

## SMART AGENT SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT ("AGREEMENT") GOVERNS YOUR ACQUISITION AND USE OF THE SMART AGENT SERVICES.

IF YOU PURCHASE OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN YOUR PURCHASE AND ONGOING USE OF THOSE SERVICES.

This agreement is between You and Us. You acknowledge that the Service is hosted for Us by salesforce.com. By agreeing to these terms You confirm that You accept and agree to abide by the salesforce.com Platform Terms of Use which is attached here as Exhibit A.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on January 15<sup>th</sup>, 2016. It is effective between You and Us as of the date of You accepting this Agreement.

## 1. DEFINITIONS

- 1.1. "**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.2. "**AppExchange**" means the online directory of applications that might interoperate with the Services, located at <http://www.salesforce.com/appexchange> or at any successor websites.
- 1.3. "**Customer**" means any individual or entity whose personal information is retained in the Service
- 1.4. "**Customer Information**" means any nonpublic personal information relating to an identified Customer, including, but not limited to: a Customer's name, address, telephone number, and social security number; as those terms are defined in Title V of the Gramm-Leach-Bliley Act ("GLBA") and the privacy regulations and information security guidelines issued by the federal financial regulators pursuant to Title V of GLBA.
- 1.5. "**De-Identified Personal Information**" means personal information from which a person's name and other unique identifiers have been removed, and from which a person cannot reasonably be identified;
- 1.6. "**De-Identify**," with respect to Personal Information, means to make it into De-Identified Personal Information.
- 1.7. "**Internet Services Provider**" means the third party service you select and utilize to access the internet.
- 1.8. "**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- 1.9. "**Order Form**" means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. Order Forms shall be deemed incorporated herein by reference.
- 1.10. "**Purchased Services**" means Services that You or Your Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a free trial.
- 1.11. "**Services**" means the online, Web-based applications and platform provided by Us via <http://www.smartagentcrm.com> and/or other designated websites as described in the User Guide, that are ordered by You as part of a free trial or under an Order Form, including associated offline components but excluding Third Party Applications.
- 1.12. "**Third-Party Applications**" means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party applications, including but not limited to those listed on the AppExchange.
- 1.13. "**User Guide**" means the online user guide for the Services, accessible via <http://www.salesforce.com>, as updated from time to time. You acknowledge that You have had the

opportunity to review the User Guide during the free trial described in Section 2 (Free Trial) below.

- 1.14. "**Users**" means You, Your employees, representatives, consultants, contractors or agents who are authorized to by You to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request).
- 1.15. "**We**," "**Us**" or "**Our**" means River Bluff Technologies, Inc. described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).
- 1.16. "**You**" or "**Your**" means any User, individual, Company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.
- 1.17. "**Your Data**" means all electronic data or information submitted or entered by You to the Purchased Services.

## 2. FREE TRIAL

We may make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which you registered or are registering to use the applicable Service or (b) the start date of any Purchased Services ordered by You. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

NOTWITHSTANDING SECTION 9 (WARRANTIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

Please review the User Guide during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

## 3. PURCHASED SERVICES

**3.1. Provision of Purchased Services.** We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

**3.2. User Subscriptions.** Unless otherwise specified in the applicable Order Form, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the subscription term at the same pricing as the underlying subscription pricing, prorated monthly for the portion of that subscription term remaining at the time the subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the underlying subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require on-going use of the Services.

**3.3.** SmartAgentcrm.com is available by prepaid subscription. You must subscribe to an Initial Term of either 1 year (12 months, Annual Subscription) or 1 month (Monthly Subscription). After the Initial Term, your subscription will automatically renew each year (Annual Subscription) or each month (Monthly Subscription) unless you cancel your subscription at least 30 days prior to the expiration of each year (Annual Subscription) or month (Monthly Subscription).

