



## RIVA INTERNATIONAL, INC.

### RIVA CLOUD TERMS AND CONDITIONS OF USE (as referenced on a related order form)

The parties acknowledge that these RIVA CLOUD TERMS AND CONDITIONS OF USE ("**Terms and Conditions**") and related Appendices form the licensing agreement ("**Agreement**") between Riva International, Inc. ("**Licensor**") and the customer ("**Licensee**"). These Terms and Conditions shall govern the relationship between the parties from the earliest start date in a related executed order form ("**Order Form**") to the latest expiration date of the initial subsequently executed Order Form.

Licensee acknowledges it is planning to implement and test or has successfully implemented and tested Riva Cloud, Riva Insight and/or related software, individually or jointly referred to as "**Software**", during a proof of concept period and/or wishes to move forward with the purchase of Software. These Terms and Conditions govern access to and use of the Licensor web sites ("**Web Sites**"), located at [www.rivaengine.com](http://www.rivaengine.com), [www.rivasync.com](http://www.rivasync.com) or [www.rivacloud.com](http://www.rivacloud.com), which locations may change from time to time, and the Software and related services located therein (collectively, the "**Web Services**"), by Licensee and its authorised users ("**Users**") for the duration of the licensing term ("**Term**") as identified on a related Order Form.

1. **DEFINITIONS.** All capitalized terms used in these Terms and Conditions have the meanings given to them as defined herein.
2. **ACCESS TO THE WEB SERVICES AND TERM OF LICENCE.** Licensor grants to Licensee for use by its Users during the Term set out on a related Order Form, a non-exclusive and non-transferable worldwide right and licence to use the Web Services for internal use only, according to these Terms and Conditions. This right and licence applies to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect, control with such entity ("**Affiliate**") or one or more of the other Affiliates of that entity or a combination thereof. For purposes of this definition, any entity shall control another entity if the first entity (a) owns, indirectly or of record, more than fifty (50%) percent of the voting securities of the other entity, or (b) has the ability to elect a majority of the directors of the other entity. Unless otherwise set forth on an Order Form, the Term will be automatically renewed for a term of equal duration to the term of the initial Order Form and/or subsequent Order Forms or Licensee purchase orders making reference to the most recent Order Form and modifying the Term and/or number of Users set forth therein. The Web Services will be disabled immediately upon completion of the Term if payment for the next term has not been received within 30 days of Licensee's receipt of renewal invoice of the relevant term. Fifteen (15) days after the Web Services have been disabled, without being required to notify the Users, and at its sole discretion, Licensor may choose to delete the Users' account information. Licensor shall be required to provide Licensee written notice of any proposed price increases at least 60 days prior to the expiration date of any term, in which case the pricing increase will be effective upon renewal and thereafter. Multi-year Agreements, for a maximum duration of three (3) years, will have the initial price locked in and will not be subject to price increases during the duration of the multi-year Agreement.
3. **PAYMENT TERMS AND CURRENCY.** Monthly subscription payment will be made by way of pre-payment by authorised credit card. Yearly or non-monthly subscription payment for orders with an annual value of under 2,000.00 will be paid by authorised credit card. Yearly subscription payment and payment of monthly subscription orders with an annual value of over 2,000.00 will be made by electronic funds transfer (additional bank charges, transfer fees and all other related expenses are the responsibility of Licensee) or by cheque, at licensee's option, upon receipt by Licensor of an approved Licensee purchase order, for the term detailed in the Order Form. Upon receipt of an Order Form or a Licensee authorised purchase order, Licensor will activate access to Web Services for a period of one (1) month. For monthly subscriptions, upon receipt of uninterrupted monthly payment, the term will be renewed. For annual subscriptions, upon receipt of full payment, Licensor will activate the remaining months of the Term. During the Term, Licensee has the right to purchase additional licenses at the same price as the initial order unless Licensee has received notification of a price increase as identified above. A cumulative volume discount will apply if the number of additional licenses causes a higher volume pricing discount threshold to be achieved. The price for additional accounts will be pro-rated to be co-terminus with the previous licenses. There is no refund for decreasing the number of Users for annual subscriptions. Unless otherwise stated on the applicable Order Form, upon execution of the Order Form, Licensee shall prepay any fees or payments set forth in the Order Form. Licensing fees and time and materials charges not paid upon execution of the applicable Order Form, including penalties for late payment as per the Order Form and/or related invoice, will be invoiced monthly according to Licensor's billing cycle. Licensee shall have the right to withhold any portion of an invoice that is reasonably disputed in good

faith; provided that (i) Licensee cooperates diligently with Licensor to resolve the dispute in a timely manner and (ii) Licensee makes payment of all undisputed portions of such invoice. Any withholding of fees hereunder in accordance with the foregoing shall not be deemed a breach of this Agreement.

Currency of this agreement will be based on the region from which this Agreement is signed. Clients residing in Europe, the Middle East or Africa will be charged in Euro's (EUR), clients residing in Canada will be charged in Canadian Dollars (CAD) and all other regions will be charged in U.S. Dollars (USD).

