



## RIVERBED CUSTOMER AGREEMENT

IMPORTANT: PLEASE READ BEFORE INSTALLATION OR USE OF ANY PRODUCTS (AS DEFINED BELOW). THIS RIVERBED CUSTOMER AGREEMENT ("AGREEMENT") IS A BINDING AGREEMENT BETWEEN RIVERBED TECHNOLOGY, INC. (FOR CUSTOMERS LOCATED IN NORTH OR SOUTH AMERICA) OR RIVERBED TECHNOLOGY PTE. LTD. (FOR CUSTOMERS LOCATED IN EUROPE, MIDDLE EAST, AFRICA OR ASIA) ("RIVERBED") AND THE ENTITY OR COMPANY THAT IS THE AUTHORIZED PURCHASER, LICENSEE OR USER OF THE PRODUCTS ("CUSTOMER"). BY PURCHASING, ACCESSING, DOWNLOADING, INSTALLING OR IN ANY WAY USING A PRODUCT, CUSTOMER IS UNCONDITIONALLY CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT WITH RIVERBED. IF CUSTOMER DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CUSTOMER IS NOT AUTHORIZED TO AND MAY NOT DOWNLOAD, ACCESS, INSTALL OR USE ANY OF THE PRODUCTS.

### 1. DEFINITIONS.

(a) "Additional Use Rights" means the terms and conditions set forth at [www.riverbed.com/license/additional\\_use\\_rights](http://www.riverbed.com/license/additional_use_rights), as may be updated by Riverbed from time to time.

(b) "Documentation" means the then-current written and/or electronic end user or technical documentation pertaining to a Product that is provided by Riverbed together with the delivery of a Product or otherwise made available by Riverbed.

(c) "Hardware" means any hardware or equipment on Riverbed's or one of its affiliate's then-current price list or otherwise made available by Riverbed, including any components or replacements of any of the foregoing.

(d) "Hosting Services" means any hosting services on Riverbed's or one of its affiliate's then-current price list or otherwise made available by Riverbed that are provided by Riverbed for a Perpetually Licensed Product, Term Licensed Product or a Subscription Product that enable any such Product to be used in a hosted environment. Hosting Services do not apply to SaaS Products. As part of Hosting Services, Riverbed shall use commercially reasonable efforts to make the applicable Riverbed hosted Products available twenty-four (24) hours per day, seven (7) days per week for the duration of the applicable Hosting Services term purchased by Customer.

(e) "Perpetually Licensed Product" means any Software that is licensed by Riverbed on a perpetual basis as set forth in the applicable ordering documentation received by Riverbed, the Product description on Riverbed's then-current price list, or the Additional Use Rights with respect to a particular Product.

(f) "Products" means, collectively, the Hardware and Software and all Documentation associated therewith. For the avoidance of doubt, Products include the Perpetually Licensed Products, Term Licensed Products, SaaS Products, and Subscription Products.

(g) "SaaS Product" means any Software made available by Riverbed through hosted services, software as a service (SaaS), or cloud services as set forth in the applicable ordering documentation received by Riverbed, the Product description on Riverbed's then-current price list, or the Additional Use Rights with respect to a particular Product. For the avoidance of doubt, any Hosting Services provided by Riverbed for a Perpetually Licensed Product, Term Licensed Product, or a Subscription Product do not change such Product to a SaaS Product for purposes of this Agreement.

(h) "Software" means any software on Riverbed's or one of its affiliate's then-current price list or otherwise made available by Riverbed, including (i) software provided on a stand-alone basis, (ii) software provided on or with any Hardware, (iii) software provided as part of hosted services, SaaS, or cloud services, and (iv) any upgrades, updates, patches, enhancements, or fixes to any of the foregoing that may be made available by Riverbed.

