

## Verdigris SaaS Services

### Terms of Use

By using the Verdigris SaaS Services, you and, if applicable, the company you represent (collectively, "**you**" or "**Customer**") accept and agree to be bound by the following terms and conditions (the "**Terms of Use**" or "**Terms**"). It is important that you read these Terms as they form a legal agreement between you and Verdigris Technologies, Inc ("**Verdigris**", "**we**", or "**us**").

In the event of any conflict between the content in this document and any documents incorporated by reference, this document shall control with respect to your use of the SaaS Services. If you disagree with any of the provisions in these Terms, do not click that you agree to them, and do not accept, access, or use the SaaS Services.

Verdigris reserves the right, from time to time, with or without notice to you, to change these Terms at our sole and absolute discretion. The most current version of these Terms can be reviewed at <https://verdigris.co/saas-terms> at any time and supersede all previous versions. By using the Verdigris SaaS Services after changes are made to the Terms, you agree to be bound by such changes.

Your only recourse if you disagree with these Terms, or with any changes to these Terms, is to discontinue your use of the SaaS Services. Accordingly, we recommend you review these Terms periodically.

### **1 Description, Licenses, and Restrictions**

**1.1 Description of Verdigris SaaS Services.** The SaaS Services consist of certain embedded and hosted software and associated tools and documentation that allow you to analyze certain data and content (your "**Raw Customer Data**" and "**Input Customer Data**" as further defined in Section 2.2) collected from the equipment you acquired, via purchase or lease, from Verdigris (the "**Equipment**") located at any physical locations at which you have placed such equipment and to create reports with the Customer Data (your "**Reports**"). While Verdigris strives to have its SaaS Services available, it cannot guarantee any uptime for the SaaS Services.

**1.2 Customer Accounts and Access Codes.** To register your use of the SaaS Services and to obtain the necessary credentials to access the SaaS Services (collectively, "**Access Codes**"), you must create an account with Verdigris ("**Customer Account**"). You agree to provide true, accurate, and complete registration information to Verdigris and to maintain and promptly update your information as applicable. You are responsible for maintaining the confidentiality and security of your Access Codes, and all activities that occur using your Access Codes, are your responsibility. You are fully responsible for all actions that are taken under your Customer Account. You may not divulge your Access Codes to anyone else. In order to maintain accurate information (including a current email address and other required contact information) related to your account, you must keep your Customer Account information up-to-date.

**1.3 SaaS Services License Grant.** Subject to the terms and conditions in these Terms, we grant you a limited, non-exclusive, non-assignable, or non-transferable license under Verdigris's intellectual property rights in the SaaS Services during the Term to use and to allow your employees and contractors to use, the SaaS Services to monitor the Equipment, collect and analyze the Customer Data and develop and use the Reports all using the SaaS Services. You have no right to distribute or allow access to the stand-alone SaaS Services to any third parties.

**1.4 Customer Responsibilities.** You will: (i) be solely responsible for the accuracy, quality, integrity and legality of that Customer Data provided directly from you to Verdigris (including but not limited to circuit identification information, utility data, line drawings and utilities billing information) and of the means by which you acquire, upload, transmit and process such Customer Data to provide it to us; (ii) be solely responsible for the location, care and maintenance of the Equipment to ensure that all Equipment can collect raw Customer Data in a manner that provides, on an uninterrupted basis, Customer Data with sufficient quality, accuracy, longevity for meaningful analysis by the SaaS Services; (iii) be solely responsible for the transmit the Raw Customer Data to us; (iv) use commercially reasonable efforts to prevent unauthorized access to or use of all or any portion of the SaaS Services, and notify Verdigris promptly of any such unauthorized access or use; (v) make such disclosures, obtain such consents and otherwise comply with any applicable law, rule or regulation regarding the use, processing, transfer, disclosure or access to personally identifiable information of, or other information specific to, Customer's personnel having use of or access to any SaaS Services; and (vi) be responsible for obtaining and maintaining appropriate equipment, including the Equipment, and ancillary services needed to connect to, access or otherwise use the SaaS Services, including, without limitation, computers, computer operating systems and web browsers.

