as Chairman of the Audit Committee (\$2,500).

### **Beneficial Share Ownership of Officers and Directors**

As of the date of this Annual Report, no member of the Company's Board of Directors or its executive officer owned shares of the Company.

### **B. Legal/Disciplinary History**

None of the officers, directors, promoters, or control persons of Rubicon Technology, Inc. has, in the past five years, been the subject of any of the following:

- A conviction in a criminal proceeding or named as a defendant in a pending criminal proceeding (excluding traffic violations and other minor offenses);
- Any bankruptcy petition filed by or against any business of which such person was a general partner, or executive officer either at the time of the bankruptcy or within two years prior to that time;
- The entry of an order, judgment, or decree, not subsequently reversed, suspended, or vacated, by a court of competent jurisdiction that permanently or temporarily enjoined, barred, suspended, or otherwise limited such person's involvement in any type of business, securities, commodities, or banking activities;
- A finding or judgment by a court of competent jurisdiction (in a civil action), the SEC or the Commodity Futures Trading Commission, or a state securities regulator of a violation of federal or state securities or commodities law, which finding or judgment has not been reversed, suspended, or vacated; or
- The entry of an order by a self-regulatory organization that permanently or temporarily barred, suspended, or otherwise limited such person's involvement in any type of business or securities activities.

### C. Disclosure of Family Relationships

None.

### D. Disclosure of Related Party Transactions

The Company entered into a Managed Services Agreement (the “Janel-Rubicon MSA”) with Janel Corporation on August 15, 2023, upon determination by the Independent Committee of the Company’s Board of Directors that it was in the best interest of the Company for Janel to provide certain services detailed in the Janel-Rubicon MSA. The Company incurred approximately \$6,000 in 2023 for software license & usage fees under the Janel-Rubicon MSA, which is included in accrued liabilities for the year ended December 31, 2023.

### E. Disclosure of Conflicts of Interest

Mr. Darren Seirer, a director of the Company, serves as Chief Executive Officer of Janel Corporation, which holds a 46.6% investment in the Company.

#### Beneficial Owners

The percentage of beneficial ownership is based on 2,377,815 shares of common stock outstanding as of February 29, 2024. As of December 31, 2023, the following stockholders beneficially own 5% or more of the Company’s Class A Common Stock:

Name of beneficial owner	Shares beneficially owned	
	Number	Percent
<b>5% stockholders:</b>		
Bandera Master Fund L.P. <sup>(1)</sup>	128,323	5.4%
Janel Corporation <sup>(2)</sup>	1,108,000	46.6%

(1)The ownership information set forth in the table is based on information contained in a statement on Schedule 13D (the “Bandera 13D”), filed on August 19, 2022, with the SEC by Bandera Master Fund L.P. (“Bandera”), together with Bandera Partners LLC, Gregory Bylinsky and Jefferson Gramm, Managing Partners, Managing Directors and Portfolio Managers of Bandera Partners (“Reporting Persons”) with respect to ownership of shares of our common stock. The Bandera 13D reflects that each of Bandera Master Fund L.P. and Bandera Partners has sole dispositive and voting power with respect to 128,323 of the reported shares. Bandera reports on the Bandera 13D that each of Messrs. Bylinsky and Gramm as Managing Partners, Managing Directors and Portfolio Managers of Bandera Partners may be deemed to have shared power to vote or dispose of the shares owned by Bandera. Bandera reports on the Bandera 13D that no person other than the Reporting Persons have the right to receive or the power to direct the receipts of dividends from, or the proceeds from the sale of, our common stock. The principal business address of Bandera is 50 Broad Street, Suite 1820, New York, New York 10004.

(2)The ownership information set forth in the table is based on information contained in a statement on Schedule 13D (the “Janel 13D”), filed on August 15, 2022, with the SEC by Janel, together with Oaxaca Group L.L.C. and Dominique Schulte, its then Chief Executive Officer, (“Reporting Persons”) with respect to ownership of shares of our common stock. The Janel 13D reflects that the Reporting Persons have shared dispositive and voting power with respect to 1,108,000 of the reported shares. The principal business address of Janel is 80 Eighth Avenue, New York, New York 10011.

### Financial Reporting (Items 12 & 13: Financial information for the issuers most recent fiscal period. Similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence)

Copies of the audited Consolidated Financial Statements of Rubicon Technology, Inc. as of December 31, 2023, and 2022 and the years ended December 31, 2023, and 2022, including the Consolidated Balance

Sheets, Consolidated Statements of Operations, Consolidated Statements of Changes in Stockholders' Equity, Consolidated Statements of Cash Flows, and Notes to the Consolidated Financial Statements, are attached hereto as Exhibit 1.1. The attached Consolidated Financial Statements and the notes thereto are hereby incorporated by reference to this Annual Report.

**Third Party Advisors (Item 14: The name, address, telephone number, and email address of each of the following outside providers that advise the issuer on matters relating to operations, business development and disclosure)**

- (1) Investment banker: None.
- (2) Promoter: None
- (3) Securities Counsel: Robinson & Cole, LLP  
1055 Washington Boulevard  
Stamford, CT 06901  
Email: ekogan@rc.com
- (4) Auditor: Marcum LLP  
777 S. Figueroa St., 29<sup>th</sup> Floor  
Los Angeles, CA 90017  
Email: info@marcumllp.com

Preparation of Rubicon Technology, Inc.'s consolidated financial statements is the responsibility of the Company's management. Marcum LLP is responsible for expressing an opinion on the consolidated financial statements for the year ended December 31, 2023, based on their audit. During 2023, we incurred audit fees from Marcum LLP of \$131,403 related to the audit of the financial statements of Rubicon Technology, Inc. The aggregate fees billed by Marcum LLP for audit services of the Company's annual financial statements and review services of the Company's quarterly financial statements for the fiscal year 2022 were \$221,883. During 2023 and 2022, we did not incur any other audit-related fees from Marcum LLP. The Company did incur \$7,990 in transaction advisory service fees from Marcum LLP in the year ended December 31, 2023. Marcum LLP has served as the Company's auditor since 2017.

Marcum LLP has confirmed to us that the firm is licensed to practice public accounting in the states in which we conduct our business. Marcum LLP is registered with the PCAOB.

- (5) Public relations consultant: None.
- (6) Investor relations consultant: None.
- (7) Any other advisor: None.

**Item 15: Management's Discussion and Analysis of Financial Condition and Results of Operations**

*The following discussion and analysis of our financial condition and results of operations should be read together with our financial statements and related notes appearing elsewhere in this Annual Report. This discussion and analysis contains forward-looking statements that involve risks, uncertainties, and assumptions. You should review the "Risk Factors" section of this Annual Report for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements described in the following discussion and analysis.*

For an overview of the nature of the Company's business and products and services offered by the Company see Item 8 and Item 9 of this Annual Report.

**Financial operations**

The Company's revenue consists of sales of optical and industrial sapphire products sold as blanks or polished windows. Products are made to varying specifications, such as crystal planar orientations and thicknesses. We expect that in future periods our revenue will continue to be primarily from the sale of optical materials. We recognize revenue once the performance obligation is satisfied, when the product is manufactured to the customer's specification and based upon shipping terms, title, and control of the

product and risk of loss transfer to the customer. Delays in product orders or changes to the timing of shipments could cause our quarterly revenue to vary significantly. All of our revenue and corresponding accounts receivable are denominated in U.S. dollars. Substantially all our revenue is generated by our direct sales team, and we expect this to continue in the future.

The cost of products that were produced at our facility consists primarily of manufacturing materials, labor, manufacturing related overhead, such as utilities, depreciation, provisions for excess and obsolete inventory reserves, idle plant charges, outsourcing costs, freight, and warranties. We purchase materials and supplies to support current and future demand for our products. We currently outsource a significant amount of our material needs. We are subject to variations in the cost of outsourced products and materials from period to period because we do not have long-term fixed-price agreements with our suppliers. Since the Company no longer manufactures or fabricates product and we have sold our production facility and related equipment, cost of goods sold only includes the cost of outsourced product and the cost of inventory previously produced at our facility (see Note 1 – Summary of Significant Accounting Policies). The Company no longer has any manufacturing overhead or costs that would be included in the cost of goods sold.

Our operating expenses are comprised of sales and marketing, and general and administrative (“G&A”) expenses. G&A expenses consist primarily of compensation of our employees and associated costs for finance, human resources, information technology and administrative activities, including charges for accounting, legal services, insurance, and stock-based compensation. During the second half of 2023 operating expenses also included lease expense related to the rent of the spaces where the Company conducts its operations and stores non-essential inventory (see Note 1 – Summary of Significant Accounting Policies).

Our gross profit (loss) has been and will continue to be affected by a variety of factors, including average sales prices of our products, product mix, and our ability to reduce costs.

(Gain) loss on sale or disposal of assets represents the difference between the amount of proceeds from sale of our property, equipment and consumable assets and their respective net book values. When the amount of proceeds exceeds the net book value of an underlying asset, we record this favorable variance as a gain on sale or disposal of assets. Alternatively, when the net book value of an asset exceeds the amount of proceeds recovered from sale or disposal of this asset, such unfavorable variance is recorded as a loss on sale or disposal of assets.

Other gain includes the settlement of liabilities for amounts that were less than amounts originally recorded and compensation received for an easement right.

Other income (expense) consists of interest income, interest expense, gains and losses on investments, grant revenue, and other miscellaneous income.

We account for income taxes under the asset and liability method whereby the expected future tax consequences of temporary differences between the book value and the tax basis of assets and liabilities are recognized as deferred tax assets and liabilities, using enacted tax rates in effect for the year in which the differences are expected to be recognized. Our analysis of ownership changes that limit the utilization of our NOL carryforwards as of December 31, 2023, shows no impact on such utilization. We are in a cumulative loss position for the past three years which is considered significant negative evidence that is difficult to overcome on a “more likely than not” standard through objectively verifiable data. Based on an evaluation in accordance with the accounting standards, as of December 31, 2023, and 2022, a valuation allowance has been recorded against the net U.S. deferred tax assets in order to measure only the portion of the deferred tax assets that are more likely than not to be realized based on the weight of all the available evidence. Until an appropriate level of sustained profitability is attained, we expect to maintain a full valuation allowance on our U.S. net deferred tax assets. Any U.S. tax benefits or tax expense recorded on the Consolidated Statement of Operations will be offset with the corresponding adjustment from the use of the NOL carryforward asset which currently has a full valuation allowance. In the event that we change our determination as to the amount of deferred tax assets that can be realized, we will adjust our valuation allowance with a corresponding impact to the provision for income taxes in the period in which such determination is made.

The majority of our stock-based compensation relates primarily to our Board of Directors, executive and administrative personnel and is accounted for as a G&A expense. For the years ended December 31,

2023 and 2022, our stock-based compensation expense was \$0 and \$182,000, respectively.

## Results of operations

The following table sets forth our consolidated statements of operations for the periods indicated:

	<b>Year ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
	<b>(in thousands)</b>	
Revenue	\$ 1,998	\$ 3,587
Cost of goods sold	2,056	2,147
Gross profit (loss)	<u>(58)</u>	<u>1,440</u>
Operating expenses:		
General and administrative	1,726	2,346
Sales and marketing	125	136
Gain on sale or disposal of assets	(1,895)	(1,410)
Other gain	—	(217)
Total operating (income) expense	<u>(44)</u>	<u>855</u>
Income (loss) from continuing operations	(14)	585
Other income (expense)	<u>(1)</u>	<u>334</u>
Income (loss) before income taxes from continuing operations	(15)	919
Income (loss) from discontinued operations, net of taxes	—	16
Income tax expense	—	—
Net income (loss)	<u>\$ (15)</u>	<u>\$ 935</u>

The following table sets forth our statements of operations as a percentage of total revenue for the periods indicated:

	<b>Year ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
	<b>(percentage of total)</b>	
Revenue	100%	100%
Cost of goods sold	103	60
Gross profit (loss)	<u>(3)</u>	<u>40</u>
Operating expenses:		
General and administrative	87	65
Sales and marketing	6	4
Gain on sale or disposal of assets	(95)	(39)
Other gain	—	(6)
Total operating (income) expense	<u>(2)</u>	<u>24</u>
Income (loss) from operations from continuing operations	(1)	16
Other income (expense)	<u>—</u>	<u>9</u>
Income (loss) before income taxes from continuing operations	(1)	25
Income (loss) from discontinued operations, net of taxes	—	—
Income tax expense	—	—
Net income (loss)	<u>(1)%</u>	<u>25%</u>

## Comparison of years ended December 31, 2023, and 2022

As part of the decision in the second quarter of 2023 to no longer produce or fabricate its own products, the Company had a significant reduction in headcount and overhead related to its facilities, which were sold as part of the process.

**Revenue.** Revenue from continuing operations was \$1,998,000 for the year ended December 31, 2023, and \$3,587,000 for the year ended December 31, 2022, a decrease of \$1,589,000. This decrease in revenue was primarily due to a decrease in demand from several customers, as well as the loss of a few significant customers due to the transition away from manufacturing.

There was no revenue from discontinued operations for the years ended December 31, 2023 and 2022, respectively.

*Gross profit (loss).* Gross loss from continuing operations was \$58,000 for the year ended December 31, 2023, and gross profit from continuing operations was \$1,440,000 for the year ended December 31, 2022, a decrease of \$1,498,000. This decrease was primarily due to the write off of current inventory of \$141,000 and the write off of non-current inventory of \$650,000 in 2023, as well as the change in business model from manufacturing to resale.

There was no gross profit from discontinued operations for the years ended December 31, 2023 and 2022, respectively.

*General and administrative expenses.* General and administrative expenses from continuing operations were \$1,726,000 and \$2,346,000 for the years ended December 31, 2023, and 2022, respectively, a decrease of \$620,000. As part of the decision in the second quarter of 2023 to no longer produce or fabricate its own products, the Company had a significant reduction in headcount and overhead related to its facilities, which were sold as part of the process. This resulted in a decrease of \$460,000 in salaries, offset by an increase of \$65,000 in facility fees, which were historically included as overhead in the cost of goods sold. Additionally, legal expenses, audit and tax consulting and insurance expense decreased by \$257,000, as the Company is no longer listed on NASDAQ and is deregistered from the SEC. There was also an increase of \$32,000 in director fees and technology expense.

There were no general and administrative expenses from discontinued operations for the years ended December 31, 2023 and 2022, respectively.

*Sales and marketing expenses.* Sales and marketing expenses from continuing operations were \$125,000 and \$136,000 for the years ended December 31, 2023, and 2022, respectively, a decrease of \$11,000. This decrease was due to a decrease in staffing.

There were no sales and marketing expenses from discontinued operations for the years ended December 31, 2023 and 2022, respectively.

*Gain on sale or disposal of assets.* The gain on sale or disposal of assets for the year ended December 31, 2023, was \$1,895,000, an increase of \$469,000 over the gain of \$1,426,000 recorded for the year ended December 31, 2022. The gain in 2023 includes a gain on the sale of the Bensenville land and building of \$747,000, a gain on the sale of other equipment of \$352,000 and a gain on the sale of excess inventory and consumables of \$796,000. The gain in 2022 includes a gain on the sale of equipment and excess consumable assets of \$1,332,000, and a gain on the sale of the Company's parcel of land located in Batavia, Illinois of \$78,000, as well as a gain of \$16,000 for proceeds received for previously returned medications of Rubicon DTP LLC.

*Other gain.* During the year ended December 31, 2022, the Company settled liabilities that were accrued in prior years, resulting in a gain of approximately \$189,000, and received \$28,000 from the Illinois Toll Authority as compensation for an easement right.

*Other income (expense).* Other expense from continuing operations was \$1,000 and other income from continuing operations was \$334,000 for the years ended December 31, 2023 and 2022, respectively, a decrease of \$335,000. This decrease was primarily due to the recognition of \$250,000 of grant revenues (see Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations - Critical Accounting Policies and Estimates of this Annual Report on Form 10-K for more information). Additionally, there was a decrease in interest income of \$47,000 and a decrease in the realized gain on investments of \$18,000, as well as an increase in interest expense of \$50,000, offset by other income of \$30,000, primarily due to the refund of overpaid corporate taxes from a previous year.

*Income tax (expense) benefit.* We are subject to income taxes in the United States. On an annual basis, we assess the recoverability of deferred tax assets and the need for a valuation allowance. For the year ended December 31, 2023, a valuation allowance has been included in the 2023 forecasted effective tax rate. At December 31, 2023, we continue to be in a three-year cumulative loss position; therefore, as of December 31, 2023, we maintained a full valuation allowance on our United States net deferred tax assets and until an appropriate level of profitability is attained, we expect to maintain a full valuation allowance going forward. In the event that we change our determination as to the amount of deferred tax assets that can be realized, we will adjust our valuation allowance with a corresponding impact to the provision for income taxes in the period in which such determination is made.

The Company is subject to taxation in the U.S. and in U.S. state jurisdictions. The Company assesses the



recoverability of deferred tax assets and the need for a valuation allowance. Such evaluations involve the application of significant judgment, and multiple factors, both positive and negative, are considered. The Company is in a cumulative loss position for the past three years, which is considered significant negative evidence that is difficult to overcome on a “more likely than not” standard through objectively verifiable data. Under the accounting standards, objective verifiable evidence is given greater weight than subjective evidence such as the Company’s projections for future growth.

The tax provision for the years ended December 31, 2023, and 2022, is based on an estimated combined statutory effective tax rate. For the years ended December 31, 2023, and 2022, we recorded a tax expense of \$0 and \$0, respectively, for an effective tax rate of 0.0% and 0.0%, respectively. For the years ended December 31, 2023, and 2022, the difference between our effective tax rate and the U.S. federal 21% statutory rate and state 7.45% (net of federal benefit) statutory rate was primarily related to the change in our U.S. NOL valuation allowances and U.S. R&D credit.

At December 31, 2023, we had separate Federal, Illinois and Indiana NOL carryforwards of \$193 million, \$186 million, and \$664,000, respectively. The Federal NOLs will begin to expire in 2026, the Illinois NOLs will begin to expire in 2024, and the Indiana NOLs will begin to expire in 2039. In addition, at December 31, 2023, we had Federal research and development credits of \$662,000, which will begin to expire in 2028.

### Liquidity and capital resources

We believe our existing cash and cash equivalents, and interest thereon, will be sufficient to fund our projected operating requirements for at least the next twelve months.

As of December 31, 2023, we had cash and cash equivalents totaling \$594,000, including cash of \$118,000 held in deposits at major banks and \$476,000 invested in money market funds.

As of December 31, 2022, we had cash and cash equivalents totaling \$1,590,000, including cash of \$1,584,000 held in deposits at major banks and \$6,000 invested in money market funds.

These consolidated financial statements have been prepared on a going concern basis, which assumes that the Company will be able to realize its assets and discharge its liabilities in the normal course of business. The Company has an accumulated deficit as of December 31, 2023, and has sustained net losses and negative cash flows from operating activities in each of the periods ended December 31, 2023 and 2022, which raises doubt of the Company’s ability to continue as a going concern. Management believes these losses and negative cash flows were the direct result of costs related to the Company’s prior manufacturing model. As part of its transition to a reseller, the Company has eliminated these legacy costs that had a significant negative impact on its gross profit, net income and operating cash flows. Management believes that its new business model and plans are reasonable and attainable, and therefore that doubt of the Company’s ability to continue as a going concern for at least one year from the issuance of these financial statements has been alleviated due to: (i) cash on hand (ii) expected revenues and (iii) continued improvements in gross profit and cost reductions. However, management cannot provide any assurances that the Company will be successful in accomplishing these business plans. If the Company is unable to raise additional capital whenever necessary, it may be forced to adjust its plans going forward.

### Cash flows

The following table presents the sources and uses of cash flows during 2023 and 2022:

	<b>Year Ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
	(in thousands)	
Net cash used in operating activities	\$ (823)	\$ (521)
Net cash provided by investing activities	4,102	16,722
Net cash used in financing activities	(4,395)	(25,751)
Net decrease in cash and cash equivalents	<u>\$ (1,116)</u>	<u>\$ (9,550)</u>

### **Operating activities**

For the year ended December 31, 2023, cash used in operating activities of continuing operations was \$823,000. The Company generated a net loss of \$15,000, including non-cash items of \$1,033,000, and an increase in cash from a decrease in net working capital of \$225,000. The net working capital decrease was primarily driven by a decrease of \$495,000 in accounts receivable, a decrease in inventories of \$162,000, and a decrease in grants receivable of \$126,000, offset by a decrease in accounts payable and accrued and other current liabilities of \$450,000 and an increase in prepaids of \$105,000.

For the year ended December 31, 2022, cash used in operating activities of continuing operations was \$521,000. The Company generated a net income of \$919,000, including non-cash items of \$1,315,000, and a decrease in cash from an increase in net working capital of \$125,000. The net working capital increase was primarily driven by an increase in grants receivable of \$250,000, a decrease in accrued payroll of \$298,000, and a decrease in corporate income and franchise taxes and accrued real estate taxes of \$33,000, offset by a decrease in inventories of \$145,000, a decrease in prepaid assets and other current assets of \$158,000, a decrease in accounts receivable of \$41,000, an increase in accounts payable of \$12,000 and an increase in accrued and other current liabilities and advance payments of \$100,000.

There was no cash used in or provided by discontinued operations for the years ended December 31, 2023 or 2022, respectively.

### **Investing activities**

For the year ended December 31, 2023, net cash provided from investing activities of continuing operations of \$4,102,000 was comprised of proceeds from the sale of property and excess equipment and consumable assets.

For the year ended December 31, 2022, net cash provided from investing activities of continuing operations totaling \$16,722,000 was comprised of proceeds from the sale of property and excess equipment and consumable assets of \$1,954,000, as well as proceeds from the sale of investments of \$15,823,000, offset by investment purchases of \$1,055,000.

### **Financing activities**

For the year ended December 31, 2023, net cash used in financing activities of continuing operations was \$4,395,000, resulting from a return of stockholder capital of \$2,616,000, the purchase of treasury stock of \$168,000 (see Item 11: Company Insiders), and mortgage loan principal payments of \$1,611,000.

For the year ended December 31, 2022, net cash used in financing activities of continuing operations was \$25,751,000, resulting from a return of stockholder capital of \$27,092,000 and cash used to settle net equity awards of \$210,000, and mortgage loan principal payments of \$9,000, offset by proceeds from the mortgage, net of escrow funding and loan costs, of \$1,560,000.

### **Operating leases**

We have entered into operating leases for our office and offsite storage and recognize rent expense on a straight-line basis over the terms of the leases in accordance with ASU 2016-02.

### **Off balance sheet arrangements**

None.

## **Part E. Issuance History and Financial Information**

### **Item 16: List of securities, offerings and shares issued for services in the past two years**

During 2022, the Company issued 16,227 shares related to the exercise of restricted stock units and stock options. There was no issuance of shares in 2023.

### **Financial Reporting (Items 12 & 13: Financial information for the issuers most recent fiscal period. Similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence)**

Copies of the audited Consolidated Financial Statements of Rubicon Technology, Inc. as of December 31, 2023, and 2022 and the years ended December 31, 2023, and 2022, including the Consolidated Balance Sheets, Consolidated Statements of Operations, Consolidated Statements of Changes in Stockholders' Equity, Consolidated Statements of Cash Flows, and Notes to the Consolidated Financial Statements, are attached hereto as Exhibit 1.1. The attached Consolidated Financial Statements and the notes thereto are hereby incorporated by reference to this Annual Report.