(i) "Subscription Product" means any Software that is licensed by Riverbed on a term or subscription basis that expires after the applicable term or subscription period ends as set forth in the applicable ordering documentation received by Riverbed, the Product description on Riverbed's then-current price list, or the Additional Use Rights with respect to a particular Product, and that includes Support bundled with the subscription.

(j) "Support" means Riverbed's then-current generally available end user maintenance and support services as described at [www.riverbed.com/supportservicedescription](http://www.riverbed.com/supportservicedescription).

(k) "Term Licensed Product" means any Software that is licensed by Riverbed on a term or subscription basis that expires after the applicable term or subscription period ends as set forth in the applicable ordering documentation received by Riverbed, the Product description on Riverbed's then-current price list, or the Additional Use Rights with respect to a particular Product, but that does not include any Support bundled with the term license.

### 2. USE OF RIVERBED PRODUCTS.

(a) **Perpetually Licensed Products.** Subject to the terms and conditions of this Agreement and provided that Customer has paid the applicable fees, Riverbed grants Customer a perpetual, limited, personal, non-sublicensable, non-transferable (except as expressly provided in Section 11), nonexclusive license to: (a) install, access, and use the Perpetually Licensed Product (in object code format only), (b) access, use, and reasonably reproduce the Documentation, and (c) exercise any other rights applicable to the Perpetually Licensed Product as expressly set forth in the Additional Use Rights.

(b) **Subscription Products and Term Licensed Products.** Subject to the terms and conditions of this Agreement and provided that Customer has paid the applicable fees, Riverbed grants Customer a limited, personal, non-sublicensable, non-transferable (except as expressly provided in Section 11), nonexclusive license for the duration of the applicable term or subscription period purchased by Customer to: (a) install, access, and use the Subscription Product or Term Licensed Product (in object code format only), (b) access, use, and reasonably reproduce the Documentation, and (c) exercise any other rights applicable to the Subscription Product or Term Licensed Product as expressly set forth in the Additional Use Rights. Each instance of the applicable Subscription Product or Term Licensed Product may be used only for the term of the license purchased by Customer.



(c) **SaaS Products.** Subject to the terms and conditions of this Agreement and provided that Customer has paid the applicable fees, for the duration of the applicable term or subscription period purchased by Customer, Customer may (a) access and use the SaaS Product in accordance with this Agreement, (b) access, use, and reasonably reproduce the Documentation, and (c) exercise any other rights applicable to the SaaS Product as expressly set forth in the Additional Use Rights. Riverbed shall use commercially reasonable efforts to make SaaS Products available twenty-four (24) hours per day, seven (7) days per week for the duration of the applicable term or subscription period purchased by Customer for such SaaS Product. Customer acknowledges that Customer must maintain an active subscription to any SaaS Product in order to access any information or data associated with such SaaS Product; if the subscription expires or is terminated, such information and data may no longer be accessible by Customer. Riverbed is not obligated to retain any such information or data.

(d) **Additional Product Rights.** Customer shall exercise the rights granted in this Agreement solely for Customer's internal business use in accordance with the Documentation and shall comply with all other restrictions and limitations applicable to each Product, including all terms and conditions set forth in the Additional Use Rights. If there is a conflict between the terms and conditions of the Additional Use Rights and the main body of this Agreement, the Additional Use Rights will control, but only with respect to the applicable Product to which such terms pertain. Subject to the foregoing, the specific Products licensed and/or made available to Customer under this Agreement, including the number of licenses issued and the term of any applicable license or subscription, as applicable, will be identified on the applicable ordering documentation received by Riverbed. Riverbed may require the purchase of a minimum subscription term and/or require payment either up front or monthly based on Riverbed's then-current purchase and invoice policies for any Term Licensed Product, Subscription Product and/or SaaS Product purchases. Customer may use each licensed copy of the Software that is provided on or with any Hardware only as embedded in or for execution on that specific unit of Hardware (or replacement thereof) owned or leased by Customer. Customer may also copy configurations of the Software (excluding any Software provided on or embedded in any Hardware) solely for backup, archival and/or disaster recovery purposes. Without granting any additional licenses or usage rights hereunder, Customer may authorize its contractors and outsourcers to access, use or operate the Products solely on Customer's behalf, provided that (i) Customer obtains any such third party's binding consent to abide by the terms of this Agreement, and (ii) Customer remains responsible for such third parties' use of the Products and compliance with the terms and conditions of this Agreement, and any breach of this Agreement by any such third party will be deemed a breach of this Agreement by Customer.

