



## LICENSE AGREEMENT GENERAL TERMS AND CONDITIONS

THESE GENERAL TERMS AND CONDITIONS ("**Terms & Conditions**") and related Appendices form the license agreement (the "**License Agreement**") between the customer ("**Licensee**") and Riva International, Inc. ("**Licensor**"). These Terms and Conditions shall govern the relationship between the parties from the earliest start date in an executed Order Form to the latest expiration date of the current or future executed Order Form. Any authorised partner of Licensor may provide services to Licensee on behalf of the Licensor under this License Agreement.

### 1. DEFINITIONS

"**Affiliate**" means with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect, control with such entity 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.

"**Business Day**" means any calendar day other than a Saturday, Sunday or General or Optional holiday observed in Alberta, Canada as identified in the following link: <http://humanservices.alberta.ca/working-in-alberta/1472.html>

"**Business Hours**" means from 9:00 a.m. to 5:00 p.m. Mountain Standard Time (or Mountain Daylight Saving Time) on a Business Day;

"**Claims**" includes any and all manner of actions, proceedings, claims, demands, losses, costs, damages and expenses (including legal fees on a solicitor/client basis) which may be brought against or suffered, sustained, paid or incurred by a party arising directly or indirectly, related to, or otherwise connected with this License Agreement;

"**Computer**" means one or more central processing unit (CPU) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions;

"**Confidential Information**" means 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 data stored on or processed by the Software 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 organization of the Software, 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 Software, or any other Licensor product, provided that:

- (a) information that is independently developed by the receiving party;
- (b) information which becomes part of the public domain (other than through unauthorized disclosure by the receiving party); or

- (c) information which, to the knowledge of the receiving party, is disclosed by the owner of such information to a third party free of any obligation of confidentiality or of which either party gained knowledge or possession free of any obligation of confidentiality,

shall not be considered Confidential Information;

**"Contact Persons"** refers to the Licensee and Licensor personnel listed in the Order Form in descending order of availability who are to be contacted to report an Incident, submit a Request Support or requests for Enhancements;

**"CRM"** refers to a software application that gathers, maintains and allows information about a customer's relationship with a vendor to be stored in a database;

**"Documentation"** means standard documentation (print or electronic media) supplied by Licensor to the Licensee in respect of the Software, Releases, or Enhancements, and containing descriptive information, as the case may be, regarding functionality, defects corrections, installation, operating and maintenance instructions;

**"Enhancements"** has the meaning set forth in Section 4.2 herein;

**"Error"** means any error with respect to the Software which, after consultation with Licensee, Licensor reasonably determines is the direct result of the incorrect functioning of the Software causing incorrect results or incorrect functions to occur during, or a result of Licensee's use of the Software;

**"Fees"** means collectively the fees associated with the various products and services offered by Licensor as set out in the Order Form;

**"Incident"** means an event, whether or not such an event results in the determination of the existence of an Error, which results in one party contacting the other through each party's respective Contact Person;

**"Installation Locations"** means those locations set forth in the Order Form where the Software is permitted to be installed;

**"Installation Services"** means the installation of the Software and Third Party Software by Licensor;

**"Licensee Responsibilities"** means the responsibilities as set out in Appendix 1 of this License Agreement;

**"Maintenance"** means Software maintenance services set forth in Appendix 4;

**"Named Users"** or **"Users"** means the actual number of users who will use the Software (the specific names of the users are not required). This number is identified in the Order Form;

**"Order Form"** means an order form to which these Terms and Conditions are attached, as amended and supplemented from time to time by the parties executing additional Order Forms;

**"Release"** means a new version of the Software, released by Licensor according to Appendix 4, that may contain Enhancements, functional changes, modifications, extensions, Error corrections, or bug fixes;

**"Request Support"** means the process through which Licensee submits a support request to advise Licensor that there is a Licensee request for support. The support request wizard zips up the appropriate log and configuration files and submits them to Licensor's support system, thereby automatically creating a support incident case in Licensor's support and incident management system which is tracked until resolution of the support request.

"**Software**" or "**Riva**" mean Riva CRM Integration On Premise as a software product and any product documentation, tools and utilities, and miscellaneous technical information as well as any Enhancements and Releases as provided from time to time by Licensor pursuant to this License Agreement;

"**Supplemental Services**" has the meaning set forth in Section 4.3 herein;

"**Term**" means the term of this License Agreement as set out in the Order Form;

"**Third-Party Software**" means the third-party software listed on Schedule B to Appendix 2 of this License Agreement that is required in order for the Software to perform its functionality as agreed to by the parties;

"**Time and Materials Charges**" means the charges for incidental services and materials not covered by Maintenance, Supplemental Services, or included in a Work Order, as such charges are amended by Licensor from time to time at their sole discretion; and

"**Work Order**" or "**Order Form**" has the meaning set forth in Section 4.4 herein.

## 1.2 **Incorporation of Schedules**

All Appendices annexed hereto are incorporated in this License Agreement and are deemed to be a part hereof and any references to this License Agreement shall mean this License Agreement including such Appendices:

## 2. **LICENSE TO USE THE SOFTWARE**

2.1 Upon acceptance of this License Agreement, Licensor hereby grants to the Licensee and its Affiliates, for the internal use of the Licensee only, a non-exclusive, non-transferable license and limited right for the Named Users to use the Software for the sole and exclusive purpose of CRM integration, synchronization and related activities solely within and with respect to the operations of the Licensee during the Term. Licensee agrees to:

- (a) supervise the use of the Software in accordance with these Terms and Conditions; and,
- (b) not receive any form of payment from any user of the Software.

## 2.2 **Delivery of the Software and Installation**

Unless engaged to perform installation services for the installation fees set out in the Order Form (as applicable), Licensor is only responsible for electronically delivering the Software and Documentation to Licensee's Location. Licensee shall be responsible for the installation of the Software and Third Party Software on the Computer(s) at the Installation Locations selected according to the installation terms and conditions set out in Appendix 2.

## 2.3 **Training**

Licensor shall provide Licensee with training as set out in Appendix 3 for the fees set out in the initial or subsequent Order Form.

## 2.4 **Documentation Revisions**

Licensor will revise all documentation to incorporate any amendments or modifications as soon as reasonably practicable, but not to exceed sixty (60) days from delivery of a Release or upgrade to Licensee.

### **3. LICENSE RESTRICTIONS**

3.1 Licensee agrees not to (and will not allow, direct or authorize any Named Users or third parties to):

- (a) use, or permit any other person to use, the Software, including permitting others to access the Software for their own purpose, or enabling others to use Software registration or access codes, license keys, passwords, or serial number(s) (if any), except in accordance with these Terms and Conditions;
- (b) use the Software or the Documentation to act as a service bureau, application service provider, provider of CRM integration services, provider of identity management integration services, or other provider of services, in whole or in part, for or to any other person, entity or third party, including any Affiliate of the Licensee;
- (c) reproduce, adapt, vary, modify, decompile, enhance, translate, attempt to reverse engineer, reverse engineer, reverse assemble, create a derivative work of, or otherwise attempt to discover any source code of the Software, or communicate the same to any other person, or otherwise reduce or attempt to reduce the Software to human perceivable form;
- (d) develop or write any software or other program or have any software or other program written or developed based on the Software or based on any of the Confidential Information;
- (e) copy or distribute the Software by any means;
- (f) sell, assign, sublicense, rent, lease, grant a security interest in, or otherwise transfer any right in the Software or distribute or network any portion of the Software or related materials;
- (g) remove any proprietary notices or labels from the Software;
- (h) install the Software on computers used by unlicensed and/or unauthorized individuals;
- (i) use the name, or trade-marks of the Licensor or of any of its Affiliates, licensors, third party content or service providers, distributors, dealers or authorized suppliers, in any advertising, publicity releases, reference lists, media such as but not limited to sales presentations, without its prior written consent; or
- (j) use the Software as part of any form of time sharing or leasing arrangement.

### **4. MAINTENANCE, ENHANCEMENTS AND SUPPLEMENTAL SERVICES**

4.1 The Licensor agrees to provide software maintenance, upgrades and support services ("Maintenance") for the Software in accordance with Appendix 4.

4.2 Upon request by Licensee, Licensor may modify or change the Software (an "Enhancement") in order to improve functional capability, or add new functional capability.

4.3 Upon request by Licensee, Licensor may also, at its sole discretion, provide services in addition to the Maintenance provided under this License Agreement ("Supplemental Services").

4.4 Prior to creating any Enhancements or performing any Supplemental Services, Licensor shall provide Licensee with a written estimate of the work involved and the associated costs. Upon receipt of Licensee's approval of the written estimate, Licensor shall create a formal work order detailing the work involved and all associated costs (the "Work Order" or "Order Form"). Licensor

shall present the Work Order to Licensee for execution prior to creating the Enhancements or performing Supplemental Services.

- 4.5 Unless otherwise agreed to in a Work Order, all work performed by Licensor associated with any Enhancement and/or Supplemental Services shall be charged out at Licensor's then current Time and Materials Charges.
- 4.6 Licensor shall own all intellectual property rights in any Enhancements and shall further own all intellectual property rights developed, authored, invented, first reduced to practice or otherwise created in the performance of any Supplemental Services; provided, however, that any prior intellectual property rights of Licensee or its Affiliates or any intellectual property rights related to Licensee's or its Affiliates' business operations (such as, for example, customer information, manufacturing operations, etc.) shall not be transferred.

## **5. INCIDENT REPORTING AND INCIDENT MANAGEMENT**

- 5.1 Upon the occurrence of an Incident, the Contact Person of the party discovering or identifying the Incident shall contact the Contact Person of the other party. Such Contact Persons are set out in the Order Form or as an appendix to this License Agreement.
- 5.2 Once either party's Contact Person has been apprised of an Incident, the Contact Person will immediately inform the other party's Contact Person of the Incident. The parties, acting reasonably, will determine if the Incident constitutes an Error. If the Incident is an Error, a severity code for the Error shall be agreed to and assigned by both Licensor and Licensee according to the severity codes set out in Schedule A of Appendix 4 (the "Severity Codes"). In the event that the parties cannot agree to what the appropriate Severity Code should be, Licensor and Licensee shall force an escalation to occur until the parties agree on the appropriate severity code, in accordance with the escalation call tree set out in Schedule A of Appendix 4.
- 5.3 Licensor shall maintain a log of all Incidents reported by Licensor or Licensee (the "**Incident Log**") and provide email summaries of the status of resolution of Incidents being tracked in the Incident Log. The Incident Log will be updated by Licensor once a week.

## **6. LICENSEE RESPONSIBILITIES**

Licensee acknowledges and agrees that in order for Licensor to provide the Maintenance under this License Agreement in Appendix 4, Licensee shall be required to fulfil the responsibilities set out in Appendix 1 to these Terms and Conditions.

## **7. FEES AND CHARGES AND AUDIT RIGHTS**

### **7.1 Fees and Charges**

- 7.1.1 Licensee shall pay the Named User Fees as set out in the applicable Order Form upon execution of the Order Form.

### **7.2 Invoicing**

- 7.2.1 Fees not paid upon the execution of the applicable Order Form will be invoiced monthly in accordance to Licensor's billing cycle for such fees.
- 7.2.2 Time and Materials Charges will be invoiced monthly in arrears according to Licensor's normal billing cycle for such charges.

### 7.3 **Late Payment**

- 7.3.1 Unless otherwise stipulated on the Order Form, all Fees and charges shall be due and payable upon receipt of the invoice and shall be deemed overdue if they remain unpaid fifteen (15) days after due date.
- 7.3.2 Interest charges at the rate of eighteen (18%) percent per annum compounded annually shall be applied to all overdue undisputed amounts until they are paid.

### 7.4 **Taxes and Import Duties**

- 7.4.1 Fees and charges under this License Agreement are exclusive of any local, city, county, provincial, state, federal 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, New Zealand and others, **LICENSEE IS RESPONSIBLE FOR SUBMITTING ALL SUCH APPLICABLE TAXES (INCLUDING CITY, COUNTY, STATE, FEDERAL OR OTHER SALES OR VAT FOR LICENCES AND SERVICES AS APPROPRIATE FOR THE TAX JURISDICTION(S) IN WHICH LICENSEE RESIDES) DIRECTLY TO THE APPROPRIATE TAX AUTHORITIES.**
- 7.4.2 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.