**1.5 Restrictions.** In addition to other restrictions contained in these Terms, you agree not to do any of the following, unless expressly permitted by Verdigris in these Terms or in writing by Verdigris:

- a. Use the SaaS Services with any equipment other than the Equipment and allow anyone other than you to access your Customer Account or use any portion of the SaaS Services;
- b. Sell, lease, share, transfer, sublicense the SaaS Services, directly or indirectly, to any third party or otherwise fail to protect the confidentiality of the SaaS Services, Access Codes, or any services or information posted or available in areas of the SaaS Services that require Access Codes;
- c. Use the SaaS Services for any violate any rights of third parties, or expose Verdigris to legal liability in your use of the SaaS Services;
- d. Use the SaaS Services (i) for any breach of any laws or regulations, (ii) for any illegal, unauthorized, or otherwise improper purposes, or (iii) in any manner that would violate these Terms;
- e. Remove any legal, copyright, trademark, watermark, or other proprietary rights notices contained on or in the SaaS Services.

f. Copy, adapt, reformat, reverse-engineer, disassemble, decompile, translate or otherwise modify the SaaS Services, Access Codes, or the Reports, or any of our other services, through automated or other means; or

g. Transmit any viruses, worms, defects, Trojan horses, or any items of a destructive nature through your use of the SaaS Services.

**1.6 Support and Modifications.** We may provide you with support or modifications for the SaaS Services in our sole discretion. We may terminate the provision of such support or modifications to you at any time without notice or liability to you. We may release subsequent versions of the SaaS Services and require that you use such subsequent versions. Your continued use of the SaaS Services following a subsequent release will be deemed your acceptance of modifications.

**1.7 Fees.** You are responsible for paying all fees associated with the use of the SaaS Services on or before the due date for such fees.

**1.8 Compliance.** If, in Verdigris's sole discretion, you do not demonstrate full compliance with this Agreement, we may restrict or terminate your access to the SaaS Services.

## **2 Proprietary Rights**

**2.1 Verdigris Property.** As between you and us, we own all rights, title, and interest, including without limitation all intellectual property rights, in and to, the SaaS Services (including all elements of the reports and information provided by Verdigris to Customer other than the Reported Customer Data) and any Equipment, and all elements, components, and executables of the SaaS Services and Equipment (collectively, the "**Verdigris Materials**"). Except for the express licenses granted in these Terms, Verdigris does not grant you any right, title, or interest in the Verdigris Materials. You agree to take such actions, including, without limitation, execution of affidavits or other documents, as Verdigris may reasonably request to effect, perfect, or confirm Verdigris's rights to the Verdigris Materials.

**2.2. Customer Data.** Excepting out all Verdigris Materials and Verdigris Equipment IP, all rights relating to or embodied in the Customer Data shall be owned by Customer. As used in this Agreement, "**Customer Data**" means any and all of the following: (i) "**Raw Customer Data**" which means any raw data collected by the Equipment at any Customer site, (ii) "**Input Customer Data**" which means any data uploaded onto the SaaS Services directly by Customer other than the Raw Customer Data collected by the equipment (where Input Customer Data includes but is not limited to circuit identification information, utility data, line drawings, and utilities billing information) and (iii) "**Reported Customer Data**" which means the data delivered by the SaaS Services to Customer as a result of the use, analysis, and processing of the Raw Customer Data and the Input Customer Data by the Verdigris' SaaS Services. Customer grants Verdigris a worldwide, non-exclusive, and perpetual license to use the Customer Data for use in the continued refinement of the SaaS Services results provided that and only to the extent that such Customer Data has been de-identified, is not associated with the Customer or any Customer site.

**2.3 Feedback.** You have no obligation to give us any suggestions, comments, or other feedback ("Feedback") relating to the Verdigris Materials. However, we may use and include

any Feedback that you voluntarily provide to improve the Verdigris Materials. Accordingly, if you give Feedback, you agree that we may freely use, reproduce, license, and distribute such Feedback.

### **3 Privacy, and Legal Compliance**

**3.1 Privacy.** You represent and warrant to Verdigris that the Customer Data or any other information or data that you provide to Verdigris will not contain any personally identifiable information of any individual.

**3.2 Legal Compliance.** You will comply with all applicable laws and regulations. You will not use the SaaS Services for any unlawful, fraudulent, or improper activity. Verdigris, at its sole discretion, reserves the right to restrict your use of the SaaS Services in the event that Verdigris determines, in its sole discretion, that your use of the SaaS Services is inappropriate.

### **4 Marketing and Publicity**

**4.1 Verdigris's Marketing and Publicity.** We may publicly refer to you, orally or in writing, as a licensee of the Verdigris SaaS Services and we may publish your name and/or logo (with or without a link to your Application) on our Website, in press releases, and in promotional materials without your prior consent.

### **5 Confidentiality.**

**5.1 Definition.** “**Confidential Information**” means any information disclosed by either Party (a “**Disclosing Party**”) to the other Party (a “**Receiving Party**”) under this Agreement, either directly or indirectly, in writing, orally or by inspection of tangible objects (including documents, software, facilities, equipment and operating plans). Although certain information may be generally known in the relevant industry, the fact that the Disclosing Party uses the same may not be so known and in such instance would comprise Confidential Information if so characterized. Furthermore, the fact that various fragments of information or data may be generally known in the relevant industry does not mean that the manner in which the Disclosing Party combines them, and the results obtained thereby, are so known and in such instance would also comprise Confidential Information if so characterized. Confidential Information shall not, however, include any information that (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (iii) is already rightfully in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality and without restriction as to disclosure and use; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Receiving Party's possession.