(e) **Hosting Services.** If Customer is purchasing any Hosting Services for a Product, Customer may access the applicable Product in the applicable hosted, SaaS or cloud environment only while such Product has an active Hosting Service and Customer has a valid license for such Product. Customer acknowledges that Customer must have a then-current paid Support plan in effect in order to purchase Hosting Services for a Perpetually Licensed Product or Term Licensed Product and must maintain an active Support plan for such Product during the term of the Hosting Services; if Customer's Support for the applicable Product expires during a Hosting Services term, Customer must renew the Support. Customer further acknowledges that Customer must continue to pay all applicable fees for any such Hosting Services in order to access and use the applicable Products and any associated data in the applicable hosted, SaaS or cloud environment. The purchase of Hosting Services does not extend the license term of any Term Licensed Product or Subscription Product or the term of any Support plan. Once Hosting Services expire or are terminated, Customer may continue to use the applicable Product in accordance with this Agreement for the remainder of the applicable license term (if any).

### 3. RESTRICTIONS.

(a) **Usage Restrictions.** Except as expressly permitted by this Agreement, Customer shall not, and shall not authorize or permit any other person or entity to, directly or indirectly: (a) copy, modify (except as expressly permitted under the applicable Documentation), distribute, or create derivative works of any Product, (b) disassemble, decompile or reverse engineer any of the Products, or otherwise attempt to discover any source code, structure, algorithms, sequence, organization or ideas underlying any of the Products (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited), (c) sell or resell any Products, (d) sublicense, rent, lease, use for timesharing or service bureau purposes for third parties or otherwise provide temporary access to any Product or use any Product for the benefit of any third party, (e) provide Product or Support passwords or other Product log-in information to any unauthorized third party, (f) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities relating to any Product, (g) obscure, alter, remove, or destroy any proprietary markings, restrictive legends, or intellectual property notices on any Product, or (h) access or use any Product for purposes of designing or developing a competing product or service. Notwithstanding the foregoing, Customer may use the Products pursuant to a leasing arrangement whereby Customer leases the Product from a third party authorized by Riverbed. Customer acknowledges and agrees that the Software (including its design and structure) and Documentation constitute trade secrets and/or confidential information of Riverbed or its licensors. Except as expressly permitted by this Agreement, Customer shall hold in confidence and shall not disclose, provide, or permit access to any Software or Documentation in any form to any third party without Riverbed's prior written consent. Regardless of any references to any sale or purchase in this Agreement, all Software is licensed by Riverbed, and not sold. As between the parties, all ownership rights with respect to the intellectual property rights in and to the Products, and any copies or portions thereof, remain in Riverbed and its suppliers and licensors. The Products are protected by the intellectual property laws (including copyright laws) of the United States, foreign jurisdictions and all applicable international treaties. This Agreement does not grant Customer any rights not expressly set forth herein. Any action of Customer in contravention of this Section 3 may result in the termination of this Agreement, including the license grant for the Software, as described in Section 8 below.

(b) **Licensing and Usage Metrics.** Certain Products are made available on a concurrent, Licensed Server, and/or on a per user or per seat basis, and/or are subject to other capacity metrics as set forth in the applicable ordering documentation received by Riverbed, the Product description on Riverbed's then-current price list, or the Additional Use Rights with respect to a particular Product. The following terms apply to any such Products unless otherwise specified in the Additional Use Rights for a particular Product.

