



## RIVERBED CLOUD SERVICES AGREEMENT

IMPORTANT: PLEASE READ BEFORE INSTALLATION OR USE OF ANY CLOUD SERVICES (AS DEFINED BELOW). THIS RIVERBED CLOUD SERVICES 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 OR USER OF THE CLOUD SERVICES ("**CUSTOMER**"). BY PURCHASING, ACCESSING OR IN ANY WAY USING THE CLOUD SERVICES, 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 ACCESS OR USE ANY OF THE CLOUD SERVICES.

### 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) "**Cloud Services**" means, collectively, any (i) SaaS Services or (ii) Software licensed with associated Hosting Services.
- (c) "**Customer Data**" means all information and data provided by or on behalf of the Customer to Riverbed as part of the Cloud Services.
- (d) "**Documentation**" means the then-current written and/or electronic end user or technical documentation pertaining to the applicable Cloud Service that is provided by Riverbed together with the delivery of the applicable Cloud Service or otherwise made available by Riverbed.
- (e) "**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.
- (f) "**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.
- (g) "**SaaS Services**" means the Riverbed cloud and/or software-as-a-service (SaaS) offerings as described in the Additional Use Rights.
- (h) "**SLA**" means each of the then-current service level agreements as described at [www.riverbed.com/service-level-agreements](http://www.riverbed.com/service-level-agreements).
- (i) "**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 Riverbed 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.
- (j) "**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.
- (k) "**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).
- (l) "**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.
- (m) "**User**" means an individual who is authorized by Customer to use the Cloud Services for benefit of Customer.

### 2. RIVERBED'S RESPONSIBILITIES.

- (a) **Provision of Cloud Services.** Riverbed shall provide the Cloud Services to Customer in accordance with the applicable SLA (if any); otherwise, Riverbed shall use commercially reasonable efforts to make the Cloud Services 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 Cloud Service, except for (i) planned downtime (of which Riverbed shall give advance electronic notice) and emergency downtime; and (ii) any unavailability caused by circumstances beyond Riverbed's reasonable control, including, for example, an act of God, an act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Riverbed employees), Internet service provider failure or delay, third party application, or denial of service attack. The fees for SaaS Services include Support for the duration of the applicable term or subscription period purchased by Customer.
- (b) **Updates to the Cloud Services.** Riverbed's updates and enhancements to the Cloud Services will not materially decrease the overall functionality of such Cloud Service during the applicable term or subscription period purchased by Customer for such Cloud Service. From time to time, Riverbed performs scheduled maintenance during planned downtime to update the Cloud Services. Customer acknowledges that Riverbed may, in certain situations, need to perform emergency maintenance of a Cloud Service without providing advance notice.



### 3. USE OF THE CLOUD SERVICES.

(a) **Acceptable Use.** 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 Cloud Services in accordance with this Agreement, (b) access, use, and reasonably reproduce the Documentation, and (c) exercise any other rights applicable to the Cloud Services as expressly set forth in the Additional Use 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 Cloud Service, 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 Cloud Service to which such terms pertain. Without granting any additional licenses or usage rights hereunder, Customer may authorize its contractors and outsourcers to access or use the Cloud Services 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 Cloud Services 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.

(b) **Customer's Responsibilities.** Customer shall be responsible for (i) Users' compliance with this Agreement, (ii) the accuracy, quality and legality of Customer Data and the means by which Customer acquires Customer Data, including informing Users of any Customer policies and practices that are relevant to their use of the Cloud Service, and (iii) using commercially reasonable efforts to prevent unauthorized access to or use of the Cloud Services, and notifying Riverbed promptly of any such unauthorized access or use.

(c) **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 Cloud Service, (b) disassemble, decompile or reverse engineer any of the Cloud Services, or otherwise attempt to discover any source code, structure, algorithms, sequence, organization or ideas underlying any of the Cloud Services (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited), (c) sell or resell any Cloud Services, (d) sublicense, rent, lease, use for timesharing or service bureau purposes for third parties or otherwise provide temporary access to any Cloud Service or use any Cloud Service for the benefit of any third party, (e) attempt to gain unauthorized access to the Cloud Services or their related systems or networks, (f) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities relating to any Cloud Service, (g) interfere with or disrupt the integrity or performance of the Cloud Services or third-party data contained therein, or (h) access or use any Cloud Service for purposes of designing or developing a competing product or service. Any action of Customer in contravention of this Section 3 may result in the suspension of the Cloud Services and/or the termination of this Agreement, including the license grant for any Software provided to Customer in connection with such Cloud Services.

(d) **Usage Metrics.** Cloud Services are subject to usage metrics as set forth in the applicable ordering documentation received by Riverbed, the Cloud Service description on Riverbed's then-current price list, or the Additional Use Rights with respect to a particular Cloud Service.

4. **HOSTING SERVICES.** If Customer is purchasing any Hosting Services for any Software, Customer may access the applicable Software in the applicable hosted environment only while such Software has an active Hosting Service and Customer has a valid license for such Software. 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 Perpetually Licensed or Term Licensed Product during the term of the Hosting Services; if Customer's Support for the applicable Perpetually Licensed or Term Licensed 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 Software and any associated data in the applicable hosted 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 Software in accordance with the EULA for the remainder of the applicable license term (if any).

5. **DATA PROTECTION AND PRIVACY.** Riverbed shall process Customer Data in accordance with this Agreement, Riverbed's then-current privacy policy (available at [www.riverbed.com/privacypolicy](http://www.riverbed.com/privacypolicy)), and the applicable Cloud Service Documentation. Riverbed shall maintain administrative, physical and technical safeguards consistent with industry standards and the Documentation, which are designed to provide security, confidentiality and integrity of the Customer Data processed by Riverbed. To the extent that Riverbed processes any Personal Data (as defined in the DPA) contained in Customer Data, on Customer's behalf, in the provision of the Cloud Services, the terms of the data processing addendum at [www.riverbed.com/data-processing-addendum](http://www.riverbed.com/data-processing-addendum) ("DPA"), as may be updated by Riverbed from time to time, shall apply.

