RIVERBED PROACTIVE SUPPORT SERVICES TERMS & CONDITIONS

These Riverbed Proactive Support Services Terms & Conditions ("**Agreement**") set forth the terms and conditions that govern the Proactive Support Services (as defined below) that are made available by Riverbed Technology LLC and/or any of its affiliates, as applicable ("**Riverbed**"). Any references to "**Customer**" below mean the applicable customer that is placing an Order for Proactive Support Services either directly from Riverbed or indirectly through one of Riverbed's authorized channel partners.

1. **Definitions**.

(a) "**Deliverables**" means all analyses, reports, manuals, supporting materials, test results, recommendations, drawings, and other materials, whether in tangible or electronic format, that are expressly identified as a deliverable in the applicable Service Documentation and/or that are provided to Customer by Riverbed in the course of providing the Proactive Support Services to Customer. All Deliverables will be provided in the English language unless otherwise agreed in writing by Riverbed.

(b) "**EULA**" means the applicable Riverbed license agreement that accompanies a Product and is also attached hereto and located at www.riverbed.com/license, and which governs use of the Product.

(c) "**Order"** means a written purchase order for Proactive Support Services that is submitted by Customer directly to Riverbed and is accepted by Riverbed, or a written order for Proactive Support Services that is placed indirectly by Customer through a Riverbed authorized channel partner and is accepted by Riverbed.

(d) "**Proactive Support Services**" means the supplemental support services that are listed on Riverbed's or one of its affiliate's then-current price list. Proactive Support Services include Riverbed Annual Resident Support Services, Riverbed Resident Support Services, and Riverbed Performance Administration Services. Proactive Support Services are not included with a purchase of Support.

(e) "**Proactive Support Services Addendum**" means a mutually agreed upon written services addendum between Riverbed and Customer that describes Proactive Support Services to be rendered by Riverbed to Customer.

(f) "**Products**" means Riverbed's generally available products, including hardware, software, cloud products, and any related Riverbed documentation provided therewith by Riverbed, that are listed on Riverbed's or one of its affiliate's then-current price list or that are otherwise made available by Riverbed.

(g) "**Riverbed Annual Resident Support Services**" means Riverbed's operational, adoption, and management services for Products that are offered on an annual basis and supplement Riverbed's Support offerings as further described in the Service Documentation.

(h) "**Riverbed Performance Administration Services**" means Riverbed's administration services for Products that are offered on an annual basis and supplement Riverbed's Support offerings as further described in the Service Documentation.

(i) "**Riverbed Resident Support Services**" means Riverbed's operational, adoption, and management services for Products that supplement Riverbed's Support offerings as further described in the Service Documentation.

(j) "**Service Documentation**" means a Riverbed-written document that describes a Proactive Support Service offering and provides an overview of the key benefits, service tasks, and any Deliverables included in such Proactive Support Service offering, including any brochures, service description documents and proposals provided by Riverbed to Customer.

(k) "**Support**" means Riverbed's then-current generally available end user maintenance and support services attached hereto and as described at www.riverbed.com/supportservicedescription.

2. **Sale and Purchase; Delivery**.

(a) Riverbed shall sell to Customer and Customer shall purchase from Riverbed the Proactive Support Services set forth in the Order. If Customer does not customarily use purchase orders to purchase goods and services, upon approval by Riverbed, the Riverbed-issued valid sales quotation that incorporates this Agreement by reference and is signed by Customer, or the mutually executed Proactive Support Services Addendum, will serve as the Order. The terms and conditions of this Agreement (including in any Proactive Support Services Addendum executed in connection with this Agreement) will supersede any different or additional terms on Customer's purchase order. Any purchase order issued by Customer to Riverbed is solely for the purpose of requesting delivery dates and quantities, specifying the ship-to and bill-to addresses, specifying the identity of Proactive Support Services purchased, and specifying the applicable price for each Proactive Support Service; all other terms on such purchase order will have no force or effect.