## **Part F. Exhibits**

### **1 Consolidated Financial Statements**

- 1.1** Financial information for the years ended December 31, 2023, and December 31, 2022

### **2 Issuer's Certifications (Item 20)**

- 2.1** Certification of principal executive officer

### **3 Material Contracts (Item 17)**

- 3.1** Real Estate Sales Contract, dated as of February 7, 2022, between Rubicon Technology, Inc. and Capitol Trucking, Inc., a Texas corporation for the purchase of that parcel of real property commonly known as Fox Valley Business Park, Lot 101, Batavia, Illinois, 60510 (incorporated by reference to Exhibit 10.12 of the Company's Form 10-K filed on March 30, 2023)
- 3.2** Amended and Restated Executive Employment Agreement by and between Rubicon Technology, Inc. and Timothy E. Brog, dated as of May 12, 2017 (incorporated by reference to Exhibit 10.6 of the Company's Form 10-K filed on March 30, 2023)
- 3.3** Form of First Amendment to Executive Employment Agreement, by and between Rubicon Technology, Inc. and Timothy E. Brog (incorporated by reference to Exhibit 10.14 of the Company's Form 10-K filed on March 30, 2023)
- 3.4** Business Loan Agreement, dated August 15, 2022, between Rubicon Technology BP LLC and American Community Bank & Trust (incorporated by reference to Exhibit 10.15 of the Company's Form 10-K filed on March 30, 2023)
- 3.5** Promissory Note, dated August 15, 2022, between Rubicon Technology BP LLC and American Community Bank & Trust (incorporated by reference to Exhibit 10.16 of the Company's Form 10-K filed on March 30, 2023)
- 3.6** Mortgage, dated August 15, 2022, between Rubicon Technology BP LLC and American Community Bank & Trust (incorporated by reference to Exhibit 10.19 of the Company's Form 10-K filed on March 30, 2023)
- 3.7** Confidential Separation Agreement and General Release, dated February 20, 2023, by and between Timothy E. Brog and Rubicon Technology, Inc. (incorporated by reference to Exhibit 10.21 of the Company's Form 10-K filed on March 30, 2023)
- 3.8** Separation Agreement and General Release, dated June 30, 2023, by and between Michael Mikolajczyk and Rubicon Technology, Inc.
- 3.9** Consulting Agreement, dated June 30, 2023, by and between Michael Mikolajczyk and Rubicon Technology, Inc.
- 3.10** Managed Services Agreement, dated August 15, 2023, by and between Janel Corporation and Rubicon Technology, Inc.
- 3.11** Separation Agreement and General Release, dated October 24, 2023, by and between Joseph Ferrara and Rubicon Technology, Inc.
- 3.12** Consulting Agreement, dated October 24, 2023, by and between Joseph Ferrara and Rubicon Technology, Inc.

**3.13** Managed Services Agreement, dated August 15, 2023, by and between Janel Corporation and Rubicon Technology, Inc.

#### **4 Articles of incorporation and bylaws (Item 18)**

**4.1** Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibits 3.1, 3.2 and 3.3 of the Company's December 31, 2022 Form 10-K filed on March 30, 2023)

**4.2** Amended and Restated By Laws (incorporated by reference to Exhibit 3.1 of the Form 8-K filed on February 20, 2023)

#### **5 Equity Incentive Plans**

**5.1** Rubicon Technology, Inc Stock Incentive Plan (incorporated by reference to Exhibit 10.2 of the Company's Form 10-K filed on March 30, 2023)

#### **6 Purchase of Equity Securities by the Issuer and Affiliated Purchasers (Item 19)**

**6.1** Issuer Purchases of Equity Securities

**6.2** Section 382 Rights Agreement dated as of December 18, 2017 (incorporated by reference to Exhibit 4.4 of the Company's Form 10-K filed on March 30, 2023)

**6.3** Amendment No. 1 to the Section 382 Rights Agreement, dated December 18, 2020 (incorporated by reference to Exhibit 4.5 of the Company's Form 10-K filed on March 30, 2023)

**6.4** Amendment No. 2 to the Section 382 Rights Agreement, dated July 1, 2022 (incorporated by reference to Exhibit 10.13 of the Company's Form 10-K filed on March 30, 2023)

**6.5** Stock Purchase and Sale Agreement, dated as of July 1, 2022, between Janel Corporation and Rubicon Technology, Inc. (incorporated by reference to Exhibit 2.1 of the Company's Form 10-K filed on March 30, 2023)

## **INDEPENDENT AUDITORS' REPORT**

To the Board of Directors and Shareholders of  
Rubicon Technology, Inc. and Subsidiaries

### ***Opinion***

We have audited the consolidated financial statements of Rubicon Technology, Inc. and Subsidiaries, which comprise the consolidated balance sheet as of December 31, 2023 and 2022, and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the years in the two year period ended December 31, 2023, and the related notes to the consolidated financial statements.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the consolidated financial position of Rubicon Technology, Inc. and Subsidiaries as of December 31, 2023 and 2022, and the consolidated results of its operations and its cash flows for each of the years in the two year period ended December 31, 2023 in accordance with accounting principles generally accepted in the United States of America.

### ***Basis for Opinion***

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Rubicon Technology, Inc. and Subsidiaries and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Rubicon Technology, Inc. and Subsidiaries' ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

## *Auditors' Responsibilities for the Audit of the Financial Statements*

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Rubicon Technology, Inc. and Subsidiaries' internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Rubicon Technology, Inc. and Subsidiaries' ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audits, significant audit findings, and certain internal control related matters that we identified during the audits.

/s/ Marcum LLP

Marcum LLP

Los Angeles, CA

April 1, 2024

EXHIBIT 1.1

Rubicon Technology, Inc.

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**Rubicon Technology, Inc.**  
**Consolidated Balance Sheets**

	<b>As of</b>	
	<b>December 31,</b>	
	<b>2023</b>	<b>2022</b>
	<b>(in thousands, other than share data)</b>	
<b>Assets</b>		
Cash and cash equivalents	\$ 594	\$ 1,590
Restricted cash	—	120
Accounts receivable, net	176	671
Inventories, net	71	325
Other inventory supplies	—	124
Prepaid expenses and other current assets	152	47
<b>Total current assets</b>	<b>993</b>	<b>2,877</b>
Grants receivable	123	250
Inventories, non-current, net	—	650
Property and equipment, net	—	2,182
<b>Total assets</b>	<b>\$ 1,116</b>	<b>\$ 5,959</b>
<b>Liabilities and stockholders' equity</b>		
Accounts payable	\$ 262	\$ 438
Accrued payroll	5	128
Accrued and other current liabilities	140	223
Corporate income and franchise taxes	304	304
Accrued real estate taxes	—	67
Advance payments	—	4
Current portion of long-term debt, net of unamortized finance costs	—	25
<b>Total current liabilities</b>	<b>711</b>	<b>1,189</b>
Long term debt, net of current portion and unamortized finance costs	—	1,566
<b>Total liabilities</b>	<b>711</b>	<b>2,755</b>
Commitments and contingencies (see Note 9)		
<b>Stockholders' equity</b>		
Preferred stock, \$0.001 par value, 1,000,000 undesignated shares authorized, no shares issued or outstanding	—	—
Common stock, \$0.001 par value 8,200,000 shares authorized; 3,011,917 and 3,011,917 shares issued; 2,377,815 and 2,462,889 shares outstanding	29	29
Additional paid-in capital	346,904	349,520
Treasury stock, at cost, 634,102 and 549,028 shares	(15,315)	(15,147)
Accumulated deficit	(331,213)	(331,198)
<b>Total stockholders' equity</b>	<b>405</b>	<b>3,204</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 1,116</b>	<b>\$ 5,959</b>

The accompanying notes are an integral part of these consolidated financial statements.

**Rubicon Technology, Inc.**  
**Consolidated Statements of Operations**

	<b>Year Ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
	<b>(in thousands, other than share data)</b>	
Revenue	\$ 1,998	\$ 3,587
Cost of goods sold	2,056	2,147
Gross profit (loss)	(58)	1,440
Operating expenses:		
General and administrative	1,726	2,346
Sales and marketing	125	136
Gain on sale or disposal of assets	(1,895)	(1,410)
Other gain	—	(217)
Total operating (income) expense from continuing operations:	(44)	855
Income (loss) from continuing operations	(14)	585
Other income (loss):		
Interest income	58	105
Interest expense	(89)	(39)
Realized gain on equity investments	—	18
Grant revenue	—	250
Miscellaneous income	30	—
Total other income (loss) from continuing operations	(1)	334
Income (loss) before income taxes from continuing operations	(15)	919
Income tax expense	—	—
Income (loss) from continuing operations	(15)	919
Income (loss) from discontinued operations	—	16
Net income (loss)	\$ (15)	\$ 935
<i>Net income (loss) per common share: basic</i>		
Continuing operations	\$ (0.01)	\$ 0.38
Discontinued operations	—	0.01
<i>Net income (loss) per common share: diluted</i>		
Continuing operations	\$ (0.01)	\$ 0.37
Discontinued operations	—	0.01
Weighted average common shares outstanding used in computing net income (loss) per common share		
Basic	2,401,294	2,448,682
Diluted	2,401,294	2,455,897

The accompanying notes are an integral part of these consolidated financial statements.

**Rubicon Technology, Inc.**

**Consolidated Statements of Comprehensive Income (Loss)**

	<b>Year Ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
	<b>(in thousands)</b>	
Income (loss) from continuing operations	\$ (15)	\$ 919
Income (loss) from discontinued operations	—	16
Net income (loss)	<u>(15)</u>	<u>935</u>
Other comprehensive income:		
Unrealized gain on investments, net of taxes	—	1
Other comprehensive income	—	1
Comprehensive income (loss)	<u>\$ (15)</u>	<u>\$ 936</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Rubicon Technology, Inc.**

**Consolidated Statements of Stockholders' Equity**

	<u>Common stock</u>		<u>Treasury stock</u>		<u>Additional paid-in capital</u>	<u>Stockholders' equity</u>		
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>		<u>Accom other comp loss</u>	<u>Accum deficit</u>	<u>Total stockholders' equity</u>
	(in thousands other than share data)							
Balance at January 1, 2022	2,995,680	\$ 29	(549,028)	\$(15,147)	\$ 376,640	(1)	\$(332,133)	\$ 29,388
Stock-based compensation	—	—	—	—	182	—	—	182
Restricted stock issued, net of shares withheld for employee taxes	15,338	—	—	—	(203)	—	—	(203)
Common stock issued, net of shares withheld for employee taxes	899	—	—	—	(7)	—	—	(7)
Return of stockholder capital	—	—	—	—	(27,092)	—	—	(27,092)
Unrealized gain on investments, net of tax	—	—	—	—	—	1	—	1
Net income	—	—	—	—	—	—	935	935
Balance at December 31, 2022	3,011,917	\$ 29	(549,028)	\$(15,147)	\$ 349,520	\$ —	\$(331,198)	\$ 3,204
Purchase of treasury stock	—	—	(85,074)	(168)	—	—	—	(168)
Return of stockholder capital	—	—	—	—	(2,616)	—	—	(2,616)
Net loss	—	—	—	—	—	—	(15)	(15)
Balance at December 31, 2023	<u>3,011,917</u>	<u>\$ 29</u>	<u>(634,102)</u>	<u>\$(15,315)</u>	<u>\$ 346,904</u>	<u>\$ —</u>	<u>\$(331,213)</u>	<u>\$ 405</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Rubicon Technology, Inc.**

**Consolidated Statements of Cash Flows**

	<b>Year Ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
	<b>(in thousands)</b>	
<b>Cash flows from operating activities</b>		
Income (loss) from operations	\$ (15)	\$ 919
Adjustments to reconcile net income (loss) from operations to net cash used in operations		
Depreciation and amortization	71	120
Inventory write-off	791	—
Gain on sale or disposal of assets	(1,895)	(1,410)
Gain on sale of equity investments	—	(18)
Other gain	—	(189)
Stock-based compensation	—	182
Changes in operating assets and liabilities:		
Accounts receivable	495	41
Inventories	114	151
Other inventory supplies	49	(6)
Prepaid expenses and other assets	(105)	158
Grants receivable	126	(250)
Accounts payable	(175)	12
Accrued payroll	(123)	(298)
Corporate income and franchise taxes	—	(22)
Accrued real estate taxes	(68)	(11)
Advance payments	(4)	2
Accrued and other current liabilities	(84)	98
<b>Net cash used in operating activities</b>	<b>(823)</b>	<b>(521)</b>
<b>Cash flows from discontinued operations</b>	<b>—</b>	<b>—</b>
<b>Cash flows from investing activities</b>		
Proceeds from sale or disposal of assets	4,102	1,954
Purchase of investments	—	(1,055)
Proceeds from sale of investments	—	15,823
<b>Net cash provided by investing activities</b>	<b>4,102</b>	<b>16,722</b>
<b>Cash flows from financing activities</b>		
Proceeds from mortgage, net of escrow funding and loan costs	—	1,560
Mortgage loan principal payments	(1,611)	(9)
Purchase of treasury stock	(168)	—
Taxes paid related to net share settlement of equity awards	—	(210)
Return of stockholder capital	(2,616)	(27,092)
<b>Net cash used in financing activities</b>	<b>(4,395)</b>	<b>(25,751)</b>
Net decrease in cash, cash equivalents and restricted cash	(1,116)	(9,550)
Cash, cash equivalents and restricted cash, beginning of year	1,710	11,260
Cash, cash equivalents and restricted cash, end of year	<u>\$ 594</u>	<u>\$ 1,710</u>
<b>Supplemental disclosure of cash flow:</b>		
Cash paid for interest	<u>\$ 67</u>	<u>\$ 33</u>

The accompanying notes are an integral part of these consolidated financial statements.

## **Rubicon Technology, Inc.**

### **Notes to Consolidated Financial Statements**

#### **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### **Description of Business**

Rubicon Technology, Inc. (“Rubicon” or the “Company”) currently consists of one subsidiary, Rubicon Worldwide LLC, doing business as Rubicon Technology Worldwide LLC (“RTW”). During 2023, the legal entities Rubicon BP LLC and Rubicon DTP LLC were dissolved.

RTW is an advanced materials provider specializing in monocrystalline sapphire for applications in optical and industrial systems. RTW sells its products on a global basis to customers in North America, Europe, and Asia. We manage our operations and ship from our facility located in Bensenville, Illinois. During the second quarter of 2023, the Company decided to no longer produce or fabricate its own products. As part of this decision the Company sold its warehouse and manufacturing facility and all its fixed assets in the third quarter of 2023. This decision also resulted in a significant reduction in overhead and headcount. Future sales of the Company are being fulfilled with existing inventory manufactured in-house and outsourced products.

##### **Principles of Consolidation**

The Consolidated Financial Statements include the accounts of the Company and its wholly owned subsidiary, Rubicon Worldwide LLC, doing business as Rubicon Technology Worldwide LLC. For the year ended December 31, 2022, through the period ending September 30, 2023, reporting also included Rubicon BP LLC and the discontinued operations of Rubicon DTP LLC. The legal entities Rubicon BP LLC and Rubicon DTP LLC were dissolved in the fourth quarter of 2023. All intercompany transactions and balances have been eliminated in consolidation.

A summary of the Company’s significant accounting policies applied in the preparation of the accompanying Consolidated Financial Statements follows.

##### **Liquidity and capital resources**

We believe our existing cash and cash equivalents, and interest thereon, will be sufficient to fund our projected operating requirements for at least the next twelve months.

As of December 31, 2023, we had cash and cash equivalents totaling \$594,000, including cash of \$118,000 held in deposits at major banks and \$476,000 invested in money market funds.

As of December 31, 2022, we had cash and cash equivalents totaling \$1,590,000, including cash of \$1,584,000 held in deposits at major banks and \$6,000 invested in money market funds.

These consolidated financial statements have been prepared on a going concern basis, which assumes that the Company will be able to realize its assets and discharge its liabilities in the normal course of business. The Company has an accumulated deficit as of December 31, 2023, and has sustained net losses and negative cash flows from operating activities in each of the periods ended December 31, 2023 and 2022, which raises doubt of the Company’s ability to continue as a going concern. Management believes these losses and negative cash flows were the direct result of costs related to the Company’s prior manufacturing model. As part of its transition to a reseller, the Company has eliminated these legacy costs that had a significant negative impact on its gross profit, net income and operating cash flows. Management believes that its new business model and plans are reasonable and attainable, and therefore doubt of the Company’s ability to continue as a going concern for at least one year from the issuance of these financial statements has been alleviated due to: (i) cash on hand (ii) expected revenues and (iii) continued improvements in gross profit and cost reductions. However, management cannot provide any assurances that the Company will be successful in accomplishing these business plans. If the Company is unable to raise additional capital whenever necessary, it may be forced to adjust its plans going forward.

## Cash, Cash Equivalents and Restricted Cash

The Company considers all unrestricted highly liquid investments immediately available to be cash equivalents. Cash equivalents primarily consist of time deposits with banks and brokerage money market accounts. During 2022, as part of the mortgage loan, the lender required approximately 12 months in “payment reserves” totaling \$120,000 which were restricted from use by the Company until it could meet certain debt service ratio requirements. During 2023, the mortgage loan was paid off as part of a sale of the Company’s building and land. This resulted in the release of the “payment reserves”.

## Accounts Receivable

The majority of the Company’s accounts receivable are due from defense subcontractors, industrial manufacturers, fabricators, and resellers. Credit is extended based on an evaluation of the customer’s financial condition. Accounts receivable are due based on contract terms and at stated amounts due from customers, net of an allowance for doubtful accounts. Losses from credit sales are provided for in the financial statements.

Accounts outstanding longer than the contractual payment terms are considered past due. The Company determines its allowance by considering a number of factors, including the length of time a customer’s account is past due, the customer’s current ability to pay and the condition of the general economy and industry as a whole. The Company writes off accounts receivable when they are deemed uncollectible and such write-offs, net of payments received, are recorded as a reduction to the allowance.

Accounts receivable is comprised of the following as of the year ended December 31, 2023 and 2022:

	Year Ended December 31,	
	2023	2022
	(in thousands)	
Trade receivables	\$ 178	\$ 689
Allowance for doubtful accounts	(2)	(18)
Balance of accounts receivable, net	<u>\$ 176</u>	<u>\$ 671</u>

## Inventories

Finished goods inventory and related production materials are valued at the lower of cost or net realizable value. Net realizable value is determined based on an estimated selling price in the ordinary course of business less reasonably predictable costs of completion and disposal. Raw materials cost is determined using the first-in, first-out method. Work-in-process and finished goods costs for inventory manufactured in-house were determined on a standard cost basis, which included materials, labor, and manufacturing overhead. The Company reduces the carrying value of its inventories for differences between the cost and the estimated net realizable value, taking into account usage, expected demand, technological obsolescence, and other information. The Company no longer fabricates or manufactures its own products.

During the year ended December 31, 2022, the Company made the determination that certain raw material and work in process inventories were such that the likelihood of significant usage within the current year was doubtful and classified such inventories as non-current in the reported financial statements. During the year ended December 31, 2023, the Company determined that all of this inventory was obsolete. As a result, an additional reserve of \$650,000 was established for this inventory and charged to cost of goods sold.

The Company establishes inventory reserves when conditions exist that suggest inventory may be in excess of anticipated demand or is obsolete based on customer specifications. The Company evaluates the ability to realize the value of its inventory based on a combination of factors, including forecasted sales, estimated current and future market value and changes in customers’ product specifications. The Company’s method of estimating excess and obsolete inventory has remained consistent for all periods presented. The excess and obsolete inventory reserve at December 31, 2023, was \$7,618,000 compared to \$7,052,000 at December 31, 2022. For the year ended December 31, 2023, there was an increase in excess or obsolete inventory of \$566,000, which was attributable to the write off of \$650,000 of non-current inventory and \$141,000 of current inventory, offset by sales of inventory which had previously been reserved. For the year ended

December 31, 2022, there was a reduction in excess or obsolete inventory of \$697,000, which was attributable to consumed inventory which had previously been reserved.

The Company also carries a lower of cost or market inventory reserve based on net realizable value using most recent sales prices to determine market value. As of December 31, 2023, and 2022, the balance of the lower of cost or market reserve was \$0 and \$8,000, respectively, representing a decrease of \$8,000 resulting from reclassifying inventory and its related reserve to excess and obsolete.

Inventories are composed of the following:

	As of December 31,	
	2023	2022
	(in thousands)	
Raw materials	\$ —	\$ 367
Work-in-process	—	379
Finished goods	71	229
	<u>\$ 71</u>	<u>\$ 975</u>

### Other Inventory Supplies

The Company's other inventory supplies include stock of consumable assets and spare parts used in the manufacturing process. All of this inventory was either sold or fully reserved for during the year ended December 31, 2023.

### Assets Held for Sale and Long-lived Assets

An asset is considered to be held for sale when all of the following criteria are met: (i) management commits to a plan to sell the asset; (ii) it is unlikely that the disposal plan will be significantly modified or discontinued; (iii) the asset is available for immediate sale in its present condition; (iv) actions required to complete the sale of the asset have been initiated; (v) sale of the asset is probable and the completed sale is expected to occur within one year; and (vi) the asset is actively being marketed for sale at a price that is reasonable given its current market value. A long-lived asset classified as held for sale is measured at the lower of its carrying amount or fair value less cost to sell. If the long-lived asset is newly acquired, the carrying amount of the long-lived asset is established based on its fair value less cost to sell at the acquisition date. A long-lived asset is not depreciated or amortized while it is classified as held for sale.

On September 19, 2022, the Company completed the sale of its parcel of land located in Batavia, Illinois pursuant to the terms and conditions of the agreement of sale, dated as of February 7, 2022. The selling price for the property was \$722,000. The Company realized net proceeds of approximately \$600,000 after the payment of real estate taxes, brokerage and legal fees, transfer taxes and other expenses.

On June 16, 2023, Rubicon Technology BP LLC, whose sole member and manager is the Company, entered into a Purchase and Sale Agreement (the "Purchase Agreement") with Hamilton Partners, Inc. for the sale of the property commonly known as 900 East Green Street, Bensenville, IL 60106, for a total cash consideration of \$2,974,000. The sale of the property was closed on September 14, 2023. As part of the sale, the Company leased back a portion of the property to continue its operations. The Company recognized a gain of approximately \$747,000 on the sale of the property. On July 25, 2023, the Company auctioned off its manufacturing and fabrication equipment for net proceeds of approximately \$256,000 and recorded a gain of \$352,000 related to those sales.

### Grants Receivable and Grant Revenue

Section 2301 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and its subsequent amendments in sections 206 and 207 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, provides for a refundable payroll tax credit (Employee Retention Credit or ERC) to eligible employers with less than 500 employees who paid qualified wages after March 12, 2020, and before June 30, 2021. During the quarter ended June 30, 2022, the Company determined that although it did not meet the eligibility conditions during the period beginning March 12, 2020, and ending December 31,



2020, it did qualify to claim the ERC for the periods ending March 31, 2021, and June 30, 2021. As such, the Company recorded Grant Revenue and Grants Receivable of approximately \$250,000 related to its pending ERC claim analogous to ASC Subtopic 958-605. The Company received approximately \$126,000 for its claim for the period ending June 30, 2021, in August 2023. Since the Company does not expect to receive the funds for the ERC claim for at least twelve months, the remaining receivable has been classified as a non-current asset on the balance sheet.

## Property and Equipment

On June 16, 2023, Rubicon Technology BP LLC, whose sole member and manager is the Company, entered into a Purchase and Sale Agreement (the "Purchase Agreement") with Hamilton Partners, Inc. for the sale of the property commonly known as 900 East Green Street, Bensenville, IL 60106, for total cash consideration of \$2,974,000. The sale of the property closed on September 14, 2023. As part of the sale, the Company leased back a portion of the property to continue its operations. The Company recognized a gain of approximately \$747,000 on the sale of the property. On July 25, 2023, the Company auctioned off its manufacturing and fabrication equipment for net proceeds of approximately \$407,000 and recorded a gain of \$352,000 related to those sales. As a result, the Company no longer has any property or equipment as of December 31, 2023.

Property and equipment consists of the following:

	As of December 31,	
	2023	2022
	(in thousands)	
Machinery, equipment, and tooling	\$ —	\$ 3,263
Buildings	—	1,711
Information systems	—	819
Land and land improvements	—	594
Furniture and fixtures	—	7
Total cost	—	6,394
Accumulated depreciation and amortization	—	(4,212)
Property and equipment, net	\$ —	\$ 2,182

Property and equipment are carried at cost and depreciated over their estimated useful lives using the straight-line method. The cost of maintenance and repairs is charged to expense as incurred. Significant renewals and improvements are capitalized. Depreciation expense associated with property and equipment was \$52,000 and \$120,000 for the years ended December 31, 2023, and 2022, respectively.

