



STANDARD TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE.** Riverbed Technology, Inc. or its subsidiaries ("Riverbed") hereby offers to purchase from the vendor named on the face hereof ("Seller") the products and services described on the face hereof (respectively, "Products" and "Services") subject to these terms and conditions. Acceptance of this offer must be made on its exact terms. These Standard Terms and Conditions of Purchase, together with information contained on the face hereof, and any additions or revisions mutually agreed to in writing by Seller and Riverbed (the "Purchase Order") shall constitute the entire agreement and understanding of Seller and Riverbed with respect to the purchase of Seller's Products or Services, superseding all prior oral or written understandings relating thereto and shall not be modified or interpreted by reference to any prior course of dealing, usage of trade or course of performance. If Seller's order acknowledgement, invoice or any other communication from Seller contains provisions inconsistent with the provisions hereof, this Purchase Order shall prevail and Riverbed hereby notifies Seller of its objection to and rejection of any such terms and conditions stated by Seller, whether or not material, that are in conflict with, inconsistent with, or in addition to those contained in the Purchase Order. Seller's (1) failure to object within 10 days to any terms contained in the Purchase Order or (2) commencement of performance shall constitute Seller's acceptance of all terms and conditions in the Purchase Order. If Seller's acceptance is by commencement of performance, Riverbed reserves the right to treat its offer as having lapsed before acceptance unless Riverbed is notified of such acceptance within a reasonable time.

2. **PRICES.** Unless otherwise expressly approved in writing by Riverbed, prices for all Products and Services are as noted on this Purchase Order, and may not be changed without the prior written consent of Riverbed. Unless otherwise stated on the face hereof or elsewhere herein, all such prices are FOB Riverbed's facility to which Products are to be shipped and are complete. No additional charges of any type shall be added without Riverbed's express written consent. Seller warrants that any prices, rates, discounts and allowances on Products or Services are not less favorable than the lowest price currently extended to any other customer of Seller for the same or like Products or Services in equal or lower quantities. If this Purchase Order is for Services on a time and material basis and no price is prescribed for such Services, the price will be deemed to be the reasonable rate for the Services, which shall not exceed the lowest price currently extended to any other customer for the same or like Services in equal or lower quantities. Seller agrees to reduce prices or increase discounts and allowances, prospectively in the event of any general price reduction or cost reduction and retroactively in the event that more favorable terms have been made available to other customers of Seller during the term of this Purchase Order.

3. **TAXES.** Any properly assessed taxes, duties, or other fee imposed by a governmental authority, on or measured by the transaction between Riverbed and Seller shall be separately stated in each invoice indicating the tax and once paid by Riverbed, no additional tax assessments with respect to such invoiced amounts shall be paid.

4. **TERMS OF PAYMENT.** Unless otherwise stated on the face hereof, Riverbed shall pay all amounts due for Products or Services purchased hereunder within thirty (30) days after (a) Riverbed's receipt of Seller's invoice or (b) if later, Riverbed's acceptance of the Products or Services. No interest charges or other penalties for late payment may be assessed by Seller without the prior written consent of Riverbed. Seller agrees that Riverbed shall not be responsible for paying any invoice for Product or Services purchased hereunder received later than one hundred and twenty (120) days from the date the Product or Service being invoiced was provided to Riverbed. Riverbed may withhold or set off from any amounts otherwise due to Seller, any amounts owed by Seller to Riverbed. However, Riverbed at its option may pay in advance of inspection and acceptance without prejudice to those or any rights hereunder. C.O.D. shipments will not be accepted; items so tendered will be returned at Seller's expense.

5. **SHIPPING AND DELIVERY.** Seller shall be responsible for packing, shipping, and safe delivery of all Products and shall bear all risk of damage or loss until the Products are delivered to, and accepted by, Riverbed. Time is of the essence; delivery must be made in accordance with the schedule set forth in this Purchase Order. In the event of failure to make timely delivery, Riverbed shall have the right, upon written notice to Seller, to cancel this Purchase Order, in its entirety or as to Products or Services not delivered on time. Riverbed shall have no liability for any damage resulting from such cancellation. Riverbed may return or store, at Seller's expense, any Products delivered more than ten (10) days in advance of the delivery date specified for such Products. If accelerated shipping means are required to meet the delivery schedule set forth herein, or to minimize the lateness of delivery, excess shipping charges shall be borne by Seller. Unless otherwise stated on the face hereof, Riverbed reserves the right to refuse delivery in installments, and, if accepted, to defer payment without interest or penalty until shipment is completed.

6. **INSPECTION.** (a) Products and Services are subject to Riverbed's inspection, testing and acceptance at destination. Payment therefor by Riverbed shall not constitute acceptance. Unless otherwise stated herein, title to the

Products shall remain with Seller until acceptance by Riverbed hereunder.

(b) Riverbed shall have a commercially reasonable time after delivery of the Products or provision of the Services to inspect and conduct commercially reasonable acceptance tests in respect of the Products and Services. Acceptance of any installment shall not be deemed acceptance of Riverbed's entire order or of any subsequent installment. Any acceptance of Products or Services received pursuant to this Purchase Order expressly made or implied from Riverbed's conduct is conditioned upon Seller's cure of any nonconformity, whether or not such nonconformity substantially impairs the value of such Products or Services.

(c) If any Products or Services fail to conform to the terms hereof, Riverbed may reject such Products or Services without affecting Seller's obligations under this Purchase Order. FAILURE OF RIVERBED TO REJECT ANY PRODUCTS OR SERVICES SHALL NOT CONSTITUTE A WAIVER OF ITS LEGAL RIGHTS (INCLUDING RIGHT TO REVOKE ACCEPTANCE) IF RIVERBED SUBSEQUENTLY DISCOVERS SUCH PRODUCTS OR SERVICES ARE NONCONFORMING. ANY PREVIOUS ACCEPTANCE BY RIVERBED OF SIMILAR PRODUCTS OR SERVICES SHALL NOT CONSTITUTE A WAIVER OR DEFENSE HEREUNDER.

(d) Upon rejection of any Products hereunder, Riverbed may return such Products to Seller, at Seller's risk and expense, and require Seller to promptly replace the nonconforming Products. Seller may not charge any restocking, handling, or other fees and charges in connection with rejected Products. Upon rejection of any Services hereunder, Riverbed may require Seller to promptly reperform such Services at no additional charge to Riverbed.

7. **SERVICES.** If the Purchase Order covers the performance of Services for Riverbed or involves operations by Seller on the premises of Riverbed or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and except to the extent that such injury is due solely and directly to Riverbed's or its customer's negligence, as the case may be, shall indemnify and protect Riverbed (and its employees, subsidiaries, affiliates, successors, customers and agents) against all liability, claims or demands for injuries or damages to any person or property growing out of the performance of the Purchase Order including the cost of defending against any such claim.

8. **WARRANTIES.** Seller warrants all Products and Services furnished under this Purchase Order: (a) to be free from defects in design, materials and workmanship; (b) to be of merchantable quality; (c) to conform strictly, to any Specifications included or referenced herein; and (d) to be fit and sufficient for their intended purposes. Seller further warrants that: (i) it has and is conveying to Riverbed, clear and marketable title to all Products, or deliverables resulting from Services, provided hereunder, free from all liens and encumbrances; and (ii) all Products and Services provided hereunder comply with all applicable laws, rules and regulations and do not violate or infringe upon any third party intellectual property or other rights or interest of any nature whatsoever. In the case of the performance of Services, Seller warrants that it shall perform the Services in a professional manner in accordance with applicable industry standards except to the extent a higher standard is specified in which case the higher standard shall apply. Such warranties shall survive any inspection, acceptance, delivery, payment for the Products and Services and termination of the Purchase Order and shall inure to the benefit of Riverbed, its successors, assigns and customers. Nothing herein shall limit any other warranties, express or implied, available to Riverbed under applicable law. For purposes hereof, "Specifications" means any and all specifications, drawings, samples, models, diagrams, bulletins, engineering sheets or other materials relating to the Products or Services provided by Seller to Riverbed. Products and Services corrected or replaced by Seller shall be subject to all of the provisions of this Purchase Order in the manner and to the same extent as Products and Services originally furnished hereunder. Riverbed's warranty rights hereunder are in addition to, but shall not be limited by, any standard warranties offered by Seller.