(i) **Concurrent Basis.** Software licensed on a concurrent basis may be copied onto any number of Customer's laptops, personal computers, or other compatible devices provided that the total number of concurrent users and/or executions does not exceed the number of concurrent user and/or execution licenses acquired by Customer. Each user that is using an instance of Software will be deemed a concurrent user, and each execution of Software will be deemed a concurrent execution, for purposes of calculating the total number of concurrent users and/or concurrent executions.

(ii) **Licensed Server Basis.** For Software licensed on a Licensed Server basis, each instance of the applicable Software licensed by Customer may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download and that is running a supported operating system or computing platform (each a, "Licensed Server"). Software licensed on



a Licensed Server basis may also be installed on a single backup server or cluster of backup servers operating as a single entity running a supported operating system or computing platform and used only if the primary Licensed Server fails. Only one copy of a single Software instance licensed on a Licensed Server basis may be running or used at any time. Provided that the Software is covered by a then-current Support plan, Customer may transfer Software from the designated Licensed Server to another designated server that meets the requirements to be a Licensed Server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Software on the original Licensed Server is no longer used and is de-installed using any de-installation instructions provided by Riverbed. Upon transfer of the Software to a new designated server in accordance with the foregoing requirements, the new designated server will be deemed a Licensed Server.

(iii) **Per Device / Per End Point / Per Seat / Per User / Per Unit Basis.** Software licensed on a per device, per end point, per seat, per user and/or similar per unit basis may be used only up to the number of devices, end points, seats, users and/or other applicable units purchased by Customer for that instance. If the Software is licensed on a named user basis, only the specified named users may access and the use the Software and named user accounts may not be shared between multiple users.

(iv) **Capacity.** For Software licensed on a capacity basis, each instance of Software purchased by Customer may be used only up to the capacity purchased by Customer for that instance (e.g., throughput, bandwidth, number of TCP connections, flow capacity, number of management licenses for Riverbed devices, or other specified capacity).

4. **DATA PROTECTION AND PRIVACY.** Customer acknowledges that some Products may collect certain data, metrics and/or personal information regarding Customer and/or its users, and Riverbed may also collect certain information from Customer as required to provide Customer with Products and services. With respect to any such information Riverbed and Customer shall comply with the terms and conditions of Riverbed's then-current privacy policy available at [www.riverbed.com/legal/privacy-policy/](http://www.riverbed.com/legal/privacy-policy/), as may be updated from time to time ("**Privacy Policy**"), which is hereby incorporated into this Agreement.

#### 5. **SUPPORT AND UPGRADES.**

(a) **Perpetually Licensed Products and Term Licensed Products.** The license fees for Perpetually Licensed Products and Term Licensed Products do not include Support, and therefore Customer is not entitled to receive, any support services, upgrades, updates, patches, enhancements or fixes for any Perpetually Licensed Product or Term Licensed Product unless the Customer separately purchases Support. If Customer purchases Support for a Perpetually Licensed Product or Term Licensed Product, Riverbed shall provide such Support as described at [www.riverbed.com/supportservicesdescription](http://www.riverbed.com/supportservicesdescription). Customer is not entitled to, and shall not, install or use any Software upgrades, updates, patches, enhancements or fixes made available by Riverbed, including on Riverbed's support website, except on or with Products that are covered by a then-current paid Support plan.

(b) **Subscription and SaaS Products.** The fees for Subscription Products and SaaS Products include Support for the duration of the applicable term or subscription period purchased by Customer.