### 7.5 **Audit Rights and Enforcement by Licensor**

- 7.5.1 Not more than once each year, upon not less than sixty (60) days notice, Licensor will have the right to conduct a virtual audit, supervised by Licensee, by using remote desktop viewing software to view the Riva server and access log files and related licensing information, or, if a virtual remote viewing audit option is not approved by Licensee, appoint an independent third party auditor to conduct an audit at Licensee's location during Licensee's normal business hours. In the case of a third-party audit, the third party auditor will be bound by a stand-alone confidentiality agreement with obligations at least as stringent as those contained in this License Agreement a copy of which will be provided to Licensee. The audit will focus on compliance with Section 2 and Section 3 and whether any adjustment to the License Fees hereunder is required. The third party auditor's reasonable costs will be paid by Licensor unless the number of Named Users is greater than the number stated on the Order Form, in which case Licensee will pay the reasonable costs of the audit in addition to the amount identified in 7.5.2.
- 7.5.2 If the audit reveals that the number of users with access to the Licensed Product is greater than the number of Named Users stated on the Order Form, then, Licensor shall have the right to charge, and Licensee shall have the obligation to immediately pay, an amount equal to the difference in the License Fees paid hereunder and the License Fees that would have been payable as of the Effective Date, based on the number of additional users identified beyond the number of Named Users in the Order Form.

## 8. **CONFIDENTIAL INFORMATION**

- 8.1 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, except as provided in this Section 8.1, 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, officers and employees and to the consultants, officers and employees of its corporate Affiliates to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this License 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 License Agreement by such consultants, officers and employees. The Receiving Party shall be responsible for any breach of the provisions of this Section 8.1 by its consultants, officers, or employees. The obligations in this Section 8.1 shall not restrict any disclosure by either party pursuant to:

- (a) any applicable law or legislation;
- (b) any order of any court of competent jurisdiction or government agency;
- (c) requirements for disclosure to regulators;
- (d) requirements for disclosure as part of the arbitration process contemplated under this License Agreement pursuant to Section 16; and
- (e) requirements for disclosure required in the course of judicial proceedings to enforce rights and/or remedies under this License 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 the Receiving Party shall endeavour to give prompt notice to the Disclosing Party of any such requirement to disclose.

8.2 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 License Agreement to prevent the unauthorized 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 8, 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 8.

8.3 Notwithstanding this Article 8 or any other provision of this License Agreement, the parties shall be free to refer generally to the existence of this License Agreement and the type of commercial relationships created hereby, provided no disclosure of specific terms is made.

## **9. TERM AND TERMINATION**

### **9.1 Term**

9.1.1 This License Agreement shall continue for the duration of the Term as indicated on the Order Form unless terminated pursuant to Section 9.2 below.

9.1.2 This License Agreement may be renewed or extended at any time as per the information on the Order Form unless Licensee has received notification of proposed changes at least 60 days prior to the expiration date.

## 9.2 Termination

9.2.1 Prior to the expiration of the Term, this License Agreement may be terminated as follows:

- (a) by Licensor, if Licensee fails to 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 breach of this License Agreement within thirty (30) days of receiving notice from Licensor of such default;
- (b) by Licensee without notice, if Licensor fails to cure any breach of this License Agreement within thirty (30) days of receiving notice from Licensee of such default;
- (c) 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.

## 9.3 Licensee's Obligations Upon Termination

9.3.1 Upon expiration or termination of this License Agreement for any reason, Licensee shall:

- (a) pay any outstanding fees and charges owed to Licensor for, including any fees in lieu of notice or fees for late payment, within sixty (60) days after the date of termination;
- (b) immediately discontinue use of the Software and Documentation, unless otherwise permitted by Licensor; and
- (c) at Licensor's sole discretion and direction, either return or destroy all copies of the Software and Documentation in Licensee's possession or control.

## 9.4 Licensor's Obligations Upon Termination

9.4.1 Upon expiration or termination of this License Agreement for any reason, Licensor shall:

- (a) promptly complete the preparation of any additional output data that has been specially requested by the Licensee as a Supplemental Service; and
- (b) within thirty (30) days of either the date of termination or receipt of all fees and charges owed by Licensee to Licensor under this License Agreement, whichever is later, return to



Licensee all output data, original materials, input data, and any other information or data prepared by Licensor under this License Agreement that is the property of Licensee but is in Licensor's possession.

#### **10. LIMITED WARRANTY**

Licensor warrants that it is the owner of, and/or has the right to license, the Software and the Documentation 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 Software or the Documentation. Licensor also warrants that, the Software will perform substantially in accordance with the Documentation and specifications when used in the required hardware and software environment. If the Software fails to perform as warranted, Licensor will remedy, in accordance with the Support Call-Back/Fix Expectation timelines set out in Schedule A to Appendix 4, the priority levels P1 through P3 non-conformities at no charge provided that Licensee provides Licensor with sufficient detailed written information, including log files, to allow Licensor to reproduce reported Errors(s). Licensor further warrants that upon delivery, the media on which the Software is delivered will be free of physical defects, the Software will be virus-free and free from material defects in materials and workmanship and not contain any code such as "backdoors", "time-bombs", "security protection procedures", "disabling devices" or "drop dead devices" that could disable Licensee's system(s). Licensor's sole obligation and Licensee's sole remedy for any breach of warranty as set forth in the preceding sentence shall be for Licensor to furnish Licensee with a new copy of the Software (virus-free and free from defects in materials and workmanship and not containing any code such as "backdoors", "time-bombs", "security protection procedures", "disabling devices" or "drop dead devices" that could disable Licensee's system(s)) on complying media that is free of physical defects. This Limited Warranty is contingent upon Licensee's timely installation of all Software updates and minor revisions provided by Licensor.

