



RIVERBED EVALUATION AGREEMENT

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

1. DEFINITIONS.

- (a) "**Cloud Services**" means, collectively, any SaaS Services or Hosting Services.
- (b) "**Documentation**" means the then-current written and/or electronic end user or technical documentation pertaining to the applicable Evaluation Product that is provided by Riverbed together with the delivery of the applicable Evaluation Product or otherwise made available by Riverbed.
- (c) "**Evaluation Confirmation**" means the Riverbed evaluation quotes or confirmations provided to Company from time to time by Riverbed.
- (d) "**Evaluation Products**" means, the Riverbed products, listed on the Evaluation Confirmation that are provided to Company for evaluation hereunder, including, the Hardware, Software, Cloud Services and all Documentation associated therewith.
- (e) "**Evaluation Term**" means the period of time commencing on the date of original shipment by Riverbed or issuance by Riverbed of a license or access key (as applicable) until the evaluation end date provided in the Evaluation Confirmation. If no evaluation end date is provided in the Evaluation Confirmation, the period shall be for thirty (30) days following the date of original shipment by Riverbed or issuance by Riverbed of a license or access key (as applicable).
- (f) "**Hardware**" means any hardware or equipment on Riverbed's or one of its affiliate's then-current price list or otherwise made available by Riverbed, including any components or replacements of any of the foregoing.
- (g) "**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 or SaaS environment.
- (h) "**SaaS Services**" means the Riverbed cloud and/or software-as-a-service (SaaS) offering described in the applicable ordering documentation received by Riverbed, the cloud or SaaS offering description on Riverbed's then-current price list, or at www.riverbed.com/license/additional_use_rights with respect to a particular cloud or SaaS offering.
- (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 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) "**Support**" means Riverbed's then-current generally available end user maintenance and support services as described at www.riverbed.com/supportservicesdescription.

2. **EVALUATION.** Subject to the terms and conditions of this Agreement, Company may use the Evaluation Product during the Evaluation Term solely to internally test and evaluate the performance of the Evaluation Products. Riverbed hereby grants to Company a personal, non-transferable, non-sublicensable, non-exclusive license to use the Software during the Evaluation Term solely in accordance with the Documentation and solely for the purpose of internally testing and evaluating the Evaluation Products. The Evaluation Products are loaned to Company for evaluation and Riverbed retains ownership of all right, title and interest to the Evaluation Product and the intellectual property rights related thereto. This Agreement does not entitle Company to any Support with respect to the Evaluation Product, but any such support provided by Riverbed in its sole discretion shall be subject to this Agreement.

3. **DELIVERY AND RETURN OF EVALUATION PRODUCTS.** If the Evaluation Product includes any hardware, Riverbed will ship such products to the evaluation site listed in the Evaluation Confirmation at a mutually agreed upon time; Riverbed shall be responsible for all shipping costs for the delivery of such products to Company. At the conclusion of the Evaluation Term, or, if earlier, upon termination of the evaluation by Riverbed or Company, unless the Evaluation Products have been purchased by Company, Company shall (a) if the Evaluation Product includes any hardware, return such products to Riverbed at Company's expense and Company shall be responsible for, and shall reimburse Riverbed for, any loss of, damage to, or failure to timely return such products from the time the products are in Customer's possession or control until such products are returned to Riverbed, or (b) if the Evaluation Product consists solely of software and/or Cloud Services, immediately discontinue any use of the Evaluation Product and de-install the product in accordance with any de-installation instructions provided by Riverbed. If Company elects to purchase the Evaluation Product, Riverbed reserves the right to charge for any shipping costs, taxes or duties incurred in connection with shipment of the Evaluation Product to Company. In the event Company fails to return or discontinue use of the Evaluation Product within thirty (30) days after the end of the Evaluation Term, Riverbed reserves the right to invoice Company for the then-current list price of such product and Company shall pay such invoice within ten (10) days after receipt of the invoice. Upon payment of the invoice, the product will no longer be deemed an Evaluation Product and its use is subject to the applicable terms located at www.riverbed.com/license.

