

**EMERGYS MANAGED INFRASTRUCTURE AND SERVICES AGREEMENT GENERAL  
TERMS AND CONDITIONS (“GTC”)**

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**1. DEFINITION**

- 1.1 “Agreement” means these GTCs, any Order Form referencing these GTCs, and the Acceptable Usage Policy, Support Policy and Supplementary Terms referenced by these GTCs and/or such Order Forms.
- 1.2 “Client Data” means any data, information or material relating to Client that is created, uploaded or transferred in connection with the Managed Infrastructure and Service by Client or its affiliates.
- 1.3 “Service” means the provision of the infrastructure and managed services as set forth in the applicable Order Form and Additional services provided by Emergys to the Client as applicable.
- 1.4 “Illegal Use” of the software shall mean any use of the software which is not in conformity with, or directly against, the terms of this Agreement and/or any law in applicable jurisdictions, and shall include but not be limited to, any use of the Managed Infrastructure and Services (i) beyond specified time period or (ii) without payment of amounts due to Emergys by the Client.
- 1.5 “Support Hours” means 9:30 am to 6 pm United States Eastern Standard Time, Monday to Friday every week.
- 1.6 “Third Party” means an individual or an entity which is not the Client or Emergys.
- 1.7 “Third Party Services” mean services which are provided by Third Parties directly to the Client.
- 1.8 “DDoS” shall mean a distributed denial of service (“DDoS”) attack typically occurs when a number of servers located throughout the Internet launch an attack against a website or a server(s) in order to overload either the network or the server resources
- 1.9 “PHI” means Protected Health Information as this term is defined in HIPAA.
- 1.10 “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated by DHHS pursuant thereunder and the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated thereunder, as may be amended from time to time
- 1.11 “Protected Information” shall mean (i) any cardholder data, (ii) any personally identifiable information, (iii) any personal information as the term “personal information” may be defined under any applicable state data security or data breach Laws, or (iv) any “personal data” as defined in EU directive 95/46/EC, the GDPR and PHI.
- 1.12 “Applicable Servers” means any physical or virtual information systems housed remotely at Client’s location, remotely at a thirdparty’s location(s), or within Emergys’s facilities, which may be used by the Client or its users to transmit to, maintain, store, use or access Protected Information
- 1.13 “Order Form” means Emergys Managed Infrastructure and Services order form signed by the Client and in which Client agrees to be bound by the terms and conditions of the Agreement for the Service.
- 1.14 “AUP” means Emergys’s Acceptable Usage Policy found at <http://emergys.com/emergys-agreements/> herein, as may be amended from time to time.
- 1.15 “Party”/ “Parties” Client and Emergys shall individually be termed as ‘Party’ and collectively as ‘Parties’.

**2. CLIENT OBLIGATIONS**

- 2.1 Client’s use of Third Party Services, software and other products including, without limitation, SAP application software products, IBM database software products, and IBM operating system products is governed by the terms of any license or other agreement between Client and the Third Party.
- 2.2 Client shall comply with all legal requirements applicable to Client’s use of the Managed Infrastructure and Service and with the AUP.
- 2.3 Client shall ensure that, its employees or other individuals who are accessing the Managed Infrastructure and Service shall strictly comply with security precautions provided by Emergys.
- 2.4 Client shall deploy best efforts to prevent unauthorized access to or use of the Managed Infrastructure and Service and immediately notify Emergys of any known or suspected unauthorized use of the Managed Infrastructure and Service or any other breach of security.
- 2.5 Client shall use reasonable security precautions in connection with its use of the Managed Infrastructure and Service, including encrypting any protected personal information transmitted by the Client or included in Client Data or stored in the servers or storage devices used by Client.
- 2.6 Client and its users agree to fulfil any requests from Emergys that are needed to perform activities necessary for Emergys or the Client to fulfil the terms of this Agreement in a timely manner, including but not limited to installation, maintenance, support, service, audit, investigation, and remediation.
- 2.7 Client and its personnel agree not to remove, modify or obscure any copyright, trademark, patent or other proprietary rights notices that appear on any software and/or Services provided by Emergys. Client further agrees not to reverse engineer, decompile, or disassemble any of the software provided by Emergys
- 2.8 Client acknowledge that the Services may be subject to terms and conditions imposed by third parties of software products that Emergys is providing to the Client as part of the Services, and Client agree to be bound by, and to comply with, any such third party terms and conditions, as terms and conditions may be changed from time to time.

- 2.9 Client acknowledge that the Services shall be used only for internal business purpose and Client shall not have the right to sublicense or re-distribute the Service to Third Parties, without the prior written approval of Emergys.

### 3. PAYMENT

- 3.1 The Client agrees to pay the Service Fee, provided in the Order Form by way of wire transfer ("Service Fee") for the use of Managed Infrastructure and Service. Emergys reserves the right to revise the Fee at its sole discretion.
- 3.2 **Installation Fee:** The Client agrees to pay Installation Fee in advance, Emergys shall provide the invoice to the Client at the beginning of the Term. Payments for such invoice shall be due and payable upon receipt of invoice by the Client. If such Installation Fee is not paid after a seven (7) day grace period from the date of the invoice, shall accrue interest at the rate of United States Prime Rate as listed in the Eastern print edition of the Wall Street Journal at the time such fees are due plus one and a half percent (1.5%) per month, but not to exceed the maximum amount as allowed by law. Further, in the event of late payment, Emergys reserves the right to suspend and/or cease the provision of Managed Infrastructure and Service and the related support to the Client without notice.
- 3.3 **Managed Infrastructure and Services Fee:** The Service Fees for Managed Infrastructure and Service and the support shall be paid monthly as per the details provided in the applicable Order Form. The Client agrees to pay the monthly fees in advance, Emergys shall issue the invoice in the preceding month and the invoice amount shall be due and payable upon receipt of an invoice by the Client. If such fee is not paid after a seven (7) day grace period from the date of the invoice, shall accrue interest at the rate of United States Prime Rate as listed in the Eastern print edition of the Wall Street Journal at the time such fees are due plus one and a half percent (1.5%) per month, but not to exceed the maximum amount as allowed by law. Further, in the event of late payment, Emergys reserves the right to suspend and/or cease the provision of Managed Infrastructure and Service and the related support to the Client without notice.
- 3.4 The Parties agree that any overage charges incurred by the Client, as per the Order Form, for a particular month, shall be included in the invoice of the subsequent month.
- 3.5 The Parties agree that all Fees and charges are non-refundable.
- 3.6 **Taxes:** The fee and all other amounts due as set forth in this Agreement are net amounts to be received by Emergys, exclusive of all taxes, duties, and assessments, including without limitation all sales, withholding, VAT, excise, ad valorem, and use taxes (collectively, the "Taxes"), and are not subject to offset or reduction because of any Taxes incurred by the Client or otherwise due as a result of this Agreement. Client shall be responsible for and shall pay directly, any and all Taxes relating to the performance of this Agreement, provided that this paragraph shall not apply to taxes based solely on Emergys's income.

### 4. INFRASTRUCTURE

Emergys shall provide the necessary infrastructure as detailed in the Order Form.

### 5. SUPPORT

Emergys agrees to provide the support and the SLAs as detailed in Support Policy for Emergys Managed Infrastructure and Services as found at <http://emergys.com/emergys-agreements/>.

### 6. MAINTENANCE

Emergys will be entitled, at its sole discretion, to undertake Scheduled Maintenance as detailed in Support Policy for Emergys Managed Infrastructure and Services as found at <http://emergys.com/emergys-agreements/> upon reasonable notice to the Client. Client agrees that during such maintenance service the Managed Infrastructure and Service shall not be available for the period mentioned in the notice informing such Scheduled Maintenance.