#### **11. LICENSOR'S INTELLECTUAL PROPERTY RIGHTS**

The Software, Releases, and each component part of the Software and Releases are the valuable, proprietary intellectual property of Licensor. The Licensee acknowledges that any and all of the trade-marks, including "Riva" and related trade names, copyrights, industrial designs, patents, trade secrets and other intellectual property rights used or embodied trade secrets in or in connection with the Software shall be and shall remain the sole property of Licensor. The Licensee further acknowledges and agrees that ownership of, and title to, the Software, Releases, and all subsequent copies thereof regardless of the form or media are held by the Licensor. OTHER THAN THE LIMITED LICENSE GRANTED HEREIN THIS LICENSE AGREEMENT DOES NOT GIVE THE LICENSEE ANY INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE, RELEASES, STANDARD ANNUAL FREQUENCY ESTIMATES OR ANY COMPONENT PARTS OF THE SOFTWARE OR RELEASES OR STANDARD ANNUAL FREQUENCY ESTIMATES. The Software is protected by copyright laws and applicable international copyright treaties, as well as other relevant intellectual property laws and treaties. The Software is licensed, not sold.

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All changes made to the core proprietary Software functionality, also referred to as the Riva Sync Engine ("Riva Sync Engine"), to service Client's subscription, will be the sole property of Licensor. Licensee will not be granted or retain any intellectual property rights regardless of the changes configured, delivered or performed; irrespective of when said changes occurred.

## **12. DISCLAIMER OF WARRANTIES**

EXCEPT AS EXPRESSLY PROVIDED IN THIS LICENSE AGREEMENT, LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTE, EQUITY OR OTHERWISE, IN RESPECT OF THE MAINTENANCE, THE SOFTWARE, DOCUMENTATION, OR ANY ENHANCEMENTS OR RELEASES OR OTHER MATERIALS AND TECHNICAL SUPPORT, INCLUDING, BUT NOT LIMITED TO, IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, SATISFACTORY RESULTS, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

LICENSEE ACKNOWLEDGES AND AGREES THAT THE SOFTWARE IN GENERAL IS NOT ERROR-FREE AND AGREES THAT THE EXISTENCE OF NON-MATERIAL ERRORS SHALL NOT CONSTITUTE A BREACH OF THIS LICENSE AGREEMENT.

LICENSOR DOES NOT WARRANT THAT THE SOFTWARE SHALL PERFORM ERROR FREE OR WITHOUT INTERRUPTION, OR THAT IT IS FREE FROM BUGS, NON-MATERIAL ERRORS, OR OTHER PROGRAM LIMITATIONS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR, ITS RESPECTIVE EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE REPRESENTATIONS, WARRANTIES OR CONDITIONS IN CONNECTION WITH THE SOFTWARE IN THIS LICENSE AGREEMENT. LICENSOR MAKES NO WARRANTIES REGARDING THIRD PARTY PRODUCTS PURCHASED SEPARATELY BY LICENSEE FROM A THIRD PARTY VENDOR, OR ANY THIRD PARTY SOFTWARE.

## **13. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR INDEMNITY UNDER SECTION 14 BELOW, LICENSOR ALSO EXCLUDES FOR ITSELF AND ITS SUPPLIERS ANY LIABILITY IN EXCESS OF THE AMOUNT PAID FOR THE USE OF THE SOFTWARE PRO RATED FOR THE NUMBER OF DAYS REMAINING IN THE TERM, HOWSOEVER CAUSED, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE EXCEPTING THEREFROM IN ALL DAMAGES ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR AND ITS SUPPLIERS.

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 SOFTWARE PRO-RATED FOR THE NUMBER OF DAYS REMAINING IN THE TERM, HOWSOEVER CAUSED, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE EXCEPTING THEREFROM IN ALL DAMAGES ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSEE.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUES OR INVESTMENT OR THE LIKE, LOSS OF GOODWILL, LOSS OF DATA, LOSS OF BUSINESS, COSTS OF CAPITAL, LOSS OF INFORMATION OF DATA, OF OTHER FINANCIAL LOSS OR PERSONAL INJURY, HOWEVER SUCH DAMAGES ARE CAUSED, EVEN IF SUCH DAMAGES ARE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPTING THEREFROM, IN ALL INSTANCES, DAMAGES ARISING DUE TO THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A PARTY.

## 14. CONTROL OF DATA AND INDEMNITY OF LICENSOR

- 14.1 Licensee acknowledges that the Software is designed and intended to facilitate integration of data between two or more systems, as determined by Licensee, using data provided by Users and that Users, not Licensor, control and are solely responsible for the input of this data and associated information whether through the use of Software, third-party add-ins, or other non-Software related applications or services. 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 Software. Licensor agrees to take such reasonable precautions against loss of or damage to information synchronized by Users including Resulting Data (as defined below) as is standard for providers of services of a similar nature to the Software 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 6, 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 by the Software or otherwise submitted by or for Licensee or Users or collected and processed by or for Licensee or Users using the Software (“**Resulting Data**”), and that Licensor shall have no right or interest with respect thereto.
- 14.2 LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS LICENSOR FROM AND AGAINST ANY AND ALL PROCEEDINGS, ACTIONS OR DEMANDS, LOSSES, COSTS AND LIABILITIES THAT LICENSOR MAY SUFFER, SUSTAIN OR INCUR, AS A RESULT OF, OR ARISING OUT OF CLAIMS BY USERS RELATED TO RESULTING DATA OR ARISING OUT OF CLAIMS BY THIRD PARTIES THAT THE SOFTWARE INFRINGES SUCH THIRD PARTY RIGHTS AS A RESULT OF: 1. CHANGES MADE TO THE SOFTWARE IN ACCORDANCE WITH LICENSEE'S WRITTEN SPECIFICATIONS OR USE OF ITS DATA; 2. LICENSEE'S USE OF THE SOFTWARE IN COMBINATION WITH ANY ADD-INS, APPLICATIONS, SERVICES OR OTHER PRODUCTS NOT SUPPLIED OR RECOMMENDED BY LICENSOR; 3. LICENSEE'S USE OF THE SOFTWARE CONTRARY TO THE DOCUMENTATION; 4. LICENSEE'S FAILURE TO USE THE MOST CURRENT VERSION OF THE SOFTWARE WITHIN A REASONABLE TIME AFTER BEING INSTRUCTED TO DO SO TO AVOID AN INFRINGEMENT CLAIM; 5. LICENSEE MODIFYING OR ALTERING THE SOFTWARE IN ANY WAY; OR 6. LICENSEE'S IMPROPER INSTALLATION OR USE OF THIRD PARTY SOFTWARE OR BREACH OF ANY TERMS AND CONDITIONS IN ANY THIRD PARTY SOFTWARE LICENSE AGREEMENTS, PROVIDED THAT, IN ALL OF THE ABOVE NOTED CASES:
- a. LICENSEE PROMPTLY PROVIDES WRITTEN NOTICE TO LICENSOR OF ANY SUCH CLAIM; AND
  - b. LICENSEE HAS SOLE CONTROL OVER THE DEFENSE AND SETTLEMENT OF SUCH CLAIM (PROVIDED, HOWEVER, THAT LICENSEE SHALL NOT SETTLE ANY CLAIM THAT REQUIRES ANY ADMISSION OF FAULT BY LICENSOR WITHOUT LICENSOR'S PERMISSION), ALTHOUGH LICENSOR SHALL BE ENTITLED TO PARTICIPATE IN THE DEFENCE OF SUCH CLAIM, AT ITS SOLE EXPENSE, USING COUNSEL OF ITS CHOOSING.
  - c. LICENSOR SHALL COOPERATE FULLY WITH ALL REASONABLE REQUESTS OF LICENSEE (AT LICENSEE'S EXPENSE) IN DEFENDING OR SETTLING SUCH CLAIM

