riverbed

RIVERBED FREE OFFERINGS TERMS AND CONDITIONS

IMPORTANT: PLEASE READ BEFORE INSTALLATION OR USE OF ANY FREE OFFERINGS (AS DEFINED BELOW). THESE RIVERBED FREE OFFERINGS TERMS AND CONDITIONS ("**AGREEMENT**") CONSTITUTE A BINDING AGREEMENT BETWEEN RIVERBED TECHNOLOGY LLC ("**RIVERBED**") AND THE ENTITY OR COMPANY THAT IS THE AUTHORIZED USER OF THE FREE OFFERINGS ("**COMPANY**"). BY EXECUTING A WRITTEN ORDER OF AGREEMENT FOR ANYFREE OFFERINGS, COMPANY IS UNCONDITIONALLY CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT WITH RIVERBED. IF COMPANY DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, COMPANY IS NOT AUTHORIZED TO AND MAY NOT DOWNLOAD, INSTALL, ACCESS OR USE ANY FREE OFFERINGS.

1. **FREE OFFERINGS**. Subject to the terms of this Agreement, Riverbed, in its sole discretion, will on occasion make available to Company access to certain applications, features, functionality, products or other technology free of charge ("**Free Offering(s)**"). Free Offerings are not "Products" and/or "Evaluation Products" under any other agreement or terms and conditions Company may otherwise have with Riverbed; Company's use of the Free Offerings is governed exclusively by the terms and conditions of this Agreement. Free Offerings are excluded from Riverbed's support obligations and any support provided by Riverbed in its sole discretion shall be subject to this Agreement. Company agrees not to (x) copy, modify, reverse engineer, decompile or disassemble any Free Offerings, make derivative works based upon any Free Offerings, or use any Free Offerings to develop any products, or (y) publish or provide any benchmark or comparison tests to any third party or assist any third party to do any of the foregoing. Riverbed may use Company's feedback regarding a Free Offering's performance, stability and other relevant information to assist Riverbed in the ongoing development and improvement of Free Offerings and/or Riverbed products. Riverbed shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into any Free Offerings and/or Riverbed products any such feedback, or any other suggestions, enhancement requests, recommendations provided by Company relating to Free Offerings. Riverbed's supplying of any Free Offerings does not represent a commitment, promise or legal obligation on Riverbed's part to deliver any new products, features or functionality for general availability. Riverbed does not commit, promise, or agree to finally release and/or offer for sale any Free Offerings, whether or not perfected, and the development, release, and timing of any features or functionality remains at Riverbed's sole discretion. Company acknowledges and agrees that Riverbed, in its sole discretion and for any or no reason, may terminate Company's access to the Free Offerings or any part thereof. Company acknowledges and agree that any termination of Company's access to the Free Offerings may be without prior notice, and that Riverbed will not be liable to Company or any third party for such termination.

2. **DATA AND DATA PROTECTION**.

(a) Company acknowledges that certain Free Offerings may process data submitted by Company or Company's behalf ("**Company Data**"). Company retains all rights and ownership in Company Data. Riverbed does not claim any ownership rights in Company Data.

(b) The terms of data processing addendum attached hereto and at 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 Company's behalf, as defined in the DPA. Riverbed shall maintain appropriate administrative, physical and technical security measures designed to protect Company Data and Personal Data from unauthorized access, destruction, use, modification, or disclosure.

(c) Unless otherwise mutually agreed in writing, Company Data shall not include and Company shall not process or submit to Riverbed 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.

(d) Riverbed processes, uses and collects certain types of data and information from Company and Company's authorized users in connection with use of the Free Offerings to deliver, analyze, support and improve the Free Offerings and as otherwise described in this Agreement, Riverbed's then-current Privacy Policy (attached hereto and available at www.riverbed.com/privacypolicy) and any applicable documentation provided with the Free Offering. Riverbed may collect certain information and data that relates to the use and operation of the Free Offerings, 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 Free Offerings, to deliver performance insights, and to analyze and enhance the Free Offerings and other Riverbed product and service offerings.

3. **WARRANTY DISCLAIMER**. COMPANY ACKNOWLEDGES AND AGREES THAT FREE OFFERINGS ARE PROVIDED "AS IS'' AND MAY NOT BE FUNCTIONAL IN COMPANY'S ENVIRONMENT. COMPANY'S USE OF FREE OFFERINGS IS ENTIRELY AT COMPANY'S OWN RISK. RIVERBED MAKES NO WARRANTIES IN CONNECTION WITH ANY FREE OFFERINGS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. RIVERBED SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

4. **LIMITED LIABILITY**. RIVERBED SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (A) FOR LOSS OR INACCURACY OF DATA, COMPUTER FAILURE OR MALFUNCTION, DAMAGES RESULTING FROM COMPANY'S USE OF FREE OFFERINGS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, (B) FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF PROFITS, AND LOSS OF GOODWILL, (C) FOR ANY AMOUNT IN THE AGGREGATE IN EXCESS OF US$1,000, OR (D) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

5. **GENERAL**. This Agreement shall be governed by and construed under the Federal laws of the United Stateswithout giving effect to the principles of conflicts of law and without application of the UN Convention on Contracts for the International Sale of Goods. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of any right under this Agreement and all waivers must be in writing. In the event that any term of this Agreement is held by a court to be unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Company may not assign this Agreement without the prior written consent of Riverbed. Any attempted assignment or transfer in violation of the foregoing shall be void. This Agreement is the complete agreement between the parties hereto concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties with respect thereto. This Agreement may only be modified by a written document executed by the parties hereto.