(b) Proactive Support Services will be deemed completed by Riverbed upon the sooner of (i) mutual agreement by the parties, or (ii) upon delivery of the Proactive Support Services or the applicable Deliverables (if any) identified in the applicable Service Documentation and/or Proactive Support Services Addendum. Riverbed will use reasonable efforts to schedule Proactive Support Services as promptly as practicable; however, Riverbed requires a minimum of ten (10) business days after Riverbed's acceptance of an Order to prepare and plan for Proactive Support Services to begin. If Proactive Support Services will be performed onsite at a location designated by Customer, such onsite visits must include fixed or budgeted travel and expenses as part of the Order, and Customer shall schedule each day of onsite Proactive Support Services in consecutive days, and in minimum increments of five (5) consecutive days if five (5) or more days are purchased, unless

otherwise approved in advance by Riverbed. Without limiting the foregoing, Proactive Support Services that are not completed within thirty (30) days after the originally agreed upon completion date for the Proactive Support Service will be deemed completed or delivered unless otherwise agreed by Riverbed in writing. Regardless of how such Proactive Support Services are billed, if requested by Riverbed, Customer shall confirm the completion of all Proactive Support Services to Riverbed in writing within two (2) business days after any such completion. If Customer fails to provide written notice to Riverbed of Riverbed's failure to complete any Proactive Support Services within five (5) business days after such Proactive Support Services are deemed completed in accordance with this Section, Customer waives any right to claim that Riverbed did not complete the Proactive Support Services.

(c) If Customer cancels or attempts to reschedule delivery of any Proactive Support Services within three (3) business days prior to a confirmed delivery date, Riverbed may accept the rescheduling or cancellation request and (if applicable) may deduct the applicable quantity of any such cancelled or rescheduled Proactive Support Services from Customer's remaining quantities of such Proactive Support Services (as such quantities are described in the Service Documentation). Notwithstanding anything to the contrary, Riverbed is not obligated to reschedule any Proactive Support Services to be delivered after the expiration of (i) any applicable monthly period (for any features offered on a monthly basis for such Proactive Support Service) and/or (ii) the overall contract term for such Proactive Support Services.

(d) Riverbed will provide the Proactive Support Services for the specific Products identified in the applicable Service Documentation. A Proactive Support Services plan is not transferable to any other Product or to any third party, including in connection with Product title transfers between Customer and any third party. Customer shall not transfer any Proactive Support Service plan between any Products or to any third party without Riverbed's prior written consent. Riverbed is not obligated to provide any Proactive Support Services: (i) on any Product that: (A) is altered or modified, (B) is not installed, operated, repaired, or maintained in accordance with Riverbed's specifications, documentation, recommendations and/or instructions, (C) has its serial number removed or altered, or (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 applicable agreements between Riverbed and Customer), (ii) where there are any problems or concerns relating to Customer's or a third party's network, systems, hardware, software, or other issues beyond the reasonable control of Riverbed, (iii) where there are any problems or concerns relating to any combination or use of any Product with any open source software or other unsupported software or hardware provided by Riverbed or one of its affiliates, including any software made available via the Riverbed Community website at community.riverbed.com, via GitHub, or via any other software hosting website, or (iv) to any geographic location or to any customers in violation of applicable laws or regulations.

(e) If Customer purchased the Proactive Support Services indirectly through a Riverbed authorized channel partner, the terms and conditions set forth in Sections 2(a) and 3 will not apply, and the terms and conditions applicable to purchases, as well as any discounts or pricing, will be negotiated solely between Customer and the applicable authorized channel partner.

3. **Price and Payment**.

(a) Customer shall pay Riverbed for the Proactive Support Services in accordance with the rates set forth in the accepted Order, GSA Schedule Pricelist, and/or Proactive Support Services Addendum, as applicable. The fees for the Proactive Support Services (including any applicable expenses) may be invoiced in full in advance for the entire applicable contract period upon Riverbed's acceptance of the Order. All fees applicable to Proactive Support Services are nonrefundable unless otherwise expressly agreed in writing by RiverbedTravel and other expenses that are incurred in connection with the Proactive Support Services may, at Riverbed's option, either be quoted by Riverbed and paid by Customer on a fixed fee basis, or upon submission of an invoice detailing actual expenses in accordance with FAR 31.205-46 and the Federal Travel Regulation (FTR), reimbursed by Customer. Any travel and hotel arrangements that are not included in a fixed fee are to be made by Riverbed, and may be approved by Customer if such approval is requested by Customer prior to the arrangements being booked, provided that such approval is not unreasonably withheld or delayed. Any Order or Proactive Support Services Addendum received without travel and expenses line items will be delivered remotely unless otherwise approved by Riverbed in writing.