## **15. SOFTWARE WARRANTY AND INDEMNITY**

15.1 LICENSOR HEREBY REPRESENTS AND WARRANTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE SOFTWARE DOES NOT INFRINGE UPON THE CANADIAN AND U.S. 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. EXCEPT TO THE EXTENT THAT THE LICENSEE IS REQUIRED TO INDEMNIFY LICENSOR IN ACCORDANCE WITH SECTION 14, LICENSOR AGREES TO INDEMNIFY AND SAVE LICENSEE HARMLESS FROM AND AGAINST ANY SUCH THIRD PARTY CLAIMS, PROVIDED THAT:

- (a) LICENSEE PROMPTLY PROVIDES WRITTEN NOTICE TO LICENSOR OF ANY SUCH CLAIM; AND
- (b) LICENSOR HAS SOLE CONTROL OVER THE DEFENCE AND SETTLEMENT OF SUCH CLAIM, ALTHOUGH LICENSEE SHALL BE ENTITLED TO PARTICIPATE IN THE DEFENCE OF SUCH CLAIM, AT ITS SOLE EXPENSE, USING COUNSEL OF ITS CHOOSING. LICENSEE SHALL COOPERATE FULLY WITH ALL REASONABLE REQUESTS OF LICENSOR (AT LICENSOR'S EXPENSE) IN DEFENDING OR SETTLING SUCH CLAIM. IF THE SOFTWARE DEVELOPED BY LICENSOR PURSUANT TO THIS LICENSE AGREEMENT IS FINALLY DETERMINED TO BE INFRINGING, OR IN LICENSOR'S JUDGEMENT, SUCH USE IS LIKELY TO BE INFRINGING, LICENSOR MAY, AT ITS OPTION:
  - (i) PROCURE FOR LICENSEE THE RIGHT TO CONTINUE USING THE INFRINGING SOFTWARE;
  - (ii) REPLACE OR MODIFY THE SOFTWARE TO MAKE THEIR USE NON-INFRINGING, WHILE YIELDING SUBSTANTIALLY EQUIVALENT RESULTS, WITH NO REDUCTION IN FUNCTIONALITY; OR
  - (iii) TERMINATE THIS LICENSE AGREEMENT AND REFUND THE LICENSEE ANY UNUSED, PRE-PAID LICENSE FEES.

15.2 Notwithstanding the foregoing warranty set out in Section 15.1 above, 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 Software by Licensee or any other person that are not authorized by Licensor in writing.

## **16. DISPUTE RESOLUTION**

16.1 Licensee and Licensor agree to utilise all reasonable efforts to resolve any dispute, whether arising during the term of this License Agreement or at any time after the expiration or termination of this License Agreement, which touches upon the validity, construction, meaning, performance or affect of this License Agreement or the rights and liabilities of the parties or any matter arising out of or connected with this License Agreement, promptly and in an amicable and good faith manner by negotiations between the parties.

16.2 Either party may refer any dispute to a management committee, consisting of senior managers of Licensor and Licensee. This committee shall meet as soon as is reasonably possible after a dispute is referred to it, giving due regard to the nature and impact of the issue under consideration. If a dispute cannot be resolved by this committee within ten (10) Business Days, either party may submit the dispute for arbitration as provided in Section 16.3.

- 16.3 Subject to Section 16.6 in this Section 16, any dispute that has proceeded through the committee established in Section 16.2 without resolution may be submitted to arbitration. Any arbitration conducted pursuant to this License Agreement shall take place in English, in the City of Edmonton, Alberta. The costs of the arbitration shall be borne by Licensee and Licensor as may be specified in the arbitrator's decision. The provisions of the *Arbitration Act* (Alberta), as amended, except as otherwise provided in this License Agreement, shall govern the arbitration process.
- 16.4 The determination arising out of the arbitration process shall be final and binding upon the parties to the arbitration.
- 16.5 Licensor and Licensee shall continue the performance of their respective obligations during the resolution of any dispute or disagreement, including during any period of arbitration, unless and until this License Agreement is terminated or expires in accordance with its terms and conditions.
- 16.6 The following matters shall be excluded from arbitration under this License Agreement:
- (a) a decision by Licensor or Licensee to terminate this License Agreement;
  - (b) any lawsuits involving third parties;
  - (c) breach of confidentiality by either party; and
  - (d) intellectual property Claims whether initiated by third parties or by one of the parties to this License Agreement.

## **17. GENERAL**

### **17.1 Force Majeure**

17.1.1 Neither party shall be responsible for any failure to comply with any of the terms of this License Agreement where such failure is directly or indirectly caused by or results from events of force majeure beyond the control of either party. These events shall include, but not be limited to, civil disturbances, war, rationing, embargoes, acts of God, or acts of Government, but lack of finances shall in no event be deemed to be a cause beyond a party's control.

