

VergeOS Terms & Conditions

PLEASE READ THESE TERMS AND CONDITIONS ("TERMS") CAREFULLY BEFORE USING THE SERVICES OR PLATFORM OFFERED BY VERGE.IO, INC., A DELAWARE CORPORATION ("VERGE"). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH VERGE OR A RESELLER (DEFINED BELOW) WHICH REFERENCE THESE TERMS (EACH, AN "ORDER FORM"), YOU ("CUSTOMER") AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL ORDER FORMS, THE "AGREEMENT") TO THE EXCLUSION OF ALL OTHER TERMS. IN ADDITION, ANY ONLINE ORDER FORM WHICH YOU SUBMIT VIA COMPANY'S STANDARD ONLINE PROCESS AND WHICH IS ACCEPTED BY VERGE SHALL BE DEEMED TO BE MUTUALLY EXECUTED. WITHOUT LIMITING THE FOREGOING, CUSTOMER'S ACCESS OR USE OF THE SERVICES OR PLATFORM IN ANY MANNER SHALL BE DEEMED AN ACCEPTANCE OF THESE TERMS. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS. IF CUSTOMER IS ACCESSING THE SERVICES OR PLATFORM PURSUANT TO A RESELLER ORDER FORM EXECUTED BETWEEN CUSTOMER AND A THIRD-PARTY RESELLER AUTHORIZED BY VERGE (EACH, A "RESELLER"), CERTAIN OBLIGATIONS UNDER THIS AGREEMENT WILL DIFFER OR NOT APPLY, AS FURTHER DESCRIBED BELOW.

1. DEFINITIONS. Certain capitalized terms used herein are set forth below, other terms shall have the respective meanings set forth elsewhere in this Agreement or the applicable Order Form.

"Fee(s)" means the fees set forth on an applicable Order Form.

"Free Services" means any use or access of the Services or Platform on a free, proof of concept, pilot, unpaid, trial, beta, testing or similar basis.

"Initial Term" means a period specified on an applicable Order Form.

"Platform" means Verge's proprietary software platforms or applications (in object code form) and related documentation as specified on the applicable Order Form, and includes any change, improvement, enhancement, extension, upgrade or other new version or release thereof that is developed or otherwise generally made available by Verge in connection with the Services without additional charge.

"Renewal Term(s)" means a period of one (1) year from the end of the Initial Term or any Renewal Term, unless this Agreement is otherwise terminated as set forth herein.

"Services" means other services as Verge may offer to licensees of the Platform as described on the applicable Order Form.

"Term" means the Initial Term or a Renewal Term, as applicable.

"Third Party Works" means third party software, source code or technology licensed to Verge and made available to Customer.

"Usage" means any usage or server installation limitations of the Platform as set forth on an applicable Order Form.

2. LICENSES AND SERVICES.

2.1 Platform License and Restrictions.

2.1.1 During the Term, and subject to Customer's compliance with the terms and conditions of this Agreement including, without limitation, Usage restrictions, Verge grants to Customer a non-exclusive, non-transferable, non-sublicensable license to install on servers owned or operated by or on behalf of Customer ("Customer Infrastructure") and use the Platform for Customer's internal business purposes. Customer agrees that the Platform is for Customer's internal use (and not for resale or for the benefit of any third party).

2.1.2 Customer shall not (and shall not allow any third party to): (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Platform (except and solely to the extent that such restrictions are prohibited by applicable statutory law); (b) modify, translate, or create derivative works based on the Platform; (c) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to any Platform; (d) use the Platform for any benchmarking, timesharing or service bureau purposes or otherwise for the benefit of a third party; or (e) remove or otherwise alter any proprietary notices or labels from the Platform or any portion thereof. Customer shall use the Platform only in compliance with (i) the applicable Order Form and documentation, (ii) the rights granted hereunder, and (iii) in accordance with all applicable laws and regulations, including, but not limited to, laws related to privacy (whether applicable within the United States, the European Union, or otherwise).

