

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark one)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **June 30, 2019**

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number **001-33834**

RUBICON TECHNOLOGY, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware State or Other Jurisdiction of Incorporation or Organization	36-4419301 I.R.S. Employer Identification No.
900 East Green Street Bensenville, Illinois Address of Principal Executive Offices	60106 Zip Code

Registrant's Telephone Number, Including Area Code: **(847) 295-7000**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$.001 per share	RBCN	The NASDAQ Stock Market
Preferred Shares Purchase Rights		

As of August 2, 2019, the Registrant had 2,677,463 shares of common stock, par value \$.001 per share, outstanding.

RUBICON TECHNOLOGY, INC.
Quarterly Report on Form 10-Q
For the quarterly period ended June 30, 2019

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PART I FINANCIAL INFORMATION

Rubicon Technology, Inc.

Condensed Consolidated Balance Sheets

	June 30, 2019	December 31, 2018
	(unaudited)	
	(in thousands, other than share data)	
Assets		
Cash and cash equivalents	\$ 9,637	\$ 11,241
Restricted cash	169	169
Short-term investments	15,478	14,356
Accounts receivable, net	529	733
Inventories	1,941	2,130
Other inventory supplies	138	183
Prepaid expenses and other current assets	185	109
Assets held for sale	4,145	4,145
Total current assets	<u>32,222</u>	<u>33,066</u>
Property and equipment, net	2,717	2,728
Total assets	<u>\$ 34,939</u>	<u>\$ 35,794</u>
Liabilities and stockholders' equity		
Accounts payable	\$ 367	\$ 400
Accrued payroll	479	28
Accrued and other current liabilities	294	345
Corporate income and franchise taxes	279	286
Accrued real estate taxes	126	96
Advance payments	16	39
Total current liabilities	<u>1,561</u>	<u>1,194</u>
Total liabilities	<u>1,561</u>	<u>1,194</u>
Commitments and contingencies (Note 7)		
Stockholders' equity		
Preferred stock, \$.001 par value, 1,000,000 undesignated shares authorized, no shares issued or outstanding	—	—
Common stock, \$.001 par value, 8,200,000 shares authorized; 2,925,957 and 2,919,542 shares issued; 2,677,167 and 2,733,601 shares outstanding	29	29
Additional paid-in capital	376,035	375,979
Treasury stock, at cost, 248,790 and 185,941 shares	(12,714)	(12,213)
Accumulated other comprehensive income (loss)	1	(2)
Accumulated deficit	(329,973)	(329,193)
Total stockholders' equity	<u>33,378</u>	<u>34,600</u>
Total liabilities and stockholders' equity	<u>\$ 34,939</u>	<u>\$ 35,794</u>

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

Rubicon Technology, Inc.

Condensed Consolidated Statements of Operations

	Three months ended June 30,		Six months ended June 30,	
	2019	2018	2019	2018
	(unaudited)			
	(in thousands, other than share data)			
Revenue	\$ 769	\$ 801	\$ 1,689	\$ 1,840
Cost of goods sold	<u>729</u>	<u>921</u>	<u>1,314</u>	<u>1,853</u>
Gross profit (loss)	40	(120)	375	(13)
Operating expenses:				
General and administrative	928	692	1,354	1,314
Sales and marketing	69	106	164	225
Research and development	-	42	-	75
Gain on disposal of assets	(76)	(1,052)	(151)	(1,614)
Asset impairment charge	—	—	—	—
Income (loss) from operations	<u>(881)</u>	<u>92</u>	<u>(992)</u>	<u>(13)</u>

Other income:				
Interest income	93	80	261	138
Unrealized gain (loss) on investments	(105)	—	(105)	—
Realized gain on investments	66	—	66	—
Realized (loss) on foreign currency translation	(3)	(16)	—	(2)
Total other income	51	64	222	136
Income (loss) before income taxes	(830)	156	(770)	123
Income tax expense	(6)	(6)	(10)	(13)
Net income (loss)	<u>\$ (836)</u>	<u>\$ 150</u>	<u>\$ (780)</u>	<u>\$ 110</u>
Net income (loss) per common share				
Basic	<u>\$ (0.31)</u>	<u>\$ 0.05</u>	<u>\$ (0.29)</u>	<u>\$ 0.04</u>
Diluted	<u>\$ (0.31)</u>	<u>\$ 0.05</u>	<u>\$ (0.29)</u>	<u>\$ 0.04</u>
Weighted average common shares outstanding used in computing net income (loss) per common share				
Basic	2,704,357	2,733,202	2,717,240	2,732,285
Diluted	<u>2,704,357</u>	<u>2,739,198</u>	<u>2,717,240</u>	<u>2,735,283</u>

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

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Rubicon Technology, Inc.

Condensed Consolidated Statements of Comprehensive Income (Loss)

	Three months ended June 30,		Six months ended June 30,	
	2019	2018	2019	2018
	(unaudited)			
	(in thousands)			
Net income (loss)	\$ (836)	\$ 150	\$ (780)	\$ 110
Other comprehensive income (loss):				
Unrealized gain on investments, net of tax	21	1	3	1
Other comprehensive income	21	1	3	1
Comprehensive income (loss)	<u>\$ (815)</u>	<u>\$ 151</u>	<u>\$ (777)</u>	<u>\$ 111</u>

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

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Rubicon Technology, Inc.

Condensed Consolidated Statements of Stockholders' Equity
For the Three and Six Months Ended June 30, 2019 and 2018

	Common stock		Treasury stock		Stockholders' equity			
	Shares	Amount	Shares	Amount	Additional paid-in capital	Accum other comp loss	Accum deficit	Total stockholders' equity
	(in thousands other than share data)							
Balance at January 1, 2018	2,910,334	\$ 29	(177,484)	\$ (12,148)	\$ 375,611	\$ (3)	\$ (330,156)	\$ 33,333
Stock-based compensation	—	—	—	—	21	—	—	21
Restricted stock issued	6,592	—	—	—	53	—	—	53
Common stock issued, net of shares withheld for employee taxes	249	—	—	—	89	—	—	89
Net loss	—	—	—	—	—	—	(40)	(40)
Balance at March 31, 2018	2,917,175	\$ 29	(177,484)	\$ (12,148)	\$ 375,774	\$ (3)	\$ (330,196)	\$ 33,456
Stock-based compensation	—	—	—	—	18	—	—	18
Common stock issued, net of shares withheld for employee taxes	1,218	—	—	—	111	—	—	111
Net income	—	—	—	—	—	1	150	151
Balance at June 30, 2018	<u>2,918,393</u>	<u>\$ 29</u>	<u>(177,484)</u>	<u>\$ (12,148)</u>	<u>\$ 375,903</u>	<u>\$ (2)</u>	<u>\$ (330,046)</u>	<u>\$ 33,736</u>

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

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	Common stock		Treasury stock		Stockholders' equity			
	Shares	Amount	Shares	Amount	Additional paid-in capital	Accum other comp loss	Accum deficit	Total stockholders' equity
	(in thousands other than share data)							

Balance at January 1, 2019	2,919,542	\$ 29	(185,941)	\$ (12,213)	\$ 375,979	\$ (2)	\$ (329,193)	\$ 34,600
Stock-based compensation	—	—	—	—	11	—	—	11
Common stock issued, net of shares withheld for employee taxes	1,946	—	—	—	—	—	—	—
Purchase of common stock, at cost	—	—	(3,999)	(31)	—	—	—	(31)
Unrealized loss on investments, net of tax	—	—	—	—	—	(19)	—	(19)
Net loss	—	—	—	—	—	—	56	56
Balance at March 31, 2019	2,921,488	\$ 29	(189,940)	\$ (12,244)	\$ 375,990	\$ (21)	\$ (329,137)	\$ 34,617
Stock-based compensation	—	—	—	—	9	—	—	9
Common stock issued, net of shares withheld for employee taxes	4,469	—	—	—	36	—	—	36
Purchase of common stock, at cost	—	—	(58,850)	(470)	—	—	—	(470)
Unrealized gain on investments, net of tax	—	—	—	—	—	22	—	22
Net income (loss)	—	—	—	—	—	—	(836)	(836)
Balance at June 30, 2019	2,925,957	\$ 29	(248,790)	\$ (12,714)	\$ 376,035	\$ 1	\$ (329,973)	\$ 33,378

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

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Rubicon Technology, Inc.

Condensed Consolidated Statements of Cash Flows

	Six months ended	
	June 30,	
	2019	2018
	(unaudited)	
	(in thousands)	
Cash flows from operating activities		
Net income (loss)	\$ (780)	\$ 110
Adjustments to reconcile net income (loss) to net cash used in operating activities		
Depreciation and amortization	85	206
Net gain on sale or disposal of assets	(151)	(1,614)
Stock-based compensation	471	297
Changes in operating assets and liabilities:		
Accounts receivable	204	211
Inventories	189	242
Other inventory supplies	44	72
Prepaid expenses and other assets	(76)	(560)
Accounts payable	(30)	(413)
Accrued payroll	37	(66)
Accrued real estate taxes	5	(100)
Corporate income and franchise taxes	(7)	(21)
Advanced payments	(22)	(24)
Accrued and other current liabilities	(54)	(15)
Net cash used in operating activities	(85)	(1,675)
Cash flows from investing activities		
Purchase of property and equipment	(48)	—
Proceeds from sale or disposal of assets	151	3,195
Purchases of investments	(1,354)	(7,139)
Proceeds from sale of investments	235	102
Net cash used in investing activities	(1,016)	(3,842)
Cash flows from financing activities		
Taxes paid related to net share settlement of equity awards	(2)	(5)
Purchases of common stock	(501)	—
Net cash used in financing activities	(503)	(5)
Net effect of currency translation	—	(1)
Net decrease in cash, cash equivalents and restricted cash	(1,604)	(5,523)
Cash, cash equivalents and restricted cash, beginning of period	11,410	11,725
Cash, cash equivalents and restricted cash, end of period	\$ 9,806	\$ 6,202

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

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Rubicon Technology, Inc.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

June 30, 2019

1. BASIS OF PRESENTATION

Interim financial data

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the

United States (“GAAP”) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by GAAP for complete consolidated financial statements and should be read in conjunction with Rubicon Technology, Inc.’s (the “Company”) annual report filed on Form 10-K for the fiscal year ended December 31, 2018. The condensed consolidated balance sheet as of December 31, 2018 set forth therein was derived from audited financial statements. In the opinion of management, all adjustments (consisting only of adjustments of a normal and recurring nature) considered necessary for a fair presentation of the results of operations have been included. Consolidated operating results for the three and six-month periods ended June 30, 2019, are not necessarily indicative of results that may be expected for the year ending December 31, 2019.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries, Rubicon Technology Worldwide LLC, Rubicon DTP LLC, Rubicon Technology BP LLC, Rubicon Sapphire Technology (Malaysia) SDN BHD and Rubicon Technology Hong Kong Limited. All intercompany transactions and balances have been eliminated in consolidation.

Investments

The Company invests available cash primarily in U.S. Treasury securities, investment grade commercial paper, FDIC guaranteed certificates of deposit, common stock and corporate notes. Investments classified as available-for-sale debt securities are carried at fair value with unrealized gains and losses recorded in accumulated other comprehensive income (loss). Investments in equity securities are reported at fair value, with both realized and unrealized gains and losses recorded as unrealized gain (loss) on investments and realized gain on investments, in other income (expense), in the Consolidated Statements of Operations. Investments in which the Company has the ability and intent, if necessary, to liquidate are classified as short-term.

The Company reviews its available-for-sale debt securities investments at the end of each quarter for other-than-temporary declines in fair value based on the specific identification method. The Company considers various factors in determining whether an impairment is other-than-temporary, including the severity and duration of the impairment, changes in underlying credit ratings, forecasted recovery, its ability and intent to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value and the probability that the scheduled cash payments will continue to be made. When the Company concludes that an other-than-temporary impairment has resulted, the difference between the fair value and carrying value is written off and recorded as a charge on the consolidated statements of operations.

Accounts receivable

The majority of the Company’s accounts receivable is 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 length of time customer’s account is past due, 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.

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Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The Company records treasury stock purchases under the cost method whereby the entire cost of the acquired stock is recorded as treasury stock. In November 2018, the Company’s Board of Directors authorized a program to repurchase up to \$3 million of the Company’s common stock (“Common Stock”). The Company’s share repurchase program does not obligate it to acquire any specific number of shares. Under the program, shares may be repurchased in privately negotiated and/or open market transactions. The timing, price and volume of repurchases are based upon market conditions, relevant securities laws and other factors. The stock repurchase plan expires on November 19, 2021 and may be terminated at any time.

On June 10, 2019, the Company acquired 12,818 shares of Common Stock at a price of \$8.12 per share from Michael Mikolajczyk, the Company’s Chairman of the Audit Committee and the Board of Directors. This purchase was unanimously approved by all of the disinterested directors of the Company. It is included in the purchase activity set forth below.

Share repurchase activity during the three months ended June 30, 2019, was as follows:

Periods	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced program	Approximate dollar value of shares that may yet be purchased under the program (in thousands)
April 1, 2019 to April 30, 2019	9,282	\$ 7.81	9,282	\$ 2,830
May 1, 2019 to May 31, 2019	35,350	7.94	35,350	2,549
June 1, 2019 to June 30, 2019	14,218	8.13	14,218	2,433
Total	58,850			

Inventories

Inventories 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, and work-in-process and finished goods costs are determined on a standard cost basis, which includes 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 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.

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Inventories consisted of the following:

	<u>June 30,</u> <u>2019</u>	<u>December 31,</u> <u>2018</u>
	(in thousands)	
Raw materials	\$ 468	\$ 468
Work-in-process	1,015	1,322
Finished goods	458	340
	<u>\$ 1,941</u>	<u>\$ 2,130</u>

Property and equipment

Property and equipment consisted of the following:

	<u>June 30,</u> <u>2019</u>	<u>December 31,</u> <u>2018</u>
	(in thousands)	
Machinery, equipment and tooling	\$ 3,340	\$ 3,293
Buildings	1,711	1,686
Information systems	820	819
Land and land improvements	594	594
Furniture and fixtures	8	8
Total cost	<u>6,473</u>	<u>6,400</u>
Accumulated depreciation and amortization	<u>(3,757)</u>	<u>(3,672)</u>
Property and equipment, net	<u>\$ 2,716</u>	<u>\$ 2,728</u>

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. The Company makes 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.

For the year ended December 31, 2018, the Company reviewed the current fair value of its assets and concluded no adjustments were needed. Additionally, no adjustments were recorded for the three and six months ended June 30, 2019. The Company will continue to assess its long-lived assets to ensure the carrying amount of these assets is still appropriate given any changes in the asset usage, marketplace and other factors used in determining the current fair value.

