

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 20, 2023

RUBICON TECHNOLOGY, INC.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	001-33834 (Commission File Number)	36-4419301 (I.R.S. Employer Identification No.)
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900 East Green Street Bensenville, Illinois (Address of principal executive offices)	60106 (Zip Code)
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(847) 295-7000
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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.

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

Title of each class	Trading symbol	Name of each exchange on which registered
None	N/A	N/A

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangement of Certain Officers.

Appointment of Joseph Ferrara as Executive Officer and Chief Financial Officer

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

Resignation of Timothy E. Brog as Director

On February 20, 2023, Timothy E. Brog, the former Chief Executive Officer, President and Acting Chief Financial Officer of the Company, tendered his resignation as a member of the Board. The resignation was effective upon the receipt by Mr. Brog of a settlement payment pursuant to the Separation Agreement (as defined below), which occurred on February 22, 2023. Mr. Brog's resignation from the Company as Chief Executive Officer, President and Acting Chief Financial Officer was previously announced on December 12, 2022 and was effective on January 6, 2023. Mr. Brog's resignation as a member of the Board was not the result of any disagreements with the Company on any matters relating to its operations, policies or practices.

Confidential Separation Agreement and General Release for Timothy E. Brog

On February 20, 2023, the Company entered into a Confidential Separation Agreement and General Release (the "Separation Agreement") with Mr. Brog, in connection with Mr. Brog's resignation from the Company as Chief Executive Officer, President and Acting Chief Financial Officer. Pursuant to the Separation Agreement, Mr. Brog is entitled to receive, among other things, a payment of \$112,000 for the assignment to the Company by Mr. Brog of 57,593 shares of common stock of the Company, par value \$0.001 per share (the "Common Stock"), held by Mr. Brog. The Separation Agreement also contains a general release of claims against the Company, as well as certain other customary covenants, including covenants pertaining to non-disparagement and confidentiality.

The foregoing description of the Separation Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Separation Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.1 and incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On February 20, 2023, the Board adopted the Third Amended and Restated Bylaws of the Company (the “Amended and Restated Bylaws”). This action was taken by means of an action by unanimous written consent of the Board in lieu of a special meeting. The Amended and Restated Bylaws were effective immediately and included, among other things, the following changes:

- A requirement that at least 50% of the members of the Board will satisfy the “independence” requirements under the NASDAQ Stock Market LLC Rules;
- A requirement that the Company shall take all commercially reasonable actions in order for the Common Stock to be listed on the OTCQB or a national securities exchange until the earlier of (a) December 31, 2026 or (b) one stockholder owns greater than 85% of the outstanding shares of Common Stock, and in the event that the Company suspends the registration of the Common Stock under the Securities Exchange Act of 1934, as amended, the Company will prepare and publish on its website reports or disclosure in writing that are substantially equivalent to Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K;
- A requirement that any transaction or series of transactions in an amount greater than \$50,000 involving the Company and any of its officers, directors, stockholders that own greater than 5% of its outstanding shares of Commons Stock or any entities affiliated with such parties, must be approved by a majority of the disinterested members of the Board and the terms of such transaction must be disclosed in writing to stockholders within five business days of the closing or completion of such transaction in a report or other disclosure that is substantially equivalent to a Current Report on Form 8-K;
- A requirement that any action taken by the Company or any stockholder that would result in a stockholder owning greater than 49% (an “Above 49% Stockholder”) of the outstanding shares of Common Stock, would require the approval of a majority of stockholders of the Common Stock, excluding such Above 49% Stockholder and any entity or person(s) affiliated with such Above 49% Stockholder; and
- A clarification that the changes described above can only be amended by the approval of stockholders holding greater than 75% of the outstanding shares of Common Stock.

The foregoing description of the Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws, a copy of which is attached to this Current Report on Form 8-K as Exhibit 3.1 and incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
3.1	Third Amended and Restated Bylaws of Rubicon Technology, Inc.
10.1	Confidential Separation Agreement and General Release, dated February 20, 2023, by and between Timothy E. Brog and Rubicon Technology, Inc.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: February 24, 2023

RUBICON TECHNOLOGY, INC.

By: /s/ Joseph Ferrara
 Name: Joseph Ferrara
 Title: Executive Officer and Chief Financial Officer

EX-3.1 2 ea174254ex3-1_rubicon.htm THIRD AMENDED AND RESTATED BYLAWS OF RUBICON TECHNOLOGY, INC.