4. **USER I.D.'S AND USE OF WEB SERVICES.** Access to the Web Services will be controlled through the use of unique user ID's created and assigned by the Licensee for Users required and administrators to access the Web Services ("**User IDs**"). Licensee is responsible for monitoring and maintaining access control of the Web Services by Licensee's Users. Licensee shall be solely responsible for any and all unauthorised, or improper use of the Web Services (other than by Licensor) and for compliance of all activities of all Users using their User IDs, including the use of User ID by personnel or agents who are no longer engaged by the Licensee. In addition, Users agree that they shall not:
  - a. use the Web Services for any illegal purpose;
  - b. sell, assign, sub-license, rent, broadcast or re-transmit the Web Services, in whole or in part, including without limitation, using the Web Services in connection with any paid service bureau activities except as permitted herein; or
  - c. copy, reverse engineer, de-compile, disassemble, modify, adapt or translate the Web Services or any component thereof, or create a derivative work of, or otherwise attempt to discover any source code of the Web Services or communicate the same to any other person or otherwise reduce or attempt to reduce the Web Services to human perceivable form.
5. **COMPUTER AND INTERNET CONNECTION.** Users shall be responsible for supplying, at their own expense, all computer and telecommunication equipment required to enable them to access the Web Services, including a supported Internet browser, supported versions of which may change, from time to time, at Licensor's sole discretion. The list of supported browsers, which will be updated from time to time, is available at the following link: <http://kb.omni-ts.com/entry/492/#supported-web-browsers>
6. **THIRD PARTY SOFTWARE.** For Users who need to directly access the Web Services, Users shall be responsible for downloading from the Internet and updating at their own risk and expense, any and all third-party software (for example, Internet browsers) which may change from time to time. Users shall be responsible for complying with all terms and conditions and licenses regarding such third-party software.
7. **OWNERSHIP OF AND RESPONSIBILITY FOR USE, CONTROL AND SECURITY OF DATA.** Licensor and Licensee acknowledge that the Web Services are intended to facilitate integration between two systems using data provided by Users and that Users, not Licensor, control the input of this data and associated information. Licensor is not responsible for the accuracy, meaning, completeness or legality of any data input into the target systems or results as calculated that are synchronized using the Web Services. Licensor agrees to take such reasonable precautions against loss of or damage to information synchronized by Users including Licensee Data and Confidential Information (each as defined below) as is standard for providers of services of a similar nature to the Web Services provided by Licensor. In no way shall Licensor be responsible for cleaning and/or resetting Licensee data that has been synchronised by the Software unless the parties agree in writing, pursuant to a Professional Services Agreement based on the information in Appendix 3, that explicitly provides for Licensor to provide data update cleansing services. Licensor understands and agrees that Licensee is the sole owner of all data that is synchronised through the Web Services or otherwise submitted by or for Licensee or Users or collected and processed by or for Licensee or the Users using the Web Services ("**Licensee Data**"), and that Licensor shall have no right or interest with respect thereto. Licensor understands that the Licensee Data is confidential and may be proprietary and otherwise protected by law, and Licensor agrees not to disclose the Licensee Data to any third party or access, use, modify, disseminate, or provide access (whether logical or physical) to the Licensee Data for any purpose other than to provide the services specifically set forth in these Terms and Conditions. In addition, Licensor agrees not to sell, assign, license, lease or commercially exploit any Licensee Data. Licensor shall maintain appropriate security for the Licensee Data as is standard for providers of services of a similar nature to the Web Services. Licensee shall be the data controller and Licensor shall be a data processor with respect to any Licensee Data processed via the Web Services and Licensee shall comply with all applicable laws in the processing of Licensee Data. Licensor shall process the Licensee Data via the Web Services only in accordance with the terms of this Agreement and any written instructions given by Licensee to Licensor from time to time. Licensee shall have the right to audit Licensor's compliance with such policies upon reasonable notice to Licensor. Any breach by Licensor or Licensee of the terms of this Section 7 shall be deemed a material breach of this Agreement.

8. **SUPPORT AND MAINTENANCE.** Licensor shall support and maintain the Web Services in accordance with the terms and conditions set out in the attached Appendix 2.
9. **TERMINATION.**
- a. This Agreement may be terminated as follows:
- i. by Licensor, if Licensee fails to comply with any term, condition or provision of these Terms or or fails to prepay or pay any undisputed fees and, charges due and owing to Licensor within thirty (30) days of receiving notice from Licensor of such default; or if Licensee fails to cure any other material breach of this Licence Agreement within thirty (30) days of receiving notice from Licensor of such default;
  - ii. by Licensee without notice, if Licensor fails to cure any material breach of this Agreement within thirty (30) days of receiving notice from Licensee of such default; provided that any breach by Licensor of its confidentiality obligations pursuant to Section 8 shall be deemed a material breach of this Agreement and Licensee may terminate this Agreement immediately upon written notice to Licensor thereof;
  - iii. by either party if:
    - (i) a receiver (unless the receivership order is vacated in thirty (30) days), trustee or bankruptcy or any other similar officer (unless such person's appointment is vacated in thirty (30) days) is appointed to take charge of all or any substantial part of the other party's business or property;
    - (ii) the other party becomes an insolvent person or commits an act of bankruptcy;
    - (iii) a petition is filed or any other action is taken with respect to the other party for reorganisation or for an arrangement under bankruptcy in the jurisdiction in which the other party is incorporated, related to bankruptcy or insolvency and providing a plan for a debtor to settle, satisfy or to extend the time for the payment of debts; or
    - (iv) any application or petition or certificate or order is made or granted for the winding up or dissolution of the other party, voluntarily or otherwise.
- b. Upon any expiration or termination of this Agreement for any reason;
- i. Licensee shall (1) pay any outstanding undisputed fees and charges owed to Licensor prior to the date of termination within thirty (30) days after the date of termination, (2) immediately discontinue use of the Web Services, unless otherwise permitted by Licensor, and (3) upon written request to do so from Licensor, Licensee will either return or destroy all copies of documentation in Licensee's possession and provide proof thereof in the form of a signed statement thereto from an appropriate authority;
  - ii. Licensor shall (1) subject to the immediately succeeding clause (2) below, within thirty (30) days of either the date of termination or receipt of all undisputed fees and charges owed by Licensee to Licensor under this Agreement, whichever is later, return to Licensee all Licensee Data (and all other output data, original materials, input data and any other information or data prepared by Licensor under this Agreement that is the property of Licensee but is in Licensor's possession); and (2) if the Agreement is terminated by Licensee for Licensor's material breach, Licensor shall reimburse Licensee on a pro-rated basis for that portion of Licensee's prepayment under this Agreement which covers any period beyond the termination date within thirty (30) days after termination.
  - iii. if payment for a new Subscription Term has not been received within 30 days of Licensee's receipt of invoice, Licensor may, at its sole discretion, and without notifying Licensee, immediately disable Web Services. If payment has not been received within 30 days after the Web Services have been disabled, without notifying Licensee or the Users, Licensor, at its sole discretion, may choose to delete the Users' Web Services account information.
10. **LIMITED WARRANTIES, AND LIABILITIES AND CONFIDENTIALITY:**
- a. Limited Warranty Regarding Web Services: Licensor warrants that it will provide the Web Services in a manner consistent with general industry standards and the Web Services will perform substantially in accordance with the service level warranties and provide the support services as set out in Appendix 2. Other than the service level warranties set out in Appendix 2, LICENSOR DOES NOT WARRANT THAT THE WEB SERVICES WILL BE AVAILABLE AT ALL TIMES, but