In the six months ended June 30, 2018, the Company completed individual sales and held auctions for assets located at each of its U.S. properties, resulting in the sale of a portion of its excess U.S. equipment and consumables, which had a total net book value of \$1.5 million. Additionally, in the six months ended June 30, 2018, the Company completed sales of Malaysia equipment with a total net book value of \$131,000. Unsold excess equipment continued to be classified as current assets held for sale at June 30, 2018. Based on these sales, a gain on disposal of assets of \$1.6 million was recorded for the six months ended June 30, 2018.

The Company completed a sale of excess consumable assets in the amount of approximately \$76,000 during the three months ended June 30, 2019. For the six months ended June 30, 2019, the Company sold \$151,000 of excess consumable assets. Unsold excess Malaysia equipment continued to be classified as current assets held for sale at June 30, 2019 and December 31, 2018.

The Company is pursuing the sale of its parcel of land in Batavia, Illinois, and the sale or lease of its 65,000 square-foot facility located in Penang, Malaysia. Although the Company cannot assure the timing of these sales, these properties were classified as current assets held for sale at June 30, 2019 and December 31, 2018, as it is the Company's intention to complete these sales within the next twelve-month period. The Company cannot guarantee that it will be able to successfully complete the sale or lease of any assets.

Revenue recognition

The Company recognizes revenue in accordance with ASC Topic 606, *Revenue From Contracts with Customers* ("Topic 606"), when performance obligations under a purchase order or signed quotation are satisfied. The Company's business practice commits the Company to manufacture and deliver product 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.

Government Contracts

In 2012, the Company signed a contract with the Air Force Research Laboratory to produce large-area sapphire windows on a cost plus fixed fee basis. The deliverables under this contract included development of machinery and technology to be able to produce large-area sapphire windows, prove the concept of growing large windows with that equipment and delivery of large-area sapphire windows. The Company recorded research and development revenue related to this contract on a gross basis over the contractually defined period of time as the obligations were completed, using the input method of measuring progress, which recognizes revenue as resources are consumed, labor hours expended and costs are incurred, plus a portion of the fixed fee. For the three and six months ended June 30, 2018, the same amount of revenue of \$56,000 was recorded, as no revenue was recorded for the three months ended March 31, 2018. As the Company has completed this contract in 2018, all revenues corresponding to the total value of the contract of \$4.7 million have been recognized as of December 31, 2018. Therefore no additional research and development revenue was recorded for the three and six months ended June 30, 2019. At June 30, 2019, the estimated costs to complete the contract were in excess of the contract value. In reviewing its current estimates, the Company expects its remaining payments to be less than \$200,000, which has previously been accrued.

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 \$3,000 and \$8,000 at June 30, 2019 and December 31, 2018, respectively.

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").

Diluted net income (loss) per common share was the same as basic net income (loss) per common share for the three and six months ended June 30, 2019 and 2018, because the effects of potentially dilutive securities did not have a material impact on the calculation of diluted net income (loss) per share. The Company had outstanding options exercisable into 32,126 and 27,000 shares of the Company's common stock that would have had an anti-dilutive effect at June 30, 2019 and 2018, respectively.

New accounting pronouncements adopted

In February 2016, the FASB issued ASU No. 2016-02 ("ASU 2016-02"), *Leases (Topic 842)*, which modifies the lease recognition requirements and requires entities to recognize the assets and liabilities arising from leases on the balance sheet. ASU 2016-02 requires entities to use a modified retrospective approach for leases that exist or are entered into after the beginning of the earliest comparative period in the financial statements. ASU 2016-02 is effective for interim and annual reporting periods beginning after December 15, 2018, with early adoption permitted. The Company's adoption of ASU 2016-02 did not have a material impact on its consolidated financial statements, as the Company does not have any material lease arrangements.

In February 2018, the FASB issued ASU No. 2018-02 ("ASU 2018-02"), *Income Statement-Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Comprehensive Income*. The new guidance allows companies to reclassify stranded tax effects resulting from the Tax Act, from accumulated other comprehensive income to retained earnings. The guidance also requires certain new disclosures regardless of the election. Early adoption is permitted. The Company's adoption of ASU 2018-02 did not have a material impact on its consolidated financial statements.

In June 2018, the FASB issued ASU No. 2018-07 ("ASU 2018-07"), *Compensation - Stock Compensation (Topic 718): Improvements to Non-Employee Share-Based Payment Accounting*. These amendments expand the scope of Topic 718, *Compensation - Stock Compensation* which currently only includes share-based payments to employees to include share-based payments issued to non-employees for goods or services. Consequently, the accounting for share-based payments to non-employees and employees will be substantially aligned. ASU 2018-07 supersedes Subtopic 505-50, *Equity - Equity-Based Payments to Non-Employees*. The guidance is effective for public companies for the interim and annual periods beginning after December 15, 2018. Early adoption is permitted, but no earlier than a company's adoption date of Topic 606, *Revenue from Contracts with Customers*. At this time, the Company does not recognize the existence of any non-employee relationships involving share-based payments; therefore, the Company's adoption of ASU 2018-07 did not have a material impact on the Company's financial statements.

3. INVESTMENTS

The Company invests its available cash primarily in U.S. Treasury securities, investment grade commercial paper, FDIC guaranteed certificates of deposit, common stock and corporate notes. Investments classified as available-for-sale debt securities are carried at fair value with unrealized gains and losses recorded in accumulated other comprehensive income (loss). Investments in equity securities are reported at fair value, with both realized and unrealized gains and losses recorded as unrealized gain (loss) on investments and realized gain on investments, in other income (expense), in the consolidated statements of operations.

The following table presents the amortized cost and gross unrealized losses on all securities at June 30, 2019:

	<u>Amortized cost</u>	<u>Gross unrealized gains</u> (in thousands)		<u>Gross unrealized losses</u>	<u>Fair value</u>
Short-term investments:					
U.S. Treasury securities	\$ 14,522	\$ 2		\$	\$ 14,524
Common stock	1,059	29		(134)	\$ 954
Total short-term investments	<u>\$ 15,581</u>	<u>\$ 31</u>		<u>\$ (134)</u>	<u>\$ 15,478</u>

The following table presents the amortized cost and gross unrealized losses on all securities at December 31, 2018:

	<u>Amortized cost</u>	<u>Gross unrealized gains</u> (in thousands)		<u>Gross unrealized losses</u>	<u>Fair value</u>
Short-term investments:					
U.S. Treasury securities	\$ 14,357	—		(1)	14,356
Total short-term investments	<u>\$ 14,357</u>	<u>\$ —</u>		<u>\$ (1)</u>	<u>\$ 14,356</u>

The Company values its investments at fair value, defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value, which are the following:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The Company's fixed-income available-for-sale debt securities consist of U.S. Treasury securities, high-quality investment grade commercial paper, FDIC guaranteed certificates of deposit and corporate notes. Investments in equity securities consist of common stock. The Company values these securities based on pricing from pricing vendors, who may use quoted prices in active markets for identical assets (Level 1 inputs) or inputs other than quoted prices that are observable either directly or indirectly (Level 2 inputs) in determining fair value. The valuation techniques used to measure the fair value of the Company's financial instruments having Level 2 inputs were derived from non-binding market consensus prices that are corroborated by observable market data, quoted market prices for similar instruments, or pricing models, such as discounted cash flow techniques.

The following table summarizes the Company's financial assets measured at fair value on a recurring basis as of June 30, 2019:

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
	(in thousands)			
Cash equivalents:				
Money market funds	\$ 3,873	\$ —	\$ —	\$ 3,873
Investments:				
Available-for-sale securities — current:				
U.S. Treasury securities	—	14,524	—	14,524
Common stock	954	—	—	954
Total	<u>\$ 4,827</u>	<u>\$ 14,524</u>	<u>\$ —</u>	<u>\$ 19,351</u>

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The following table summarizes the Company's financial assets measured at fair value on a recurring basis as of December 31, 2018:

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
	(in thousands)			
Cash equivalents:				
Money market funds	\$ 2,821	\$ —	\$ —	\$ 2,821
Investments:				
Available-for-sale securities — current:				
U.S. Treasury securities	—	14,356	—	14,356
Total	<u>\$ 2,821</u>	<u>\$ 14,356</u>	<u>\$ —</u>	<u>\$ 17,177</u>

There are no terms or conditions restricting the Company from redeeming any of its investments.

In addition to the debt securities noted above, the Company had approximately \$5.7 million and \$8.4 million of time deposits included in cash and cash equivalents as of June 30, 2019 and December 31, 2018, respectively.

4. SIGNIFICANT CUSTOMERS

For the three months ended June 30, 2019, the Company had three customers individually that accounted for approximately 19%, 17% and 12%, of revenue. For the three months ended June 30, 2018, the Company had three customers individually that accounted for approximately 21%, 15% and 13% of revenue. For the six months ended June 30, 2019, the Company had three customers that accounted for approximately 20%, 18% and 15% of revenue. For the six months ended June 30, 2018, the Company had three customers that accounted for approximately 15%, 15% and 10% of revenue. No other customer accounted for 10% or more of the Company's revenues during the three and six months ended June 30, 2019 and 2018.

Customers individually representing more than 10% of trade receivables accounted for approximately 69% and 79% of accounts receivable as of June 30, 2019 and December 31, 2018, respectively.

5. STOCKHOLDERS' EQUITY

Common shares reserved

As of June 30, 2019, the Company had reserved 80,030 shares of common stock for issuance upon the exercise of outstanding common stock options and vesting of RSUs. Also, 328,660 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 June 30, 2019.

On May 30, 2019, the Company's Compensation Committee determined that the Chief Executive Officer satisfied the criteria to earn his 2018 objective based bonus and therefore is entitled to be granted 49,000 shares ("Bonus Shares") of the Company's Common Stock. The Bonus Shares have not been issued as of this date and are likely to be issued in the third quarter of 2019. The Company recognized an expense of \$414,000 during the three months ended June 30, 2019 for the granting of the Bonus Shares. The share information set forth in this Report on Form 10-Q does not include the Bonus Shares.

Preferred stock

At the Company's 2018 annual meeting ("2018 Annual Meeting") of stockholders, an amendment to the Company's Eighth Amended and Restated Certificate of Incorporation (as amended, the "Certificate of Incorporation") was approved to decrease the Company's authorized number of shares of preferred stock from 5,000,000 shares to 1,000,000 shares. Subsequent to receiving stockholder approval at the 2018 Annual Meeting, the Company filed with the Secretary of State of the State of Delaware a Certificate of Amendment to decrease the authorized number of preferred shares, consequently reducing the number of total authorized shares from 13,200,000 to 9,200,000.

6. STOCK INCENTIVE PLANS

In August 2007, the Company adopted the Rubicon Technology Inc. 2007 Stock Incentive Plan, which was amended and restated effective in June 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 entitled 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 value of the common stock on the grant date. On June 24, 2016, the 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.

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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, 328,660 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 as of June 30, 2019, and changes during the six months then ended:

	Shares available for grant	Number of options outstanding	Weighted-average option exercise price	Number of restricted stock shares issued	Number of RSUs outstanding
At January 1, 2019	295,067	69,083	\$ 12.10	99,570	50,176
Granted	(925)	—	—	—	925
Exercised/issued	—	—	—	—	(5,636)
Cancelled/forfeited	34,518	(34,518)	12.58	—	—
At June 30, 2019	328,660	34,565	\$ 11.62	99,570	45,465

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 June 30, 2019, there was \$53,977 of intrinsic value arising from 32,126 stock options exercisable and outstanding.

The Company uses the Black-Scholes option pricing model to value stock options. The Company uses historical stock price average to determine its volatility assumptions. The assumed risk-free rates were based on U.S. Treasury rates in effect at the time of grant with a term consistent with the expected option lives. The expected term is based upon the vesting term of the Company's options. The forfeiture rate of 28.99% is based on the history of forfeited options. The expense is allocated using the straight-line method. For the three and six months ended June 30, 2019, the Company recorded \$6,000 and \$13,000, respectively, of stock option compensation expense. For the three and six months ended June 30, 2018, the Company recorded \$13,000 and \$30,000, respectively, of stock option compensation expense. As of June 30, 2019, the Company had \$53,000 of total unrecognized compensation cost related to non-vested stock option awards granted under the Company's stock-based plans that it expects to recognize over a weighted-average period of 1.25 years.

A summary of the Company's non-vested options during the six months ended June 30, 2019, is presented below:

	Options	Weighted-average exercise price
Non-vested options at January 1, 2019	21,992	\$ 6.86
Granted	—	—
Vested	—	—
Canceled/forfeited	(1,874)	6.10
Non-vested options at June 30, 2019	20,118	\$ 6.93

Pursuant to an employment agreement, the Company granted 30,902 and 59,098 RSUs to a key executive in 2018 and 2017, respectively.

The following table summarizes the award vesting terms for the remaining unvested RSUs under this grant:

Number of RSUs	Target price
15,000	\$ 11.00
15,000	\$ 12.50
15,000	\$ 14.00

The RSUs vest in the amounts set forth above on the first date the 15-trading day average closing price of the Company's common stock equals or exceeds the corresponding target price for the common stock before May 12, 2021. At the time the negotiation of the terms of the employment agreement began, the closing price of the common stock was \$5.50. On the date of grant, the closing price of the common stock was \$6.30.

The Company used a Monte Carlo simulation model valuation technique to determine the fair value of RSUs granted because the awards vest based upon achievement of market price targets. The Monte Carlo simulation model utilizes multiple input variables that determine the probability of satisfying the market condition stipulated in the award and calculates the fair value of each RSU.

The daily expected stock price volatility is based on a three-year historical volatility of the Company's common stock. The daily expected dividend yield is based on annual expected dividend payments. The average daily risk-free interest rate is based on the three-year treasury yield as of the grant date. Each of the tranches is calculated to have its own fair value and requisite service period. The fair value of each tranche is amortized over the requisite or derived service period which is up to four years.

For the three and six months ended June 30, 2019, the Company recorded \$7,000 and \$7,000, respectively, of RSU expense. For the three months and six months ended June 30, 2018, the Company recorded \$115,000 and \$206,000, respectively, of RSU expense. As of June 30, 2019, there was no compensation cost related to the non-vested RSUs remaining.

A summary of the Company's RSUs for the six month period ended June 30, 2019, is presented below:

	RSUs outstanding	Weighted average price at time of grant	Aggregate intrinsic value
Non-vested RSUs as of January 1, 2019	50,176	\$ 6.31	
Granted	925	7.95	

Vested	(5,636)	7.36	
Cancelled			
Non-vested RSUs at June 30, 2019	45,465	\$ 6.22	\$ 282,684

For the three and six months ended June 30, 2019, the Company recorded \$3,000 and \$7,000, respectively, of stock compensation expense related to restricted stock. For the three and six months ended June 30, 2018, the Company recorded \$4,000 and \$61,000, respectively, of stock compensation expense related to restricted stock.

