



## RIVERBED END USER LICENSE AGREEMENT AND PRODUCT WARRANTY STATEMENT

IMPORTANT: PLEASE READ BEFORE INSTALLATION OR USE OF ANY PRODUCTS (AS DEFINED BELOW). THIS RIVERBED END USER LICENSE AGREEMENT AND PRODUCT WARRANTY STATEMENT ("**AGREEMENT**") IS A BINDING AGREEMENT BETWEEN RIVERBED (AS DEFINED BELOW) AND THE ENTITY OR COMPANY THAT IS THE AUTHORIZED PURCHASER OR LICENSEE OF THE PRODUCTS ("**YOU**" OR "**YOUR**"). BY PURCHASING, DOWNLOADING, INSTALLING OR IN ANY WAY USING A PRODUCT YOU ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT WITH RIVERBED. IF YOU DO NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO AND MAY NOT DOWNLOAD, INSTALL OR USE ANY OF THE PRODUCTS.

### 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) "**Affiliate**" means an entity that controls, is controlled by, or is under common control with Riverbed Technology LLC.
- (c) "**Authorized Third Parties**" means Your Users, Your third-party service providers delivering information technology services to You, and each of their respective Users permitted to access and use the Products on Your behalf in accordance with this Agreement.
- (d) "**Cloud Service(s)**" 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, including associated offline components provided by Riverbed as part of the Cloud Service.
- (e) "**Documentation**" means the then-current written and/or electronic end user or technical documentation pertaining to a Product that is provided by Riverbed together with the delivery of a Product or otherwise made available by Riverbed.
- (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) "**Products**" means, collectively, the Hardware, Software, Cloud Services and all Documentation associated therewith.
- (h) "**Riverbed**" means Riverbed Technology LLC or its applicable Affiliate(s).
- (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, and (iii) 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/supportservicedescription](http://www.riverbed.com/supportservicedescription).
- (k) "**Usage Term**" means the period during which You have the right to use the applicable Product, 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.
- (l) "**User**" means the individuals (including employees and contractors) permitted to access and use the Products on Your behalf in accordance with this Agreement.

2. **LICENSE AND RIGHT TO USE.** Subject to the terms and conditions of this Agreement and provided that You have paid the applicable fees, Riverbed grants You for the duration of the applicable Usage Term a limited, personal, non-sublicensable, non-transferable (except as expressly provided in Section 11), nonexclusive: (a) license to install, access, and use the Software (in object code format only), (b) license to access, use, and reasonably reproduce the Documentation, (c) right to access and use the Cloud Services, and (d) right to exercise any other rights applicable to a Product as expressly set forth in the Additional Use Rights. You shall exercise the rights granted in this Agreement solely for Your internal business use in accordance with the Documentation and shall comply with all other restrictions and limitations applicable to each Product, 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 Product to which such terms pertain. Subject to the foregoing, the specific Products licensed and/or made available to You under this Agreement, including the quantity and the Usage Term, will be identified on the applicable ordering documentation received by Riverbed. You may use each licensed copy of the Software that is provided on or with any Hardware only as embedded in or for execution on that specific unit of Hardware (or replacement thereof) owned or leased by You. You may also copy configurations of the Software (excluding any Software provided on or embedded in any Hardware) solely for backup, archival and/or disaster recovery purposes. Without granting any additional licenses or usage rights hereunder, You may permit Authorized Third Parties to access, use or operate the Products solely on Your behalf, provided that (i) You obtain any such Authorized Third Party's binding consent to abide by the terms of this Agreement, and (ii) You remain responsible for such Authorized Third Party's use of the Products and compliance with the terms and conditions of this Agreement, and any breach of this Agreement by any such Authorized Third Party will be deemed a breach of this Agreement by You.