### 7. WARRANTY AND DISCLAIMER OF WARRANTIES

THE MANAGED INFRASTRUCTURE AND SERVICE IS PROVIDED "AS IS." EMERGYS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO CLIENT OR TO ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE MANAGED INFRASTRUCTURE AND SERVICE HEREUNDER, AND EMERGYS DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE MANAGED INFRASTRUCTURE AND SERVICE INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EMERGYS DOES NOT WARRANT THAT THE MANAGED INFRASTRUCTURE AND SERVICE WILL BE ERROR FREE OR WILL PERFORM IN AN UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE MANNER. CLIENT ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CLIENT'S PRIVACY, CONFIDENTIAL INFORMATION, AND PROPERTY. EMERGYS DOES NOT PROVIDE ANY WARRANTY FOR MANUFACTURER, SUPPLIER, PROVIDER, ARCHITECTURE, TYPE, OR VERSION OF INFRASTRUCTURE HARDWARE AND SOFTWARE, INCLUDING WITHOUT LIMITATION SERVER, NETWORK, STORAGE, FIREWALL, LOAD BALANCER OR OPERATING SYSTEM, AND.

EMERGYS MAY FROM TIME TO TIME FACILITATE FOR CLIENT'S PURCHASE OR LICENSE OF THIRD PARTY SOFTWARE, SERVICES, AND OTHER PRODUCTS NOT INCLUDED AS PART OF THE MANAGED INFRASTRUCTURE AND SERVICE, AND/OR MAY INSTALL, MAINTAIN OR CONFIGURE THOSE THIRD PARTY PRODUCT OR SERVICES FOR THE CLIENT. EMERGYS MAKES NO REPRESENTATIONS OR WARRANTY WHATSOEVER REGARDING SUCH THIRD PARTY PRODUCTS AND RELATED SERVICES MENTIONED HEREIN. AS BETWEEN EMERGYS AND CLIENT SUCH THIRD PARTY SERVICES AND RELATED SERVICES ARE PROVIDED ON "AS IS" BASIS.

### 8. INDEMNITY

Client agrees to indemnify and hold harmless Emergys, Emergys's affiliates, and each of their respective suppliers, officers, directors, attorneys, agents, and employees from and against any and all claims, requests for injunctive relief, demands, liabilities, obligations, losses, damages,

penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party and arising out of or related to any of the following: (i) actual or alleged use of the Managed Infrastructure and Service in violation of (a) the AUP, (b) any other part of this Agreement, (ii) infringement or misappropriation of Emergys's or a Third Party's copyright, trade secret, patent, trademark, or other proprietary right (iii) violation of applicable law, by any person regardless of whether such person has been authorized to use the Managed Infrastructure and Service by Client, (iv) any use by the Client of any Third Party software or services.

## 9. LIMITATION OF LIABILITY

Exclusion of Damages: IN NO EVENT WILL EMERGYS BE LIABLE TO THE CLIENT OR A THIRD PARTY FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS, BUSINESS INTERRUPTION) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE MANAGED INFRASTRUCTURE AND SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE CLIENT OR THE THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

IN ANY EVENT, EMERGYS'S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT OR UNDER ANY OTHER FORM OR LIABILITY) FOR DAMAGES OR LOSS, HOWSOEVER ARISING OR CAUSED, WHETHER OR NOT ARISING FROM EMERGYS'S NEGLIGENCE, SHALL NOT BE IN EXCESS OF THE PRORATED AMOUNT OF FEES PAID TO EMERGYS HEREUNDER IN PRECEDING MONTH OF THE EVENT WHICH IS GIVING RISE TO SUCH CLAIM. THE FOREGOING LIABILITY CAP SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY OR REMEDY HEREIN.

## 10. CONFIDENTIALITY

- 10.1 The Service and discussions between the Parties contains valuable trade secrets and is the confidential information of Emergys.
- 10.2 Client shall not disclose, provide or otherwise make available the Service to any person other than the employees of Client or authorized contractors or the Client whose use of or access to the Service is necessary in connection with Client's exercise of its rights granted under this Agreement.
- 10.3 Client shall not use the Service for any purpose not expressly permitted by this Agreement
- 10.4 Client further agrees that it shall not reproduce or copy by any means the Service, except as reasonably required to accomplish the purpose of this Agreement.
- 10.5 Client shall use all commercially reasonable precautions to protect the confidentiality of the Service, and shall secure from all employees, agents or independent contractors having access to the Service, agreements, at least as protective of the Service as the provisions of this Section to maintain the Service in confidence.

