riverbed

RIVERBED GENERAL TERMS

These General Terms ("**General Terms**") are entered into as of the Effective Date between Riverbed and Customer and govern Customer's use of the Offerings. Unless otherwise indicated, capitalized terms have the meaning assigned to them in these General Terms or in an incorporated Exhibit attached hereto. Any individual accepting this Agreement on behalf of Customer represents that they have the authority to bind Customer to this Agreement. If such individual does not have such authority, or if the individual does not agree with the terms and conditions of this Agreement, such individual must not accept this Agreement and may not use the Offerings.

Applicable Exhibits	The following Exhibits attached hereto and made available at www.riverbed.com/license are incorporated into the General Terms and apply to the provision of the applicable Offerings upon Customer's ordering of such offering: • Cloud Services Exhibit • Hardware Exhibit • Software Exhibit • Professional Services Exhibit

1. **DEFINITIONS**. Defined terms are set out below. Capitalized terms used but not defined in an Exhibit or the Additional Use Rights will have the meaning assigned to them, if any, within these General Terms.

1.1. "**Additional Use Rights**" means the terms and conditions attached hereto and set forth at www.riverbed.com/license/additional_use_rights, as may be updated by Riverbed from time to time.

1.2. "**Affiliate**" means an entity that controls, is controlled by, or is under common control with Riverbed Technology LLC.

1.3. "**Agreement**" means these General Terms, the referenced Exhibits, and any accompanying or future Order that Customer places under these General Terms.

1.4. "**Channel Partner**" means a reseller or other channel partner authorized to sell Riverbed Offerings.

1.5. "**Cloud Service(s)**" means any software-as-a-service or cloud-based solutions on Riverbed's then-current price list or otherwise made available by Riverbed, including associated offline components provided by Riverbed as part of the Cloud Service.

1.6. "**Customer**" means the entity for which an authorized representative accepts or otherwise agrees to the terms of the Agreement.

1.7. "**DPA**" means the then-current Riverbed Data Processing Addendum located at www.riverbed.com/data-processing-addendum.

1.8. "**Delivery**" means: (a) for Cloud Services, when Riverbed emails the login credentials to the email address associated with Customer's account; (b) for shipping and delivery of Hardware, F.O.B. Origin per UCC (or FCA per INCOTERMS 2020 for international shipments) Riverbed's applicable warehouse or place of production; and (c) for Software, when Riverbed notifies Customer of availability of Software for download or installation.

1.9. "**Documentation**" means the then-current technical documentation and usage guides expressly designated by Riverbed as applicable to the Solution.

1.10. "**Effective Date**" means the earliest of: (a) the date Customer first accesses or uses any Riverbed Offerings; (b) the effective date of the initial Order that references these General Terms; or (c) when Customer clicks a box indicating acceptance of these General Terms.

1.11. "**EOL Policies**" means the then-current applicable Solution end-of-life policies, available at www.riverbed.com/supportpolicy.

1.12. "**Exhibits**" means any of the exhibits referenced herein or otherwise set forth in an Order.

1.13. "**Hardware**" means hardware or equipment on Riverbed's then-current price list or otherwise made available by Riverbed, including any components or replacements of any of the foregoing.

1.14. "**Offerings**" means the Solutions, Services and other offerings that Riverbed makes generally available, including without limitation Cloud Services, Hardware, Software, Support and Professional Services.

1.15. "**Order**" has the meaning set forth in Section 2 (Quoting and Ordering).

1.16. "**Professional Services**" means the configuration, consulting, implementation, training and other professional services made available by Riverbed.

1.17. "**Riverbed**" means Riverbed Technology LLC or one of its Affiliates, as applicable.

1.18. "**Software**" means any software on Riverbed's then-current price list or otherwise made available by Riverbed, including (a) software provided on a stand-alone basis, (b) software provided on or with any Hardware, and (c) any upgrades, updates, patches, enhancements, or fixes to any of the foregoing that may be made available by Riverbed.

1.19. "**Solution(s)**" means, collectively, the Cloud Services, Hardware, and Software.

1.20. "**Services**" means, collectively, any generally available services on Riverbed's then-current price list or otherwise made available by Riverbed, including Support and Professional Services.

