



STANDARD TERMS AND CONDITIONS OF SALE AND LICENSE

These Standard Terms and Conditions of Sale and License (“**Agreement**”) are effective as of the date that Riverbed accepts the Order (“**Effective Date**”) and are between Riverbed Technology, Inc. (or if Customer is purchasing directly from an affiliate of Riverbed Technology, Inc., the affiliate identified on the applicable Order) (“**Riverbed**”) and the customer identified on the applicable Order (“**Customer**”).

1. Definitions.

(a) “**EULA**” means the applicable Riverbed license agreement that accompanies a Product and is also located at www.riverbed.com/license, and which governs use of the Product.

(b) “**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 Product that enable such Product to be used in a hosted environment.

(c) “**Products**” means Riverbed’s generally available products, including hardware, software, and any related Riverbed documentation provided therewith by Riverbed, that are listed on Riverbed’s or one of its affiliate’s then-current price list or that are otherwise made available by Riverbed.

(d) “**Services**” means, collectively, Hosting Services and Support.

(e) “**Support**” means Riverbed’s then-current generally available end user maintenance and support services as described at www.riverbed.com/supportservicesdescription.

2. **Sale and Purchase.** The Products and/or Services to be sold or licensed to Customer under this Agreement are identified on the Riverbed-issued valid sales quotation that incorporates this Agreement by reference (“**Quote**”). Customer may purchase from Riverbed the Products and/or Services set forth on the Quote by submitting a written purchase order to Riverbed; such purchase order is subject to acceptance by Riverbed (“**Order**”). If Customer does not customarily use purchase orders to purchase goods and services, upon approval by Riverbed, the Customer-signed Quote will 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 order. Any purchase order issued by Customer to Riverbed is solely for the purpose of requesting delivery dates and quantities, specifying the ship-to and bill-to addresses, specifying the identity of Products and Services purchased along with the number of licenses issued and the term of any applicable license or subscription, and specifying the applicable price for each Product and Service; all other terms on such purchase order will have no force or effect. The Order is subject to acceptance by Riverbed (which acceptance may be evidenced by Riverbed’s shipment of Products or issuance by Riverbed of a license key, as applicable, under the Order). If the Order for Products exceeds Riverbed’s inventory, Riverbed may allocate available inventory in Riverbed’s discretion, without liability to Customer or any third party. Customer shall not resell any Products or Services.

3. **Price and Payment.** Customer shall pay to Riverbed the prices for Products and Services set forth in the accepted Order. Customer is 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 goods and services, sales or use tax, VAT or similar taxes, provided that Riverbed shall 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 Customer shall increase its payments to Riverbed such that the net payment to Riverbed, after withholding tax, would be the same as if no withholding tax were applicable. Customer shall make all payments in U.S. dollars. Customer shall pay all amounts invoiced within 30 days after the invoice date, unless Riverbed at any time determines that Customer’s credit is not satisfactory, in which case payment terms will be C.O.D. Riverbed shall not invoice for any Products or Support before the actual date of shipment or issuance of a license key, as applicable, 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. **Delivery Terms.** Riverbed shall mark all hardware Products for shipment to Customer’s address set forth on the Order. All hardware Products are delivered F.O.B. Origin per UCC (or FCA per INCOTERMS 2010 for international shipments) Riverbed’s applicable warehouse or place of production. For clarity, title to hardware Products (other than any software included therein) passes to Customer at the same time risk of loss transfers to Customer in accordance with the foregoing. Riverbed may select the carrier if Customer does not designate a carrier in writing or if the Customer’s designated carrier does not pick up Product at Riverbed’s applicable warehouse or place of production at the time it is available for pick up. Customer is responsible for and shall pay all shipping charges. Products that consist only of software (without associated hardware) and/or SteelHead SaaS will be delivered by issuing a key to Customer at the email address provided by Customer. Subject to the terms and conditions of this Agreement, Riverbed shall use its reasonable commercial efforts to fill promptly (by full or partial shipment or issuance of a license key, as applicable) Customer’s Order for Products that has been accepted by Riverbed, 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 or issuance of a license key, as applicable, will be deemed a separate sale and may be invoiced upon such shipment or issuance. Customer shall not decrease, reschedule or cancel the Order.

