



## RIVERBED PREVIEWS TERMS AND CONDITIONS

IMPORTANT: PLEASE READ BEFORE INSTALLATION OR USE OF ANY PREVIEWS (AS DEFINED BELOW). THESE RIVERBED PREVIEW 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 PREVIEWS ("**COMPANY**"). BY DOWNLOADING, INSTALLING, ACCESSING OR IN ANY WAY USING ANY PREVIEWS, 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 PREVIEWS.

1. **PREVIEWS.** 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 that Riverbed (a) has not made generally available to its customers, and (b) has identified as alpha, beta, non-GA, limited release, developer preview, advance access or any other such similar designation (including any subsequent or modified versions of the foregoing) ("**Previews**"). Previews are not "Products" under any other agreement or terms and conditions Company may otherwise have with Riverbed; Company's use of Previews is governed exclusively by the terms and conditions of this Agreement. Company may use Previews solely for internal evaluation purposes. Previews 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 Previews, make derivative works based upon any Previews, or use any Previews 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 Preview's performance, stability and other relevant information to assist Riverbed in the ongoing development and improvement of Previews and/or Riverbed products. Riverbed shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into any Previews and/or Riverbed products any such feedback, or any other suggestions, enhancement requests, recommendations provided by Company relating to Previews. Any information on testing, data, analysis or results of any comparative, competitive, or benchmarking testing of any Previews is Riverbed Confidential Information. Use and publication of any test data is at the sole discretion and control of Riverbed.

2. **PREVIEWS ARE EXPERIMENTAL.** Riverbed's supplying of any Previews 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 Previews, whether or not perfected, and the development, release, and timing of any features or functionality remains at Riverbed's sole discretion. Riverbed reserves the right to unilaterally cease and abandon any Previews at any time without any obligation or liability whatsoever. Company acknowledges that any orders for other products that Riverbed sells are not in reliance on any Previews furnished pursuant to this Agreement ever becoming incorporated into a commercially available product or otherwise made available. Further, Riverbed assumes no liability in connection with any uses of the Previews whatsoever, including without limitation, Company's enablement and use in a production environment or in combination with other software or data supplied by Riverbed or used together with any Previews.

### 3. DATA AND DATA PROTECTION.

(a) Company acknowledges that certain Previews may process data submitted by Company or on 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 at [www.riverbed.com/data-processing-addendum](http://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 Previews to deliver, analyze, support and improve the Previews and as otherwise described in this Agreement, Riverbed's then-current Privacy Policy (available at [www.riverbed.com/privacypolicy](http://www.riverbed.com/privacypolicy)) and the applicable Documentation. Riverbed may collect certain information and data that relates to the use and operation of the Previews, 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 Previews, to deliver performance insights, and to analyze and enhance the Previews and other Riverbed product and service offerings.

4. **CONFIDENTIAL INFORMATION.** Company acknowledges that, in the course of using any Previews, Company may learn or obtain information relating to the Previews, Riverbed products and to Riverbed that is of a confidential and proprietary nature ("**Confidential Information**"). Such Confidential Information includes, but is not limited to, its features and modes of operation, this Agreement, trade secrets, product performance, know how, invention techniques, processes, programs, schematics, software source code, data, financial information, and sales and marketing plans or any other information which Company knows or has reason to know is confidential, proprietary or trade secret information of Riverbed. Company shall at all times, both during the term of this Agreement and for a period of 5 years after its termination, keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by Riverbed under this Agreement, nor shall Company disclose any such Confidential Information to any third party. Further, Company shall only disclose Previews and Confidential Information to those employees and consultants as are necessary for the use expressly and unambiguously authorized hereunder, and only after such employees and consultants have agreed in writing to be bound by provisions no less restrictive than those of this Agreement. The obligations of confidentiality shall not apply to information which has entered the public domain except where such entry is the result of Company's (or its representatives') breach of this Agreement. Any press release or publication regarding this Agreement is subject to prior approval of the parties.

5. **TERMINATION.** Either party may terminate this Agreement (a) for any reason, by giving the other thirty (30) days' prior written notice to the other party; or (b) immediately, on notice, in the event of a material breach by such other party. Upon termination of this Agreement, Company shall immediately cease use of any Previews and shall return the Confidential Information and data (including all copies thereof) then in Company's possession or control which relates to such Previews, and certify in writing as to such action. Upon termination hereof for any reason, the terms of the following sections shall survive: 4-8.



6. **WARRANTY DISCLAIMER.** COMPANY ACKNOWLEDGES AND AGREES THAT PREVIEWS ARE PROVIDED “AS IS” AND MAY NOT BE FUNCTIONAL IN COMPANY’S ENVIRONMENT. COMPANY’S USE OF PREVIEWS IS ENTIRELY AT COMPANY’S OWN RISK. RIVERBED MAKES NO WARRANTIES IN CONNECTION WITH PREVIEWS, 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.

7. **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 PREVIEWS 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.

8. **GENERAL.** This Agreement shall be governed by and construed under the laws of the State of California without giving effect to the principles of conflicts of law and without application of the UN Convention on Contracts for the International Sale of Goods. The prevailing party in any action arising out of this Agreement shall be entitled to an award of its costs and attorneys’ fees. 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 supersedes and replaces any prior oral or written communications or agreements between the parties with respect thereto, including without limitation any advanced access program agreement or similar agreement. This Agreement may only be modified by a written document executed by the parties hereto. Company acknowledges and agrees that due to the unique nature of Riverbed’s Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder and that upon any such breach or threat thereof, Riverbed shall be entitled to an injunction and other appropriate equitable relief in addition to whatever remedies it may have at law. All notices under this Agreement must be delivered via email to the email address of the party to be noticed as provided to the other from time to time. Notices to Riverbed must be sent to [contracts@riverbed.com](mailto:contracts@riverbed.com).