

Veritas™ Evaluation/Trial Hosted Services Terms

May 2021

VERITAS™

These Veritas Hosted Services Evaluation/Trial Terms (“**Service Terms**”) are part of the Agreement between You and Veritas. For the purposes of these Service Terms, “**Veritas**” means Veritas Technologies LLC and/or its subsidiaries, and the terms “**You**”, “**Your**” or “**Customer**” refer to the Service Entitlement owner/contract owner named in the Service Order. You and Veritas may each also be referred to as a “**Party**” and together, the “**Parties**.” The “**Agreement**” consists of, collectively, these Service Terms, plus the terms of the applicable Service Order including the relevant Service Description. Capitalized terms not defined in these Service Terms have the same meaning as defined in the Service Order. Customer and Veritas agree as follows:

1. **DEFINITIONS.** Capitalized terms shall have the meanings set forth below. Defined terms stated in the singular may be used in the plural, and vice versa.

- a) “**Actual Use Level**” means Customer’s actual quantity, type and duration of Service use, regardless of Registered Use Level.
- b) “**Affiliate(s)**” means, any present or future entity that, directly or indirectly Controls, or is Controlled by, or is under common Control with either Party, where “Control” means power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities, by contract, or otherwise.
- c) “**Certificate**” means the machine-generated certificate sent to Customer by Veritas to confirm a purchase of the applicable Service, whether ordered directly from Veritas or through Veritas’ authorized channel partner.
- d) “**Confidential Information**” has the meaning given under “**Confidentiality**” below.
- e) “**Customer Data**” means information which the Customer uploads to the Service to be processed and/or stored through the Service and any information generated within the Service as a result of the processing of that information.
- f) “**Provisioning Information**” means information that Veritas needs to configure the Service, and/or to provide any included support for the Service to the Customer, including but not limited to, names, e-mail address, IP address and contact details of designated users and contacts for the Service, and other Personal Information provided during configuration of the Service or any subsequent support call.
- g) “**Trial Period**” means the initial minimum period of time for which Customer evaluates a Service, as set forth in a Service Order. If a period of time is not otherwise set forth, the Trial Period shall be for a maximum of thirty (30) days.
- h) “**Personal Information**” means information from which a living individual can be recognized.
- i) “**Renewal Period**” means each of the subsequent, sequential Service periods following the Initial Period.
- j) “**Service(s)**” means cloud-based and/or hosted Veritas service(s), delivered to Customer hereunder for evaluation, whether as an individual service or as a collective bundle of related services, including any Service Components.
- k) “**Service Component**” means certain enabling software, hardware peripherals and associated documentation which may be separately provided by Veritas as an incidental part of a Service.
- l) “**Service Description**” means Veritas’ standard, then-current description of a Service’s features, including any product-specific additional terms and requirements, and any accompanying service level targets (“**SLA**”), if applicable. Current copies of all Service Descriptions are available at <https://www.veritas.com/about/legal/license-agreements>.
- m) “**Service Order**” means the Parties’ mutually-agreed commitment for a Service under this Agreement. A Service Order may take the form of a written addendum, click-through, exhibit or statement of work signed by the Parties, a machine-generated Veritas quote accepted by Customer, or in the absence of any such document, Customer’s order accepted by Veritas directly or through an authorized Veritas channel partner, as documented in the Certificate issued in confirmation of such order.