1.21. "**Support Services**" means Riverbed's then-current generally available end user maintenance and support services that are purchased under an Order or included with the purchase of subscription-based Software or Cloud Services.

1.22. "**Support Services Description**" means Riverbed's then-current Support Services Description, attached hereto and available at www.riverbed.com/supportservicedescription.

2. **QUOTING AND ORDERING**.

2.1. **Process**. Customer may request a quote from Riverbed either in the form of a written quotation or other online process ("**Quote**"). Quoted prices are effective until the expiration date of the Quote but may change due to shortages in materials or resources, increases in production costs, or other factors. Customer may order the Offerings quoted by: (a) issuing a Customer purchase order that references such Quote; (b) signing a Quote that incorporates reference to this Agreement; (c) ordering online through a Riverbed-designated online process; or (d) ordering through a Channel Partner. All Orders are subject to credit approval and acceptance by Riverbed (which is deemed to occur on Delivery). An accepted order is hereinafter referred to as an "**Order**". Except as otherwise specifically provided in this Agreement, all Orders are non-refundable and non-cancellable. The terms and conditions of the Agreement will apply to all Orders and supersede any different or additional terms on Customer's purchase orders (or any other unilateral Customer document not agreed in writing by authorized representatives of both parties). If Customer requires that a purchase order ("**PO**") be issued before making payment under an Order, Customer will provide to Riverbed such valid PO conforming to the applicable Order prior to Delivery.

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

2.3. **Purchasing Through Channel Partners**. The Agreement specifies the terms and conditions under which Offerings will be provided by Riverbed to Customer, whether purchased directly from Riverbed or indirectly through a Channel Partner. Channel Partners are not authorized to modify this Agreement or make any commitments on Riverbed's behalf. If Customer purchases Offerings from a Channel Partner, then Sections 2, 3, and 4 of this Agreement do not apply; and all purchase terms (including those related to credit, invoicing, payment, ordering, pricing and delivery) will be as agreed between Customer and Channel Partner If Customer is entitled to a refund under this Agreement, then unless otherwise specified, Riverbed will refund any applicable fees to the Channel Partner and the Channel Partner will be solely responsible for refunding the appropriate amounts to Customer.

3. **DELIVERY**. Delivery of Hardware is governed by the Hardware Exhibit. All Software and Cloud Services are provided by electronic means. Software transfers to Customer upon Delivery.

4. **PAYMENT**. All fees and the invoicing frequency are as set forth in the applicable Order; Professional Services are subject to the additional payment terms set forth in the Professional Services Exhibit. Riverbed will not invoice for any Solution prior to Delivery. Customer will pay all fees and approved expenses in U.S. dollars within thirty days from the date of invoice receipt. All past due payments, except to the extent reasonably disputed, will accrue interest at a rate equal to the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k). Upon renewal, Riverbed reserves the right to increase fees for subscription-based Offerings up to Riverbed's then-current list price in accordance with the then current applicable GSA Schedule Pricelist.

5. **WARRANTIES AND DISCLAIMER**.

5.1. **Solutions**. Riverbed provides a Hardware warranty as set forth in the Hardware Exhibit. Riverbed warrants to Customer that the Cloud Services and Software will conform in all material respects to the applicable published specifications within the Documentation for the applicable Warranty Period. "**Warranty Period**" means a period commencing on Delivery and continuing (a) for the duration of the Cloud Services subscription; or (b) for ninety days with respect to Software. Customer's sole and exclusive remedy, and Riverbed's sole and exclusive obligation, for any breach of the foregoing warranty will be Riverbed's correction of any reproducible error in the Cloud Services or Software, or if Riverbed cannot correct the error in a commercially reasonable manner, then termination of the non-conforming Cloud Services or Software and a refund of the applicable unused, prepaid fees (for Cloud Services) or license fees (for Software).

5.2. **Services**. Riverbed warrants to Customer that the Professional Services and Support Services will be performed in a professional manner in accordance with generally accepted industry standards. Customer will notify Riverbed within thirty days of an alleged breach of this warranty. Customer's sole and exclusive remedy, and Riverbed's sole and exclusive obligation, for any breach of the foregoing warranty will be Riverbed's reperformance of the applicable Professional Services or Support Services.

