riverbed

RIVERBED U.S. PUBLIC SECTOR ADDENDUM

If Customer is a U.S. Public Sector End User, then this Addendum is incorporated into and applies to the Agreement. "**U.S. Public Sector End User**" means an agency, department, or other entity of the United States federal government ("**Federal**") or a state, local, or public education entity created by the law (including constitution or statute) of the applicable state ("**SLED**"). To the extent the deviations set forth in this Addendum are required by applicable law, Riverbed and U.S. Public Sector End User agree that the following provisions take precedence over any conflicting terms in the Agreement. Capitalized terms not defined herein will have the meaning specified (if applicable) in the Agreement.

1. **GOVERNMENT PURPOSE**. For purposes of this Addendum, references in the Agreement to "business" use will be deemed references to government use.

2. **INDEMNIFICATION**.

   2.1. **No Customer Indemnification Obligation**. To the extent applicable law prohibits the U.S. Public Sector End User from indemnifying Riverbed, any terms or conditions in the Agreement requiring the U.S. Public Sector End User to indemnify Riverbed will be deemed void and not bind the U.S. Public Sector End User.

   2.2. **Control of Defense**. Any provision of the Agreement requiring Riverbed to defend or indemnify the U.S. Public Sector End User is hereby amended, to the extent required by applicable laws, to provide that the U.S. Department of Justice (for Federal) or applicable State Attorney General's Office (for SLED) has the sole right to represent the respective Federal or SLED End User in litigation and other formal proceedings.

3. **CONTROLLING LAW, VENUE, AND DISPUTES**.

   3.1. **Federal**. With respect to Federal end users, the Agreement and any disputes arising out of or related thereto will be governed by U.S. federal law. Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable federal law is hereby deleted and superseded by the forum or venue required by applicable law.

   3.2. **SLED**. With respect to SLED end users, the Agreement and any disputes arising out of or related thereto will be governed by the laws of the state pursuant to which SLED end user is created, or else the state in which SLED end user's primary headquarters or main office is geographically located. With respect to all disputes arising out of or related to the Agreement, the parties consent to exclusive jurisdiction and venue in the state and federal courts located in such state.

4. **FEDERAL END USERS**.

   4.1. **Commercial Items**. The Offerings 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 and Cloud Services under this Agreement are "commercial computer software" as defined by FAR § 12.212.

   4.2. **Data Rights**. Notwithstanding any contrary provisions contained in the Agreement, the commercial computer software subject to this Agreement may not be used, reproduced, or disclosed by the Federal end user except as provided for under paragraph (b)(2) of FAR § 52.227-19, Commercial Computer Software License. All Software and Cloud Services were developed exclusively at private expense and are restricted computer software under FAR § 52.227-14, Rights in Data-General. Therefore, to the extent that FAR § 52.227-19 is inapplicable, the Federal end user will receive restricted rights to the Software and Cloud Services 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 Federal end user will receive limited rights to Documentation 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).

   4.3. **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:

      (a) Notwithstanding any other provision of the Agreement, when the end user is an agency or instrumentality of the U.S. government, the following will apply:

         (i) *Applicability*. The Agreement is a part of a contract between the commercial supplier and the Federal end user 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*. The Agreement will bind the ordering activity as end user but will not operate to bind a Federal end user employee or person acting on behalf of the Federal end user in his or her personal capacity.

         (iii) *Continued performance*. Riverbed will not unilaterally revoke, terminate or suspend any rights granted to the Federal end user except as allowed by the Agreement. If the supplier or licensor believes the ordering activity to be in breach of the Agreement, it will 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.

         (iv) *Arbitration; equitable or injunctive relief*. In the event of a claim or dispute arising under or relating to the Agreement, a binding arbitration will 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 Federal end user only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

         (v) *Updating terms*. After award, Riverbed may unilaterally revise commercial supplier Agreement terms if they are not material. A material change is defined as: (1) terms that change the Federal end user's rights or obligations; (2) terms that increase

Federal end user prices; (3) terms that decrease overall level of service; or (4) terms that limit any other Federal end user rights addressed elsewhere in this contract. 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. Any Agreement license terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract will not be enforceable against the Federal end user, and the Federal end user will not be deemed to have consented to them.

(vi) *No automatic renewals*. If any license or service tied to periodic payment is provided under the Agreement (e.g., annual software maintenance or annual lease term), such license or service will not renew automatically upon expiration of its current term without prior express consent by an authorized Federal end user representative.

(vii) *Audits*. Any clause of the Agreement permitting Riverbed to audit the end user's compliance with the Agreement is hereby amended as follows:

(1) 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 Federal end user contract or order.

(2) 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 will arise on the part of the ordering activity until the conclusion of the dispute process.

(3) Any audit requested by the contractor will be performed at Riverbed's expense, without reimbursement by the Federal end user.

(viii) *Non-assignment*. The Agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Federal end user's prior approval, except as expressly permitted under subparagraph (b) of GSAR § 552.212-4.

(b) If any language, provision, or clause of the Agreement conflicts or is inconsistent with the preceding paragraph (a), the language, provisions, or clause of paragraph (a) will prevail to the extent of such inconsistency.