Exhibit 3.1

THIRD AMENDED AND RESTATED BYLAWS

of

RUBICON TECHNOLOGY, INC. (the “Corporation”)

ARTICLE 1**OFFICE AND RECORDS**

Section 1.1 Delaware Office. The registered office of the Corporation in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, State of Delaware 19808. The name of its registered agent at that address is Corporation Service Company.

Section 1.2 Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors may designate or as the business of the Corporation may from time to time require.

Section 1.3 Books and Records. The books and records of the Corporation may be kept outside the State of Delaware at such place or places as may from time to time be designated by the Board of Directors.

ARTICLE 2**STOCKHOLDERS**

Section 2.1 Annual Meetings. An annual meeting of the stockholders shall be held for the election of directors at such date, time and place, either within or without the State of Delaware, as may be designated by the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting.

Section 2.2 Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors. Such special meetings shall be held at such date, time and place either within or without the State of Delaware as may be stated in the notice of the meeting.

Section 2.3 Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the mail, postage prepaid, directed to the stockholder at the stockholder's address as it appears on the records of the Corporation.

Section 2.4 Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.5 Quorum. At each meeting of stockholders, except where otherwise provided by law or the Certificate of Incorporation or these Bylaws, the presence in person or by proxy of the holders of a majority of the outstanding shares of stock entitled to vote at the meeting shall constitute a quorum. For purposes of the foregoing, two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting. In the absence of a quorum, the stockholders so present may, by majority vote, adjourn the meeting from time to time in the manner provided in Section 2.4 of these Bylaws until a quorum shall attend.

Section 2.6 Organization. Meetings of stockholders shall be presided over by a chairman of the meeting, who shall be the Chairman of the Board, or in the absence of the Chairman of the Board, the President, or in the absence of the foregoing persons, a chairman designated by the Board of Directors, or in the absence of such designation, a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in the absence of the Secretary, the chairman of the meeting may appoint any person to act as secretary of the meeting. At each meeting of stockholders, annual or special, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (1) the establishment of an agenda or order of business for the meeting; (2) rules and procedures for maintaining order at the meeting and the safety of those present; (3) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (4) restrictions on entry to the meeting after the time fixed for the commencement thereof; (5) restrictions on the use of audio or video recording devices at the meeting; and (6) limitations on the time allotted to questions or comments by participants. The chairman of a meeting may adjourn or recess any meeting of stockholders, annual or special, at any time and for any reason, whether or not a quorum is present, to reconvene at the same or some other place.

Section 2.7 Voting; Proxies.

(a) Unless otherwise provided in the Certificate of Incorporation or these Bylaws, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by the stockholder which has voting power upon the matter in question.

(b) Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for the stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person.

(c) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Corporation.

(d) Voting at meetings of stockholders need not be by written ballot unless the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or by proxy at such meeting shall so determine.

(e) Subject to the rights of the holders of any series of preferred stock, at all meetings of stockholders for the election of directors, the vote of a plurality of the outstanding shares of stock entitled to vote thereon present in person or by proxy shall be required to elect.

All other elections and questions shall, unless otherwise provided by law or by the Certificate of Incorporation or these Bylaws, be decided by the vote of the holders of a majority of the outstanding shares of stock entitled to vote thereon present in person or by proxy at the meeting.

Section 2.8 Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (a) in the case of determination of stockholders entitled to vote at any meeting of stockholders, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting and (b) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (ii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 2.9 List of Stockholders Entitled to Vote. The Secretary shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic email addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten days prior to the meeting: (a) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is

to be held at a place, then the list shall be produced and kept at the place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

Section 2.10 Advance Notice Procedures; Notice of Annual Meetings of Stockholders.

(a) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) by or at the direction of the Board of Directors, or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in the Bylaws, who is entitled to vote at the meeting and who complies with the notice procedures set forth in the Bylaws.

3

(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 2.10(a), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 60th day nor earlier than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 90th day prior to such annual meeting and not later than the close of business on the later of the 60th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 14a-11 promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); and (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (B) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

(c) Notwithstanding anything in the second sentence of Section 2.10(b) to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 70 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required herein shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(d) General.

(i) Only such persons who are nominated in accordance with the procedures set forth herein shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth herein. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall be disregarded.

4

(ii) For purposes herein, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(iii) Notwithstanding the foregoing, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in these Bylaws shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (B) of the holders of any series of preferred stock to elect directors under specified circumstances.

Section 2.11 Inspectors of Election. Before any meeting of stockholders, the Board of Directors shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The number of inspectors shall be either one (1) or three (3). If any person appointed as inspector fails to appear or fails or refuses to act, then the chairman of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy.