does warrant that it will use all reasonable commercial efforts to resolve (whether by correction or reasonable work around), in a timely manner, any defects in the Web Services that come to its attention, and that it will use all reasonable commercial efforts to maintain availability of the Web Services. LICENSOR DOES NOT WARRANT THAT INTERNET ACCESS TO THE WEB SERVICES WILL BE AVAILABLE AT ALL TIMES, AND ASSUMES NO RESPONSIBILITY FOR USERS' FAILURE TO ACCESS THE WEB SERVICES AS A RESULT OF PROBLEMS WITH USERS' ABILITY TO ACCESS THE INTERNET. Licensor also warrants that this Agreement accurately describes the applicable administrative, technical and physical safeguards for the protection of the security, confidentiality and integrity of Licensee Data, and Licensor will maintain such safeguards in accordance herewith and will not materially decrease the overall security of the Web Services during any subscription term.

- b. Confidentiality: Licensor shall at all times hold all Licensee data processed under this Agreement in strictest confidence using at least the same degree of care as it uses to safeguard its own information of a highly confidential nature. Licensor shall not use, copy or divulge data processed under the Agreement to any third party except those that are legally empowered to access or to whom the Licensee wishes to give access to after notifying Licensor in writing. Any such permitted disclosures shall in no way affect the ownership of such data. Licensor shall, on termination of this Agreement for any reason (and notwithstanding any claim of whatever nature it may have against the Licensee), immediately cease use of and deliver to the Licensee all tangible materials relating to the data processed under the Agreement, including all copies of all relevant documents whether in paper or electronic form in the possession of Licensee.
- c. Third-party software: If any third-party software is incorporated or embedded in the Web Services, Licensor represents and warrants that it has all rights and licenses with respect to the third-party software necessary to license such software on the terms provided in this Agreement.
- d. Right to license: Licensor warrants that it is the owner of and has the right to license the Web Services and all documentation associated therewith and that there exists no actual or threatened suit by any third-party based on an alleged violation of such third party's rights with respect to the Services or such documentation. Licensor further warrants that, to the best of its knowledge, the Web Services and all documentation associated therewith do not infringe upon the Canadian and U.S. intellectual property rights of a third party, including but not limited to trademarks, patents, copyrights and trade secrets or any other contractual right of a third party.
- e. Malicious Code: Licensor warrants that use of the Web Services will not expose Licensee or its Users to any Malicious Code which is defined as (i) any undisclosed program routine, device or other feature or hidden file, including, without limitation, a time bomb, backdoors, virus, software lock, security protection procedures, Trojan horse, drop-dead device, worm, disabling device, malicious logic or trap door, that is designed to delete, disable, deactivate, interfere with or otherwise harm the Software or any hardware, software, data or other programs of Licensee or its Users, or (ii) any transmitting or activating computer program, any communication feature or tool which enables Licensor to collect information regarding Licensee's or its Users' activities or data, or any hardware-limiting, software-limiting, or services-limiting function (including, but not limited to, any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.
- f. "As Is" and "As Available" Use: LICENSOR WARRANTS THAT THE SOFTWARE WILL PERFORM THE FUNCTIONS SET OUT IN APPENDIX 1. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE WEB SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND LICENSOR SPECIFICALLY DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS OR WARRANTIES NOT SPECIFICALLY SET OUT HEREIN. LICENSOR SPECIFICALLY DISCLAIMS ANY WARRANTIES THAT THE WEB SERVICES ARE ERROR FREE, THAT THEY WILL MEET THE REQUIREMENTS OR EXPECTATIONS OF USERS, OR THE ACCURACY OF THE RESULTS OF THE CALCULATIONS, OR THAT THEY CONFORM TO ANY STATUTE, LAW OR REGULATION OF ANY FEDERAL, PROVINCIAL OR STATE REGULATORY AUTHORITY HAVING JURISDICTION OVER ANY USERS. LICENSOR SPECIFICALLY DOES NOT WARRANT ANY THIRD PARTY SOFTWARE PROVIDED BY USERS AND USED IN CONNECTION WITH THE WEB SERVICES OR SOFTWARE.
- g. Limitation of Liability: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR EXCLUDES FOR ITSELF AND ITS SUPPLIERS, PARTNERS AND RESELLERS WITH RESPECT TO INCIDENTS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY LIABILITY IN EXCESS OF THE AMOUNT ACTUALLY PAID AND/OR DUE FROM

LICENSEE FOR THE WEB SERVICES FOR THE CURRENT TERM PRORATED FOR THE NUMBER OF DAYS REMAINING IN THE TERM AFTER THE DATE OF THE LOSS (THE "COMPENSATION AMOUNT"), FOR THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY, HOWSOEVER CAUSED, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY.; PROVIDED THAT, IN NO EVENT SHALL LICENSOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE DURATION OF THIS AGREEMENT (THE "LICENSOR COMPENSATION AMOUNT"). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE ALSO EXCLUDES FOR ITSELF, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS ANY LIABILITY IN EXCESS OF THE AMOUNT PAID FOR THE USE OF THE WEB SERVICES, HOWSOEVER CAUSED, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE ANY LIABILITY IN EXCESS OF THE AMOUNT PAID FOR THE WEB SERVICES FOR THE CURRENT TERM, PRORATED FOR THE NUMBER OF DAYS REMAINING IN THE TERM AFTER THE DATE OF THE LOSS (THE "LICENSEE COMPENSATION AMOUNT"), HOWSOEVER CAUSED, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY.

