



Riverbed SteelHead SaaS Terms of Service

IMPORTANT: PLEASE READ BEFORE USE OF ANY PRODUCTS (AS DEFINED BELOW). THESE RIVERBED STEELHEAD SAAS TERMS OF SERVICE ("AGREEMENT") ARE A BINDING AGREEMENT BETWEEN RIVERBED TECHNOLOGY, INC. (FOR CUSTOMERS LOCATED IN NORTH OR SOUTH AMERICA) OR RIVERBED TECHNOLOGY PTE. LTD. (FOR CUSTOMERS LOCATED IN EUROPE, MIDDLE EAST, AFRICA OR ASIA) ("RIVERBED") AND THE ENTITY OR COMPANY THAT IS THE AUTHORIZED PURCHASER OF THE PRODUCTS ("CUSTOMER"). BY PURCHASING OR IN ANY WAY USING A PRODUCT, CUSTOMER IS UNCONDITIONALLY CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT WITH RIVERBED. IF CUSTOMER DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CUSTOMER IS NOT AUTHORIZED TO AND MAY NOT USE ANY OF THE PRODUCTS.

This Agreement is effective as of the last date signed below ("Effective Date") and is between Riverbed Technology, Inc. ("Riverbed") and the State of Oregon ("Customer").

This Agreement applies to the purchase of Riverbed Products and Support from any authorized Riverbed Reseller. This Agreement supersedes any different or additional terms relating to the license and maintenance of Riverbed Products set forth in any Customer purchase order, confirmation or similar form even if signed after the date hereof.

Customer: The State of Oregon

Riverbed Technology, Inc.

By: [Signature]  
Name: Ginny Beckwith  
Title: Procurement Services Mgr  
Date: 6/7/17

DocuSigned by:  
[Signature]  
EE157A92CC8D4B8...  
By: \_\_\_\_\_  
Name: Jack Kizziah  
Title: VP, Corporate Controller  
Date: 6/10/2017

1. **PRODUCTS.** "Products" means, collectively, the SteelHead SaaS products on Riverbed's or one of its affiliate's then-current price list and all Documentation associated therewith. "Documentation" means the then-current written and/or electronic end user or technical documentation pertaining to a Product that is made available by Riverbed. The Products provide Customers with access to Akamai Technologies ("Akamai")'s SureRoute for IP network services, combined with Riverbed's SteelHead CX software, for purposes of accelerating the performance of specified third party SaaS applications ("SaaS Apps") that are identified by Riverbed in the Riverbed Cloud Portal and will be accessed by Customer from its networks. Activation of the Products occurs through the Riverbed Cloud Portal. Customer may access the Products 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. The subscriptions for the Products also include access to Riverbed's technical support services, the terms of which are set forth at [www.riverbed.com/supportservicesdescription](http://www.riverbed.com/supportservicesdescription) ("Support").

2. SAAS APPS.

(a) The then-current SaaS Apps available for use with a particular Product will be identified in the Riverbed Cloud Portal. Customer may elect to opt in or opt out of use of any available SaaS App through the Riverbed Cloud Portal at any time in Customer's discretion; Customer is not required to use any SaaS App. Riverbed may add, change, remove, or suspend any SaaS App at any time in Riverbed's discretion. Riverbed will use reasonable efforts to provide Customer with thirty (30) days' prior notice (posted on the Riverbed Cloud Portal and/or sent to Customer's email address on file with Riverbed) prior to any removal or suspension of any SaaS App, provided that Riverbed may suspend any SaaS App immediately without prior notice if the SaaS App poses a significant risk to the security, performance, or stability of Riverbed's or Akamai's networks (as determined by Riverbed in its sole discretion). Riverbed will notify Customer through the Riverbed Cloud Portal and/or via email if a suspended SaaS App is permanently removed.