The estimated useful lives are as follows:

Asset description	Life
Buildings	39 years
Machinery, equipment, and tooling	3-10 years
Furniture and fixtures	7 years
Information systems	3 years

## Operating Leases

The Company, as part of the sale of its building, leased back 6,085 square feet of office space to conduct its operations, for a monthly rental payment of \$5,074. The lease commenced on September 14, 2023, and continues through May 31, 2024, at which time the lease term will become month-to-month, subject to 90-day notice of termination. In addition, the Company leased 3,200 square feet of separate warehouse space to store non-essential inventory that it plans to sell in the future for a monthly rental payment of \$2,400. The lease commenced on August 1, 2023, and had an initial term through January 31, 2024, at which time the lease term became month-to-month for a maximum of six months.

Both leases' initial terms were for less than one year and both contain renewal options which are not reasonably certain of exercise and would not extend the term of the lease for greater than one year from the commencement dates. As

such, these leases qualify as short-term leases under ASC 842, and the Company elected not to apply the related requirements of ASC 842. All lease payments are therefore recognized in net income on a straight-line basis.

### Warranty Cost

The Company's sales terms include a warranty that its products will meet certain specifications. The Company records a current liability for the expected cost of warranty-related claims at the time of sale. The warranty reserve is included in accrued and other current liabilities on the Consolidated Balance Sheets.

The following table presents changes in the Company's product warranty liability:

	Year Ended December 31,	
	2023	2022
	(in thousands)	
Balance, beginning of period	\$ 1	\$ 1
Charged to cost of sales	(15)	(16)
Actual product warranty expenditures	15	16
Balance, end of period	<u>\$ 1</u>	<u>\$ 1</u>

The Company does not provide maintenance or other services and it does not have sales that involve bill & hold arrangements, multiple elements, or deliverables. However, the Company does provide product warranty for up to 90 days, for which the Company has accrued a warranty reserve of \$1,000 and \$1,000 for the years ended December 31, 2023, and 2022, respectively.

### Current and Long-term Debt

The Company reports debt issuance costs as an adjustment to the carrying amount of the related debt in accordance with ASC 835-30-45. The amortization of such costs is included in interest expense for the period.

On August 15, 2022, the Company, entered into a business loan agreement (the "Loan") and promissory note (the "Note") in the amount of \$1,620,000 with American Community Bank & Trust (the "Lender"). The interest rate on the Note was 6% and its original maturity date was August 15, 2027. The Note had a 25-year amortization schedule. Interest and principal payments were made on a monthly basis and a balloon payment would have been made upon the maturity of the Note. The Loan and Note had customary terms and provisions for default and increases in payment. As part of the Loan the Company was required to maintain approximately 12 months in "payment reserves" totaling \$120,000 which were restricted from use by the Company. The Loan was secured by a real estate mortgage encumbering the property commonly known as 900 E. Green Street, Bensenville, IL. Rubicon Worldwide LLC, and the Company entered into unlimited commercial guaranty agreements in favor of the Lender. The Company reported debt issuance costs as an adjustment to the carrying amount of the related debt in accordance with ASC 835-30-45. The amortization of such costs is included in interest expense for the period.

The following table shows the net proceeds from the Loan at the time of its origination, which was repaid in full on September 14, 2023, in conjunction with the sale of the property securing the Note:

	Proceeds From Mortgage Loan (in thousands)
Initial loan amount	\$ 1,620
Loan costs	(22)
Escrow funding for property tax	(38)
Net proceeds from mortgage loan	<u>\$ 1,560</u>

Current and long-term debt, net, are shown in the table below:

	<u>December 31,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
	(in thousands)	
Mortgage note	\$ —	\$ 1,611
Unamortized loan costs	—	(20)
<b>Total debt</b>	<b>—</b>	<b>1,591</b>
Less: short-term portion	—	25
<b>Long-term portion</b>	<b>\$ —</b>	<b>\$ 1,566</b>

Total interest and amortization expense on the Company's debt obligations are as follows:

	<u>December 31,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
	(in thousands)	
Interest expense	\$ 67	\$ 37
Amortization of loan costs	22	2
<b>Total interest expense</b>	<b>\$ 89</b>	<b>\$ 39</b>

### Fair Value of Financial Instruments

The Company's financial instruments consist primarily of cash and cash equivalents, restricted cash, short-term investments, accounts receivable, and accounts payable. The carrying values of these assets and liabilities approximate their fair values due to the short-term nature of these instruments at December 31, 2023, and 2022.

### Concentration of Credit Risks and Other Risks and Uncertainties

Financial instruments that could potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalents, restricted cash, short-term investments, and accounts receivable. As of December 31, 2023, the Company had no cash on deposit at financial institutions in excess of amounts insured by the FDIC, or money market investments in excess of amounts insured by the SIPC. This compares to \$1,200,000 as of December 31, 2022. The Company performs a periodic evaluation of these institutions for relative credit standing. The Company has not experienced any losses in such accounts and management believes it is not exposed to any significant risk of loss on these balances.

The Company uses third parties for certain finishing functions for its products, including the slicing and polishing of its sapphire crystal inventory. These types of services are only available from a limited number of third parties. The Company's ability to successfully outsource these finishing functions will substantially depend on its ability to develop, maintain, and expand its strategic relationship with these third parties. As a result, the Company may be unable to meet the demand for its products, which could have a material adverse impact on the Company.

Concentration of credit risk related to revenue and accounts receivable is discussed in Note 3 – Significant Customers.

### Revenue Recognition

Revenues recognized include product sales and billings for freight costs.

The Company recognizes revenue in accordance with ASC Topic 606, *Revenue From Contracts with Customers* ("Topic 606") which was adopted on January 1, 2018. The Company recognizes revenue when performance obligations under a purchase order or signed quotation are satisfied. The Company's business practice commits the Company to manufacture and deliver products upon acceptance of a customer's purchase order or signed quotation ("agreement"). The agreement with the customer includes specifications of the product to be delivered, price, expected ship date and payment terms. The Company's agreements generally do not contain variable, financing, rights of return or non-cash components. There are no up-front costs to develop the production process. The performance obligation is satisfied at the point in time (single performance obligation) when the product is manufactured to the customer's specification, as performance does not create

an asset with an alternative use to the Company. Accordingly, the Company recognizes revenue when the product is shipped, and control of the product, title and risk of loss have been transferred to the customer. The Company grants credit terms considering normal collection risk. If there is doubt about collection, full prepayment for the order is required. Any payments received prior to shipment are recorded as deferred revenue and included in Advance Payments in the Consolidated Balance Sheets.

The Company does not provide maintenance or other services and we do not have sales that involve multiple elements or deliverables.

All of the Company's revenue is denominated in U.S. dollars.

### **Shipping and Handling Costs**

The Company records costs incurred in connection with shipping and handling of products as cost of goods sold. Amounts billed to customers in connection with these costs are included in revenue and are not material for any of the periods presented in the accompanying financial statements.

### **Sales Tax**

The Company collects and remits sales taxes on products sold to customers and reports such amounts under the net method in its Consolidated Statements of Operations and records a liability until remitted to the respective tax authority.

### **Stock-based Compensation**

The Company requires all share-based payments to employees, including grants of employee stock options, to be measured at fair value and expensed in the Consolidated Statements of Operations over the service period (generally the vesting period) of the grant. Expense is recognized in the Consolidated Statements of Operations for these share-based payments. The Company uses Black Scholes option pricing model in order to determine the fair value of stock option grants.

### **Accounting for Uncertainty in Income Taxes**

The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such positions are then measured based on the largest benefit that has a greater than 50% likelihood of being realized upon settlement. The Company recognizes interest and/or penalties related to income tax matters in income tax expense. There were no interest or penalties related to income taxes that have been accrued or recognized as of and for the years ended December 31, 2023, and 2022.

The Company is subject to taxation in the U.S. and in a U.S. state jurisdiction. Due to the existence of NOL carryforwards, tax years ended December 31, 2006, 2008, 2009 and 2012 through 2021 are open to examination by tax authorities for Federal purposes. Due to NOL carryforwards at the State level, tax years ended 2012 through 2021 are open to examination by state tax authorities.

Currently, the Company potentially has a withholding tax obligation to a foreign jurisdiction and has recorded an appropriate liability for the potential tax obligation.

### **Income Taxes**

Deferred tax assets and liabilities are provided for temporary differences between financial reporting and income tax bases of assets and liabilities and are measured using the enacted tax rates and laws expected to be in effect when the differences will reverse. Deferred income taxes also arise from the future benefits of NOL carryforwards. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized. Full valuation allowances on net deferred tax assets are maintained until an appropriate level of profitability that generates taxable income is deemed sustainable or until a tax strategy is developed that would enable the Company to conclude that it is more likely than not that a portion of the deferred tax assets will be realizable. Based on an evaluation in accordance with the accounting standards, as of December 31, 2023, and 2022, a valuation allowance has been recorded against the net U.S. and foreign deferred tax assets in order to measure only the portion of the deferred tax assets that are more likely

than not to be realized based on the weight of all the available evidence.

### Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates and those differences could be material.

### Net Income (Loss) per Common Share

Basic net income (loss) per common share is computed by dividing net income (loss) by the weighted-average number of common shares outstanding during the period. Diluted net income (loss) per common share is computed by dividing net income (loss) by the weighted-average number of diluted common shares outstanding during the period. Diluted shares outstanding are calculated by adding to the weighted-average shares (a) any outstanding stock options based on the treasury stock method and (b) restricted stock units ("RSU").

### New Accounting Pronouncements Adopted

The Company has evaluated recently issued accounting pronouncements and does not believe that any of these pronouncements will have a significant impact on the Company's consolidated financial statements and related disclosures.

## 2. SEGMENT INFORMATION

Revenue is attributed by geographic region based on ship-to location of the Company's customers. The following table summarizes revenue by geographic region:

	Year Ended December 31,	
	2023	2022
	(in thousands)	
North America	\$ 1,737	\$ 2,940
Asia	121	567
Other	140	80
Total revenue	<u>\$ 1,998</u>	<u>\$ 3,587</u>

All revenues for the years ended December 31, 2023, and 2022, were from the sale of optical sapphire products and related materials.

All of our assets were located in the United States for the years ended December 31, 2023 and 2022.

## 3. SIGNIFICANT CUSTOMERS

In 2023, our top customers (each 10% or greater in revenues) accounted for, in the aggregate, approximately 56% of our revenues from continuing operations. In 2022, our top six customers (each 10% or greater of our revenues) accounted for, in the aggregate, approximately 72% of our revenue.

Customers individually representing more than 10% of trade receivables accounted for approximately 73% and 74% of accounts receivable as of December 31, 2023, and 2022, respectively.

## 4. DISCONTINUED OPERATIONS: Closure of Direct Dose Rx

On June 24, 2021, the Company's Board of Directors decided effective immediately to close its pharmacy operations

dba Direct Dose Rx. Immediately thereafter, Direct Dose Rx began transitioning its customers to other providers and began the process of closing its operations. Direct Dose was launched as a start-up pharmacy primarily to deliver medications and vitamins to patients being discharged from skilled nursing facilities. The Company does not believe that the costs associated with such closure will be material. Based on the Company's review and analysis of ASC 205-20 Presentation of Discontinued Operations it concluded to present the discontinued operations separately.

	Year Ended December 31,	
	2023	2022
	(in thousands)	
Revenues (discontinued operations)	\$ —	\$ —
Operating Expense (discontinued operations)	—	(16)
Income/loss from operations of discontinued operations, net of taxes	<u>\$ —</u>	<u>\$ 16</u>

## 5. ASSETS HELD FOR SALE AND LONG-LIVED ASSETS

When circumstances, such as adverse market conditions, indicate that the carrying value of a long-lived asset may be impaired, the Company performs an analysis to review the recoverability of the asset's carrying value using estimates of the undiscounted cash flows (excluding interest charges) from the expected future operations of the asset. These estimates consider factors such as expected future operating income, operating trends, and prospects, as well as the effects of demand, competition, and other factors. If the analysis indicates that the carrying value is not recoverable from future cash flows, an impairment loss is recognized to the extent that the carrying value exceeds the estimated fair value. The estimated fair value of assets is determined using appraisal techniques which assume the highest and best use of the asset by market participants, considering the use of the asset that is physically possible, legally permissible, and financially feasible at the measurement date. Any impairment losses are recorded as operating expenses, which reduce net income.

The Company had no long-lived assets as of December 31, 2023. The Company reviewed the fair value of its assets and concluded no adjustments were needed as of December 31, 2022.

## 6. STOCKHOLDERS' EQUITY

### Common Stock

At the Company's annual meeting of stockholders held on May 3, 2017, the Company's stockholders approved amendments to the Company's Eighth Amended and Restated Certificate of Incorporation (as amended, the "Certificate of Incorporation") to (i) effect a reverse stock split of the Company's common stock; and (ii) decrease the Company's authorized number of shares of common stock to three times the number of shares of the Company's common stock outstanding immediately following the reverse stock split. On May 3, 2017, following the annual meeting, the Company filed with the Secretary of State of the State of Delaware a Certificate of Amendment to (a) implement the reverse stock split at a ratio of 1-for-10; and (b) to reduce the number of authorized shares of common stock from 40,000,000 to 8,200,000, consequently reducing the number of total authorized shares from 45,000,000 to 13,200,000. With the completion of the reverse stock split, the Company's shares began trading above the required \$1.00 per share closing bid price, as required by the Listing Qualifications Department of NASDAQ. The share information has been retroactively reflected for the effects of this reverse stock split for all periods presented.

### Preferred Stock

At the Company's annual meeting of stockholders held on May 10, 2018, the Company's stockholders approved an amendment to the Certificate of Incorporation to decrease the Company's authorized number of shares of preferred stock from 5,000,000 shares to 1,000,000 shares.

### Common Shares Reserved

As of December 31, 2023, the Company had reserved 300 shares of common stock for issuance upon the exercise of outstanding common stock options. Also, 320,273 shares of the Company's common stock were reserved for future grants

of stock options and RSUs (or other similar equity instruments) under the Rubicon Technology, Inc. 2016 Stock Incentive Plan (the "2016 Plan") as of December 31, 2023.

### **Purchases of Equity Securities by the Issuer**

On June 15, 2023, Michael Mikolajczyk tendered his resignation as a director, which became effective on September 30, 2023. On the same date, pursuant to a separation agreement, Mr. Mikolajczyk was paid \$56,000 for the assignment to the Company by Mr. Mikolajczyk of 27,481 shares of common stock of the Company held by Mr. Mikolajczyk.

On February 20, 2023, Timothy Brog tendered his resignation as a director, which became effective on February 22, 2023. Pursuant to a separation agreement, Mr. Brog was paid \$112,000 for the assignment to the Company by Mr. Brog of 57,593 shares of common stock of the Company held by Mr. Brog. As of March 31, 2023, 52,624 of those shares had been assigned to the Company. The balance of the shares was assigned in the second quarter of 2023.

### **7. STOCKHOLDER RIGHTS AGREEMENT**

On December 18, 2017, the Company entered into a Section 382 Rights Agreement with American Stock Transfer & Trust Company, LLC, as Rights Agent (the "Rights Agreement") in an effort to protect stockholder value by attempting to diminish the risk that the Company's ability to use its net NOLs to reduce potential future federal income tax obligations may become substantially limited. The Company's ability to utilize its NOLs may be substantially limited if the Company experiences an "ownership change" within the meaning of Section 382 of the Internal Revenue Code of 1986, as amended (the "IRC"). The Rights Agreement is intended to act as a deterrent to any person acquiring beneficial ownership of 4.9% or more of the Company's outstanding common stock without the approval of the Company's Board of Directors (the "Board").

The Board authorized the issuance of one Right for each outstanding share of common stock, par value \$0.001 per share, of the Company, payable to stockholders of record date of the close of business on January 2, 2018. One Right will also be issued together with each share of the Company's common stock issued after January 2, 2018, but before the Distribution Date (as defined below) and, in certain circumstances, after the Distribution Date. Subject to the terms, provisions and conditions of the Rights Agreement, if the Rights become exercisable, each Right would initially represent the right to purchase from the Company one one-thousandth of a share of Series A Junior Participating Preferred Stock, par value \$0.001 per share, of the Company (the "Series A Preferred Stock") for a purchase price of \$40.00. If issued, each one-thousandth of a share of Series A Preferred Stock would give the stockholder approximately the same dividend, voting and liquidation rights as does one share of common stock. However, prior to exercise, a Right does not give its holder any rights as a stockholder of the Company, including, without limitation, any dividend, voting or liquidation rights.

The Rights will not be exercisable until the earlier of (i) ten business days after a public announcement that a person has become an "Acquiring Person" by acquiring beneficial ownership of 4.9% or more of outstanding common stock (or, in the case of a person that had beneficial ownership of 4.9% or more of the outstanding common stock as of the close of business on December 18, 2017, by obtaining beneficial ownership of any additional shares of common stock representing 0.5% or more of the shares of common stock then outstanding (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding shares of the common stock or pursuant to a split or subdivision of the outstanding shares of common stock) at a time such person still beneficially owns 4.9% or more of the outstanding common stock), and (ii) ten business days (or such later date as may be specified by the Board prior to such time as any person becomes an Acquiring Person) after the commencement of a tender or exchange offer by or on behalf of a person that, if completed, would result in such person becoming an Acquiring Person (the "Distribution Date").

Until the Distribution Date, common stock certificates or the ownership statements issued with respect to uncertificated shares of common stock will evidence the Rights. Any transfer of shares of common stock prior to the Distribution Date will also constitute a transfer of the associated Rights. After the Distribution Date, separate rights certificates will be issued, and the Rights may be transferred other than in connection with the transfer of the underlying shares of common stock unless and until the Board has determined to effect an exchange pursuant to the Rights Agreement (as described below).

In the event that a person becomes an Acquiring Person, each holder of a Right, other than Rights that are or, under certain circumstances, were beneficially owned by the Acquiring Person (which will thereupon become void), will thereafter have the right to receive upon exercise of a Right and payment of the purchase price, a number of shares of the Company's common stock (or, in certain circumstances, cash, property or other securities of the Company) having a market value equal to two times the purchase price. However, Rights are subject to redemption and exchange at the option of the Company.

In the event that, at any time following a person becoming an Acquiring Person, (i) the Company engages in a merger or other business combination transaction in which the Company is not the surviving corporation; (ii) the Company engages in a merger or other business combination transaction in which the Company is the surviving corporation and the common stock is changed or exchanged; or (iii) 50% or more of the Company's assets, cash flow or earning power is sold or transferred, each holder of a Right (except Rights which have previously been voided) shall thereafter have the right to receive, upon exercise of the Right, common stock of the acquiring company having a value equal to two times the purchase price.

At any time until the earlier of December 18, 2023, and ten calendar days following the first date of public announcement that a person has become an Acquiring Person or that discloses information which reveals the existence of an Acquiring Person or such earlier date as a majority of the Board becomes aware of the existence of an Acquiring Person, the Board may redeem the Rights in whole, but not in part, at a price of \$0.001 per Right (the "Redemption Price"). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

At any time after a person becomes an Acquiring Person, the Board may, at its option, exchange the Rights (other than Rights that have become void), in whole or in part, at an exchange ratio of one share of common stock, or a fractional share of Series A Preferred Stock (or of a share of a similar class or series of the Company's preferred stock having similar rights, preferences and privileges) of equivalent value, per Right (subject to adjustment). Immediately upon an exchange of any Rights, the right to exercise such Rights will terminate and the only right of the holders of Rights will be to receive the number of shares of common stock (or fractional share of Series A Preferred Stock or of a share of a similar class or series of the Company's preferred stock having similar rights, preferences and privileges) equal to the number of such Rights held by such holder multiplied by the exchange ratio.

Each one one-thousandth of a share of Series A Preferred Stock, if issued: (i) will be nonredeemable and junior to any other series of preferred stock the Company may issue (unless otherwise provided in the terms of such other series), (ii) will entitle holders to preferential cumulative quarterly dividends in an amount per share of Series A Preferred Stock equal to the greater of (a) \$1 or (b) 1,000 times the aggregate the dividends, if any, declared on one share of the Company's common stock, (iii) will entitle holders upon liquidation (voluntary or otherwise) to receive \$1,000 per share of Series A Preferred Stock plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, (iv) will have the same voting power as one share of common stock, and (v) will entitle holders to a per share payment equal to the payment made on one share of the Company's common stock, if shares of the common stock are exchanged via merger, consolidation, or a similar transaction. Because of the nature of the Series A Preferred Stock's dividend, liquidation and voting rights, the value of a Unit of Series A Preferred Stock purchasable upon exercise of each Right should approximate the value of one share of common stock.

The Rights and the Rights Agreement will expire on the earliest of (i) December 18, 2023, (ii) the time at which the Rights are redeemed pursuant to the Rights Agreement, (iii) the time at which the Rights are exchanged in full pursuant to the Rights Agreement, (iv) the date that the Board determines that the Rights Agreement is no longer necessary for the preservation of material valuable Tax Benefits, (v) the beginning of a taxable year of the Company to which the Board determines that no NOL tax benefits may be carried forward, and (vi) a determination by the Board, prior to the time any Person becomes an Acquiring Person, that the Rights Agreement and the Rights are no longer in the best interests of the Company and its stockholders.

The Board may adjust the purchase price, the number of shares of Series A Preferred Stock or other securities or assets issuable and the number of outstanding Rights to prevent dilution that may occur as a result of certain events, including among others, a stock dividend, a stock split or a reclassification of the Series A Preferred Stock or common stock. With certain exceptions, no adjustments to the purchase price will be required until cumulative adjustments amount to at least 1% of the purchase price.

For so long as the Rights are redeemable, the Board may supplement or amend any provision of the Rights Agreement in any respect without the approval of the holders of the Rights. From and after the time the Rights are no longer redeemable, the Board may supplement or amend the Rights Agreement only to cure an ambiguity, to alter time period provisions, to correct inconsistent provisions, or to make any additional changes to the Rights Agreement which the Company may deem necessary or desirable, but only to the extent that those changes do not impair or adversely affect any Rights holder (other



than an Acquiring Person or any Affiliate or Associate of an Acquiring Person or certain of their transferees) and do not result in the Rights again becoming redeemable or the Rights Agreement again becoming amendable other than in accordance with this sentence.

In connection with the adoption of the Rights Agreement and authorization and declaration of the dividend of the Rights, on December 18, 2017, the Company filed the Certificate of Designation with the Secretary of State of the State of Delaware. The Certificate of Designation became effective on December 18, 2017.

In connection with the execution of the Purchase Agreement, on June 27, 2022, the Company's Board of Directors approved Amendment No. 2 (the "Amendment") to the Rights Agreement. The Amendment, among other things, renders the Rights Agreement inapplicable to the Offer, the Purchase Agreement and the transactions contemplated under the Purchase Agreement. In addition, the Amendment provides that neither the Purchaser, nor any of its affiliates or associates will become an "Acquiring Person" or "Beneficial Owner" (as such terms are defined in the Rights Agreement), and a Distribution Date and Stock Acquisition Date (as such terms are defined in the Rights Agreement) will not be deemed to have occurred, as a result of the announcement of the Offer, the execution of the Purchase Agreement, or the consummation of the Offer or of the other transactions contemplated by the Purchase Agreement. The Amendment also extends the final expiration date of the Rights Agreement to September 1, 2025.