5.3. **Limitations**. The warranties in this Section do not extend to: (a) any Offering that is modified or altered; (b) any Offering that is not used in accordance with the applicable Documentation; and (c) No-Charge Offerings.

5.4. **Disclaimer**. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, RIVERBED PROVIDES THE OFFERINGS "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, SECURITY, RELIABILITY AND NONINFRINGEMENT. RIVERBED ALSO MAKES NO WARRANTY REGARDING (A) NONINTERRUPTION OF USE, (B) FREEDOM FROM BUGS, (C) THE AVAILABILITY AND/OR FUNCTIONALITY OF THIRD-PARTY PRODUCTS, SERVICES, APIS, AND/OR INTEGRATIONS THAT ARE MADE AVAILABLE BY ANY THIRD PARTY, AND/OR (D) THAT ANY OFFERING WILL MEET CUSTOMER'S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

6. **PROPRIETARY RIGHTS**. Regardless of any references to any sale or purchase in the Agreement, all Software is licensed by Riverbed, and not sold. Except for the rights expressly granted under the Agreement, Riverbed and its licensors retain all right, title, and interest in and to the Cloud Services, Software, Documentation, Professional Services, and Usage Data (as defined in Section 9.2), including all related intellectual property rights inherent therein. Additionally, Riverbed retains ownership of any intellectual property resulting from

Support Services. Customer acknowledges that the Offerings are protected by copyright, trademark, and other laws of the United States and foreign countries. Customer agrees not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Offerings. If Customer provides any feedback about the Offerings, Riverbed may use that feedback without restriction.

7. **Support Services**. Riverbed will provide Customer with the level of Support Services specified in an Order in accordance with the Support Services Description. Riverbed reserves the right to discontinue the manufacture or sale of, or otherwise render or treat as obsolete, any Offering, subject to Riverbed's EOL Policies.

8. **Non-Riverbed Technology**. Customer acknowledges that certain Offerings 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, "**Non-Riverbed Technology**"), and that such Non-Riverbed Technology may be subject to separate terms and conditions. If Customer uses any Offering in connection with any Non-Riverbed Technology, Customer is solely responsible for complying with the Non-Riverbed Technology vendor's applicable terms and conditions, and Customer further acknowledges that all use of Non-Riverbed Technology is at Customer's sole risk. Riverbed is not obligated to provide any support for any Non-Riverbed Technology. Without limiting Section 5, Riverbed does not guarantee or warrant that any Offering will have any ongoing integration support and/or will remain interoperable with any Non-Riverbed Technology; Riverbed reserves the right to discontinue any Offering integration that permits interoperability or use with any Non-Riverbed Technology at any time in Riverbed's sole discretion.

9. **DATA USE AND PRIVACY**.

   9.1. **Personal Data**. The terms of the DPA are hereby incorporated by reference and will apply to the extent that Riverbed processes Personal Data on Customer's behalf pursuant to the Agreement. For the purposes of the Standard Contractual Clauses, Customer is the data exporter, and Customer's acceptance of this Agreement will be treated as its execution of the Standard Contractual Clauses and Appendices. The terms "**processes**", "**Personal Data**" and "**Standard Contractual Clauses**" used in this Section are each defined in the DPA.

   9.2. **Operational and Usage Data**. Riverbed collects Customer contact and purchase information to manage Customer's account and to fulfill and invoice Orders. Riverbed also collects and processes information necessary to facilitate delivery and operation of the Offerings, verify compliance with the terms of the Agreement, and provide Support Services. From time to time, Riverbed may collect and process certain information and data derived from Customer's use of the Offerings, including Riverbed's technical logs, configuration and performance data and other insights (collectively, "**Usage Data**"). Riverbed uses Usage Data to operate, improve and support the Offerings and for other lawful business purposes, including benchmarking and reports. Riverbed will not share any Usage Data externally unless it is: (a) de-identified so that it does not identify Customer, its users or any other person; and (b) aggregated with data across other customers.

10. **CONFIDENTIALITY**.