**5.2 Non-use and Non-disclosure.** Each Receiving Party agrees not to use any Confidential Information of the Disclosing Party except as expressly permitted in this

Agreement or as expressly authorized. Neither Receiving Party shall disclose any Confidential Information of the Disclosing Party, to third parties or to such Receiving Party's employees, except as provided in Sub-Section (c) below.

**5.3 Maintenance of Confidentiality.** Each Receiving Party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the Disclosing Party. Without limiting the foregoing, each Receiving Party shall take at least those measures that it takes to protect its own most highly confidential information but in no circumstances less than reasonable care. Neither Receiving Party shall disclose the Disclosing Party's Confidential Information to any person or entity other than its officers, employees, consultants, contractors and financial and legal advisors who need access to such Confidential Information in order to effect the intent of this Agreement and who have entered into written confidentiality agreements with or have confidentiality obligations to the Receiving Party consistent with this Section, prior to any disclosure of Confidential Information to such officers, employees, consultants, contractors and financial and legal advisors. Neither Receiving Party shall make any copies of the Confidential Information of the Disclosing Party unless such copies are previously approved in writing by the Disclosing Party or authorized under this Agreement. Each Receiving Party shall reproduce the Disclosing Party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original. Notwithstanding anything in this Section, a Receiving Party may disclose Confidential Information of the Disclosing Party if and to the extent the Receiving Party is required by law to disclose such Confidential Information, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement, to the extent allowed by law, prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

**5.4 Remedies.** Each Receiving Party acknowledges that a breach of this Section would cause irreparable harm to the non-breaching Party, the extent of which would be difficult to ascertain. Accordingly, the Parties agree that, in addition to any other remedies to which the non-breaching Party may be legally entitled, the non-breaching Party shall have the right to obtain immediate injunctive relief from a court of competent jurisdiction if the other Party or any of its officers, employees, consultants or other agents breaches this section on Confidential Information. The Parties further agree that no bond or other security shall be required to obtain such equitable relief and the Parties hereby agree not to contest the issuance of any such injunctive relief.

## **6 Term and Termination**

**6.1 Term.** The term of these Terms of Use shall commence on the date upon which you agree to the Terms and shall continue in force thereafter, unless modified or terminated as provided herein.

**6.2 Verdigris Termination; Suspension; Discontinuance.** We may suspend or terminate your use of all or any of the SaaS Services at any time if we believe you have violated these Terms. We may discontinue the availability of some or all of the SaaS Services at any time for any reason. All of our rights herein may be exercised without prior notice or liability to you.

**6.3 Effect of Termination.** Upon termination of the agreement between you and us under these Terms, (a) all rights and licenses granted to you will terminate immediately, (b) any and all payment obligations will be due, (c) you will promptly destroy Verdigris Confidential Information in your possession or control, and (d) unless we agree otherwise in writing or as stated in these Terms, you must permanently delete all data which you stored pursuant to your use of the SaaS Services, except as expressly permitted by these Terms. Verdigris may request that you certify in writing your compliance with this section. No liability shall be created for either party by the mere fact of termination of the agreement under these Terms. The following sections of these Terms shall survive termination: Sections [TBD].

**6.4 Remedies.** You acknowledge that your breach of these Terms may cause irreparable harm to Verdigris, the extent of which would be difficult to ascertain. Accordingly, you agree that, in addition to any other remedies to which Verdigris may be legally entitled, Verdigris shall have the right to seek immediate injunctive relief in the event of a breach of these Terms by you or any of your officers, employees, consultants or other agents.

## **7 WARRANTIES AND WARRANTY DISCLAIMER**

**7.1** THE VERDIGRIS MATERIALS ARE PROVIDED "AS IS" WITH NO WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, SECURITY, TITLE AND/OR NON-INFRINGEMENT. WE DO NOT REPRESENT, WARRANT OR MAKE ANY CONDITION THAT THE VERDIGRIS MATERIALS ARE FREE OF INACCURACIES, ERRORS, BUGS OR INTERRUPTIONS, OR ARE RELIABLE, ACCURATE, COMPLETE OR OTHERWISE VALID. YOUR USE OF THE VERDIGRIS MATERIALS IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE THAT RESULTS FROM USE OF THE VERDIGRIS MATERIALS INCLUDING FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OR FROM OUR SAAS SERVICES SHALL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS.

