



## RIVERBED ACCELERATOR FOR OFFICE 365 TERMS OF SERVICE

IMPORTANT: PLEASE READ BEFORE INSTALLATION OR USE OF ANY CLOUD PRODUCTS (AS DEFINED BELOW). THESE RIVERBED ACCELERATOR FOR OFFICE 365 TERMS OF SERVICE ("**AGREEMENT**") ARE A BINDING AGREEMENT BETWEEN RIVERBED TECHNOLOGY, INC. (FOR CUSTOMERS LOCATED IN NORTH OR SOUTH AMERICA), RIVERBED TECHNOLOGY PTE. LTD. (FOR CUSTOMERS LOCATED IN EUROPE, MIDDLE EAST, AFRICA OR ASIA) OR RIVERBED TECHNOLOGY AUSTRALIA PTY LIMITED (FOR CUSTOMERS LOCATED IN AUSTRALIA) ("**RIVERBED**") AND THE ENTITY OR COMPANY THAT IS THE AUTHORIZED PURCHASER OR USER OF THE CLOUD PRODUCTS ("**CUSTOMER**"). BY PURCHASING, ACCESSING OR IN ANY WAY USING THE CLOUD PRODUCTS, CUSTOMER IS UNCONDITIONALLY CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT WITH RIVERBED ("**EFFECTIVE DATE**"). 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 PRODUCTS.

### 1. DEFINITIONS.

- (a) "**Authorized User**" means the individuals authorized by Customer to access, use or operate the Cloud Products, including Customer's employees or third party contractors and outsourcers that are bound by terms and conditions no less restrictive than those contained herein.
- (b) "**Cloud Products**" means the Accelerator for Office 365 products made available by Riverbed, including all Documentation associated therewith.
- (c) "**Customer Data**" means all information and data provided by or on behalf of the Customer to Riverbed as part of the Cloud Product. Customer Data does not include Usage Data (as defined below).
- (d)
- (e) "**Documentation**" means the then-current written and/or electronic end user or technical documentation pertaining to the Cloud Product that is provided by Riverbed together with the delivery of the applicable Cloud Product or otherwise made available by Riverbed.
- (f) "**Order Form**" means an ordering document specifying the Cloud Products to be provided hereunder that is entered into between Customer and Riverbed or any Riverbed affiliates.
- (g) "**Subscription Term**" means the permitted subscription period for which Customer is authorized to access and use a Cloud Product as set forth in the applicable Order Form.
- (h) "**Support**" means Riverbed's then-current generally available end user maintenance and support services as described at [www.riverbed.com/supportservicesdescription](http://www.riverbed.com/supportservicesdescription).

### 2. CLOUD PRODUCTS.

- (a) **Access and Use.** Subject to the terms and conditions of this Agreement and provided that Customer has paid the applicable fees, Riverbed grants Customer a non-exclusive, non-sublicensable and non-transferable (except as expressly provided in Section 17) right to access and use the Cloud Products during the applicable Subscription Term solely for Customer's internal business use in accordance with this Agreement and the Documentation. Customer may allow its Authorized Users to access and use the Cloud Products for this purpose. Customer shall be responsible for Authorized Users' compliance with this Agreement, Documentation and the applicable Order Form.
- (b) **Documentation.** Riverbed hereby grants Customer a non-exclusive, non-sublicensable and non-transferable (except as expressly provided in Section 17) license to access, use and reasonably reproduce the Documentation solely for Customer's internal business use in connection with Customer's use of the Cloud Products.
- (c) **Usage Metrics.** The Cloud Products made available on a per user basis may be used only up to the number of users purchased by Customer as specified in the applicable Order Form. The subscription fees for the Cloud Products include bundled egress data. Riverbed reserves the right to invoice Customer for egress data usage in excess of 10 GiB (GiB means 1024<sup>3</sup> bytes) per user per month but only after Riverbed has provided Customer with at least two (2) excess data usage notices, and at least thirty (30) days have passed since the transmission of the first notice.
- (d) **Support.** The subscription fees for the Cloud Products include bundled Support for the duration of the Subscription Term purchased by Customer. During the Subscription Term, Riverbed shall provide Support to Customer in accordance with Riverbed's standard Support terms.
- (e) **Availability.** Riverbed shall use commercially reasonable efforts to make the Cloud Products available twenty-four (24) hours per day, seven (7) days per week for the duration of the applicable Subscription Term purchased by Customer for such Cloud Product, 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.
- (f) **Subscriptions.** Unless otherwise provided in the applicable Order Form or Documentation, Cloud Products are purchased as subscriptions for the Subscription Term stated in the applicable Order Form. The number of licenses issued and the term of any applicable subscription will be identified on the applicable Order Form. Riverbed requires the purchase of a minimum Subscription Term based on Riverbed's then-current purchase policies for any Cloud Products purchase.
- (g) **Changes to the Cloud Product.** Riverbed reserves the right to make updates and enhancements to the Cloud Product provided that such updates and enhancements to the Cloud Product will not materially decrease the overall functionality of such Cloud Product during the Subscription Term for such Cloud Product. Subject to Riverbed's obligation to provide Cloud Products under existing Order Forms, Riverbed reserves the right to discontinue the manufacture or sale of, or otherwise render or treat as obsolete, any Cloud Product, subject to Riverbed's end of sale / end of support policy at [www.riverbed.com/supportpolicy](http://www.riverbed.com/supportpolicy).