## 11. SECURITY

Emergys agrees to maintain reasonable and appropriate measures to protect the servers and adhere to the AUP as found at <http://emergys.com/emergys-agreements/>. As part of Emergys's measures to mitigate DDoS Attacks, if the total traffic (including attacking and non-attacking traffic) to the Client's Infrastructure begins to negatively affect the Emergys's network or other customers, the Client's Internet traffic going to the attacked Infrastructure may be null routed (blocked) until the attack drops to a level deemed to be acceptable by Emergys or to third-party DDoS protection provider. The Client shall be responsible for any monthly Internet bandwidth usage charges or monthly data transfer charges above the contracted amounts during a DDoS attack, as calculated by Emergys using the standard monthly data transfer calculation methods and the current rates for additional data transfer. Other than the responsibility mentioned herein, Client shall be solely responsible for data maintenance, integrity, retention and security of Client Data. If Client transfers or is otherwise involved in the transfer of any Client Data in connection with its business or otherwise) over the public network or private networks, the Client is solely responsible for compliance with any applicable laws, rules and regulations in any and all applicable regions or countries regarding the security, privacy, legality and/or safe handling of such Client Data.

## 12. PROTECTED INFORMATION AND PHI DISCLOSURE

- 12.1 The Client hereby represents and warrants that they will not transmit, maintain, or store any Protected Information or PHI on Applicable Servers.
- 12.2 The Client acknowledges and agrees that Services provided under this Agreement do not involve any use or disclosure of Protected Information to Emergys.
- 12.3 The Client agrees that if (i) it breaches this Section or are alleged to have breached this Section (including, without limitation, transmission to, maintenance on, or storage of any Protected Information on Applicable Servers by the Client or its users) and (ii) such breach or alleged breach by the Client or its users subjects Emergys to compliance with any Laws or to any claims and costs including, without limitation, claims related to any incident of such Protected Information being or potentially being accessed or acquired by any unauthorized person, the Client shall be solely responsible for all claims and costs incurred by Emergys resulting therefrom and shall hold harmless, defend and indemnify Emergys for any and all claims and costs associated with or arising out of such breach or alleged breach.

## 13. TERM AND TERMINATION

- 13.1 This Agreement shall commence upon the Effective Date as stated in the Order Form and shall remain in effect for the term provided in the Order Form.
- 13.2 Emergys may terminate this Agreement immediately in the following events:

- 13.2.1 if Client breaches any of the terms of this Agreement, and such breach is not remedied within fifteen (15) days following written notice thereof to Client;
  - 13.2.2 at any time if Client becomes insolvent, or ceases to carry on business in the normal course, or makes or seeks to make or arrange an assignment for the benefit of creditors, or if proceedings in voluntary or involuntary bankruptcy are initiated by, or on behalf of Client, or if a receiver or similar officer is appointed to take charge of all or part of Client's assets;
  - 13.2.3 Client makes Illegal Use of the Managed Infrastructure and Service;
  - 13.2.4 If Emergys is faced with a claim that the Services provided infringe on the Intellectual Property Rights of a third party, and Emergys is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, Emergys may terminate the applicable part of the Service; or
  - 13.2.5 If Client is infringing the intellectual property rights of others or is aiding or threatening such infringement.
- 13.3 **Consequences of Termination:** In the event this Agreement is terminated by Emergys, the Client will remain obligated to pay any amounts due to Emergys before the effective date of termination. In the event this Agreement is terminated by the Client for whatsoever reason, the Client is obligated to pay any outstanding amount due to Emergys as on the date of termination plus the Fees for the entire or the remainder of the respective Support Period/Renewal Period, as the case may be. The Client shall immediately cease all use of the Managed Infrastructure and Service and certify in writing to Emergys compliance thereof. The Client shall promptly release any Internet addresses assigned in connection with the Service (but not any URL or top level domain or domain name), and Emergys may take steps to change or remove any such IP addresses. Subject to applicable Laws, Emergys may delete and otherwise destroy all of the software, equipment and data at any time after five (5) days after the expiration or earlier termination of this Agreement.
- 13.4 Database Export Service upon Termination: In the event this Agreement is terminated, Service Provider shall export the contents of all SAP application databases and provide these database export files to the Client, upon payment of a mutually agreed fee for this export service by the Client.
- 13.5 Section 7, 8, 9, 10 and 13 shall survive the termination of this Agreement.

