



Standard Terms and Conditions of Sale and License

1. These terms and conditions ("Agreement") shall apply to the sale or license of Products or Services from Riverbed Technology, Inc. or its affiliate identified on the applicable Order ("Riverbed") to the customer on the applicable Order ("Customer"). This Agreement constitutes the agreement between Riverbed and Customer with respect to such Products and Services, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior discussions, understandings or representations between the parties. This Agreement may not be modified or waived, except by a mutual signed writing, and, 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) expressly covering the sale or license of Products or Services by Riverbed to Customer at the time the order is accepted by Riverbed, however, then the express terms of that agreement will govern. "Products" are Riverbed's currently generally available products, including hardware, software and documentation, listed on Riverbed's then current price list or that are otherwise sold to Customer hereunder. "Services" means Riverbed's currently generally available maintenance and support services and any professional services listed on Riverbed's then current price list or that are otherwise sold to Customer hereunder. "Software" means machine readable software provided by Riverbed, whether incorporated into or provided for use in or with a hardware Product or provided as a Product separate from any hardware (whether initially, as part of maintenance or support or otherwise), and any related documentation.
2. Customer will purchase from Riverbed the Products and/or Services by submitting a written purchase order to Riverbed; such purchase order is subject to acceptance by Riverbed (an "Order"). If Reseller does not customarily use purchase orders to purchase good and services, upon approval by Riverbed, a Riverbed-issued sales quotation signed and submitted by Customer and accepted by Riverbed (the "Quote") may serve as the Order. The terms and conditions of this Agreement will apply to the Order and supersede any different or additional terms on Customer's purchase orders. Purchase orders issued by Reseller to Riverbed are solely for the purpose of requesting delivery dates and quantities, specifying the ship-to and bill-to addresses, and specifying the applicable price for each Product and Service; all other terms on such purchase order shall have no force or effect. The Order is subject to acceptance by Riverbed (which acceptance may be evidenced by Riverbed's shipment of the Order). If the Order exceeds Riverbed's inventory, Riverbed may allocate available inventory in Riverbed's discretion, without liability to Reseller or any third party. For the Order, Products shall be new (other than Products that were previously used in a customer evaluation or replacement Products provided as part of Support or warranty) on original shipment from Riverbed unless otherwise designated by Riverbed at the time of Order or on its then current pricelist (e.g. all Product SKUs designated with a "-E" are refurbished Products). The Products and Services are not for resale.
3. Prices payable by Customer for Products and Services are those set forth in the accepted Order. Customer will be responsible for all taxes, withholding, duties and other governmental assessments (other than Riverbed's franchise taxes or taxes based upon Riverbed's net income), including, without limitation, sales or use tax, VAT or similar taxes, provided that Riverbed will not invoice Customer for taxes to the extent Customer has provided an appropriate resale certificate, exemption documentation or valid VAT identification number that exempts Customer from paying and/or Riverbed from collecting such tax. If Customer is required to pay any withholding taxes on payments to Riverbed, then payments to Riverbed must be increased such that the net payment to Riverbed, after withholding tax, would be the same as if no withholding tax were applicable. Payment shall be made in U.S. dollars. Customer shall pay all amounts invoiced within 30 days from invoice date, unless Riverbed at any time determines that Customer's credit is not satisfactory, in which case payment terms shall be C.O.D. Riverbed shall not invoice for Product or Support before the actual date of shipment of the applicable Products. All sums not paid when due will accrue interest daily at the lesser of an annual rate of eighteen percent (18%) or the highest rate permissible by law on the unpaid balance until paid in full.
4. Riverbed shall mark all Products for shipment to Customer's address set forth on the Order. All Products are delivered F.O.B. Origin per UCC (or FCA per INCOTERMS 2000 for international shipments) Riverbed's applicable warehouse or place of production. Riverbed may select the carrier if Customer does not designate a carrier in writing or if the Customer's designated carrier does not pickup Product at Riverbed's applicable warehouse or place of production at the time it is available for pickup. Customer shall be responsible for all shipping charges. Subject to the terms and conditions of this Agreement, Riverbed shall use its reasonable commercial efforts to fill promptly (by full or partial shipment) Customer's Order, insofar as practical and consistent with Riverbed's then-current lead-time schedule, shipping schedule, access to supplies on acceptable terms and allocation of available Products and capacity among Riverbed customers; each partial shipment shall be deemed a separate sale and may be invoiced upon such shipment. Customer may not decrease, reschedule or cancel any Order.
5. 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 years of prior 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 interfere with Customer's normal business operations.
6. Riverbed warrants to Customer that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Riverbed warrants to Customer that the Products, upon original shipment by Riverbed, will conform in all material respects to the applicable published specifications for such Products for a period of one (1) year with respect to hardware and ninety (90) days with respect to Software from the date of original shipment by Riverbed of the nonconforming Product (but not replacements). Products obtained from Riverbed that do not comply with the warranty and are returned by Customer to Riverbed during the warranty period (and for which a Riverbed RMA has been issued) will be repaired or replaced at Riverbed's option, provided that Customer bears the cost of freight and insurance to the point of repair or return. Riverbed will bear the cost of freight and insurance for return of goods to Customer. If Riverbed cannot, or determines that it is not practical to, repair or replace the returned Product, the price paid by Customer therefor will be credited to Customer. RIVERBED MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS OR ANY SERVICES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. RIVERBED ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS. The above warranty does not extend to any Product that is modified or altered, is not maintained to Riverbed's maintenance recommendations, has its serial number removed or altered or is treated with abuse, negligence or other improper treatment (including, without limitation, use outside the recommended environment). Customer's sole remedy with respect to any nonconformity, deficiency, warranty or defect with respect to the Products and/or Services is as stated above.



7. Riverbed shall hold Customer and its officers, directors, agents and employees harmless from liability resulting from infringement by the Products of any United States patent issued or copyright registered as of the date of this Agreement, provided Riverbed is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise; Riverbed will not be responsible for any settlement it does not approve in writing. The foregoing obligation of Riverbed does not apply with respect to Product or portions or components: (i) not supplied by Riverbed, (ii) made in whole or in part in accordance with Customer specifications or requests, (iii) which are modified after shipment, if the alleged infringement relates to such modification, (iv) combined, processed or used with other products, processes or materials where the alleged infringement relates to such combination, process or use, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where the infringement is incident to use of the Product but does not result primarily from the Product and its intended application. For U.S. Government purposes only, any indemnification mentioned herein shall be valid and enforceable against the U.S. Government so long as consistent with Federal law or regulation.
8. Any Software is not sold, but rather is licensed pursuant to the applicable Riverbed license agreement located at www.riverbed.com/license that governs use of the Software (the "EULA") and this Agreement solely for Customer's internal use in or with that Product strictly in accordance with the accompanying documentation and any other use restrictions applicable for that Product. Such license is non-exclusive, non-transferable, non-sublicensable and does not include the right to (and Customer will not) modify, reverse engineer (except to the extent applicable law prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software, or use the software or Product for the benefit of any third party. If a Product is provided to any unit or agency of the United States Government ("U.S. Government"), the following provisions shall apply: All software and accompanying documentation are deemed to be commercial, including computer databases, related documentation, technical data and manuals as defined in FAR 2.101. Therefore, pursuant to FAR 12.212 and DFARS 227.7202, any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms herein.
9. Customer shall keep confidential and not disclose to any other party or use, except as required by this Agreement, non-public information obtained from Riverbed, including, without limitation, all products, code, inventions (whether patentable or not), algorithms, designs, know-how, ideas, product development plans, information on Riverbed's customer care website, and all customer, business, technical, training and financial information (collectively, "Confidential Information"); provided, however, that Customer shall be not prohibited from disclosing or using information (i) that at the time of disclosure, Customer can document is generally available to the public or becomes publicly available through no act or omission of any party having a confidentiality obligation with respect to such information, (ii) that is or has been disclosed to Customer by a third party who is not under (and to whom such party does not owe) an obligation of confidentiality with respect thereto, or (iii) that is or has been independently developed by Customer without use of the Confidential Information. Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that the Riverbed's remedies at law for a breach by the receiving party of its obligations under this paragraph will be inadequate and that Riverbed will be entitled to equitable relief (including, without limitation, provisional and permanent injunctive relief) in addition to any other remedies.
10. Customer will conduct its business operations in accordance with all applicable U.S. and foreign laws, ordinances, codes and regulations. Customer shall comply with all applicable export laws, restrictions and regulations of any United States, European Union or other foreign agency or authority and agrees not to 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.