2.2 Services

2.2.1 Verge shall provide the Platform by electronic delivery. Unless otherwise stated in an applicable Order Form, Customer shall be responsible for installing and configuring the Platform on Customer Infrastructure. Customer shall provide Verge reasonable access to the Customer Infrastructure in order to install, configure and manage the Platform to the extent specified in an applicable Order Form. Verge shall not have any obligation to insure or be responsible for any loss or damage to property of any kind owned or leased by Customer or its employees, contractors and agents including, without limitation, Customer Infrastructure.

2.2.2

If Customer has opted-out of Verge's collection and use of Usage Data (defined below) in accordance with Section 5.2, Customer shall (a) maintain complete and accurate records with respect to usage of the Platform in accordance with any Usage limits specified on an applicable Order Form and (b) upon thirty (30) days' prior written notice and no more than once per year, Customer shall provide Verge with access to such records in order for Verge to confirm Customer's compliance with this Agreement. Without limiting the foregoing, upon written request Customer shall certify, in writing, that Customer is in compliance with this Agreement.

3. PAYMENT; TAXES.

- 3.1 **Payment.** Fees are due and payable as set forth in an applicable Order Form. Verge shall invoice Customer as set forth in the Order Form. All Fees under this Agreement are due upon the date(s) set forth in this Agreement and are payable within thirty (30) days from the date of Verge's invoice. Payment shall be made without any right of set-off or deduction. All payments made pursuant to this Agreement shall be made in U.S. dollars and are nonrefundable. All payments shall be made in accordance with payment terms in the Order Form. Verge may, in its sole discretion, increase the Fees set forth in an applicable Order Form (unless otherwise specified in such Order Form) upon sixty (60) days' prior written notice prior to the start of any Renewal Term; provided that such increase shall not exceed five percent (5%) of the rates paid during the immediately preceding Initial Term or Renewal Term, as applicable (the "Fee Increase Cap"). Notwithstanding the foregoing, during the Initial Term or a given Renewal Term, no fee increases shall apply.
- 3.2 **Late Payment.** Any amount not paid when required to be paid under this Agreement shall accrue interest at the rate of one and 1.5% per month (18% per annum) on the remaining amount required to be paid, or at the highest amount permitted by applicable law (if lower), such interest to accrue on a daily basis from the payable date until the remaining amount is paid.
- 3.3 **Taxes.** All Fees are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind. Unless otherwise set forth in an applicable Order Form, Customer shall be responsible for payment of such taxes and duties of any kind, provided however that Verge shall be responsible for payment of taxes levied or imposed based upon Verge's net income. Without limitation, Customer shall be responsible for all applicable sales taxes unless it first claims a sales tax exemption by providing Verge with an exemption certificate acceptable to the applicable authorities.
- 3.4 **Reseller Payment.** In the event that Customer's access to the Services or Platform is pursuant to a Reseller Order Form, then Customer's payment obligations shall instead be governed by such Reseller Order Form and any definitive agreement executed between Customer and Reseller with respect to such payment obligations.

4. TERM AND TERMINATION.

- 4.1 **Term.** This Agreement shall commence on the Order Effective Date and continue for the Initial Term unless terminated earlier as set forth below; provided, however, that in the event that Customer's access to the Services or Platform is pursuant to one or more Reseller Order Forms, then, with respect to such access, this Agreement shall commence on the date that Customer first accesses the Services or Platform and continue until the expiration of all outstanding Reseller Order Forms, unless earlier terminated as set forth below. Thereafter, unless otherwise specified in an applicable Order Form, this Agreement shall renew for successive Renewal Terms, unless either party gives at least sixty (60) days' notice of non-renewal prior to the expiration of the applicable Term; provided, however, that (a) either party may terminate Customer's access to Free Services at any time and without liability to the other party; and (b) in the case of Reseller Order Forms, renewal, if any, shall instead be specified in the applicable Reseller Order Form or otherwise mutually agreed upon between Customer and Reseller.
- 4.2 **Termination for Breach.** Either party may terminate this Agreement immediately in the event the other party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days after receipt of notice of material breach.