In 2018, all non-employee directors received an annual fee of \$20,000 cash, payable quarterly. From January 1, 2018, to the 2018 Annual Meeting of Stockholders, the directors in the aggregate earned \$15,000 in stock, which was equal to 1,878 shares of restricted common stock. Thereafter, at every Annual Meeting, beginning in 2018, non-employee directors receive \$10,000 in RSUs which vest on the day immediately preceding the next following Annual Meeting of Stockholders.

For the three months ended June 30, 2019, \$30,000 in RSUs were issued to our directors. For the three months ended June 30, 2018, 6,592 shares of restricted stock were issued to our directors. As of June 30, 2019 and December 31, 2018, outstanding non-vested restricted stock shares were 0 and 2,454 respectively.

For the six months ended June 30, 2018, 1,878 shares of restricted common stock were issued to outside directors.

An analysis of restricted stock outstanding is as follows:

Non-vested restricted stock as of January 1, 2019	2,454
Granted	—
Vested	(2,454)
Non-vested restricted stock as of June 30, 2019	—

The Company recognized an expense of \$414,000 during the three months ended June 30, 2019 for the granting of the Bonus Shares. The share information set forth in this Report on Form 10-Q does not include the Bonus Shares.

7. COMMITMENTS AND CONTINGENCIES

Litigation

From time to time, the Company experiences routine litigation in the normal course of its business.

In the third quarter of 2018, the Company received a summons from Bartmann, Perales & Dolter, LLC, the former lessor of the Franklin Park, Illinois, property the Company leased previously, alleging that the Company owes \$175,000 in overdue rent payments, property taxes and restoration costs. The Company intends to vigorously defend the allegation and has asserted a counterclaim pursuant to the terms of the lease agreement for reimbursement of costs and expenses to maintain the condition and repair for said property. The management of the Company does not believe this pending litigation will have a material adverse effect on the financial condition or results of operations or cash flows of the Company.

Contingent Payments Related to Direct Dose

In May 2019, the Company formed Rubicon DTP LLC (“Rubicon DTP”) in order to launch a Direct to Patient (DTP) pharmacy solution under the brand names - Direct Dose Rx and Rubicon Rx. On May 17, 2019, the Company acquired certain equipment and other assets from an Indiana based pharmacy operation (“Seller”), including its licenses to operate in 11 states. Direct Dose Rx is focused on the delivery of prescription medication, over-the-counter drugs and vitamins (“Meds”) to skilled nursing facilities and hospitals for patients that are being discharged. Rubicon Rx will deliver Meds to patients at their homes. The Company has concluded that as of June 30, 2019 this transaction was not material to its financial statements.

The Company has a contingent liability to Seller in the amount of \$500,000 in the event that, for the time period between May 17, 2019 and December 31, 2019, Rubicon DTP’s revenue is equal to or greater than \$4,185,000.

The Company has an additional contingent liability to Seller in the amount of \$500,000 in the event that, for the time period between January 1, 2020 and December 31, 2020, Rubicon DTP’s revenue is equal to or greater than \$7,500,000.

The Company has an additional contingent liability to Seller if Rubicon DTP is sold for greater than \$12 million on or before May 17, 2022, in an amount equal to one of the following: (a) if the aggregate consideration paid for Rubicon DTP is greater than \$12 million, but equal to or less than \$30 million, then \$1.5 million; (b) if the aggregate consideration paid for Rubicon DTP is greater than \$30 million, but equal to or less than \$60 million, then \$2.0 million; (c) if the aggregate consideration paid for Rubicon DTP is greater than \$60 million, but less than \$100 million, then \$3.0 million; or (d) if the total consideration paid for Rubicon DTP is greater than or equal to \$100 million, then \$4.5 million.

Although it is possible that the Company meets one or more of the various targets and is required to make some or all of the above described payments, the Company believes the likelihood is remote.

8. INCOME TAXES

In 2017, the U.S. enacted the Tax Cuts and Jobs Act (the “Act”) which, among other provisions, reduced the U.S. corporate tax rate from 35% to 21% effective January 1, 2018. The SEC issued guidance, Staff Accounting Bulletin 118, on accounting for the tax effects of the Act. The guidance allows the Company to record provisional amounts for those impacts, with the requirement that the accounting be completed in a period not to exceed one year from the date of enactment. The Company has completed its accounting for the tax effects of enactment of the Act. The deemed inclusion from the repatriation tax increased from \$3.9 million at the time of provision to \$5.0 million at the time the calculation was finalized for the 2018 tax return. The increase of the inclusion related primarily to the refinement of Malaysia earnings and profits. As the Company is in a full valuation allowance position, an equal benefit adjustment was recorded for the impact of the increase of the deemed repatriation tax.

The Company is subject to taxation in the U.S., Malaysia and in a U.S. state jurisdiction. On a quarterly basis, 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. For the period ended June 30, 2019, a valuation allowance has been included in the 2019 forecasted effective tax rate. 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. Based on an evaluation in accordance with the accounting standards, as of December 31, 2015, 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 available evidence. At June 30, 2019, the Company continues to be in a three-year cumulative loss position, therefore, until an appropriate level of profitability is attained, the Company expects to maintain a full valuation allowance on its U.S. and Malaysia net deferred tax assets. Any U.S. and Malaysia tax benefits or tax expense recorded on the Company’s consolidated statements of operations will be offset with a corresponding adjustment from the use of the net operating loss (“NOL”) carryforward asset which currently has a full valuation allowance. In the event that the Company changes its determination as to the amount

of deferred tax assets that can be realized, the Company will adjust its valuation allowance with a corresponding impact to the provision for income taxes in the period in which such determination is made.

The tax provision for the six months ended June 30, 2019, is based on an estimated combined statutory effective tax rate. The Company recorded for the three and six months ended June 30, 2019, a tax expense of \$6,000 and \$10,000, respectively, for an effective tax rate of 0.74% and 1.29%, respectively. For the three and six months ended June 30, 2019 the difference between the Company's effective tax rate and the U.S. federal 21% statutory rate and state 6.2% (net of federal benefit) statutory rate was primarily related to the change in the Company's U.S. and Malaysia valuation allowances, U.S. research and development credit, Malaysia foreign tax rate differential and Malaysia withholding taxes on intercompany loan interest.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward Looking Statements

All statements, other than statements of historical facts, included in this Quarterly Report on Form 10-Q, 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 our Annual Report on Form 10-K, for the year ended December 31, 2018, and elsewhere in this Quarterly Report 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 Quarterly 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 Quarterly Report, 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 Quarterly Report, the documents that we reference in this Quarterly Report and have filed with the SEC as exhibits, and our Annual Report on Form 10-K for the year ended December 31, 2018, 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.

OVERVIEW

Rubicon Technology Worldwide LLC – Sapphire

We are a vertically integrated, advanced materials provider specializing in monocrystalline sapphire for applications in optical and industrial systems. We use our proprietary crystal growth technology to produce high-quality sapphire products to meet our customers exacting specifications. We believe that we continue to have a reputation as one of the highest quality sapphire producers in the market. We provide optical and industrial sapphire products in various shapes and sizes, including round and rectangular windows and blanks, domes, tubes and rods.

Historically, we have also provided sapphire products to the LED and mobile device markets, which are the largest markets for sapphire. However, given competitive pressures in those markets, in the fourth quarter of 2016 we announced our decision to limit our focus in to the optical and industrial sapphire markets and exit the LED market. Following this decision, we developed a plan to close our Malaysia facility, and scale down and consolidate remaining operations in the U.S.

In 2018, we completed individual sales and held auctions for assets located in Malaysia and at each of our U.S. properties, resulting in the sale of certain of our excess equipment and consumable assets. We continue to seek buyers for a few pieces of our remaining unsold Malaysia equipment. In 2018, we completed the sale of our manufacturing and office facility located in Batavia, Illinois. We are pursuing the sale of our parcel of land in Batavia, Illinois, and the sale or lease of our 65,000 square-foot manufacturing facility in Penang, Malaysia. The timing on the sale or lease of this real estate is difficult to predict.

We operate in a very competitive market. Our ability to expand our optical and industrial business and acceptance of new product offerings are difficult to predict.

In addition, our current optical and industrial sapphire business serves smaller markets than our historical undertakings, therefore, we are actively evaluating the acquisition of profitable companies outside of the sapphire market to utilize our substantial NOL carryforwards.

Historically, a significant portion of our revenue has been derived from sales to relatively few customers. For the three months ended June 30, 2019, we had had three customers individually that accounted for approximately 19%, 17% and 12% of revenue. For the three months ended June 30, 2018, we had three customers individually that accounted for approximately 21%, 15% and 13% of revenue. For the six months ended June 30, 2019, we had had three customers individually that accounted for approximately 20%, 18% and 15% of revenue. For the six months ended June 30, 2018, we had three customers individually that accounted for approximately 15%, 15% and 10% of revenue. Our principal customers have been defense subcontractors, industrial manufacturers, fabricators and resellers. No other customer accounted for 10% or more of our revenues during the three and six months ended June 30, 2019 and 2018. We expect our sales to continue to be concentrated among a small number of customers. However, we also expect that our significant customers may change from time to time.

We recognize revenue based upon the shipping terms with our customers. Delays in product orders or changes to the timing of shipments could cause our quarterly revenue to vary significantly. We sell our products on a global basis, and historically derived a significant portion of our revenue from customers outside of the U.S., with the majority of our sales to the Asian and European markets. Following the decision to limit our focus to the optical and industrial sapphire markets, a major source of our revenue is derived from the North American market. All of our revenue and corresponding accounts receivable are denominated in U.S. dollars. Substantially all of our revenue is generated by our direct sales force and we expect this to continue in the future.

We manage direct sales, grow and fabricate sapphire parts and ship from our facility located in Bensenville, Illinois. Previously, we leased this property, and it served as the headquarters of our operations and one of our growth facilities. In 2018, we vacated our leased Franklin Park, Illinois, facility due to the expiration of our lease. Additionally, in 2018, we completed the purchase of our Bensenville property and consolidated all of our operations into this facility.

Our cost of goods sold 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 are subject to variations in the cost of consumable assets from period to period because we do not have long-term fixed-price agreements with our suppliers. We currently outsource some of our production processes and needs.

Our operating expenses are comprised of sales and marketing, and general and administrative (“G&A”) expenses. G&A expenses consist primarily of compensation and associated costs for finance, human resources, information technology and administrative activities, including charges for accounting, legal services and insurance. Additionally, the majority of our stock-based compensation relates to administrative personnel and is accounted for as a G&A expense.

Other income consists of interest income, unrealized gain (loss) on investments, realized gain on investments and realized gains (loss) on currency translation.

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, 2018, shows no impact on such utilization. In order to protect our NOL carryforwards, in December 2017, we implemented a stockholders’ rights plan. We are in a cumulative loss position for the past three years. Based on an evaluation in accordance with the accounting standards, a valuation allowance has been recorded against the net U.S. and Malaysia 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 available evidence. Until an appropriate level of profitability is attained, we expect to maintain a full valuation allowance on our U.S. and Malaysia net deferred tax assets.

We continue to review a variety of strategic alternatives with a goal of providing greater value to our stockholders. These alternatives could result in, among other things, further modifying or eliminating certain of our operations, selling material assets, 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, or we may continue to operate with our current business plan and strategy. We cannot provide assurance that this process will result in the consummation of any transaction, or that the consummation of any transaction will provide greater value to our stockholders.

Rubicon DTP LLC d/b/a Direct Dose Rx

In May 2019, the Company formed Rubicon DTP LLC in order to launch a Direct to Patient (DTP) pharmacy solution under the brand names - Direct Dose Rx and Rubicon Rx. On May 17, 2019, pursuant to the Asset Purchase Agreement (“Direct Dose APA”), by and among Wellfount Corporation, Rubicon DTP LLC, and Rubicon Technology, Inc., dated as of May 17, 2019, the Company acquired certain equipment and operating assets from an Indiana based pharmacy operation, including its licenses to operate in 11 states. Direct Dose Rx is focused on the delivery of prescription medication, over-the-counter drugs and vitamins (“Meds”) to skilled nursing facilities and hospitals for patients that are being discharged. Rubicon Rx will deliver Meds to patients at their homes.

Rubicon is in the process of negotiating agreements with drug wholesalers, applying for licenses with pharmacy benefit management companies (PBMs) and renewing or creating partnerships with skilled nursing facilities (SNFs). Direct Dose Rx and Rubicon Rx is currently operated from a leased facility located in Indianapolis, Indiana.

For additional terms relating to the acquisition, including certain earn-out payments at the end of 2019, 2020 and upon the sale of the business if it occurs prior to the third anniversary of the transaction, please review the Asset Purchase Agreement (“Direct Dose APA”), by and among Wellfount Corporation, Rubicon DTP LLC, and Rubicon Technology, Inc., dated as of May 17, 2019, filed as an exhibit hereto.

RESULTS OF CONSOLIDATED OPERATIONS THREE MONTHS ENDED JUNE 30, 2019 AND 2018

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

	Three months ended June 30,	
	2019	2018
	(in thousands)	
Revenue	\$ 769	\$ 801
Cost of goods sold	729	921
Gross profit (loss)	40	(120)
Operating expenses:		
General and administrative	928	692
Sales and marketing	69	106
Research and development	—	42
Gain on sale or disposal of assets	(76)	(1,052)
Total operating expenses	(921)	212
Income (loss) from operations	(881)	92
Other income	51	64
Income (loss) before income taxes	(830)	156
Income tax expense	(6)	(6)
Net income (loss)	\$ (836)	\$ 150

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

	Three months ended June 30,	
	2019	2018
	(percentage of total)	
Revenue	100%	100%
Cost of goods sold	95	113
Gross profit (loss)	5	(13)
Operating expenses:		
General and administrative	121	87
Sales and marketing	9	13
Research and development	—	13
Gain on sale or disposal of assets	(10)	(139)

Total operating expenses	(120)	26
Income (loss) from operations	(115)	13
Other income	7	13
Income (loss) before income taxes	(108)	26
Income tax expense	1	—
Net income (loss)	(109)%	26%

Revenue. Revenue was \$769,000 and \$801,000 for the three months ended June 30, 2019 and 2018, respectively, a decrease of \$32,000. This decrease in revenue from our optical and industrial sapphire business was due to an increased emphasis on limiting our sales to profitable orders; also, due to fluctuations in demand and timing of orders.

Gross profit/(loss). Gross profit/(loss) was \$40,000 and \$(120,000) for the three months ended June 30, 2019 and 2018, respectively, an increase of \$160,000. This improvement was primarily attributable to a decrease in production costs, as a result of the consolidation of our facilities and improved production efficiency.

General and administrative expenses. General and administrative expenses were \$928,000 and \$692,000 for the three months ended June 30, 2019 and 2018, respectively, an increase of \$236,000. The increase was largely attributable to a non-cash stock grant expense of \$414,000 and by approximately \$22,000 for costs and expenses related to the due diligence and negotiation of the Direct Dose APA. This was partially offset by a reduction in employee compensation costs of \$85,000 on a lower headcount, lower office maintenance and insurance policies of \$65,000 and lower audit, tax and consulting fees of \$46,000.

Sales and marketing expenses. Sales and marketing expenses were \$69,000 and \$106,000 for the three months ended June 30, 2019 and 2018, respectively, a decrease of \$37,000. The decrease in sales and marketing expenses was primarily attributable to a decrease in employee compensation costs of approximately \$10,000 and a decrease in exhibition, travel and meal expenses of \$27,000.

Research and development expenses. Research and development expenses were \$42,000 for the three months ended June 30, 2018. We did not record any expenses attributable to the research and development in the three months ended June 30, 2019, which resulted in a decrease of \$42,000. This was attributable to a temporary suspension of research and development activities.

Gain on sale or disposal of assets. For the three months ended June 30, 2019, we recorded a gain on sale or disposal of excess equipment of \$76,000. In 2018, we held multiple auctions and completed individual sales of certain of our excess equipment and consumable assets located in the U.S. and Malaysia. As the result of these sales, for the three months ended June 30, 2018, we recorded a gain on disposal of assets of \$1,052,000 on the sales of fully depreciated and previously written down equipment, small tools and consumable assets.

Other income. Other income was \$51,000 and \$64,000 for the three months ended June 30, 2019 and 2018, respectively, a decrease of \$13,000.

Income tax (benefit) expense. In accordance with ASC740 “Accounting for Income Taxes” (“ASC740”), we evaluate our deferred income tax assets quarterly to determine if valuation allowances are required or should be adjusted. At June 30, 2019, we continue to be in a three-year cumulative loss position; therefore, until an appropriate level of profitability is attained, we expect to maintain a valuation allowance on net deferred tax assets related to future U.S. and Malaysia tax benefits and will no longer accrue tax benefits or tax expense on our Consolidated Statements of Operations. The tax provision for the three months ended June 30, 2019, is based on an estimated combined statutory effective tax rate. For the three months ended June 30, 2019, the difference between the Company’s effective tax rate of 0.74% and the U.S. federal 21% statutory rate and state 6.2% (net of federal benefit) statutory rate was primarily related to the change in our U.S. and Malaysia NOL valuation allowances, U.S. research and development credit, Malaysia foreign tax rate differential and Malaysia withholding taxes on intercompany loan interest.

RESULTS OF CONSOLIDATED OPERATIONS SIX MONTHS ENDED JUNE 30, 2019 AND 2018

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

	Six months ended	
	June 30,	
	2019	2018
	(in thousands)	
Revenue	\$ 1,689	\$ 1,840
Cost of goods sold	1,314	1,853
Gross profit (loss)	375	(13)
Operating expenses:		
General and administrative	1,354	1,314
Sales and marketing	164	225
Research and development	—	75
Gain on sale or disposal of assets	(151)	(1,614)
Total operating expenses	(1,367)	1
Loss from operations	(992)	(13)
Other income	222	136
Income (loss) before income taxes	(770)	123
Income tax expense	10	13
Net income (loss)	\$ (780)	\$ 110

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

	Six months ended	
	June 30,	
	2019	2018
	(percentage of total)	
Revenue	100%	100%
Cost of goods sold	78	100
Gross profit	22	—
Operating expenses:		
General and administrative	80	72

Sales and marketing	10	11
Research and development	—	6
Gain on sale or disposal of assets	(9)	(89)
Total operating expenses	81	—
Loss from operations	(59)	—
Other income	13	6
Income (loss) before income taxes	(46)	6
Income tax expense	1	—
Net income (loss)	(47)%	6%

Revenue. Revenue was \$1,689,000 and \$1,840,000 for the six months ended June 30, 2019 and 2018, respectively, a decrease of \$151,000. This decrease in revenue from our optical and industrial sapphire business was due to an increased emphasis on limiting our sales to profitable orders; also, due to fluctuations in demand and timing of orders.

Gross profit/(loss). Gross profit/(loss) was \$375,000 and \$(13,000) for the six months ended June 30, 2019 and 2018, respectively, an increase of \$388,000. This improvement was primarily attributable to an increase in pricing and a decrease in production costs of \$370,000, as a result of improved production efficiency. Additionally, based on a revised estimate, we recorded an adjustment of \$28,000 of expected remaining payments related to our government contract.

General and administrative expenses. General and administrative expenses were \$1,354,000 and \$1,314,000 for the six months ended June 30, 2019 and 2018, respectively, an increase of \$40,000. The increase was largely attributable to non-cash stock grant expense of \$414,000 and by approximately \$22,000 for costs and expenses related to the due diligence and negotiation of the Direct Dose APA. This was partially offset by a reduction in employee compensation costs of \$191,000 on a lower headcount. The Company also experienced a decrease in the administrative office maintenance, connectivity and business insurance costs of \$125,000 on renegotiated contracts and policies. Additionally, we recorded lower audit and tax consulting expense of \$105,000. The general and administrative expenses for the six months ended June 30, 2018 was lower due to an adjustment of \$43,000 due to the reimbursement of legal expenses, which was related to a recovery of certain SEC compliance counsel costs.

Sales and marketing expenses. Sales and marketing expenses were \$164,000 and \$225,000 for the six months ended June 30, 2019 and 2018, respectively, a decrease of \$61,000. The decrease in sales and marketing expenses was primarily attributable to a decrease in employee compensation costs on a lower headcount of approximately \$36,000 and a decrease in exhibition and travel expenses.

Research and development expenses. Research and development expenses were \$75,000 for the six months ended June 30, 2018. We did not record any expenses attributable to the research and development in the six months ended June 30, 2019, which resulted in a decrease of \$75,000. This was attributable to a temporary suspension of research and development activities.

Gain on sale or disposal of assets. For the six months ended June 30, 2019, we recorded a gain on sale or disposal of excess equipment of \$151,000. In 2018, we held multiple auctions and completed individual sales of certain of our excess equipment and consumable assets located in the U.S. and Malaysia. As the result of these sales, for the six months ended June 30, 2018, we recorded a gain on disposal of assets of \$1,614,000 on the sales of fully depreciated and previously written down equipment, small tools and consumable assets.

Other income. Other income was \$222,000 and \$136,000 for the six months ended June 30, 2019 and 2018, respectively, an increase of \$86,000. The increase in other income was primarily due to better money management and an increase in interest rates.

Income tax (benefit) expense. In accordance with ASC740 “Accounting for Income Taxes” (“ASC740”), we evaluate our deferred income tax assets quarterly to determine if valuation allowances are required or should be adjusted. At June 30, 2019, we continue to be in a three-year cumulative loss position; therefore, until an appropriate level of profitability is attained, we expect to maintain a valuation allowance on net deferred tax assets related to future U.S. and Malaysia tax benefits and will no longer accrue tax benefits or tax expense on our Consolidated Statements of Operations. The tax provision for the six months ended June 30, 2019, is based on an estimated combined statutory effective tax rate. For the six months ended June 30, 2019, the difference between the Company’s effective tax rate of 1.29% and the U.S. federal 21% statutory rate and state 6.2% (net of federal benefit) statutory rate was primarily related to the change in our U.S. and Malaysia NOL valuation allowances, U.S. research and development credit, Malaysia foreign tax rate differential and Malaysia withholding taxes on intercompany loan interest.

LIQUIDITY AND CAPITAL RESOURCES

We have historically funded our operations using a combination of issuances of common stock and cash generated from our operations. In addition to this, recently, we have used the funds obtained through selling our excess equipment to fund our operations.

As of June 30, 2019, we had cash, cash equivalents and short-term investments totaling \$25.1 million, including cash of \$5.7 million held in deposits at major banks, \$3.9 million invested in money market funds and \$15.5 million of short-term investments including U.S. Treasury securities, investment grade commercial paper, FDIC guaranteed certificates of deposit, common stock and corporate notes.

Cash flows from operating activities

The following table represents the major components of our cash flows from operating activities for the six months ended June 30, 2019 and 2018:

	Six months ended	
	June 30,	
	2019	2018
	(in thousands)	
Net income (loss)	\$ (780)	\$ 110
Non-cash items:		
Depreciation and amortization	85	206
Net gain on sale or disposal of assets	(151)	(1,614)
Stock-based compensation	471	297
Total non-cash items:	405	(1,111)
Working capital:		
Accounts receivable	204	211
Inventories	233	314

Prepaid expenses and other assets	(76)	(560)
Other accruals	(71)	(640)
Total working capital items:	290	(675)
Net cash provided by (used in) operating activities	\$ (85)	\$ (1,676)

Cash used by operating activities was \$85,000 for the six months ended June 30, 2019. During such period, we generated a net loss of \$780,000, including non-cash items of \$405,000, and an increase in cash from net working capital of \$290,000. The net working capital cash increase was primarily driven by a decrease in accounts receivable of \$204,000 on collected balances and a decrease of \$233,000 in raw materials, work-in-process and consumable parts inventories used in operations. This was partially offset by an increase in prepaid expenses and other assets of \$76,000 on renewed insurance policies and annual contracts.

Cash used in operating activities was \$1,676,000 for the six months ended June 30, 2018. During such period, we generated a net income of \$110,000, including non-cash items of \$(1,111,000), and a decrease in cash from net working capital of \$675,000. The net working capital cash decrease was primarily driven by an increase in prepaid expenses and other assets of \$560,000 due to collections on sales of assets completed after the end of the period. Additionally, we experienced a decrease in accounts payable of \$413,000 and a decrease in other accruals of \$227,000 on decreased spending. This was partially offset by a decrease of \$314,000 in raw materials, work-in-process and consumable parts inventories used in operations, and a decrease in accounts receivable of \$211,000 on lower sales volume.

Cash flows from investing activities

The following table represents the major components of our cash flows from investing activities for the six months ended June 30, 2019 and 2018:

	Six months ended	
	June 30,	
	2019	2018
	(in thousands)	
Purchase of property and equipment	\$ (48)	\$ -
Proceeds from sale or disposal of assets	151	3,195
Purchases of investments	(1,354)	(7,139)
Proceeds from sales of investments	235	102
Net cash used in investing activities	\$ (1,016)	\$ (3,842)

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Net cash used in investing activities was \$1,016,000 for the six months ended June 30, 2019, primarily due to the purchases of investments in U.S. Treasury securities and common stock of \$1,354,000. This was partially offset by the proceeds from sales of investments of \$235,000. Additionally, we invested in certain property and equipment for \$48,000 and received proceeds from the disposal of assets of \$151,000.

Net cash used in investing activities was \$3,842,000 for the six months ended June 30, 2018, was primarily due to the purchases of investments in commercial paper and corporate notes and bonds of \$7,139,000. This was partially offset by the proceeds from sales of equipment and other assets of \$3,195,000 at our U.S. and Malaysia locations. Additionally, this was offset by the proceeds from sales of investments of \$102,000.

We anticipate our capital expenditures related to our sapphire and pharmacy business to be minimal.

Cash flows from financing activities

Net cash used in financing activities was \$503,000 for the six months ended June 30, 2019, which was due to purchases of our treasury stock of \$501,000 and cash for taxes on net share settlement of equity share awards of \$2,000.

Net cash used in financing activities was \$5,000 for the six months ended June 30, 2018. This was primarily from cash for taxes on net share settlement of equity share awards.

Future liquidity requirements

We believe that our existing cash, cash equivalents, anticipated cash flows from operating activities and proceeds from sales or leases of fixed assets will be sufficient to meet our anticipated cash needs for at least the next twelve months. However, if our ability to generate 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. Our cash needs include cash required to fund our operations. If the assumptions underlying our business plan regarding future revenues and expenses change, or if unexpected opportunities or needs arise, we may seek to raise additional cash by selling equity or convertible debt securities. If we raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our stockholders could be significantly diluted, and these newly issued securities may have rights, preferences or privileges senior to those of existing stockholders.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

We consider to be critical those accounting policies that require our most subjective or complex judgments, which often result from a need to make estimates about the effect of matters that are inherently uncertain, and that are among the most important of our accounting policies in the portrayal of our financial condition and results of operations. We believe the following to be our critical accounting policies, including the more significant estimates and assumptions used in preparation of our financial statements.

Revenue recognition

We recognize revenue in accordance with ASC Topic 606, *Revenue From Contracts with Customers* ("Topic 606"), when performance obligations under a purchase order or signed quotation are satisfied. Our business practice commits us to manufacture and deliver product 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. Our 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 us. Accordingly, we recognize revenue when the product is shipped, and control of the product, title and risk of loss have been transferred to the customer. We grant 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.

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In 2012, we signed a contract with the Air Force Research Laboratory to produce large-area sapphire windows on a cost plus fixed fee basis. The deliverables under this contract included development of machinery and technology to be able to produce large-area sapphire windows, prove the concept of growing large windows with that equipment, and delivery of large-area sapphire windows. We recorded research and development revenue related to this contract on a gross basis over the contractually defined period of time as the obligations were completed, using the input method of measuring progress, which recognizes revenue as resources are consumed, labor hours expended and costs are incurred, plus a portion of the fixed fee. As we have completed this government contract in 2018, all revenues corresponding to the total value of the contract of \$4.7 million have been recognized as of December 31, 2018. No additional research and development revenue was recorded for the six months ended June 30, 2019.

At June 30, 2019, the costs to complete the contract were in excess of the contract value. In reviewing our current estimates, we expect our remaining payments to be less than \$200,000, which has previously been accrued.

We do not provide maintenance or other services and do not have sales that involve bill & hold arrangements, multiple elements or deliverables. However, we do provide product warranty for up to 90 days, for which we have accrued a warranty reserve of \$3,000 and \$8,000 at June 30, 2019 and December 31, 2018, respectively.

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, we perform an analysis to review the recoverability of the asset's carrying value. We make 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.

For the year ended December 31, 2018, we reviewed the current fair value of our assets and concluded no adjustments were needed. Additionally, no adjustments were recorded for the six months ended June 30, 2019. We will continue to assess our long-lived assets to ensure the carrying amount of these assets is still appropriate given any changes in the asset usage, marketplace and other factors used in determining the current fair value.

The Company is pursuing the sale of its parcel of land in Batavia, Illinois, and the sale or lease of its 65,000 square-foot facility located in Penang, Malaysia. Although the Company cannot assure the timing of these sales, these properties were classified as current assets held for sale at June 30, 2019 and December 31, 2018, as it is the Company's intention to complete these sales within the next twelve-month period. The Company cannot guarantee that it will be able to successfully complete the sale or lease of any assets.

In the three months ended June 30, 2018, the Company completed individual sales and held auctions for equipment and consumable assets, resulting in the sale of certain of our excess U.S. and Malaysia assets, which had a total net book value of \$626,000. Based on these sales, a gain on sale or disposal of equipment and consumable assets of \$562,000 was recorded for the three months ended June 30, 2018. The Company completed a sale of excess consumable assets, which had no book value, in the amount and gain of approximately \$76,000 during the three months ended June 30, 2019. For the six months ended June 30, 2019, the Company sold excess consumable assets, which had no book value, in the amount and gain of \$151,000. Unsold excess Malaysia equipment continued to be classified as current assets held for sale at June 30, 2019 and December 31, 2018.

Inventory valuation

We value our inventory 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, and work-in-process and finished goods costs are determined on a standard cost basis which includes materials, labor and manufacturing overhead. We establish inventory reserves when conditions exist that suggest inventory may be in excess of anticipated demand or is obsolete based on customer required specifications. We evaluate the ability to realize the value of our inventory based on a combination of factors, including forecasted sales, estimated current and future market value and changes in customers' product specifications.

Our method of estimating excess and obsolete inventory has remained consistent for all periods presented. However, if our recognition of excess or obsolete inventory is, or if our estimates of our inventory's potential utility become, less favorable than currently expected, additional inventory reserves may be required.

We determine our normal operating capacity and record as an expense costs attributable to lower utilization of equipment and staff. For the three and six months ended June 30, 2019, we determined that we were not operating at capacity and recorded costs associated with lower utilization of equipment and staff of \$56,000 and \$154,000, respectively. For the three and six months ended June 30, 2018, we determined that we were not operating at capacity and recorded costs associated with lower utilization of equipment and staff of \$207,000 and \$445,000, respectively. It is likely we will incur additional adjustments for lower utilization of our equipment and staff in 2019.

Investments

We invest our available cash primarily in U.S. Treasury securities, investment grade commercial paper, FDIC guaranteed certificates of deposit, common stock and corporate notes. Investments classified as available-for-sale debt securities are carried at fair value with unrealized gains and losses recorded in accumulated other comprehensive income (loss). Investments in equity securities are reported at fair value, with both realized and unrealized gains and losses recorded in other income, in the Consolidated Statements of Operations. Investments in which we have the ability and intent, if necessary, to liquidate are classified as short-term.

We review our available-for-sale debt securities investments at the end of each quarter for other-than-temporary declines in fair value based on the specific identification method. We consider various factors in determining whether an impairment is other-than-temporary, including the severity and duration of the impairment, changes in underlying credit ratings, forecasted recovery, our ability and intent to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value and the probability that the scheduled cash payments will continue to be made. When we conclude that an other-than-temporary impairment has resulted, the difference between the fair value and carrying value is written off and recorded as a charge on the Consolidated Statements of Operations. As of June 30, 2019 and 2018, no impairment was recorded.

Stock-based compensation

We grant stock-based compensation in the form of stock options, RSUs and restricted stock. We expense stock-based compensation based upon the fair value on the date of grant. We use the Black-Scholes option pricing model to determine the fair value of stock options. The determination of the fair value of stock-based payment awards on the date of grant using an option-pricing model is affected by assumptions regarding a number of complex and subjective variables. These variables include our expected stock volatility over the term of the awards, actual and projected employee stock option exercise behaviors, risk-free interest rates, forfeitures and expected dividends.

The expected term represents the weighted-average period that our stock options are expected to be outstanding and is based upon the historical data. We estimate the volatility of our common stock based on a historical range of stock price fluctuations. We base the risk-free interest rate that we use in the option pricing model on U.S. Treasury zero-coupon issues with remaining terms similar to the expected terms on the options. We do not anticipate paying any cash dividends in the foreseeable future and, therefore, use an expected dividend yield of zero in the option pricing model. We are required to estimate forfeitures at the time of grant and

revise those estimates in subsequent periods if actual forfeitures differ from those estimates. The current forfeiture rate of 28.99% was based on our past history of forfeitures.

All option grants are granted at an exercise price per share equal to the closing market price of our common stock on the day before the date of grant.

Based on the fair value of the common stock at June 30, 2019, there was \$53,977 of intrinsic value arising from 32,126 stock options exercisable and outstanding.

Pursuant to an employment agreement, we granted 30,902 and 59,098 RSUs to a key executive in 2018 and 2017, respectively. We used a Monte Carlo simulation model valuation technique to determine the fair value of these RSUs because the awards vest based upon achievement of our stock market price targets. The Monte Carlo simulation model utilizes multiple input variables that determine the probability of satisfying the market condition stipulated in the award and calculates the fair value of each RSU. The daily expected stock price volatility is based on a four-year historical volatility of our common stock. The daily expected dividend yield is based on annual expected dividend payments. The average daily risk-free interest rate is based on the three-year treasury yield as of the grant date. Each of the target price tranches is calculated to have its own fair value and requisite service period. The fair value of each tranche is amortized over the requisite or derived service period which is up to four years.

We allocate stock-based compensation costs using a straight-line method, which amortizes the fair value of each award on a straight-line basis over the service period.

Income tax valuation allowance

In accordance with ASC 740 “Accounting for Income Taxes” (“ASC 740”), we evaluate our deferred income tax assets quarterly to determine if valuation allowances are required or should be adjusted. Evaluating the need for and amount of a valuation allowance for deferred tax assets often requires significant judgment and extensive analysis of all positive and negative evidence available to determine whether all or some portion of the deferred tax assets will not be realized. A valuation allowance must be established for deferred tax assets when it is more likely than not (a probability level of more than 50%) that they will not be realized. In general, “realization” refers to the incremental benefit achieved through the reduction in future taxes payable or an increase in future taxes refundable from the deferred tax assets, assuming that the underlying deductible differences and carryforwards are the last items to enter into the determination of future taxable income. In determining our valuation allowance, we consider the source of taxable income including taxable income in prior carryback years, future reversals of existing temporary differences, the required use of tax planning strategies, and future taxable income exclusive of reversing temporary differences and carryforwards. We are in a cumulative loss position for the past three years, which is considered significant negative evidence by the accounting standards that is difficult to overcome on a “more likely than not” standard through objectively verifiable data. The accounting standards attribute greater weight to objective verifiable evidence than to subjective positive evidence, such as our projections for future growth. Based on an evaluation in accordance with the accounting standards, as of June 30, 2019, a valuation allowance has been recorded against the net U.S. and Malaysia 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 available evidence. Any U.S. and Malaysia tax benefits or tax expense recorded on the Consolidated Statements of Operations will be offset with a 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.

RECENT ACCOUNTING PRONOUNCEMENTS

See Note 2 to the Consolidated Financial Statements for a discussion of new accounting standards.

OFF-BALANCE SHEET ARRANGEMENTS

We do not have any off-balance sheet arrangements.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

For the six months ended June 30, 2019, there were no material changes in the information regarding market risk contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018.

ITEM 4. CONTROLS AND PROCEDURES

Management’s evaluation of disclosure controls and procedures

Based on evaluations at June 30, 2019, our chief executive officer and interim chief financial officer (together, our “certifying officers”), with the participation of the management team, have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) are effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that material information relating to the Company is accumulated and communicated to management, including our certifying officers, as appropriate to allow timely decisions regarding required disclosures.

Changes in internal control over financial reporting

Our certifying officer has concluded that there were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) during the three months ended June 30, 2019, that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II

ITEM 6. EXHIBITS

The exhibits filed or incorporated by reference as a part of this report are listed in the Exhibit Index which appears following the signature page to this Quarterly Report on Form 10-Q and is incorporated by reference.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Rubicon Technology, Inc.

Date: August 13, 2019

By: /s/ Timothy E. Brog
 Timothy E. Brog
 President, Chief Executive Officer
 and Interim Chief Financial Officer

EXHIBIT INDEX

The Exhibits listed below are filed or incorporated by reference as part of this Quarterly Report on Form 10-Q.

Exhibit No.	Description	Incorporation by Reference
3.1	Eighth Amended and Restated Certificate of Incorporation of Rubicon Technology, Inc.	Filed as Exhibit 3.1 to the registrant's Registration Statement on Form S-1/A, filed on November 1, 2007 (File No. 333-145880)
3.2	Amendment No. 1 to Eighth Amended and Restated Certificate of Incorporation of Rubicon Technology, Inc.	Filed as Appendix A to the registrant's Definitive Proxy Statement on Schedule 14A, filed on April 29, 2011 (File No. 1-33834)
3.3	Amendment No. 2 to Eighth Amended and Restated Certificate of Incorporation of Rubicon Technology, Inc.	Filed as Exhibit 3.1 to the registrant's Current Report on Form 8-K, filed on May 4, 2017 (File No. 1-33834)
3.4	Second Amended and Restated Bylaws of Rubicon Technology, Inc.	Filed as Exhibit 3.3 to the registrant's Quarterly Report on Form 10-Q, filed on May 10, 2016 (File No. 1-33834)
3.5	Certificate of Designations of Series A Junior Participating Preferred Stock of Rubicon Technology, Inc. filed with the Secretary of State of Delaware on December 18, 2017.	Filed as Exhibit 3.1 to the registrant's Current Report on Form 8-K, filed on December 18, 2017 (File No. 1-33834)
3.6	Amendment No. 3 to Eighth Amended and Restated Certificate of Incorporation of Rubicon Technology, Inc.	Filed as Exhibit 3.1 to the registrant's Current Report on Form 8-K, filed on May 15, 2018 (File No. 1-33834)
10.1*	Asset Purchase Agreement for Direct Dose Rx	Filed herewith
31.1*	Certification of Chief Executive Officer and Interim Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	
32.1*	Certification of Chief Executive Officer and Interim Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	
101.INS*	XBRL Instance Document	
101.SCH*	XBRL Taxonomy Extension Schema Document	
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document	
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document	
101.PRE*	XBRL Taxonomy Extension Presentation Document	
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document	

* Filed electronically with this Quarterly Report on Form 10-Q

EX-10.1 2 f10q0619ex10-1_rubicon.htm ASSET PURCHASE AGREEMENT FOR DIRECT DOSE RX

Exhibit 10.1

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**"), dated as of May 17, 2019, is entered into by and among Wellfount, Corporation, a Delaware corporation ("**Seller**"), Rubicon DTP LLC, a Delaware limited liability company ("**Buyer**") and, for the purposes of Section 2.5, Section 5.1 and Article VI only, Rubicon Technology, Inc., a Delaware corporation ("**Rubicon**").

RECITALS

WHEREAS, Seller, under the assumed name Wellfount Pharmacy, is engaged in the business of directly sending packaged medicine in boxes for patient use and appropriate compliance (the “**Business**”);

WHEREAS, Rubicon is the sole member of Buyer; and

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, the rights and obligations of Seller to the Purchased Assets (as defined herein) and the Assumed Liabilities (as defined herein), in each case related to the Business, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings specified or referred to in Exhibit A to this Agreement.

ARTICLE II PURCHASE AND SALE

2.1 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible of Seller wherever located used or held for use by Seller in or for the operation of the Business which are listed on **Schedule 2.1**, including but not limited to the inventory related to the Business and the contracts (“**Assigned Contracts**”) described thereon (collectively, the “**Purchased Assets**”).

2.2 Excluded Assets. Notwithstanding the foregoing, Seller shall not be obligated to sell, and Buyer shall not be obligated to purchase or acquire from Seller, any assets of Seller other than the Purchased Assets (collectively, the “**Excluded Assets**”).

2.3 Assumed Liabilities. Subject to the terms and conditions set forth herein, at the Closing, Buyer shall assume and agree to pay, perform and discharge when due only those Liabilities and obligations of the Business arising after the Closing and related to the Purchased Assets as set forth on **Schedule 2.3**, but only to the extent that such Liabilities and obligations do not relate to any breach, default or violation by Seller on or prior to the Closing (collectively, the “**Assumed Liabilities**”).

2.4 Excluded Liabilities. Other than the Assumed Liabilities expressly assumed pursuant to **Section 2.3**, Buyer shall not assume, or in any way be liable for, any Liabilities or obligations of Seller of any kind, whether known or unknown, contingent, matured or otherwise, whether currently existing or hereinafter created, and such Liabilities or obligations shall be retained by Seller (collectively, the “**Excluded Liabilities**”). Without limiting the generality of the foregoing, the Excluded Liabilities shall include, without limitation, the following:

(i) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, brokers, investment bankers, finders, advisers and others;

(ii) any Liabilities relating to or arising out of the Excluded Assets;

(iii) any Indebtedness of the Seller;

(iv) any Liabilities of Seller for any present or former employees, independent contractors or consultants of Seller, including, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers’ compensation, severance, retention, termination or other payments or with respect to any Employee Benefit Plan;

(v) any Liabilities for trade or accounts payable of Seller with respect to the Business;

(vi) any Liabilities for any and all Taxes attributable to the ownership or operation of the Purchased Assets or the Business prior to the Closing (with, for this purpose, Taxes for the period in which the Closing Date occurs that relate to the period ending on the Closing Date shall be considered to be (x) in the case of Taxes imposed on a transactional basis or based upon income, receipts or similar items, the amount of such Taxes as determined based on an interim closing of the books on the Closing Date and (y) in the case of other Taxes, the amount of such taxes for the entire Tax period in which the Closing Date occurs, multiplied by a fraction, the numerator of which is the number of days in the portion of such tax period ending on the Closing Date and the denominator of which is the total number of days in such Tax period);

(vii) any Liabilities for legal proceedings against the Seller or any of its Affiliates or arising out of or relating to any pre-Closing period, the pre-Closing operation of the Business or the pre-Closing ownership, operation or use of any of the Purchased Assets;

(viii) any Liabilities of the Seller arising prior to the Closing under the Assigned Contracts, and any and all Liabilities relating to any breach, act or omission by the Seller prior to the Closing under any Assigned Contract; and

(ix) any Liabilities arising out of events, conduct or conditions existing or occurring prior to the Closing that constitute a violation by the Seller or the Business of or non-compliance by the Seller or the Business with any Law or any Permit.