11. Subject to Customer's compliance with all terms of this Agreement and annual advance payment of Riverbed's then standard support and maintenance fees for the level of support purchased (i.e., Silver Gold, or Platinum Level), Riverbed will provide its then standard corresponding support and maintenance Services, the current version of which is located at www.riverbed.com/supportservicedescription ("Support Services"). Riverbed will not provide, and Customer will not request, any Support Services for any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Riverbed. Customer will not escalate calls to Riverbed for Support Services nor install updates, upgrades, bug fixes or the like on any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Riverbed. Riverbed's obligations under any Support plan with respect to any Product is subject to annual advance payment of Riverbed's applicable Support fee. The purchase or renewal of Support for any Product purchased by Customer requires the purchase or renewal of Support for all Products purchased by Customer. Riverbed retains ownership of any intellectual property resulting from Services. Customer may renew Support by submitting an Order for renewal of that Support, which shall renew on an annual basis at the rate specified in the initial Order. If, with respect to a particular Product, there is a lapse in Support any subsequent purchase of Support will be deemed purchased retroactive to the later of (x) the date on which any prior Support concluded or (y) the date on which the particular Product was purchased in addition to a twenty percent (20%) charge on the lapsed support period, which amounts will be based on the level (Silver, Gold or Platinum) of Support that Customer requests to purchase for such Products on a go-forward basis. Customer may purchase annual Support for a Product that provides for one (1) to five (5) years of support subject to Riverbed's end of sale policy at www.riverbed.com/supportpolicy. If Customer purchases Support for a Product that provides for more than one year of support, the support period in excess of one year may be cancelled by Customer at any time without cause by providing written notice to Riverbed, and any unused, prepaid amount (reduced by the amount of any additional discount provided because Customer purchased more than one (1) year of Support) will be refunded to Customer within 45 days of Riverbed's receipt of such written notice. For example, if Support is cancelled after one year of a three year period, Riverbed will refund two years of prepaid, unearned support. All obligations of Riverbed to provide support services will be terminated on receipt of the cancellation notice. If applicable, any professional Services provided by Riverbed will be subject to the additional terms located at www.riverbed.com/legal/professionalserviceterms.
12. EXCEPT FOR BODILY INJURY, RIVERBED WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE AMOUNTS PAID TO RIVERBED HEREUNDER DURING THE TWELVE MONTH PERIOD PRIOR



TO THE DATE THE CAUSE OF ACTION AROSE OR (II) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. RIVERBED SHALL HAVE NO LIABILITY 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. THE PRODUCT IS 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.

13. This Agreement is deemed made and performed entirely within California and is governed by California law (without reference to conflicts of laws provisions). If any clause or portion thereof is found to be unenforceable, it will be modified or excised to the minimum extent so that this Agreement shall otherwise remain in full force and effect. Customer's rights and obligations are not assignable or transferable without the prior written consent of Riverbed; Riverbed may assign in whole or in part (except that Riverbed shall obtain the consent of the U.S. Government where the U.S. Government is the Customer hereunder and such consent is required). In the event that Customer allows the Products to be used in a network accessible by third parties, or deploys the Products in a third party network, Customer will indemnify Riverbed from any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses, and liabilities of any type whatsoever that may arise on account of such activities. Customer has not relied on the availability of any future version of a product purchased under this Agreement or any future product in making any purchases under this Agreement. Riverbed and Customer agree that any Order (or portion thereof) shall be deemed separable from any other Order (or portion thereof).