17.1.2 If performance of this License Agreement in the reasonable opinion of either party is made impossible by force majeure for a period of ten (10) consecutive Business Days, then such party shall so notify the other in writing and Licensee shall either terminate this License Agreement without penalty, and the Licensor shall refund any pre-paid, un-earned fees, pro-rate, or authorise Licensor to complete its performance under this License Agreement with such adjustments as are required by the existence of the force majeure and are agreed upon by both parties.

### **17.2 Further Assurances**

The parties shall with reasonable diligence hold all meetings, perform all acts, execute and deliver all documents and instruments, do all such things and provide all such reasonable assurances as may be reasonably necessary or desirable to give effect to the provisions of this License Agreement.

### **17.3 No Assignment**

This License Agreement shall be binding upon and enure to the benefit of the parties to this License Agreement and their respective successors and permitted assigns. Licensee shall not assign this License Agreement without first obtaining the written consent of Licensor, which consent shall not be unreasonably withheld. However, Licensee may assign this License Agreement without Licensor's consent to (i) any Affiliate; or, (ii) any purchaser of all or a substantial part of the business with which

the Software is used. If Licensee amalgamates with any other entity, the successor in interest pursuant to such amalgamation shall assume all rights and obligations under this License Agreement without any further amounts payable to Licensor.

This License Agreement may be assigned by Licensor in connection with the sale of all or substantially all of the assets used in carrying on its business or in connection with the merger, reorganization, or similar arrangement.

#### **17.4 Independent Contractor**

No relationship of principal and agent will exist between Licensee and Licensor. The parties will remain at all times independent contractors. In no event will either party's staff or subcontractors be considered agents or employees of the other party's. Licensor may subcontract its obligations under this License Agreement only if it receives the prior written consent of Licensee. Licensor will at all times continue to be liable to Licensee for all of its obligations and liabilities in respect of this License Agreement.

#### **17.5 Amendment, Waiver or Modification**

This License Agreement may not be amended except by written instruments signed by Licensee and Licensor. No indulgence or forbearance by either party under this License Agreement shall be deemed to constitute a waiver of its rights to insist on performance in full and in a timely manner of all covenants under this License Agreement and any such waiver, in order to be binding upon a party must be expressed and in writing and signed by such party and then such waiver shall be effective only in the specific instance and for the purpose for which it is given. No waiver of any term, condition or covenant by either party shall be deemed to be a waiver by such party if its rights to require full and timely compliance with the same term, condition or covenant there after, or if any other term, covenant or condition of this License Agreement at anytime.

#### **17.6 Transfer of License to a Different CRM or Email Platform**

Licenses provided under this License Agreement are specific to the CRM and email platform for which the license was generated. There is no provision in this License Agreement to allow the transfer of licences to a different CRM or email platform.

#### **17.7 Entire Agreement**

This License Agreement comprises the complete and exclusive statement of the agreement between Licensee and Licensor, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this License Agreement.

#### **17.8 Survivability**

The provisions of Section 1 (Definitions), Section 7.5 (Audit Rights and Enforcement by Licensor); Section 8 (Confidential Information); Section 10 (Limited Warranty); Section 11 (Licensor's Intellectual Property Rights); Section 12 (Disclaimer of Warranties); Section 13 (Limitation of Liability); Section 14 (Indemnity of Licensor); Section 15 (Software Warranty and Indemnity); 17.6 (Transfer of License to a Different CRM or Email Platform), Section 17.8 (Survivability) and Section 17.9 (Applicable Law) shall survive termination of this License Agreement, howsoever caused.

#### **17.9 Applicable Law**

If Licensees' principal place of business is located or registered in the United States of America, this License Agreement shall be governed by the laws of the State of California 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 California for all matters arising out of or in connection with this License Agreement. For all other Licensees, this License Agreement shall be governed by the laws of the Province of Alberta 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 License Agreement.

**17.10 OFAC Warranty**

Licensor warrants that neither it, nor any of its owners (including, but not limited to, shareholders, partners and members, as applicable), are on any list maintained by the United States Treasury Department's Office of Foreign Assets Control (the "OFAC list") of persons, entities, or prohibited or restricted jurisdictions. In addition, Licensor warrants that with respect to each individual assigned by Licensor to perform services for Licensee it has taken all commercially reasonable steps to ensure that such individual is not on the OFAC list. Licensor further warrants that it has taken all commercially reasonable steps to ensure that no entity or individual to which Licensor subcontracts any work under this License Agreement is on the OFAC list.

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

**Licensee:**

**Licensor:**

**RIVA INTERNATIONAL, INC.**

#103, 10301-109 Street  
Edmonton, Alberta  
Canada T5J 1N4  
www.rivacrmintegration.com

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

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

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

Name: Michèle Dagneault

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

Title: President

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

Date:

**APPENDIX 1**

**LICENSEE RESPONSIBILITIES**

Unless otherwise stated, Licensee is responsible for the following:

1. **Telecommunications and Security**

- (a) Managing all aspects of local and wide area networks, cabling, wiring closets and Internet access used at Licensee's Installation Location;

- (b) If access to on-line software updates and support request submission is desired, ensuring the Licensee's firewall is configured to allow appropriate communication between Riva and the target systems, and Riva and the Riva Request Support server as per Appendix 4;
- (c) Managing physical security of and access to Licensee locations including system, infrastructure, devices, workstations, servers, and printers. Any associated costs for system outages, data loss, communications failures, standard configuration impacts, and any other problems incurred due to security and system failure violations shall be borne by Licensee; and
- (d) Providing Licensor, where possible, with at least five (5) days advance notice prior to implementing changes or relocations of any kind which may impact Licensor's provision of the Maintenance. This includes proposed upgrades to the email or CRM systems.

2. **Licensee Software, Non-Licensor Operating Systems and Data Management**

Storing, maintaining, and providing security for removable media while it is in the possession of Licensee.