4.3 **Effect of Termination.** Customer shall immediately delete the Platform and, if Customer has opted-out of Verge's collection and use of Usage Data (defined below) in accordance with Section 5.2, certify to Verge, in writing, within five (5) days after termination or expiration of this Agreement, that it has deleted such Platform. Customer acknowledges and agrees that the Platform may incorporate automatic shutdown features that make it inoperable after this Agreement's termination or expiration or in the event of Customer's use of the Platform in breach of this Agreement.

4.4 **Survival.** Sections 1, 3, 4.3, 4.4, 5, 6.5, 7, 8, 9 and 10 of this Agreement shall survive the termination of this Agreement for any reason.

5. PROPRIETARY RIGHTS.

5.1 **Verge Rights.** Except for the licenses explicitly granted in this Agreement, all right, title and interests in and to the intellectual property and proprietary rights of whatever nature in the Platform and the Services, including derivative works, are and shall remain the exclusive property of Verge and/or its suppliers and licensors, and nothing in this Agreement should be construed as transferring any aspects of such rights to Customer or any third party. Verge and its suppliers reserve any and all rights not expressly granted in this Agreement.

5.2 **Customer's Ownership Rights.** As between the parties, Customer shall retain all right, title and interest in and to the Customer data, content, information and materials stored or processed by the Platform ("Customer Data") and Customer Infrastructure. Nothing in this Agreement shall confer on Verge any right of ownership or interest in any Customer Data or Customer Infrastructure, or the intellectual property rights therein. Customer shall be solely responsible for the security of Customer Infrastructure. Customer, not Verge, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data. Customer acknowledges and agrees that, unless Customer opts-out through the Platform or in a manner provided by Verge, Verge may collect and use certain usage data in connection with the provision of the Platform including, without limitation, metadata in connection with Usage and data used to optimize and maintain performance of the Platform, to investigate and prevent system abuse and verify Customer's compliance with the terms of this Agreement ("Usage Data").

5.3 **Feedback.** To the extent that Customer provides Verge with any feedback relating to the Services or Platform (including, without limitation, feedback related to usability, performance, interactivity, bug reports and test results) ("Feedback"), Verge shall own all right, title and interest in and to such Feedback (and Customer hereby makes and agrees to make all assignments necessary to achieve such ownership).

6. REPRESENTATIONS, WARRANTIES AND DISCLAIMER.

6.1 **Verge Warranties.** Verge warrants to Customer that: (a) the Platform shall materially perform in accordance with the applicable documentation; and (b) any Services performed by Verge under this Agreement shall be performed in a workmanlike manner, in accordance with general industry standards. In the event that Verge provides Customer with access to any Free Services, then (i) Customer acknowledges that such Free Services are experimental in nature, are provided "AS IS", and may not be functional on any machine or in any environment; and (ii) the foregoing representations made by Verge do not apply with respect to Free Services.

6.2 **Mutual Warranties.** Each party represents and warrants that: (a) it is a duly organized and validly existing under the laws of the jurisdiction in which it is organized; (b) it has full power and authority, and has obtained all approvals, permissions and consents necessary, to enter into this Agreement, to perform its obligations and to grant the rights hereunder; (c) this Agreement is legally binding upon it and enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement does not and shall not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.

6.3 **Exclusions.** Verge's warranties in Section 6.1 do not extend to problems that result from: (a) Customer's failure to implement updates issued by Verge; (b) any alterations or additions to the Platform not performed by or at the direction of Verge; (c) failures that are not reproducible by Verge in a stand-alone environment; (d) Customer's operation of the Platform in violation of this Agreement or not in accordance with its documentation; (e) failures caused by data, software, hardware or products not licensed or provided by Verge (including, without limitation, Customer Infrastructure or Customer Data); or (f) Third Party Works.

6.4 **Remedies.** In the event of a breach of a warranty under Section 6.1, Verge shall, at its discretion and cost, either repair, replace or re-perform the Platform or Services or refund a portion of Fees previously paid to Verge that are associated with the defective Platform or Services. The foregoing states Customer's exclusive remedy, and Verge's sole liability, arising in connection with the limited warranties herein.

6.5 **Disclaimer.** EXCEPT AS SET FORTH IN THIS AGREEMENT, THE PLATFORM AND SERVICES ARE PROVIDED TO CUSTOMER "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND. VERGE AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. VERGE AND ITS SUPPLIERS DO NOT WARRANT THAT THE PLATFORM OR SERVICES SHALL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS SHALL BE CORRECTED.