- h. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR IN THE CASE OF LICENSOR, TO THE USERS) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS OR INVESTMENT OR THE LIKE, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OF OTHER FINANCIAL LOSS OR PERSONAL INJURY, INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWSOEVER CAUSED (INCLUDING NEGLIGENCE), INCLUDING IN THE CASE OF LICENSOR, RELATING TO USERS' USE OF THE WEB SERVICES INCLUDING UNAUTHORISED ACCESS AND USE OF USER'S DATA BY ANY PERSON OR PERSONS, THE PERFORMANCE, FAILURE OR INTERRUPTION OF THE WEB SERVICES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- i. IN THE EVENT ANY EXCLUSION, LIMITATION OR OTHER PROVISION CONTAINED IN THESE TERMS & CONDITIONS OF USE SHALL BE HELD TO BE INVALID FOR ANY REASON AND LICENSOR BECOMES LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGE, SUCH LIABILITY IS LIMITED TO THE LICENSOR COMPENSATION AMOUNT AND NO MORE.
- j. This article 10 shall survive for three (3) years the expiry or termination of these Terms and Conditions.

## 11. **CONFIDENTIAL INFORMATION.**

- a. Confidential Information of either Licensor or Licensee (a "Disclosing Party") shall be held in confidence by the other party ("Receiving Party"). No Receiving Party shall disclose, publish, release, transfer or otherwise make available Confidential Information of the Disclosing Party in any form to, or for the use or benefit of, any person or entity, or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except as provided in this Section 11a., without such Disclosing Party's prior written consent. The Receiving Party shall, however, be permitted to disclose relevant aspects of a Disclosing Party's Confidential Information to its consultants, directors, officers and employees and to the consultants, directors officers and employees of its corporate Affiliates (including in the case of Licensee, all Users) to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement; provided, however, that such party shall take all reasonable measures, consistent with the manner in which such party protects its own Confidential Information from time to time, to ensure that Confidential Information of the other party is not disclosed or duplicated in contravention of the provisions of this Agreement by such consultants, directors, officers and employees. The Receiving Party shall be responsible for any breach of the provisions of this Section 11.a by its consultants, directors, officers, or employees. The obligations in this Section 11.a. shall not restrict any disclosure by either party pursuant to: (1) any applicable law or legislation; (2) any order of any court of competent jurisdiction or government agency; (3) requirements for disclosure to regulators; and (4) requirements for disclosure required in the course of judicial proceedings to enforce rights and/or remedies under this Agreement, providing that the Receiving Party has taken all reasonable steps to obtain a judicial order to close such proceedings and files relating to such information to all persons other than pursuant to such judicial order, unless such process has been waived in writing by the

Disclosing Party; provided that in each of (1)-(4) above, the Receiving Party shall give prompt written notice to the Disclosing Party of any such requirement to disclose, where legally permissible, and reasonable assistance (at the Disclosing Party's cost) if the Disclosing Party wishes to contest or limit the scope of such requirement to disclose. If the Receiving Party is required to disclose the Disclosing Party's Confidential Information in accordance with the foregoing, it shall disclose only that portion of the Confidential Information as necessary to comply with the applicable requirement.

- b. Each Party recognizes that its disclosure of Confidential Information in respect of the other party may give rise to irreparable injury to the other party and acknowledges that remedies other than injunctive relief may not be adequate. Accordingly, without implementing the dispute resolution procedures described in this Agreement to prevent the unauthorised possession, use, disclosure or knowledge of any Confidential Information, in the event of a breach, or threatened breach, of any of the provisions of this Section 11, Disclosing Party shall be entitled to seek an interim injunction, interlocutory injunction and permanent injunction in addition to and not in limitation of any other rights, remedies or damages available to Disclosing Party at law or in equity including, but not limited to, specific performance and other such relief as a court of competent jurisdiction may deem just and proper, as well as such monetary damages as may be proven at law. Receiving Party further agrees to waive any requirement for the deposit of security or posting of any bond in connection with such remedy. Each of the parties hereto agree to waive the right for trial by jury of any or all issues arising in any action or proceeding between the parties hereto or their successors, with respect to the provisions of this Section 11.
- c. Notwithstanding this Section 11 or any other provision of this Agreement, the parties shall be free to refer generally to the existence of this Agreement and the type of commercial relationships created hereby, provided no disclosure of specific terms is made.
- d. For purposes of this Agreement, "Confidential Information" shall mean all non-public, proprietary, confidential information pertaining to or concerning a party or its Affiliates including (i) all confidential information relating to the business and affairs of the Licensee or any Affiliate thereof, including all Licensee Data and all information relating to its operations, financial affairs, technology, clients or prospective clients; and (ii) all confidential information relating to the business and affairs of Licensor or any Affiliate thereof, including all information relating to its operations, financial affairs, technology, clients and projects undertaken for its clients, and (iii) the logic, structure, sequence and organisation of the Web Services, and all information, data, drawings, specifications, documentation, software listings, source or object code which the Licensor may have imparted and may from time to time impart to the Licensee, relating to the Web Services, or any other Licensor product, provided that: (1) information that is independently developed by the Receiving Party; (2) information which becomes part of the public domain (other than through unauthorised disclosure by the Receiving Party); or (3) information which, to the knowledge of the Receiving Party, is received from a third party other than the Disclosing Party free of any obligation of confidentiality by such third party to the Disclosing Party or of which the Receiving Party gained knowledge or possession prior to disclosure by the Disclosing Party free of any obligation of confidentiality to the Disclosing Party or otherwise, shall not be considered Confidential Information.