#### **4. USE OF THE SERVICES**

**4.1. Our Responsibilities.** We shall: (i) provide to You standard support for the Purchased Services at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours' notice via the Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or platform provider of Service, or Internet Service Provider failures or delays, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

**4.2. Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the User Guide and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

**4.3. Usage Limitations.** Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls You are permitted to make against Our application programming interface, and, for Services that enable You to provide public websites, on the number of page views by visitors to those websites. Any such limitations are specified in the User Guide. The Services provide real-time information to enable You to monitor Your compliance with such limitations.

#### **5. THIRD-PARTY PROVIDERS**

**5.1. Acquisition of Third-Party Products and Services.** We may offer Third-Party Applications for sale under Order Forms. Any other acquisition by You of third-party products or services, including but not limited to Third-Party

Applications and implementation, customization and other consulting services, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. We do not warrant or support third-party products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form. No purchase of third-party products or services is required to use the Services.

**5.2. Third-Party Applications and Your Data.** If You install or enable Third-Party Applications for use with Services, You acknowledge that We may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third-Party Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. The Services shall allow You to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Services.

**5.3. Google Services.** Service features that interoperate with Google services depend on the continuing availability of the Google API and program for use with the Services. If Google Inc. ceases to make the Google API or program available on reasonable terms for the Services, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

**5.4. Transmission of Customer Data.** The Services do not transmit Your Customer Data outside the Services, however should You transmit Customer Data to any other service, or add on Third-Party Applications that transmit Your data outside the Services, whether or not you use the The Services to do this, You do this at Your own risk and you acknowledge that the security and validity of the Your data is Your responsibility.

#### **6. FEES AND PAYMENT FOR PURCHASED SERVICES**

**6.1. User Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on services purchased and not actual usage, (iii) payment obligations are non-cancellable and fees paid are non-refundable, and (iv) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. Subscribers have two payment options: an Annual Subscription payment or a Monthly Subscription payment plan.

The Annual Subscription fee will be charged to your credit card upon submitting the Order. After your Initial Term, the Annual Subscription fee will automatically be charged to your credit card on your Anniversary Date. Your Anniversary Date is defined as the first day of the month of the original subscription order date.

Monthly User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

Note: It may take up to 24 hours to activate your subscription. Confirmation of your subscription order will be sent to you via e-mail within 24 hours. All purchases are final. No refunds will be given for unused portions of your subscription period.

- 6.2. Invoicing and Payment.** You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 12.2 (Term of Purchased User Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information.
- 6.3. Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) a late fee of \$25, and (c) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).
- 6.4. Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full.
- 6.5. Payment Disputes.** We shall not exercise Our rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.
- 6.6. Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against it based on Our income, property and employees.

## 7. PROPRIETARY RIGHTS

- 7.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 7.2. Restrictions.** You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
- 7.3. Ownership of Your Data.** As between Us and You, You exclusively own all rights, title and interest in and to all of Your Data. However, We may De-Identify and aggregate Your Data as provided by Section 7.4.
- 7.4. De-Identified Information.** In consideration of our provision of the Services, you hereby transfer and assign to us all right, title and interest in and to all De-Identified Information that we create from Your Data. You agree that we may use, disclose, market, license and sell De-Identified Information for any purpose without restriction, and that you have no interest in such information, or in the proceeds of any sale, license, or other commercialization thereof.
- 7.5. Suggestions.** We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.
- 7.6. Federal Government End Use Provisions.** We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

## 8. CONFIDENTIALITY

- 8.1. Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that

reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**8.2. Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

**8.3. Protection of Your Data.** Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data except as allowed under section 7.4, (b) disclose Your Data except as compelled by law in accordance with Section 8.4 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services or prevent or address service or technical problems, De-Identify Your Data, or at Your request in connection with customer support matters.

**8.4. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

**8.5. Agreed Disclosure.** If You become a paying customer, You agree to allow Us to reference You as a customer using Our technology on Our website and in print copy or

marketing collateral. You will provide Us with an approved company logo that We may publish on Our website and/or marketing collateral to communicate such relationship.