   10.1. **Definition**. Each party (the "**Receiving Party**") agrees that any nonpublic information, software, inventions (whether patentable or not), algorithms, designs, know-how, ideas, product development plans, pricing and discounts, and all customer, business, technical, training and financial information (collectively, "**Confidential Information**") it obtains from the other (the "**Disclosing Party**") are the confidential property of the Disclosing Party and its suppliers. Without limiting the foregoing, the Offerings (including their design and structure) and all information on Riverbed's Support Portal constitute trade secrets and/or Confidential Information of Riverbed or its licensors. Confidential Information does not include any information that (a) was publicly known at the time of the Disclosing Party's communication thereof to the Receiving Party or becomes publicly known thereafter through no fault of the Receiving Party; (b) was in the Receiving Party's possession free of any obligation of confidentiality at the time of the Disclosing Party's communication thereof to the Receiving Party; (c) is rightfully obtained by the Receiving Party free of any obligation of confidentiality from a third party authorized to make such disclosure without restriction; or (d) is identified by the Disclosing Party as no longer proprietary or confidential.

   10.2. **Use and Disclosure**. Except as expressly and unambiguously allowed herein, the Receiving Party will hold the Disclosing Party's Confidential Information in confidence using the same degree (but no less than a reasonable degree) of care and protection that it uses to protect its own Confidential Information of a similar nature and not use or disclose any Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to those of its employees and contractors with a need to know such Confidential Information and who have signed a written agreement with nonuse and nondisclosure provisions at least as protective of such Confidential Information as the terms of this Agreement. The Receiving Party may disclose Confidential Information to the minimum extent disclosure is required by court order or as otherwise required by law, on condition that (a) notice of such requirement for such disclosure is given to the Disclosing Party prior to making any such disclosure (if permitted under applicable law); and (b) the Receiving Party ensures that any Confidential Information disclosed under this provision will still be afforded the protection of this Agreement to the extent it does not become publicly available as a result of such disclosure.

   10.3. **Reserved**..

   10.4. **Compelled Disclosure**. Notwithstanding anything to the contrary, the Receiving Party may disclose Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body (collectively, "**Compelled Disclosures**"); provided, that the Receiving Party provides the Disclosing Party reasonable written notice of a Compelled Disclosure (to the extent legally permitted). The Receiving Party will provide reasonable cooperation to the Disclosing Party in connection with a Compelled Disclosure at the Disclosing Party's expense. Riverbed recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor

11. **TERM AND TERMINATION**.

   11.1. **Term of Agreement**. The Agreement will become effective on the Effective Date and will continue in full force and effect until terminated by either party pursuant to this Section 11 (Term and Termination).

11.2. **Term of Orders**. Each Order will commence on the start date as specified in the Order or Delivery, whichever is the later, and continue for the duration specified in the Order.

11.3. **Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Riverbed shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11.4. **Effect of Termination**. Upon termination or expiration of this Agreement all subscriptions, licenses, rights to use or access the Offerings will cease. For any termination by Customer for cause in accordance with this Section, Riverbed will refund to Customer the portion of any prepaid fees made to Riverbed for Offerings not yet provided as of the effective date of termination. All provisions of the Agreement that by their nature should survive termination will so survive.

11.5. **Temporary Suspension**. In addition to any of its other rights or remedies set forth in this Agreement, Riverbed reserves the right to temporarily suspend provision of the Offerings: (a)reserved; (b) for Customer's breach of Section 14 (Compliance with Laws and Export Control); (c) if Riverbed reasonably determines suspension of the Offering is necessary to avoid material harm to Riverbed or its other end users; or (d) as required by subpoena, court order or other legal process.

12. **LIMITATIONS OF LIABILITY**.

12.1. **Types of Damages**. IN NO EVENT WILL RIVERBED AND ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR (A) ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS, CONTRACTS, BUSINESS, REVENUES, GOODWILL OR REPUTATION; (B) COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES; OR (C) LOSS OR CORRUPTION OF DATA, INTERRUPTION OF USE, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM CUSTOMER'S USE OF (OR INABILITY TO ACCESS OR USE) ANY OFFERING.

12.2. **Monetary Cap**. THE AGGREGATE LIABILITY OF RIVERBED AND ITS AFFILIATES AND SUPPLIERS WILL NOT EXCEED THE AGGREGATE FEES RECEIVED BY RIVERBED FROM OR ON BEHALF OF CUSTOMER 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.