5. Warranties and Disclaimer.

(a) Riverbed warrants to Customer that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Any warranties for Products are as set forth in the EULA. Customer’s sole and exclusive remedy, and Riverbed’s sole and exclusive obligation, with respect to any failure to provide the Services in accordance with the foregoing warranty is to re-perform the applicable Service. Customer’s sole and exclusive remedy, and Riverbed’s sole and exclusive obligation, with respect to any nonconformity, deficiency, warranty or defect with respect to any Product is as set forth in the EULA. For the Order, Products will 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 price list (e.g. all Product SKUs designated with a “-E” are refurbished Products).

(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, SECURITY, RELIABILITY AND NONINFRINGEMENT. RIVERBED ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS OR THAT ANY PRODUCT OR SERVICE WILL MEET CUSTOMER’S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.



6. **Use of Riverbed Products.** All Products are subject to, and Customer shall comply with, the terms and conditions of the EULA. No licenses or usage rights for any Products are granted under this Agreement.

7. **Support Services.** Subject to Customer's compliance with all terms of this Agreement and annual advance payment of Riverbed's then-standard fees for the level of Support purchased, Riverbed shall use reasonable commercial efforts to provide Support to Customer. Riverbed is not obligated to provide, and Customer shall not request, any Support for any Product with respect to which a Support contract is not then in effect or with respect to which Support fees have not been timely and fully paid to Riverbed. Customer shall not escalate any calls to Riverbed for Support nor install any updates, upgrades, bug fixes or the like for any Product with respect to which a Support contract is not then in effect or 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 are subject to Customer's annual advance payment of Riverbed's applicable Support fee. Riverbed may elect to cancel a Support plan for which full payment has not been received. Customer acknowledges that Riverbed has the right to verify Customer's entitlement to receipt of Support, and that Customer is entitled to receive Support only on Products for which Riverbed has been paid the applicable Support fees. 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, and Riverbed is not obligated to provide Support to Customer if the foregoing condition is not met. Riverbed retains ownership of any intellectual property resulting from performance of Services. If, with respect to a particular Product, there is a lapse in Support, (a) any subsequent purchase of Support will be deemed purchased retroactive to the later of (i) the date on which any prior Support period concluded or (ii) the date on which the particular Product was purchased, and (b) Customer shall pay all applicable Support fees for such lapsed period plus an additional twenty percent (20%) charge on the applicable Support fees for the lapsed Support period, which amounts will be based on the level of Support that Customer requests to purchase for such Products on a go-forward basis. Riverbed reserves the right to discontinue the manufacture or sale of, or otherwise render or treat as obsolete, any Product, subject to Riverbed's end of sale / end of support policy at www.riverbed.com/supportpolicy. If Customer purchases any supplemental support services, including Focused Support Services and/or Riverbed Resident Support Services, the terms of this Agreement do not apply to such services and the terms set forth at www.riverbed.com/proactivesupportservices will apply to such purchase.

8. **Hosting Services.** If Customer purchases any Hosting Services, such Hosting Services are subject to the applicable terms and conditions set forth in the EULA.

9. **Professional Services.** If Customer purchases any training, consulting, installation and/or other professional services, the terms of this Agreement do not apply to such services and the terms set forth at www.riverbed.com/termsandconditions/professionalservices will apply to such purchase.

10. **Confidentiality.** Each party (the "**Receiving Party**") agrees that any nonpublic information, software, inventions (whether patentable or not), algorithms, designs, know-how, ideas, product development plans, pricing and discounts, and all customer, business, technical, training and financial information (collectively, "**Confidential Information**") it obtains from the other (the "**Disclosing Party**") are the confidential property of the Disclosing Party and its suppliers. Without limiting the foregoing, the Products (including their design and structure) and all information on Riverbed's customer care website constitute trade secrets and/or Confidential Information of Riverbed or its licensors. Except as expressly and unambiguously allowed herein, the Receiving Party will hold the Disclosing Party's Confidential Information in confidence using the same degree (but no less than a reasonable degree) of care and protection that it uses to protect its own Confidential Information of a similar nature and not use or disclose any Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to those of its employees and contractors with a need to know such Confidential Information and who have signed a written agreement with nonuse and nondisclosure provisions at least as protective of such Confidential Information as the terms of this Agreement. Confidential Information does not include any information that (a) was publicly known at the time of the Disclosing Party's communication thereof to the Receiving Party or becomes publicly known thereafter through no fault of the Receiving Party, (b) was in the Receiving Party's possession free of any obligation of confidentiality at the time of the Disclosing Party's communication thereof to the Receiving Party, (c) is rightfully obtained by the Receiving Party free of any obligation of confidentiality from a third party authorized to make such disclosure without restriction, or (d) is identified by the Disclosing Party as no longer proprietary or confidential. The Receiving Party may disclose Confidential Information to the minimum extent disclosure is required by court order or as otherwise required by law, on condition that (i) notice of such requirement for such disclosure is given to the Disclosing Party prior to making any such disclosure (if permitted under applicable law), and (ii) the Receiving Party ensures that any Confidential Information disclosed under this provision will still be afforded the protection of this Agreement to the extent it does not become publicly available as a result of such disclosure. Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that the Disclosing Party's remedies at law for a breach by the Receiving Party of its obligations under this Section will be inadequate and that the Disclosing Party will be entitled to equitable relief (including provisional and permanent injunctive relief) in addition to any other remedies. Without limiting the foregoing, Customer shall not provide the Products or disclose any Riverbed Confidential Information, Riverbed documentation or any information regarding any Products to any Riverbed competitors. Customer shall not, without Riverbed's prior written consent, publish or provide to any third party results of any benchmark or comparison tests of any Products. Upon termination or expiration of this Agreement, the Receiving Party shall return or destroy all Confidential Information of the Disclosing Party in its possession. The obligations set forth in this Section will survive any termination or expiration of this Agreement.