9. **LIMITATION OF LIABILITY.** IN NO EVENT WHATSOEVER SHALL RIVERBED HAVE ANY LIABILITY TO SELLER ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS OR SERVICES PURCHASED HEREUNDER, THE TRANSACTIONS CONTEMPLATED HEREBY, OR SELLER'S OR RIVERBED'S CONDUCT OR ACTIONS IN RELATION TO ANY OF THE SAME OR TO EACH OTHER, IN AN AMOUNT IN EXCESS OF, AND RIVERBED'S LIABILITY SHALL BE STRICTLY LIMITED TO, THE PURCHASE PRICE FOR THE PRODUCTS OR SERVICES WHICH GIVE RISE TO RIVERBED'S LIABILITY.

10. **INDEMNIFICATION.** Seller agrees to indemnify, hold harmless and defend Riverbed (and its employees, subsidiaries, affiliates, successors and agents) from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and attorneys' fees) which relate to or arise out of (a) Seller's design, manufacture, assembly, use, handling, sale or distribution of the Products or Services sold hereunder; (b) the performance of this Purchase Order by Seller, its employees or agents, whether on or off Seller's premises; (c) Seller's breach of any representation, warranty or obligation hereunder; (d) Seller's actual or threatened violation of any law, rule or regulation of any governmental authority or agency (including,



but not limited to, any law relating to contamination by, or the actual or threatened release of, any hazardous or toxic substance, waste or pollutant); or (e) any act, omission or negligence of Seller with respect to the performance of its obligations to any third party. This indemnity will survive Riverbed's acceptance of and payment for the Products and Services hereunder and any termination of this Purchase Order. This indemnity will not be limited in any manner whatsoever by insurance coverage maintained by Seller.

11. **WAIVER.** Riverbed shall not be deemed to have waived any provision hereof, or any breach by Seller of any provision hereof, unless such waiver is specifically set forth in writing and executed by an authorized officer of Riverbed. No waiver by Riverbed of any provision hereof or any breach by Seller hereunder shall constitute a waiver of such provision on any other occasion or a waiver of any other breach by Seller.

12. **GOVERNING LAW; VENUE.** This Purchase Order and the transactions contemplated hereby shall be governed by, and construed and enforced in accordance with, the laws of the State of California without regard to its conflicts of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this Agreement or any purchase or sale made hereunder. Any legal action or proceeding relating to this Purchase Order shall be instituted in a state or federal court in San Francisco County, California, and Riverbed and Seller agree to submit to the jurisdiction of, and agree that venue is proper in, said courts.

13. **SEVERABILITY.** The invalidity, illegality or unenforceability, in whole or in part, of any provision, term or condition hereof shall not affect the validity and enforceability of the remainder of such provision, term or condition or of any other provision, term or condition, and, to the extent possible, such invalid, illegal or unenforceable provision shall be replaced by a provision most nearly reflecting the fundamental objectives of the original provision.

14. **AMENDMENTS.** This Purchase Order may not be amended except by written agreement of Seller and Riverbed expressly referring hereto.

15. **ASSIGNMENT.** Seller's rights and obligations hereunder may not be assigned or otherwise transferred without Riverbed's express prior written permission.

16. **CANCELLATION.** In the event of Seller's breach of any provision hereof, Riverbed shall have the right to cancel this Purchase Order at any time without liability. Riverbed shall also have the right to cancel all or part of this Purchase Order, without cause, at any time by written notice, and Riverbed shall pay reasonable cancellation costs in accordance with industry practice, provided that in no event shall the total amount payable by Riverbed exceed the lesser of the price specified in the Purchase Order and demonstrable costs reasonably incurred prior to cancellation.

17. **PROPRIETARY INFORMATION.** All information obtained by Seller from Riverbed or learned by Seller in connection with this Purchase Order or performance hereunder or relating in any way to Riverbed's business shall be received in confidence and remain the property of Riverbed, and shall be used and disclosed by Seller only to the extent necessary for the performance hereunder.

18. **SECURITY INTEREST OF RIVERBED.** Seller grants to Riverbed a security interest, to the extent any advance payment is made by Riverbed, in any Products made or purchased for this Purchase Order and agrees, promptly upon request of Riverbed, to sign and deliver to Riverbed appropriate UCC forms evidencing such security interest.