12.3. **Exceptions**. THIS SECTION DOES NOT LIMIT LIABILITY FOR (A) DEATH OR BODILY INJURY OF A PERSON; OR (B) IF CUSTOMER IS LOCATED WITHIN THE EUROPEAN UNION OR THE EUROPEAN FREE TRADE AREA, 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.

12.4. **Nature of Claims**. THE LIMITATIONS IN THIS SECTION APPLY REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, EVEN IF RIVERBED IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THE OFFERINGS ARE NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE OFFERING 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.

12.5. NOTWITHSTANDING ANYTHING IN THIS SECTION 12 TO THE CONTRARY AND SO FAR AS PERMITTED BY LAW, RIVERBED'S LIABILITY RELATING TO NO-CHARGE OFFERINGS WILL BE LIMITED TO FIVE THOUSAND US DOLLARS.

13. **INDEMNIFICATION**.

13.1. **Defense and Indemnification**. Riverbed will have the right to intervene to defend any third party action, suit or proceeding brought against Customer alleging that the Solutions infringe any of such third party's patents or copyrights that are registered in the United States as of the Effective Date (each, a "**Claim**"), and will indemnify Customer for any losses, damages, costs, expenses and judgments resulting from a Claim that are agreed to by Riverbed in a settlement or that are finally awarded against Customer by a court or a governmental entity with competent jurisdiction. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

13.2. **Conditions of Indemnification**. The foregoing obligations are expressly conditioned on Customer promptly notifying Riverbed of any and all threats, claims and proceedings related to a Claim and providing Riverbed with reasonable assistance and the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise of such Claim. Riverbed is not responsible for any settlement it does not approve in writing.

13.3. **Exclusions**. Riverbed will have no obligation under this Section with respect to any Solution or any portion or component thereof: (a) that is not supplied by Riverbed; (b) that is made in whole or in part in accordance with Customer specifications or requests; (c) that is modified, including any modification made using any programming capabilities or scripting languages that are included in or with any Solution or that are otherwise made available for any Solution, if the alleged infringement relates to such modification; (d) that is combined, processed, or used with other products, technologies, processes or materials, if the alleged infringement relates to such combination, process or use; (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; (f) where Customer's use is not strictly in accordance with this Agreement; or (g) where the alleged infringement relates to a patent that is deemed essential or required for any industry standard or that claims a method of conducting business.

13.4. **Other Remedies**. If any Solution becomes, or in Riverbed's reasonable opinion is likely to become the subject of a Claim, then Riverbed may at its sole option and expense: (a) procure for Customer the right to continue to use the applicable Solution; (b) replace the applicable Solution with a noninfringing alternative; (c) modify the applicable Solution to make it noninfringing; or (d) terminate

Customer's entitlement to the Solution and refund any applicable: (i) prepaid fees for any Solution provided on a subscription basis, prorated for the remaining portion of the then-current subscription term; and (ii) fees paid for any Solution licensed on a perpetual basis, less straight-line depreciation over a five-year period.

13.5. **Exclusive Remedy**. This Section states Riverbed's sole and exclusive obligation, and Customer's sole and exclusive remedy, to the maximum extent permitted under applicable law, for any third-party claims of infringement.

14. **COMPLIANCE WITH LAW AND EXPORT CONTROL**. Customer will conduct its business operations in accordance with all applicable U.S., European Union, Singapore and other foreign laws, ordinances, codes and regulations. Without limiting the foregoing, Customer will 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 will not import, export or re-export, or allow the import, export or re-export of, any Offering, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations. Pursuant to these laws, restrictions, and regulations, Customer will ensure that no Offering is, in the absence of authorization by U.S. and other applicable law as required, used by or exported, sold or re-exported to: (a) any U.S. sanctioned or embargoed country, or to nationals or residents of such countries; (b) any person, entity, organization or other party identified on the U.S. Department of Commerce's Denied Persons or Entity List, the U.S. Department of Treasury's Specially Designated Nationals or Blocked Persons List, or the Department of State's Debarred Parties List, as published and revised from time to time; or (c) any party who is known or suspected to be involved in relation to any nuclear, biological or chemical weapons, or proliferation-related end-uses restricted by the U.S. Export Administration Regulations, including the design, development, or production of missiles capable of delivering these weapons. Without limiting the foregoing, Customer will not use any Offering, 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.