3. **Contact Persons and Communications**

Licensee's Contact Person, as identified on the Order Form, shall be responsible for:

- (a) Making technical contacts within Licensee available to Licensor inside or outside of Licensee's normal business hours;
- (b) Communicating any proposed significant changes to Licensee's operations that would impact Licensor's provision of Maintenance;
- (c) Participating in status meetings with Licensor as scheduled between the parties from time to time;
- (d) Reporting issues regarding provision of Maintenance to Licensor's Contact Person in a timely manner; and
- (e) Communicating and coordinating the resolution of issues with appropriate personnel within Licensee's organization, including escalating issues within its organizational structure as appropriate.





## **APPENDIX 2**

### **LICENSE INSTALLATION**

Unless otherwise defined herein, all definitions shall have the meaning as set forth in the Terms and Conditions contained in the License Agreement between Licensor and Licensee.

#### **ARTICLE 1 - Installation by Licensee**

Subject to Section article 2 below, the Licensee shall be responsible for the installation of the Software on the Computer(s) as required to meet Licensee's integration requirements. The Licensee shall assume full responsibility for the installation of the Software pursuant to this Section article 1 and the operating environment in which the Software is to function. The Licensee shall only install the Software on the Computer(s) that meet the minimum operating environment requirements provided by Licensor in Schedule A to Appendix 2 of this License Agreement. Licensee may install Riva on one or more virtual or physical servers with single or multi-core processor CPUs as required to meet Licensee's integration and synchronisation requirements.

#### **ARTICLE 2 - Licensor Installation Services**

At the request of the Licensee, Licensor shall provide one technician for the number of hours indicated in the Order Form to install and configure the Software and provide training for one designated employee of the Licensee about the installation and configuration process (the "Installation Services").

In the event Licensor installs the Software, the Licensee shall pay the Installation Services Fees as set forth in the Order Form, plus, if required, all reasonable out-of-pocket expenses in connection with such installation, including without limitation travel expenses of the technician(s) provided pursuant to this Article 2.

#### **ARTICLE 3 - Licenses and Installation of Third Party Software**

Licensee shall be responsible for obtaining the necessary licenses to satisfy the Minimum Operating Environment Requirements in Schedule A to Appendix 2 and any Third Party Software listed in Schedule B to Appendix 2 that are required in order for the Software to perform in accordance with the Consolidated Requirements Document. Licensee shall be responsible for abiding by the installation and general terms and conditions of the Third Party Software licenses obtained pursuant to this Article 3.

#### **ARTICLE 4 - No Warranty or Representations for, and Liability and Indemnity in Connection with Third Party Software**

LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTE, EQUITY OR OTHERWISE, IN RESPECT OF THE THIRD PARTY SOFTWARE, INCLUDING, BUT NOT LIMITED TO, IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. In no way shall Licensor be liable in any way for: (i) failure by Licensee to obtain the necessary Third Party Software licenses; (ii) failure of the Third Party Software to perform properly, (iii) failure by the Licensee to install the Third Party Software properly; (iv) the Software not performing properly due to the improper installation of the Third Party Software by the Licensee. Licensee shall:

- 4.1 be liable to Licensor; and

- 4.2 as a separate and independent covenant, shall indemnify, defend and save harmless Licensor, its affiliates, directors, officers, employees, agents and contractors, and each of them (collectively, the "**Licensor Group**") from and against, any and all claims, causes of action, proceedings, losses, costs, expenses, damages and liabilities whatsoever (collectively "**Claims**") which may be brought against the Licensor Group, or any of them, or which any of them may suffer, sustain, pay or incur, relating to, arising out of, or in connection with the installation and use of the Third Party Software by the Licensee.

## **SCHEDULE A TO APPENDIX 2**

### **MINIMUM OPERATING ENVIRONMENT REQUIREMENTS**

(The following requirements are subject to updates as described on the following page: ( <http://kb.omni-ts.com/entry/1/> )

#### **Summary of Recommended Riva Server System Requirements**

##### **Riva Server Requirements**

- Operating System: Windows XP, Windows 7, Windows Server 2003 / 2003 R2 / 2008 / 2008 R2 / Windows Server 2012
- Software Requirements: Microsoft .NET 3.5 SP1 (required even if a later .NET framework is installed)
- Minimum Processor (CPU): Intel P4 / AMD Athlon XP (supports x86 and x64 architectures)
- Minimum Memory (RAM): 256 MB (additional RAM for Riva)
- Minimum Available Disk Space: 500 MB (Riva logging)

##### **Firewall Requirements**

Should Licensee wish to take advantage of the on-line “Check for Updates” and “Request Support” options, Licencee’s firewall will need to be configured to allow communication over port 80 to the Riva remote update and support server for IP addresses as may change from time to time as identified at the following section in our Knowledge Base:

<http://kb.omni-ts.com/entry/349/>

**SCHEDULE B TO APPENDIX 2  
THIRD PARTY SOFTWARE LICENSES**

**Not Applicable for Riva On-Premise**



## APPENDIX 3

### LICENSE TRAINING

#### Installation Training

Licensor offers standard and customised Riva administration training at the 100, 200, 300A and 300B levels (training which will be modified from time to time at Licensor's sole discretion) as described in the following link: ( <http://kb.omni-ts.com/download/12/> ).

Licensor shall make available to Licensee training to be billed on a per-hour basis at the standard Time and Materials Charges as identified in Appendix 6, plus reasonable travel and other expenses as applicable if training is provided at Licensee's location or on a per-project basis as identified in a specific training project as may be agreed to by Licensee.

Unless otherwise stated in an Order Form, training shall be conducted virtually from Licensor's Edmonton offices once the Software as described on the Order Form has been installed. Licensee is responsible to ensure appropriate firewall access is provided to allow the proper functioning of the remote viewing and training software. The following link provides additional firewall information:  
<http://kb.omni-ts.com/entry/349/>

#### New Release Training

New release training conducted shall be conducted virtually from Licensor's facilities and shall be charged according to Licensor's then current Time and Materials Charges.

#### Additional Training

If requested, Licensee may request training in addition to what is identified in the Order Form. Additional training shall be charged according to Licensor's then current Time and Materials Charges as defined in Appendix 6.