2. **ORDERING.** Veritas reserves the right to indicate the method(s) by which it will receive and accept evaluation Service Orders for a given Service.
3. **SERVICE USAGE DURING EVALUATION.** In its evaluation of the Service, Customer will only use the Service for its internal business use in a non-production environment, up to any use levels specified in the Service Order, and only for lawful business purposes. Veritas reserves the right to reduce or suspend Customer's use or access, alter the Trial Period duration, or otherwise cease providing the evaluation of the Service to Customer at any time with immediate effect in its sole discretion. The Service Description contains service-specific features and terms to this Agreement, provided, however, that not all features listed may be available for this Trial Period, such as any Service Level Agreements or Service Credits.
4. **TRIAL PERIOD.** The Trial Period will commence on the date that Customer is notified by Veritas that the Service has been provisioned. Unless otherwise agreed by the parties, there will be no charge for the Service during the Trial Period. Subject to Veritas' obligations in Sections 5 (Confidentiality) and 6 (Use and Protection of Customer Data and Provisioning Information), Customer agrees that Veritas will not return any Customer Data to Customer upon expiration or termination of this Agreement and shall delete all Customer Data.
5. **DISCLAIMER OR WARRANTIES.** CUSTOMER AGREES THAT VERITAS SHALL PROVIDE THE SERVICE ON AN "AS-IS" BASIS AND THAT THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS WHETHER EXPRESS OR IMPLIED CONCERNING THE SERVICE, INCLUDING, BUT NOT LIMITED TO, SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. VERITAS DOES NOT WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.
6. **INTELLECTUAL PROPERTY.** The intellectual property rights in the Service are and will remain Veritas' property or that of its licensors.
7. **CONFIDENTIALITY.**
 - a) **"Confidential Information"** means the non-public information that is exchanged between the parties, provided that such information is: (1) identified as confidential at the time of disclosure by the disclosing party ("**Discloser**"), or (2) disclosed under circumstances that would indicate to a reasonable person that the information ought to be treated as confidential by the party receiving such information ("**Recipient**"). A Recipient may use the Confidential Information that it receives from the Discloser solely for the purpose of performing activities contemplated under this Agreement. For a period of five (5) years following the applicable date of disclosure of any Confidential Information, a Recipient will not disclose the Confidential Information to any third party. Veritas will protect Customer Data for as long as that Customer Data resides in the Service. A Recipient will protect the Discloser's Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication as the Recipient uses to protect its own confidential information of a like nature. The Recipient may disclose the Confidential Information to its Affiliates, agents and subcontractors with a need to know in order to fulfill the purpose of this Agreement, who have signed a nondisclosure agreement at least as protective of the Discloser's rights as this Agreement.
 - b) This provision imposes no obligation upon a Recipient with respect to Confidential Information which: (i) is or becomes public knowledge other than by breach of this Agreement; (ii) was in the Recipient's possession before receipt from the Discloser and was not subject to a duty of confidentiality; (iii) is rightfully received by the Recipient without any duty of confidentiality; (iv) is disclosed generally to a third party by the Discloser without a duty of confidentiality on the third party; or (v) is independently developed by the Recipient without use of the Confidential Information. The Recipient may disclose the Discloser's Confidential Information as required by law or court order provided: (1) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure; and (2) discloses only as much of the Confidential Information as is required. Upon request from the Discloser or upon termination of the Agreement, the Recipient will return all Confidential Information and all copies, notes, summaries or extracts thereof or certify destruction of the same.
 - c) Each Party will retain all right, title and interest to such Party's Confidential Information. The Parties acknowledge that a violation of the Recipient's obligations with respect to Confidential Information may cause irreparable harm to the Discloser for which a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Discloser will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions.

8. USE AND PROTECTION OF CUSTOMER DATA AND PROVISIONING INFORMATION.

a) Veritas operates as a data processor with no control over the type, substance or format of Customer Data. Customer, as data controller, is responsible (i) to ensure that processing and disclosure of such information to Veritas complies with applicable laws; (ii) to inform users that their information will be processed by Veritas in the United States or other countries that may have less protective data protection laws than the region in which they are situated (including the European Economic Area); (iii) to inform users of how it will be used, and to assure that Customer has all appropriate consents required for such transfer and use; and (iv) to satisfy itself that the Security Standards are appropriate, given the nature of the Customer Data.

b) Veritas does not require access to or use of Customer Data to provide the Service, other than by machine-read, electronic methods. Veritas may access or use Customer Data, if required, to enable proper functioning of the Service or as otherwise set forth in the Service Description and, in such limited circumstances, Veritas shall process Customer Data in accordance with the Customer's instructions, provided that such instructions are consistent with the terms of this Agreement. Veritas may access, use or disclose Customer Data as required by law or court order, but will give Customer reasonable notice of any legally required disclosure to allow Customer to seek a protective order or other appropriate remedy (except to the extent Veritas' compliance with the foregoing would cause it to violate a court order or other legal requirement). As between Customer and Veritas, Customer Data will remain the property of Customer at all times.

c) By providing the Provisioning Information, Customer acknowledges that the Provisioning Information, including any Personal Information contained within it, will be processed and accessible on a global basis by Veritas, its Affiliates agents and subcontractors for the purposes of providing the Service, to generate statistical information about the Service, for internal research and development, and as otherwise described in the Service Descriptions, including in countries that may have less protective data protection laws than in the country in which Customer or its users are located. Veritas may disclose the collected Personal Information as required or permitted by law or in response to a subpoena or other legal process. Customer also consents for itself and as agent for its contacts whose details have been provided as part of the Provisioning Information to the use by Veritas of that Personal Information for the purposes of informing Customer of Veritas products and services which may be of interest to Customer and account management. Where Customer's processing of the personal data provided to Veritas under this Agreement is subject to the General Data Protection Regulation (EU) 2016/679, or other applicable laws that relate to the processing of personal data and privacy that may exist in the European Economic Area, United Kingdom, and/or Switzerland, Veritas shall process such personal data in accordance with the Data Processing Terms and Conditions at <https://www.veritas.com/privacy>. All questions and requests on privacy matters may be addressed to Veritas Technologies LLC – Privacy Program Office at Veritas' headquarters location published at [veritas.com](https://www.veritas.com) or via email: privacy@veritas.com. Veritas acknowledges that individuals may choose to opt out of direct marketing at any time on written notice to Veritas.