Such inspectors shall: (a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting and the authenticity, validity, and effect of proxies and ballots, (b) count all votes and ballots, (c) determine and retain for a reasonable period a record of the disposition of any and all challenges made to any determination by the inspectors, (d) determine when the polls shall close, (e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots, and (f) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

ARTICLE 3

BOARD OF DIRECTORS

Section 3.1 Functions and Compensation. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation, except as may be otherwise provided in the Delaware General Corporation Law (the "DGCL") or the Certificate of Incorporation.

Section 3.2 Number; Qualifications. The Board of Directors shall consist of one or more members, each of whom shall be a natural person. The Board of Directors shall be fixed solely and exclusively by resolution duly adopted from time to time by resolution of the Board of Directors. The directors shall hold office in

the manner provided in the Certificate of Incorporation. No director need be a stockholder of the Corporation. At least 50% of the members of the Board of Directors shall satisfy the "independence" requirements under the NASDAQ Stock Market LLC Rules (and specifically, the Corporate Governance Requirements and Rule 5605).

Section 3.3 Resignation; Removal; Vacancies. Any Director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. A resignation shall be effective upon receipt, unless the resignation otherwise provides. Directors may be removed from office only in the manner provided in the Certificate of Incorporation. Vacancies in the Board of Directors shall be filled in the manner provide in the Certificate of Incorporation.

5

Section 3.4 Regular Meetings. The regular annual meeting of the Board of Directors shall be held, without notice other than this Section 3.4, on the same date and at the same place as the Annual Meeting following the close of such meeting of stockholders. Other regular meetings of the Board of Directors may be held at such hour, date and place as the Board of Directors may by resolution from time to time determine and publicize by means of reasonable notice given to any director who is not present at the meeting at which such resolution is adopted.

Section 3.5 Special Meetings. Special meetings of the Board of Directors may be called, orally or in writing, by or at the request of a majority of the directors, the Chairman of the Board, if one is elected, or the President. The person calling any such special meeting of the Board of Directors may fix the hour, date and place thereof.

Section 3.6 Notice of Meetings. Notice of the hour, date and place of all special meetings of the Board of Directors shall be given to each director by the Secretary or an Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the Chairman of the Board, if one is elected, or the President or such other officer designated by the Chairman of the Board, if one is elected, or the President. Notice of any special meeting of the Board of Directors shall be given to each director in person, by telephone, or by facsimile, electronic mail or other form of electronic communication, sent to his or her business or home address, at least 24 hours in advance of the meeting, or by written notice mailed to his or her business or home address, at least 48 hours in advance of the meeting. Such notice shall be deemed to be delivered when hand delivered to such address, read to such director by telephone, deposited in the mail so addressed, with postage thereon prepaid if mailed, dispatched or transmitted if faxed, telexed or telecopied, or when delivered to the telegraph company if sent by telegram.

A written waiver of notice signed before or after a meeting by a director and filed with the records of the meeting shall be deemed to be equivalent to notice of the meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because such meeting is not lawfully called or convened. Except as otherwise required by law, by the Certificate of Incorporation or by these Bylaws, neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 3.7 Quorum. At any meeting of the Board of Directors, a majority of the total number of directors shall constitute a quorum for the transaction of business, but if less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice, except as provided herein. Any business which might have been transacted at the meeting as originally noticed may be transacted at such adjourned meeting at which a quorum is present. For purposes of this section, the total number of directors includes any unfilled vacancies on the Board of Directors.

Section 3.8 Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of the directors present shall constitute action by the Board of Directors, unless otherwise required by law, by the Certificate of Incorporation or by these Bylaws. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 3.9 Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the records of the meetings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such consent shall be treated as a resolution of the Board of Directors for all purposes.

6

Section 3.10 Manner of Participation. Directors may participate in meetings of the Board of Directors by means of conference telephone or other communications equipment by means of which all directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting for purposes of these Bylaws.

Section 3.11 Committees. The Board of Directors, by vote of a majority of the directors then in office, may elect one or more committees, including, without limitation, a Compensation Committee, a Nominating and Corporate Governance Committee and an Audit Committee, and may delegate thereto some or all of its powers except those which by law, by the Certificate of Incorporation or by these Bylaws may not be delegated. Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but unless otherwise provided by the Board of Directors or in such rules, the committee shall be governed by the same rules regarding meetings, action without meetings, notice, waiver of notice, and quorum and voting requirements as are applicable to the Board of Directors. All members of such committees shall hold such offices at the pleasure of the Board of Directors. The Board of Directors may abolish any such committee at any time. Any committee to which the Board of Directors delegates any of its powers or duties shall keep regular minutes of its meetings and shall report its action to the Board of Directors.