(b) Riverbed 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). Customer shall make all payments in U.S. dollars. Customer shall pay all amounts invoiced within 30 days after the invoice date, unless Riverbed at any time determines that Customer's credit is not satisfactory, in which case payment terms will be C.O.D. All sums not paid when due will accrue interest daily at the lesser of an annual rate of eighteen percent (18%) or the highest rate permissible by law on the unpaid balance until paid in full.

4. **Warranties and Disclaimer**.

(a) Riverbed warrants to Customer that the Proactive Support Services will be provided in a professional manner in accordance with generally accepted industry standards. Any warranties for Products are as set forth in the EULA. Customer's sole and exclusive remedy, and Riverbed's sole and exclusive obligation, with respect to any failure to provide the Proactive Support Services in accordance with the foregoing warranty is to re-perform the applicable Proactive Support Services. Customer's sole and exclusive remedy, and Riverbed's sole and exclusive obligation, with respect to any nonconformity, deficiency, warranty or defect with respect to any Product is as set forth in the EULA.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, RIVERBED MAKES NO OTHER WARRANTIES WITH RESPECT TO ANY PRODUCTS OR ANY SERVICES AND DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, SECURITY, RELIABILITY AND NONINFRINGEMENT. RIVERBED ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS OR THAT ANY SERVICE OR DELIVERABLE WILL MEET CUSTOMER'S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

5. **Proactive Support Services**.

(a) Subject to Customer's compliance with all the terms of this Agreement and payment of the applicable fees, Riverbed will use reasonable commercial efforts to provide the Proactive Support Services as set forth in the applicable Order, Service Documentation or

Proactive Support Services Addendum. For clarity, Riverbed is not obligated to deliver any Proactive Support Services under any Service Documentation or Proactive Support Services Addendum unless Riverbed has received and accepted an Order for such Proactive Support Services. If the Proactive Support Services are provided at Customer's facilities, Riverbed shall comply with Customer's reasonable policies that apply to onsite service providers, provided that such policies are provided to and agreed to by Riverbed in writing in advance. Without limiting the foregoing, Customer acknowledges and agrees that (i) Customer's purchase of Products (including any Support plans) is covered under one or more separate agreements, (ii) Customer is not granted any rights in or to any Product or any entitlement to receive any Support services under this Agreement or any Proactive Support Services Addendum, and (iii) no purchase of any Products, Support or other services is contingent upon the provision of any Proactive Support Services hereunder. Riverbed may subcontract its obligations under this Agreement, provided that Riverbed shall remain responsible for its obligations under this Agreement.

(b) Riverbed Annual Resident Support Services and Riverbed Performance Administration Services are offered on a 12 month contract term and will be performed only on business days occurring within such term. All features and quantities listed in the Service Documentation are offered over the 12 month contract term only and may not be used after such contract term has expired.

(c) Riverbed Resident Support Services are offered on a 30 day contract term and will be performed only on business days occurring within such term. All features and quantities listed in the Service Documentation are offered over the 30 day contract term only and may not be used after such contract term has expired.

(d) As used with respect to the Proactive Support Services (including any features and quantities) as described in the applicable Service Documentation and/or this Agreement, a "**business day**" is eight (8) hours during the regular business hours 7:00 AM to 7:00 PM local time, Monday through Friday (excluding local holidays).

6. **Support**. Customer must have a then-current valid Support contract for each Product for which Customer will purchase or renew Proactive Support Services. The Proactive Support Services do not include Support and do not modify or replace any Support contract for any Product. Without limiting the foregoing, if the Support contract for a Product expires, Riverbed will continue to use reasonable efforts to provide Proactive Support Services for such Product for the remainder of the Proactive Support Services contract term (if such Proactive Support Services were already purchased prior to the Support expiration), but Riverbed is not obligated to provide Support on such Product and Customer is not permitted to purchase or renew any Proactive Support Services for such Product until Customer renews the Support contract for such Product. Customer acknowledges that Riverbed's ability to provide Proactive Support Services may be impaired or prevented entirely if the underlying Product is not covered by a then-current Support plan, and Riverbed is not responsible for any such impairments or failures. In addition, the Proactive Support Services are not available for Products for which Customer did not purchase Support that is provided by Riverbed (e.g. Products where a Riverbed authorized reseller, distributor or service partner provides the initial levels of support (including telephone and email support) for such Products to Customer).