## 12. **WEB SERVICES WARRANTY AND INDEMNITY.**

- a. LICENSOR HEREBY REPRESENTS AND WARRANTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE WEB SERVICES DO NOT INFRINGE UPON THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, INCLUDING BUT NOT LIMITED TO TRADEMARKS, PATENTS, COPYRIGHT AND TRADE SECRETS OR ANY OTHER CONTRACTUAL RIGHT OF A THIRD PARTY. LICENSOR AGREES TO INDEMNIFY AND SAVE LICENSEE, LICENSEE'S USERS, AND LICENSEE'S SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL PROCEEDINGS, ACTIONS OR DEMANDS, LOSSES, COSTS AND LIABILITIES THAT ANY OF THEM MAY SUFFER, SUSTAIN OR INCUR, AS A RESULT OF, OR ARISING OUT OF CLAIMS BY THIRD PARTIES THAT THE WEB SERVICES INFRINGES SUCH THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS, PROVIDED THAT (1) LICENSEE PROMPTLY PROVIDES WRITTEN NOTICE TO LICENSOR OF ANY SUCH CLAIM; AND (2) LICENSOR HAS SOLE CONTROL OVER THE DEFENCE AND SETTLEMENT OF SUCH CLAIM (EXCEPT THAT LICENSOR MAY NOT SETTLE ANY CLAIM UNLESS THE SETTLEMENT UNCONDITIONALLY RELEASES LICENSEE OF ALL LIABILITY AND DOES NOT INCLUDE AN ADMISSION OF LIABILITY OR FAULT ON THE PART OF LICENSEE). LICENSEE SHALL COOPERATE FULLY WITH ALL REASONABLE

REQUESTS OF LICENSOR (AT LICENSOR'S EXPENSE) IN DEFENDING OR SETTLING SUCH CLAIM.

- b. IF THE WEB SERVICES ARE FINALLY DETERMINED TO BE INFRINGING, OR IN LICENSOR'S JUDGEMENT, SUCH USE IS LIKELY TO BE INFRINGING, LICENSOR MAY, AT ITS OPTION : (1) PROCURE FOR LICENSEE THE RIGHT TO CONTINUE USING THE INFRINGING WEB SERVICES AT NO ADDITIONAL COST TO LICENSEE; (2) REPLACE OR MODIFY THE SOFTWARE TO MAKE THEIR USE NON-INFRINGING, WHILE YIELDING SUBSTANTIALLY EQUIVALENT RESULTS, WITH NO REDUCTION IN FUNCTIONALITY; OR SOLELY IN THE EVENT BOTH THE FOREGOING OPTIONS IN (1) AND (2) ARE NOT POSSIBLE AFTER LICENSOR USES ALL REASONABLE EFFORTS TO OBTAIN A LICENSE OR SO REPLACE OR MODIFY THE INFRINGING WEB SERVICES OR SOFTWARE, TERMINATE THIS AGREEMENT AND REFUND THE LICENSEE ANY UNUSED, PRE-PAID LICENSE FEES.
- c. Notwithstanding the foregoing warranty set out in this Section 12, including Licensor's obligation to indemnify Licensee hereunder, neither the warranty or the indemnity apply to any Claims arising out of or related to modifications or enhancements to the Web Services by Licensee or any other person at Licensee's direction or authorization that are not authorised by Licensor in writing where such Claims would not have arisen without such modification or enhancements.

13. **GENERAL.**

- a. Use of Licensee's' Names and Logos: Licensee agrees that Licensor may use the Licensee's name and/or logo(s) to identify the Licensee as a customer of Licensor on the Licensor Web Sites, and as part of a general list of Licensor's customers for use and reference in Licensor corporate, promotional and marketing literature. Additionally, Licensor agrees that it will request and must receive approval from Licensee prior to issuing a press release or otherwise identifying the Licensee as a customer and describing the Licensee's intended utilization and the benefits the Licensee expects to receive from use of the Web Services. The content of any press release will be subject to the Licensee's prior approval, which can be unreasonably withheld.
- b. Governing Law: If the Licensee's principal place of business is located or registered in the United States of America, these Terms and Conditions shall be governed by the laws of the State of Delaware and the laws of the United States of America applicable therein, and the parties do hereby irrevocably submit and attorn to the jurisdiction of the courts of the State of Delaware for all matters arising out of or in connection with these Terms and Conditions. For Licensees whose principal place of business is not located or registered in the United States of America, these Terms and Conditions shall be governed by the laws of the Province of Alberta, Court of Queen's Bench and the laws of Canada applicable therein, and the parties do hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Alberta for all matters arising out of or in connection with this Agreement.
- c. Entire Agreement: These Terms and Conditions and any and all Appendices or Schedules attached thereto, constitute the entire agreement between the parties in relation to the subject matter hereof and supercede and replace any and all prior agreements, written or oral, between them regarding same. In the event of a conflict between these Terms and Conditions, the Order Form, or any appendix or schedule attached hereto, the terms of these Terms and Conditions shall prevail.
- d. Assignment: Licensee may not assign these Terms and Conditions or any of the rights granted herein without the prior written consent of Licensor., which consent shall not be unreasonable withheld or delayed.
- e. Counterparts: This Agreement may be executed in more than one counterparts, and may be delivered by facsimile, e-mail or other electronic means. An executed copy of this Agreement delivered by facsimile, e-mail or other electronic means shall for all purposes be considered an original document and each executed counterpart shall be considered as the original.
- f. Relationship of Parties: The relationship between the parties shall at all times be that of independent contractors. No provision of this Agreement is intended to, or shall be construed, to render one party an employee, servant or partner of the other.

14. **TAXES AND IMPORT DUTIES.**

- a. Given that Licensor is a Canadian-based company, for non-Canada-based customers, fees and charges under this Agreement are exclusive of any local, city, county, provincial, state, federal, VAT or other sales or goods and services taxes. For Licensees with billing addresses in countries, states,

provinces or other jurisdictions where Licensor is not a resident for tax collection purposes, including the United States of America, Mexico, South America, Europe, Australia and others, Licensee is responsible for self-assessing its tax obligations and shall submit all such applicable taxes (including city, county, state, federal, VAT or other goods and services) for licences and services as appropriate for the tax jurisdiction(s) in which Licensee resides, directly to the appropriate tax authorities.