19. **PROPERTY SUPPLIED BY RIVERBED.** Seller will keep all property furnished by Riverbed segregated and clearly marked, and Seller will maintain a complete inventory thereof. Seller assumes all risk of loss, destruction or damage to such property while in Seller's custody or control, and agrees to immediately notify Riverbed of any loss, destruction or damage. Upon termination or completion of this Purchase Order, Seller will deliver such property as directed by Riverbed, in good condition subject to ordinary wear and tear.

20. **REMEDIES.** Any failure of Seller to comply with this Purchase Order whether or not material, shall constitute a breach hereof. In the event of any such breach, Riverbed reserves the following rights against Seller: (a) to cancel and reject as much of Seller's performance that is nonconforming and executory, or at Riverbed's option, to cancel the whole order; and recover so much of the price as has been paid with respect to such cancellation or rejection; (b) to make covering purchases at Riverbed's expense of any nonconforming Products or Services and recover the cost thereof; (c) to recover all incidental and consequential damages; and (d) to recover from Seller the amount of any damage, injury or loss to Riverbed resulting from any breach of warranty as to Products or Services ordered hereunder, any breach of the price or delivery terms hereof, or any other breach of any other terms of this Purchase Order. Products that do not conform to the requirements of this Purchase Order may be returned to Seller at Seller's expense for replacement, repair or credit at Riverbed's option, or may be held for Riverbed's instructions at Riverbed's risk. Upon rejection or revocation of acceptance, Riverbed shall have a security interest in Seller's Products in his possession or control for any payments made on their price, and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody, and may hold and resell such Products, and such resale shall be without prejudice to any other remedies or rights of Riverbed against Seller. The remedies herein specifically reserved shall be cumulative and in addition to any other remedies provided by law or equity.

21. **RELATIONSHIP OF PARTIES.** Notwithstanding any provision hereof, for all purposes of this Purchase Order each party shall be and act as an

independent contractor and not as a partner, employee, joint venturer, or agent of the other and shall not bind nor attempt to bind the other to any contract. Seller is acting as an independent contractor and Seller is solely responsible for all taxes, withholdings, and other statutory or contractual obligations properly attributable to Seller, including, but not limited to, appropriate Workers' Compensation Insurance; and Seller agrees to defend, indemnify and hold Riverbed harmless from any and all claims, damages, liability, attorneys' fees and expenses on account of an alleged failure by Seller to satisfy any such obligations.

22. **INSURANCE.** Riverbed does not provide theft, fire, or any type of insurance on Seller's property or equipment. Seller acknowledges that it is Seller's sole responsibility to insure Seller's property or equipment.

23. **GOVERNMENT CONTRACT PROVISIONS.** If Seller's products and services are utilized or resold by Riverbed under or in connection with a the United States Government Contract or a subcontract or purchase order issued to Riverbed by a third party for ultimate delivery of products or services to the United States Government, then, except as otherwise provided in the Government Contract or Government Subcontract in question, except as otherwise required by the express terms of the clause in question, this Purchase Order shall be deemed to include each of the following provisions of the Government Contract or Government Subcontract, which clauses are hereby incorporated by reference as though fully set forth herein: FARS 52.203-7, .219-9, .219-16, .222-21, .222-25, .222-26, .222-35, .222-36, .222-37, .225-5, .225-13, .227-19, and .249-2; DFARS 252.219-7003 and 252.225-7021; 41 CFR 60-741.5, 41 CFR 60-741.5, and 41 CFR 61-250.1. Copies of the foregoing clauses are available at www.arnet.gov/far. Any and all clauses not listed in this contract or order but that Riverbed is required by law or by the terms of a Government Contract or Government Subcontract to include as a part of Seller's contract or order are also hereby incorporated by reference as though fully set forth. As between Riverbed and Seller, wherever appearing in the clauses referenced above that are incorporated by reference in this contract or order, the terms "Government," "Contracting Officer," and similar terms shall include both the United States Government, Riverbed's Customer, and Riverbed, the intent being that Riverbed shall have the same rights with respect to Seller that the Government or Riverbed's Customer has against Riverbed under and by reason of the Government Contract or Government Subcontract. To the same extent, as between Riverbed and Seller, wherever appearing in such clauses the term "Contractor" shall refer to Seller. The substitution of terms provided for in the preceding sentences of this paragraph shall not apply, however, where the effect would result be contrary to the parties' intent that Riverbed shall have the same rights with respect to Seller that the Government or Riverbed's Customer has against Riverbed under and by reason of the Government Contract or Government Subcontract.