7. **Customer Responsibilities**. Customer will perform all obligations and satisfy all requirements identified as a Customer obligation or requirement in any Order or Service Documentation. Customer acknowledges and agrees that Riverbed's ability to provide Proactive Support Services is dependent on Customer and/or the reseller, distributor or service partner from whom Customer purchased the Proactive Support Services timely providing accurate Product installation location information, and any failure to do so may impact Riverbed's ability to provide the Proactive Support Services. Remote access to the Products on Customer's network may be required to provide Proactive Support Services, and Riverbed is not responsible for any failure or delay in providing the Proactive Support Services to the extent caused by Customer's failure to provide such access. Riverbed is not responsible for any delays in providing Proactive Support Services caused by Riverbed's compliance with applicable export/import laws and regulations. Without limiting the foregoing, Customer shall (a) make available in a timely manner all technical data, facilities, programs, files, documentation, test data, sample output, or other information and resources reasonably required by Riverbed and (b) provide services and access to equipment and all supporting infrastructure, including network connectivity and power supply requirements, if applicable, that Riverbed may reasonably require for the performance of the Proactive Support Services. Customer will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer. If Customer fails to perform any Customer obligations or satisfy any Customer requirements, Riverbed is not obligated to perform any Proactive Support Services that are affected by such failure.

8. **Deliverables**. For any Deliverables provided to Customer in connection with the Proactive Support Services, Riverbed hereby grants to Customer a nonexclusive, nontransferable, royalty-free, nonsublicensable license to (a) use and make reasonable numbers of copies of such Deliverables for Customer's internal business use, and (b) exercise any other rights (if any) expressly granted under any Service Documentation or Proactive Support Services Addendum with respect to such Deliverables. Except as expressly permitted herein or in an applicable Proactive Support Services Addendum or other written agreement between Riverbed and Customer, Customer shall not, and shall not allow any third party to, (i) provide any Deliverable to any third party or use any Deliverable for the benefit of any third party, except for Customer's contractors and outsourcers who may use the Deliverables solely to perform services for the benefit of Customer, provided that Customer remains responsible for such contractors' and outsourcers' compliance with the terms and conditions of this Agreement, (ii) modify, create derivative works of, reverse engineer, or copy any portion of the Deliverables, (iii) incorporate or embody any Deliverables in any of Customer's products, technology, marketing materials, or intellectual property, or (iv) without Riverbed's prior written consent, publish or provide to any third party results of any benchmark or comparison tests of any Deliverable. Riverbed retains ownership of all right, title and interest in and to the Deliverables and any intellectual property resulting from the Proactive Support Services. Riverbed does not grant Customer any rights not expressly set forth herein or in an applicable Proactive Support Services Addendum or other written agreement between Riverbed and Customer.

9. **Term and Termination.** Unless terminated earlier as provided herein, this Agreement will continue in effect until the Proactive Support Services on the applicable Order or Proactive Support Services Addendum are complete. 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. Upon termination or expiration of this Agreement, the Order, or the Proactive Support Services Addendum for any reason, (a) if Customer purchased directly from Riverbed, Customer shall pay Riverbed all amounts due or accrued under such Order or Proactive Support Services Addendum as of the date of such termination or expiration, (b) Customer shall return to Riverbed all Confidential Information and other materials of Riverbed relating to such Order or Proactive Support Services Addendum, and (c) the following Sections will survive: 1, 4(b), 8, 9, 10, 11, 12, and 13. If this Agreement is terminated by Riverbed for Customer's breach of this Agreement, any Proactive Support Services Addendum then in effect will terminate. If this Agreement expires or is terminated for any other reason, any Proactive Support Services

Addendum then in effect will continue in effect subject to the terms and conditions of this Agreement until the expiration or termination of such Proactive Support Services Addendum.