9. LIMITATION OF LIABILITY.

a) Nothing in this Agreement shall exclude or limit: (i) Veritas' liability for death or personal injury caused by its negligence; or (ii) any fraudulent pre-contractual misrepresentations made by Veritas on which Customer can be shown to have relied; or (iii) any other liability which cannot be excluded by law.

b) IN NO EVENT WILL VERITAS OR ITS SUPPLIERS BE LIABLE WHETHER IN CONTRACT, TORT OR OTHERWISE, TO CUSTOMER OR ANY OTHER PERSON FOR: (I) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; OR (II) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, LOSSES, EXPENSES OR COSTS OF ANY KIND; EVEN IF ADVISED OF THE POSSIBILITY AND WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT OR USE OF THE SERVICE, DEFECTIVE PERFORMANCE, NON-PERFORMANCE OR DELAYED PERFORMANCE BY VERITAS OF ANY OF ITS OBLIGATIONS UNDER OR CONNECTED WITH THIS AGREEMENT. REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, VERITAS' OR ITS SUPPLIERS' TOTAL LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE GREATER OF THE FEES PAID BY CUSTOMER OR FIVE THOUSAND US DOLLARS (\$5,000.00) FOR THE SERVICE GIVING RISE TO THE LIABILITY.

14. **U.S. GOVERNMENT RIGHTS.** This Section applies only to U.S. Government entities. The Service and any related enabling software are deemed to be commercial computer software as defined in FAR 12.212. Any use, modification, reproduction, release, performance, display or disclosure of the Service or any related enabling software by the U.S. Government shall be solely in accordance with the terms of this Agreement, except (a) as modified by any addendum agreed to in writing by Veritas and the U.S. Government, and (b) that any provisions contrary to federal law shall be read out of this Agreement without impacting the validity and enforceability of its other provisions.

15. **GENERAL.** (a) Veritas has the right to subcontract the performance of the Service to third parties, provided that Veritas remains responsible for the contractual obligations according to the Agreement and any Service Order. (b) All notices of breach, termination or the like will be in writing and addressed to the receiving Party's current business contact, if known, with a cc: to the General Counsel/Legal Department of the receiving Party and sent to the Party's address as listed in the Agreement, or as updated by either Party in writing. Notices shall be effective upon receipt and shall be deemed received as follows: (i) if personally delivered by courier, when delivered, or (ii) if mailed by first class mail, or the local equivalent, on the fifth business day after posting with the proper address. (c) Customer may not assign the rights granted hereunder or the Agreement, in whole or in part and whether by operation of contract, law or otherwise, without Veritas' prior written consent. Such consent will not be unreasonably withheld or delayed. (d) Each Party will be excused from performance, other than payment obligations, for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, due to unforeseen circumstances or to causes beyond such Party's reasonable control including but not limited to war, strike, riot, crime, acts of God, or shortages of resources. (e) This Agreement shall be governed by and construed in accordance with the following laws, without giving effect to conflict of law principles: the laws of the State of California if Customer is located in the Americas; the laws of England and Wales, if Customer is located in the United Kingdom, Europe, Middle East or Africa; the substantive laws of English, if Customer is located in India; the substantive laws of New South Wales, Australia, if Customer is located in Australia, New Zealand, or the Pacific islands (excluding overseas territories of the USA or France); the substantive laws of Japan, if Customer is located in Japan; the substantive laws of Peoples Republic of China, if Customer is located in China, excluding Hong Kong, Macau, and Taiwan; or the substantive laws of the Republic of Singapore, if Customer is located in anywhere else in Asia Pacific. Such application of law excludes any provisions of the United Nations Convention on Contracts for the International Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. (f) If any provision of the Agreement is found partly or wholly illegal or unenforceable, such provision will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions will remain in full force and effect. A waiver of any breach or default under the Agreement will not constitute a waiver of any other right for subsequent breach or default. No person other than a Party to the Agreement will be entitled to enforce any term of it except as expressly provided herein. (g) Customer hereby acknowledges and agrees that the Service and any related download or technology may be subject to applicable import/export controls and trade sanction laws, regulations, rules and licenses, and that Customer is hereby notified of the information published by Veritas on <http://www.veritas.com/legal/legal-notice>, or successor website, and will comply with the foregoing, and with such further export restrictions that may govern an individual Service, as specified in the relevant Service Description. (h) Any subsequent modifications to these terms and conditions will be made in writing and duly signed by authorized representatives of both parties or they will be void and of no effect. Together with the terms of the Service Order, these terms are the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any previous or contemporaneous agreement, proposal, commitment, representation, or other communication whether oral or written between the parties regarding such subject matter. The Agreement prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by Customer, even if signed and returned. The terms of the Service Order, the Service Description, and these Veritas Hosted Services Terms shall govern, in that order of precedence, in the event of any conflict by or among such documents. This Agreement may be executed in multiple counterparts all of which taken together shall constitute one single agreement between the parties.