## 8. STOCK INCENTIVE PLANS

In August 2007, the Company adopted the Rubicon Technology Inc. 2007 Stock Incentive Plan, which was amended and restated effective in March 2011 (the "2007 Plan"), and which allowed for the grant of incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock, RSUs, performance awards and bonus shares. The maximum number of shares that could be awarded under the 2007 Plan was 440,769 shares. Options granted under the 2007 Plan entitle the holder to purchase shares of the Company's common stock at the specified option exercise price, which could not be less than the fair market value of the common stock on the grant date. On June 24, 2016, the 2007 Plan terminated with the adoption of the Rubicon Technology, Inc. 2016 Stock Incentive Plan, (the "2016 Plan"). Any existing awards under the 2007 Plan remain outstanding in accordance with their current terms under the 2007 Plan. In June 2016, the Company's stockholders approved adoption of the 2016 Plan effective as of March 17, 2016, which allows for the grant of incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock, RSUs, performance awards and bonus shares. The Compensation Committee of the Board administers the 2016 Plan. The committee determines the type of award to be granted, the fair value, the number of shares covered by the award, and the time when the award vests and may be exercised.

Pursuant to the 2016 Plan, 222,980 shares of the Company's common stock plus any shares subject to outstanding awards under the 2007 Plan that subsequently expire unexercised, are forfeited without the delivery of shares, or are settled in cash, will be available for issuance under the 2016 Plan. The 2016 Plan will automatically terminate on March 17, 2026, unless the Company terminates it sooner.

The following table summarizes the activity of the stock incentive and equity plans:

	<b>Shares available for grant</b>	<b>Number of options outstanding</b>	<b>Weighted- average option exercise price</b>	<b>Number of restricted stock shares issued</b>	<b>Number of RSUs outstanding</b>
Outstanding at January 1, 2022	304,731	4,050	14.16	99,570	28,030
Granted	—	—	—	—	—
Exercised/issued	—	(2,250)	6.10	—	(28,030)
Canceled/forfeited	15,542	(1,500)	20.26	—	—
Outstanding at December 31, 2022	320,273	300	\$ 44.10	99,570	—
Granted	—	—	—	—	—
Exercised/issued	—	—	6.10	—	—
Canceled/forfeited	—	—	20.26	—	—
Outstanding at December 31, 2023	320,273	300	\$ 44.10	99,570	—

There were no option grants made during 2023.

At December 31, 2023, the exercise prices of outstanding options were as follows:

Exercise price	Number of options outstanding	Average remaining contractual life (years)	Number of options exercisable
\$44.10	300	0.94	300
	300	0.94	300

There were no options that were granted or became vested in the years ended December 31, 2023 or 2022, respectively.

The Company's aggregate intrinsic value is calculated as the difference between the exercise price of the underlying stock options and the fair value of the Company's common stock. Based on the fair value of the common stock at December 31, 2023, there was no intrinsic value arising from 300 stock options exercisable or outstanding.

There were no RSUs granted in the years ended December 31, 2023 or 2022, and there were no RSUs outstanding at December 31, 2023 or 2022.

## 9. INCOME TAXES

Components of income before income taxes and the income tax provision are as follows:

Income (loss) before income taxes is all U.S.-based for the years ended December 31, 2023 and 2022, respectively.

There was no current of deferred income tax expense for the years ended December 31, 2023 or 2022, respectively.

The reconciliation of income tax computed at the federal statutory rate to income before taxes is as follows:

	Year Ended December 31,	
	2023	2022
U.S. federal statutory rate	21.0%	21.0%
State taxes net of federal benefit	7.5	5.4
Permanent differences	(3.8)	—
Valuation allowance	(24.7)	(26.4)
	—%	—%

Deferred income taxes reflect the net tax effects of the temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.

Significant components of the Company's net deferred income taxes are as follows at December 31:

	<u>2023</u>	<u>2022</u>
	(in thousands)	
Deferred tax assets:		
Allowance for doubtful accounts	\$ 1	\$ 5
Inventory reserves	2,422	2,928
Consumables excess reserve	—	162
Accrued liabilities	6	15
Warrant interest expense	196	195
Stock compensation expense	2	706
State net operating loss	14,021	13,425
Net operating loss carryforward	40,454	39,759
Capital loss carryforward	6,755	6,755
Tax credits	662	669
Depreciation	—	219
Valuation allowance	(64,497)	(58,068)
Total deferred tax assets	<u>22</u>	<u>15</u>
Deferred tax liability:		
Prepaid expenses	(22)	(15)
Net deferred tax liability	<u>\$ —</u>	<u>\$ —</u>

At December 31, 2023, we had separate Federal, Illinois and Indiana NOL carryforwards of \$193 million, \$186 million, and \$664,000, respectively. The Federal NOLs will begin to expire in 2026, the Illinois NOLs will begin to expire in 2024, and the Indiana NOLs will begin to expire in 2039. In addition, at December 31, 2023, we had Federal research and development credits of \$662,000, which will begin to expire in 2028.

The Company completed an analysis of the utilization of NOLs subject to limits based upon certain ownership changes as of December 31, 2023. The results of this analysis indicated no ownership change limiting the utilization of net operating losses and tax credits.

The Company prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken, or expected to be taken, in a tax return. At December 31, 2023, and 2022, the Company had \$1.1 million of unrecognized tax benefits taken or expected to be taken in a tax return that have been recorded on the Company's financial statements as an offset to the valuation allowance related to tax positions taken in 2012. It is not reasonably possible that the amount will change in the next twelve months. There were no material changes to the prior year or current year positions taken during the year ended December 31, 2023.

There were no interest or penalties related to income taxes that have been accrued or recognized as of and for the years ended December 31, 2023, and 2022.

The Company files income tax returns in the United States federal jurisdiction and in a state jurisdiction. During 2009, the Company began foreign operations and is subject to local income taxes in certain foreign jurisdictions. The Company's foreign tax returns for the periods ended December 31, 2010 through 2012 have been audited with no changes made to the taxable income for those years. All other foreign tax years are open to examination by tax authorities.

The Company's federal tax returns for the periods ended December 31, 2010, 2008 and 2007 have been audited by the Internal Revenue Service (IRS) with no changes made to the Company's taxable losses for those years. The Company's state tax returns for the periods ended December 31, 2009 through 2012 have been audited by the Illinois Department of Revenue with no changes made to the Company's taxable losses for those years. Due to the existence of NOL carryforwards, tax years ended December 31, 2006, 2008, 2009 and 2012 through 2022 are open to examination by tax authorities for Federal purposes. Due to NOL carryforwards at the State level, tax years ended 2012 through 2022 are open to examination by state tax authorities. Tax years 2013 through 2019 are open to examination by foreign tax authorities.

Due to the closing of the Company's foreign operations, the Company no longer considers the undistributed earnings of its foreign subsidiary to be indefinitely reinvested. Upon liquidation of its subsidiary, it is anticipated any cash left after the

liquidation will be brought back to the U.S. via a payment of principal towards the intercompany loan.

Currently, the Company potentially has a withholding tax obligation to a foreign jurisdiction and has recorded an appropriate liability for the potential tax obligation.

## **10. COMMITMENTS AND CONTINGENCIES**

### **Operating Leases**

The Company, as part of the sale of its building, leased back 6,085 square feet of office space to conduct its operations, for a monthly rental payment of \$5,074. The lease commenced on September 14, 2023, and continues through May 31, 2024, at which time the lease term will become month-to-month, subject to 90-day notice of termination. In addition, the Company leased 3,200 square feet of separate warehouse space to store non-essential inventory that it plans to sell in the future for a monthly rental payment of \$2,400. The lease commenced on August 1, 2023, and had an initial term through January 31, 2024, at which time the lease term became month-to-month for a maximum of six months.

Both leases' initial terms were for less than one year and both contain renewal options which are not reasonably certain of exercise and would not extend the term of the lease for greater than one year from the commencement dates. As such, these leases qualify as short-term leases under ASC 842, and the Company elected not to apply the related requirements of ASC 842. All lease payments are therefore recognized in net income on a straight-line basis.

### **Litigation**

From time to time, the Company experiences routine litigation in the ordinary course of its business. There are no outstanding material matters as of December 31, 2023, and through the date of this filing.

## **11. BENEFIT PLAN**

The Company sponsors a 401(k) savings plan (the "Plan"). Employees are eligible to participate in the Plan upon reaching 18 years of age. Employees make contributions to the Plan through payroll deferrals. Employer matching contributions are discretionary. There were no employer matching contributions for the years ended December 31, 2023, and 2022.

## **12. RELATED PARTY TRANSACTIONS**

The Company entered into a Managed Services Agreement (the "Janel-Rubicon MSA") with Janel Corporation on August 15, 2023, upon determination by the Independent Committee of the Company's Board of Directors that it was in the best interest of the Company for Janel to provide certain services detailed in the Janel-Rubicon MSA. The Company incurred approximately \$6,000 in 2023 for software license & usage fees under the Janel-Rubicon MSA, which is included in accrued liabilities for the year ended December 31, 2023.

## **13. SUBSEQUENT EVENTS**

On February 8, 2024, the Company entered into a Managed Services Agreement (the "Rubicon-Janel MSA") with Janel Corporation upon determination by the Independent Committee of the Company's Board of Directors that it was in the best interest of the Company to provide certain services to Janel, as detailed in the Janel-Rubicon MSA. On February 15, 2024, Joseph Ferrara was appointed Chief Financial Officer, Treasurer and Secretary of Janel Corporation. Pursuant to the appointment, the Company and Mr. Ferrara mutually agreed to terminate the Consulting Agreement entered into on October 24, 2023, before the expiration of the term provided in the agreement. Mr. Ferrara will continue to consult on financial matters for the Company under the terms provided in the Janel-Rubicon MSA.

## **EXHIBIT 2.1**

### **CERTIFICATION OF PRINCIPAL EXECUTIVE & FINANCIAL OFFICER**

I, Lindsey Reynolds, Executive Officer of Rubicon Technology, Inc., certify that:

1. I have reviewed this Annual Report of Rubicon Technology Inc.;
2. Based on my knowledge, this Annual Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Annual Report; and
3. Based on my knowledge, the financial statements, and other financial information included or incorporated by reference in this Annual Report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in this Annual Report.

/s/ Lindsey Reynolds  
Lindsey Reynolds  
Executive Officer &  
Director of Accounting

April 1, 2024 Date

**EXHIBIT 6.1****Issuer Purchases of Equity Securities**

	<u># of Shares Purchased</u>	<u>Avg. \$/Share</u>
Three months ended		
March 31, 2023		\$
<i>Repurchase shares – T. Brog</i>	52,624 <sup>(1)</sup>	1.94
June 30, 2023		
<i>Repurchase shares – T. Brog</i>	4,969 <sup>(1)</sup>	1.94
<i>Repurchase shares – M. Mikolajczyk</i>	27,481 <sup>(2)</sup>	2.04
September 30, 2023	—	—
December 31, 2023	—	—
<b>Year ended December 31, 2023</b>	<b><u>85,074</u></b>	<b><u>\$ 1.98</u></b>

- (3) On February 20, 2023, the Company entered into a Confidential Separation Agreement and General Release with Mr. Brog, which stated that Mr. Brog was entitled to receive, among other things, a payment of \$112,000 for the assignment to the Company by Mr. Brog of 57,593 shares of common stock of the Company, par value \$0.001 per share, held by Mr. Brog. As of March 31, 2023, 52,624 of those shares had been assigned to the Company. The balance of the shares was assigned in the second quarter of 2023.
- (4) On June 30, 2023, the Company entered into a Confidential Separation Agreement and General Release with Mr. Mikolajczyk, in connection with Mr. Mikolajczyk's resignation as a member of the Board. Pursuant to that agreement, Mr. Mikolajczyk was entitled to receive a payment of \$56,092 for the assignment to the Company by Mr. Mikolajczyk of 27,481 shares of common stock of the Company, par value \$0.001 per share, held by Mr. Mikolajczyk.

**SEPARATION AGREEMENT AND GENERAL RELEASE**

THIS SEPARATION AGREEMENT AND GENERAL RELEASE (the "Agreement") is entered into effective as of the 30th day of June, 2023, by and between Michael Mikolajczyk ("**MM**") and Rubicon Technology, Inc., a Delaware corporation ("Rubicon"), (collectively, the "Parties").

**EXPLANATORY STATEMENT**

**MM** is currently a Director of Rubicon and currently owns 31,456 shares of Rubicon common stock, par value \$.001 per share (the "Shares"), with 27,481 shares in a brokerage account and 3,975 shares in an IRA account.

MM and the Company have mutually determined that **MM will** resign as a Director of the Company and the Parties wish to settle all amounts owed or potentially owed to MM or Rubicon.

NOW THEREFORE, in consideration of the foregoing Explanatory Statement, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, it is agreed as follows:

**AGREEMENT**

1. Incorporation of Recitals. The Explanatory Statement to this Agreement is incorporated by reference herein.
2. Closing; Payment and Transfer.
  - (a) The closing of the transactions contemplated by this Agreement (the "Closing") will take place effective as of July 1, 2023. After the later of the Closing and the expiration of the revocation period described in Section 1.5(b) herein:
    - (1) Rubicon shall cause the total sum of \$56,092.20 (the "Share Payment") to be paid to MM from Rubicon for the 27,481 Shares in MM's brokerage account;
    - (2) MM's release of Rubicon and Rubicon Released Parties as set forth below will become effective;
    - (3) Rubicon's release of MM and MM Released Parties as set forth below will become effective;
    - (4) MM will assign the Shares to Rubicon, and will execute Assignments Separate from Certificate with respect thereto in the form attached hereto as **Exhibit B**;
    - (5) The Share Payment will be considered consideration, which is good, valuable, and sufficient, in addition to other consideration as outlined herein; and

**EXHIBIT 3.8**

- (6) The Parties will execute and deliver, each to the other, a Consulting Agreement in a form agreed to by the Parties effective as of the date hereof (the "Consulting Agreement").
  
- (b) Rubicon agrees to indemnify MM, hold him harmless and advance MM defense costs, including reasonable attorney's fees of counsel for MM, to the maximum extent permitted by the Certificate of Incorporation and the Amended and Restated Bylaws of Rubicon as in effect on the date hereof.
  
- (c) MM will be fully responsible for paying any and all taxes owed relating to the receipt by MM of the Share Payment, if any. The Parties hereto agree that for tax purposes, the assignment of the Shares is deemed a sale of the Shares and the Share Payment shall exclusively be for the sale of the Shares.
  
- 3. Release of Rubicon. MM, for himself, and on behalf of his agents, executors, heirs, representatives, and successors, (each a "MM Released Party" and together the "MM Released Parties"), knowingly and voluntarily releases and forever discharges Rubicon and each of its past and present employees, agents, officers, directors, stockholders holding more than twenty percent (20%) of the capital stock of the Company and subsidiaries, (each a "Rubicon Released Party" and together the "Rubicon Released Parties") from any claims, charges, causes of action, demands or damages, known or unknown, fixed or contingent at law or in equity, and waives and releases any and all rights and claims of any type that MM or MM Released Party may have had or now has at any time prior to the date hereof, against Rubicon and/or the Rubicon Released Parties in any way related to past due, presently owed or future payments related to MM's engagement as a member of the Board of Directors of Rubicon or otherwise other than for the payment of the Share Payment in accordance with and subject to the conditions contained in this Agreement and other than the Consulting Agreement. This waiver and release includes, but is not limited to:
  - (a) any claims for any tort, including wrongful termination, wrongful discharge, defamation, intentional infliction of emotional distress, intentional interference with a contractual relationship or any other common law claims;
  
  - (b) any claims for the, breach of any written, implied or oral contracts, including, but not limited to, any contract of employment;
  
  - (c) any claims of discrimination, harassment or retaliation based on age, marital status, national origin, ancestry, race, religion, gender, sex, sexual orientation, physical or mental disability or medical condition;
  
  - (d) except for payments provided pursuant to this Agreement and the Consulting Agreement, any claims for payments of any nature, including, but not limited to, wages, attorney's fees, costs, overtime pay, vacation pay, severance pay, commissions, bonuses, or the monetary equivalent of benefits;
  
  - (e) except for the consideration provided pursuant to this Agreement and the Consulting Agreement and any benefits under any retirement plan, any claims or rights under any benefit plan or program of Rubicon;



## **EXHIBIT 3.8**

- (f) any and all claims with respect to the current or future performance, financial results or value of Rubicon; and
  - (g) any and all claims that may arise under common law and all federal, state and local statutes, ordinances, rules, regulations and orders, including, but not limited to, any claim or cause of action in law or in equity based on or arising under the Fair Labor Standards Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act (ADEA), as amended by the Older Workers Benefit Protection Act (OWBPA), the Americans with Disabilities Act of 1990, as amended, the Civil Rights Acts of 1866, 1871 and 1991, as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, the Family and Medical Leave Act, as amended, the Employee Retirement Income Security Act of 1974, as amended, the Occupational Safety and Health Act, as amended, the Worker Adjustment and Retraining Notification Act, as amended, any state law with respect to employee or severance rights, any state federal or local laws governing whistleblowing or retaliation claims to the maximum extent permitted by law, including but not limited to the Sarbanes Oxley Act, any laws or agreements that provide for punitive, exemplary or statutory damages, and any laws or agreements that provide for payment of attorneys' fees, costs, or expenses.
4. Release of MM. Rubicon, for itself, and on behalf of its past and present employees, agents, officers, directors, stockholders holding more than twenty percent (20%) of the capital stock of the Company, subsidiaries and affiliates, knowingly and voluntarily releases and forever discharges MM Released Party and MM Released Parties from any claims, charges, causes of action, demands or damages, known or unknown, fixed or contingent at law or in equity, and waives and releases any and all rights and claims of any type that Rubicon and/or Rubicon Released Party may have had or now has at any time prior to the date hereof, against MM and/or the MM Released Parties in any way related to MM, whether already commenced or will commence in the future, for events occurring prior to the date of full execution of this Agreement. This waiver and release includes, but is not limited to:
- (a) any claims for any tort, defamation, intentional infliction of emotional distress, intentional interference with a contractual relationship or any other common law claims;
  - (b) any claims for the breach of any written, implied or oral contracts, including, but not limited to any contract of employment;
  - (c) any claims of discrimination, harassment or retaliation based on age, marital status, national origin, ancestry, race, religion, gender, sex, sexual orientation, physical or mental disability or medical condition;
  - (d) any claims for payments of any nature; and
  - (e) any and all claims with respect to the current or future performance, financial results or value of Rubicon.
5. Complete Releases.

### **EXHIBIT 3.8**

- (a) It is specifically agreed and understood that the releases given pursuant to this Agreement shall be construed in the broadest possible manner. The Parties agree that this Agreement represents a full, final and complete settlement between the Parties regardless of the adequacy of the compensation.
- (b) MM acknowledges that he is aware that Rubicon has plans which may increase the value of Rubicon and/or the price of the Shares, but that, as a sophisticated investor and as someone very familiar with Rubicon's business, MM nevertheless desires to transfer the Shares pursuant to the terms hereof.
- (c) The Parties understand, agree and represent that the covenants made herein and the releases herein executed may affect their rights and liabilities to a substantial extent, and the Parties agree that the covenants and releases provided herein are in their respective best interest on the date hereof. The Parties represent and warrant that, in negotiating and executing this Agreement, they had an adequate opportunity to consult with competent counsel or other representatives of their choosing concerning the meaning and effect of each term and provision hereof, and that there are no representations, promises or agreements other than those expressly set forth herein. The Parties have carefully read this Agreement in its entirety, and fully understand and agree to its terms and conditions, and intend and agree that it is a final and binding settlement agreement, and understand that, in the event of a breach, any Party may seek relief, including damages, restitution and injunctive relief, at law or in equity.

#### 6. Waiver of Claims.

- (a) Solely for matters occurring prior to the date hereof, MM irrevocably covenants (i) that he has not and will not file suit in any court against any of the Rubicon Released Parties, (ii) that he has not and will not assist anyone else in filing suit in any court against any of the Rubicon Released Parties, except as required by law, and (iii) that he has not and will not file or assist anyone else in filing any administrative complaint or charge with any governmental agency against any of the Rubicon Released Parties, based on any matter in connection with his investment in or affiliation with Rubicon. MM further warrants and represents that he has not transferred or assigned to any other person, entity or corporation any rights or claims against any of the Rubicon Released Parties. Nothing in this Agreement shall prevent MM from (i) commencing an action or proceeding to enforce this Agreement or the Consulting Agreement; or
  - (ii) filing a timely charge or complaint with the EEOC or participating in any investigation or proceeding conducted by the EEOC regarding any claim of employment discrimination (although MM has waived any right to personal recovery or personal injunctive relief in connection with any such charge or complaint).
- (b) Solely for matters occurring prior to the date hereof, Rubicon Released Parties irrevocably covenants that it has not and will not file suit in any court against any of the MM Released Parties, that it has not and will not assist anyone else in filing suit in any court against any of the MM Released Parties, except as required by law, and that it has not and will not file or assist anyone else in filing any administrative complaint or charge with any governmental agency against any of the MM Released Parties, based on any matter in connection with its affiliation with MM prior to the execution of this Agreement except if required by law or government agency or body. Rubicon further warrants and represents that it has not transferred or

### **EXHIBIT 3.8**

assigned to any other person, entity or corporation any rights or claims against any of the MM Released Parties.

7. Reserved.
8. Representation and Warranty of MM. MM warrants and represents to Rubicon that MM has good and marketable title to the Shares free and clear of any lien, claim or encumbrance. There are no options, warrants, calls, subscriptions, rights, commitments, agreements, or understandings of any character obligating MM to transfer any interest in any of the Shares to any Person.
9. Non-Disparagement. Rubicon's Board of Directors on behalf of itself and stockholders holding more than twenty percent (20%) of the capital stock of the Company and MM each agree that they will not knowingly make any statement intended or reasonably likely to disparage or defame the other, or its business if applicable, or its/his directors, officers, agents, employees, or stockholders holding more than twenty percent (20%) of the capital stock of the Company to any individual or entity not a party to this Agreement.
10. Complete Agreement. This Agreement and the Consulting Agreement constitutes the complete, final and entire agreement between the Parties concerning the subject matter and supersedes all prior negotiations, contracts, and proposed agreements, understandings, terms, covenants, conditions or representations, if any, between the Parties.
11. Severability. Should any provision of this Agreement be deemed illegal, invalid or otherwise unenforceable, in whole or in part, by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
12. Governing Law and Jurisdiction. All provisions of this Agreement will be construed in accordance with and governed by the laws of New York, and each of the Parties irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts situated in New York County.
13. Acknowledgement of Authority. The individual(s) signing this Agreement on behalf of any Party warrant and represent that they have all necessary and appropriate authority and approvals to bind and execute this Agreement on behalf of all entities and in all capacities for which they sign.
14. Miscellaneous.
  - (a) Expiration of Offer. MM has twenty-one (21) days in which to review and consider this Agreement. If a signed copy of this Agreement has not been received by Joseph Ferrara, Executive Officer via email at [jferrara@rubicontechnology.com](mailto:jferrara@rubicontechnology.com), by 5:00 p.m. EST on the twenty-first day after this Agreement was provided to MM, the terms and conditions set forth in this Agreement will expire automatically. Any changes, whether material or otherwise, made to this Agreement do not restart or affect in any manner the running of the original twenty-one (21) day period.
  - (b) Right to Revoke Agreement. MM may revoke this Agreement within seven (7) days from the date he signs this Agreement, in which case this Agreement shall be null and

### **EXHIBIT 3.8**

void and of no force or effect on either party. Any revocation must be in writing and received by Joseph Ferrara, Executive Officer via email [atjferrara@rubicontechnology.com](mailto:atjferrara@rubicontechnology.com), by 5:00 p.m. EST on or before the seventh (7<sup>th</sup>) day after this Agreement is executed by **MM**.