7. **CONFIDENTIALITY.** Each party ("Receiving Party") agrees that all code, inventions, algorithms, know-how and ideas and all other business, technical and financial information it obtains from the other party ("Disclosing Party") are the confidential property of the disclosing party ("Confidential Information" of the Disclosing Party). The Receiving Party shall hold in confidence and not use or disclose any Confidential Information of the Disclosing Party other than in connection with performing its obligations or exercising its rights pursuant to this Agreement. Confidential Information shall not include information that Receiving Party can document: (a) is generally available to the public other than through breach of this Agreement; (b) is rightfully disclosed to Receiving Party by a third party without restriction; (c) was in Receiving Party's rightful possession without restriction prior to the disclosure to Receiving Party and was not obtained by Receiving Party either directly or indirectly from Disclosing Party; or (d) is independently developed by the Receiving Party without use of any Confidential Information of the Disclosing Party. Upon expiration or termination of this Agreement for any reason, each party shall return all copies of all Confidential Information of the other party in its possession or control. Receiving Party may disclose Confidential Information as required by government or judicial order, provided Receiving Party gives Disclosing Party written notice prior to such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information.

8. INDEMNIFICATION.

8.1 Indemnity.

8.1.1 Verge shall defend, indemnify and hold Customer harmless against any third party claims, liabilities or expenses incurred (including reasonable attorneys' fees), as well as amounts finally awarded in a settlement or a non-appealable judgement by a court ("Losses"), to the extent arising from any claim or allegation by a third party that the Platform infringes or misappropriates a valid United States patent, copyright or trade secret right of a third party; provided that Customer gives Verge: (a) prompt written notice of any such claim or allegation; (b) sole control of the defense and settlement thereof; and (c) reasonable cooperation and assistance in such defense or settlement. If any portion of the Platform becomes or, in Verge's opinion, is likely to become, the subject of an injunction, Verge may, at its option, (i) procure for Customer the right to continue using such Platform, (ii) replace or modify such Platform so that it becomes non-infringing without substantially compromising its functionality, or, if (i) and (ii) are not commercially practicable, then (iii) terminate Customer's license to the allegedly infringing Platform and refund to Customer a prorated portion of the prepaid and unearned Fees for the infringing Platform or components thereof. The foregoing states the entire liability of Verge with respect to infringement of patents, copyrights, trade secrets or other intellectual property rights. Notwithstanding anything to the contrary herein, Verge shall have no obligation under this Section 8 with respect to Free Services.

8.1.2 Customer shall defend, indemnify and hold Verge harmless against any Losses to the extent arising from any claim or allegation by a third party in connection with (a) Customer's use of the Platform and Services in violation of this Agreement, (b) Customer Data, (c) Customer Infrastructure or (d) Customer's violation of any law or regulation or of any third party rights, including infringement, libel, misappropriation, or other violation of any third party's intellectual property or other legal rights in connection with its use of the Platform and Services.

8.2 **Exclusions.** The foregoing indemnification obligations of Verge shall not apply to: (a) any portions of the Platform modified by any party other than Verge, if the alleged infringement relates to such modification, (b) the combination or bundling of the Platform with any products, processes or materials not provided by Verge where the alleged infringement relates to such combination, (c) use of a version of the Platform other than the version that was current at the time of such use, as long as a non-infringing version had been released, (d) infringement or misappropriation of any proprietary right in which Customer has an interest, or (e) Third Party Works.

9. LIMITATION OF LIABILITY.

- 9.1 **Exclusions.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) ANY LOST PROFIT, LOST DATA, OR BUSINESS INTERRUPTION, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, SOFTWARE OR TECHNOLOGY.
- 9.2 **Aggregate Liability.** EXCEPT FOR BREACHES OF SECTION 7 (CONFIDENTIAL INFORMATION), CLAIMS FOR INDEMNIFICATION PURSUANT TO SECTION 8 (INDEMNIFICATION), MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, OR A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD IN CONNECTION WITH EACH PARTY'S PERFORMANCE HEREUNDER, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY FOR ANY REASON AND UPON ANY CAUSE OF ACTION UNDER THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID TO VERGE DURING THE TWELVE (12) MONTHS PRIOR TO WHEN THE CAUSE OF ACTION AROSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF CUSTOMER USES FREE SERVICES, VERGE'S AGGREGATE LIABILITY TO CUSTOMER WILL BE LIMITED TO ONE HUNDRED DOLLARS (\$100).