#### 6. **STANDARD WARRANTY; WARRANTY DISCLAIMER.**

(a) Riverbed warrants to Customer that the Hardware and Software, as originally shipped by Riverbed, will conform in all material respects to the applicable published specifications for such Products during the applicable Warranty Period. "**Warranty Period**" means a period commencing on the date of original shipment by Riverbed or issuance by Riverbed of a license or access key, as applicable, of the applicable Product and continuing (i) for one (1) year with respect to Hardware, (ii) for ninety (90) days with respect to Perpetually Licensed Products, and (iii) with respect to Term Licensed Products, Subscription Products, and SaaS Products, for ninety (90) days or until the expiration or termination of the applicable term or subscription period purchased by Customer, whichever occurs sooner. Riverbed warrants to Customer that any Support and Hosting Services will be provided in a professional manner using commercially reasonable efforts. Shipment of a replacement Product or provision of any updates or upgrades will not extend the Warranty Period. The foregoing warranty does not extend to any Product that (a) is modified or altered, (b) is not maintained and stored in accordance with Riverbed's maintenance recommendations and instructions, (c) has its serial number removed or altered, (d) is damaged (including by electrical power surges), mishandled, or treated with abuse, negligence or other improper treatment (including use outside the recommended environment or in violation of this Agreement), or (e) is not used in accordance with the applicable Riverbed published specifications and/or Documentation. Customer's sole and exclusive remedy, and Riverbed's sole and exclusive obligation, for any breach of the foregoing warranties will be, at Riverbed's option, (I) with respect to the Hardware and Software warranty, the repair or replacement of or (at Riverbed's option if repair or replacement is impractical) refund of the fees received by Riverbed for returned non-conforming units of Product for which full documentation and proof of non-conformity is provided to Riverbed (and for which a Riverbed RMA has been issued) within the applicable Warranty Period, and (II) with respect to Support and Hosting Services, re-performance of the applicable service. Such refund will be paid to Customer or the Riverbed channel partner making the warranty claim. Riverbed is not responsible for any difference between the amount paid to Riverbed for the returned Product and the amount paid by Customer for such returned Product.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, RIVERBED PROVIDES THE PRODUCTS AND SERVICES "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, SECURITY AND NONINFRINGEMENT. RIVERBED ALSO MAKES NO WARRANTY REGARDING (I) NONINTERRUPTION OF USE, (II) FREEDOM FROM BUGS, (III) THE AVAILABILITY AND/OR FUNCTIONALITY OF THIRD PARTY PRODUCTS, SERVICES, APIS, AND/OR INTEGRATIONS THAT ARE MADE AVAILABLE BY ANY THIRD PARTY, AND/OR (IV) THAT ANY PRODUCT OR SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

7. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, BUT SUBJECT TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHER LEGAL OR EQUITABLE THEORY, (A) NEITHER RIVERBED NOR ANY OF ITS AFFILIATES OR SUPPLIERS IS LIABLE FOR (I) ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS, CONTRACTS, BUSINESS, REVENUES, GOODWILL OR REPUTATION, (II) COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (III) LOSS OR CORRUPTION



OF DATA, INTERRUPTION OF USE, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM CUSTOMER'S USE OF (OR INABILITY TO ACCESS OR USE) ANY PRODUCT OR SERVICE, AND (B) THE AGGREGATE LIABILITY OF RIVERBED AND ITS AFFILIATES AND SUPPLIERS WILL NOT EXCEED THE AGGREGATE FEES RECEIVED BY RIVERBED FOR THE APPLICABLE PRODUCT OR SERVICE THAT GAVE RISE TO THE CLAIM. THE FOREGOING LIMITATION IS CUMULATIVE, WITH ALL CLAIMS BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF RIVERBED IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THE PRODUCTS ARE NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE PRODUCT WOULD RESULT IN FORESEEABLE RISK OF INJURY OR DEATH TO ANY PERSON. THIS INCLUDES OPERATION OF NUCLEAR FACILITIES, LIFE-SUPPORT SYSTEMS, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS AND AIR TRAFFIC CONTROL. NEITHER RIVERBED NOR ANY OF ITS AFFILIATES IS LIABLE FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL OR FOR ANY ALLOCATION OF PRODUCTS BETWEEN ITS CUSTOMERS IN THE EVENT OF A SHORTAGE. THIS SECTION DOES NOT LIMIT LIABILITY FOR BODILY INJURY OF A PERSON.