- (c) **Notice of Rights Under ADEA.** Without detracting in any respect from any other provision of this Agreement.
1. **MM**, in consideration of the Share Payment and other good and valuable consideration as detailed herein, agrees and acknowledges that this Agreement constitutes a knowing and voluntary waiver of all rights or claims he has or may have against Rubicon as set forth herein, including, but not limited to, all rights or claims arising under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), including, but not limited to, all claims of age discrimination in employment and all claims of retaliation in violation of the ADEA.
2. **MM** understands that, by entering into this Agreement, he does not waive rights or claims that may arise after the date of his execution of this Agreement, including without limitation any rights or claims that he may have to secure enforcement of the terms and conditions of this Agreement.
3. **MM** agrees and acknowledges that the consideration (Settlement Payment, Health Benefits, and other good and valuable consideration as detailed herein) provided to him under this Agreement is in addition to anything of value to which he is already entitled.
4. Rubicon hereby advises **MM** to consult with an attorney prior to executing this Agreement.
5. **MM** acknowledges that he was informed that he had at least twenty- one (21) days in which to review and consider this Agreement and after signing it, seven (7) days in which to revoke it as described in this Agreement.
- (d) **Further Assurance.** The Parties to this Agreement shall deliver or cause to be delivered such instruments and other documents at such times and places as are reasonably necessary or desirable, and shall take any other action reasonably requested by the other party for the purpose of giving effect to this Agreement.
- (e) **Subpoena or Legal Service.** Upon service on **MM**, or anyone acting on his behalf, of any subpoena, order, directive or other legal process requiring him to engage in conduct encompassed by this Agreement, **MM** or his attorney shall immediately notify Rubicon of such service and of the content of any testimony or information to be provided pursuant to such subpoena, order, directive or other legal process and within five (5) business days send to the undersigned representative of Rubicon via overnight delivery (at Rubicon's expense) a copy of the documents that have been served upon **MM**.
- (f) **Successors and Assignment.** This Agreement shall inure to the benefit of, be binding upon and be enforceable by and against the Parties and their respective successors and permitted assigns. No party to this Agreement may assign any of his or its rights or obligations under this Agreement or any document referred to in this Agreement without the prior written consent of the other Parties to this Agreement.
- (g) **Modification and Waiver.** No amendment, variation or waiver of this Agreement shall be valid unless it is in writing and duly executed by or on behalf of all the Parties to this Agreement.

## **EXHIBIT 3.8**

- (h) **Notices.** Any notices to be given under this Agreement shall be sent to the address of the party appearing on the signature page hereto.
  
- (i) **Duty to Cooperate.** MM agrees that he will assist and cooperate with Rubicon in connection with the defense or prosecution of any claim that may be made against or by Rubicon, or in connection with any ongoing or future investigation or dispute or claim of any kind involving Rubicon, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations or proceedings relate to services performed or required to be performed by MM, pertinent knowledge possessed by MM, or any act or omission by MM. MM further agrees to perform all acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this section. Rubicon agrees to pay MM at an hourly rate of \$600 per hour and reimburse MM for reasonable expenses for services provided pursuant to this **Section 14(i)** against invoices submitted by MM.
  - G) **Construction.** This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party who caused it to have been drafted. As used in this Agreement, the singular shall include the plural and vice versa and the use of any gender shall be deemed to be or include the neutral and other gender, whenever appropriate.
  
- (k) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. The Parties may sign this Agreement electronically which signature will have the same effect as a handwritten signature.
  
- (l) **Attorney's Fees and Costs.** Each of the Parties to this Agreement shall bear their own costs and attorneys' fees in connection with the preparation, review, negotiation, drafting or redrafting of this Agreement.

*[remainder of page intentionally left blank]*

**EXHIBIT 3.8**

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily execute this Agreement and Release as of the date first above written.

**MM EXPRESSLY ACKNOWLEDGES, REPRESENTS, AND WARRANTS THAT HE HAS READ THIS AGREEMENT CAREFULLY; THAT HE FULLY UNDERSTANDS THE TERMS, CONDITIONS, AND SIGNIFICANCE OF THIS AGREEMENT; THAT HE HAS HAD A FULL OPPORTUNITY TO REVIEW THIS AGREEMENT; THAT HE UNDERSTANDS THAT THIS AGREEMENT HAS BINDING LEGAL EFFECT; AND THAT HE HAS EXECUTED THIS AGREEMENT FREELY, KNOWINGLY, AND VOLUNTARILY.**

**PLEASE READ CAREFULLY. THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES.**

**RUBICON TECHNOLOGY INC.**

By:     /s/ Joseph Ferrara      
Joseph Ferrara, its Executive Officer

    /s/ Michael Mikolajczyk      
Michael Mikolajczyk

FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, WITH RESPECT TO THE OBLIGATIONS IN SECTIONS 3, 4 AND 9 HEREOF IN ITS CAPACITY AS A HOLDER OF MORE THAN TWENTY PERCENT (20%) OF THE CAPITAL STOCK OF THE COMPANY:

**JANEL CORPORATION**

By:     /s/ Darren Seirer      
Duly Authorized

**CONSULTING AGREEMENT**

This Consulting Agreement (this "Agreement") is made and entered into effective as of June 30, 2023, by and between Rubicon Technology, Inc., a Delaware corporation (the "Company") and Michael Mikolajczyk and his affiliate, Miko Investments, LLC ("Consultant"), having an office as set forth in the signature block.

WHEREAS, the Company desires to retain Consultant as an independent contractor to perform the Services (as defined herein) for the Company; and

WHEREAS, Consultant is willing to perform such Services, on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. SERVICES AND COMPENSATION

(a) Consultant agrees to perform for the Company the services described in Exhibit A attached hereto (the "Services").

(b) The Company agrees to pay Consultant the compensation set forth in Exhibit A for the performance of the Services, and to reimburse Consultant for expenses, as set forth in Exhibit A.

2. CONFIDENTIALITY

(a) Definition. "Confidential Information" means any and all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to business processes, practices, methods, plans, publications, documents, research, operations, services, strategies, techniques, agreements, contracts, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, work-in- process, technologies, databases, compilations, device configurations, embedded data, metadata, manuals, records, articles, systems, material, results, developments, reports, graphics, drawings, sketches, formulae, notes, algorithms, product plans, designs, styles, models, ideas, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, or specifications of the Company and its affiliates, including all Confidential Information disclosed by or on behalf of the Company either directly or indirectly in writing, or orally.

(b) Non-Use and Non-Disclosure. Consultant shall not, during or subsequent to the term of this Agreement, use Confidential Information for any purpose whatsoever other than to perform the Services for the Company, and shall not disclose Confidential Information to any third party except as expressly authorized herein. It is understood that Confidential Information shall remain the sole property of the Company. Consultant agrees that Consultant shall treat all Confidential Information of the Company with the same degree of care as Consultant accords its own confidential information, but in no case less than reasonable care. Without limiting the foregoing, Consultant further agrees to take all necessary precautions to prevent any disclosure of such Confidential

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Information except as may be authorized expressly by the Company. Consultant will immediately notify the Company of any unauthorized use or disclosure of Confidential Information, and agrees to assist, at its sole expense and effort, the Company in remedying any such unauthorized use or disclosure of the Confidential Information. Confidential Information does not include information which Consultant can clearly demonstrate (i) is known to Consultant at the time of disclosure to Consultant by or on behalf of the Company, provided that such information is not otherwise restricted as to use or disclosure by another agreement between Consultant and the Company, (ii) has become publicly known and made generally available through no wrongful act of Consultant, or (iii) has been rightfully received by Consultant without

## **EXHIBIT 3.9**

restriction as to use or disclosure from a third party who is authorized to make such disclosure without a breach of such third party's obligations of confidentiality.

(e) Return of Materials. Upon the termination of this Agreement, or upon the Company's earlier request, Consultant will deliver to the Company any and all of the Company's property and Confidential Information that Consultant may have in his possession or control at the time of such termination.

### **3. OWNERSHIP**

(a) Assignment. Except as otherwise provided for herein, Consultant agrees that all inventions, concepts, arts, discoveries, designs, developments, contributions, findings or improvements, whether or not patentable or registrable under copyright or similar laws, and all copyrightable and patentable works, including, but not limited to, all software, source and object code, algorithms, architecture, works of authorship, trademarks, formulas, methods, processes, manufacturing techniques and trade secrets, and all related know-how and rights to obtain, register, perfect and enforce these proprietary interests conceived, discovered, developed or reduced to practice by Consultant, solely or in collaboration with others, in connection with Consultant's performance of the Services under this Agreement, whether (i) related to the Company's business or actual or demonstrably anticipated research or development, (ii) developed using any amount of the Company's equipment, supplies, facilities or Confidential Information or (iii) resulting from any work performed for the Company, whether or not performed during ordinary business hours (collectively, "Work Product"), are the sole property of the Company. Consultant further agrees to assign or cause to be assigned, and does hereby irrevocably and unconditionally assign fully, to the Company all Work Product and any associated copyrights, patents, mask work rights or other intellectual property rights.

(b) Further Assurances. Consultant agrees to provide reasonably requested assistance to the Company, or its designee, at the Company's expense, to secure the Company's rights in the Work Product and any associated copyrights, patents, mask work rights or other intellectual property rights in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which are reasonably necessary to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive right, title and interest in and to such Work Product, and any associated copyrights, patents, mask work rights or other intellectual property rights. Consultant further agrees that Consultant's obligation to execute or cause to be executed, when it is in Consultant's power to do so, any such instrument or papers shall continue after the termination of this Agreement.

### **4. REPORTS**

Consultant agrees that he will from time to time during the term of this Agreement or any extension thereof keep the Company advised as to Consultant's progress in performing the Services hereunder and that Consultant will, if and as requested by the Company, prepare written reports with respect thereto.

### **5. TERM AND TERMINATION**

(a) Term. This Agreement will commence on July 1, 2023 and will continue until January 1, 2024 or (ii) termination as provided below.

(b) Termination. Either Party may terminate this Agreement, in its complete and unfettered discretion, upon thirty (30) days' written notice.

(c) Survival. Upon such termination, all rights and duties of the parties toward each other shall cease and terminate, except that:

(i) If the Company terminates the Agreement, then the Company shall pay, within thirty (30) days of the effective date of termination, all agreed to amounts that would have been paid to Consultant for Services under this Agreement, if any, in accordance with the provisions of Section I; and

(ii) If the Consultant terminates the Agreement, then the Company shall pay within thirty (30) days of the effective date of termination, all amounts owing to Consultant for Services under this Agreement



## **EXHIBIT 3.9**

through the effective date of termination, if any, in accordance with the provisions of Section 1.

### **6. ASSIGNMENT**

Neither this Agreement nor any right hereunder nor interest herein may be assigned, pledged or transferred by Consultant without the express written consent of the Company.

### **7. INDEPENDENT CONTRACTOR STATUS**

It is the express intention of the parties that Consultant is an independent contractor.

This Agreement shall not be construed as creating between Consultant and the Company or any of its affiliates any agency, employment or representative relationship. Consultant shall, at all times, perform the Services as an independent contractor. The Company will not withhold from payments to be made to Consultant any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law, or make any contributions on Consultant's behalf for unemployment insurance or social security; nor will the Company make available to Consultant any of the benefits afforded to employees of the Company. Neither party shall be liable to the other for any lost profits or indirect or inconsequential damages arising under this Agreement.

### **8. ADDITIONAL COVENANTS**

(a) Authority. Consultant shall not, nor shall it represent itself as having any authority to, commit the Company or its affiliates by negotiation or otherwise to any contract,

agreement or other legal commitments in the name of or binding upon the Company or its Affiliates or pledge or extend credit in the name of the Company or its affiliates.

(b) No-Subcontractors. Consultant shall not subcontract any portion of the Services to any agent or subcontractor of Consultant, without the express written permission of the Company. Any such permitted subcontractor will be retained only pursuant to terms and conditions at least as favorable to the Company and its affiliates as this Agreement, and Consultant will be liable for any breach of such agreement and for the performance of each such permitted subcontractor.

(c) Compliance with Laws. Consultant agrees to comply with all federal, state, and local laws, ordinances, rules and regulations, which are now or may become applicable to the Services covered by this Agreement, and to secure any and all necessary permits, licenses and other authorizations which are legally required in order for Consultant to perform the Services.

(d) Acknowledgment. Consultant hereby acknowledges and agrees that the restrictive covenants and other terms and conditions of this Agreement are reasonable and reasonably necessary to protect the legitimate business interests of The Company. Consultant represents that Consultant's execution of this Agreement is its free and voluntary act, that Consultant has entered into this Agreement for good, valuable and adequate consideration and that Consultant has entered into this Agreement with the advice of counsel.

### **9. REMEDIES**

(a) Except as provided in Section 15(d), the Company and Consultant agree that any dispute or controversy arising out of, relating to or in connection with the interpretation, validity, construction, performance, breach or termination of this Agreement shall be settled by binding arbitration to be held in New York County, New York, in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction.

(b) Consent to Personal Jurisdiction. The arbitrator(s) shall apply New York law to the merits of any dispute or claim, without reference to conflicts of law rules. Consultant hereby consents to the personal jurisdiction of the state and federal courts located in New York, New York for any action or proceeding arising from or relating to this Agreement or relating to any arbitration in which the parties are participants.

(c) Costs. Company and Consultant shall each pay one-half of the costs and expenses of such arbitration, and each shall separately pay its counsel fees and expenses unless otherwise required by law.

(d) Equitable Relief. The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgment of the powers of the arbitrator.

**EXHIBIT 3.9**

(e) Acknowledgment. CONSULTANT HAS READ AND UNDERSTANDS SECTION 9, WHICH DISCUSSES ARBITRATION. CONSULTANT UNDERSTANDS THAT BY

SIGNING THIS AGREEMENT, CONSULTANT AGREES TO SUBMIT ANY CLAIMS ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, OR THE INTERPRETATION, VALIDITY, CONSTRUCTION, PERFORMANCE, BREACH OR TERMINATION THEREOF, TO BINDING ARBITRATION, EXCEPT AS PROVIDED IN SECTION 15(d), AND THAT THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF CONSULTANT'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL ASPECTS OF THE RELATIONSHIP BETWEEN THE PARTIES.

10. GOVERNING LAW

This Agreement shall be governed by the internal substantive laws, but not the choice of law rules, of the State of New York.

11. ENTIRE AGREEMENT

This Agreement is the entire agreement of the Parties and supersedes any prior agreements between them, whether written or oral, with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by Consultant and a duly authorized representative of the Company.

12. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement, or any terms thereof, shall not affect the validity of this Agreement as a whole, which shall at all times remain in full force and effect.

13. NOTICES

Any notice shall be addressed to the party being notified at the address set forth below or at such other address as either party may in writing provide. Notice shall be deemed given in accordance with this Section 13 upon delivery if personally delivered or transmitted via reputable overnight carrier.

If to the Company:

If to Consultant:

Miko Investments, LLC  
540 Frontage Road, Suite 2230  
Northfield, Illinois 60093

[Remainder of this Page Intentionally Blank; Signature Page Follows]

**EXHIBIT 3.9**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**RUBICON TECHNOLOGY INC.**

By:     /s/ Joseph Ferrara    

Its:     Executive Officer & CFO    

**CONSULTANT**

    /s/ Michael Mikolajczyk    

Michael E. Mikolajczyk  
Manager/Member  
Miko Investments, LLC

## **EXHIBIT 3.9**

### **EXHIBIT A**

#### Services and Compensation

All capitalized terms not defined herein shall have the meaning ascribed to them in the Consulting Agreement.

1. **Services:** Consultant will make himself available to consult with and assist the Executive Officer of the Company from time to time as requested by the Executive Officer for no more than twenty (20) hours per month, pro rated for any partial month during the Term.
2. **Expiration:** From the date of execution of the Consulting Agreement through January 1, 2024.
3. **Services Rate:**
  - (a) \$20,000 upon execution of this Agreement;
  - (b) \$15,000 on October 1, 2023;
  - (c) \$15,000 on January 1, 2024.
4. **Expenses.** Consultant shall be entitled to reimbursement by the Company, in accordance with the Company's expense reimbursement policy as may be in effect from time to time, for such customary, ordinary and necessary business and travel expenses as are incurred by Consultant in the performance of Consultant's duties and activities required by the Services. Upon receipt of appropriate receipts or documentation of expenses incurred in the ordinary course of business, the Company shall promptly reimburse Consultant for reasonable and customary business and travel expenses incurred by Consultant in performing the Services hereunder.

**EXHIBIT 3.10**

**EXHIBIT A**

MANAGEMENT SERVICES AGREEMENT

This management services agreement (the "Agreement") is dated as of August 15, 2023 and is between Janel Corporation ("Janel"), a Nevada corporation having an office at 80 Eighth Avenue, New York, New York 10011, and Rubicon Technology, Inc., a Delaware corporation (the "Company"), having an office at 900 East Green Street, Bensenville, Illinois 60106 (the "Company Office").

RECITALS

WHEREAS, the Company desires to have Janel furnish certain services to the Company and its subsidiaries, as described in Section 1.01 ("Services"), and Janel has agreed to furnish Services pursuant to the terms and conditions set forth herein.

WHEREAS, a Special Committee (the "Special Committee") of the Board of Directors of the Company (the "Board") comprised of the independent and disinterested directors are approving this Agreement and recommend that the Board approve this Agreement, and a majority of the independent and disinterested directors of the Board will vote to approve this Agreement.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Engagement of Janel

1.01. Services.

During the term of this Agreement, Janel shall provide to the Company and its subsidiaries the Services described and defined on Exhibit A in connection with the business, operations and affairs, both ordinary and extraordinary, of the Company and its subsidiaries and affiliates. During the term of this Agreement, Janel shall provide to the Company the non-exclusive services of persons designated by Janel to perform the Services in accordance with the terms and provisions of this Agreement (the "Designated Persons"). Each of the Designated Persons shall devote such time and effort as is reasonably necessary to fulfill the statutory and fiduciary duties applicable in their performance of the Services until such time as such Designated Person is instructed or removed by the Board or the resignation of such Designated Person in such capacity to perform their applicable Services or his or her death. In the event a Designated Person ceases for any reason to serve in such capacity to perform their applicable Services, Janel has a right, but not an obligation, to propose another person to serve in such capacity to perform the applicable Services. If such person is required to be approved by the Board, then this Agreement shall be deemed amended accordingly. This Agreement shall apply in all material respects to any successor to a Designated Person who performs their applicable Services in accordance with this Agreement and the term Designated Person used herein shall apply to any such successor. The Designated Persons or other persons designated by Janel to perform the Services (i) shall be the only persons performing the Services for the Company, (ii) shall perform or provide no other services for or to the Company and (iii) shall not serve as a director, officer, employee, agent or representative for the Company.

1.02. In performing Services, Janel and its personnel shall be subject to the oversight of the Special Committee and shall report to the Company's Executive Officer at least quarterly and otherwise in accordance with such procedures as may be adopted by the Special Committee from time to time. Janel, any Designated Person, any of Janel's Agents (as defined below) or any of its personnel may incur an obligation or enter into any transaction on behalf of the Company, other than as specifically contemplated hereby, only (a) with the prior approval of the Special Committee or (b) in accordance with any written delegation of authority delivered to Janel with the consent of the Special Committee (as such delegation of authority may be amended from time to time, the "Delegation of Authority").

1.03. While the amount of time and personnel required for performance by Janel hereunder will necessarily vary depending upon the nature and type of Services, Janel shall devote such time and effort and make available such personnel as may from time to time reasonably be required for the performance of Services hereunder

## **EXHIBIT 3.10**

and shall use its reasonable best efforts to carry out the purposes of the Company and shall perform Services to the best of its abilities in a timely, competent and professional manner, in compliance with any laws relevant to such Services, in compliance with the Delegation of Authority, in compliance with the Company's policies, procedures and controls provided by the Company to Janel in writing from time to time and in compliance with such reasonable directions as Janel's officers, employees or representatives may receive from the Special Committee or from the Company's officers or other designated representatives from time to time.

1.04. Exhibit A may be amended from time to time to provide for additional Services, the elimination of certain Services, increases or decreases to the compensation paid hereunder, or other changes, upon the mutual agreement of the parties hereto in writing.

1.05. In the performance of Services, Janel will (i) assist and support the Company's compliance with any applicable Federal or state securities law and the rules of any national securities exchange or over-the-counter market, as applicable, and act in a manner consistent with regards thereto, and (ii) not cause the Company to violate, any statute or regulation or any order, writ, judgment, or decree of any court, arbitrator or governmental authority applicable to the Company and its subsidiaries and affiliates.

### Section 2. Term and Termination

2.01. This Agreement shall commence effective as of August 15, 2023 and shall continue unless and until terminated as provided in Section 2.02 below; provided, however, the fees hereunder shall be subject to a review and adjustment as agreed upon by the parties hereto.

2.02. This Agreement may be terminated (i) by either party, effective on any anniversary date, upon not less than ninety (90) days prior written notice to the other; (ii) by the Company, at any time, on less than ninety (90) days notice; provided that, if the Company provides less than ninety (90) days notice, it shall pay to Janel a termination fee equal to 125% of the fees due under this Agreement, as calculated under Section 3, from, and including, such termination date until, and including, the 90th day following the date of such notice; (iii) immediately upon the bankruptcy or dissolution of Janel, or (iv) immediately by the Company for Cause (as defined below) or upon a material breach of this Agreement (as reasonably determined by the Special Committee) by Janel.

For the purposes of this Agreement, "Cause" shall mean, with respect to the termination of this Agreement, fraud, gross negligence, criminal conduct or willful misconduct by Janel or any Designated Person, as applicable, or breach of fiduciary duty by any Designated Person, in connection with performing its or his or her respective duties hereunder, as reasonably determined by the Special Committee.

2.03. In the event this Agreement is terminated pursuant to Section 2.02 above, Janel shall cease to perform Services. If the termination of this Agreement takes effect on a day other than the end of a calendar month, monthly fees shall be prorated based on the number of days that Janel performed Services during such calendar month until termination.

### Section 3. Payments to Janel

3.01. In consideration of Services furnished by Janel hereunder, the Company shall pay to Janel an hourly fee to be negotiated and approved by the Special Committee. Any fees paid to Janel under this agreement will be at market prices determined by Janel.

The fee payable hereunder shall be paid by the Company to Janel upon demand of Janel during the term of this Agreement. Janel shall prepare a statement documenting such fees, and the Company shall pay Janel for such expenses within thirty (30) days after receipt and approval of such statement and such supporting material as the Special Committee may require.

3.02. The Company shall reimburse Janel and the Designated Persons for all documented, reasonable and necessary business expenses incurred on behalf of the Company solely in connection with the performance of Services provided to the Company, including, but not limited to:

### **EXHIBIT 3.10**

(a) Costs of legal, tax, accounting, consulting, auditing, administrative, compliance, marketing, investor relations and other similar services rendered for the Company, including such services rendered by providers retained by Janel or the Designated Persons to the extent that there is insufficient expertise within Janel to provide such services.

(b) Costs associated with any computer software or hardware, electronic equipment, or purchased information technology services from third party vendors to the extent that there is insufficient expertise within Janel to provide such services.

(c) Other fees payable to third party administrators and service providers.

(d) Expenses incurred by managers, officers, employees and agents of Janel or the Designated Persons for travel on behalf of the Company and other out-of-pocket expenses incurred by managers, officers, employees and agents of Janel or the Designated Persons.

(e) All other expenses not otherwise covered hereunder actually incurred by Janel and the Designated Persons which are reasonably necessary for the performance of the Services under this Agreement.

Expenses incurred by Janel on behalf of the Company and reimbursable pursuant to this Section 3.02 shall be reimbursed by the Company at cost upon written demand of Janel. Janel shall prepare a statement documenting such expenses, including copies of provider invoices, and the Company shall reimburse Janel for such expenses within thirty (30) days after receipt and approval of such statement and such supporting material as the Special Committee may require.

3.03. The provisions of Section 3.02 shall survive the expiration or earlier termination of this Agreement to the extent such expenses have previously been incurred or are incurred in connection with such expiration or termination. For the avoidance of doubt, the expenses payable by the Company as described in Section 3.02 are exclusive of, and in addition to, the fees payable pursuant to Section 3.01.

#### Section 4. Representations and Warranties of Janel and the Designated Persons

4.01. Janel hereby makes the following representations and warranties on which the Company has relied in making the delegation set forth in this Agreement:

(a) Janel is a Nevada corporation, duly organized, validly existing and in a good standing under the laws of the State of Nevada and is duly qualified as a foreign company in each jurisdiction in which the nature of its business makes such qualification necessary.

(b) Janel has all requisite power and Janel has authority to execute, deliver and perform this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of Janel.