### 3. ADDITIONAL CONDITIONS OF USE.

(a) **Restrictions.** Except as expressly permitted by this Agreement, You shall not, and shall not authorize or permit any other person or entity to, directly or indirectly: (i) copy, modify (except as expressly permitted under the applicable Documentation), distribute, or create derivative works of any Product, (ii) 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), (iii) sell or resell any Products, (iv) 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, (v) provide Product or Support passwords or other Product log-in information to any unauthorized third party, (vi) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities relating to any Product, (vii) obscure, alter, remove, or destroy any proprietary markings, restrictive legends, or intellectual property notices on any Product, (viii) access or use any Product for purposes of designing or developing a competing product or service, (ix) abuse, interfere or disrupt networks, security systems, User accounts or the integrity or performance of any Cloud Services or third-party data contained therein, (x) facilitate the attack or disruption of any Cloud Service, including a denial of service attack, unauthorized access, penetration testing, crawling, or distribution of malware (including viruses, trojan horses, worms, time bombs, spyware, adware, and cancelbots), or (xi) use any Cloud Service in a way prohibited by law or that would cause You or Riverbed to be out of compliance with applicable law. Notwithstanding the foregoing, You may use the Products pursuant to a leasing arrangement whereby You lease the Product from a third party authorized by Riverbed. Except



as expressly permitted by this Agreement, You shall hold in confidence and shall not disclose, provide, or permit access to any Software, Cloud Services or Documentation in any form to any third party without Riverbed's prior written consent. Regardless of any references to any sale or purchase in this Agreement, all Software is licensed by Riverbed, and not sold. As between the parties, all ownership rights with respect to the intellectual property rights in and to the Products, and any copies or portions thereof, remain in Riverbed and its suppliers and licensors. The 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 You any rights not expressly set forth herein. Any action taken by You in contravention of this Section 3 may result in the suspension of the Products and/or the termination of this Agreement as described in Section 9 below. If You become aware or receive notice that You or Your Users have violated the restrictions applicable to Cloud Services set forth in this Section, You shall take immediate action to suspend Your and/or Your Users access (as applicable) to the Cloud Services.

(b) **Cloud Services.**

(i) Unless otherwise expressly provided at [www.riverbed.com/sla](http://www.riverbed.com/sla), Riverbed shall use commercially reasonable efforts to make the Cloud Services available 24 hours per day, 7 days per week for the duration of the applicable Usage Term purchased by You 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.

(ii) Riverbed reserves the right to make modifications to a Cloud Service provided that such modifications to the Cloud Service will not materially decrease the overall functionality of such Cloud Service during the applicable Usage Term.

(iii) You are solely responsible for: (a) following any access instructions, specifications, and application Documentation provided by Riverbed, (b) establishing strong authentication and authorization policies, such as password requirements, and maintaining the confidentiality of all User credentials, (c) the security, accuracy, quality, and lawful use of Your Data (as defined below) and the means by which You acquired Your Data, and (d) any and all access and use of the Cloud Services via Your Users' accounts and all related activity, including compliance with this Agreement.

(iv) You retain all right, title and interest in and to any data, content, code, video, images, or other materials of any type that you (including Your Users) submit to the Cloud Services ("**Your Data**"). You grant Riverbed, its Affiliates and its and their applicable service providers a worldwide, limited term, royalty-free license to host, copy, transmit and display Your Data as necessary to provide the Cloud Services in accordance with this Agreement and the applicable Documentation.

(c) **No-Charge Offerings.** Riverbed may make certain offerings available to You available at no charge, including free accounts, evaluations, trial use, betas (collectively, "**No-Charge Offerings**"). Any use of No-Charge Offerings is subject to the applicable No-Charge Offering terms available at [www.riverbed.com/nochargeofferingterms](http://www.riverbed.com/nochargeofferingterms).

(d) **Government Use.** If You are part of an agency, department, or other entity of the United States federal, state and local government ("**Government**"), then Your use of the Products is subject to the terms set forth in Attachment A ("**Government Addendum**").

4. **THIRD PARTY PRODUCTS.** You acknowledge that certain Products may have integrations or other features or functionality that permit interoperability or use with third party software, services, and/or other technology that are not provided by Riverbed (collectively, "**Third Party Technology**"), and that such Third Party Technology may be subject to separate terms and conditions. If You use any Product in connection with any Third Party Technology, You are solely responsible for complying with the Third Party Technology vendor's applicable terms and conditions and privacy policies, and You further acknowledge that all use of Third Party Technology is at Your sole risk. Riverbed is not obligated to provide any support for any Third Party Technology. Without limiting Section 7(b), Riverbed does not guarantee or warrant that any Product will have any ongoing integration support and/or will remain interoperable with any Third Party Technology; Riverbed reserves the right to discontinue any Product integration that permits interoperability or use with any Third Party Technology at any time in Riverbed's sole discretion.