- b. For Canada, the United States and Mexico, Licensor represents and warrants that pursuant to the North American Free Trade Agreement between Canada, the United States and Mexico ("NAFTA"), the price and the amount to be received by Licensor are free of any import duties, import taxes or other import charges. Upon request by U.S. Licensees, Licensor will provide a W-8NEB-E.

15. **AMENDMENT.** No modification or amendment of any of the provisions of this Agreement shall be binding unless approved in writing by a duly authorised representative of the Parties hereto.

16. **CONFLICTING PROVISIONS AND ORDER OF PRECEDENCE.** The provisions of this Agreement shall take precedence over any previous Agreements. Mutual Non-Disclosure Agreements, or conflicting provision in any pre-printed terms and conditions contained on the reverse of any Purchase Order issued by Licensee, on web sites or elsewhere in connection with the licensing of the Web Services. The provisions of the Agreement shall take precedence over any shrink-wrap, click-wrap, browse-wrap or similar license which is made applicable by acceptance on the internet or by incorporation in the Web Services, Licensor's proposal, or other similar means.

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be executed on the date first written below.

**Licensee:**

**Licensor:**

**RIVA INTERNATIONAL, INC.**

#103, 10301-109 Street

Edmonton, Alberta

Canada T5J 1N4

www.rivaengine.com

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Jameson Van Dijk

Title: \_\_\_\_\_

Title: Vice President of Operations

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## **Appendix 1**

# **WEB SERVICES FUNCTIONS**

### **Functions**

Web Services functions are set out in the standard documentation (print or electronic media) as available on the Web Sites identified below, which may change from time to time, in respect of the Web Services and which contain descriptive information, as the case may be, regarding functionality, defects, corrections, installation, configuration, operating and maintenance instructions:

Riva web site: <http://www.rivaengine.com/>

Riva Cloud Knowledge Base: <http://kb.omni-ts.com/78/>

## SERVICE LEVEL AGREEMENT ("SLA")

### SERVICE LEVELS

#### 1. Service Level For Support Services

- a. Riva is licensed based on a monthly or an annual subscription model. Web Services maintenance, upgrades and free technical support are included in the subscription licence fee.
- b. For all customers, free telephone and email support (including tier one, two and three support) are provided Monday to Friday between the hours of 7:00 a.m. to 7:00 p.m., Mountain Time, GMT -7 (17:00 to 1:00 Central European Time, UTC +2), excluding Alberta General and Optional holidays as listed at the following link: <http://employment.alberta.ca/SFW/1472.html>
- c. For non-North American customers, additional telephone and email support (tier one and two) are provided between the hours of 9:00 a.m. to 5:00 p.m. Central European Time, UTC +1, except on Saturday, Sunday or statutory holiday observed in Munich, Germany as defined under the BY section of the following link: [http://en.wikipedia.org/wiki/Public\\_holidays\\_in\\_Germany](http://en.wikipedia.org/wiki/Public_holidays_in_Germany)
- d. Critical, non-free, support requests that fall outside standard times are charged on a per-incident, per-hour rate, as per Appendix 3 with 30-minute chargeable blocks of time. A pre-approved credit card or specific purchase order must be provided to receive support outside standard support hours.
  - i. Support provided three hours before or continuing three hours after standard support hours: 200.00 an hour.
  - ii. Support provided between 8:00 p.m. and 6:00 a.m.: 300.00 an hour.
- e. Premium support for customers who require 24/7 or 24/5 support is available for purchase.

#### 2. Definition of Support Services

As identified below, Licensor shall provide free telephone and email support of the Software during Regular Licensor Business Hours on Business Days. Scheduled Support, emergency Support and Support requested outside the Regular Licensor Business Hours and Business Days are charged out according to Licensor's then current Time and Materials Charges.

- a. Free technical support includes access to the Web Sites, related Knowledge Base, and email and telephone support to troubleshoot and resolve problems caused by bugs or other reasons Web Services are not performing as designed.
- b. Free technical support does NOT include planning, designing, consulting, installation, training, configuration, best practice reviews, customisation, implementation services or troubleshooting customer configuration or problems caused by configuration errors made by Licensee. These professional services are provided under the current Time and Materials Charges.
- c. Free technical support does NOT include problem solving related to an incident caused by Licensee unless Licensor, while carrying out planning, installation, configuration or deployment as defined in a Statement of Work for professional services, was responsible for causing Licensee to create the incident.

#### 3. Initiating Support Incident

An Incident Report shall be initiated by completing the information on the "Contact Us" form available after logging into their Riva Cloud account or from the Riva web site or by submitting an email to [support@rivasync.com](mailto:support@rivasync.com) with specific details regarding the status of last successful sync, start of sync problem, nature of problem (as identified by the categories identified in Schedule A below), recent changes to the CRM or email system and any additional information that would provide assistance to the support team. Licensee can choose to follow up by email or by phone to provide additional information to help expedite the resolution. Communication regarding functionality, defects corrections, installation, operating and maintenance instructions for existing cases may be initiated by email or by phone or an existing case.