### 6. PROPRIETARY RIGHTS AND SOFTWARE LICENSING.

(a) **Reservation of Rights.** Regardless of any references to any sale or purchase in this Agreement, all Cloud Services are made available to Customer by Riverbed for a subscription term, and not sold. As between the parties, all ownership rights with respect to the intellectual property rights in and to the Cloud Services, and any copies or portions thereof, remain in Riverbed and its suppliers and licensors. The Cloud Services 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.

(b) **License to Host Customer Data.** Customer grants Riverbed, its affiliates and applicable service providers a worldwide, limited-term license to host, copy, transmit and display Customer Data as necessary for Riverbed to provide the Cloud Services in accordance with this Agreement and the applicable Documentation. Subject to the limited licenses granted herein, Riverbed acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data. Customer agrees that Riverbed may process and collect statistical data derived from Customer Data for purposes of enhancing, developing, marketing and/or promoting Riverbed products and services, provided that such statistical data is aggregated and/or de-identified such that it cannot reasonably be used to identify an individual or entity.

(c) **License to Use Feedback.** Customer grants to Riverbed and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Riverbed and/or its Affiliates' services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or its Users relating to the operation of the Cloud Services.



(d) **Software License.** For Cloud Services that include a separate Software SKU, subject to the terms and conditions of this Agreement and provided that Customer has paid the applicable fees, Riverbed grants Customer:

(i) **Perpetually Licensed Products:** a perpetual, limited, personal, non-sublicensable, non-transferable (except as expressly provided in Section 13), nonexclusive license to: (a) install, access, and use the Perpetually Licensed Product (in object code format only), and (b) exercise any other rights applicable to the Perpetually Licensed Product as expressly set forth in the Additional Use Rights.

(ii) **Subscription Products and Term Licensed Products:** a limited, personal, non-sublicensable, non-transferable (except as expressly provided in Section 13), 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), and (b) 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.

7. **OTHER RIVERBED PRODUCTS.** If Customer purchases, downloads, installs or in any way uses any Software (without associated Hosting Services) and/or any hardware or equipment on Riverbed's or one of its affiliate's then-current price list or otherwise made available by Riverbed ("Hardware"), then the terms of this Agreement do not apply to such Software and/or Hardware and the terms of Riverbed's End User License Agreement and Product Warranty Statement set forth at [www.riverbed.com/license](http://www.riverbed.com/license) ("EULA"), as may be updated by Riverbed from time to time, shall apply. If Customer purchases, downloads, installs or in any way uses any Support, Supplemental Support Services or Professional Services (as defined in the Riverbed Services Terms), the terms of this Agreement do not apply to such services and the terms set forth at [www.riverbed.com/serviceterms](http://www.riverbed.com/serviceterms) ("Riverbed Services Terms"), as may be updated by Riverbed from time to time, shall apply.

8. **STANDARD WARRANTY; WARRANTY DISCLAIMER.**

(a) Riverbed warrants to Customer that during the applicable subscription term, the Cloud Services will conform in all material respects to the applicable published specifications for such Cloud Services. The foregoing warranty does not extend to any Cloud Service that is modified or altered or 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 warranty will be, at Riverbed's option, the repair or replacement of or (at Riverbed's option if repair or replacement is impractical) refund of the fees received by Riverbed for the period in which the Cloud Service did not materially conform and for which full documentation and proof of non-conformity is provided to Riverbed. Such refund will be paid to Customer or the Authorized Channel Partner making the warranty claim. Riverbed is not responsible for any difference between the amount paid to Riverbed for the non-conforming Cloud Service and the amount paid by Customer for such non-conforming Cloud Service.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, RIVERBED PROVIDES THE CLOUD 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 CLOUD SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

9. **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) 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 CLOUD 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 CLOUD 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 CLOUD SERVICES ARE NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE SERVICES 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. THIS SECTION DOES NOT LIMIT LIABILITY FOR BODILY INJURY OF A PERSON.

10. **TERMINATION.** This Agreement will continue in effect for the duration of the applicable term purchased by Customer with respect to Cloud 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 rights granted hereunder. For the avoidance of doubt, any Product licenses provided to Customer by Riverbed will survive any termination of this Agreement in accordance with the terms of such licenses. Upon request by Customer within thirty (30) days after the effective date of termination or expiration of this Agreement, Riverbed will for a period of no longer than sixty (60) days make Customer Data available to Customer for export or download as provided in the Documentation. Sections 1, 3, 5, 6, and 8 through 13 will survive any termination of this Agreement. Riverbed reserves the right to temporarily suspend or permanently terminate use of or access to instances of Cloud Services 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 Cloud Services from Riverbed. Customer is not authorized to terminate any Cloud Service or any Term Licensed Product and/or Subscription Product licenses (if applicable) prior to the end of the purchased term unless otherwise expressly provided in the Additional Use Rights or otherwise agreed in writing by Riverbed.

11. **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 Cloud Service, 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 Cloud Service 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 Cloud Service, 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.

12. **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 Cloud Services 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 Cloud Services qualify as "commercial items" under FAR § 2.101 and all Cloud Services are developed exclusively at private expense. The Cloud Services are (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 Cloud Service 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.

13. **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 and/or usage of Cloud Services, 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 Cloud Service (e.g., any use by any unauthorized Users). 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.