- 3. **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 the Cloud Products, (b) disassemble, decompile or reverse engineer any of the Cloud Products, or otherwise attempt to discover any source code, structure, algorithms, sequence, organization or ideas underlying any of the Cloud Products (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited), (c) sell or resell the Cloud Products, (d) sublicense, rent, lease, use for timesharing or service bureau purposes for third parties or otherwise provide temporary access to the Cloud Products or use the Cloud Products for the benefit of any third party, (e) attempt to gain unauthorized access to the Cloud Products 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 the Cloud Products, (g) interfere with or disrupt the integrity or performance of the Cloud Products or third-party data contained therein, or (h) access or use the Cloud Products 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 Products and/or the termination of this Agreement.

#### 4. **SALE AND PURCHASE.**

(a) Riverbed shall sell to Customer and Customer shall purchase from Riverbed the Cloud Products set forth in Order Forms. The terms and conditions of this Agreement will apply to all Order Forms and supersede any different or additional terms on Customer’s purchase orders. Any purchase orders issued by Customer to Riverbed are solely for the purpose of requesting delivery dates and quantities, specifying the bill-to addresses, specifying the identity of Cloud Products purchased along with the number of licenses issued, the Subscription Term, and the applicable price for each Cloud Product; all other terms on such purchase order will have no force or effect. All Order Forms are subject to acceptance by Riverbed (which acceptance may be evidenced by Riverbed’s issuance of login instructions and/or a license key under the Order Form).

(b) Riverbed affiliates may sell Cloud Products to Customer under the Agreement. The Riverbed affiliate will be identified on the Order Form, and that Order Form will be solely between that Riverbed affiliate and Customer and any references to “Riverbed” in this Agreement will be deemed references to that Affiliate solely with regard to that Order Form. If requested by a Riverbed affiliate or Customer, such Riverbed affiliate and Customer may enter into one or more local agreements that reflect local laws, terms and conditions and that reference this Agreement (each, a “**Local Agreement**”). In the event of a conflict between the terms herein and those in any Local Agreement, the terms in the Local Agreement will take precedence, but only as pertaining to Order Forms governed by the Local Agreement.

(c) Cloud Products will be delivered by issuing login instructions and/or a license key to Customer at the email address provided by Customer. Each partial issuance of a license key will be deemed a separate sale and may be invoiced upon such issuance.

#### 5. **FEES AND PAYMENT.**

(a) **Fees.** Customer shall pay to Riverbed all fees specified in all Order Forms. Except as otherwise expressly provided in this Agreement, (i) all payment obligations are non-cancelable and all fees non-refundable, and (ii) quantities purchased cannot be decreased during the relevant Subscription Term.

(b) **Invoicing and Payment.** Fees will be invoiced in advance, either annually or in accordance with any different billing frequency stated in the relevant Order Form. 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 Cloud Products before the issuance of login instructions and/or a license key, as applicable. 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. Customer shall make all payments in U.S. dollars.

(c) **Suspension of Cloud Products.** Riverbed reserves the right to suspend Customer’s access to and/or use of the Cloud Products if any payment is due but unpaid but only after Riverbed has provided Customer with at least two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice.

