

# ECDN ACCELERATOR

## Terms and Conditions

Riverbed offers customers the opportunity to evaluate Riverbed SD ECDN, Integrations, and Riverbed ECDN Accelerator Analytics (each, a “Service”) free of charge in accordance with the terms and conditions set forth in this agreement (“Agreement”).

This Agreement between Riverbed, Inc. (“Riverbed”) and you (either as an individual or on behalf of a legal entity as an authorized employee or agent of that entity) (“Customer”) governs the use of the Service(s) by Customer. BY CHECKING THE “I ACCEPT” BOX YOU REPRESENT THAT YOU ARE AUTHORIZED TO ACT ON BEHALF OF CUSTOMER, AND ARE AGREEING THAT CUSTOMER WILL BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE THAT CUSTOMER WILL BE BOUND BY THIS AGREEMENT, DO NOT CHECK THE “I ACCEPT” BOX AND CUSTOMER MAY NOT USE THE SERVICE(S).

### **1) Use Rights and Restrictions.**

Riverbed grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable, restricted license during the term of this Agreement to access and use the Service(s) solely in accordance with this Agreement. Any use of the Service(s) will be on computers or network servers under Customer’s control solely for the purpose of internal evaluation of the Service(s) and/or interoperability testing of the Service(s) with Customer’s products or systems through one or more of the following Service configurations:

- a) If Customer requests and a Riverbed sales representative approves via e-mail, the license to access and use the Service(s) includes the right to use up to twenty-five (25) copies of the Riverbed desktop client application (the “Agent”) on machines under Customer’s control, which number may be increased at your reasonable request and with e-mail approval by a Riverbed sales representative.
- b) It is possible to use the Riverbed SD ECDN without the Agent through browser-based peering (“BBP”). If Customer elects to evaluate BBP, Customer may provide access and use of those Services to up to 300 internal user without the Agent, subject to potential increase as set forth in Section 1(a) above).
- c) In the event Customer is evaluating the Riverbed SD ECDN as part of an integration with a third party service (an “Integration”) such as Microsoft Teams, Zoom, etc. (an “Integration Partner”), a Riverbed plug-in (a “Plug-in”) may be installed in or included with the Integration Partner’s web application (a “Bundled App”) in order to perform the Services through the Integration. Customer must have a valid and subsisting license with the Integration Partner in order to use the Bundled App, and Riverbed shall have no responsibility or liability in connection with the performance or operation of the Integration Partner’s service.

Customer agrees to use and operate the Service(s) in compliance with any applicable laws, and any testing procedures and/or usage guidelines provided by Riverbed. In particular, Customer acknowledges that in the normal operation of the Service(s), certain of Customer’s network resources may be consumed by the Service(s), including without limitation,

bandwidth and memory on the machines upon which the Agent or the App Bundle is installed. Customer may not use the Service(s) if Customer is a competitor of Riverbed (i.e., provides a similar product or service). In addition, Customer may not access or use the Service(s) in order to monitor or discover its performance, functionality, features, availability or otherwise for Customer's own competitive purpose or that of any third party.

## **2. Term and Termination.**

The term of this Agreement will begin when Customer both accepts this Agreement and has received e-mail approval by a Riverbed sales representative (the "Effective Date"). The term of this Agreement will end thirty (30) days after the Effective Date (the "Termination Date"), which date may be extended upon Customer's reasonable request and e-mail approval by a Riverbed sales representative. In addition, the Termination Date will occur immediately upon written or electronic notice from Riverbed to Customer in the event Customer materially breaches the terms of this Agreement. Upon the Termination Date, Customer must immediately cease all use of the Service(s). The terms of Sections 2 through 8 will survive any termination or expiration of this Agreement.