(c) This Agreement constitutes a legal, valid and binding obligation of Janel, enforceable against it in accordance with its terms.

(d) The execution, delivery and performance by Janel or the Designated Persons, as applicable, of this Agreement does not (i) violate any provision of Janel's Certificate of Incorporation, Code of Business Conduct and Ethics or By-laws, (ii) violate any statute or regulation or any order, writ, judgment, or decree of any court, arbitrator or governmental authority applicable to Janel or any of its assets or the Designated Persons, or (iii) violate or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of any lien on the assets of Janel pursuant to the provisions of, any mortgage, indenture, contract, agreement or other undertaking to which Janel is a party.

(e) To the knowledge of Janel, there are no past or present actions, occurrences, conditions or circumstances that could reasonably be expected to adversely affect the Company's ability to comply

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with the requirements of applicable Federal and state securities laws or its control environment, in each case by reason of the entry by the Company into this Agreement or the provision of Services by Janel.

## Section 5.

5.01. Janel may delegate any or all of the powers, rights and obligations under this Agreement and may appoint, employ, contract or otherwise deal with any person or entity (each, an "Agent") in respect of the performance of Services. Janel may assign to any such Agent approved by the Special Committee the right to receive any fee or reimbursement of expenses as Janel would be entitled to receive under this Agreement.

5.02. Janel shall supervise the activities of its Agents, and notwithstanding the designation of or delegation to any Agent, Janel shall remain obligated to the Company for the proper performance of Services; provided, however, that Janel and the Company may enter into any agreement for indemnification pursuant to which an Agent may indemnify and hold harmless Janel and the Company, jointly and severally, from any liability to them arising by reason of the act or omission of such Agent. Nothing contained herein shall affect or otherwise limit the indemnification obligations of Janel to the Company as provided in Section 9.

Section 6. Records; Access

6.01. Janel and its officers, employees and representatives, including the Designated Persons, in performance of Services, shall have access to all accounting books, ledgers, receipts, business information, employee information, research, organizational structure information, data, computer programs and budget figures of the Company and its subsidiaries and any other information of the Company and its subsidiaries related to the performance of Services by Janel, its officers, employees, and representatives, including the Designated Persons, whether or not considered material (the "Information"), and the Company shall promptly make any such Information available to Janel upon its reasonable request.

6.02. Janel covenants that during the term of this Agreement it will notify the Company of any change in Janel's business, properties, assets, prospects, financial condition or results of operations or that would reasonably be expected to have a material effect on the provision of Services under this Agreement.

6.03. In the event the Agreement is terminated, Janel will transfer any and all physical and electronic records of the Company in a reasonable format specified by the Company and will make source codes owned or controlled by Janel-as they pertain to the Company-available to the Company during a transition period of up to nine (9) months following the date of termination.

Section 7. Limitation on Activities

Notwithstanding any provision of this Agreement, Janel and its personnel shall not take any action which, in their sole judgment made in good faith, would violate any law, rule, regulation or statement of policy of any governmental body or agency having jurisdiction over the Company and its subsidiaries and affiliates, or otherwise not permitted by the Company's Certificate of Incorporation or By-laws, as each may be amended from time to time, or policies and procedures, except if such action shall be ordered in writing by the Special Committee following the affirmative vote of a majority of the members of the Special Committee present at a properly called meeting of the Special Committee, in which case Janel or its personnel shall have no liability for acting in accordance with the specific instructions of the Company so given. Notwithstanding the foregoing, the officers, directors, members, employees, affiliates, consultants or agents of Janel (the "Janel Persons") (except the Designated Persons in their respective capacities provided hereunder) shall not be liable to the Company or holders of its securities for any act or omission by Janel or any Designated Person, as applicable, taken or omitted to be taken in the performance of Services under this Agreement except as provided in Section 9 of this Agreement.

Section 8. Limitation on Liability

Janel shall reasonably rely on information provided to it about the Company, if any, that is provided by the Company or the Company's subsidiaries, employees, agents or representatives. In no event shall Janel be liable for any error or inaccuracy of any report, computation or other information or document produced in accordance with



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this Agreement, for whose accuracy the Company assumes all responsibility, unless resulting from the fraud, gross negligence or willful misconduct of Janel, any Designated Person or other Janel Person. Notwithstanding any provision herein to the contrary, except with respect to fraud, gross negligence or willful misconduct by Janel, any Designated Person or other Janel Person, Janel's aggregate liability with respect to, arising from, or arising in connection with this Agreement, or from all Services provided or omitted to be provided under this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed the amounts paid hereunder by the Company to Janel as fees and charges for the trailing twelve months from the date of any claim, but not including reimbursable expenses.

Section 9. Indemnity and D&O Insurance.

9.01. To the fullest extent permitted by law, Janel shall defend, indemnify, save and hold harmless the Company from and against any claims, liabilities, damages, losses, costs or expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and reasonable expenses of investigating or defending against any claim or alleged claim of any nature whatsoever (a "Claim") resulting from Janel's, the Designated Persons' or the Janel Persons' activities or services under this Agreement and incurred by reason of Janel's, any Designated Person's or other Janel Person's, as applicable, fraud, gross negligence or willful misconduct; provided, however, that Janel, such Designated Person or such other Janel Person shall not be held responsible for (i) any action of the Company in which Janel, any Designated Person or other Janel Person, as applicable, advised the Board or the Special Committee prior to taking such action and the Board (including a majority of the disinterested directors) or the Special Committee declined to follow such advice and such decision was provided in writing to Janel or (ii) any Claim to the extent such Claim is occasioned by the fraud, gross negligence or willful misconduct of the Company's officers, directors, employees, consultants or agents (except for Designated Persons or other Janel Persons).

9.02. To the fullest extent permitted by law, the Company shall defend, indemnify, save and hold harmless Janel, Designated Persons and other Janel Persons from and against any Claim resulting from the Company's fraud, gross negligence or willful misconduct, except to the extent any such Claim is occasioned by the fraud, gross negligence or willful misconduct of Janel, Designated Persons or other Janel Persons.

9.03. The Company shall enter into customary indemnification agreements with the Agents.

9.03. Promptly after receipt by Janel or the Company of notice of any Claim, it (the "Indemnified Party") shall notify the other (the "Indemnifying Party") in writing; provided, however, that the failure of the Indemnified Party to give timely notice hereunder shall not affect the rights of the Indemnified Party to indemnification hereunder, except to the extent that the Indemnifying Party can demonstrate actual, material prejudice to it as a result of such failure. The Indemnified Party shall reasonably cooperate with appropriate requests of the Indemnifying Party with regard to the defense of any Claim. The Indemnifying Party shall maintain authority and control of the defense of any such Claim and the authority to settle or otherwise dispose of any such Claim (provided that the Indemnified Party shall have the right to reasonably participate at its own expense in the defense or settlement of any such Claim). In no event, however, may the Indemnifying Party agree to any settlement of any Claim that would affect any of the Indemnified Party's rights or obligations, or that would constitute an admission of guilt or liability on the part of the Indemnified Party, without the Indemnified Party's express prior written consent.

9.04. If Janel should reasonably determine its interests are or may be adverse to the interests of the Company, Janel may retain its own counsel in connection with such claim or alleged claim or action, in which case the Company shall be liable, to the extent permitted under this Section 9, to Janel for any reasonable and documented legal, accounting or other directly related fees and expenses incurred by Janel in connection with its investigating or defending such claim or alleged claim or action.

9.05. Neither Janel nor the Company (including their officers, directors, members, employees, affiliates and consultants and the Designated Persons) shall be liable to the other or any third party for any special, consequential or exemplary damages (including lost or anticipated revenues or profits relating to the same) arising from any claim relating to this Agreement or any of the Services provided hereunder, whether such claim is based on warranty, contract, tort (including negligence or strict liability) or otherwise, even if an authorized representative

## **EXHIBIT 3.10**

of Janel or the Company, as applicable, is advised of the possibility or likelihood of the same.

### Section 10. Payments and Duties of Janel Upon Termination

10.01. Janel shall promptly upon termination:

(a) pay to the Company any money collected and held for the account of the Company pursuant to this Agreement, after deducting any accrued compensation and reimbursement for its expenses to which it is then entitled under Section 3;

(b) deliver to the Board all assets, books and records and documents of the Company then in the custody of Janel; and

(c) cooperate with the Company to provide an orderly management transition and the Company shall pay Janel reasonable fees and expenses in connection therewith.

Section 11. Confidential Information; Non-Solicitation. Except as provided in Sections 11.01 and 11.02 below, neither Janel nor the Designated Persons shall at any time during or following the termination or expiration for any reason of this Agreement, directly or indirectly, disclose, publish or divulge to any person (except where necessary in connection with the furnishing of Services under this Agreement), appropriate or use, or cause or permit any other person to appropriate or use, any of the Company's inventions, discoveries, improvements, trade secrets, copyrights or other proprietary, secret or confidential information not then publicly available (the "Confidential Information").

11.01. Notwithstanding anything to the contrary in this Section 11, Janel or the Designated Persons or their agents may disclose Confidential Information to Janel's representatives or agents who (i) need to know such information to permit Janel and the Designated Persons to provide Services in accordance with the terms of this Agreement, (ii) are informed of the confidential nature of the Confidential Information and (iii) agree to maintain the confidentiality of the Confidential Information.

11.02. Notwithstanding anything to the contrary in this Section 11, if Janel, the Designated Persons or any of Janel's representatives are required to disclose any Confidential Information pursuant to applicable laws or regulations or by any subpoena or similar legal process, Janel shall promptly notify the Company in writing of any such requirement, if legally permissible, so that the Company may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. Janel shall, and shall direct its representatives (including the Designated Persons) to, reasonably cooperate with the Company to obtain such a protective order or other remedy and if such order or other remedy is not obtained, or the Company waives compliance with the provisions of this Agreement, Janel, the Designated Persons or Janel's representatives shall disclose only that portion of the Confidential Information which they are advised by counsel that they are legally required to so disclose and will use good faith efforts to obtain reliable assurance that confidential treatment will be accorded the information so disclosed.

11.03. Janel and the Designated Persons acknowledge that (i) they are aware and that Janel's representatives have been advised that (a) the Confidential Information may include material non-public information about the Company and its subsidiaries and affiliates, and (b) the United States securities laws and securities law of other jurisdictions prohibit any person who has material non-public information about a company from purchasing or selling securities of such company on the basis of such information or from otherwise misappropriating such material non-public information in breach of fiduciary duty or other relationship of trust and confidence, (ii) Janel has developed compliance procedures regarding the use of material non-public information and (iii) Janel, the Designated Persons and Janel's representatives will handle such material non-public information in accordance with applicable laws, including Federal and state securities laws. Janel and its personnel, and the Designated Persons, shall comply with any Company's policies regarding Confidential Information and insider trading.

11.04. The Company agrees that, during the term of this Agreement, and for a period of one (1) year from the termination of this Agreement, it will not, directly or indirectly, without obtaining the prior written consent of Janel, solicit for employment, hire or employ any person who has served as a Designated Person or any other

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officers or employees of Janel or its affiliates; provided, however, that the restriction on solicitation or hire above shall not restrict the Company's ability to conduct generalized searches for employment (including through the use of general or media advertisements, employment agencies and internet postings) not directly targeted towards Janel's or its affiliates' officers or employees and hiring any person that ceases to be employed by Janel or an affiliate thereof without the Company's prior direct solicitation.

11.05. Janel agrees that, during the term of this Agreement, and for a period of one (1) year from the termination of this Agreement, it will not, directly or indirectly, without obtaining the prior written consent of the Company, solicit for employment, hire or employ any person who has served as an officer or employee of the Company or its affiliates; provided, however, that the restriction on solicitation or hire above shall not restrict Janel's ability to conduct generalized searches for employment (including through the use of general or media advertisements, employment agencies and internet postings) not directly targeted towards the Company's or its affiliates' officers or employees and hiring any person that ceases to be employed by the Company or an affiliate thereof without Janel's prior direct solicitation.

Section 12. Non-Exclusive Arrangement; Conflicts of Interest

12.01. The Company acknowledges that Janel and its Affiliated Companies (as defined below) have in the past and may from time to time in the future enter into agreements similar to this Agreement with other companies pursuant to which Janel may agree to provide services similar in nature to Services being provided hereunder, and such agreements shall not constitute a breach of this Agreement; provided, however, that Janel covenants that in doing so Janel shall not breach any of its covenants or obligations expressly set forth in this Agreement. The Company understands that the Designated Persons, as of the respective dates they are designated to serve as the Designated Persons, may provide services to certain other companies, and such other activities shall not constitute a breach of this Agreement. In addition, to the extent business opportunities arise, the Company acknowledges that Janel will be under no obligation to present such opportunity to the Company, and Janel may, in its sole discretion, present any such opportunity to whatever company it so chooses, or to none at all; provided, however, nothing contained herein shall affect or otherwise limit the fiduciary obligations of the officers and directors of the Company, including the Designated Persons.

12.02. The Company, Janel and their respective Affiliated Companies recognize and acknowledge that as a result of Janel providing Services pursuant to this Agreement the potential for conflicts of interest exist between and/or among Janel, the Company, Affiliated Companies of Janel and the Company and the respective officers and directors of Janel and the Company, including but not limited to (i) that an Affiliated Company of Janel may be a majority or significant stockholder of the Company, (ii) that directors, officers, members and/or employees of Janel or of Affiliated Companies of Janel may serve as directors and/or officers of the Company, (iii) that Janel and Affiliated Companies thereof may engage and are expected to continue to engage in the same, similar or related lines of business as those in which the Company, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Company, directly or indirectly, may engage, (iv) that Janel and Affiliated Companies thereof may have an interest in the same areas of corporate opportunity as the Company and Affiliated Companies thereof, and (v) that Janel and Affiliated Companies thereof may engage in material business transactions with the Company and Affiliated Companies thereof, including (without limitation) providing the Services to or being a significant supplier of the Company and Affiliated Companies thereof. Janel and the Company agree that if either of them determines that an actual conflict of interest exists, or if either of them has knowledge of any actions, occurrences, conditions or circumstances that could reasonably be expected to result in a conflict of interest, it shall disclose the fact of such actual or prospective conflict to the other and, in such event, both Janel and the Company shall work cooperatively to either (i) resolve or prevent, as applicable, the conflict of interest in a manner satisfactory to both Janel and the Company or (ii) cease providing or receiving the Services giving rise to such conflict.

12.03. For purposes of this Agreement, "Affiliated Companies" shall mean in respect of Janel any entity which is controlled by Janel, controls Janel or is under common control with Janel (other than the Company and any entity that is controlled by the Company) and in respect of the Company shall mean any entity controlled by the Company.

12.04. The Company represents and warrants that the Special Committee of the Board has approved

## **EXHIBIT 3.10**

this Agreement and recommended Board approval, and a majority of the disinterested directors of the Company has voted to approve this Agreement.

### Section 13. Independence

13.01. Except as specifically provided herein, none of the parties shall act or represent or hold itself out as having authority to act as an agent or partner of any other party, or in any way bind or commit any other party to any obligations. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, trust or other association of any kind, each party being individually responsible for its obligations set forth in this Agreement. Janel or its officers, employees and representatives shall not have the authority to act for, bind, or otherwise commit the Company or any of its subsidiaries or affiliates, and neither Janel nor any of its officers, employees or representatives shall hold itself or themselves out as having any such authority, except (i) the Designated Persons' authority to act in their respective capacities provided hereunder and perform his or her duties in such capacity, and (ii) to the extent that such authority has been specifically granted to Janel or any of its officers, employees and representatives by the Special Committee.

13.02. Neither party shall be responsible for the compensation, the withholding of taxes, workers compensation, employee benefits or any other employer liability for the employees and agents of the other party. For the avoidance of doubt, no Designated Person shall be entitled to receive compensation from the Company for the Services provided in the respective capacities hereunder unless approved by the Board or the Special Committee. Without limiting the generality of the foregoing, the parties acknowledge and agree that Janel is an independent contractor and that none of Janel or the Designated Persons is an employee of the Company. Janel or an Affiliated Company of Janel shall timely withhold and pay all taxes and file all reports required by applicable law to be withheld, paid and filed for the Designated Persons.

### Section 14. General

14.01. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior representations and agreements, whether oral or written, and cannot be modified, changed, waived or terminated except by a writing signed by both of the parties hereto. No course of conduct or trade custom or usage shall in any way be used to explain, modify, amend or otherwise construe this Agreement.

14.02. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, sent by nationally recognized overnight carrier, one day after being sent, or mailed by first class registered or certified mail, return receipt requested, five days after being sent.

14.03. This Agreement shall be governed by and construed under the laws of the State of New York and the parties hereby submit to the personal jurisdiction of any federal or state court located therein, and agree that jurisdiction shall rest exclusively therein, without giving effect to the principles of conflict of laws.

14.04. Except as provided in Section 5 of this Agreement, this Agreement may not be assigned directly or indirectly, by operation of law or otherwise, by any party hereto (including in connection with a sale or transfer of all or substantially all of business or assets of such party, whether by sale, merger, operation of law, or otherwise in connection with a change of control) without the prior written consent of the other parties to this Agreement. This Agreement shall solely inure to the benefit of and be binding upon the parties hereto and their permitted (in accordance with the foregoing) successors and assigns.

14.05. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

14.06. Sections 4, 8, 9, 10, 11 and 14.03 and this Section 14.06 shall survive any expiration or termination of this Agreement.

**EXHIBIT 3.10**

The parties have duly executed this Agreement as of the date first above written.

JANEL CORPORATION

By:   
Name: Vincent Verde  
Title: Principal Financial Officer

RUBICON TECHNOLOGY, INC.

By:   
Name: Joseph Ferrara  
Title: Executive Officer

**EXHIBIT 3.10**

EXHIBIT A  
SERVICES

The "Services" shall include, but not be limited to,

- Provide the non-exclusive services of people to assist the Company's chief accounting officer. Such person, in his or her capacity, may perform duties normally associated with assisting a chief accounting officer, including, as appropriate, managing SEC filing obligations, performing routine accounting tasks, performing reviews, preparing annual budgets and related matters.
- Provide user licenses required to support the Company's operational use of Oracle NetSuite ("NS"), specifically that NS account associated with Janel.

**EXHIBIT 3.11**

**SEPARATION AGREEMENT AND GENERAL RELEASE**

THIS SEPARATION AGREEMENT AND GENERAL RELEASE (the "Agreement") is entered into effective as of the 24th day of October, 2023, by and between Joseph Ferrara ("JF") and Rubicon Technology, Inc., a Delaware corporation ("Rubicon"), (collectively, the "Parties").

EXPLANATORY STATEMENT

JF is currently the Executive Officer and Chief Financial Officer of Rubicon.

JF and the Company have mutually determined that JF will resign as the Executive Officer and Chief Financial Officer, and the Parties wish to settle all amounts owed or potentially owed to JF or Rubicon.

NOW THEREFORE, in consideration of the foregoing Explanatory Statement, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, it is agreed as follows:

AGREEMENT

1. Incorporation of Recitals. The Explanatory Statement to this Agreement is incorporated by reference herein.

2. Closing; Payment and Transfer.

(a) The closing of the transactions contemplated by this Agreement (the "Closing") will take place effective as of October 27, 2023. After the later of the Closing and the expiration of the revocation period described in Section 15(b) herein:

- (1) Rubicon shall cause the total sum of \$45,000 (the "Bonus Payment") to be paid to JF from Rubicon;
- (2) JF's release of Rubicon and Rubicon Released Parties as set forth below will become effective;
- (3) Rubicon's release of JF and JF Released Parties as set forth below will become effective;
- (4) The Bonus Payment will be considered consideration, which is good, valuable, and sufficient, in addition to other consideration as outlined herein; and
- (5) The Parties will execute and deliver, each to the other, a Consulting Agreement in a form agreed to by the Parties effective as of the date hereof (the "Consulting Agreement").

(b) Rubicon agrees to indemnify JF, hold him harmless and advance JF defense costs, including reasonable attorney's fees of counsel for JF, to the maximum extent permitted by the Certificate of Incorporation and the Amended and Restated Bylaws of Rubicon as in effect on the date hereof.

3. Release of Rubicon. JF, for himself, and on behalf of his agents, executors, heirs,

**EXHIBIT 3.11**

representatives, and successors, (each a "JF Released Party" and together the "JF Released Parties"), knowingly and voluntarily releases and forever discharges Rubicon and each of its past and present employees, agents, officers, directors, stockholders holding more than twenty percent (20%) of the capital stock of the Company and subsidiaries, (each a "Rubicon Released Party" and together the "Rubicon Released Parties") from any claims, charges, causes of action, demands or damages, known or unknown, fixed or contingent at law or in equity, and waives and releases any and all rights and claims of any type that JF or JF Released Party may have had or now has at any time prior to the date hereof, against Rubicon and/or the Rubicon Released Parties in any way related to past due, presently owed or future payments related to JF's engagement as a Executive Officer and Chief Financial Officer of Rubicon or otherwise other than for the payment of the Bonus Payment in accordance with and subject to the conditions contained in this Agreement and other than the Consulting Agreement. This waiver and release includes, but is not limited to:

- (a) any claims for any tort, including wrongful termination, wrongful discharge, defamation, intentional infliction of emotional distress, intentional interference with a contractual relationship or any other common law claims;
- (b) any claims for the breach of any written, implied or oral contracts, including, but not limited to, any contract of employment;
- (c) any claims of discrimination, harassment or retaliation based on age, marital status, national origin, ancestry, race, religion, gender, sex, sexual orientation, physical or mental disability or medical condition;
- (d) except for payments provided pursuant to this Agreement and the Consulting Agreement, any claims for payments of any nature, including, but not limited to, wages, attorney's fees, costs, overtime pay, vacation pay, severance pay, commissions, bonuses, or the monetary equivalent of benefits;
- (e) except for the consideration provided pursuant to this Agreement and the Consulting Agreement and any benefits under any retirement plan, any claims or rights under any benefit plan or program of Rubicon;
- (f) any and all claims with respect to the current or future performance, financial results or value of Rubicon; and
- (g) any and all claims that may arise under common law and all federal, state and local statutes, ordinances, rules, regulations and orders, including, but not limited to, any claim or cause of action in law or in equity based on or arising under the Fair Labor Standards Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act (ADEA), as amended by the Older Workers Benefit Protection Act (OWBPA), the Americans with Disabilities Act of 1990, as amended, the Civil Rights Acts of 1866, 1871 and 1991, as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, the Family and Medical Leave Act, as amended, the Employee Retirement Income Security Act of 1974, as amended, the Occupational Safety and Health Act, as amended, the Worker Adjustment and Retraining Notification Act, as amended, any state law with respect to employee or severance rights, any state federal or local laws governing whistleblowing or retaliation claims to the maximum extent permitted by law, including but not limited to the Sarbanes Oxley Act, any laws or agreements that provide for punitive, exemplary or statutory damages, and any laws or agreements that provide for payment of attorneys' fees, costs, or expenses.



### **EXHIBIT 3.11**

4. Release of JF. Rubicon, for itself, and on behalf of its past and present employees, agents, officers, directors, stockholders holding more than twenty percent (20%) of the capital stock of the Company, subsidiaries and affiliates, knowingly and voluntarily releases and forever discharges JF Released Party and JF Released Parties from any claims, charges, causes of action, demands or damages, known or unknown, fixed or contingent at law or in equity, and waives and releases any and all rights and claims of any type that Rubicon and/or Rubicon Released Party may have had or now has at any time prior to the date hereof, against JF and/or the JF Released Parties in any way related to JF, whether already commenced or will commence in the future, for events occurring prior to the date of full execution of this Agreement. This waiver and release includes, but is not limited to:

- (a) any claims for any tort, defamation, intentional infliction of emotional distress, intentional interference with a contractual relationship or any other common law claims;
- (b) any claims for the breach of any written, implied or oral contracts, including, but not limited to any contract of employment;
- (c) any claims of discrimination, harassment or retaliation based on age, marital status, national origin, ancestry, race, religion, gender, sex, sexual orientation, physical or mental disability or medical condition;
- (d) any claims for payments of any nature; and
- (e) any and all claims with respect to the current or future performance, financial results or value of Rubicon.

