



Riverbed Steelhead Cloud Accelerator Terms of Service

IMPORTANT: PLEASE READ BEFORE USE OF THE RIVERBED TECHNOLOGY STEELHEAD CLOUD ACCELERATOR PRODUCT ("PRODUCT"). BY IN ANY WAY USING THE PRODUCT, THE ENTITY OR COMPANY THAT YOU REPRESENT ("CUSTOMER") IS UNCONDITIONALLY CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT WITH RIVERBED TECHNOLOGY, INC. OR THE RIVERBED TECHNOLOGY, INC. SUBSIDIARY THAT IS PROVIDING THE PRODUCT TO CUSTOMER ("RIVERBED"). IF CUSTOMER DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, USE OF THE PRODUCT IS STRICTLY PROHIBITED. THIS AGREEMENT CONSTITUTES THE AGREEMENT BETWEEN RIVERBED AND CUSTOMER WITH RESPECT TO SUCH PRODUCTS, TO THE EXCLUSION OF ANY PRE-PRINTED OR CONTRARY TERMS OF ANY PURCHASE ORDER (OR SIMILAR DOCUMENT) AND SUPERSEDES AND CANCELS ANY PRIOR DISCUSSIONS, UNDERSTANDINGS OR REPRESENTATIONS BETWEEN THE PARTIES. THIS AGREEMENT MAY NOT BE MODIFIED OR WAIVED, EXCEPT BY A MUTUAL SIGNED WRITING, AND, 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 CUSTOMER AND RIVERBED EXPRESSLY COVERING THE USE OF THE PRODUCTS BY CUSTOMER, THEN THE EXPRESS TERMS OF THAT AGREEMENT WILL GOVERN TO THE EXTENT SUCH AGREEMENT CONFLICTS WITH THE TERMS OF THIS AGREEMENT.

- PRODUCT DESCRIPTION.** The Product provides Customers with access to Akamai Technologies ("Akamai")'s SureRoute for IP network services, combined with Riverbed's Cloud Steelhead software, for purposes of accelerating the performance of specified SaaS applications being accessed by Customers from their networks. The Product also includes access to Riverbed's technical support services, the terms of which are set forth at www.riverbed.com/termsandconditions. Activation of the Product occurs through the Riverbed Cloud Portal, and Riverbed will provide the Product to Customer during the term of the paid subscription to the Product. Customer may access the Product from its network only via Riverbed Steelhead appliance(s) running specified versions of Riverbed WAN optimization software that are current on Riverbed support and maintenance.
- USE RESTRICTIONS.** Usage of the Product is limited by the number of users purchased. Certain products or SaaS applications may be subject to additional restrictions or terms set forth at www.riverbed.com/additionalcloudacceleratorterms. In addition, usage of the Product is limited to the particular SaaS application package(s) purchased by Customer. Riverbed reserves the right to temporarily suspend or permanently terminate use of or access to the Product and support for the Product in the event that Customer violates the terms of this Agreement. Use of the Akamai network in connection with the Product is subject to Akamai's acceptable use policy available at www.akamai.com. For the avoidance of doubt, for Customer to benefit from the acceleration for the SaaS application package(s) purchased in connection with the Product, Customer must ensure that all of its Riverbed Steelhead appliances and/or software that are used to access the Product are covered by a then current Riverbed maintenance and support plan. Riverbed retains ownership of any intellectual property resulting from its services.
- GOVERNMENT USE.** If Customer is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Product and documentation qualify as "commercial items" "commercial computer software" and "commercial computer software documentation." In accordance with such provisions, and as such any use of the Product or documentation by the Government shall be governed solely by the terms of this Agreement. All other use is prohibited.
- DISCLAIMER AND LIMITATIONS.** RIVERBED PROVIDES THE PRODUCT WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, SECURITY, RELIABILITY AND NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. THE PRODUCT IS 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 EMERGENCY COMMUNICATION SYSTEMS AND AIR TRAFFIC CONTROL. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL RIVERBED OR ITS SUPPLIERS BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM CUSTOMER'S USE OF THE PRODUCT. RIVERBED'S LIABILITY FOR DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE FEES RECEIVED BY RIVERBED FOR THE PRODUCT IN CONNECTION WITH THIS AGREEMENT. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF RIVERBED SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSION MAY NOT APPLY TO LICENSEE.
- TERM AND TERMINATION.** This Agreement shall continue for the duration of the subscription term of the Product purchased by Customer. This Agreement shall terminate if Customer violates or fails to comply with any provision of this Agreement and fails to cure such breach within thirty (30) days of receipt of notice of breach from Riverbed. Any termination of this Agreement due to Customer's uncured breach shall also terminate the rights granted hereunder. Upon termination of this Agreement due to a termination of an uncured breach by the Customer, Customer shall no longer enjoy use of the Product. Sections 4 to 7 shall survive termination of this Agreement. Except for terminations by Customer expressly permitted by Riverbed, if a Product subscription is terminated prior to the end of the applicable subscription term for any reason, Customer shall pay Riverbed a termination charge (which Customer acknowledges reflects a reasonable measure of actual damages and not a penalty) equal to 100% of the fees that would have become due for the remainder of the term, in addition to all fees outstanding at the date of termination.
- EXPORT CONTROLS.** Customer shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or other United States, European Union or other foreign agency or authority, and Customer shall not export, or allow the export or re-export of, the Product in violation of any such restrictions, laws or regulations. Customer is responsible for obtaining any licenses required to export, re-export, transfer or import the Product. The Product may not, in the absence of authorization by U.S. and local law and regulations, as required, be used by or exported or re-exported to (i) any U.S. sanctioned or embargoed country, or to nationals or residents of such countries; or (ii) to 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 (iii) any Party where the end-use involves nuclear weapons, chemical/biological weapons, or missile technology.

7. **MISCELLANEOUS.** If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of Riverbed to act with respect to a breach of this Agreement by Customer or others does not constitute a waiver and shall not limit Riverbed's rights with respect to such breach or any subsequent breaches. This Agreement is personal to Customer and may not be assigned or transferred for any reason whatsoever without Riverbed's consent, and any action or conduct in violation of the foregoing shall be void and without effect. In obtaining the Products, Customer acknowledges that it has not relied and will not rely on the availability of any future Riverbed product or version of a product. Riverbed expressly reserves the right to assign this Agreement and to delegate any of its obligations hereunder. This Agreement shall be governed by and construed under California law as such law applies to agreements between California residents entered into and to be performed within California, without reference to the UN Convention on the International Sale of Goods. Unless waived by Riverbed in a particular instance or prohibited by applicable law, the sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the State and Federal courts in California, and each party hereby consents to the jurisdiction of such courts for any such dispute. The party prevailing in any dispute under this Agreement shall be entitled to its costs and legal fees.

NOTICE: NO INTELLECTUAL PROPERTY RIGHTS ARE TRANSFERRED HEREIN.

PLEASE CONTACT RIVERBED TECHNOLOGY AT (415) 247-8800 WITH ANY QUESTIONS.