10. **Confidentiality**. 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 Products (including their design and structure) and all information on Riverbed's customer care website constitute trade secrets and/or Confidential Information of Riverbed or its licensors. 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. 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. 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 (i) 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 (ii) 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 disclosureWithout limiting the foregoing, Customer shall not provide the Products or disclose any Riverbed Confidential Information, Riverbed documentation or any information regarding any Products to any Riverbed competitors. Customer shall not, without Riverbed's prior written consent, publish or provide to any third party results of any benchmark or comparison tests of any Products. Upon termination or expiration of this Agreement, the Receiving Party shall return or destroy all Confidential Information of the Disclosing Party in its possession. The obligations set forth in this Section will survive any termination or expiration of this Agreement. 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. **Limited Liability.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, BUT SUBJECT TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, STATUTE, OR OTHER LEGAL OR EQUITABLE THEORY, (A) NEITHER RIVERBED NOR ANY OF ITS AFFILIATES OR SUPPLIERS IS LIABLE FOR (I) ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS, CONTRACTS, BUSINESS, REVENUES, GOODWILL OR REPUTATION, (II) COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (III) LOSS OR CORRUPTION OF DATA, INTERRUPTION OF USE, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM CUSTOMER'S USE OF (OR INABILITY TO ACCESS OR USE) ANY PRODUCT OR SERVICE, AND (B) THE AGGREGATE LIABILITY OF RIVERBED AND ITS AFFILIATES AND SUPPLIERS WILL NOT EXCEED THE AGGREGATE FEES RECEIVED BY RIVERBED FOR THE PROACTIVE SUPPORT SERVICES PROVIDED UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION IS CUMULATIVE, WITH ALL CLAIMS BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF RIVERBED IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER RIVERBED NOR ANY OF ITS AFFILIATES IS LIABLE FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL. THIS SECTION DOES NOT LIMIT LIABILITY FOR BODILY INJURY OF A PERSON. THIS AGREEMENT DOES NOT ENTITLE CUSTOMER, UNDER ANY CIRCUMSTANCES, TO A REFUND OF ANY FEES PAID FOR PRODUCTS OR SUPPORT SERVICES OR OF ANY FEES PAID UNDER ANY OTHER AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

12. **Compliance with Laws and Export Control.** Customer shall 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 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 Deliverable, 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.

13. **General**.

(a) All notices under this Agreement must be in writing and will be deemed given (i) when personally delivered, (ii) when sent by confirmed fax, (iii) one day after being sent by overnight courier, or (iv) three days after being sent by prepaid certified or registered U.S. (if applicable) or express mail. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible consistent with the original intent of the parties, and the other provisions of this Agreement will remain in force. The failure of 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.

(b) This Agreement is personal to Customer and Customer 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 and/or the Order, or delegate any of its obligations hereunder, in whole or in part (except that Riverbed shall obtain the consent of the U.S. government where the U.S. government is the Customer hereunder and such consent is required).

(c) 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.

(d) Riverbed and Customer agree that any Order (or portion thereof) will be deemed separable from any other Order (or portion thereof). There are no third party beneficiaries of this Agreement.

(e) Unless otherwise expressly provided, all remedies under this Agreement are cumulative and not exclusive. Unless otherwise expressly indicated, "including" (and other variations thereof) means, as applicable, "including but not limited to" and "herein" and "hereunder" are references to this Agreement. This Agreement, including the EULA and all online terms referenced herein, constitutes the entire agreement between the parties with respect to the subject matter hereof, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior agreements, proposals, discussions, understandings, negotiations or representations between the parties relating to the subject matter of this Agreement, and all past dealing or industry custom.

(f) This Agreement will not be modified or waived, except by a mutual signed writing, provided that Riverbed may update the online terms referenced herein from time to time. If this Agreement is deemed an offer, acceptance is expressly limited to these terms. Notwithstanding anything to the contrary, if there is a mutually signed agreement (not including any purchase order or similar document) expressly covering the sale of Proactive Support Services by Riverbed to Customer at the time the Order is accepted by Riverbed, then the express terms of that agreement will govern, provided that in the event of a conflict between this Agreement and any such existing agreements, this Agreement will control with respect to the Proactive Support Services. Riverbed may include Customer's name as part of general customer lists to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

(g) Execution and delivery of this Agreement may be evidenced by facsimile or other electronic transmission. The parties acknowledge and agree that this Agreement is subject to the U.S. Electronic Signatures in Global and National Commerce Act, the Singapore Electronic Transactions Act, the U.K. Electronic Communications Act 2000, and any similar law in any other applicable jurisdiction that makes legally effective a contract in electronic form, and authorizes acceptance by means of an electronic signature or process.

(h) This Agreement is governed by and construed in accordance with the laws of the State of California (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.