## SCHEDULE A TO APPENDIX 2

### SUPPORT PRIORITY CODES AND RESPONSE TIMES

Priority Level	System State	Support Call-back	Fix Expectation	Fix Method
P1	Web Services causing invalid data to be synchronized to/from the CRM and/or causing data corruption	Same business day	Emergency fix for specific customer as soon as practicable	Specific configuration changes or patch to be applied
P2	Major functions of Web Services not available for all users	By end of second business day	Emergency fix available for all customers on a priority basis	Packaged fix
P3	Major functions of Web Services not available for some users	By end of third business day	Sub release available for all customers, typically in 1 to 3 months	Service pack
P4	Minor Web Services functions not fully available	By end of fourth business day	Next release, typically twice per year	New release
P5	Enhancement or documentation issue with Web Services	By end of next business week	Possible in future releases	New release

#### Warranty on Network Uptime

The Web Services are hosted on a cloud-based commercial service provider. Licensor warrants that its network uptime will be **99%**, with all major routing devices within its network being reachable from the global Internet **99%** of the time during the Term. This warranty does not apply in the event of the following downtime situations, which the parties agree are either necessary for the proper maintenance of the Web Services or beyond the reasonable control of Licensor, and which will not be eligible for SLA credits:

1. Regularly scheduled - Weekly Web Services-related network, hardware and software maintenance and updates are carried out 7:00 p.m. to 10:00 p.m. Mountain Time Friday during which time Web Services may not be available. Licensor will attempt to provide twenty-four (24) or more hours' notice for unscheduled, yet planned, Web Service-related updates. Licensor will take reasonable commercial steps to minimise and avoid downtime during all maintenance periods.
2. Malicious Attacks - If a third party not associated with Licensor initiates a "Denial of Service" or other form of disabling attack against our network or services, Licensor, will take all reasonable commercial steps to stop the attack, but cannot guarantee a resolution time.

#### SLA Credits

In the event that Licensor does not meet this SLA, Licensee will become eligible to request compensation for downtime. If Licensor is directly responsible for causing the downtime, Licensee will receive a credit for **2 times the actual amount of downtime. This means that if your server is unreachable for 1 hour outside of the regularly scheduled maintenance times and beyond the 1% allowed, the Licensee will receive 2 hours of credit. If Licensor is not directly responsible for causing the downtime, Licensee will not receive a credit for downtime.**

All requests for compensation for such downtime credits must be received within five (5) business days of the incident in question. The amount of compensation shall not exceed the cost of one month's subscription.

### **Appendix 3**

## **PROFESSIONAL SERVICES TIME AND MATERIALS CHARGES**

Unless otherwise agreed to in a separate document, the following professional services time and materials charges will apply:

1. Planning, consulting, installation, configuration, training, and trouble shooting and related professional services provided between 9:00 a.m. and 5:00 p.m. Mountain Time (regular Licensor business hours)

150.00 / hour.

2. Planning, consulting, installation, configuration, training, trouble shooting and related professional services starting three hours before or continuing three hours after the above defined regular Licensor business hours:

200.00 / hour.

3. Planning, consulting, installation, configuration, training, trouble shooting and related professional services provided between 8:00 p.m. and 6:00 a.m.

300.00 / hour.

4. Software Customization, Modifications and Developer Professional Services

200.00 / hour.

5. On-site surcharge

25.00 / hour.

6. Additional Charges

If Professional Services are provided at a location other than Licensor's premises, the on-site surcharge, including travel time, travel expenses, per diem and other agreed-to expenses will be charged.

## Appendix 4

# DATA PROCESSING AND GDPR

### 1. DEFINITIONS

“Licensee Personal Data” means the Personal Data described under Section 2 of this Appendix, in respect of which the Licensee is the Controller;

“Controller” has the meaning given in the GDPR;

“Data Protection Legislation” means all applicable legislation relating to data protection and privacy including without limitation the EU Data Protection Directive 95/46/EC and all local laws and regulations which amend or replace any of them, including the GDPR, together with any national implementing laws in any Member State of the European Union or, to the extent applicable, in any other country, as amended, repealed, consolidated or replaced from time to time;

“Data Subject” has the meaning given in the GDPR;

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

“Personal Data”, “Personal Data Breach”, “Process”, “Processing,” “Processor” each have the meaning given in the GDPR.

Capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement.

### 2. DETAILS OF THE PROCESSING

- 2.1 Categories of Data Subjects. This Appendix applies to the Processing by the Licensor of Licensee Personal Data (described under Section 2.2) relating to the following Data Subjects: prospects, clients, customers, business contacts and other contacts included within the Licensee’s Exchange email system and Processed by the Licensor through the Web Services.
- 2.2 Types of Personal Data. Licensee Personal Data includes contact information and data included within the Licensee’s email and CRM systems and Processed by the Software, including names, e-mail addresses, business or account information, tasks, appointments and related information, as designated by Licensee.
- 2.3 Subject-Matter, Purpose and Nature of The Processing. Licensee Personal Data will be Processed and synchronized by the Licensor for purposes of performing the Web Services as set out into the Agreement.
- 2.4 Duration of The Processing. Licensee Personal Data will be Processed for the duration of the Agreement until return or deletion of Licensee Personal Data as instructed by the Licensee under the Agreement and this Appendix.

### 3. PROCESSING OF LICENSEE PERSONAL DATA

- 3.1 The parties acknowledge and agree that Licensee is the Controller of Licensee Personal Data and the Licensor is the Processor of that data. Furthermore, Licensee controls the location of target system end-points as defined by the location of the email server and CRM systems with which Web Services communicate. Licensee agrees that Licensor shall process data as per the Licensee configured end-point locations, irrespective of the end-points geographic location. Licensee further agrees that it has sole control over the end-user consumption of processed data whether said data is processed through an email client or web browser. Licensor shall only Process Licensee Personal Data on behalf of and in accordance with the Licensee’s prior written instructions (including as set out

in this Appendix and the Agreement) and for no other purpose. Licensor is hereby instructed to Process Licensee Personal Data to the extent necessary to enable the Licensor to provide the Web Services in accordance with the Agreement. In case the Processing is required by the Data Protection Legislation to which the Licensor is subject, the Licensor shall promptly (i) notify the Licensee of that legal requirement and/or of the inability to comply with any instructions before the relevant Processing, to the extent permitted by the Data Protection Legislation; and (ii) cease all Processing (other than merely storing and maintaining the security of the affected Licensee Personal Data) until such time as the Licensee issues new instructions.

- 3.2 Licensor shall not transfer Licensee Personal Data outside the United States, except as defined in 3.1 above.