8. **TERMINATION.** This Agreement will continue in effect (a) indefinitely, with respect to a Perpetually Licensed Product, (b) for the duration of the applicable term or subscription period purchased by Customer with respect to a Subscription Product, Term Licensed Product or a SaaS Product, or (c) for the duration of the applicable term purchased by Customer with respect to Support or Hosting Services. This Agreement will terminate if Customer violates or fails to comply with any provision of this Agreement and fails to cure such breach within thirty (30) days after receipt of notice of such breach from Riverbed. Any termination of this Agreement will also terminate the licenses and/or other rights granted hereunder. Upon termination of this Agreement, Customer shall cease use of all Software and Documentation, shall destroy and remove from all computers, hard drives, networks and other storage media all copies of the Software (if applicable) and Documentation, and shall certify to Riverbed that such actions have occurred. Sections 1, 3, 6(b), and 7 through 11 will survive any termination of this Agreement. Riverbed reserves the right to temporarily suspend or permanently terminate use of or access to instances of Subscription Products and SaaS Products (and Support for such instances) in the event that Customer violates any terms of this Agreement or Riverbed does not timely receive payment from the Customer, or, as applicable, the channel partner, that purchased the Subscription Products and/or SaaS Products from Riverbed. Customer is not authorized to terminate any Term Licensed Product, Subscription Product or SaaS Product licenses prior to the end of the purchased license term unless otherwise expressly provided in the Additional Use Rights or otherwise agreed in writing by Riverbed.

9. **EXPORT CONTROLS.** Customer shall comply with all applicable export laws, restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and any other United States, European Union, Singapore or other foreign agency or authority and shall not import, export or re-export, or allow the import, export or re-export of, any Product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations. Pursuant to these laws, restrictions, and regulations, Customer shall ensure that no Product is, in the absence of authorization by U.S. and other applicable law as required, used by or exported, sold or re-exported to (a) any U.S. sanctioned or embargoed country, or to nationals or residents of such countries, (b) any person, entity, organization or other party identified on the U.S. Department of Commerce's Denied Persons or Entity List, the U.S. Department of Treasury's Specially Designated Nationals or Blocked Persons List, or the Department of State's Debarred Parties List, as published and revised from time to time, or (c) any party who is known or suspected to be involved in relation to any nuclear, biological or chemical weapons, or proliferation-related end-uses restricted by the U.S. Export Administration Regulations, including the design, development, or production of missiles capable of delivering these weapons. Without limiting the foregoing, Customer shall not use any Product, technology or information it obtains or learns pursuant to this Agreement in relation to any nuclear, biological or chemical weapons, or proliferation-related end-uses restricted by the U.S. Export Administration Regulations, including the design, development or production of missiles capable of delivering these weapons.

10. **GOVERNMENT USE.** If Customer is part of an agency, department, or other entity of the United States Government ("**Government**"), the use, duplication, reproduction, release, modification, disclosure and transfer of the Products is restricted in accordance with the Federal Acquisition Regulations (FAR) as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement (DFARS) as applied to military agencies. The Products qualify as "commercial items" under FAR § 2.101 and all Products are developed exclusively at private expense. The Software is (a) "commercial computer software" under FAR §12.212 and §52.227-19 and DFARS §227.7202 and §252.227-7014(a)(1), and (b) "restricted computer software" under FAR §§52.227-14(a). The Documentation is "computer software documentation" as set forth in FAR §52.227-14(a) and DFARS §252.227-7013(a). For purposes of this Agreement, references in this Agreement (including in the Additional Use Rights) to "business" use will be deemed references to Government use if Customer is part of the Government. In accordance with such provisions, any use of any Product by the Government will be governed solely by the terms of this Agreement. All other use by or on behalf of the Government is prohibited.