(b) Subscriptions for Products are generally noncancellable and nonrefundable except as expressly provided herein. If a SaaS App is removed from the Riverbed Cloud Portal and the Customer had such SaaS App enabled in its Riverbed Cloud Portal at the time Riverbed initially provided notice of such removal, or if no prior notice, at the time such SaaS App is removed, Customer may terminate Customer's subscription to the applicable Product from which the SaaS App has been removed by providing written notice to Riverbed within thirty (30) days after the date of removal of the SaaS App. If a SaaS App is continuously suspended from the Riverbed Cloud Portal for more than thirty (30) days and the Customer had such SaaS App enabled in its Riverbed Cloud Portal at the time Riverbed initially provided notice of such suspension, or if no prior notice, at the time such SaaS App is suspended, Customer may terminate Customer's subscription to the applicable Product from which the SaaS App has been continuously suspended by providing written notice to Riverbed within sixty (60) days after the initial date of suspension of the SaaS App. After receipt of a valid written cancellation request in accordance with this Section, Riverbed will cancel the subscription for the applicable Product and issue a credit equal to the amount of any prepaid, unused fees received by Riverbed for the cancelled subscription. Riverbed will only issue credits for full monthly fees; no partial months will be credited. If Customer purchased directly from Riverbed, such credit will be issued to Customer. If Customer purchased through a Riverbed channel partner, such credit will be issued to the Riverbed channel partner who purchased such Product from Riverbed. Customer must contact the Riverbed channel partner from which they purchased the applicable Product regarding any requested credits. Riverbed is not responsible for any difference between the amount paid to Riverbed for any cancelled, unused subscription term and the amount paid by Customer for such cancelled, unused subscription term or for any transactions between Customer and the applicable channel partner.



(c) The Support for the Products includes troubleshooting of the Products in connection with the SaaS Apps in accordance with Riverbed's standard Support terms, provided that, for the avoidance of doubt, Riverbed is not obligated to provide any support for any issues attributable solely to a SaaS App. Notwithstanding anything to the contrary in this Agreement or otherwise, SaaS Apps are made available to Customer by third parties under separate terms and conditions, and may require separate fees and charges. Purchase of the Products does not provide any access to, or any support or maintenance for, any SaaS App from Riverbed or any third party; Customer understands and acknowledges that Customer must separately purchase an appropriate license and support contract from the applicable third party licensor to access, use and/or receive support and maintenance on any SaaS App.

3. **USE RESTRICTIONS.** Usage of the Products is limited by the number of users purchased. Riverbed reserves the right to temporarily suspend or permanently terminate use of or access to the Products and Support in the event that Customer violates any of the terms of this Agreement. Use of the Akamai network in connection with the Products is subject to Akamai's acceptable use policy available at [www.akamai.com](http://www.akamai.com). For the avoidance of doubt, for Customer to benefit from the acceleration for the SaaS Apps in connection with the Products, Customer must ensure that all of its Riverbed SteelHead appliances and/or software that are used to access the Products are covered by a then-current Support plan.

4. **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 and transfer of the Products is restricted in accordance with the Federal Acquisition Regulations (FAR) as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement (DFARS) as applied to military agencies. The Products qualify as "commercial items" under FAR § 2.101 and all Products are developed exclusively at private expense. Any software is (a) "commercial computer software" under FAR §§12.212 and §52.227-19 and DFARS §§27.7202 and §252.227-7014(a)(1), and (b) "restricted computer software" under FAR §§52.227-14(a). The Documentation is "computer software documentation" as set forth in FAR §§52.227-14(a) and DFARS §252.227-7013(a). For purposes of this Agreement, references in this Agreement to "business" use will be deemed references to Government use if Customer is part of the Government. In accordance with such provisions, any use of any Product by the Government will be governed solely by the terms of this Agreement. All other use by or on behalf of the Government is prohibited.