5. **DATA AND DATA PROTECTION.**

(a) 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, are hereby incorporated by reference and shall apply to the extent that Riverbed processes Personal Data as a Processor on Your behalf, as defined in the DPA. Riverbed shall maintain appropriate administrative, physical and technical security measures designed to protect Your Data and Personal Data from unauthorized access, destruction, use, modification, or disclosure.

(b) Unless otherwise mutually agreed in writing, Your Data shall not include and You shall not process or submit to Riverbed any sensitive or regulated data, including: (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.

(c) Riverbed processes, uses and collects certain types of data and information from You and Your Users in connection with use of the Products to deliver, analyze, support and improve the Products and as otherwise described in this Agreement, Riverbed's then-current Products & Services Privacy Policy (available at [www.riverbed.com/privacypolicy](http://www.riverbed.com/privacypolicy)) and the applicable Documentation. Riverbed may collect certain information and data that relates to the use and operation of the 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 Products, to deliver performance insights, and to analyze and enhance the Products and other Riverbed service offerings.

6. **SUPPORT.** The fees for Products licensed by Riverbed on a perpetual basis do not include Support; if You desire to obtain Support for such Products, You shall make separate arrangements for Support (which may include entering into a separate agreement) and pay any fees associated with such Support. Unless otherwise expressly provided in the Additional Use Rights, the fees for Products made available by Riverbed on a subscription basis include a bundled Support plan for the duration of Your purchased Usage Term. You are not entitled to receive any support services (including any upgrades, updates, patches, enhancements or fixes) for any Product unless such Product is covered by a then-current paid Support plan. During the period for which You have paid the applicable Support fee, Riverbed shall provide Support for the applicable Product in accordance with Riverbed's standard Support terms. For the avoidance of doubt, You are not entitled to, and shall not, install or use any upgrades, updates, patches, enhancements



or fixes made available by Riverbed, including on Riverbed's support website, except on or with Products that are covered by a then-current paid Support plan.

#### 7. STANDARD WARRANTY; WARRANTY DISCLAIMER.

(a) Riverbed warrants to You that the Hardware, Software, and Cloud Services, upon original shipment by Riverbed or issuance by Riverbed of a license key/login information, as applicable, will conform in all material respects to the applicable published specifications for such Products during the applicable Warranty Period. "**Warranty Period**" means a period commencing on the date of original shipment by Riverbed or issuance by Riverbed of a license key or login information, as applicable, of the applicable Product and continuing (i) for 1 year with respect to Hardware, (ii) for 90 days with respect to Software, and (iii) for the duration of the Usage Term with respect to Cloud Services. Shipment of a replacement Product or provision of any updates or upgrades will not extend the Warranty Period. The foregoing warranty does not extend to any Product that (a) is modified or altered, (b) is not maintained and stored in accordance with Riverbed's maintenance recommendations and instructions, (c) has its serial number removed or altered, (d) is damaged (including by electrical power surges), mishandled, or treated with abuse, negligence or other improper treatment (including use outside the recommended environment or in violation of this Agreement), or (e) is not used in accordance with the applicable Riverbed published specifications and/or Documentation. Your sole and exclusive remedy, and Riverbed's sole and exclusive obligation, for any breach of the foregoing warranties 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. Such refund will be paid to You or the Riverbed channel partner making the warranty claim. Riverbed is not responsible for any difference between the amount paid to Riverbed for the returned Product and the amount paid by You for such returned Product.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, RIVERBED PROVIDES THE 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, RELIABILITY, SECURITY AND NONINFRINGEMENT. RIVERBED ALSO MAKES NO WARRANTY REGARDING (I) NONINTERRUPTION OF USE, (II) FREEDOM FROM BUGS, (III) THE AVAILABILITY AND/OR FUNCTIONALITY OF THIRD PARTY PRODUCTS, SERVICES, APIS, AND/OR INTEGRATIONS THAT ARE MADE AVAILABLE BY ANY THIRD PARTY, AND/OR (IV) THAT ANY PRODUCT OR SERVICE WILL MEET YOUR REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

8. **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) LOSS OR CORRUPTION OF DATA, INTERRUPTION OF USE, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM YOUR USE OF (OR INABILITY TO ACCESS OR USE) ANY 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 PRODUCT OR 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 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 END USERS IN THE EVENT OF A SHORTAGE. THIS SECTION DOES NOT LIMIT LIABILITY FOR BODILY INJURY OF A PERSON.