#### **4. CONFIDENTIALITY**

- 4.1 The Licensor shall ensure that any person authorized to Process Licensee Personal Data is subject to confidentiality obligations in respect of that Licensee Personal Data.

#### **5. SECURITY MEASURES**

- 5.1 Licensor shall implement and maintain throughout the term of the Appendix at all times in accordance with then current good industry practice, technical and organizational measures to protect against unauthorized or unlawful Processing of, or accidental loss, destruction, or damage to, Licensee Personal Data. On request, Licensor shall provide the Licensee with a detailed written description of the security measures being taken.
- 5.2 Licensor shall provide the Licensee with assistance necessary for the fulfilment of the Licensee's obligation to keep Licensee Personal Data secure.

#### **6. SUB-PROCESSING**

- 6.1 Licensor shall only engage a sub-Processor to Process any Licensee Personal Data in accordance with prior notification being published. Prior to allowing a sub-Processor authorized in accordance with this Section to Process any Licensee Personal Data, Licensor shall enter into a binding written agreement with the sub-Processor that imposes on the sub-Processor the same obligations that apply to the Licensor under this Appendix. Licensor remains fully liable to the Licensee for any acts or omissions of any sub-Processors as if such acts and omissions were conducted by Licensor.

#### **7. COOPERATION**

- 7.1 Licensor shall immediately notify the Licensee of any request or complaint that Licensor receives from Data Subjects or from applicable data protection or similar authorities regarding Licensee Personal Data. Licensor shall ensure that Licensor does not respond to any such requests except on the written instructions of the Licensee.
- 7.2 Licensor shall provide all assistance required by Licensee in order for Licensee to ensure compliance with Licensee's obligations under the Data Protection Legislation, including to:
- a. enable Licensee to respond to (i) any request from Data Subjects to exercise any of their rights under the Data Protection Legislation, (ii) address any other requests or complaints received by Licensee from Data Subjects or from data protection or other competent authorities;
  - b. facilitate the Licensee to conduct (i) a Data Protection Impact Assessment if the Licensee is required to do so under the Data Protection Legislation and (ii) consultation with Data Protection Authorities, if the Licensee is required to engage in consultation under the Data Protection Legislation in relation to Processing of Licensee Personal Data.

## **8. PERSONAL DATA BREACHES**

- 8.1 Licensor shall promptly notify the Licensee and in any event no later than two business days after it becomes aware of any Personal Data Breach affecting any Licensee Personal Data. Licensor shall (i) provide Licensee with a detailed description of the Personal Data Breach and the type of Licensee Personal Data concerned, (ii) take such actions as may be necessary or required by Licensee to minimize the effects of the Personal Data Breach, (iii) provide all such timely information and cooperation as Licensee may require in order for Licensee to meet any obligations to report or inform Data Subjects or the relevant Data Protection Authorities of the Personal Data Breach under the Data Protection Legislation.

## **9. RETURN OR DELETION OF LICENSEE PERSONAL DATA**

- 9.1 Licensor shall, at the Licensee's choice, delete or return Licensee Personal Data to the Licensee after the end of the provision of Services, and delete existing copies unless European Union or Member State law requires storage of the data.

## **10. INFORMATION**

- 10.1 Licensor shall make available to the Licensee all information necessary to demonstrate compliance with the obligations laid down in this Appendix and allow for and contribute to audits, including inspections, conducted by the Licensee or an auditor mandated by the Licensee. Licensor shall immediately inform the Licensee if, in its opinion, an instruction infringes the Data Protection Legislation

## **11. LICENSEE DATA**

Use of the Web Services may depend on Licensee's transmission of certain data ("Data"). Licensee retain all rights and ownership in Data. Licensor does not claim any ownership rights to Licensee's Data. Licensee represents and warrants that Licensee has the necessary rights and licenses required to provide Licensee Data to Licensor in connection with Licensee's use of the Web Services and that by providing Licensee Data in this manner, Licensee will not violate any intellectual property rights of third parties, confidential relationships, contractual obligations or laws. Without limiting the generality of the foregoing, Licensee shall provide all notices to, and obtain any consents from, any data subject as required by any applicable law, rule or regulation in connection with the processing of any personally identifiable information of such data subjects via the internet or any other network by Licensor and/or Licensee. Licensee shall be solely responsible for ensuring that any processing of Licensee Data by Licensor and/or Licensee via the internet or other communication service does not violate any applicable laws. Licensee shall not process or submit to the Web Services any Licensee Data that includes any: (i) "personal health information," as defined under the Health Insurance Portability and Accountability Act, unless it enters into a separate agreement with Licensor relating to the processing of such data; (ii) government issued identification numbers, including Social Security and Social Insurance numbers, driver's license numbers and other government-issued identification numbers; (iii) financial account information, including bank account numbers; (iv) payment card data, including credit card or debit card numbers; or (iv) "sensitive" personal data, as defined under Directive 95/46/EC of the European Parliament ("EU Directive") and any national laws adopted pursuant to the EU Directive, about residents of Switzerland and any member country of the European Union, including racial or ethnic origin, political opinions, religious beliefs, trade union membership, physical or mental health or condition, sexual life, or the commission or alleged commission any crime or offense.

User Option to Encrypt. Licensor provides Licensee with the option to encrypt the transmission of Licensee Data. Licensee acknowledges that it is Licensee's responsibility to encrypt the transmission of Licensee Data should Licensee wish to protect it. In the event Licensee decides not to utilize encryption and transmit Licensee Data unencrypted over a network, Licensee assumes all related risks for doing so. Licensor will not be liable for any liabilities arising from Licensee's use of the Web Services (including Licensee's transmission of Licensee Data) over the internet or other network.

For non-EMEA clients, Licensor processes Licensee Data and provides Services from the United States and Canada. By using and accessing the Service, Licensee understands and agrees to the storage and processing in this region of Licensee Data and any other information Licensee chooses to provide. Licensor reserves the right to store and process Licensee Data and any other information Licensee chooses to provide outside of the United States and will endeavor to give Licensee 30 days' notice in the event of such a change.