5. **DISCLAIMER.** RIVERBED PROVIDES THE PRODUCTS "AS IS" AND WITHOUT WARRANTY OF ANY KIND. SAAS APPS ARE PROVIDED TO CUSTOMER BY THIRD PARTIES AND RIVERBED DOES NOT OFFER ANY WARRANTY OF ANY KIND FOR ANY SAAS APP, REGARDLESS OF WHETHER OR NOT SUCH SAAS APP IS DESIGNATED BY RIVERBED AS COMPATIBLE WITH ANY PRODUCT. RIVERBED HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS FOR ANY AND ALL PRODUCTS AND SAAS APPS, 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 PRODUCT OR SAAS APP WILL MEET CUSTOMER'S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

6. **LIMITATION OF 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, (III) LOSS OR CORRUPTION OF DATA, INTERRUPTION OF USE, LOSS OF GOODWILL, WORK STOPPAGE, UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE PRODUCTS FOR ANY REASON, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM CUSTOMER'S USE OF ANY PRODUCT OR SAAS APP, (IV) CUSTOMER'S INABILITY TO USE ANY OF THE PRODUCTS OR SAAS APPS, INCLUDING AS A RESULT OF (X) ANY TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO ANY OF THE PRODUCTS OR SAAS APPS, OR (Y) RIVERBED'S REMOVAL OR SUSPENSION OF ANY OR ALL OF THE SAAS APPS, OR (V) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO ANY PRODUCTS OR SAAS APPS, AND (B) THE AGGREGATE LIABILITY OF RIVERBED AND ITS AFFILIATES AND SUPPLIERS WILL NOT EXCEED THE AGGREGATE FEES RECEIVED BY RIVERBED FOR THE APPLICABLE PRODUCT OR SERVICE THAT GAVE RISE TO THE CLAIM. 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. THE PRODUCTS ARE 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 COMMUNICATION SYSTEMS AND AIR TRAFFIC CONTROL. NEITHER RIVERBED NOR ANY OF ITS AFFILIATES IS LIABLE FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL. NOTWITHSTANDING THE FOREGOING, SAAS APPS ARE PROVIDED BY THIRD PARTIES AND CUSTOMER'S USE OF ANY SAAS APP IS AT CUSTOMER'S SOLE RISK. THIS SECTION 6 DOES NOT LIMIT LIABILITY FOR BODILY INJURY OF A PERSON.

7. **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 after receipt of notice of such breach from Riverbed. Any termination of this Agreement due to Customer's uncured breach will also terminate the rights granted hereunder. Upon termination of this Agreement, Customer shall cease use of the Product and Documentation, shall destroy and remove from all computers, hard drives, networks and other storage media all copies of the Documentation, and shall certify to Riverbed that such actions have occurred. Sections 3 to 10 will survive any 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.



8. **EXPORT CONTROLS.** 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 Product, 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 shall ensure that no Product is, in the absence of authorization by U.S. and other applicable law as required, used by or exported 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 shall not use any Product, 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).

9. **FEEDBACK.** From time to time, Customer may provide Riverbed with suggestions, comments, enhancement requests, recommendations, corrections, technical information and other feedback relating to a Product (collectively, "**Feedback**"). If Customer provides any Feedback, Customer hereby grants to Riverbed a worldwide, nonexclusive, perpetual, irrevocable, royalty-free, fully paid up, transferable, sublicensable license to make, have made, use, sell, import, copy, modify, make derivative works of, distribute, transmit, disclose and otherwise exploit any Feedback, including as part of any product, technology, or service offered by Riverbed.

10. **MISCELLANEOUS.** 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. 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, or delegate any of its obligations hereunder, in whole or in part (except that Riverbed shall obtain the consent of the Government where the Government is the Customer hereunder and such consent is required). 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. This Agreement is governed by and construed in accordance with the laws of the State of Oregon (without regard to the conflicts of laws provisions thereof). There are no third party beneficiaries of this Agreement. 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 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. 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) expressly covering the purchase or usage of Products by Customer, then the express terms of that agreement will govern, provided that in the event of a conflict between that agreement and this Agreement, this Agreement will control. Riverbed may, upon at least two (2) weeks' advance written notice, 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. If any audit reveals that Customer is in breach of this Agreement, then Customer shall (a) reimburse Riverbed for the actual expenses associated with the audit and (b) if applicable, compensate Riverbed (at Riverbed's then-current list price) for any unauthorized use of or access to any Product (e.g., any use by any unauthorized users or use of any unauthorized copies or instances of a Product). 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.

**NOTICE: NO INTELLECTUAL PROPERTY RIGHTS ARE TRANSFERRED.**

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