## **8 LIMITATION OF LIABILITY**

**8.1** LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO AMOUNTS PAID PURSUANT TO CUSTOMER'S BREACH OF TERMS RELATED TO INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, WITHOUT REGARD TO CAUSE OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, DAMAGES INCURRED BY THE OTHER PARTY FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS, OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY

OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EXCEPT WITH RESPECT TO AMOUNTS PAID TO THIRD PARTIES PURSUANT TO CUSTOMER'S BREACH OF TERMS RELATED TO PAYMENT, INTELLECTUAL PROPERTY, AND CONFIDENTIAL INFORMATION, IN NO EVENT WILL EITHER PARTY'S AGGREGATE TOTAL LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT (INCLUDING WITHOUT LIMITATION VERDIGRIS' INDEMNIFICATION OBLIGATIONS) EXCEED AMOUNTS ACTUALLY PAID BY CUSTOMER TO VERDIGRIS IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM, PROVIDED THAT THE FOREGOING LIMITATION ON LIABILITY SHALL NOT APPLY TO CLAIMS THAT A PARTY INFRINGES THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS. NEITHER PARTY WILL BE RESPONSIBLE TO PAY THE OTHER PARTY ANY LIQUIDATED DAMAGES UNDER THIS ADDENDUM OR ANY ASSOCIATED AGREEMENT.

8.2 Remedies. Except as provided in this section, Customer's sole remedies for breach are limited to termination of the Agreement, refund of the purchase price of Equipment or fees paid for SaaS Services, repair of defective Equipment, or replacement of defective Equipment. In the event of a delay in delivery of the Equipment, Customer's sole remedies are, where available under terms agreed to by the parties, expedited shipping at Verdigris's expense or cancellation of the order. Under no circumstances is Customer entitled to injunctive relief. These sole remedies are only available where the terms of the Agreement indicate they are applicable.

## **9 Indemnification.**

9.1 **Verdigris.** The following indemnification obligations are Verdigris's sole indemnification obligations: subject to the limitations herein, Verdigris will defend or settle any third party claim or action ("Claim") brought against Customer which alleges and evidences that (i) an Equipment provided under this Agreement has caused bodily injury (including death) or property damage except for any property damage caused by any failure to properly use the Equipment in accordance with instructions and specifications published with the Equipment, including without limitation in any documentation accompanying the Equipment, or any modification or abuse of the Equipment or (ii) any SaaS Services delivered hereunder infringes any third party's United States copyright, or (iii) any Verdigris trademarks infringe any third party's trademark registered in the United States.

9.2 **Customer.** Customer will (i) indemnify and hold harmless Verdigris against any breach by any Customer of Customer's obligations under the Agreement and (ii) against any claim or liability based on a modification or conversion of the Equipment or SaaS Services not made by or at the direction of Verdigris, and/or the subsequent use or disposition of such modified or converted Equipment SaaS Services.

9.3 **Indemnification Process.** The indemnifying Party's indemnity obligation is subject to the indemnifying Party's being notified by the indemnified Party promptly in writing and given full and complete authority, information and assistance (at the indemnifying Party's expense) for the defense. The indemnifying Party's will pay damages and reasonable costs therein finally awarded against the indemnified Party but shall not be responsible for any

compromise made without its consent. The foregoing is the indemnified Party's exclusive remedy and the indemnifying Party's sole liability for any claim or Claim set forth in this Section.

## **10. General Terms**

**10.1 Governing Law; Attorneys Fees.** These Terms will be governed by and construed in accordance with the laws of the State of California as such laws apply to contracts between California residents performed entirely within California. Any action or proceeding arising from or relating to these Terms must be brought in a federal court in the Northern District of California or in state court in Santa Clara County, California and each party irrevocably submits to the jurisdiction and venue of any such court. In the event of litigation between the parties arising out of or related to these Terms, the prevailing party will be entitled to recover its attorneys' fees and costs incurred.

**10.2 Interpretation.** The term "include" (and all of its variants) when used in these Terms will be interpreted to be followed by the clause "without limitation" in all cases.

**10.3 Export Laws.** You shall comply with applicable export laws and regulations of the United States with respect to any technical materials you receive pursuant to these Terms.

**10.4 Waiver.** The failure of Verdigris to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision.

**10.5 Severability of Terms.** If any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect

**10.6 Applicability and Entirety of Terms.** These Terms apply to you, they constitute the entire agreement between you and us with respect to the subject matter herein, and they supersede any and all prior proposals (oral and written), understandings, representations and other communications between you and us.

**10.7 Relationship Between the Parties.** Nothing in these Terms will be construed as creating a partnership or joint venture of any kind between the parties and neither party will have the authority or power to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

**10.8 Assignment.** You may not assign these Terms, in whole or in part, without Verdigris's prior written consent. Any assignment in violation of this section is null and void.

**10.9 Headings.** The section headings in these Terms are for convenience only and have no legal or contractual effect.