2.5 Purchase Price. The aggregate purchase price for the Purchased Assets shall be determined as follows (collectively, the “**Purchase Price**”):

- (a) The amount set forth on Schedule 2.1 less the Lease Payment, which shall be paid on the Closing Date by wire transfer of immediately available funds to an account designated in writing by Seller on the Closing Statement; **PLUS**
- (b) If, for the time period between the Closing Date and December 31, 2019 (the “**First Earn Out Period**”), Total Revenue is equal to or greater than \$4,185,000, an amount equal to \$500,000, paid in immediately available funds within 60 Business Days of the end of the First Earn Out Period; **PLUS**
- (c) If, for the 12-month period beginning January 1, 2020, and ending December 31, 2020 (the “**Second Earn Out Period**”), Total Revenue is equal to or greater than \$7,500,000, then an amount equal to \$500,000, paid in immediately available funds within 60 Business Days of the end of the Second Earn Out Period; **PLUS**

(d) If the Business is sold for greater than \$12,000,000 on or before the three-year anniversary of the Closing Date, an amount equal to one of the following:

- (i) If the aggregate consideration paid for the Business is greater than \$12,000,000 but equal to or less than \$30,000,000, then \$1,500,000 paid to Seller in immediately available funds at the closing of such transaction; OR
- (ii) If the aggregate consideration paid for the Business is greater than \$30,000,000 but equal to or less than \$60,000,000, then \$2,000,000 paid to Seller in immediately available funds at the closing of such transaction; OR
- (iii) If the aggregate consideration paid for the Business is greater than \$60,000,000 but less than \$100,000,000, then \$3,000,000 paid to Seller in immediately available funds at the closing of such transaction; OR
- (iv) If the total consideration paid for the Business is greater than or equal to \$100,000,000, then \$4,500,000 paid to Seller in immediately available funds at the closing of such transaction.

All amounts paid or required to be paid by Buyer to Seller pursuant to this Section 2.5 shall be paid by wire transfer to the account listed below. Upon receipt of the payments set forth in Section 2.5(a), Seller shall subsequently pay all of such amounts to pay down the outstanding Cardinal Liens:

TO:	SIL VLY BKSJ 3003 Tasman Drive, Santa Clara, CA 95054
ROUTING & TRANSIT #:	121140399
FOR CREDIT OF:	Wellfount Corporation
ADDRESS:	5751 W. 73 rd St. Indianapolis, IN 46278
CREDIT ACCOUNT #:	3301501594
BY ORDER OF:	Rubicon DTP, LLC

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Notwithstanding the obligations of Buyer and Rubicon that are set forth in Sections 2.5(b), (c) and (d), Buyer and Rubicon shall not be required to continue to operate the Business for any amount of time following the Closing Date, and Buyer shall have the ability to cease operation of the Business at any time that it deems reasonable, in its sole discretion; *provided, however*, that if Buyer decides to cease operation of the Business prior to the expiration of the Lease Agreement, then Buyer shall pay Seller the pro rata portion of the Lease Payment for the period remaining between the date Buyer ceased operations and the end of the term of the Lease Agreement. As used herein, the “**Lease Agreement**” means that certain Lease Agreement by and between Seller and PF Realty 2, LLC, as amended on May 11, 2011 by that certain First Lease Amendment, as further amended on May 21, 2013 by that certain Second Lease Amendment, as further amended by that certain Third Lease Amendment, as further amended as of the date hereof by that certain Assignment and Assumption of Lease and Consent of Landlord, for the leased premises located at 5751-5755 West 73rd Street, Indianapolis, IN 46278 (the “**Leased Premises**”), and the “**Lease Payment**” means \$21,150, which represents one half of the rent due under the lease for the period beginning June 2019 through the end of the term of the Lease Agreement.

2.6 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of Taft, Stettinius & Hollister LLP, 1 Indiana Square, Indianapolis, Indiana 46204, at 11:00 a.m. Eastern Standard Time, simultaneously with the execution and delivery of this Agreement, or at such other time, date or place as Seller and Buyer may mutually agree upon. **Closing Deliverables.** At the Closing, Seller shall deliver to Buyer the following:

- (i) a general bill of sale and assignment and assumption agreement in substantially the form attached hereto as Exhibit B with respect to the Purchased Assets to be conveyed by Seller at the Closing (the “**Bill of Sale, Assignment and Assumption Agreement**”);
- (ii) a certificate of an officer of Seller certifying: (A) true and complete copies of the resolutions adopted by Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby; and (B) copies of Seller’s organizational documents;
- (iii) the Closing Statement;
- (iv) the consents listed on **Schedule 3.4**;
- (v) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that Seller is not a foreign person within the meaning of Section 1445 of the Code duly executed by Seller;
- (vi) a Non-Competition Agreement, substantially in the form attached hereto as Exhibit D, executed by Eric Orme and Robert Meyer;
- (vii) except for the Cardinal Liens, documents evidencing the release or termination of all Liens on the Purchased Assets, and copies of filed UCC termination statements with respect to all UCC financing statements evidencing Liens, if any; and
- (viii) an intellectual property assignment agreement (the “**Intellectual Property Assignment**”) in substantially the form attached hereto as Exhibit C.

(b) At the Closing, Buyer shall deliver to Seller the following:

- (i) the amount of the Purchase Price set forth in Section 2.5(a) of this Agreement, in the amounts and to the accounts set forth on the Closing Statement;

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- (ii) a counterpart to the Bill of Sale, Assignment and Assumption Agreement, duly executed by Buyer; and
- (iii) a counterpart to the Intellectual Property Assignment.

(c) At Closing, the Seller shall deliver to the Buyer, or otherwise put the Buyer in possession and control of the Purchased Assets.

2.8 Allocation of Purchase Price. Seller and Buyer shall allocate the Purchase Price among the Purchased Assets for all purposes (including Tax and financial accounting) in accordance with **Schedule 2.8**. Buyer and Seller shall file all Tax Returns in a manner consistent with such allocation.

2.9 Withholding Tax. Buyer shall be entitled to deduct and withhold from any payment of the Purchase Price all Taxes that Buyer may be required to deduct and withhold under any provision of applicable Tax Law. All such withheld amounts shall be treated as delivered to Seller hereunder.

2.10 Third Party Consents. To the extent that Seller's rights under any assigned Contract or any other Purchased Asset may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller shall use its reasonable best efforts to obtain any such required consent(s) as promptly as possible.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF SELLER

As a material inducement to Buyer to enter into and perform its obligations under this Agreement, Seller represents and warrants to Buyer that, except as set forth in the correspondingly numbered Section of the Disclosure Schedules, the statements contained in this **ARTICLE III** are true and correct as of the date hereof.

3.1 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not have a Material Adverse Effect.

3.2 Authority of Seller. Seller has all necessary corporate power and authority to own, lease and operate its assets and properties and to carry on the Business as such Business is now being conducted. Seller has full power and authority to enter into, deliver and perform this Agreement and the other Transaction Documents to which Seller is a party. The execution, delivery and performance of this Agreement and the other Transaction Documents by Seller and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite action on the part of Seller. No other corporate proceedings or actions are necessary on the part of Seller to authorize (a) the execution, delivery and performance of this Agreement and the other Transaction Documents by Seller, or (b) the consummation by Seller of the transactions contemplated hereby and thereby.

3.3 Enforceability. Each of this Agreement and the other Transaction Documents has been duly executed and delivered by Seller and constitutes a legal, valid and binding agreement of the Seller, enforceable against the Seller in accordance with its terms, except to the extent that enforcement may be affected by Laws relating to bankruptcy, reorganization, insolvency and creditors' rights and by the availability of injunctive relief, specific performance and other equitable remedies.

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3.4 Consents. Except as set forth in **Schedule 3.4**, no notice to, report or filing with, or authorization, consent or approval of any Governmental Authority is necessary in connection with the execution, delivery or performance by the Seller of this Agreement or any other Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

3.5 No Conflicts. Except as set forth on **Schedule 3.5**, the execution and delivery of this Agreement and the other Transaction Documents by Seller, and the consummation by the Seller of the transactions contemplated hereby and thereby, do not and will not (a) conflict with or result in a breach or violation of any of the terms, conditions or provisions of Seller's articles of incorporation or bylaws; (b) result in a violation or breach of any provision of any applicable Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; (c) require on the part of the Seller any notice to or filing with, or any Permit, authorization, consent or approval of, any governmental entity; or (d) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any Person the right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which any of the Purchased Assets is subject.

3.6 Ownership and Condition of Assets.

(a) Except as set forth on **Schedule 3.6**, Seller has good title to, or a valid leasehold interest in, all of the Purchased Assets. Except as set forth on **Schedule 3.6**, upon execution and delivery (i) by the Seller to the Buyer of the Bill of Sale, and (ii) the other instruments of conveyance referred to in **Section 2.6(a)**, the Buyer will become the true and lawful owner of, and will receive good title to, the Purchased Assets, free and clear of any and all Liens.

(b) Except as set forth on **Schedule 3.6(b)**, the Purchased Assets collectively constitute all of the assets, tangible and intangible, materially necessary to operate the Business as presently proposed to be conducted.

(c) Each tangible Purchased Asset is free from material defects, has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear) and is suitable for the purposes for which it presently is used.

(d) Each asset that is being transferred to the Buyer as part of the Purchased Assets and that the Seller has possession of pursuant to a lease agreement or other contractual arrangement is in such condition that, upon its return to its lessor or owner under the applicable lease or contract, the obligations of the Seller to such lessor or owner shall have been discharged in full.

3.7 Permits. **Schedule 3.7** sets forth a complete and accurate list of all Permits issued to or held by the Seller or the Business. Such listed Permits are the only Permits that are required for the Seller to conduct the Business. Each such Permit is in full force and effect. The Seller is in compliance with the terms of each such Permit, and, to the knowledge of the Seller, no suspension or cancellation of such Permit is threatened and there is no basis for believing that such Permit will not be renewable upon expiration.

3.8 Office Space Lease. Seller is current in the payment of all Monthly Rental Installment payments under the Lease Agreement. Other than the Monthly Rental Installment payment, Seller does not pay any additional recurring monthly payment amounts to the Landlord, nor has Seller been notified by Landlord, nor is Seller aware, of any liability owed to the Landlord other than the Monthly Rental Installment.

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3.9 No Other Representations and Warranties. Except for the representations and warranties contained in this **ARTICLE III** (including the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Business and the Purchased Assets furnished or made available to Buyer and its Representatives (including any information, documents or material made available to Buyer in the virtual data room, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or otherwise in Law.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, as a material inducement to Seller to enter into and perform its

obligations under this Agreement, Buyer represents and warrants to Seller that in this **ARTICLE IV** are true and correct as of the date hereof.

4.1 Organization of Buyer. Buyer is a limited liability company duly incorporated, validly existing and in good standing under the Laws of the State of Delaware.

4.2 Authority of Buyer. Buyer has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

4.3 No Conflicts. The execution and delivery of this Agreement and the other Transaction Documents by Buyer, and the consummation by Buyer of the transactions contemplated hereby and thereby, do not and will not (a) conflict with or result in a breach or violation of any of the terms, conditions or provisions of Buyer's articles of incorporation or bylaws; (b) result in a violation or breach of any provision of any applicable Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. No consent, approval, permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby and thereby.

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ARTICLE V. COVENANTS

5.1 Confidentiality. Rubicon, Buyer and Seller hereby (a) acknowledge and agree that, prior to the consummation of the transactions contemplated by this Agreement, each party has had access to trade secrets and other information which is confidential with respect to the other parties, whether written or oral (the "**Confidential Information**"), and (b) understand the necessity of keeping the Confidential Information confidential and secret. Each party shall, and shall cause its Affiliates to, and shall use commercially reasonable efforts to cause its Representatives to, hold any and all Confidential Information of the other party in confidence, unless required to disclose such Confidential Information by judicial or administrative process or by other legal requirement. The foregoing obligations of confidentiality do not apply to Seller providing the business and financial records of Seller to its accountants or financial advisors to the extent necessary to comply with tax and other Laws. The foregoing obligations will not apply to any Confidential Information that (x) is or subsequently becomes generally publicly known, other than as a direct or indirect result of the breach of this Agreement by a party, (y) is lawfully acquired by a party from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation or (z) is independently acquired or developed by a party without the use or benefit of any Confidential Information. The parties hereto agree that Rubicon has the right to disclose in a press release information relating to this transaction and to file whatever documents is required by the Securities and Exchange Commission.

5.2 Account Receivables. Following the Closing Date:

(a) if Seller or any of its Affiliates receives or collects any funds relating to any post-Closing accounts receivable of Buyer or any Purchased Asset, Seller shall, and shall cause its Affiliates, to, in good faith, use commercially reasonable efforts to remit such funds to Buyer; and

(b) if Rubicon or Buyer receives or collects any funds relating to any pre-Closing accounts receivable of Seller (including those in relation to the Purchased Assets) or any other Excluded Asset, Rubicon or Buyer, as applicable, shall, and shall cause its Affiliates, to, in good faith, use commercially reasonable efforts to remit such funds to shall remit any such funds to Seller.

5.3 Further Assurances. Following the Closing, each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

5.4 Access to and Preservation of Records. For so long as required by applicable Law, Buyer shall continue to store all records relating to the Purchased Assets that are stored by Seller as of the Closing Date, in the same manner which such records are currently stored, that are related to the applicable record keeping requirements and regulations of Medicare, Medicaid, the FDA, the DEA and state pharmacy boards in jurisdictions in which Buyer conducts business (the "**Records**"). After the Closing Date, where there is legitimate purpose and provided Seller has a right under applicable Law, including patient confidentiality laws, Buyer shall provide Seller with access during normal business hours, upon prior reasonable written request specifying the need therefor and specifying Seller's right under applicable Law to have such access to such records relating to the Purchased Assets. In each case, such access shall be limited to such records relating to the Purchased Assets the origin of which occurred prior to the Closing Date and, if permitted by applicable Law, Seller and its Representatives seeking access to such records shall have the right to make copies thereof. The foregoing right of access shall not be exercisable in such a manner as to interfere unreasonably with the normal operations and business of Buyer, and with regard to such information constituting trade secrets or confidential business information of Buyer, the provisions of any applicable confidentiality obligations among the parties shall control. After the expiration of record-keeping requirements established by Law that are covered by this **Section 5.4**, Seller shall remove the Records from the premises occupied by Buyer.

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5.5 Audit Rights. For a period of four years following the Closing, for the sole purpose of ensuring Rubicon and Buyer's compliance with this Agreement, Rubicon and Buyer shall (a) afford Seller and its Representatives full and free access to and the right to inspect all of the books and records, contracts and other documents and data related to the Business or Purchased Assets; (b) furnish Seller and its Representatives with such financial, operating and other data and information related to the Business as Seller or any of its Representatives may reasonably request; and (c) instruct the Representatives of Buyer to cooperate with Seller in its investigation of the Business. Any investigation pursuant to this **Section 5.5** shall be limited to information relating to the revenue of the Business or whether the Business has been sold and the terms and conditions of such sale, and shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Rubicon or Buyer. No investigation by Seller or other information received by Seller shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Buyer in this Agreement. All information received by Seller or its Representatives pursuant to this **Section 5.5** shall be subject to the restrictions in **Section 5.1**.