Section 3.12 Compensation of Directors. Directors shall receive such compensation for their services as shall be determined by a majority of the Board of Directors, or a designated committee thereof, unless otherwise restricted by the Certificate of Incorporation or these Bylaws, *provided* that directors who are serving the Corporation as employees and who receive compensation for their services as such, shall not receive any salary or other compensation for their services as directors of the Corporation.

ARTICLE 4

OFFICERS

Section 4.1 Executive Officers; Election; Qualifications. As soon as practicable after the annual meeting of stockholders in each year the Board of Directors shall appoint a President and Secretary, and it may, if it so determines, elect a Chairman of the Board and a Vice Chairman of the Board from among its members. The Board of Directors may also appoint one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and may give any of them such further designations or alternate titles as it considers desirable. Any number of offices may be held by the same person.

Section 4.2 Term of Office; Resignation; Removal; Vacancies. Except as otherwise provided by the Certificate of Incorporation or these Bylaws, each of the officers of the Corporation shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding the officer's election, and until the officer's successor is elected and qualified or until the officer's earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation. Except as otherwise provided by law, the Board of Directors may remove any officer with or without cause at any time, by the affirmative

vote of the majority of the directors then in office, if any, of an officer under a contract of employment. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

Section 4.3 Chairman of the Board. The Chairman of the Board, if one is appointed, shall preside, when present, at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board shall have such other powers and shall perform such other duties as the Board of Directors may from time to time designate.

Section 4.4 Chief Executive Officer. The Chief Executive Officer, if one is appointed, shall have such powers and shall perform such duties as the Board of Directors may from time to time designate. If there is no Chairman of the Board or if he or she is absent, the Chief Executive Officer shall preside, when present, at all meetings of stockholders and of the Board of Directors.

Section 4.5 President. The President shall, subject to the direction of the Board of Directors, have such powers and shall perform such duties as the Board of Directors may from time to time designate.

Section 4.6 Vice Presidents and Assistant Vice Presidents. Any Vice President (including any Executive Vice President or Senior Vice President) and any Assistant Vice President shall have such powers and shall perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 4.7 Treasurer and Assistant Treasurers. The Treasurer shall, subject to the direction of the Board of Directors and except as the Board of Directors or the Chief Executive Officer may otherwise provide, have general charge of the financial affairs of the Corporation and shall cause to be kept accurate books of account. The Treasurer shall have custody of all funds, securities, and valuable documents of the Corporation. He or she shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. Any Assistant Treasurer shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 4.8 Secretary and Assistant Secretaries. The Secretary shall record all the proceedings of the meetings of the stockholders and the Board of Directors (including committees of the Board) in books kept for that purpose. In his or her absence from any such meeting, a temporary secretary chosen at the meeting shall record the proceedings thereof. The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the Corporation). The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary, shall have authority to affix it to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or that of an Assistant Secretary. The Secretary shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. In the absence of the Secretary, any Assistant Secretary may perform his or her duties and responsibilities. Any Assistant Secretary shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 4.9 Other Powers and Duties. Subject to these Bylaws and to such limitations as the Board of Directors may from time to time prescribe, the officers of the Corporation shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as from time to time may be conferred by the Board of Directors or the Chief Executive Officer.

ARTICLE 5

STOCK

Section 5.1 Form. Shares of the Corporation may, but need not, be represented by certificates. The Board of Directors may authorize the issue of some or all of the shares of the Corporation without certificates. Any such authorization will not affect shares already represented by certificates until they are surrendered to the Corporation. The rights and obligations of shareholders shall be identical whether or not their shares are represented by certificates. Certificates shall be signed by or in the name of the Corporation by the Chairman of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue. The Corporation shall not have the power to issue a certificate in bearer form.

Section 5.2 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 5.3 Transfer of Stock. Upon surrender to the Corporation or the transfer agent for the Corporation of shares endorsed or accompanied by a written assignment signed by the holder of record or by such holder's duly authorized attorney-in-fact, it shall be the duty of the Corporation, or its duly appointed transfer agent, to transfer such shares to the person entitled thereto and record the transaction upon its books.