### 5. Complete Releases.

(a) It is specifically agreed and understood that the releases given pursuant to this Agreement shall be construed in the broadest possible manner. The Parties agree that this Agreement represents a full, final and complete settlement between the Parties regardless of the adequacy of the compensation.

(b) The Parties understand, agree and represent that the covenants made herein and the releases herein executed may affect their rights and liabilities to a substantial extent, and the Parties agree that the covenants and releases provided herein are in their respective best interest on the date hereof. The Parties represent and warrant that, in negotiating and executing this Agreement, they had an adequate opportunity to consult with competent counsel or other representatives of their choosing concerning the meaning and effect of each term and provision hereof, and that there are no representations, promises or agreements other than those expressly set forth herein. The Parties have carefully read this Agreement in its entirety, and fully understand and agree to its terms and conditions, and intend and agree that it is a final and binding settlement agreement, and understand that, in the event of a breach, any Party may seek relief, including damages, restitution and injunctive relief, at law or in equity.

### 6. Waiver of Claims.

(a) Solely for matters occurring prior to the date hereof, JF irrevocably covenants (i) that he has not and will not file suit in any court against any of the Rubicon Released Parties, (ii) that he has not and will not assist anyone else in filing suit in any court against any of the Rubicon Released Parties, except as required by law, and (iii) that he has not and will not file or assist anyone else in filing any

### **EXHIBIT 3.11**

administrative complaint or charge with any governmental agency against any of the Rubicon Released Parties, based on any matter in connection with his investment in or affiliation with Rubicon. JF further warrants and represents that he has not transferred or assigned to any other person, entity or corporation any rights or claims against any of the Rubicon Released Parties. Nothing in this Agreement shall prevent JF from (i) commencing an action or proceeding to enforce this Agreement or the Consulting Agreement; or (ii) filing a timely charge or complaint with the EEOC or participating in any investigation or proceeding conducted by the EEOC regarding any claim of employment discrimination (although JF has waived any right to personal recovery or personal injunctive relief in connection with any such charge or complaint).

(b) Solely for matters occurring prior to the date hereof, Rubicon Released Parties irrevocably covenants that it has not and will not file suit in any court against any of the JF Released Parties, that it has not and will not assist anyone else in filing suit in any court against any of the JF Released Parties, except as required by law, and that it has not and will not file or assist anyone else in filing any administrative complaint or charge with any governmental agency against any of the JF Released Parties, based on any matter in connection with its affiliation with JF prior to the execution of this Agreement except if required by law or government agency or body. Rubicon further warrants and represents that it has not transferred or assigned to any other person, entity or corporation any rights or claims against any of the JF Released Parties.

7. Unemployment Insurance Claim. The Company agrees with JF that it will not object to any claim for unemployment insurance benefits that JF may pursue in accordance with applicable law.

8. Non-Disparagement. Rubicon's Board of Directors on behalf of itself and stockholders holding more than twenty percent (20%) of the capital stock of the Company and JF each agree that they will not knowingly make any statement intended or reasonably likely to disparage or defame the other, or its business if applicable, or its/his directors, officers, agents, employees, or stockholders holding more than twenty percent (20%) of the capital stock of the Company to any individual or entity not a party to this Agreement.

9. Complete Agreement. This Agreement and the Consulting Agreement constitutes the complete, final and entire agreement between the Parties concerning the subject matter and supersedes all prior negotiations, contracts, and proposed agreements, understandings, terms, covenants, conditions or representations, if any, between the Parties.

10. Severability. Should any provision of this Agreement be deemed illegal, invalid or otherwise unenforceable, in whole or in part, by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. Governing Law and Jurisdiction. All provisions of this Agreement will be construed in accordance with and governed by the laws of New York, and each of the Parties irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts situated in New York County.

12. Acknowledgement of Authority. The individual(s) signing this Agreement on behalf of any Party warrant and represent that they have all necessary and appropriate authority and approvals to bind and execute this Agreement on behalf of all entities and in all capacities for which they sign.

13. Miscellaneous.

(a) Expiration of Offer. JF has twenty-one (21) days in which to review and consider this Agreement. If a signed copy of this Agreement has not been received by Lindsey Reynolds, Executive Officer via email at lreynolds@rubicontechnology.com, by 5:00 p.m. EST on the twenty-first day after this

### **EXHIBIT 3.11**

Agreement was provided to *IF*, the terms and conditions set forth in this Agreement will expire automatically. Any changes, whether material or otherwise, made to this Agreement do not restart or affect in any manner the running of the original twenty-one (21) day period.

(b) Right to Revoke Agreement. *IF* may revoke this Agreement within seven (7) days from the date he signs this Agreement, in which case this Agreement shall be null and void and of no force or effect on either party. Any revocation must be in writing and received by Lindsey Reynolds, Executive Officer via email at lreynolds@rubicontechnology.com, by 5:00 p.m. EST on or before the seventh (7<sup>th</sup>) day after this Agreement is executed by *IF*.

(c) Notice of Rights Under ADEA. Without detracting in any respect from any other provision of this Agreement.

1. *IF*, in consideration of the Bonus Payment and other good and valuable consideration as detailed herein, agrees and acknowledges that this Agreement constitutes a knowing and voluntary waiver of all rights or claims he has or may have against Rubicon as set forth herein, including, but not limited to, all rights or claims arising under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), including, but not limited to, all claims of age discrimination in employment and all claims of retaliation in violation of the ADEA.

2. *IF* understands that, by entering into this Agreement, he does not waive rights or claims that may arise after the date of his execution of this Agreement, including without limitation any rights or claims that he may have to secure enforcement of the terms and conditions of this Agreement.

3. *IF* agrees and acknowledges that the consideration (Settlement Payment, Health Benefits, and other good and valuable consideration as detailed herein) provided to him under this Agreement is in addition to anything of value to which he is already entitled.

4. Rubicon hereby advises *IF* to consult with an attorney prior to executing this Agreement.

5. *IF* acknowledges that he was informed that he had at least twenty-one (21) days in which to review and consider this Agreement and after signing it, seven (7) days in which to revoke it as described in this Agreement.

(d) Further Assurance. The Parties to this Agreement shall deliver or cause to be delivered such instruments and other documents at such times and places as are reasonably necessary or desirable, and shall take any other action reasonably requested by the other party for the purpose of giving effect to this Agreement.

(e) Subpoena or Legal Service. Upon service on *IF*, or anyone acting on his behalf, of any subpoena, order, directive or other legal process requiring him to engage in conduct encompassed by this Agreement, *IF* or his attorney shall immediately notify Rubicon of such service and of the content of any testimony or information to be provided pursuant to such subpoena, order, directive or other legal process and within five (5) business days send to the undersigned representative of Rubicon via overnight delivery (at Rubicon's expense) a copy of the documents that have been served upon *IF*.

(f) Successors and Assignment. This Agreement shall inure to the benefit of, be binding upon and be enforceable by and against the Parties and their respective successors and permitted assigns. No party to this Agreement may assign any of his or its rights or obligations under this Agreement or any document referred to in this Agreement without the prior written consent of the other Parties to this Agreement.

(g) Modification and Waiver. No amendment, variation or waiver of this Agreement shall be valid unless it is in writing and duly executed by or on behalf of all the Parties to this Agreement.

**EXHIBIT 3.11**

(h) Notices. Any notices to be given under this Agreement shall be sent to the address of the party appearing on the signature page hereto.

(i) Duty to Cooperate. JF agrees that he will assist and cooperate with Rubicon in connection with the defense or prosecution of any claim that may be made against or by Rubicon, or in connection with any ongoing or future investigation or dispute or claim of any kind involving Rubicon, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations or proceedings relate to services performed or required to be performed by JF, pertinent knowledge possessed by JF, or any act or omission by JF. JF further agrees to perform all acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this section. Rubicon agrees to pay JF at an hourly rate of \$600 per hour and reimburse JF for reasonable expenses for services provided pursuant to this Section .Ll.(i)\_ against invoices submitted by JF.

(j) Construction. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party who caused it to have been drafted. As used in this Agreement, the singular shall include the plural and vice versa and the use of any gender shall be deemed to be or include the neutral and other gender, whenever appropriate.

(k) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. The Parties may sign this Agreement electronically which signature will have the same effect as a handwritten signature.

(l) Attorney's Fees and Costs. Each of the Parties to this Agreement shall bear their own costs and attorneys' fees in connection with the preparation, review, negotiation, drafting or redrafting of this Agreement.

*[remainder of page intentionally left blank]*

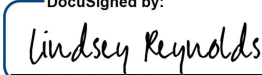
**EXHIBIT 3.11**


IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily execute this Agreement and Release as of the date first above written.

**JF EXPRESSLY ACKNOWLEDGES, REPRESENTS, AND WARRANTS THAT HE HAS READ THIS AGREEMENT CAREFULLY; THAT HE FULLY UNDERSTANDS THE TERMS, CONDITIONS, AND SIGNIFICANCE OF THIS AGREEMENT; THAT HE HAS HAD A FULL OPPORTUNITY TO REVIEW THIS AGREEMENT; THAT HE UNDERSTANDS THAT THIS AGREEMENT HAS BINDING LEGAL EFFECT; AND THAT HE HAS EXECUTED THIS AGREEMENT FREELY, KNOWINGLY, AND VOLUNTARILY.**

**PLEASE READ CAREFULLY. THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES.**


**RUBICON TECHNOLOGY INC.**

DocuSigned by:  
  
By: \_\_\_\_\_  
Lindsey Reynolds, its Executive Officer  
Date: 10/24/2023

DocuSigned by:  
  
Joseph Ferrara  
Date: 10/24/2023

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, WITH RESPECT TO THE OBLIGATIONS IN SECTIONS 3, 4 AND 9 HEREOF IN ITS CAPACITY AS A HOLDER OF MORE THAN TWENTY PERCENT (20%) OF THE CAPITAL STOCK OF THE COMPANY:

**JANEL CORPORATION**

DocuSigned by:  
  
By: \_\_\_\_\_  
Duly Authorized  
Date: 10/24/2023

## **EXHIBIT 3.12**

# **CONSULTING AGREEMENT**

This Consulting Agreement (this "Agreement") is made and entered into as of October 27th, 2023, by and between Rubicon Technology, Inc., a Delaware corporation (the "Company") and Joseph Ferrara ("Consultant").

**WHEREAS**, the Company desires to retain Consultant as an independent contractor to perform the Services (as defined herein) for the Company; and

**WHEREAS**, Consultant is willing to perform such Services, on the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

### **1. SERVICES AND COMPENSATION**

Consultant agrees to perform for the Company the services described in Exhibit A attached hereto (the "Services").

The Company agrees to pay Consultant the compensation set forth in Exhibit A for the performance of the Services, and to reimburse Consultant for expenses, as set forth in Exhibit A.

### **2. CONFIDENTIALITY**

- a. Definition. "Confidential Information" means any and all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to business processes, practices, methods, plans, publications, documents, research, operations, services, strategies, techniques, agreements, contracts, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, work-in-process, technologies, databases, compilations, device configurations, embedded data, metadata, manuals, records, articles, systems, material, results, developments, reports, graphics, drawings, sketches, formulae, notes, algorithms, product plans, designs, styles, models, ideas, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, or specifications of the Company and its affiliates, including all Confidential Information disclosed by or on behalf of the Company either directly or indirectly in writing, or orally.
- b. Non-Use and Non-Disclosure. Consultant shall not, during or subsequent to the term of this Agreement, use Confidential Information for any purpose whatsoever other than to perform the Services for the Company, and shall not disclose Confidential Information to any third party except as expressly authorized herein. It is understood that Confidential Information shall remain the sole property of the Company. Consultant agrees that Consultant shall treat all Confidential Information of the Company with the same degree of care as Consultant accords its own confidential information, but in no case less than reasonable care. Without limiting the foregoing, Consultant further agrees to take all necessary precautions to prevent any disclosure of such Confidential Information except as may be authorized expressly by the Company. Consultant will immediately notify the Company of any unauthorized use or disclosure of Confidential Information, and agrees to assist, at its sole expense and effort, the Company in remedying any such unauthorized use or disclosure of the Confidential Information. Confidential Information does not include information which Consultant can clearly demonstrate (i) is known to Consultant at the time of disclosure to Consultant by or

### **EXHIBIT 3.12**

on behalf of the Company, provided that such information is not otherwise restricted as to use or disclosure by another agreement between Consultant and the Company, (ii) has become publicly known and made generally available through no wrongful act of Consultant, or (iii) has been rightfully received by Consultant without restriction as to use or disclosure from a third party who is authorized to make such disclosure without a breach of such third party's obligations of confidentiality.

- c. Return of Materials. Upon the termination of this Agreement, or upon the Company's earlier request, Consultant will deliver to the Company any and all of the Company's property and Confidential Information that Consultant may have in its possession or control at the time of such termination.

### **3. OWNERSHIP**

- a. Assignment. Except as otherwise provided for herein, Consultant agrees that all inventions, concepts, arts, discoveries, designs, developments, contributions, findings or improvements, whether or not patentable or registrable under copyright or similar laws, and all copyrightable and patentable works, including, but not limited to, all software, source and object code, algorithms, architecture, works of authorship, trademarks, formulas, methods, processes, manufacturing techniques and trade secrets, and all related know-how and rights to obtain, register, perfect and enforce these proprietary interests conceived, discovered, developed or reduced to practice by Consultant, solely or in collaboration with others, in connection with Consultant's performance of the Services under this Agreement, whether (i) related to the Company's business or actual or demonstrably anticipated research or development, (ii) developed using any amount of the Company's equipment, supplies, facilities or Confidential Information or (iii) resulting from any work performed for the Company, whether or not performed during ordinary business hours (collectively, "Work Product"), are the sole property of the Company. Consultant further agrees to assign or cause to be assigned, and does hereby irrevocably and unconditionally assign fully, to the Company all Work Product and any associated copyrights, patents, mask work rights or other intellectual property rights.
- b. Further Assurances. Consultant agrees to provide reasonably requested assistance to the Company, or its designee, at the Company's expense, to secure the Company's rights in the Work Product and any associated copyrights, patents, mask work rights or other intellectual property rights in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which are reasonably necessary to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive right, title and interest in and to such Work Product, and any associated copyrights, patents, mask work rights or other intellectual property rights. Consultant further agrees that Consultant's obligation to execute or cause to be executed, when it is in Consultant's power to do so, any such instrument or papers shall continue after the termination of this Agreement.

### **4. REPORTS**

Consultant agrees that he will from time to time during the term of this Agreement or any extension thereof keep the Company advised as to Consultant's progress in performing the Services hereunder and that Consultant will, if and as requested by the Company, prepare written reports with respect thereto.

### **5. TERM AND TERMINATION**

### **EXHIBIT 3.12**

- (a) Term. This Agreement will commence on October 27, 2023, and will continue until March 31, 2024, or (ii) termination as provided below.
- (b) Termination. Either Party may terminate this Agreement, in its complete and unfettered discretion, upon thirty (30) days' written notice.
- (c) Survival. Upon such termination, all rights and duties of the parties toward each other shall cease and terminate, except that:

1. If the Company terminates the Agreement, then the Company shall pay, within thirty (30) days of the effective date of termination, all agreed to amounts that would have been paid to Consultant for Services under this Agreement, if any, in accordance with the provisions of Section 1; and

11. If the Consultant terminates the Agreement, then the Company shall pay within thirty (30) days of the effective date of termination, all amounts owing to Consultant for Services under this Agreement through the effective date of termination, if any, in accordance with the provisions of Section 1; and

m. In any event the duties of the parties under Sections 2 and 3 shall survive.

### **6. ASSIGNMENT**

Neither this Agreement nor any right hereunder nor interest herein may be assigned, pledged or transferred by Consultant without the express written consent of the Company.

### **7. INDEPENDENT CONTRACTOR STATUS**

It is the express intention of the parties that Consultant is an independent contractor. This Agreement shall not be construed as creating between Consultant and the Company or any of its affiliates any agency, employment or representative relationship. Consultant shall, at all times, perform the Services as an independent contractor. The Company will not withhold from payments to be made to Consultant any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law, or make any contributions on Consultant's behalf for unemployment insurance or social security; nor will the Company make available to Consultant any of the benefits afforded to employees of the Company. Neither party shall be liable to the other for any lost profits or indirect or inconsequential damages arising under this Agreement.

### **8. ADDITIONAL COVENANTS**

(a) Authority. Consultant shall not, nor shall it represent itself as having any authority to, commit the Company or its affiliates by negotiation or otherwise to any contract, agreement or other legal commitments in the name of or binding upon the Company or its Affiliates or pledge or extend credit in the name of the Company or its affiliates.

(b) No-Subcontractors. Consultant shall not subcontract any portion of the Services to any agent or subcontractor of Consultant, without the express written permission of the Company. Any such permitted subcontractor will be retained only pursuant to terms and conditions at least as favorable to the Company and its affiliates as this Agreement, and Consultant will be liable for any breach of such agreement and for the performance of each such permitted subcontractor.

(c) Compliance with Laws. Consultant agrees to comply with all federal, state, and local laws, ordinances, rules and regulations, which are now or may become applicable to the Services covered by this Agreement, and to secure any and all necessary permits, licenses and other authorizations which are legally required in order for Consultant to perform the Services.

(d) Acknowledgment. Consultant hereby acknowledges and agrees that the restrictive covenants and other terms and conditions of this Agreement are reasonable and reasonably necessary to protect the legitimate business interests of The Company. Consultant represents that Consultant's execution of this Agreement is its free and voluntary act, that Consultant has entered into this Agreement for good, valuable and adequate consideration and that Consultant has entered into this Agreement with the advice of counsel.



### **EXHIBIT 3.12**

#### **9. REMEDIES**

- a. Except as provided in Section 9(d), the Company and Consultant agree that any dispute or controversy arising out of, relating to or in connection with the interpretation, validity, construction, performance, breach or termination of this Agreement shall be settled by binding arbitration to be held in New York County, New York, in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction.
- b. Consent to Personal Jurisdiction. The arbitrator(s) shall apply New York law to the merits of any dispute or claim, without reference to conflicts of law rules. Consultant hereby consents to the personal jurisdiction of the state and federal courts located in New York, New York for any action or proceeding arising from or relating to this Agreement or relating to any arbitration in which the parties are participants.
- c. Costs. Company and Consultant shall each pay one-half of the costs and expenses of such arbitration, and each shall separately pay its counsel fees and expenses unless otherwise required by law.
- d. Equitable Relief. The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgment of the powers of the arbitrator.
- e. Acknowledgment. CONSULTANT HAS READ AND UNDERSTANDS SECTION 9, WHICH DISCUSSES ARBITRATION. CONSULTANT UNDERSTANDS THAT BY SIGNING THIS AGREEMENT, CONSULTANT AGREES TO SUBMIT ANY CLAIMS ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, OR THE INTERPRETATION, VALIDITY, CONSTRUCTION, PERFORMANCE, BREACH OR TERMINATION THEREOF, TO BINDING ARBITRATION, EXCEPT AS PROVIDED IN SECTION 15(d), AND THAT THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF CONSULTANT'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL ASPECTS OF THE RELATIONSHIP BETWEEN THE PARTIES.

#### **10. GOVERNING LAW**

This Agreement shall be governed by the internal substantive laws, but not the choice of law rules, of the State of New York.

#### **11. ENTIRE AGREEMENT**

This Agreement is the entire agreement of the Parties and supersedes any prior agreements between them, whether written or oral, with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by Consultant and a duly authorized representative of the Company.

#### **12. SEVERABILITY**

The invalidity or unenforceability of any provision of this Agreement, or any terms thereof, shall not affect the validity of this Agreement as a whole, which shall at all times remain in full force and effect.

**EXHIBIT 3.12**

13. **NOTICES**

Any notice shall be addressed to the party being notified at the address set forth below or at such other address as either party may in writing provide. Notice shall be deemed given in accordance with this Section 13 upon delivery if personally delivered or transmitted via reputable overnight carrier.

If to the Company:  
Lindsey Reynolds  
Rubicon Technology Inc.  
900 E. Green Street  
Bensenville, IL 60106

If to Consultant:  
Joseph Ferrara  
48 Hallocks Run  
Somers, NY 10589

[Remainder of this Page Intentionally Blank; Signature Page Follows]

**EXHIBIT 3.12**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**RUBICON TECHNOLOGY INC.**

By \_\_\_\_\_  
Lindsey Reynolds, its Executive Officer

DocuSigned by:  
*Lindsey Reynolds*  
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**CONSULTANT**

DocuSigned by:  
*Joseph Ferrara*  
DA78F2B59C9442C  
Joseph Ferrara

**EXHIBIT 3.12**

**EXHIBIT A**  
**To Consulting Agreement**

**Services and Compensation**

All capitalized terms not defined herein shall have the meaning ascribed to them in the Consulting Agreement.

1. Services: Consultant will make himself available to consult with and assist the Executive Officer of the Company from time to time as requested by the Executive Officer for no more than twenty (32) hours per month, pro rated for any partial month during the Term.

2. Expiration: From the date of execution of the Consulting Agreement through March 31, 2024.

3. Services Rate: ,  
\$10,000 on December 1, 2023;  
\$10,000 on March 31, 2024.

4. Expenses. Consultant shall be entitled to reimbursement by the Company, in accordance with the Company's expense reimbursement policy as may be in effect from time to time, for such customary, ordinary and necessary business and travel expenses as are incurred by Consultant in the performance of Consultant's duties and activities required by the Services. Upon receipt of appropriate receipts or documentation of expenses incurred in the ordinary course of business, the Company shall promptly reimburse Consultant for reasonable and customary business and travel expenses incurred by Consultant in performing the Services hereunder.

**EXHIBIT 3.13**

MANAGEMENT SERVICES AGREEMENT

This management services agreement (the "Agreement") is dated as of February 8, 2024 and is between Janel Corporation ("Janel"), a Nevada corporation having an office at 80 Eighth Avenue, New York, New York 10011, and Rubicon Technology, Inc., a Delaware corporation ("Rubicon"), having an office at 900 East Green Street, Bensenville, Illinois 60106.

RECITALS

WHEREAS, Janel desires to have Rubicon furnish certain services to Janel and its subsidiaries, as described in Section 1.01 ("Services"), and Rubicon has agreed to furnish Services pursuant to the terms and conditions set forth herein.

WHEREAS, a Special Committee (the "Special Committee") of the Board of Directors of Rubicon (the "Board") comprised of the independent and disinterested directors are approving this Agreement and recommend that the Board approve this Agreement, and a majority of the independent and disinterested directors of the Board will vote to approve this Agreement.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows: Section

1. Engagement of Rubicon

1.01. Services.

During the term of this Agreement, Rubicon shall provide to Janel and its subsidiaries the Services described and defined on Exhibit A in connection with the business, operations, and affairs, both ordinary and extraordinary, of Janel and its subsidiaries and affiliates. During the term of this Agreement, Rubicon shall provide to Janel the non-exclusive services of persons designated by Rubicon to perform the Services in accordance with the terms and provisions of this Agreement (the "Designated Persons"). Each of the Designated Persons shall devote such time and effort as is reasonably necessary to fulfill the statutory and fiduciary duties applicable in their performance of the Services until such time as such Designated Person is instructed or removed by Janel or the resignation of such Designated Person in such capacity to perform their applicable Services or his or her death. In the event a Designated Person ceases for any reason to serve in such capacity to perform their applicable Services, Rubicon has a right, but not an obligation, to propose another person to serve in such capacity to perform the applicable Services. This Agreement shall apply in all material respects to any successor to a Designated Person who performs their applicable Services in accordance with this Agreement and the term Designated Person used herein shall apply to any such successor. The Designated Persons or other persons designated by Rubicon to perform the Services (i) shall be the only persons performing the Services for Janel, (ii) shall perform or provide no other services for or to Janel and (iii) shall not serve as a director, officer, employee, agent or representative for Janel.