15. **No-Charge Offerings**. Riverbed may make certain offerings available to Customer 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 attached hereto and at www.riverbed.com/nochargeofferingterms.

16. **GENERAL**.

16.1. **Publicity**. Customer consents to Riverbed's use of Customer's name for public identification as a customer in promotional marketing materials, press releases and including on Riverbed's public website to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. In addition, upon request, Customer consents to participating in a case study regarding its experiences with the Riverbed Offerings ("**Case Study**"), and inclusion of the Case Study in promotional marketing materials and press releases.

16.2. **Notice**. All legal notices will be in writing and effective upon: (a) personal delivery; (b) the second business day after being mailed or couriered; or (c) the day of sending by email, except for notices of breach (other than for non-payment) or a Claim, which for clarity must be made by mail or courier. Email notifications to: (i) Riverbed will be to contracts@riverbed.com, or (ii) Customer will be to the email address on the applicable Order, with the words "Legal Notice" in the subject line. Billing-related notices to Customer may be provided by email to the relevant billing contact designated by Customer.

16.3. **Transfer and Assignment**. This Agreement is personal to Customer and Customer will not assign (by operation of law or otherwise), transfer or sublicense any obligation or benefit under this Agreement, in whole or in part, for any reason whatsoever without Riverbed's prior written consent, and any action or conduct in violation of the foregoing will be void and without effect. Riverbed may assign this Agreement and/or any Orders, or delegate any of its obligations hereunder, in whole or in part.

16.4. **Independent Contractors**. For all purposes under this Agreement, each party will be and act as an independent contractor of the other and will not bind nor attempt to bind the other to any contract.

16.5. **No Third-Party Beneficiaries**. This Agreement does not confer any benefits on any third parties unless it expressly states that it does.

16.6. **Severability and Waiver**. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible consistent with the original intent of the parties, and the other provisions of this Agreement will remain in force. The failure of Riverbed to enforce its rights under this Agreement or to act with respect to a breach of this Agreement by Customer or others will not be construed as a waiver of such rights and will not limit Riverbed's rights with respect to any such breach or any subsequent breaches.

16.7. **Interpretation; Order of Precedence and Conflicts**. 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. Riverbed and Customer agree that any Order (or portion thereof) will be deemed separable from any other Order (or portion thereof).

16.8. **Entire 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.

16.9. **Audit**. Riverbed may, upon at least two weeks' advance written notice, and subject to Government security requirements, inspect, or have an accountant or auditor inspect, Customer's books and records relating to this Agreement and Customer's compliance with its terms and conditions, for up to two prior years of records from the date of such audit. Any such audit will be conducted during Customer's normal business hours and in a manner that does not materially interfere with Customer's normal business operations. Customer will provide all reasonable assistance for such audit. If any audit reveals that Customer is in breach of this Agreement, then

Customer will (a)reserved, and (b) if applicable, compensate Riverbed (at Riverbed's then-current GSA Schedule list price) for any unauthorized use of or access to any Offering. From time to time, Riverbed may also require Customer to provide written assurances satisfactory to Riverbed to confirm Customer's compliance with the terms and conditions of this Agreement, including any applicable Additional Use Rights.

16.10. **Counterparts**. This Agreement may be executed in any number of counterparts, all of which taken together constitute a single instrument. 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.

16.11. **Governing Law and Venue**. This Agreement is governed by and construed in accordance with the Federal laws of the USA (without regard to the conflicts of laws provisions thereof or the UN Convention on the International Sale of Goods.

16.12. **U.S. Public Sector End Users**. If Customer is a U.S. Public Sector End User (as defined in the U.S. Public Sector Addendum), then U.S. Public Sector Addendum attached hereto and available at www.riverbed.com/license supersedes or modifies the referenced provisions of the Agreement.

16.13. **N/A Terms and Conditions**. The parties agree that the terms and conditions in the following attached documents referenced herein and/or referenced in one or more of the other documents attached hereto shall not apply and are hereby removed from this Agreement: (1) Riverbed Evaluation Agreement; (2) Riverbed Preview Terms; and (3) Riverbed Standard Terms of Sale and License. Additionally, the parties agree that the sale of Solutions, Software and Services hereunder shall be conducted through Chanel Partners and any payment terms and conditions set forth herein or in any document referenced herein and attached hereto are not applicable;