Section 5.4 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 5.5 Stock Transfer Agreements. The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 5.6 Registered Owners. The Corporation (a) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, (b) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and (c) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 5.7 Public Listing and Disclosure. The Corporation shall take all commercially reasonable actions in order for its shares of common stock, par value

ARTICLE 6

INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

Section 6.1 Right to Indemnification. Subject to the other provisions of this Article 6, each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including involvement as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise (hereinafter, an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA exercise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; *provided, however*, that, except as provided in Section 6.2, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section 6.1 shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advance of expenses"); *provided, however*, that, if and to the extent that the DGCL requires, an advance of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 6.1 or otherwise.

Section 6.2 Procedure for Indemnification. Any indemnification of a director or officer of the Corporation or advance of expenses under Section 6.1 shall be made promptly, and in any event within thirty (30) days (or, in the case of an advance of expenses, twenty (20) days), upon the written request of the director or officer. A request for indemnification may be made at any time following the final disposition of the proceeding. If a determination by the Corporation that the director or officer is entitled to indemnification pursuant to this Article 6 is required, and the Corporation fails to respond within sixty (60) days to a written request for indemnity, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advance of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty (30) days (or, in the case of an advance of expenses, twenty (20) days), the right to indemnification or advances as granted by this Article 6 shall be enforceable by the director or officer in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of expenses where the undertaking required pursuant to Section 6.1, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including the Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 6.3 Employees and Agents. The Corporation may, by action of the Board of Directors, provide indemnification to persons who are not covered by Section 6.1 and who are or were employees or agents of the Corporation, or who are or were serving at the request of the Corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise, with the same or lesser scope and effect as the indemnification provided for directors and officers. The procedure for indemnification of other employees and agents for whom the Board of Directors has provided indemnification pursuant to this Section 6.3 shall be the same procedure set forth in Section 6.2 for directors and officers, unless otherwise set forth in the action of the Board of Directors providing indemnification for such other employees and agents.

Section 6.4 Service for Subsidiaries. Any person serving as a director, officer, employee or agent of a subsidiary shall be conclusively presumed to be serving in such capacity at the request of the Corporation.

Section 6.5 Reliance. Persons who after the date of the adoption of this provision become or remain directors of the Corporation or who, while a director or officer of the Corporation, become or remain a director, officer, employee or agent of a subsidiary, shall be conclusively presumed to have relied on the rights to indemnity, advance of expenses and other rights contained in this Article 6 in entering into or continuing such service. The rights to indemnification and to the advance of expenses conferred in this Article 6 shall apply to claims made against an indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

Section 6.6 Non-Exclusivity of Rights. The rights to indemnification and to the advance of expenses conferred in this Article 6 shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation or under any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.7 Limitation on Indemnification. Subject to the requirements of Section 6.1 and the DGCL, the Corporation shall not be obligated to indemnify any person pursuant to this Article 6 in connection with any proceeding (or any part of any proceeding):

(a) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Exchange Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Corporation, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements); or

(d) if prohibited by applicable law.

Section 6.8 Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee or agent of the Corporation or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such expenses, liability or loss under the DGCL.

Section 6.9 Contract Rights. The provisions of this Article 6 shall be deemed to be a contract right between the Corporation and each indemnitee who serves in any covered capacity at any time while this Article 6 and the relevant provisions of the DGCL or other applicable law are in effect, and any repeal or modification of this Article 6 or any such law shall not affect any rights or obligations then existing with respect to any state of facts or proceeding then existing.

Section 6.10 Merger or Consolidation. For purposes of this Article 6, reference to the “Corporation” shall not include any constituent corporation absorbed in a consolidation or merger with the Corporation unless specifically authorized by the Board of Directors.

Section 6.11 Other Terms Defined. For purposes of this Article 6, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article 6.

ARTICLE 7

MISCELLANEOUS

Section 7.1 Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 7.2 Seal. The Corporation may, but need not, have a corporate seal which may be altered at pleasure, and may use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 7.3 Waivers. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver.

Section 7.4 Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction, or solely because the votes of such persons are counted for such purpose, if: (a) the material facts as to the director’s or officer’s relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorized the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (b) the material facts as to the director’s or officer’s relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 7.5 Execution of Corporate Contracts and Instruments. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the Board of Directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 7.6 Construction; Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both a corporation and a natural person.

Section 7.7 Amendment of Bylaws. The Bylaws may be amended or repealed in the manner set forth in the Corporation’s Certificate of Incorporation. Notwithstanding the prior sentence or anything to the contrary contained in the Corporation’s Certificate of Incorporation, Sections 3.2, 5.7, 7.9 and 7.10 herein and this Section 7.7, as it relates to Sections 3.2, 5.7, 7.9 and 7.10, shall only be amended by the approval of stockholders holding greater than 75% of the outstanding shares of Common Stock.