10. MISCELLANEOUS.

- 10.1 **Severability.** If any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.
- 10.2 **Assignment.** Neither party may assign any of its rights or obligations hereunder without the other party's consent; provided that either party may assign all of its rights and obligations hereunder without such consent to a successor-in-interest in connection with a sale of all or substantially all of such party's business relating to this Agreement. Subject to the foregoing conditions, this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns. There are no intended third party beneficiaries of this Agreement.
- 10.3 **No Waiver; Limitations.** Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy.
- 10.4 **Governing Law.** This Agreement shall be governed by the laws of the State of Delaware, without regard to the conflict of laws provisions thereof. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act apply to, or govern, this Agreement. In the event either party initiates an action in connection with this Agreement or any other dispute between the parties, the exclusive venue and jurisdiction of such action shall be in the state and federal courts in New Castle County, Delaware. The prevailing party in any action to enforce this Agreement shall be entitled to recover reasonable attorneys' fees and costs.
- 10.5 **Notices.** Unless otherwise agreed to by the parties, any notice, authorization, or consent required or permitted to be given or delivered under this Agreement shall be in writing, in English and addressed and delivered to Verge at the address specified on the Verge Website or to Customer at the address specified in the applicable Order Form. Notices shall be deemed to have been received by a party, and shall be effective: (a) on the fifth business day after which such Notice is deposited prepaid in the local postal system; (b) on the day received, if sent with a reputable, expedited overnight or international courier or hand delivered or (c) one business day after being sent electronically with a confirmed delivery receipt. Either party may change its address for receipt of Notice purposes upon issuance of Notice thereof in accordance with this Section.
- 10.6 **Export Law Assurances.** Customer acknowledges that the Platform may be subject to export and import control laws, and agrees to comply fully with those laws in connection with the Platform. Customer agrees that the Platform is not being and shall not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor shall it be used for: nuclear activities, chemical or biological weapons, or missile projects unless authorized by the U.S. government. Customer hereby certifies that it is not prohibited by the U.S. government from participating in export or re-export transactions.
- 10.7 **U.S. Government Restricted Rights.** If the Platform is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense ("DOD") acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in such Platform and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose software or any documentation, shall be subject in all respects to the

license rights and restrictions provided in this Agreement. The Platform and related documentation are provided with "Restricted Rights" (as defined in FAR section 52.227-19). Use, duplication or disclosure by the United States Government is subject to the restrictions set forth in Federal Acquisition Regulation ("FAR") FAR 12.212 and DFAR 227.7202. No other FAR, or Defense Federal Acquisition Regulation ("DFAR") or any other governmental or other terms apply unless explicitly set forth on the Order Form.

- 10.8 **Force Majeure.** Except for performance of a payment obligation, neither party shall be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, epidemics, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any causes beyond the reasonable control of that party.
- 10.9 **Remedies.** Except as specifically provided otherwise herein, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of Section 5 or 7, the non-breaching party shall suffer irreparable damage for which it shall have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.
- 10.10 **Publicity.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, affiliation, or sponsorship without obtaining the express prior written consent of the other party.
- 10.11 **Entire Agreement.** These Terms together with all applicable Order Forms comprise the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may only be amended or modified only in a writing executed by both parties; provided that if Customer is a user of Free Services, then Verge may amend or modify this Agreement by (a) posting a new version of this Agreement on the Platform; and (b) providing notice to Customer via email or other reasonable means. Verge's acceptance of any document submitted by Customer to Verge shall not be construed as an acceptance of provisions which are in any way in conflict or inconsistent with, or in addition to, this Agreement, unless such terms are separately and specifically accepted in writing by an authorized representative of Verge.