## **3. Ownership of Intellectual Property.**

Except as otherwise expressly stated herein, nothing in this Agreement creates any right of ownership in or license to Customer in or to the Service(s) (including without limitation the Agent and the Plug-in), and each party will continue to independently own its intellectual property and proprietary information. Customer may provide feedback to Riverbed, including without limitation, usability, bug reports and test results ("Feedback"). Riverbed will own all intellectual property rights, title, and interest to the Service(s) and Feedback and Customer agrees to assign to Riverbed all rights it may otherwise have to Feedback. Any rights not expressly granted to Customer herein are reserved by Riverbed. Customer agrees not to remove or destroy any proprietary, trademark or copyright markings or notices placed upon or contained within the Service(s). Customer agrees not to copy, modify, translate, disassemble, decompile, reverse engineer, create derivative works of, or make any other attempt by any means to discover or obtain the source code or other proprietary information included in the Service(s). As between Riverbed and Customer, Customer owns all content and/or data it uploads to the Service(s) ("Content"). Customer represents and warrants it either owns or has sufficient rights to upload Content in connection with its use of the Service(s).

## **4. No Commercial Obligation.**

Neither Riverbed nor Customer will be under any obligation to contract with the other for products or services as a result of participation in the activities contemplated under this Agreement.

## **5. LIMITATION OF LIABILITY.**

IN NO EVENT SHALL EITHER RIVERBED BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR IN CONNECTION WITH THIS AGREEMENT. RIVERBED'S LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY

RELATING TO OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED IN THE AGGREGATE TO \$1,000.

## **6. DISCLAIMER.**

Riverbed will use reasonable efforts to provide technical support regarding installation or use of the Service(s) to Customer via phone or e-mail.

NOTWITHSTANDING THE FOREGOING SENTENCE, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE(S) ARE PROVIDED TO CUSTOMER BY RIVERBED PURSUANT TO THIS AGREEMENT ARE PROVIDED “AS IS”, “AS AVAILABLE”, AND WITHOUT ANY WARRANTY WHATSOEVER. RIVERBED DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD-PARTY RIGHTS. IN ADDITION, RIVERBED DOES NOT GUARANTEE THAT THE SERVICE(S) WILL BE AVAILABLE AT ALL TIMES OR AT ANY PARTICULAR TIME, OR THAT RIVERBED WILL RESPOND TO SUPPORT REQUESTS IN ANY PREDETERMINED PERIOD OF TIME.

## **7. Confidentiality, Security and Privacy.**

Customer will not use or disclose any confidential information provided by Riverbed to Customer during the term of this Agreement for any purpose other than evaluating the possibility of purchasing the Service(s), and Customer will return or destroy any such confidential information after the expiration or termination of this Agreement upon the written request of Riverbed. Riverbed will use reasonable efforts in accordance with industry standards to protect the confidentiality and integrity of any Content; provided, however, that Customer acknowledges and agrees that its Content will be inaccessible to Customer through the Service(s) after the Termination Date. For security purposes, Customer and/or Customer’s users may be asked to provide user names and/or passwords (“Passwords”) in order to access the Service(s). Protection of Passwords will be the sole responsibility of Customer, and Riverbed will have no liability of any kind to Customer if unauthorized access to the Content occurs as a result of failure by Company to protect Passwords. Company will immediately notify Riverbed of any unauthorized use of the Service(s) occurring through its network or equipment of which Company becomes aware. Customer acknowledges Riverbed’s Privacy Policy located at <http://www.Riverbed.com/privacy-policy/> and by accepting this Agreement also accepts the terms of Riverbed’s Privacy Policy. Neither party will issue a press release or otherwise advertise, make a public statement, disclose to any third party information pertaining to the relationship arising under this Agreement, or otherwise refer to the other party in relation to this Agreement without the other party’s prior written consent.

## **8. General Provisions.**

This Agreement constitutes the entire agreement between Customer and Riverbed, and supersedes all previous agreements and understandings, whether oral or written, with respect to the subject matter hereof. This Agreement will be governed by the laws of the State of California, excluding its conflicts of laws rules. If any part of this Agreement is found to be void, unenforceable or invalid, it will not affect the other provisions of this Agreement. This

Agreement can only be modified by Riverbed after providing written notice to Customer of such modification. Customer will be deemed to have accepted such modification by continuing to use the Service after receiving notice of the modification. Failure by Riverbed to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Customer may not assign this Agreement or any right or obligation hereunder without Riverbed's prior written consent. Each party will perform its obligations hereunder as an independent contractor and not as an agent or representative of the other party. Nothing in this Agreement will be deemed or construed as creating a partnership, joint venture, or any similar relationship between the parties.