## APPENDIX 4

# LICENSE MAINTENANCE, UPGRADES AND SUPPORT

**Licensor's Obligations.** Licensor agrees to provide the following Software Maintenance, Upgrades and Support during the Term:

### 1. General Maintenance and Support Services

- (a) Riva is licensed on an annual subscription model. Software maintenance, upgrades and free technical support are included in the annual subscription licence fee.
- (b) Licensor shall provide maintenance for releases (minor and major) for a 12-month period.
- (c) As identified below, Licensor shall provide free telephone and email technical 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.
- (d) Free technical support includes access to our web site, Knowledge Base, email and telephone support to trouble shoot and resolve problems caused by bugs or other reasons Riva is not performing as designed.
- (e) Free technical support does NOT include planning, design, consulting, installation, training, configuration, best practice reviews, customisation or implementation services.
- (f) Free technical support does NOT include problem solving related to an incident that occurs where Licensor was not responsible for the planning, installation, configuration, deployment and changes to Riva configuration through on-going related professional services.
- (g) Free technical support does not include trouble shooting customer installation, configuration or problems caused by configuration errors or configuration changes made by Licensee to Licensee's email, CRM, Riva system or configuration or networking infrastructure. Professional services to support the above requirements are provided under the current Time and Materials Charges.

### 2. Application Release Management

- (a) Produce a minimum of one (1) and up to four (4) minor and/or major public releases during a 12-month period.
- (b) Provide Releases free of charge during the subscription period unless the Release contains Licensee-specific requested Enhancements whereupon Time and Materials charges shall be charged by Licensor.
- (c) At the time of publication of a new Release to Licensee, publish to Licensor's web site "release notes" setting out details of all error corrections and any information relating to Enhancements contained therein.
- (d) Provide maintenance, Software upgrades and support free of charge for current Releases (does not include installation or upgrade professional services).
- (e) Licensee acknowledges it is required to upgrade to a new Release at least once during any twelve month period, after which, Licensor shall be permitted to charge, and Licensee shall be obligated to pay, if applicable, Time and Materials Charges for installing, migrating and/or providing support and

maintenance to upgrade to the current version of the Software. Time and Materials Charges shall be identified in an agreed-to and executed Statement of Work.

- (f) Licensee further acknowledges that, if the cause of a problem is the result of an upgrade or change in version or options of their CRM or email platform, Licensee will be required to upgrade to the most current version of Riva in order to receive free maintenance, upgrades and support.

### **3. Service Level For Services**

- (a) Licensor will use reasonable commercial efforts to substantially perform to the response time commitments for Incident Reporting as set out in Schedule A to Appendix 4.

### **4. Support and Initiating a Support Incident**

- (a) Support is not provided to end users or non-qualified Riva administrators.
- (b) Support is only available to qualified Riva administrators or designated account contacts, as identified to Licensor by Licensee, who have received Riva Administrator training equivalent to at least Level 300A and B as described in Appendix 3 or by having received hands-on training as a member of the project team responsible for and having worked with Licensor during the initial project planning, installation, configuration, implementation and best practices review. To be eligible to receive support, any contact who is designated by Licensee as a Riva administrator who was not a member of the initial Software installation team shall have received from Licensee appropriate and relevant training on the level 300A and B topics identified in Appendix Three or shall have received training from Licensor such that the delegated contact is able to work with Licensor at a level equal to or higher than if the designated contact had been part of the initial Software planning, installation, configuration and implementation team or had received the identified Level 300A and B training.
- (c) An Incident Report shall be initiated by a qualified Riva administrator selecting the “Request Support” link in the Riva administration interface as identified in the following link: <http://kb.omni-ts.com/entry/323/>. This is the first step in the support process. Licensee can choose to follow up the Request Support submission by email or by phone to provide additional information to help expedite the resolution. Communication against an existing case can be initiated by email or phone.
- (d) If Licensee wishes to use Riva’s “Request Support” or “Check for Updates” processes, Licensee’s firewall and infrastructure must be configured to allow communication on ports 80 and 443 from the IP address range to be determined from time to time. This will allow Riva to connect to the reporting server to submit Incident Request Support cases and will allow the update server to respond to update requests.

## SCHEDULE A TO APPENDIX 4

### SUPPORT PRIORITY CODES AND RESPONSE TIMES

Priority Level	System State	Support Call-back	Fix Expectation	Fix Method
P1	Riva Software causing invalid data to be synchronized and/or causing data corruption such that the CRM or email platform are unusable for the majority of users	Same business day	Emergency fix for specific customer as soon as practicable	Specific patch files
P2	Major functions of Riva Software not available for all users	By end of second business day	Emergency fix available on a priority basis	Packaged fix
P3	Major functions of Riva Software not available for some users	By end of third business day	Interim release available, typically in 1 to 3 months	Interim Release
P4	Minor Riva Software functions not fully available	By end of fourth business day	Next release, minimum twice per year	New release
P5	Enhancement or documentation issue with Riva Software	By end of next business week	Possible in future releases	New release





## APPENDIX 5

# LICENSE CO-MARKETING

### **Publicity**

Licensee agrees that Licensor may use the Licensee's name, service mark and/or logo(s) to identify the Licensee as a customer of Licensor and as part of a general list of Licensor's customers for use and reference on Licensor's web site, corporate, promotional and marketing literature, provided that such listing does not state or imply that Licensee endorses Licensor or its Software or services.

Subject to approval by Licensee, which approval may be withheld for any reason, preferably within sixty (60 days) of the Effective Date, the parties may work together to establish the content and timing of a press release, success story or case study for general release.

## APPENDIX 6

### TIME AND MATERIALS CHARGES

Unless otherwise agreed to in a separate document, requests for emergency support, scheduled support or professional services that fall outside of the following hours will be billed at the following time and materials charges rates:

1. Planning, consulting, installation, configuration, training, trouble shooting and related professional services provided between
  - a. 8:00 a.m. and 5:00 p.m. Mountain Time - \$150.00 US / hour;
  - b. 5:00 p.m. to 8:00 p.m. and 6:00 a.m. to 8:00 a.m. Mountain Time - \$200.00 US / hour
  - c. 8:00 p.m. and 6:00 a.m. Mountain Time - \$300.00 US / hour;
2. Software Customization, Modifications and Developer Professional Services  
\$200.00 US / hour.
3. On-site surcharge  
\$25.00 US / hour.
4. 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 pre-approved expenses will be charged.