Section 7.8 Forum for Adjudication of Disputes. To the fullest extent permitted by law, and unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for: (1) any derivative action or proceeding brought in the name or right of the Corporation or on its behalf, (2) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee, stockholder or other agent of the Corporation to the Corporation or the Corporation’s stockholders, (3) any action arising or asserting a claim arising pursuant to any provision of the DGCL or any provision of the Certificate of Incorporation or these Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (4) any action asserting a claim governed by the internal affairs doctrine, including, without limitation, any action to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or these Bylaws. Any person or entity purchasing or otherwise acquiring any interest in shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 7.8.

Section 7.9 Related Party Transactions. Any transaction or series of transactions in an amount greater than \$50,000 involving the Corporation and any of its officers, directors, stockholders that own greater than 5% of its outstanding shares of common stock or any entities affiliated with such parties, must be approved by a majority of the disinterested members of the Board of Directors and the terms of such transaction must be disclosed in writing to stockholders within five business days of the closing or completion of such transaction in a report or other disclosure that is substantially equivalent to a Current Report on Form 8-K under the Exchange Act.

Section 7.10 Stock Ownership. Any action taken by the Corporation or any stockholder that would result in a stockholder owning greater than 49% (“Above 49% Stockholder”) of the outstanding shares of the Common Stock, would require the approval of a majority of stockholders of the Common Stock, excluding the

EX-10.1 3 ea174254ex10-1_rubicon.htm CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE, DATED FEBRUARY 20, 2023, BY AND BETWEEN TIMOTHY E. BROG AND RUBICON TECHNOLOGY, INC.

Exhibit 10.1

CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE

THIS CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE (the "Agreement") is entered into this 20th day of February, 2023, by and between Timothy E. Brog ("TEB") and Rubicon Technology, Inc., a Delaware corporation ("Rubicon"), (collectively, the "Parties").

EXPLANATORY STATEMENT

Pursuant to TEB's Amended and Restated Executive Employment Agreement dated May 12, 2017 and the First Amendment to Executive Employment Agreement dated August 23, 2022 (collectively, the "Employment Agreement," attached as **Exhibit A** and hereby incorporated by reference), TEB was entitled to receive, and Rubicon was responsible to pay for health and welfare benefits to which TEB was entitled under the Employment Agreement, for a 12-month period following separation from employment (collectively, "Health Benefits"). TEB currently owns 57,593 shares of Rubicon common stock, par value \$.001 per share (the "Shares").

The Parties wish to settle all amounts owed or potentially owed, terminate Rubicon's obligations to TEB, other than the Health Benefits, and mutually agree to terminate TEB's employment at Rubicon and redeem the Shares.

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

AGREEMENT

1. Incorporation of Recitals. The Explanatory Statement to this Agreement is incorporated by reference herein.
2. Closing; Payment and Transfer.

(a) The closing of the transactions contemplated by this Agreement (the "Closing") will take place simultaneously with the execution of this Agreement. After the later of the Closing and the expiration of the revocation period described in Section 15(b) herein:

- (1) Rubicon shall cause the total sum of \$112,000 (the "Settlement Payment") to be paid to TEB from Rubicon;
- (2) TEB's release of Rubicon and Rubicon Released Parties as set forth below will become effective;
- (3) Rubicon's release of TEB and TEB Released Parties as set forth below will become effective;
- (4) TEB will assign the Shares to Rubicon, and will execute Assignments Separate from Certificate with respect thereto in the form attached hereto as **Exhibit B**.

- (5) Rubicon will begin payment of the Health Benefits as soon as administratively possible, provided TEB timely elects coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) within sixty (60) days of the loss of coverage. Health Benefits payments will be made directly by the Company to the administrator of the Health Benefit plans.
- (6) Rubicon will waive its right to contest TEB's claim for unemployment compensation benefits, consistent with applicable law, should he apply for such benefits following separation from employment.
- (7) The Settlement Payment and Health Benefits will be considered consideration, which is good, valuable, and sufficient, in addition to other consideration as outlined herein.

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

(c) TEB will be fully responsible for paying any and all taxes owed relating to the receipt by TEB of the Settlement Payment, if any. The Parties hereto agree that for tax purposes, the assignment of the Shares is deemed a sale of the Shares and the Settlement Payment shall exclusively be for the sale of the Shares.