5.6 Short Dated Pharmaceutical Inventory. Notwithstanding any restrictions in this Agreement or the Transaction Documents to the contrary, Seller shall have the right, following the Closing, to sell the Seller's remaining Short Dated Pharmaceutical Inventory that exists as of the Closing Date. If Seller is unable to sell any amount of the Short Dated Pharmaceutical Inventory to a third party within 15 days following the Closing Date, Seller shall deliver such Short Dated

5.7 Removal of Excluded Assets. On or before May 31, 2019, Seller shall remove or caused to be removed materially all of the tangible Excluded Assets that are located on the Leased Premises. During such time between the Closing and May 31, 2019, Buyer shall provide Seller and its agents and representatives with reasonable access to the Leased Premises to remove any remaining tangible Excluded Assets, provided that such removal activities by the Seller or its agents and representatives shall be conducted during normal business hours and shall not be conducted in such a manner as to interfere unreasonably with the normal operations and business of Buyer.

ARTICLE VI INDEMNIFICATION

6.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is 3 years from the Closing Date. None of the covenants or other agreements contained in this Agreement shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

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6.2 Indemnification by Seller. Subject to the other terms and conditions of this **ARTICLE VI**, Seller shall indemnify and defend Buyer (the “**Buyer Indemnitees**”) against, and shall hold Buyer harmless from and against, and shall pay and reimburse Buyer for, any and all Losses actually incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

(b) any Excluded Asset or any Excluded Liability;

(c) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement, the other Transaction Documents or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement; and/or

(d) the Cardinal Liens.

6.3 Indemnification by Buyer. Subject to the other terms and conditions of this **ARTICLE VI**, Buyer shall indemnify and defend Seller (the “**Seller Indemnitees**”) against, and shall hold Seller harmless from and against, and shall pay and reimburse Seller for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement

(b) any Assumed Liability; and/or

(c) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement.

In addition to the requirements set forth in this **Section 6.3**, Buyer and Rubicon shall jointly and severally indemnify Seller for Buyer and Rubicon’s obligations to pay the Purchase Price under **Section 2.5** herein.

6.4 Certain Limitations. The indemnification provided for in **Section 6.2** and **Section 6.3** shall be subject to the following limitations:

(a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification under **Section 6.2(a)** or **Section 6.3(a)**, as the case may be, until the aggregate amount of all Losses in respect of indemnification under **Section 6.2(a)** or **Section 6.3(a)** exceeds \$10,000 (the “**Deductible**”), in which event the Indemnifying Party shall be required to pay or be liable for all Losses, including the amount of the Deductible; *provided, however*, that notwithstanding the foregoing, the Deductible shall not apply with respect to Losses caused by the fraud, criminal activity or willful misconduct by or of a party hereto (collectively, “**Fraud**”).

(b) The aggregate amount of all Losses for which Seller shall be liable pursuant to **Article VI**, and the aggregate amount of all Losses for which Buyer shall be liable pursuant to **Article VI**, respectively, shall not exceed the Purchase Price; *provided, however*, that notwithstanding the foregoing, the limitation in this **Section 6.4(b)** shall not apply with respect to Losses caused by Fraud.

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(c) Payments by an Indemnifying Party pursuant to **Section 8.2** or **Section 8.3** in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(d) Each Indemnified Party shall take, and cause its Affiliates and Representatives to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

6.5 Indemnification Procedures.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate or Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 6.5(b)**, it shall have the right to take such action as it deems

necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to **Section 6.5(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this **Section 6.5(b)**. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all Liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within 10 days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 6.5(a)**, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

6.6 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **ARTICLE VI**, the Indemnifying Party shall satisfy its obligations within 15 Business Days of such agreement or final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that, should an Indemnifying Party not make full payment of any such obligations within such 15 Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to five percent. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed.

6.7 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

6.8 Exclusive Remedies. The parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this **ARTICLE VI**. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this **ARTICLE VI**. Nothing in this **Section 6.8** or elsewhere in this Agreement shall limit any Person's rights to seek relief in respect of Fraud.

ARTICLE VII. MISCELLANEOUS

7.1 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

7.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses as set forth on the signature pages hereto (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 7.2**).

7.3 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (w) to Articles, Sections, Schedules, Disclosure Schedules and Exhibits mean the Articles and Sections of, and the Schedules, Disclosure Schedules and Exhibits attached to, this Agreement; (x) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (y) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder; (z) to the "parties" mean Buyer and Seller as applicable. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules, Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

7.4 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

7.5 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or

unenforceability shall not affect any other term or provision of this Agreement and invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

7.6 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, Exhibits, Schedules and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

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7.7 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that Seller may freely assign its rights under this Agreement and the Transaction Documents. No assignment shall relieve the assigning party of any of its obligations hereunder.

7.8 No Third-Party Beneficiaries. Except as provided in **ARTICLE VI**, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

7.9 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

7.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE IN EACH CASE LOCATED IN THE CITY OF WILMINGTON AND COUNTY OF NEW CASTLE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

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(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10(c).

7.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to seek specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

7.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

SIGNATURE PAGE FOLLOWS

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

SELLER:

WELLFOUNT, CORPORATION

By: /s/ Eric Orme

Name: Eric Orme

Title: Chief Executive Officer

Notice to Seller: Wellfount, Corporation

5751 W. 73rd St.
Indianapolis, IN 46278
E-mail: eorme@wellfount.com
Attention: Eric Orme

with a copy to: Taft, Stettinius & Hollister, LLC
One Indiana Square, Suite 3500
Indianapolis, IN 46204
E-mail: jkirk@taftlaw.com
Attention: Jeff Kirk

Signature Page to Wellfount, Corporation Asset Purchase Agreement

BUYER:

RUBICON DTP LLC

By: _____
Name: Timothy Brog
Title: Chief Executive Officer

Notice to Buyer: Rubicon DTP, LLC
5751 W 73rd Street
Indianapolis, IN 46278
E-mail: dburand@wellfount.com
Attention: Dave Burand

with a copy to: 900 East Green St.
Bensenville, IL 60106
E-mail: Tbrog@rubicontechnology.com
Attention: Timothy Brog

RUBICON:

RUBICON TECHNOLOGY, INC.

By: _____
Name: Timothy Brog
Title: Chief Executive Officer

Notice to Buyer: Rubicon Technology, Inc.
900 East Green St.
Bensenville, IL 60106
E-mail: Tbrog@rubicontechnology.com
Attention: Timothy Brog

with a copy to: Dave Burand
5751 W 73rd Street
Indianapolis, IN 46278
E-mail: dburand@wellfount.com
Attention: Dave Burand

Signature Page to Wellfount, Corporation Asset Purchase Agreement

**EXHIBIT A
DEFINITIONS**

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Assigned Contracts**” shall have the meaning set forth in **Section 2.1**.

“**Assumed Liabilities**” has the meaning set forth in **Section 2.3**.

“**Bill of Sale, Assignment and Assumption Agreement**” has the meaning set forth in **Section 2.7(a)(i)**.

“**Business**” has the meaning set forth in the recitals.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Wilmington, Delaware are authorized or required by Law to be closed for business.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Indemnitees**” has the meaning set forth in **Section 6.2**.

“**Cardinal Liens**” means any and all Liens on Seller’s assets, including the Purchased Assets that secure Seller’s obligations under that certain Prime Vendor Agreement by and between Seller, Cardinal Health 110, LLC and Cardinal Health 411, Inc., dated June 1, 2014 and as extended by the First Amendment to the Prime Vendor Agreement, dated effective October 1, 2015, and as amended by the Second Amendment to the Prime Vendor Agreement, dated effective April 1, 2016 and any other related agreements.

“**Closing**” has the meaning set forth in **Section 2.6**.

“**Closing Date**” means the date on which the Closing occurs.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidential Information**” has the meaning set forth in **Section 5.1**.

“**Contracts**” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral, to which Seller is a party, or by which Seller, the Business or the Purchased Assets are bound.

“**Deductible**” has the meaning set forth in **Section 6.4(a)**.

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“**Direct Claim**” has the meaning set forth in **Section 6.5(c)**.

“**Disclosure Schedules**” means the Disclosure Schedules to this Agreement delivered by Seller concurrently with the execution and delivery of this Agreement.

“**Dollars**” or “**\$**” means the lawful currency of the United States.

“**Employee Benefit Plan**” shall mean any “employee pension benefit plan” (as defined in Section 3(2) of ERISA), any “employee welfare benefit plan” (as defined in Section 3(1) of ERISA), and any other written or oral plan, agreement or arrangement involving direct or indirect compensation, including insurance coverage, severance benefits, disability benefits, deferred compensation, cafeteria plan benefits, pension benefits, bonuses (including any bonuses linked to a change of control), retention arrangements, stock options, stock purchase, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement compensation.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**Excluded Assets**” has the meaning set forth in **Section 2.2**.

“**Excluded Liabilities**” has the meaning set forth in **Section 2.4**.

“**First Earn Out Period**” has the meaning set forth in **Section 2.5(b)**.

“**Fraud**” has the meaning set forth in **Section 6.4(a)**.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Indebtedness**” shall mean with respect to any Person, at any date of determination, without duplication, (a) all obligations of such Person for borrowed money, including all principal, interest, premiums, fees, expenses, overdrafts and penalties with respect thereto, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of the property or services, except trade payables incurred in the ordinary course of business, (d) all obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit or similar instrument, (e) all capital lease obligations, (f) all bonds (e.g., performance and suretyship), (g) all other obligations of such Person which would be required to be shown as indebtedness on a balance sheet of such Person prepared in accordance with GAAP, and (h) all indebtedness of any other Person of the type referred to in clauses (a) to (g) above directly or indirectly guaranteed by such first Person or secured by any assets of such first Person, whether or not such Indebtedness has been assumed by such first Person.

“**Indemnified Party**” means the party making a claim under **ARTICLE VI**.

“**Indemnifying Party**” means the party against whom a claim under **ARTICLE VI** is being asserted.

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“**Intellectual Property**” shall mean any or all of the following and all right, title and interest therein: (a) Software; (b) names, corporate names, domain names, fictitious names, trademarks, trademark applications, service marks, service mark applications, trade names, brand names, product names and slogans, and goodwill associated with any of the foregoing; (c) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, confidential or proprietary information, know-how, product rights, technology, technical data, models, algorithms, tools, business process methodologies and all documentation relating to any of the foregoing; (d) patents, and patent applications, and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (e) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto; (f) websites, social media accounts and all content thereon and designs related thereto; (g) databases and data collections (including any normative data and any normative databases) and all rights therein; (h) moral and economic rights of authors and inventors, however denominated; (i) similar or equivalent rights to any of the foregoing and other intangible assets or any nature; and (j) goodwill and claims of infringement and misappropriation against third parties.

“**Inventory**” means all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories of the Business.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Liabilities**” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“**Liens**” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**Long Dated Pharmaceutical Inventory**” means any and all of Seller’s inventory related to the Business that does not qualify as Short Dated Pharmaceutical Inventory.

“**Losses**” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that “Losses” shall not include punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to the value of the Purchased Assets.

“**Permits**” shall mean all permits, licenses, registrations, certificates, orders, approvals, franchises, variances and similar rights issued by or obtained from any Governmental Authority.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Purchase Price**” has the meaning set forth in **Section 2.5**.

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“**Purchased Assets**” has the meaning set forth in **Section 2.1**.

“**Records**” has the meaning set forth in **Section 5.4**.

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Second Earn Out Period**” has the meaning set forth in **Section 2.5(c)**.

“**Seller**” has the meaning set forth in the preamble.

“**Seller Indemnitees**” has the meaning set forth in **Section 6.3**.

“**Short Dated Pharmaceutical Inventory**” means all of Seller’s inventory related to the Business that will expire in 90 days or less as of the Closing date.

“**Tax**” or “**Taxes**” means (i) all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, escheat, unclaimed property, abandoned property or other taxes, fees, assessments or charges of any kind whatsoever in the nature of a tax (whether or not disputed), together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties and (ii) any liability for the payment of any amounts of the type described in clause (i) of this definition as a result of being a member of an affiliated, consolidated, combined or unitary group for any period, as a result of any tax sharing or tax allocation agreement, arrangement, or understanding, or as a result of being liable for another Person’s taxes as a transferee or successor, by Contract, or otherwise.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any Schedule or attachment thereto, and including any amendment thereof.

“**Third Party Claim**” has the meaning set forth in **Section 6.5(a)**.

“**Total Revenue**” means the gross sales made by Buyer to customers in the normal course of business.

“**Transaction Documents**” means this Agreement, the Bill of Sale, Assignment and Assumption Agreement, Intellectual Property Assignment and the other agreements, certificates, instruments and documents required to be delivered pursuant to this Agreement.

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BILL OF SALE – ASSIGNMENT AND ASSUMPTION AGREEMENT

This **BILL OF SALE – ASSIGNMENT AND ASSUMPTION AGREEMENT** is dated May ____, 2019, by and among Wellfount, Corporation, a Delaware corporation (“**Assignor**”) and Rubicon DTP LLC, a Delaware limited liability company (the “**Assignee**”).

WHEREAS, the Assignor and the Assignee are parties to that certain Asset Purchase Agreement, dated as of the date hereof, by and among the Assignor, the Assignee, and Rubicon Technology, Inc., a Delaware corporation (the “**Agreement**”); and

WHEREAS, the Agreement contemplates that the Assignor will sell, assign, transfer, convey, contribute and deliver to the Assignee all of the Assignor’s right, title, and interest in, to, and under, the Purchased Assets, and that the Assignee will assume and agree to pay, perform and discharge all of the Assumed Liabilities, all in accordance with the terms and conditions of the Agreement; and

WHEREAS, capitalized terms used but not defined herein have the respective meanings assigned to them in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Assignment of Purchased Assets.** The Assignor, as provided in the Agreement, for good and valuable consideration received from the Assignee, hereby absolutely and unconditionally sells, assigns, transfers, conveys, contributes, grants, bargains, sets over, releases, delivers, and confirms unto the Assignee, its successors and its assigns, forever, the Assignor’s entire right, title, and interest in, to, and under all of the Purchased Assets wherever located, to have and to hold forever.

2. **Assumption.** The Assignee, as provided in the Agreement, hereby absolutely and unconditionally covenants and agrees with the Assignor to assume, discharge, keep, pay, and perform when due, all of, but only, the Assumed Liabilities. The Assignee assumes no Excluded Liabilities and the parties hereto agree that all Excluded Liabilities shall remain the sole responsibility of the Assignor, as set forth in the Agreement.

3. **Terms of the Asset Purchase Agreement.** This Bill of Sale – Assignment and Assumption Agreement is not intended to, and does not in any manner enhance, diminish or otherwise modify the rights and obligations of the parties under the Agreement. In the event of any conflict or inconsistency between the terms of the Agreement and the terms hereof, the terms of the Agreement shall govern. This Bill of Sale – Assignment and Assumption Agreement may not be changed, modified, discharged or terminated orally in any manner other than by an agreement in writing signed by the parties hereto or their respective successors and assigns.