## 14. GENERAL

- 14.1 All notices, requests or communications to be given under this Agreement shall be in writing and shall be deemed duly given and served when delivered in person, by United States mail, postage prepaid, by prepaid overnight courier service, or by facsimile, to the addresses set forth immediately below (or to such other addresses as the parties may designate by notice given in accordance with this provision):
- 14.1.1. To Emergys: Emergys Corp, 630 Davis Drive, Suite 210, Morrisville, North Carolina, United States Attn: Finance Department, [finance@emergys.com](mailto:finance@emergys.com)
  - 14.1.2 To Client: **Address mentioned in the applicable Order Form**
- 14.2 This Agreement shall be governed by and construed according to the laws of the State of North Carolina, without reference to the choice or conflict of law provisions of such laws. Each party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement, or in respect of the transactions contemplated thereby, whether in tort or contract or at law or in equity, exclusively in the courts of the State of North Carolina or in the federal courts of the United States of America located in North Carolina and sitting in the county in which Emergys is located (the "Chosen Courts"). Solely in connection with such actions, proceedings and claims, the parties irrevocably submit to the jurisdiction of the Chosen Courts, and agree not to assert as a defense in any such action, suit or proceeding that such party is not subject to the jurisdiction of the Chosen Courts, that such action, proceeding or claim may not be brought or is not maintainable in the Chosen Courts, that venue is not appropriate in the Chosen Courts, or that this Agreement may not be enforced in the Chosen Courts.
- 14.3 No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless made in writing and signed by each of the parties hereto.
- 14.4 If either Party fails to enforce any term of this Agreement or fails to exercise any remedy, such failure to enforce or exercise on that occasion shall not prevent enforcement or exercise on any other occasion.
- 14.5 Force Majeure if Emergys's performance of any obligation under this Agreement is prevented, restricted or interfered with by causes including failure or malfunction of Client supplied equipment, disruptions of Internet protocol ("IP") service, services through intermediate carriers and providers other than Emergys, acts of God, explosions, vandalism, cable cut, storms, fires, floods or other catastrophes, power failure, national emergencies, insurrections, riots, acts of terrorism, wars, strike, lockouts, boycotts, work stoppages or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then Emergys shall be excused from such performance on a day-to-day basis during such restriction or interference. Emergys may choose to terminate this Agreement without any obligations, if Force Majeure subsists for a period of more than 30 days.
- 14.6 Emergys may subcontract the Services or any part thereof to any third party without requiring any prior approval from Client.
- 14.7 The rights and remedies of the parties provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies available at law or in equity.
- 14.8 The Parties agree that, in the performance of this Agreement they are and shall be independent contractors. Nothing herein shall be construed to constitute either Party as the agent of the other Party for any purpose whatsoever, and neither Party shall bind or attempt to bind the other Party to any contract or the performance of any obligation or represent to any Third Party that it has any right to enter into any binding obligation on the other Party's behalf.

- 14.9 For the avoidance of doubt, the rights and obligations of Client hereunder shall survive any assignment and/or change of control of Emergys. The Client shall not assign its rights under this Agreement to any third party, including its subsidiaries and affiliates, without the prior written consent of Emergys.
- 14.10 If any provision of this Agreement is held invalid by any law, rule, order, or regulation of any government or by the final determination of any court of competent jurisdiction, such invalidity shall not affect the enforceability of any other provisions and such provisions shall be interpreted so as to best accomplish the objectives of such invalid provisions within the limits of applicable law or applicable court decision.
- 14.11 This Agreement along with the auxiliary documents, constitutes the complete and exclusive statement of the agreement between the parties, and supersedes all prior agreements, proposals, negotiations and communications between the parties, both verbal and written, regarding the subject matter hereof.
- 14.12 This Agreement may be executed in two or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.