3. Release of Rubicon. Other than the Health Benefits, TEB, for himself, and on behalf of his agents, executors, heirs, representatives, and successors, (each a "TEB Released Party" and together the "TEB Released Parties"), knowingly and voluntarily releases and forever discharges Rubicon and each of its past and present employees, agents, officers, directors, shareholders holding more than twenty percent (20%) of the capital stock of the Company and subsidiaries, (each an "Rubicon Released Party" and together the "Rubicon Released Parties") from any claims, charges, causes of action, demands or damages, known or unknown, fixed or contingent at law or in equity, and waives and releases any and all rights and claims of any type that TEB or TEB Released Party may have had or now has at any time prior to the date hereof, against Rubicon and/or the Rubicon Released Parties in any way related to past due, presently owed or future payments related to TEB's employment, or his termination of employment with Rubicon other than for the payment of the Health Benefits and Settlement Payment in accordance with and subject to the conditions contained in this Agreement. This waiver and release includes, but is not limited to:

(a) any claims for any tort, including wrongful termination, wrongful discharge, defamation, intentional infliction of emotional distress, intentional interference with a contractual relationship or any other common law claims;

(b) any claims for the breach of any written, implied or oral contracts, including, but not limited to, any contract of employment;

(c) any claims of discrimination, harassment or retaliation based on age, marital status, national origin, ancestry, race, religion, gender, sex, sexual orientation, physical or mental disability or medical condition;

(d) except for payments provided pursuant to this Agreement, any claims for payments of any nature, including, but not limited to, wages, attorney's fees, costs, overtime pay, vacation pay, severance pay, commissions, bonuses, or the monetary equivalent of benefits;

(e) except for the consideration provided pursuant to this Agreement and any benefits under any retirement plan, any claims or rights under any benefit plan or program of Rubicon;

(f) any and all claims with respect to the current or future performance, financial results or value of Rubicon; and

(g) any and all claims that may arise under common law and all federal, state and local statutes, ordinances, rules, regulations and orders, including, but not limited to, any claim or cause of action in law or in equity based on or arising under the Fair Labor Standards Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act (ADEA), as amended by the Older Workers Benefit Protection Act (OWBPA), the Americans with Disabilities Act of 1990, as amended, the Civil Rights Acts of 1866, 1871 and 1991, as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, the Family and Medical Leave Act, as amended, the Employee Retirement Income Security Act of 1974, as amended, the Occupational Safety and Health Act, as amended, the Worker Adjustment and Retraining Notification Act, as amended, any state law with respect to employee or severance rights, any state federal or local laws governing whistleblowing or retaliation claims to the maximum extent permitted by law, including but not limited to the Sarbanes Oxley Act, any laws or agreements that provide for punitive, exemplary or statutory damages, and any laws or agreements that provide for payment of attorneys' fees, costs, or expenses.

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

(a) any claims for any tort, defamation, intentional infliction of emotional distress, intentional interference with a contractual relationship or any other common law claims;

(b) any claims for the breach of any written, implied or oral contracts, including, but not limited to any contract of employment;

3

(c) any claims of discrimination, harassment or retaliation based on age, marital status, national origin, ancestry, race, religion, gender, sex, sexual orientation, physical or mental disability or medical condition;

(d) any claims for payments of any nature; and

(e) any and all claims with respect to the current or future performance, financial results or value of Rubicon.

5. Complete Releases.

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

(b) The Parties hereto agree and understand that nothing in this Agreement alters in any way Rubicon's obligation to pay for TEB's Health Benefits from February 1, 2023 to January 31, 2024 and such payments shall be made directly to the Health Benefits administrator.

(c) TEB acknowledges that he is aware that Rubicon has plans which may increase the value of Rubicon and/or the price of the Shares, but that, as a sophisticated investor and as someone very familiar with Rubicon's business, TEB nevertheless desires to transfer the Shares pursuant to the terms hereof.

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

6. Waiver of Claims.

(a) Solely for matters occurring prior to the date hereof, TEB irrevocably covenants (i) that he has not and will not file suit in any court against any of the Rubicon Released Parties, (ii) that he has not and will not assist anyone else in filing suit in any court against any of the Rubicon Released Parties, except as required by law, and (iii) that he has not and will not file or assist anyone else in filing any administrative complaint or charge with any governmental agency against any of the Rubicon Released Parties, based on any matter in connection with his investment in or affiliation with Rubicon. TEB further warrants and represents that he has not transferred or assigned to any other person, entity or corporation any rights or claims against any of the Rubicon Released Parties. Nothing in this Agreement shall prevent TEB from (i) commencing an action or proceeding to enforce this Agreement, (ii) commencing an action as it relates to unemployment insurance or workers' compensation (although TEB acknowledges he has no known workplace injury or illness by signing this Agreement), (iii) pursuing rights or entitlement under the Consolidated Omnibus Budget Reconciliation Agreement (COBRA); or (iv) filing a timely charge or complaint with the EEOC or participating in any investigation or proceeding conducted by the EEOC regarding any claim of employment discrimination (although TEB has waived any right to personal recovery or personal injunctive relief in connection with any such charge or complaint).