11. **Limited 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 FROM CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. 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.



12. **Indemnification.** Riverbed shall defend any third party action, suit or proceeding brought against Customer alleging that the Products infringe any of such third party's patents or copyrights that are registered in the United States as of the Effective Date (each, a "Claim"), and shall indemnify Customer for any losses, damages, costs, expenses and judgments resulting from a Claim that are agreed to by Riverbed in a settlement or that are finally awarded against Customer by a court or a governmental entity with competent jurisdiction. The foregoing obligations are expressly conditioned on Customer promptly notifying Riverbed of any and all threats, claims and proceedings related to a Claim and providing Riverbed with reasonable assistance and the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise of such Claim. Riverbed is not responsible for any settlement it does not approve in writing. The foregoing obligations of Riverbed do not apply with respect to any Product or any portion or component thereof: (a) that is not supplied by Riverbed, (b) that is made in whole or in part in accordance with Customer specifications or requests, (c) that is modified, including any modification made using any programming capabilities or scripting languages that are included in or with a Product or that are otherwise made available for a Product, if the alleged infringement relates to such modification, (d) that is combined, processed, or used with other products, technologies, processes or materials, if the alleged infringement relates to such combination, process or use, (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (f) where Customer's use is not strictly in accordance with this Agreement and the EULA, or (g) where the alleged infringement relates to a patent that is deemed essential or required for any industry standard or that claims a method of conducting business. In addition, Riverbed, at its sole expense and option, may (i) procure for Customer the right to continue to use the applicable Product, (ii) replace the applicable Product with a noninfringing alternative, (iii) modify the applicable Product to make it noninfringing, or (iv) refund a pro rata portion of the amount received from or on behalf of Customer for the applicable Product depreciated on a straight line basis over a five (5) year period, provided that Customer ceases all use of such Product and, at Riverbed's option, returns the Product to Riverbed. This Section states Riverbed's sole and exclusive obligation, and Customer's sole and exclusive remedy, to the maximum extent permitted under applicable law, for any third party claims of infringement.

13. **Compliance with Laws and Export Control.** Customer shall conduct its business operations in accordance with all applicable U.S., European Union, Singapore and other foreign laws, ordinances, codes and regulations. Without limiting the foregoing, 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.

14. **General.**

(a) All notices under this Agreement must be in writing and will be deemed given (i) when personally delivered, (ii) when sent by confirmed fax, (iii) one day after being sent by overnight courier, or (iv) three days after being sent by prepaid certified or registered U.S. (if applicable) or express mail. 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.

(b) 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 and/or the Order, or delegate any of its obligations hereunder, 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).

(c) 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.

(d) Riverbed and Customer agree that any Order (or portion thereof) will be deemed separable from any other Order (or portion thereof). There are no third party beneficiaries of this Agreement.

(e) 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 the EULA and 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.

(f) 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. Notwithstanding anything to the contrary, 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, then the express terms of that agreement will govern. Riverbed may include Customer's name as part of general customer lists.

(g) Execution and delivery of this Agreement may be evidenced by facsimile or other electronic transmission. 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.

(h) This Agreement is governed by and construed in accordance with the laws of the State of California, USA (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.