4. **Further Actions.** Each of the parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated herein.

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5. **Successors and Assigns.** This Bill of Sale – Assignment and Assumption Agreement is binding upon, inures to the benefit of, and is enforceable by the parties hereto and their respective successors and assigns.

6. **Notices.** All notices, consents, waivers and other communications required or permitted by this Bill of Sale – Assignment and Assumption Agreement shall be delivered via electronic mail and in writing and shall be deemed given to a party when (a) delivered to the appropriate party address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by electronic mail; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the addresses set forth on the signature pages hereto, and marked to the attention of the Person (by name or title) designated below (or to such other address or Person as a party may designate by notice to the other parties).

7. **Assignment.** This Bill of Sale – Assignment and Assumption Agreement may not be assigned by the Assignor, by operation of law or otherwise by a party hereto, without the prior written consent of the Assignee. The provisions of this Bill of Sale – Assignment and Assumption Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective beneficiaries, heirs, successors and permitted assigns.

8. **Governing Law.** This Bill of Sale – Assignment and Assumption Agreement shall be governed by the laws of the state of Delaware (regardless of the laws that might otherwise govern under applicable Delaware principles of conflicts of law).

9. **Counterparts; Facsimile Signature.** This Bill of Sale – Assignment and Assumption Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies of this Bill of Sale – Assignment and Assumption Agreement and all documents contemplated herein may be delivered via facsimile or other legible electronic means, and such electronic copies shall be as valid as the originals.

10. **Consent to Jurisdiction; Waiver of Jury Trial.** Each party hereto irrevocably submits to the exclusive jurisdiction of any state or federal court located in Delaware for the purposes of any action arising out of this Bill of Sale – Assignment and Assumption Agreement and agrees to commence any such action only in such courts. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party’s respective address set forth in Section 7 hereof shall be effective service of process for any such action. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action arising out of this Bill of Sale – Assignment and Assumption Agreement in such courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action brought in any such court has been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS BILL OF SALE – ASSIGNMENT AND ASSUMPTION AGREEMENT OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF AND THEREOF.

[The remainder of this page has been left blank intentionally]

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IN WITNESS WHEREOF, this Bill of Sale – Assignment and Assumption Agreement has been duly executed and delivered by a duly authorized officer of each of the parties hereto as of the date first above written.

ASSIGNOR:

By: _____
Name: Eric Orme
Title: Chief Executive Officer

Notice to Seller: Wellfount, Corporation
5751 W. 73rd St.
Indianapolis, IN 46278
E-mail: eorme@wellfount.com
Attention: Eric Orme

with a copy to: Taft, Stettinius & Hollister, LLC
One Indiana Square, Suite 3500
Indianapolis, IN 46204
E-mail: jkirk@taftlaw.com
Attention: Jeff Kirk

[Signature Page to Bill of Sale – Assignment and Assumption Agreement]

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ASSIGNEE:

RUBICON DTP LLC

By: _____
Name: _____
Title: _____

Notice to Buyer: _____
E-mail: _____
Attention: _____

with a copy to: _____
E-mail: _____
Attention: _____

[Signature Page to Bill of Sale – Assignment and Assumption Agreement]

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**EXHIBIT C
FORM OF INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT**

See attached.

C-1

TRADEMARK ASSIGNMENT

This Trademark Assignment (this "Trademark Assignment") is effective as of May ____, 2019 and is between Wellfount, Corporation, a Delaware corporation (the "Assignor") and Rubicon DTP, LLC, a Delaware limited liability company (the "Assignee").

RECITALS

A. The Assignor is the owner of the trademarks set forth on Schedule A hereto, together with the goodwill of the business associated therewith (collectively referred to as the "Marks");

B. Pursuant to the terms of that certain Asset Purchase Agreement dated as of the date hereof by and among the Assignor, the Assignee and certain other parties thereto (the "Purchase Agreement"), the Assignor has agreed to transfer all of its right, title and interest in and to the Marks to the Assignee;

C. In connection with the Purchase Agreement, the Assignor has agreed to transfer substantially all of the assets of the business to which the Marks relate, and that such business is ongoing; and

D. The Assignor desires to assign all of its right, title and interest in and to the Marks to the Assignee and the Assignee desires to acquire the Marks.

AGREEMENTS

For the good and valuable consideration set forth in the Purchase Agreement, the receipt and sufficiency of which is hereby acknowledged, the Assignor and the Assignee hereby agree as follows:

1. The Assignor does hereby sell, assign, transfer, convey and deliver to the Assignee, its successors and permitted assigns, all of the Assignor's right, title and interest, in and to the Marks, and all of the goodwill of the business associated with the Marks, together with that portion of Assignor's business to which the Marks pertain, and all registrations and pending applications for the Marks, any renewals of the registrations, in all countries throughout the world, for the Assignee's own use and enjoyment, and for the use and enjoyment of the Assignee's successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by the Assignor if this Trademark Assignment had not been made together with all causes of action for any and all previously occurring infringement of the rights being assigned and the right to receive and retain the proceeds relating to those infringements.

2. The Assignor hereby requests the Commissioner for Trademarks at the United States Patent and Trademark Office (the "Commissioner"), as well as his or her counterparts at the corresponding entities or agencies in any country or jurisdiction that may exercise authority over any of the Marks, to issue any and all trademark registrations resulting from applications among the Marks or derived therefrom to the Assignee as assignee of the entire interest therein.

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3. This Trademark Assignment is in all respects subject to the provisions of the Purchase Agreement and is not intended in any way to supersede, limit, qualify or expand any provision of the Purchase Agreement.

4. Upon reasonable request by the Assignee, the Assignor will execute further papers (including, without limitation, the execution and delivery of any and all affidavits, declarations, oaths, samples, exhibits, specimens, assignments, powers of attorney or other documentation) and to do such other acts as may be necessary or reasonably requested by the Assignee. Assignor hereby authorizes Assignee, and does hereby make, constitute and appoint Assignee, and its officers, agents, successors and assigns with full power of substitution as the Assignor's true and lawful attorney-in-fact, with power, in Assignee's own name or the name of Assignor, to execute any such further papers.

5. This Trademark Assignment may be executed in any number of counterparts (including by means of facsimile and electronically transmitted portable document format (pdf) signature pages), each of which shall be an original but all of which together shall constitute one and the same instrument.

6. This Trademark Assignment shall be governed by and construed in accordance with the domestic laws of the State of Indiana without giving effect to any choice or conflict of law provision or rule (whether of the State of Indiana or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Indiana.

7. No amendment of any provision of this Trademark Assignment shall be valid unless the same shall be in writing and signed by the Assignor and the Assignee. No waiver by any party of any provision of this Trademark Assignment or any default or breach of covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the party against whom the waiver is to be effective nor shall such waiver be deemed to extend to any prior or subsequent default or breach of covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

8. This Trademark Assignment shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

* * *

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IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Trademark Assignment to be executed as of the date first set forth above.

ASSIGNOR:

Wellfount, Corporation

By: _____
Name: Eric Orme
Its: Chief Executive Officer

Address for Notices:

Wellfount, Corporation
Attn: Eric Orme
5751 W. 73rd St.
Indianapolis, IN 46278
Email: eorme@wellfount.com

with a copy to:

Taft, Stettinius & Hollister, LLC
One Indiana Square, Suite 3500
Indianapolis, IN 46204
E-mail: jkirk@taftlaw.com
Attention: Jeff Kirk

ASSIGNEE:

Rubicon DTP, LLC

By: _____
Name: _____
Its: _____

Address for Notices:

Email: _____

With a copy to:

Email: _____

Schedule A

<u>Mark</u>	<u>Serial No.</u>	<u>Application Date</u>	<u>Status</u>
CONNECT-TED	87221347	Oct. 31, 2016	Notice of Allowance Granted
DELIVER-TED	87221357	Oct. 31, 2016	Notice of Allowance Granted

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**EXHIBIT D
NON-COMPETITION AGREEMENT**

See attached.

D-1

NON-COMPETE AGREEMENT

THIS NON-COMPETE AGREEMENT (this "Agreement") is made, executed and entered into effective as of May __, 2019 (the "Effective Date"), by and between Eric Orme, an Indiana resident ("Orme"), and Rubicon DTP, LLC, a Delaware limited liability company ("Rubicon") (collectively referred to herein as "Parties" and individually as a "Party").

Whereas, Rubicon is purchasing certain assets from Wellfount, Corporation, a Delaware corporation ("Wellfount"), pursuant to an Asset Purchase Agreement dated on even date herewith ("Purchase Agreement");

Whereas, Orme is the Chief Executive Officer of Wellfount;

Whereas, the Purchase Agreement obligates Wellfount to cause Orme to execute and deliver this Agreement to Rubicon, and Rubicon would be unwilling to consummate the Purchase Agreement without this Agreement being executed and delivered; and

Whereas, all capitalized terms herein shall have the same meaning as defined in the Purchase Agreement.

NOW, THEREFORE, as a material inducement to Rubicon to purchase the assets of Wellfount as provided in the Purchase Agreement, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Non-Solicitation**. For a period of three (3) years from the Effective Date, Orme agrees not to directly, indirectly, or in any manner, in any capacity, whether as an employee, owner, consultant, agent, volunteer or otherwise, solicit the discharge medication and direct to patient pharmacy services business of any of Rubicon's customers.

2. **Non-Compete**. For a period of three (3) years from the Effective Date, Orme agrees not to directly, indirectly, or in any manner own, operate, or assist, in any capacity, whether as an employee, owner, consultant, agent, volunteer or otherwise, any discharge medication program or direct to patient pharmacy services to any long-term care facility or assisted living facility.

3. **Reduction in Effects of Agreement**. If any of the provisions or covenants contained in this Agreement are hereafter construed by any tribunal of appropriate jurisdiction to be invalid or unenforceable, in any jurisdiction, the same shall not affect the remainder of the provisions of this Agreement or the enforceability of such remainder of the provisions of this Agreement, or the enforceability of the entirety of this Agreement in any other jurisdiction. If any of the provisions or covenants contained in this Agreement are held to be unenforceable, in any jurisdiction, because of the duration or geographical scope thereof, then the Parties agree that the tribunal making such determination shall reduce the duration or geographical scope of such provision or covenant, and that, in its reduced form, such provision or covenant shall be enforceable; provided, that the determination of such tribunal shall not affect the enforceability of any provisions of this Agreement in any other jurisdiction.

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4. **Indiana Law**. This Agreement constitutes an Indiana contract and shall be construed and enforced in accordance with the laws of the State of Indiana.

5. **Venue and Jurisdiction**. The Parties to this Agreement consent and agree that the exclusive venue and jurisdiction for all legal proceedings with respect to this Agreement and the enforcement of this Agreement shall be in the courts located in Marion County, Indiana. Any judgment of such court shall automatically be enforceable in any other state or jurisdiction.

6. **No Waiver**. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel against the enforcement of any of the provisions of this Agreement, except by way of a written instrument of the Party charged with such waiver or estoppel. No such written waiver or document providing such estoppel shall be deemed to be a continuing waiver or to provide a continuing estoppel against the enforcement of any of the provisions of this Agreement unless so stated in the written document. Any such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any other act other than as specifically waived in writing by the document containing the waiver.

7. **Adequate Consideration**. Orme acknowledges that he has fully read this Agreement and fully understands this Agreement and its implications and has had this Agreement and all of its implications explained to him by an attorney selected by him. Orme further agrees that the payment of the Purchase Price provided for by the Purchase Agreement, provides more than fair and adequate consideration for the agreements made by him by way of this Agreement.

8. **No Compulsion**. Orme acknowledges, understands and agrees that he is under no compulsion to enter into this Agreement but that Rubicon would be unwilling to pay the Purchase Price provided for by the Purchase Agreement in the absence of this Agreement.

9. **Attorney's Fees**. If either Party to this Agreement shall seek to enforce, by legal or equitable proceedings, against the other Party to this Agreement, this Agreement or any rights, duties or obligations arising under this Agreement, or any claim for damages for breach of this Agreement, then the prevailing Party in such proceedings (whether such prevailing Party is the plaintiff or defendant and whether such Party prevails in full or substantially as to the relief sought or

opposed by such Party) shall recover from the other Party to such proceedings, in addition to all other sums and remedies to which such prevailing Party would otherwise be entitled, all of such prevailing Party's reasonable costs, expenses and attorney's fees incurred in such proceedings and in the preparation for and bringing of and in the defense or prosecution of such proceedings, and shall have judgment therefor in addition to judgment for all other sums and remedies to which such prevailing Party would otherwise be entitled.

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10. Specifically Enforceable. Orme acknowledges that a breach or threatened breach by him of this Agreement or any of the provisions of this Agreement will result in or could result in substantial and continuing injury to Rubicon, for which there would be no adequate remedy at law, and that the damages that would result from a failure by him or threatened failure by him to comply with any of the provisions of this Agreement would be substantial, but that the amount of such damages might be difficult, if not impossible, to ascertain. Therefore, Orme agrees that if he fails to comply with, or threatens to fail to comply with any of the provisions of this Agreement, then Rubicon shall be entitled to such injunctive and other relief, including temporary restraining orders and preliminary injunctions, all without the necessity of posting a bond, as may be necessary or appropriate to cause Orme to comply with the provisions of this Agreement. Such injunctive relief shall be in addition to any right to damages to which Rubicon would be entitled.

11. Expiration at End of Restricted Term/Extension of Restricted Term. All of the restrictions and obligations imposed upon Orme pursuant to paragraph 1 or paragraph 2 of this Agreement shall expire three (3) years from the Effective Date, without the need for any action by any party to this Agreement or any third party; provided, however, if Orme shall breach or threaten to breach any of the provisions of either paragraph 1 or paragraph 2 of this Agreement, then the period of time binding Orme under this Agreement shall be tolled from the commencement of such breach or threatened breach until cured by Orme.

[Signature pages follow]

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date hereinabove set forth.

RUBICON:

ORME:

Rubicon DTP, LLC

By: _____
Name: _____
Title: _____

Eric Orme

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EX-31.1 3 f10q0619ex31-1_rubicon.htm CERTIFICATION

Exhibit 31.1

Certifications

Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Timothy E. Brog, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Rubicon Technology, Inc. (the "registrant");
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2019

By: /s/ Timothy E. Brog

**Certification Pursuant To Section 906 of the Sarbanes-Oxley Act of 2002,
18 U.S.C. Section 1350**

In connection with the Quarterly Report of Rubicon Technology, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his or her knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 13, 2019

By: /s/ Timothy E. Brog
Timothy E. Brog
President, Chief Executive Officer and
Interim Chief Financial Officer