## 9. WARRANTIES AND DISCLAIMERS

**9.1. Our Warranties.** We warrant that (i) the Services shall perform materially in accordance with the User Guide, and (ii) subject to Section 5.3 (Google Services), the functionality of the Services will not be materially decreased during a subscription term. For any breach of either such warranty, [Your](#) exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination) below.

**9.2. Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).

**9.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 10. MUTUAL INDEMNIFICATION

**10.1. Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding ("Claim") made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney's fees incurred by, You in connection with any such Claim; provided, that You (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense.

**10.2. Indemnification by You.** You shall defend Us against any Claim made or brought against Us by a third party alleging that Your Data, or Your use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Us for any damages finally awarded against, and for reasonable attorney's fees incurred by, Us in connection with any such Claim; provided, that We (a) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally release Us of all liability); and (c) provide to You all reasonable assistance, at Our expense.

**10.3. Exclusive Remedy.** This Section 10 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

## **11. LIMITATION OF LIABILITY**

**11.1. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$250,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

**11.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **12. TERM AND TERMINATION**

**12.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

**12.2. Term of Purchased User Subscriptions.** User subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. **Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.**

**12.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**12.4. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

Authorized Refunds will be credited to Your account within 30 days of request. Refunds or partial/prorated refunds are not granted for partial months. All requests for cancellation/termination of Your Subscription must be made within a minimum of 10 business days prior to the end of the month. These cancellation requests will be effective as of the last day of the month. Any cancellation request made less than 10 business days prior to the end of the month will be effective on the last day of the following month.

**12.5. Return of Your Data.** Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

**12.6. Surviving Provisions.** Section 6 (Fees and Payment for Purchased Services), 7 (Proprietary Rights), 8 (Confidentiality), 9.3 (Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Return of Your Data), 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

## **13. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION**

**13.1. General.** Whom you are contracting with under this Agreement and should send all notices under this Agreement to the following:

**River Bluff Technologies, Inc.  
406 Main Street  
Red Wing, MN 55066**

**13.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the system administrator designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You.

**13.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to be governed by the laws of Minnesota.

#### **14. GENERAL PROVISIONS**

**14.1. Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

**14.2. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties

**14.3. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**14.4. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**14.5. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**14.6. Attorney Fees.** You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 6.2 (Invoicing and Payment)

**14.7. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.8. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

## Exhibit A – SFDC Service Agreement

### 1. DEFINITIONS

- 1.1. "AppExchange" means the online directory of on-demand applications that work with the Service, located at <http://www.appexchange.com> or at any successor websites.
- 1.2. "Platform" means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller's provision of the Reseller Application to You.
- 1.3. "Reseller" means River Bluff Technologies, Inc.
- 1.4. "Reseller Application Service" means Smart Agent.
- 1.5. "SFDC Service" means the online, Web-based application and platform service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding AppExchange applications.
- 1.6. "SFDC" means salesforce.com.
- 1.7. "Users" means Your employees, representatives, consultants, contractors or agents who are authorized to use the Service subject to the terms of this SFDC Service Agreement as a result of a subscription to the Reseller Application Service having been purchased for such User, and have been supplied user identifications and passwords by You (or by Salesforce.com or Reseller at Your request).
- 1.8. "You" and "Your" means the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this SFDC Service Agreement, together with any other terms required by Reseller.
- 1.9. "Your Data" means all electronic data or information submitted by You as and to the extent it resides in the Service.

### 2. Use of Service

- (a) Each User subscription to the Reseller Application Service shall entitle one User to use the Service via the Reseller Application, subject to the terms of this SFDC Service Agreement, together with any other terms required by Reseller. User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Service). For clarity, Your right to use the Platform hereunder does not include a subscription to use the SFDC Service or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services, to use it in connection with applications other than the Reseller Application, or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been provided to You by Your Reseller, visit [www.salesforce.com](http://www.salesforce.com) to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any SFDC Service functionality within

it that is in excess to the functionality described in the Reseller Application user guide and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access and use such functionality, and You agree that Your use of such functionality, Your use of applications other than the Reseller Application, or Your creation or use of additional custom objects in the Reseller Application beyond that which appears in the Reseller application in the for that it has been provided to You by Your Reseller, would be a material breach of this Agreement.