#### 9. TERM AND TERMINATION.

(a) **Term of Agreement.** This Agreement will continue in effect for the applicable Usage Term purchased by You with respect to a Product unless earlier terminated as set forth herein.

(b) **Termination for Cause.** Either party may terminate this Agreement if the other party fails to cure any material breach of this Agreement within 30 days after receipt of written notice describing the breach. You are not authorized to terminate any Product licenses prior to the end of the purchased Usage Term unless otherwise expressly provided in the Additional Use Rights or otherwise agreed in writing by Riverbed.

(c) **Effects of Termination.** Any termination of this Agreement will also terminate the licenses and/or other rights granted hereunder. If this Agreement is terminated by You for Riverbed's uncured material breach in accordance with Section 9(b) above, Riverbed will refund any prepaid subscription fees received by Riverbed covering the period from the effective date of termination to the end of the applicable Usage Term. If You purchased directly from Riverbed, such refund will be issued to You. If You purchased through a Riverbed channel partner, such refund will be issued to the Riverbed channel partner who purchased such Product from Riverbed. You must contact the Riverbed channel partner from which You purchased the applicable Product regarding any requested refunds. Riverbed is not responsible for any difference between the amount paid to Riverbed and the amount paid by You or for any transactions between You and the applicable channel partner. If this Agreement is terminated by Riverbed in accordance with Section 9(b) above, You will pay Riverbed or, as applicable, the channel partner, that purchased such Products from Riverbed any unpaid subscription fees covering the period from the effective date of termination to the end of the applicable Usage Term. In no event will termination relieve You of Your obligation to pay any fees payable to Riverbed or the applicable channel partner for the Usage Term prior to the effective date of termination. Upon termination of this Agreement, You shall cease use of all Software, Cloud Services, and Documentation, shall destroy and remove from all computers, hard drives, networks, and other storage media all copies of the Software (if applicable) and Documentation, and shall certify to Riverbed that such actions have occurred.

(d) **Surviving Provisions.** The following provisions will survive any termination or expiration of this Agreement: Sections 1 (Definitions), 3(a) (Restrictions), 5 (Data and Data Protection), 7(b) (Warranty Disclaimer), 8 (Limitation of Liability), 9 (Term and Termination), 10 (Compliance with Laws and Export Control), 11 (Miscellaneous), and Attachment A (Government Addendum) will survive any termination of this Agreement.



(e) **Suspension.** In addition to any of its other rights or remedies (including any termination rights) set forth in this Agreement, Riverbed reserves the right to suspend use of or access to Products: (i) in the event that Riverbed does not timely receive payment from You, or, as applicable, the channel partner that purchased such Products from Riverbed, but only after Riverbed has provided at least 2 delinquency notices, and at least 30 days (10 days in the case of a failure to pay) have passed since the transmission of the first notice, (ii) if You breach any of Sections 2 (License and Right to Use), 3 (Additional Conditions of Use), or 10 (Compliance with Laws and Export Control), (iii) if Riverbed reasonably determines suspension of the Cloud Services is necessary to avoid material harm to Riverbed or its other end users, or (iv) as required by subpoena, court order or other legal process.

10. **COMPLIANCE WITH LAWS AND EXPORT CONTROL.** You shall conduct Your business operations in accordance with all applicable U.S., European Union, Singapore and other foreign laws, ordinances, codes and regulations. Without limiting the foregoing, You shall comply with all applicable export laws, restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and any other United States, European Union, Singapore or other foreign agency or authority and shall not import, export or re-export, or allow the import, export or re-export of, any Product, technology or information You obtain or learn 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, You 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 (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, You shall not use any Product, technology or information You obtain or learn 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.

11. **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 You 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 You and You 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 licensee 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 You expressly covering the license and/or usage of Products by Riverbed to You, 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, Your books and records relating to this Agreement and Your 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 Your normal business hours and in a manner that does not materially interfere with Your normal business operations. If any audit reveals that You are in breach of this Agreement, then You 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). From time to time Riverbed may also require You to provide written assurances satisfactory to Riverbed to confirm Your 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.