(d) **Taxes.** 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.

#### 6. **PARTNER ORDERS.** This Section 6 applies if Customer purchases the Cloud Products through an authorized channel partner of Riverbed (“**Partner**”).

(a) Customer will pay the applicable fees to the Partner, as negotiated solely between Customer and the applicable Partner (instead of paying Riverbed); the terms and conditions in Sections 4 and 5 will not apply.

(b) Any order details (identity of Cloud Products purchased along with the number of licenses issued and the applicable Subscription Term) will be as stated in the order submitted to Riverbed by the Partner on Customer’s behalf.

(c) If Customer is entitled to a refund under this Agreement, then unless otherwise specified by Riverbed, Riverbed will refund any applicable fees to the Partner and the Partner will be solely responsible for refunding the appropriate amounts to Customer.

(d) Partners are not authorized to modify the terms of this Agreement or make any promises or commitments on Riverbed’s behalf.

(e) The amount paid or payable by the Partner to Riverbed for Customer’s use of the applicable Cloud Products under this Agreement will be deemed the amount actually paid or payable by Customer to Riverbed under this Agreement for purposes of calculating the liability cap in Section 10.

#### 7. **PROPRIETARY RIGHTS AND LICENSES.**

(a) **Reservation of Rights.** Regardless of any references to any sale or purchase in this Agreement, all Cloud Products 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 Products, and any copies or portions thereof, remain in Riverbed and its suppliers and licensors. The Cloud Products 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 Products 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.



(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 Authorized Users relating to the operation of the Cloud Products.

8. **OTHER RIVERBED PRODUCTS.** If Customer purchases, downloads, installs or in any way uses any downloadable software and/or any hardware or equipment (collectively, "**Products**") made available by Riverbed, then the terms of this Agreement do not apply to such Products 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 (as a standalone purchase), 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/services/terms](http://www.riverbed.com/services/terms) ("**Riverbed Services Terms**"), as may be updated by Riverbed from time to time, shall apply.

9. **STANDARD WARRANTY; WARRANTY DISCLAIMER.**

(a) Riverbed warrants to Customer that during the applicable Subscription Term, the Cloud Products, upon issuance by Riverbed of login instructions and/or a license key, as applicable, will conform in all material respects to the applicable published specifications for such Cloud Products. The foregoing warranty does not extend to any Cloud Product 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 warranties will be, at Riverbed's option, the repair or replacement the non-conforming Cloud Products, or, if Riverbed determines repair or replacement is impractical, Customer may terminate the non-conforming Cloud Products and Customer will receive a refund of any pre-paid, unused fees covering the remainder of the then-current Subscription Term after the effective date of such termination.

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

10. **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, REPUTATION, OR FOR LOSS OR CORRUPTION OF DATA (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 PRODUCT, 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 PRODUCT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING 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 PRODUCTS ARE NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE CLOUD PRODUCTS 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.

11. **INDEMNIFICATION.** Riverbed shall defend any third party action, suit or proceeding brought against Customer alleging that the Cloud 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 Cloud 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 Cloud Product or that are otherwise made available for a Cloud 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, 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 Cloud Product, (ii) replace the applicable Cloud Product with a noninfringing alternative, (iii) modify the applicable Cloud Product to make it noninfringing, or (iv) terminate access to the applicable Cloud Product and refund any prepaid fees received from or on behalf of Customer for use of the applicable Cloud Product for the remainder of the terminated Subscription Term. 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.

12. **TERM AND TERMINATION.**

(a) **Term of Agreement.** Unless terminated earlier as provided herein, this Agreement begins on the Effective Date continues until expiration of the applicable Subscription Term(s).

(b) **Term of Purchased Subscriptions.** Subscriptions begin upon issuance by Riverbed of login instructions and/or a license key and continue for the Subscription Term specified therein. Except as otherwise expressly specified in an Order Form, subscriptions will automatically renew for another Subscription Term of period equal to the initial Subscription Term or one (1) year (whichever is shorter), unless either party gives the other party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current Subscription Term. The fees for any such renewal term shall



be the same as that during the prior term unless Riverbed has given Customer notice of a fee increase, in which case the fee increase shall be effective upon renewal and thereafter. Any such fee increase shall not exceed more than a five percent (5%) per unit increase from the applicable pricing in the prior term, unless the fees in such prior term were designated in the relevant Order Form as multi-year, one-time or promotional pricing.

(c) **Termination for Cause.** Either party may terminate this Agreement (including related Order Forms) if the other party fails to cure any material breach of this Agreement within thirty (30) days after receipt of written notice describing the breach.

(d) **Effects of Termination.** If this Agreement is terminated by Customer for Riverbed's uncured material breach in accordance with Section 12(c) above, Riverbed will refund Customer any prepaid fees covering the remainder of then-current Subscription Term(s) under this Agreement after the effective date of termination. If this Agreement is terminated by Riverbed in accordance with Section 12(c) above, Customer will pay any unpaid fees covering the remainder of any then-current Subscription Term(s). In no event will any termination relieve Customer of the obligation to pay any fees payable to Riverbed for the period prior to the effective date of termination. Upon expiration or termination of this Agreement, Customer must cease using all Cloud Products.

(e) **Surviving Provisions.** The following provisions will survive any termination or expiration of this Agreement: Sections 1 (Definitions), 3 (Restrictions), 5 (Fees and Payment), 7 (Proprietary Rights and Licenses), 9(b) (Warranty Disclaimer), 10 (Limitation of Liability), 12 (Term and Termination), 13 (Confidentiality), 14 (Data and Data Protection), 15 (Compliance with Laws and Export Control), 16 (Government Use) and 17 (Miscellaneous).

13. **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 Cloud 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 Cloud Products or disclose any Riverbed Confidential Information, Riverbed documentation or any information regarding any Cloud 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 Cloud 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.

14. **DATA AND DATA PROTECTION.** Riverbed processes, uses and collects certain types of data and information from Customer and its Authorized Users in connection with use of the Cloud Products to deliver, analyze, support and improve the Cloud Products and as otherwise described in this Agreement, Riverbed's then-current Privacy Policy (available at [www.riverbed.com/privacypolicy](http://www.riverbed.com/privacypolicy)) and the applicable Documentation.

(a) **Security.** Riverbed shall maintain appropriate administrative, physical and technical security measures designed to protect Customer Data and Personal Data from unauthorized access, destruction, use, modification, or disclosure.

(b) **Personal Data.** The terms of 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, are hereby incorporated by reference and shall apply to the extent that Riverbed processes Personal Data on behalf of Customer as a Processor, as defined in the DPA.

(c) **Customer's Responsibilities.** Customer shall be responsible for (i) the accuracy, quality and legality of Customer Data and the means by which Customer acquires Customer Data, (ii) any required notices, consents, and/or authorizations related to Customer's provision of, and Riverbed's processing of, Customer Data, and (iii) using commercially reasonable efforts to prevent unauthorized access to or use of the Cloud Products, and notifying Riverbed promptly of any such unauthorized access or use.

(d) **No Sensitive Personal Data.** Unless otherwise mutually agreed in writing, Customer shall not process or submit to the Cloud Products any Customer Data that includes any: (i) special categories of personal data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation; (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (HIPAA); (iii) credit, debit or other payment card data subject to PCI DSS; (iv) other personal information subject to regulation or protection under specific laws such as the Gramm-Leach-Bliley Act (or related rules or regulations); (v) social security numbers, driver's license numbers or other government ID numbers; or (vi) any data similar to the foregoing that is protected under foreign or domestic laws or regulations.

(e) **Usage Data.** Riverbed may collect certain information and data that relates to the use and operation of the Cloud Products, including features used, device and application identifiers, operating and system configuration information, location, log files, event files and other diagnostic files, as well as statistical, aggregated data (collectively, "**Usage Data**"). Riverbed uses Usage Data for development, diagnostic and corrective purposes in connection with providing technical and customer support, to maintain the security of the Cloud Products, to deliver performance insights and to analyze and enhance the Cloud Products and other Riverbed service offerings.

15. **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 Cloud 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. Pursuant to these laws, restrictions, and regulations, Customer shall ensure that no Cloud Product 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 Product, 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.

16. **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 Products 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 Products qualify as "commercial items" under FAR § 2.101 and all Cloud Products are developed exclusively at private expense. The Cloud Products 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 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 Product 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.

17. **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 and/or any Order Forms, 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 Products, 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 Product (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. 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.