1.02. In performing Services, Rubicon and its personnel shall report to Janel's CFO at least quarterly and otherwise in accordance with such procedures as may be adopted by Janel from time to time. Rubicon, any Designated Person, any of Rubicon's Agents (as defined below) or any of its personnel may incur an obligation or enter into any transaction on behalf of Janel, other than as specifically contemplated hereby, only (a) with the prior approval of Janel or (b) in accordance with any written delegation of authority delivered to Rubicon with the consent of Janel (as such delegation of authority may be amended from time to time, the "Delegation of Authority").

1.03. While the amount of time and personnel required for performance by Rubicon

**EXHIBIT 3.13**

hereunder will necessarily vary depending upon the nature and type of Services, Rubicon shall devote such time and effort and make available such personnel as may from time to time reasonably be required for the performance of Services hereunder and shall use its reasonable best efforts to carry out the purposes of Janel and shall perform Services to the best of its abilities in a timely, competent and professional manner, in compliance with any laws relevant to such Services, in compliance with the Delegation of Authority, in compliance with Janel's policies, procedures and controls provided by Janel to Rubicon in writing from time to time and in compliance with such reasonable directions as Rubicon's officers, employees or representatives may receive from Janel's officers or other designated representatives from time to time.

1.04. Exhibit A may be amended from time to time to provide for additional Services, the elimination of certain Services, increases or decreases to the compensation paid hereunder, or other changes, upon the mutual agreement of the parties hereto in writing.

1.05. In the performance of Services, Rubicon will (i) assist and support Janel's compliance with any applicable Federal or state securities law and the rules of any national securities exchange or over-the-counter market, as applicable, and act in a manner consistent with regards thereto, and (ii) not cause Janel to violate, any statute or regulation or any order, writ, judgment, or decree of any court, arbitrator or governmental authority applicable to Janel and its subsidiaries and affiliates.

Section 2. Term and Termination

2.01. This Agreement shall commence effective as of February 1, 2024 and shall continue unless and until terminated as provided in Section 2.02 below; provided, however, the fees hereunder shall be subject to a review and adjustment as agreed upon by the parties hereto.

2.02. This Agreement may be terminated (i) by either party, effective on any anniversary date, upon not less than ninety (90) days prior written notice to the other; (ii) by Janel, at any time, on less than ninety (90) days notice; provided that, if Janel provides less than ninety (90) days notice, it shall pay to Rubicon a termination fee equal to 125% of the fees due under this Agreement, as calculated under Section 3, from, and including, such termination date until, and including, the 90th day following the date of such notice; (iii) immediately upon the bankruptcy or dissolution of Rubicon, or (iv) immediately by Janel for Cause (as defined below) or upon a material breach of this Agreement by Rubicon.

For the purposes of this Agreement, "Cause" shall mean, with respect to the termination of this Agreement, fraud, gross negligence, criminal conduct or willful misconduct by Rubicon or any Designated Person, as applicable, or breach of fiduciary duty by any Designated Person, in connection with performing its or his or her respective duties hereunder.

2.03. In the event this Agreement is terminated pursuant to Section 2.02 above, Rubicon shall cease to perform Services. If the termination of this Agreement takes effect on a day other than the end of a calendar month, monthly fees shall be prorated based on the number of days that Rubicon performed Services during such calendar month until termination.

Section 3. Payments to Rubicon

3.01. In consideration of Services furnished by Rubicon hereunder, Janel shall pay to Rubicon fees to be negotiated and approved by the parties. Any fees paid to Rubicon under this agreement will be at market prices determined by Rubicon.

The fee payable hereunder shall be paid by Janel to Rubicon upon demand of Rubicon during the term of

### **EXHIBIT 3.13**

this Agreement. Rubicon shall prepare a statement documenting such fees, and Janel shall pay Rubicon for such expenses within thirty (30) days after receipt and approval of such statement and such supporting material as Janel may require.

3.02. Janel shall reimburse Rubicon and the Designated Persons for all documented, reasonable, and necessary business expenses incurred on behalf of Janel solely in connection with the performance of Services, including, but not limited to:

(a) Costs of legal, tax, accounting, consulting, auditing, administrative, compliance, marketing, investor relations and other similar services rendered for Janel, including such services rendered by providers retained by Rubicon or the Designated Persons to the extent that there is insufficient expertise within Rubicon to provide such services.

(b) Costs associated with any computer software or hardware, electronic equipment, or purchased information technology services from third party vendors to the extent that there is insufficient expertise within Janel to provide such services.

(c) Other fees payable to third party administrators and service providers.

(d) Expenses incurred by managers, officers, employees and agents of Rubicon or the Designated Persons for travel on behalf of Janel and other out-of-pocket expenses incurred by managers, officers, employees and agents of Rubicon or the Designated Persons.

(e) All other expenses not otherwise covered hereunder actually incurred by Rubicon and the Designated Persons which are reasonably necessary for the performance of the Services under this Agreement.

Expenses incurred by Rubicon on behalf of Janel and reimbursable pursuant to this Section 3.01 shall be reimbursed by Rubicon upon written demand by Janel. Rubicon shall prepare a statement documenting such expenses, and Janel shall reimburse Rubicon for such expenses within thirty (30) days after receipt and approval of such statement and such supporting material as Janel may require.

3.03. The provisions of Section 3.02 shall survive the expiration or earlier termination of this Agreement to the extent such expenses have previously been incurred or are incurred in connection with such expiration or termination. For the avoidance of doubt, the expenses payable by Janel as described in Section 3.02 are exclusive of, and in addition to, the fees payable pursuant to Section 3.01.

#### Section 4. Representations and Warranties of Rubicon and the Designated Persons

4.01. Rubicon hereby makes the following representations and warranties on which Janel has relied in making the delegation set forth in this Agreement:

(a) Rubicon is a Delaware corporation, duly organized, validly existing and in a good standing under the laws of the State of Delaware and is duly qualified as a foreign company in each jurisdiction in which the nature of its business makes such qualification necessary.

(b) Rubicon has all requisite power and Janel has authority to execute, deliver and perform this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of Rubicon.

(c) This Agreement constitutes a legal, valid, and binding obligation of Rubicon,

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enforceable against it in accordance with its terms.

(d) The execution, delivery and performance by Rubicon or the Designated Persons, as applicable, of this Agreement does not (i) violate any provision of Janel's Certificate of Incorporation, Code of Business Conduct and Ethics or By-laws, (ii) violate any statute or regulation or any order, writ, judgment, or decree of any court, arbitrator or governmental authority applicable to Rubicon or any of its assets or the Designated Persons, or (iii) violate or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of any lien on the assets of Rubicon pursuant to the provisions of, any mortgage, indenture, contract, agreement or other undertaking to which Rubicon is a party.

(e) To the knowledge of Rubicon, there are no past or present actions, occurrences, conditions or circumstances that could reasonably be expected to adversely affect Rubicon's ability to comply with the requirements of applicable Federal and state securities laws or its control environment, in each case by reason of the entry by Janel into this Agreement or the provision of Services by Rubicon.

Section 5. Agents

5.01. Rubicon may delegate any or all of the powers, rights and obligations under this Agreement and may appoint, employ, contract, or otherwise deal with any person or entity (each, an "Agent") in respect of the performance of Services. Rubicon may assign to any such Agent approved by Janel the right to receive any fee or reimbursement of expenses as Rubicon would be entitled to receive under this Agreement.

5.02. Rubicon shall supervise the activities of its Agents, and notwithstanding the designation of or delegation to any Agent, Rubicon shall remain obligated to Janel for the proper performance of Services; provided, however, that Rubicon and Janel may enter into any agreement for indemnification pursuant to which an Agent may indemnify and hold harmless Rubicon and Janel, jointly and severally, from any liability to them arising by reason of the act or omission of such Agent. Nothing contained herein shall affect or otherwise limit the indemnification obligations of Rubicon to Janel as provided in Section 9.

Section 6. Records: Access

6.01. Rubicon and its officers, employees and representatives, including the Designated Persons, in performance of Services, shall have access to all accounting books, ledgers, receipts, business information, employee information, research, organizational structure information, data, computer programs and budget figures of Janel and its subsidiaries and any other information of Janel and its subsidiaries related to the performance of Services by Rubicon, its officers, employees, and representatives, including the Designated Persons, whether or not considered material (the "Information"), and Janel shall promptly make any such Information available to Rubicon upon its reasonable request.

6.02. Rubicon covenants that during the term of this Agreement it will notify Janel of any change in Rubicon's business, properties, assets, prospects, financial condition, or results of operations or that would reasonably be expected to have a material effect on the provision of Services under this Agreement.

6.03. In the event the Agreement is terminated, Rubicon will transfer any and all physical and electronic records of Janel in a reasonable format specified by Janel and will make source codes



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owned or controlled by Rubicon-as they pertain to Janel-available to Janel during a transition period of up to nine (9) months following the date of termination.

Section 7. Limitation on Activities

Notwithstanding any provision of this Agreement, Rubicon and its personnel shall not take any action which, in their sole judgment made in good faith, would violate any law, rule, regulation or statement of policy of any governmental body or agency having jurisdiction over Janel and its subsidiaries and affiliates, or otherwise not permitted by Janel's Certificate of Incorporation or By-laws, as each may be amended from time to time, or policies and procedures. Notwithstanding the foregoing, the officers, directors, members, employees, affiliates, consultants or agents of Rubicon (the "Rubicon Persons") (except the Designated Persons in their respective capacities provided hereunder) shall not be liable to Janel or holders of its securities for any act or omission by Rubicon or any Designated Person, as applicable, taken or omitted to be taken in the performance of Services under this Agreement except as provided in Section 9 of this Agreement.

Section 8. Limitation on Liability

Rubicon shall reasonably rely on information provided to it about Janel, if any, that is provided by Janel or Janel's subsidiaries, employees, agents, or representatives. In no event shall Rubicon be liable for any error or inaccuracy of any report, computation or other information or document produced in accordance with this Agreement, for whose accuracy Janel assumes all responsibility, unless resulting from the fraud, gross negligence or willful misconduct of Rubicon, any Designated Person or other Rubicon Person. Notwithstanding any provision herein to the contrary, except with respect to fraud, gross negligence or willful misconduct by Rubicon, any Designated Person or other Rubicon Person, Rubicon's aggregate liability with respect to, arising from, or arising in connection with this Agreement, or from all Services provided or omitted to be provided under this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed the amounts paid hereunder by Janel to Rubicon as fees and charges for the trailing twelve months from the date of any claim, but not including reimbursable expenses.

Section 9. Indemnity and D&O Insurance.

9.01. To the fullest extent permitted by law, Rubicon shall defend, indemnify, save and hold harmless Janel from and against any claims, liabilities, damages, losses, costs or expenses, including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and reasonable expenses of investigating or defending against any claim or alleged claim of any nature whatsoever (a "Claim") resulting from Rubicon's, the Designated Persons' or the Rubicon Persons' activities or services under this Agreement and incurred by reason of Rubicon's, any Designated Person's or other Rubicon Person's, as applicable, fraud, gross negligence or willful misconduct; provided, however, that Rubicon, such Designated Person or such other Rubicon Person shall not be held responsible for (i) any action of Janel in which Rubicon, any Designated Person or other Rubicon Person, as applicable, advised Janel or Janel declined to follow such advice and such decision was provided in writing to Rubicon or (ii) any Claim to the extent such Claim is occasioned by the fraud, gross negligence or willful misconduct of Janel's officers, directors, employees, consultants or agents (except for Designated Persons or other Rubicon Persons).

9.02. To the fullest extent permitted by law, Janel shall defend, indemnify, save and hold harmless Rubicon, Designated Persons and other Rubicon Persons from and against any Claim resulting from Janel's fraud, gross negligence or willful misconduct, except to the extent any such Claim is occasioned by the fraud, gross negligence or willful misconduct of Rubicon, Designated Persons or other

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Rubicon Persons.

9.03. Janel shall enter into customary indemnification agreements with the Agents.

9.03. Promptly after receipt by Rubicon or Janel of notice of any Claim, it (the "Indemnified Party") shall notify the other (the "Indemnifying Party") in writing; provided, however, that the failure of the Indemnified Party to give timely notice hereunder shall not affect the rights of the Indemnified Party to indemnification hereunder, except to the extent that the Indemnifying Party can demonstrate actual, material prejudice to it as a result of such failure. The Indemnified Party shall reasonably cooperate with appropriate requests of the Indemnifying Party with regard to the defense of any Claim. The Indemnifying Party shall maintain authority and control of the defense of any such Claim and the authority to settle or otherwise dispose of any such Claim (provided that the Indemnified Party shall have the right to reasonably participate at its own expense in the defense or settlement of any such Claim). In no event, however, may the Indemnifying Party agree to any settlement of any Claim that would affect any of the Indemnified Party's rights or obligations, or that would constitute an admission of guilt or liability on the part of the Indemnified Party, without the Indemnified Party's express prior written consent.

9.04. If Rubicon should reasonably determine its interests are or may be adverse to the interests of Janel, Rubicon may retain its own counsel in connection with such claim or alleged claim or action, in which case Janel shall be liable, to the extent permitted under this Section 9, to Rubicon for any reasonable and documented legal, accounting or other directly related fees and expenses incurred by Rubicon in connection with its investigating or defending such claim or alleged claim or action.

9.05. Neither Rubicon nor Janel (including their officers, directors, members, employees, affiliates and consultants and the Designated Persons) shall be liable to the other or any third party for any special, consequential or exemplary damages (including lost or anticipated revenues or profits relating to the same) arising from any claim relating to this Agreement or any of the Services provided hereunder, whether such claim is based on warranty, contract, tort (including negligence or strict liability) or otherwise, even if an authorized representative of Rubicon or Janel, as applicable, is advised of the possibility or likelihood of the same.

#### Section 10. Payments and Duties of Rubicon Upon Termination

10.01 Rubicon shall promptly upon termination:

(a) pay to Janel any money collected and held for the account of Janel pursuant to this Agreement, after deducting any accrued compensation and reimbursement for its expenses to which it is then entitled under Section 3;

(b) deliver to Janel all assets, books and records and documents of Janel then in the custody of Rubicon; and

(c) cooperate with Janel to provide an orderly management transition and Janel shall pay Rubicon reasonable fees and expenses in connection therewith.

#### Section 11. Confidential Information; Non-Solicitation.

Except as provided in Sections 11.01 and 11.02 below, neither Rubicon nor the Designated Persons shall at any time during or following the termination or expiration for any reason of this Agreement, directly or indirectly, disclose, publish or divulge to any person (except where necessary in connection with the furnishing of Services under this Agreement), appropriate or use, or cause or permit any other person to appropriate or use, any of Janel's

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inventions, discoveries, improvements, trade secrets, copyrights or other proprietary, secret, or confidential information not then publicly available (the "Confidential Information").

11.01. Notwithstanding anything to the contrary in this Section 11, Rubicon or the Designated Persons or their agents may disclose Confidential Information to Rubicon's representatives or agents who (i) need to know such information to permit Janel and the Designated Persons to provide Services in accordance with the terms of this Agreement, (ii) are informed of the confidential nature of the Confidential Information and (iii) agree to maintain the confidentiality of the Confidential Information.

11.02. Notwithstanding anything to the contrary in this Section 11, if Rubicon, the Designated Persons or any of Rubicon's representatives are required to disclose any Confidential Information pursuant to applicable laws or regulations or by any subpoena or similar legal process, Rubicon shall promptly notify Janel in writing of any such requirement, if legally permissible, so that Janel may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. Rubicon shall, and shall direct its representatives (including the Designated Persons) to, reasonably cooperate with Janel to obtain such a protective order or other remedy and if such order or other remedy is not obtained, or Janel waives compliance with the provisions of this Agreement, Rubicon, the Designated Persons or Janel's representatives shall disclose only that portion of the Confidential Information which they are advised by counsel that they are legally required to so disclose and will use good faith efforts to obtain reliable assurance that confidential treatment will be accorded the information so disclosed.

11.03. Rubicon and the Designated Persons acknowledge that (i) they are aware and that Rubicon's representatives have been advised that (a) the Confidential Information may include material non-public information about Janel and its subsidiaries and affiliates, and (b) the United States securities laws and securities law of other jurisdictions prohibit any person who has material non-public information about a company from purchasing or selling securities of such company on the basis of such information or from otherwise misappropriating such material non-public information in breach of fiduciary duty or other relationship of trust and confidence, (ii) Rubicon has developed compliance procedures regarding the use of material non-public information and (iii) Rubicon, the Designated Persons and Rubicon's representatives will handle such material non-public information in accordance with applicable laws, including Federal and state securities laws. Rubicon and its personnel, and the Designated Persons, shall comply with any of Janel's policies regarding Confidential Information and insider trading.

11.04. Janel agrees that, during the term of this Agreement, and for a period of one (1) year from the termination of this Agreement, it will not, directly or indirectly, without obtaining the prior written consent of Rubicon, solicit for employment, hire or employ any person who has served as a Designated Person or any other officers or employees of Rubicon or its affiliates; provided, however, that the restriction on solicitation or hire above shall not restrict Janel's ability to conduct generalized searches for employment (including through the use of general or media advertisements, employment agencies and internet postings) not directly targeted towards Rubicon's or its affiliates' officers or employees and hiring any person that ceases to be employed by Rubicon or an affiliate thereof without Janel's prior direct solicitation.

11.05. Rubicon agrees that, during the term of this Agreement, and for a period of one (1) year from the termination of this Agreement, it will not, directly or indirectly, without obtaining the prior written consent of Janel, solicit for employment, hire or employ any person who has served as an officer or employee of Janel or its affiliates; provided, however, that the restriction on solicitation or hire above shall not restrict Rubicon's ability to conduct generalized searches for employment (including through the use of general or media advertisements, employment agencies and internet postings) not directly targeted

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towards Janel's or its affiliates' officers or employees and hiring any person that ceases to be employed by Janel or an affiliate thereof without Rubicon's prior direct solicitation.

Section 12. Non-Exclusive Arrangement; Conflicts of Interest

12.01. Janel acknowledges that Rubicon and its Affiliated Companies (as defined below) have in the past and may from time to time in the future enter into agreements similar to this Agreement with other companies pursuant to which Rubicon may agree to provide services similar in nature to Services being provided hereunder, and such agreements shall not constitute a breach of this Agreement; provided, however, that Rubicon covenants that in doing so Janel shall not breach any of its covenants or obligations expressly set forth in this Agreement. Janel understands that the Designated Persons, as of the respective dates they are designated to serve as the Designated Persons, may provide services to certain other companies, and such other activities shall not constitute a breach of this Agreement. In addition, to the extent business opportunities arise, Janel acknowledges that Rubicon will be under no obligation to present such opportunity to Janel, and Rubicon may, in its sole discretion, present any such opportunity to whatever company it so chooses, or to none at all; provided, however, nothing contained herein shall affect or otherwise limit the fiduciary obligations of the officers and directors of Janel, including the Designated Persons.

12.02. Janel, Rubicon, and their respective Affiliated Companies recognize and acknowledge that as a result of Rubicon providing Services pursuant to this Agreement the potential for conflicts of interest exist between and/or among Rubicon, Janel, Affiliated Companies of Rubicon and Janel and the respective officers and directors of Rubicon and Janel, including but not limited to (i) that an Affiliated Company of Janel may be a majority or significant stockholder of Janel, (ii) that directors, officers, members and/or employees of Rubicon or of Affiliated Companies of Rubicon may serve as directors and/or officers of Janel, (iii) that Rubicon and Affiliated Companies thereof may engage and are expected to continue to engage in the same, similar or related lines of business as those in which Janel, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which Janel, directly or indirectly, may engage, (iv) that Rubicon and Affiliated Companies thereof may have an interest in the same areas of corporate opportunity as Janel and Affiliated Companies thereof, and (v) that Rubicon and Affiliated Companies thereof may engage in material business transactions with Janel and Affiliated Companies thereof, including (without limitation) providing the Services to or being a significant supplier of Janel and Affiliated Companies thereof. Rubicon and Janel agree that if either of them determines that an actual conflict of interest exists, or if either of them has knowledge of any actions, occurrences, conditions or circumstances that could reasonably be expected to result in a conflict of interest, it shall disclose the fact of such actual or prospective conflict to the other and, in such event, both Janel and Rubicon shall work cooperatively to either (i) resolve or prevent, as applicable, the conflict of interest in a manner satisfactory to both Rubicon and Janel or (ii) cease providing or receiving the Services giving rise to such conflict.

12.03. For purposes of this Agreement, "Affiliated Companies" shall mean in respect of either party any entity which is controlled by such party, controls such party or is under common control with such party (other than the other party and any entity that is controlled by the other party).

12.04. [Intentionally omitted].

Section 13. Independence

13.01. Except as specifically provided herein, none of the parties shall act or represent or hold itself out as having authority to act as an agent or partner of any other party, or in any way bind or commit any other party to any obligations. Nothing contained in this Agreement shall be construed as

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creating a partnership, joint venture, agency, trust or other association of any kind, each party being individually responsible for its obligations set forth in this Agreement. Rubicon or its officers, employees and representatives shall not have the authority to act for, bind, or otherwise commit Janel or any of its subsidiaries or affiliates, and neither Rubicon nor any of its officers, employees or representatives shall hold itself or themselves out as having any such authority, except (i) the Designated Persons' authority to act in their respective capacities provided hereunder and perform his or her duties in such capacity, and (ii) to the extent that such authority has been specifically granted to Rubicon or any of its officers, employees, and representatives.

13.02. Neither party shall be responsible for the compensation, the withholding of taxes, workers compensation, employee benefits or any other employer liability for the employees and agents of the other party. For the avoidance of doubt, no Designated Person shall be entitled to receive compensation from Janel for the Services provided in the respective capacities hereunder unless approved by Janel. Without limiting the generality of the foregoing, the parties acknowledge and agree that Rubicon is an independent contractor and that none of Rubicon or the Designated Persons is an employee of Janel. Rubicon or an Affiliated Company of Rubicon shall timely withhold and pay all taxes and file all reports required by applicable law to be withheld, paid, and filed for the Designated Persons.

Section 14. General

14.01. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior representations and agreements, whether oral or written, and cannot be modified, changed, waived, or terminated except by a writing signed by both of the parties hereto. No course of conduct or trade custom or usage shall in any way be used to explain, modify, amend, or otherwise construe this Agreement.

14.02. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, sent by nationally recognized overnight carrier, one day after being sent, or mailed by first class registered or certified mail, return receipt requested, five days after being sent.

14.03. This Agreement shall be governed by and construed under the laws of the State of New York and the parties hereby submit to the personal jurisdiction of any federal or state court located therein, and agree that jurisdiction shall rest exclusively therein, without giving effect to the principles of conflict of laws.

14.04. Except as provided in Section 5 of this Agreement, this Agreement may not be assigned directly or indirectly, by operation of law or otherwise, by any party hereto (including in connection with a sale or transfer of all or substantially all of business or assets of such party, whether by sale, merger, operation of law, or otherwise in connection with a change of control) without the prior written consent of the other parties to this Agreement. This Agreement shall solely inure to the benefit of and be binding upon the parties hereto and their permitted (in accordance with the foregoing) successors and assigns.

14.05. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

14.06. Sections 4, 8, 9, 10, 11 and 14.03 and this Section 14.06 shall survive any expiration or termination of this Agreement.


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The parties have duly executed this Agreement as of the date first above written.

JANEL CORPORATION

By:  DocuSigned by:  
Name: Darren Seifer Chairman  
Title: **and** CEO

RUBICON TECHNOLOGY, INC.

By:  DocuSigned by:  
Name: Lindsey Reynolds  
Title: Executive Officer and Director of Accounting

**EXHIBIT 3.13**

EXHIBIT A SERVICES

The "Services" shall include, but not be limited to,

- Provide services requested by Janel and agreed to by Rubicon.
- Provide the non-exclusive services of people to assist Janel's Chief Financial Officer. Such person, in his or her capacity, may perform duties normally associated with assisting a Chief Financial Officer, including, as appropriate, assisting with SEC filing obligations, performing routine accounting tasks, performing reviews, preparing annual budgets and related matters.