**NOTICE: EXCEPT FOR THE LICENSE AND USAGE RIGHTS GRANTED HEREIN, NO INTELLECTUAL PROPERTY RIGHTS ARE TRANSFERRED. PLEASE CONTACT RIVERBED AT +1 (415) 247-8800 WITH ANY QUESTIONS.**



## Attachment A

### GOVERNMENT ADDENDUM

If You are part of an agency, department, or other entity of the United States federal, state and local government (“**Government**”), Riverbed hereby agrees to modify the Agreement as set forth below; such modifications apply only to Government customers only.

1. **Commercial Items.** The Products under this Agreement qualify as “commercial items” as defined by Chapter 1 of Title 48 of the Code of Federal Regulations, Federal Acquisition Regulation (FAR), § 2.101, and the Software under this Agreement is “commercial computer software” as defined by FAR § 12.212.
2. **Data Rights.** Notwithstanding any contrary provisions contained in this Agreement, the commercial computer software subject to this Agreement may not be used, reproduced, or disclosed by the Government except as provided for under paragraph (b)(2) of FAR § 52.227-19, Commercial Computer Software License. All Software was developed exclusively at private expense and is restricted computer software under FAR § 52.227-14, Rights in Data-General. Therefore, to the extent that FAR § 52.227-19 is inapplicable, the Government shall receive restricted rights to the Software under paragraph (g)(3) of FAR § 52.227-14 (Alternative III). The Documentation is “computer software documentation” as set forth in FAR § 52.227-14, Rights in Data-General. All Documentation was developed exclusively at private expense and is limited rights data under FAR § 52.227-14. Therefore, the Government shall receive limited rights to Documents under this agreement subject to paragraph (g)(2) of FAR § 52.227-14 (Alternative II). If the purchase is by an agency or other entity of the Department of Defense, the Documentation is also subject to the license requirements of Chapter 2 of Title 48 of the Code of Federal Regulations, Defense Federal Acquisition Regulation Supplement (DFARS), § 252.227-7015, Technical Data-Commercial Items, as restricted by paragraph (g)(2) of FAR § 52.227-14 (Alternative II).
3. **Government Purpose.** For purposes of this Addendum, references in the Agreement (including in the Additional Use Rights) to “business” use will be deemed references to Government use. In accordance with such provisions, any use of any Product by the Government will be governed solely by the terms of the Agreement as modified by this Government Addendum. All other use by or on behalf of the Government is prohibited.
4. **GSA Contract Requirements.** In accordance with Chapter 5 of Title 48 of the Code of Federal Regulations, General Services Administration Acquisition Regulation (GSAR), § 552.212-4(w), the following language is incorporated into the Agreement:
  - (1) Notwithstanding any other provision of this Agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:
    - (i) *Applicability.* This Agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR 12).
    - (ii) *End user.* This Agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.
    - (iii) *Law and disputes.* This Agreement is governed by Federal law.
      - (A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.
      - (B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.
      - (C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.
    - (iv) *Continued performance.* Riverbed shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this Agreement. If the supplier or licensor believes the ordering activity to be in breach of the Agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes) of GSAR § 552.212-4.
    - (v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this Agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).
    - (vi) *Updating terms.*
      - (A) After award, Riverbed may unilaterally revise (A) commercial supplier Agreement terms if they are not material. A material change is defined as:
        - (1) Terms that change Government rights or obligations;
        - (2) Terms that increase Government prices;
        - (3) Terms that decrease overall level of service; or
        - (4) Terms that limit any other Government right addressed elsewhere in this contract.
      - (B) For revisions that will materially change the terms of the contract, the revised commercial supplier Agreement must be incorporated into the Agreement using a bilateral modification.
      - (C) Any Agreement license terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.



- (vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this Agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.
  - (viii) *Audits.* Any clause of this Agreement permitting Riverbed to audit the end user's compliance with this Agreement is hereby amended as follows:
    - (A) Discrepancies found in an audit may result in a charge by Riverbed to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.
    - (B) This charge, if disputed by the ordering activity, will be resolved in accordance with the Disputes clause at GSAR § 552.212-4(d); no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.
    - (C) Any audit requested by the contractor will be performed at Riverbed's expense, without reimbursement by the Government.
  - (ix) *Non-assignment.* This Agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of GSAR § 552.212-4.
- (2) If any language, provision, or clause of this Agreement conflicts or is inconsistent with the preceding paragraph (1), the language, provisions, or clause of paragraph (1) shall prevail to the extent of such inconsistency.