

# **Standard terms of business**

April 2024



## Intellectual Property

Emergn affirms that all right, title and interest in all Intellectual Property generated by Emergn in undertaking the contracted Services shall be deemed to have vested in the Client solely for internal use and for the purposes as described in a Statement of Work, unless otherwise agreed by Emergn in writing.

All Intellectual Property rights of which Emergn is the legal and beneficial owner prior to the commencement of this Agreement or develops during the term of this Agreement but does not generate in undertaking the contracted Services shall, for the avoidance of doubt, remain vested in Emergn.

None of the Intellectual Property rights which Emergn owns prior to the commencement of this Agreement may be copied, distributed or used by the Client or any other person under any sub-license for any purpose other than for the fulfillment of the Services defined herein.

The Client shall retain ownership of all Intellectual Property contained within Client Materials or shared with Emergn as part of this Agreement.

The Client shall grant to Emergn a fully paid-up, non-exclusive, royalty-free, non-transferable and revocable license to copy and modify the Client Materials for the term of this agreement for the purpose of providing the Services to the Client.

## Relationship of Parties

Client acknowledges that Emergn is an independent contractor and therefore no employer/employee relationship exists. Client is not responsible for payment of compensation, vacation, taxes or other benefits to Emergn personnel. The parties agree that this SoW is for the sole benefit of the Parties and does not confer any rights or benefits to any third party.

## Learning Platform Use

If Client is granted access to the Emergn Learning Platform or other materials they will abide by the Emergn Standard Platform Terms and Conditions in place at that time. These will be available at the point of signature of any Statement of Work.

## Invoicing and Payment

Invoices for other consulting and engineering services will be sent monthly in arrears and payable within 30 days of receipt. Conflicting terms defined in a SoW supersede these. Payment may not be offset against other transactions between the Parties, except where mutually agreed.



All rates set forth in SOWs (Statement of Works) are inclusive of all benefits and overhead, but exclusive of all taxes including, but not limited to, sales, use, value-added, tariffs, duties, etc.

## **Limitation of Liability and Indemnification**

Emergn agrees to indemnify, defend and hold harmless the Client from and against any and all claims, demands, costs, expenses, damages, settlements and liabilities arising out of or relating to any third-party claim that the contracted services infringe or misappropriates any intellectual property right of any third party. The Client shall provide Emergn with prompt written notice of any such claim and Emergn shall have sole control and authority with respect to the defense and settlement of any such claim. Upon Emergn's reasonable request, the Client shall give reasonable cooperation to Emergn, at Emergn's expense, in the defense of any such claim.

Emergn shall have no obligation for any claim of infringement arising from the Client's modification or alteration of the portion of the contracted products and services, where such infringement would not have occurred but for such modification or alteration, or any claim based on intellectual property rights owned by Client.

## **Confidential Information**

The Parties acknowledge that their relationship is one of high trust and confidence and that, in the course of performing the contracted services each may have access to the others Confidential Information. Confidential Information means all information that is of value to a Party and is not generally known to the industry, including sales and financial data, trade secrets, and personal data.

Each Party shall protect the confidentiality the other Party's Confidential Information using at least the same degree of care that it uses to protect its own confidential and proprietary information, but in no event less than a reasonable degree of care. Confidential Information may be used solely for purposes of delivering the contracted services and not for any other purpose without the express prior written consent of the disclosing party. The Parties shall not disclose, publish or disseminate the other's Confidential Information to anyone, except where necessary to provide the contracted services and are subject to enforceable written agreements that prohibit the use or disclosure of Confidential Information except as expressly permitted herein.

The obligation of nondisclosure shall not apply to any Confidential Information that either Party is required to disclose by law; provided, however, that the receiving Party shall promptly use its reasonable best efforts to limit such disclosure, provide reasonable advance notice of any such request for disclosure.

Upon termination or expiration of this SoW or at any other time upon request by the disclosing Party, the receiving Party shall promptly return and confirm in writing the return of all originals, copies, reproductions and summaries of the disclosing Party's Confidential Information or, at the option of the disclosing Party, destroy and confirm in writing the destruction of such Confidential Information.



## **Force Majeure**

It is agreed between the Parties that neither Party will be held responsible for damage caused by delay or failure to perform its undertaking under the terms of this SoW when the delay or failure is due to circumstances beyond its control, including but not limited to, any fires, floods, acts of God, lawful acts of public authorities, civil insurrection, or governmental measure, or of any other cause of any kind beyond the control of the Parties. If either Party determines that it is unable to perform any of its obligations hereunder as a result of a Force Majeure Event, it will notify the other Party in writing of the occurrence of and reason for any such delay within five business days of the commencement of the cause thereof.

## **Good Faith and Publicity**

The Parties shall act in good faith at all times towards the each other and shall not bring the other into disrepute.

The Client grants Emergn the right to publicize its work with the Client, and Emergn will refrain from sharing any proprietary, personal or confidential information.

## **Non-Solicitation**

The Parties agree that each invests a substantial sum in the recruiting and maintaining of personnel, including employees and contractors. As such, the parties will not solicit or recruit any active personnel from the other within six months of the expiration or termination of this Agreement. In the event that a company breaches this obligation, the breaching party agrees to pay the non-breaching party damages in an amount equal to 50% of the subject personnel's annual compensation at the time the employee is solicited or recruited by the breaching party. The foregoing shall not prevent either Party from advertising employment or consulting opportunities or otherwise soliciting such opportunities to the general public and/or from hiring or employing any person who has voluntarily responded to such advertising or solicitations so long as no one person is the intended target of the advertisement and the former employee is not specifically directed to the advertisement.

## **Termination**

Emergn or client may terminate a SoW for any reason and without penalty upon 90 days written notice. In the event of a material breach by either party, the aggrieved party may terminate with immediate effect if the breach is not resolved within 15 days of providing written notice. Conflicting terms defined in a SoW supersede these. Any unpaid balance due for services and related expenses delivered, performed or incurred before receipt of termination notice, whatever the cause, shall be due per Payment terms. Licenses are non-refundable.



## **Governing Law**

This SoW is governed by the laws of the Republic of Ireland and the parties submit to this exclusive jurisdiction for legal matters.

## **Waiver and Entire Agreement**

The choice of either Party to require strict performance of this SoW shall not act as a waiver of any right and the SoW shall continue in full force and effect. Failure of either Party to require the performance of any obligation in this SoW or the waiver by either party of a breach will not prevent subsequent enforcement of said obligation or be deemed a waiver of any subsequent breach.

This SoW represents the full understanding and entire agreement between the Parties with respect to the work defined herein. It shall supersede all other written or verbal understandings unless included in the SoW.

## **Third Parties and Severability**

The parties agree that this SoW is for the sole benefit of the Parties and does not confer any rights or benefits to any third party.

If any provision of this SoW is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of the Parties will not be materially and adversely affected thereby, such provision will be fully severable. This SoW will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof and the remaining provisions of this SoW will remain in full force and effect. In lieu of such illegal, invalid or unenforceable provision, a legal, valid and enforceable provision as similar in terms shall be included in its place.

## **Survival**

The clauses Intellectual Property, Confidential Information and Governing Law shall survive termination of this SoW.

## **Notices**

All legal notices pertaining to this SoW shall be emailed to:

Emergn: go@emergn.com

Client: