



SINGLE PURCHASE CHANNEL PARTNER AGREEMENT

This Single Purchase Channel Partner Agreement (“**Agreement**”) is entered into between Riverbed (as defined below) and the entity or company that is authorized by Riverbed as a one-time reseller of the Products and Services (“**Partner**”). This Agreement is effective as of the date that Riverbed accepts the order for the Products and Services from Partner or from the Authorized Distributor (“**Effective Date**”). If Partner does not agree to the terms and conditions of this Agreement, Partner shall not resell or use any Products or Services.

1. **Scope of Appointment.** Subject to the terms and conditions of this Agreement, Partner may resell the Products and Services only directly to the End User for the End User’s internal business use and only as packaged by Riverbed with the documentation intact and subject to the EULA. “**Riverbed**” means Riverbed Technology LLC or its applicable affiliates. “**Products**” means Riverbed’s generally available products, including hardware, Software, Cloud Services, and any related Riverbed documentation provided therewith by Riverbed or the Authorized Distributor, that are listed on Riverbed’s or one of its affiliate’s then-current price list or that are otherwise made available by Riverbed hereunder. “**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, and (iii) any upgrades, updates, patches, enhancements, or fixes to any of the foregoing that may be made available by Riverbed. “**Cloud Services**” means any software-as-a-service or cloud-based solutions on Riverbed’s or one of its affiliate’s then-current price list or otherwise made available by Riverbed. “**Authorized Distributor**” means the distributor authorized by Riverbed to distribute and resell the Products and Services to Partner. “**Services**” means, collectively, any generally available services on Riverbed’s or one of its affiliate’s then-current price list or otherwise made available by Riverbed, including Support and Professional Services. “**End User**” means the customer that is identified by Partner at the time of sale by Riverbed or the Authorized Distributor of the applicable Products and/or Services and that will use such Products and/or Services for internal business use and shall not resell or redistribute any of such Products and/or Services. “**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. “**Support**” means Riverbed’s then-current generally available end user maintenance and support services as described at www.riverbed.com/supportservicedescription; however, this Agreement and the foregoing support description will not apply to any services, including Level 1 or Level 2 support on Products, delivered by the Authorized Distributor. “**Professional Services**” has the meaning set forth at www.riverbed.com/partnerprofessionalserviceterms; Professional Services are subject to the additional terms set forth therein. THIS IS NOT A GENERAL APPOINTMENT OF PARTNER AS AN AUTHORIZED RESELLER OR CHANNEL PARTNER OF RIVERBED, BUT IS LIMITED ONLY TO THE SPECIFIC RIVERBED PRODUCTS AND SERVICES PURCHASED BY PARTNER AS AUTHORIZED BY RIVERBED ON A ONE-TIME BASIS FOR RESALE TO THE NAMED END USER.

2. Payment and Supply Terms.

(a) If Partner purchased the Products or Services from the Authorized Distributor, the purchase terms and prices for Products and Services will be negotiated solely between Partner and the Authorized Distributor. If Riverbed accepts a purchase order directly from Partner or otherwise authorizes Partner to purchase Products and/or Services directly from Riverbed, the additional terms set forth in Attachment A will apply.

(b) Riverbed may, upon at least two (2) weeks’ advance written notice, inspect, or have an accountant or auditor inspect, Partner’s books and records relating to this Agreement and Partner’s compliance with its terms and conditions, including those relating to reporting correct information regarding sell through to the End User, for up to five prior years of records from the date of such audit. Any such audit will be conducted during Partner’s normal business hours and in a manner that does not materially interfere with Partner’s normal business operations. Partner shall provide all reasonable assistance for such audit. If any audit reveals that Partner is in breach of this Agreement, then Partner 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 Product (e.g., any use by any unauthorized users or use of any unauthorized copies or instances of a Product).

3. **Covenants and Representations.** Partner: (a) shall abide by the terms and conditions of, perform its obligations under, and meet the requirements set forth in, this Agreement, (b) shall not (i) disassemble, decompile or reverse engineer any of the Products, or otherwise attempt to discover any source code, structure, algorithms, sequence, organization or ideas underlying any of the Products (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited), (ii) sublicense, rent, lease, use for timesharing or service bureau purposes for third parties or otherwise provide temporary access to any Product or use any Product for the benefit of any third party, (iii) take any action contrary to any of the terms and restrictions in this Agreement, (iv) copy, modify or create derivative works of any of the Products, (v) publish or disclose any information or results relating to performance, performance comparisons or other “benchmarking” activities relating to any Product, (vi) obscure, alter, remove, or destroy any proprietary markings, restrictive legends, or intellectual property notices on any Product, (vii) access or use any Product for purposes of designing or developing a competing product or service, or (viii) authorize or permit any other person or entity to, directly or indirectly, do any of the foregoing, (c) shall comply with good business practices and all Applicable Laws relevant to this Agreement, including all laws and regulations that relate to Partner’s activities hereunder (including obtaining and maintaining any registrations or approvals required by Applicable Law), (d) represents and warrants that neither this Agreement nor the performance of any obligations or exercise of any rights under this Agreement is restricted by, in conflict with, ineffective under, requires registration or approval or tax withholding under, or affects Riverbed’s proprietary rights under, or will require any termination payment or compulsory licensing under, any Applicable Law of any country, group of countries or other governmental entity, (e) acknowledges and agrees that (i) any Software and Cloud Services are not sold, but rather are licensed (without rights to sublicense) pursuant to the EULA solely for the End User’s internal business use and in all cases strictly in accordance with the accompanying documentation and any other use restrictions applicable for that Product (including the terms and conditions set forth at www.riverbed.com/license/additional_use_rights, as may be updated by Riverbed from time to time), and (ii) Riverbed and its suppliers retain all right, title and interest in and/or relating to the Software and Cloud Services, and no other rights or licenses, whether express or implied, are granted, (f) shall distribute Products subject to the EULA and, where required by Riverbed, designate, at the time of sale by Partner, Products and/or Services as spares or under any other use restrictions or designations designated by Riverbed to Partner, and (g) acknowledges and agrees that no rights or licenses are granted to Partner under this Agreement except as expressly provided herein. Partner shall not distribute any Products or Services under terms that are less protective of Riverbed, its licensors, its suppliers, the Products and/or the Services than the terms in this Agreement and the EULA. The Products are protected by the intellectual property laws (including copyright laws) of the United States, foreign jurisdictions and all applicable international treaties.

4. Limited Warranty; Disclaimer.

(a) Riverbed warrants to Partner that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Partner’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 Services. Products are provided with the limited warranty as set forth in the EULA. 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). Products obtained from Riverbed that do not comply with the applicable warranty and are returned by Partner to Riverbed during the applicable warranty period will be at Riverbed’s option, (I) with respect to the Hardware and Software warranty, the repair or replacement of or (at Riverbed’s option if repair or replacement is impractical) refund of the fees received by Riverbed for returned non-conforming units of Product for which full documentation and proof of non-conformity is provided to Riverbed (and for which a Riverbed RMA has been issued) within the applicable Warranty Period, and (II), with respect to the Cloud Services warranty, the repair or replacement of or (at Riverbed’s option if repair or replacement is impractical) the refund of the fees received by Riverbed for the period in which the Cloud Services did not conform. For hardware Products, Partner will bear the cost of freight and insurance to the point of repair or return; Riverbed will bear the cost of freight and insurance for return of such goods to Partner. Riverbed is not responsible for any difference between the amount paid to Riverbed for the returned Product and the amount paid by Partner or a customer for such returned Product. Partner’s sole and exclusive remedy, and Riverbed’s sole and exclusive obligation, with respect to any nonconformity, deficiency, warranty or defect with respect to the Products and/or Services is as stated above in this Section.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, RIVERBED MAKES NO OTHER WARRANTIES WITH RESPECT TO ANY PRODUCTS OR ANY SERVICES AND 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 PARTNER’S OR ANY END USER’S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

5. **Indemnification.** Partner shall indemnify and hold Riverbed, its affiliates, and its and their respective officers, directors, agents and employees harmless from and against any and all claims, losses, damages, debts, settlements, liens, costs, attorneys’ fees, expenses and liabilities of any type whatsoever (a) incurred or asserted by any End User or arising out of or relating to any claim by an End User, or (b) arising out of or relating to (i) any misrepresentation, negligent or tortious act or omission or breach of or default under this Agreement by Partner or by anyone else acting for or on behalf of Partner in connection with the promotion, distribution or other dealings with respect to any Product or Service, (ii) any representations or warranties made by or on behalf of Partner that are inconsistent with or in addition to any of the representations or warranties made by Riverbed in this Agreement or in the EULA, or (iii) any violation of any Applicable Law by Partner or any of its officers, directors, employees, agents or representatives. Partner shall not enter into any settlement agreement binding Riverbed or any of its affiliates without Riverbed’s prior written consent.

6. **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 ANY END USER’S USE OF ANY PRODUCT, AND (B) THE AGGREGATE LIABILITY OF RIVERBED AND ITS AFFILIATES AND SUPPLIERS WILL NOT EXCEED THE AGGREGATE FEES RECEIVED BY RIVERBED ON BEHALF OF PARTNER 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 DEATH OR BODILY INJURY OF A PERSON, TORT OF DECEIT, FRAUD, OR BREACH OF THE OBLIGATIONS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979 OR SECTION 2 OF THE SUPPLY OF GOODS AND SERVICES ACT 1982. PARTNER WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATIONS AS A RESULT OF TERMINATION OR EXPIRATION OF THIS AGREEMENT UNDER ANY APPLICABLE LAW.

7. **Confidential Information.** Partner agrees that any nonpublic information, software, inventions (whether patentable or not), algorithms, designs, know-how, ideas, product development plans, sales forecasts, sales volume, pricing and discounts, and all customer, business, technical, training and financial information (collectively, “**Confidential Information**”) it obtains from Riverbed are the confidential property of Riverbed and its suppliers. Without limiting the foregoing, the Products (including their design and structure) and all information on Riverbed’s partner center and customer care website constitute trade secrets and/or Confidential Information of Riverbed or its licensors. Except as expressly and unambiguously allowed herein, Partner shall hold the 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, Partner 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 Riverbed’s communication thereof to Partner or becomes publicly known thereafter through no fault of Partner, (b) was in Partner’s possession free of any obligation of confidentiality at the time of Riverbed’s communication thereof to Partner, (c) is rightfully obtained by Partner free of any obligation of confidentiality from a third party authorized to make such disclosure without restriction, or (d) is identified by Riverbed as no longer proprietary or confidential. Partner 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 Riverbed prior to making any such disclosure (if permitted under applicable law), and (ii) Partner 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 Riverbed’s remedies at law for a breach by Partner of its obligations under this Section will be inadequate and that Riverbed will be entitled to equitable relief (including provisional and permanent injunctive relief) in addition to any other remedies. Without limiting the foregoing, Partner shall not provide the Products or disclose any Confidential Information, Riverbed documentation or any information regarding any Products to any Riverbed competitors. Partner 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. Partner shall not issue any advertisements, press releases or promotional materials relating to this Agreement or any Products or Services without prior written approval

of Riverbed. Upon Riverbed's request at any time, Partner shall return or destroy all Confidential Information in its possession. The obligations set forth in this Section will survive any termination or expiration of this Agreement.

8. **Support and Maintenance.** Partner may resell Support only to the End User, under which Riverbed shall provide Support directly to the End User. Riverbed is not obligated to provide, and Partner 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. Partner shall not escalate any calls to Riverbed for Support nor provide any updates, upgrades, bug fixes or the like to any End User for use with 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 may elect to cancel a Support plan for which full payment has not been received. Partner acknowledges that Riverbed has the right to verify Partner's and/or any End User's entitlement to receipt of Support. With respect to any particular End User, the purchase or renewal of Support for any Product purchased by such End User requires the purchase or renewal of Support for all Products purchased by or for such End User, and Riverbed is not obligated to provide Support to such End User 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, (i) any subsequent purchase of Support will be deemed purchased retroactive to the later of (x) the date on which any prior Support period concluded or (y) the date on which the particular Product was purchased, which amount will be based on the level of Support that Partner requests to purchase for such Products on a go-forward basis; (ii) Partner shall pay all applicable Support Services fees for such lapsed period plus a [Reinstatement Fee](#). 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.

9. **FCPA and Export Control.** In no event will Riverbed be obligated under this Agreement to take any action (including the shipping of any product or provision of any service) or omit to take any action that Riverbed believes in good faith would cause it to be in violation of any U.S., European Union, Singapore or other foreign laws, ordinances, codes or regulations, including the U.S. Foreign Corrupt Practices Act ("**FCPA**"), the U.K. Bribery Act 2010 ("**BA**"), and the Singapore Prevention of Corruption Act (Cap. 241) ("**PCA**"). In connection with the sale or distribution of Riverbed Products or Services, or otherwise in carrying out its obligations under this Agreement, Partner represents and warrants the following:

(a) Partner shall conduct its business operations in accordance with all applicable U.S., European Union, Singapore and other foreign laws, ordinances, codes and regulations, including the FCPA, BA, PCA, and all other applicable anti-bribery laws and all export/import laws and regulations (all of the foregoing, collectively, "**Applicable Laws**");

(b) Partner shall comply with all Applicable Laws, including all applicable export laws, restrictions and regulations of any 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. Pursuant to these laws, restrictions, and regulations, Partner shall ensure that no 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 (i) any U.S. sanctioned or embargoed country, or to nationals or residents of such countries, or (ii) 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. Without limiting the foregoing, Partner shall not use any 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, and shall not re-export or sell any of the foregoing to a third 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, or to any sanctioned entities;

(c) Partner shall not (i) attempt to, directly or indirectly, improperly influence the sale or purchase of Products by payments or other actions contrary to any Applicable Law, or (ii) take any action or permit or authorize any action that would violate or cause Riverbed to violate the FCPA, BA or PCA;

(d) Partner shall not, for the purpose of influencing any act or decision to obtain or retain business or direct business to any person, pay, offer or promise to pay, or authorize the payment of, directly or indirectly, any money, gratification or anything of value to or for the use or benefit of any of the following:

(i) any government official (including any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or any representative of any public international organization, e.g., the United Nations, or any person acting in any official capacity for or on behalf of any government, state-owned business or public organization);

(ii) any political party, official thereof, or candidate for political office;

(iii) any other person if Partner or any partner, officer, director, employee, agent, representative or shareholder of Partner knows or has reason to suspect or know that any part of such money, gratification or thing of value will be offered, given or promised, directly or indirectly, to any of the above-identified persons or organizations; or

(iv) any other person, where such payment is in contravention of the FCPA, BA or PCA;

(e) None of Partner's officers, directors, employees, agents or representatives is a government official or employee or an official or employee of any department or instrumentality of any government, nor is any of them an officer of a political party or candidate for political office, who will share directly or indirectly any part of the sums that may be paid pursuant to performance of this Agreement; and Partner shall immediately notify Riverbed in writing should the foregoing change during the Term of this Agreement;

(f) Partner shall keep its books, records and accounts in reasonable detail to (i) accurately and fairly reflect transactions, payments and dispositions of assets effected in connection with performance of this Agreement, and (ii) fulfill all record keeping requirements under Applicable Law; and

(g) Partner shall not assign, transfer or subcontract to any third party any of its rights or obligations, or any of the services to be rendered by Partner, under this Agreement without the prior written consent of Riverbed. In addition, upon Riverbed's request Partner shall require that any of its subcontractors, consultants, agents or representatives agree in writing to comply with substantially similar FCPA, BA and PCA representations as those contained in this Section.

Notwithstanding any other provision in this Agreement, Riverbed may terminate this Agreement immediately upon written notice if Partner breaches any of the representations and warranties set forth in this Section.

Riverbed is committed to maintaining the highest standards of business integrity. Partner shall report any concerns regarding the topics discussed in this Section to Riverbed Legal at 415-247-8800. Additional information regarding the FCPA can be found at <http://www.justice.gov/criminal/fraud/fcpa/> and information regarding US export laws can be found at <http://www.bis.doc.gov>. Additional information regarding the PCA can be found at <https://www.cpi.gov.sg/about-corruption/prevention-of-corruption-act> and information regarding Singapore export laws can be found at <https://www.customs.gov.sg/>. Additional information regarding the BA can be found at <https://www.gov.uk/government/publications/bribery-act-2010-guidance> and information regarding U.K. export laws can be found at http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageImport_Home.

10. 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 either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights.

(b) This Agreement is personal to Partner and Partner shall not assign (by operation of law or otherwise), transfer or sublicense any obligation or benefit under this Agreement, in whole or in part, 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.

(c) For all purposes under this Agreement, and notwithstanding the use of the term "partner" in 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) 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, together with 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 reseller or other channel partner agreement (not including any purchase order or similar document) between Riverbed and Partner that expressly covers the resale of Products and Services, then the express terms of that agreement will govern.

(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.



Attachment A
DIRECT PURCHASE TERMS

In the event Partner purchases Products and/or Services directly from Riverbed and not through an Authorized Distributor, the additional terms in this Attachment A apply.

1. Riverbed shall sell to Partner and Partner shall purchase from Riverbed the Products and/or Services set forth in a written purchase order submitted by Partner directly to Riverbed and accepted by Riverbed (“**Order**”). The terms and conditions of this Agreement will apply to the Order and supersede any different or additional terms on Partner’s purchase order. Any purchase order issued by Partner to Riverbed is solely for the purpose of requesting delivery dates and quantities, specifying the ship-to and bill-to addresses, specifying the End User and the type of use, 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). Partner shall include sell through information with the Order, as requested by Riverbed, which identifies the applicable End User. Partner shall ensure that the Products and/or Services purchased on the Order may only be sold to that End User. If the Order for Products exceeds Riverbed’s inventory, Riverbed may allocate available inventory in Riverbed’s discretion, without liability to Partner or any third party.
2. Partner shall pay to Riverbed the prices for Products and Services set forth in the accepted Order, unless otherwise mutually agreed upon by the parties in writing. Partner 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 Partner for taxes to the extent Partner has provided an appropriate resale certificate, exemption documentation or valid VAT identification number that exempts Partner from paying and/or Riverbed from collecting such tax. If Partner is required to pay any withholding taxes on payments to Riverbed, then Partner 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. Partner shall make all payments in U.S. dollars. Partner shall pay all amounts invoiced within 30 days after the invoice date, unless Riverbed at any time determines that Partner’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.
3. Riverbed shall mark all hardware Products for shipment to Partner’s address set forth on the Order or as set forth in the online ordering system in the partner center, as applicable. 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 Partner at the same time risk of loss transfers to Partner in accordance with the foregoing. Riverbed may select the carrier if Partner does not designate a carrier in writing or if Partner’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. Partner is responsible for and shall pay all shipping charges. Products that consist only of Software (without associated hardware) and/or Cloud Services will be delivered by issuing a key to Partner at the email address provided by Partner. 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) Partner’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. Partner shall not decrease, reschedule or cancel the Order.