

Verdigris SaaS Services

Terms of Use

By using the Verdigris SaaS Services, the Customer ("**Customer**") accepts and agrees to be bound by the following terms and conditions (the "**Terms of Use**" or "**Terms**"). It is important that the Customer read these Terms as they form a legal agreement between the Customer and Verdigris Technologies, Inc ("**Verdigris**").

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 use of the SaaS Services. If the Customer disagrees with any of the provisions in these Terms, do not click to 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 change these Terms at Verdigris' 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, the Customer agrees to be bound by such changes.

The recourse if the Customer disagrees with these Terms, or with any changes to these Terms, is to discontinue use of the SaaS Services. Accordingly, Verdigris recommends the Customer 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 the Customer to analyze certain data and content ("**Raw Customer Data**" and "**Input Customer Data**" as further defined in Section 2.2) collected from the equipment acquired, via purchase or lease, from Verdigris (the "**Equipment**") located at any physical locations at which equipment is placed and to create reports with the Customer Data ("**Reports**").

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

1.3 SaaS Services License Grant. Subject to the terms and conditions in these Terms, Verdigris grants the Customer 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 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. The Customer has no right to distribute or allow access to the stand-alone SaaS Services to any third parties.

1.4 Customer Responsibilities. The Customer will: (i) be solely responsible for the accuracy, quality, integrity and legality of that Customer Data provided directly to Verdigris (including but not limited to circuit identification information, utility data, line drawings and utilities billing information) and of the means by which that Customer Data is acquired, uploaded, transmitted and processed to provide it to Verdigris; (ii) be solely responsible for the care and maintenance of the Equipment and Equipment location to ensure that all Equipment can collect raw 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 Verdigris; (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, the Customer agrees 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 the Customer to access the 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 the Customer's 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 Verdigris' other services, through automated or other means; or

g. Knowingly transmit any viruses, worms, defects, Trojan horses, or any items of a destructive nature through the Customer's use of the SaaS Services.

1.6 Support and Modifications. Verdigris may provide support or modifications for the SaaS Services with sole discretion. Verdigris may terminate the provision of such support or modifications at any time without notice or liability. Verdigris may release subsequent versions of the SaaS Services and require that the Customer use such subsequent versions. Continued use of the SaaS Services following a subsequent release will be deemed the Customer's acceptance of modifications.

1.7 Fees. The Customer is 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, the Customer does not demonstrate full compliance with this Agreement, Verdigris may restrict or terminate access to the SaaS Services.

2 Proprietary Rights

2.1 Verdigris Property. As between the Customer and Verdigris, Verdigris owns 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, collectively, the "**Verdigris Materials**"). Except for the express licenses granted in these Terms, Verdigris does not grant the Customer any right, title, or interest in the Verdigris Materials. The Customer agrees 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. The Customer has no obligation to give Verdigris any suggestions, comments, or other feedback ("Feedback") relating to the Verdigris Materials. However, Verdigris may use and include any Feedback that is voluntarily provided to improve the Verdigris Materials. Accordingly, if the Customer gives Feedback, the Customer agrees that Verdigris may freely use, reproduce, license, and distribute such Feedback.

3 Privacy, and Legal Compliance

3.1 Privacy. The Customer represents and warrants to Verdigris that the Customer Data or any other information or data provided to Verdigris will not contain any personally identifiable information of any individual.

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

4 Marketing and Publicity

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

5 Confidentiality.

5.1 Definition. "Confidential Information" means any information disclosed or made available by either Party (a **"Disclosing Party"**) to the other Party (a **"Receiving Party"**), either directly or indirectly, in writing, orally, or by inspection of tangible objects. Confidential Information includes, but is not limited to, business plans, financial data, employee data, customer lists, strategic partners, forecasts, strategies, software or firmware code, product designs, specifications, algorithms, computer programs, inventions, unpublished patent applications, manufacturing or technical know-how, technical drawings, diagrams, schematics, technology, processes, trade secrets, ideas, concepts, materials, formulae, compositions, information, data, results, plans, surveys, and reports of a technical nature or concerning research and development and/or engineering activity. Confidential Information does not include information that (i) was publicly known prior to disclosure; (ii) becomes publicly known after disclosure 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; (iv) is obtained by the Receiving Party from a third party without a breach of confidentiality and without restriction on disclosure and use; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

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 the SaaS services are activated and shall continue in force thereafter, unless modified or terminated as provided herein.

6.2 Termination and Suspension for Cause.

a. **Material Breach.** If either party materially breaches any of its duties or obligations under this Agreement, and such breach is not cured within thirty (30) calendar days after written notice of such breach, the non-breaching party may terminate this Agreement for cause as of a date specified in such notice.

b. **Violation of Terms.** Verdigris may suspend or terminate the Customer's use of all or any of the SaaS Services if Verdigris believes the Customer has violated these Terms, provided that Verdigris gives the Customer written notice of the violation and a thirty (30) calendar days cure period to remedy the violation.

c. **Discontinuation.** Verdigris may discontinue the availability of some or all of the SaaS Services at any time for any reason. All of Verdigris' rights herein may be exercised without prior notice or liability to the Customer, except as otherwise provided in this Section 6.2.