- (b) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application Service and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application Service, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by you to Reseller.
- (c) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or Salesforce.com promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Service.
- (d) You shall use the Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this SFDC Service Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.
- (e) You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or SFDC Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Platform or SFDC Service.



### **3. Third-Party Providers**

Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of AppExchange applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform, SFDC Service, and/or the Reseller Application Service, such as by exchanging data with the Platform, the SFDC Service, and/or the Reseller Application Service, or by offering additional functionality within the user interface of the Platform, the SFDC Service, and/or the Reseller Application Service through use of the Platform and/or SFDC Service's application programming interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application Service, and any purchase by You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this SFDC Service Agreement.

### **4. Proprietary Rights**

Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and/or the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this SFDC Service Agreement. The Platform and/or the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in this this SFDC Service Agreement.

### **5. Compelled Disclosure**

If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

### **6. Suggestions**

You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.

### **7. Termination**

Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to

(a) a breach of the terms of this this SFDC Service Agreement by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Service as part of the Reseller Application Service to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the rights it is providing to You in connection with this this SFDC Service Agreement. If You use the Reseller Application in combination with a SFDC Service Org other than the Org provisioned solely for use with the Reseller Application (a "Shared org", Reseller shall be solely responsible for provisioning the Reseller Application to You. With respect to any Shared org, You acknowledge and understand that (i) access to such Org, including the Reseller Application used in connection with such Org, may be suspended due to Your non-payment to SFDC or other breach of Your Agreement with SFDC, and (ii) in the event Your relationship with SFDC is terminated as a result of non-payment or other material breach of Your agreement with SFDC, Your Platform subscriptions would also be terminated. In no case will any such termination or suspension give rise to any liability of SFDC to You for a refund or other compensation.

### **8. Subscriptions Non-Cancelable**

Subscriptions for the Platform and the SFDC Service are non-cancelable during a subscription term, unless otherwise specified in Your agreement with Reseller.

### **9. Data Storage**

The Platform and SFDC Service include a certain cumulative amount of storage for no additional charge based on the aggregate number of User subscriptions You maintain. Contact Your Reseller for additional information. Additional storage may be available for purchase from the Reseller.

### **10. No Warranty**

SALESFORCE.COM MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. SALESFORCE.COM MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE RESELLER APPLICATION SERVICE. SALESFORCE.COM DOES NOT REPRESENT OR WARRANT THAT (A) THE RESELLER APPLICATION SERVICE WILL BE AVAILABLE, SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH THE SALESFORCE.COM SERVICE OR ANY OTHER APPLICATION, SOFTWARE, HARDWARE, SYSTEM OR DATA, (B) THE RESELLER APPLICATION SERVICE OR THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY DATA STORED USING THE RESELLER APPLICATION SERVICE WILL BE ACCURATE, RELIABLE, OR SECURE, (D) ERRORS OR DEFECTS IN RESELLER APPLICATION OR THE SERVICE WILL BE CORRECTED, OR (E) THE RESELLER APPLICATION SERVICE OR THE SYSTEMS USED BY RESELLER TO MAKE RESELLER APPLICATION AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE IS PROVIDED STRICTLY ON AN "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SALESFORCE.COM DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO RESELLER APPLICATION SERVICE AND THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

**11. No Liability**

IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**12. Further Contact**

SFDC may contact you regarding new SFDC service features and offerings.

**13. Google Programs and Services**

Platform or SFDC Service features that interoperate with the Google programs and services depend on the continuing availability of applicable Google application programming interfaces (“APIs”) and programs for use with the Service. If Google Inc. ceases to make such APIs and/or programs available on reasonable terms to SFDC, SFDC may cease providing such Service features without entitling You or Reseller to any refund, credit, or other compensation.

**14. Third Party Beneficiary**

SFDC shall be a third party beneficiary to this agreement solely as it relates to these Platform Terms of Use.