11. **MISCELLANEOUS.** If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible consistent with the original intent of the parties, and the other provisions of this Agreement will remain in force. The failure of Riverbed to enforce its rights under this Agreement or to act with respect to a breach of this Agreement by Customer or others will not be construed as a waiver of such rights and will not limit Riverbed's rights with respect to any such breach or any subsequent breaches. This Agreement is personal to Customer and Customer shall not assign (by operation of law or otherwise), transfer or sublicense any obligation or benefit under this Agreement, in whole or in part, for any reason whatsoever without Riverbed's prior written consent, and any action or conduct in violation of the foregoing will be void and without effect. Riverbed may assign this Agreement, or delegate any of its obligations hereunder, in whole or in part (except that Riverbed shall obtain the consent of the Government where the Government is the Customer hereunder and such consent is required). For all purposes under this Agreement, each party shall be and act as an independent contractor of the other and shall not bind nor attempt to bind the other to any contract. This Agreement is governed by and construed in accordance with the laws of the State of California (without regard to the conflicts of laws provisions thereof or the UN Convention on the International Sale of Goods). Unless otherwise elected by Riverbed in writing for a particular instance or prohibited by applicable law, the sole jurisdiction and venue for any court claims will be the state and U.S. federal courts located in San Francisco, California, USA, and both parties consent to the jurisdiction of such courts. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. There are no third party beneficiaries of this Agreement. Unless otherwise expressly provided, all remedies under this Agreement are cumulative and not exclusive. Unless otherwise expressly indicated, "including" (and other variations thereof) means, as applicable, "including but not limited to" and "herein" and "hereunder" are references to this Agreement. This Agreement, including all online terms referenced herein, constitutes the entire agreement between the parties with respect to the subject matter hereof, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior agreements, proposals, discussions, understandings, negotiations or representations between the parties relating to the subject matter of this Agreement, and all



past dealing or industry custom. This Agreement will not be modified or waived, except by a mutual signed writing, provided that Riverbed may update the online terms referenced herein from time to time. If this Agreement is deemed an offer, acceptance is expressly limited to these terms. If there is a mutually signed agreement (not including any purchase order or similar document) between Riverbed and Customer expressly covering the access, license and/or usage of Products, then the express terms of that agreement will govern to the extent such agreement conflicts with the terms of this Agreement. Riverbed may, upon at least two (2) weeks' advance written notice, inspect, or have an accountant or auditor inspect, Customer's books and records relating to this Agreement and Customer's compliance with its terms and conditions, for up to two prior years of records from the date of such audit. Any such audit will be conducted during Customer's normal business hours and in a manner that does not materially interfere with Customer's normal business operations. If any audit reveals that Customer is in breach of this Agreement, then Customer shall (a) reimburse Riverbed for the actual expenses associated with the audit and (b) if applicable, compensate Riverbed (at Riverbed's then-current list price) for any unauthorized use of or access to any Product (e.g., any use by any unauthorized users or use of any unauthorized copies or instances of a Product). From time to time Riverbed may also require Customer to provide written assurances satisfactory to Riverbed to confirm Customer's compliance with the terms and conditions of this Agreement, including all terms and conditions set forth in the Additional Use Rights. The parties acknowledge and agree that this Agreement is subject to the U.S. Electronic Signatures in Global and National Commerce Act, the Singapore Electronic Transactions Act, the U.K. Electronic Communications Act 2000, and any similar law in any other applicable jurisdiction that makes legally effective a contract in electronic form, and authorizes acceptance by means of an electronic signature or process.

**NOTICE: EXCEPT FOR THE LICENSE AND ACCESS RIGHTS GRANTED HEREIN, NO INTELLECTUAL PROPERTY RIGHTS ARE TRANSFERRED. PLEASE CONTACT RIVERBED AT +1 (415) 247-8800 WITH ANY QUESTIONS.**