6.3 Effect of Termination. Upon termination of the agreement between the Customer and Verdigris under these Terms, (a) all rights and licenses granted to the Customer will terminate immediately, (b) any and all payment obligations will be due, and (c) the Customer will promptly destroy Verdigris Confidential Information in their possession or control. Verdigris may request that the Customer certify in writing compliance with this section. No liability shall be created for either party by the mere fact of termination of the agreement under these Terms.

6.4 Survival. Notwithstanding any termination of this Agreement, the following provisions shall survive termination and continue in full force and effect: (1) Definitions; (2) Section 2 (Proprietary Rights); (3) Section 5 (Confidentiality); (4) Section 8 (Limitation of Liability); (5) Section 9 Indemnification; (6) Section 10.1 Governing Law; and (8) any other provisions necessary to interpret and enforce the parties' rights and obligations or to effectuate the intent of the parties.

6.5 Remedies. The Customer acknowledges that breach of these Terms may cause irreparable harm to Verdigris, the extent of which would be difficult to ascertain. Accordingly, the Customer agrees 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 the Customer or any of the Customer's officers, employees, consultants or other agents.

7 WARRANTIES AND WARRANTY DISCLAIMER

7.1 Verdigris Equipment comes with a two-year limited warranty and technical support; extended equipment warranties are available for purchase. The Verdigris Materials, including the software, are provided "as is" with no warranty, express or implied, of any kind and Verdigris expressly disclaims any and all warranties and conditions, except for the software warranty provided herein. Verdigris warrants that the software, as part of the Verdigris Materials, has been designed and tested to minimize the risk of accidental damage to the equipment it controls when used in accordance with the provided instructions and specifications. This software warranty is valid only during the period of an active software subscription. This warranty does not cover damages resulting from misuse, abuse, unauthorized modifications, or failure to follow the provided instructions and specifications. In the event of a claim under this software warranty, Customer must provide sufficient evidence of the alleged damages and their link to the software, and cooperate with any investigation conducted by Verdigris. Except as specifically provided in this warranty, Verdigris disclaims including any implied warranty or condition of merchantability, fitness for a particular purpose, availability, security, title and/or non-infringement. Verdigris does 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. The Customer's use of the Verdigris Materials is at their own discretion and risk, and the Customer will be solely responsible for any damage that results from use of the Verdigris Materials including for any damage to the Customer's computer system or loss of data. No advice or information, whether oral or written, obtained by the Customer from Verdigris or through or from Verdigris' SaaS Services shall create any warranty or condition not expressly stated in these terms.

8 LIMITATION OF LIABILITY

8.1 Limitation of Liability.

a. General Limitations: Except as expressly provided in this Section 8.1, neither party shall 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.

b. Exceptions: Notwithstanding Section 8.1.a, this limitation of liability does not apply to (i) direct damages caused by the Verdigris Materials, including the software, resulting from a breach of the software warranty as described in Section 7.1, provided that Customer has complied with the terms and conditions of this agreement, including the proper use of the software in accordance with the provided instructions and specifications; (ii) amounts paid pursuant to Customer's breach of terms related to intellectual property or confidential information under this agreement; or (iii) claims that a party infringes the other party's intellectual property rights.

c. Aggregate Liability: In no event will either party's aggregate total liability to the other party under this agreement (including without limitation Verdigris' indemnification obligations) exceed the greater of (i) amounts actually paid by Customer to Verdigris in the twelve (12) months preceding the claim or (ii) the maximum amount covered under Verdigris' applicable insurance policy for such liability, provided that such policy is in force at the time of the claim.

d. No Liquidated Damages: 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 damage to a Customer's equipment caused by the Verdigris Materials, including the software, and subject to the limitations and conditions set forth in this agreement, Verdigris shall have the option, in its sole discretion, to either repair or replace the damaged equipment or compensate the Customer for the lesser of the actual cost of repair or replacement, or the limit of liability as specified in Section 8.1.c. The Customer shall provide Verdigris with reasonable access to the damaged equipment and cooperate with any investigation conducted by Verdigris to assess the cause of damage and the appropriate remedy. 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 the 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. In addition, Verdigris will indemnify Customer for any direct, reasonable, and substantiated damages to Customer's equipment that are directly caused by the Verdigris Materials, including the software, provided that Customer promptly notifies Verdigris of such damages, cooperates with any investigation conducted by Verdigris, and allows Verdigris to have control over the defense and settlement of the claim.

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. The Customer shall comply with applicable export laws and regulations of the United States with respect to any technical materials received 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 the Customer, they constitute the entire agreement between the Customer and Verdigris with respect to the subject matter herein, and they supersede any and all prior proposals (oral and written), understandings, representations and other communications between the Customer and Verdigris.

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. The Customer 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.