4. **RESTRICTIONS.** Company agrees not to (a) copy, modify, distribute, or create derivative works of any Evaluation Product, (b) disassemble, decompile or reverse engineer any of the Evaluation Products, or otherwise attempt to discover any source code, structure, algorithms, sequence, organization or ideas underlying any of the Evaluation Products (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited), (c) sell or resell any Evaluation Products, (d) sublicense, rent, lease, use for timesharing or service



bureau purposes for third parties or otherwise provide temporary access to any Evaluation Product or use any Evaluation Product for the benefit of any third party, (e) provide Evaluation Product passwords or other Product log-in information to any unauthorized third party, (f) publish or disclose any information or results relating to performance, performance comparisons or other “benchmarking” activities relating to any Evaluation Product, (g) obscure, alter, remove, or destroy any proprietary markings, restrictive legends, or intellectual property notices on any Evaluation Product, or (h) access or use any Evaluation Product for purposes of designing or developing a competing product or service. Company will not remove the Hardware Evaluation Products from the evaluation site. Company may not retain the Products after the Evaluation Term except with the written approval of Riverbed and then only if Company has paid the then-current list price for the Evaluation Products (or such other price if mutually agreed). Company will keep confidential all business, technical or financial information which Company knows or has reason to know is confidential, proprietary or trade secret information of Riverbed (“**Confidential Information**”), and Company shall not use Confidential Information except as expressly authorized by Riverbed under this Agreement. Company will comply with all laws and regulations relating to export control. Company will disclose the Evaluation Product and Confidential Information to its employees and consultants only as may be necessary in connection with Company’s evaluation hereunder; any consultants shall have first agreed in writing to be bound by provisions substantially similar to those in this Agreement.

5. **WARRANTY DISCLAIMER.** THE EVALUATION PRODUCTS ARE FOR EVALUATION ONLY AND ARE PROVIDED “AS IS” WITHOUT WARRANTIES OF ANY KIND, 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 EVALUATION PRODUCT WILL MEET CUSTOMER’S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

6. **LIMITATION OF LIABILITY.** RIVERBED SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY THEORY OF LIABILITY 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 EVALUATION PRODUCT, (IV) FOR ANY AMOUNT IN THE AGGREGATE IN EXCESS OF US\$100, OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

7. **DATA COLLECTION.** Company acknowledges that some Evaluation Products may depend on the transmission of certain data (“**Company Data**”). Company retains all rights and ownership in Company Data. Riverbed does not claim any ownership rights in Company Data. If Company provides Riverbed with any Personal Data (as defined in the DPA), Company represents and warrants that Company has the necessary rights and licenses required to provide Company Data to Riverbed in connection with Company’s evaluation of the Evaluation Products and that by providing Company Data in this manner, Company will not violate any intellectual property rights of third parties, confidential relationships, contractual obligations or laws. Without limiting the generality of the foregoing, Company shall provide all notices to, and obtain any consents from, any data subject as required by any applicable law, rule or regulation in connection with the processing of any Personal Data of such data subjects via the Evaluation Products by Riverbed and/or Company. Company shall not process or submit to the Evaluation Products any Company Data that includes any: (a) “**personal health information**,” as defined under the Health Insurance Portability and Accountability Act; (b) government issued identification numbers, including Social Security numbers, driver’s license numbers and other state-issued identification numbers; (c) financial account information, including bank account numbers; (d) payment card data, including credit card or debit card numbers; or (e) “**sensitive**” personal data, as defined under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (“**GDPR**”) and any national laws adopted pursuant to the GDPR, about residents of Switzerland and any member country of the European Union. To the extent that Riverbed processes any Personal Data contained in Company Data, on Company’s behalf, in the provision of the Evaluation Products, the terms of the data processing addendum at www.riverbed.com/data-processing-addendum (“**DPA**”), as may be updated by Riverbed from time to time, shall apply.

8. **TERMINATION.** Either party may terminate this Agreement for any reason immediately by written notice to the other party. Upon expiration or termination of this Agreement, unless the Evaluation Products have been purchased by Company as set forth in Section 3, Company shall (a) if the Evaluation Product includes any hardware, return such products to Riverbed at Company’s expense and Company shall be responsible for, and shall reimburse Riverbed for, any loss of, damage to, or failure to timely return such products from the time the products are in Customer’s possession or control until such products are returned to Riverbed, or (b) if the Evaluation Product consists solely of software and/or Cloud Services, immediately discontinue any use of the Evaluation Product and de-install the product in accordance with any de-installation instructions provided by Riverbed. Upon termination hereof for any reason, the terms of sections 2 through 9 shall survive.

9. **GENERAL.** This Agreement shall be governed by and construed under the laws of the State of California (without reference to conflicts of laws provisions), without application of the UN Convention on Contracts for the International Sale of Goods. No waiver hereunder shall constitute a subsequent waiver hereunder. All notices and waivers hereunder will be in writing, and this Agreement may be modified only in a mutually signed writing. This Agreement is the complete agreement between the parties concerning the subject matter hereof and replaces all prior communications between the parties with respect thereto.