4

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

7. Confidentiality Provision. TEB agrees that the existence and terms of this Agreement are not to be disclosed to anyone other than his attorney and tax advisor, except as otherwise required by law, and that if disclosed to such persons, he will advise them that they may not disclose the existence or terms of this

8. **Representation and Warranty of TEB.** TEB warrants and represents to Rubicon that TEB has good and marketable title to the Shares directly or indirectly through an IRA account, free and clear of any lien, claim or encumbrance. There are no options, warrants, calls, subscriptions, rights, commitments, agreements, or understandings of any character obligating TEB to transfer any interest in any of the Shares to any other person or entity.

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

10. **Complete Agreement.** This Agreement and the Restated Executive Employment Agreement dated May 12, 2017 constitutes the complete, final and entire agreement between the Parties concerning the subject matter and supersedes all prior negotiations, contracts, and proposed agreements, understandings, terms, covenants, conditions or representations, if any, between the Parties. If there is any conflict between this Agreement and any term in the Employment Agreement, this Agreement will prevail on only that term. For the avoidance of doubt, the parties acknowledge and agree that the post-employment restrictions contained in the Employment Agreement at Section 5 "Confidentiality," Section 6 "Restrictive Covenants," Section 7 "Assignment of Inventions," and Section 8 "Reasonableness, Remedies, Claims," remain in effect in accordance with the terms of the Employment Agreement. Any changes to this Agreement must be in writing and signed by both Parties.

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

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

5

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

14. **Miscellaneous.**

(a) **Expiration of Offer.** TEB has twenty-one (21) days in which to review and consider this Agreement. If a signed copy of this Agreement has not been received by Mike Mikolajczyk, Chairman of the Board of Directors via email at mike.mikolajczyk@catalyst-cap.com, by 5:00 p.m. EST on the twenty-first day after this Agreement was provided to TEB, the terms and conditions set forth in this Agreement will expire automatically. Any changes, whether material or otherwise, made to this Agreement do not restart or affect in any manner the running of the original twenty-one (21) day period.

(b) **Right to Revoke Agreement.** TEB may revoke this Agreement within seven (7) days from the date he signs this Agreement, in which case this Agreement shall be null and void and of no force or effect on either party. Any revocation must be in writing and received by Mike Mikolajczyk, Chairman of the Board of Directors via email at mike.mikolajczyk@catalyst-cap.com by 5:00 p.m. EST on or before the seventh (7th) day after this Agreement is executed by TEB.

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

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

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

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

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

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

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

6

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

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

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

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

(i) **Separation from Employment; Return of Property.** TEB acknowledges and agrees that his last date of employment was January 6, 2023 and TEB executed any documents and performed any duties required to effectuate his separation from employment from Rubicon as of that date. TEB represents that any expenses that he is owed have been submitted and those that were not submitted as of the last day of his employment at Rubicon are waived. TEB represents that

on or before the date of this Agreement, he returned all property, including documents and data, requested by Rubicon. TEB agrees that any "Confidential Information" (as such term is described in Section 5 of the Employment Agreement remaining in his possession, if any, is subject Section 5 of the Employment Agreement.

(j) Duty to Cooperate. TEB agrees that he will assist and cooperate with Rubicon in connection with the defense or prosecution of any claim that may be made against or by Rubicon, or in connection with any ongoing or future investigation or dispute or claim of any kind involving Rubicon, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations or proceedings relate to services performed or required to be performed by TEB, pertinent knowledge possessed by TEB, or any act or omission by TEB. TEB further agrees to perform all acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this section. Rubicon agrees to pay TEB at an hourly rate of \$600 per hour and reimburse TEB for reasonable expenses for services provided pursuant to this Section 14(j) against invoices submitted by TEB.

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

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

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

[remainder of page intentionally left blank]

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

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

PLEASE READ CAREFULLY. THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES.

RUBICON TECHNOLOGY INC.

By: /s/ Mike Mikolajczyk
Mike Mikolajczyk

/s/ Timothy E. Brog
Timothy E. Brog

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

JANEL CORPORATION

By: /s/ Darren Seirer
Duly Authorized