



Cyber Security Incident Response

“Cyber Security Incident” means a security event or the threat of a security event that compromises the confidentiality, integrity, or availability of your business information or your business assets. "Breach" means an Incident that results in the confirmed disclosure, not just potential exposure, of your data to an unauthorized party.

We can provide you with an optional incident response plan and service, including a breach notification process, to assess, escalate, and respond to identified Cyber Security Incidents that directly impact your organization, your customers, or result in loss of your data. If you select this optional service and we agree to provide such services, we will work with you to discover intrusions and vulnerabilities and make commercially reasonable efforts to help you mitigate the impact of your Cyber Security Incident. We have established an incident response plan and will make that plan and our team of engineers available upon your notification to us of a Cyber Security Incident and your desire to engage us to help you respond or remediate such Cyber Security Incident.

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you and we agree that our efforts and response to you in the event of a Cyber Security Incident shall be limited to **(select one)**:

1. UNLIMITED SUPPORT: Throughout the Initial Term and any subsequent Term, you hereby authorize us to make any necessary effort to assist you with identification, recovery, and remediation of your business resulting from a Cyber Security Incident.
2. LIMITED SUPPORT: Throughout the Initial Term and any subsequent Term, you hereby authorize us to assist you with identification, recovery, and remediation of your business resulting from a Cyber Security Incident up to a maximum amount of \$_____. You agree that we will cease all Cyber Security Incident-related efforts for you upon our estimation of delivering services to you over and above the maximum amount established by this Agreement unless you otherwise authorize additional efforts in writing.
3. WAIVER: Throughout the Initial Term and any subsequent Term, you decline and waive any Cyber Security Incident remediation. At any time throughout the Initial Term or any subsequent Term, you may request in writing that we support your efforts to mitigate the impact of a Cyber Security Incident and, if we agree to provide remediation, will enter into a separate written agreement.

Emerge recognizes the customer may have remediation coverage through an outside party and will allow any covered remediation to be initiated prior to engaging in additional effort.

Additionally, please provide contact information for a Primary and Secondary contact to discuss an incident or potential incident. If possible, please provide a number that is not a desk line or associated with your environment, a cell number would be ideal.

Primary: _____
Name Phone Number

Secondary: _____
Name Phone Number

Notice

All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given only upon our acknowledgment of receipt.

Company Name: _____

Signature: _____ Date: _____

This form will remain valid for the duration of the contract(s) in place with Emerge or unless otherwise modified with approval from both parties.

Limitation of Liability and Indemnification

OUR DUTIES SHALL BE CONFINED TO THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND NO IMPLIED DUTIES ARE ASSUMED BY OR MAY BE ASSERTED AGAINST US. EXCEPT TO THE EXTENT ARISING OUT OF OUR GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, EXCEPT TO THE EXTENT ARISING OUT OF OUR CRIMINAL AND WILLFUL MISCONDUCT WHEN PROVIDING THE SERVICES, OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO MONETARY DAMAGES NOT TO EXCEED THE VALUE OF OUR CURRENT SERVICES AGREEMENT WITH YOU. For the avoidance of doubt, we shall not be responsible for any breach in the performance of our obligations under this Agreement due to (i) the failure or delay of our ability to perform our obligations under this Agreement, (ii) any action or lack of action not directly controlled by us, (iii) your action or lack of action, (iv) our ability to remediate, resolve, repair, or otherwise restore your data, business information, or any of your business assets, or (v) any action, threatened action, or lack of action by any third party. Each party shall have the duty to mitigate its damages for which another party may become responsible. As used in this Agreement, the term "we" shall include our officers, directors, employees, affiliates, and agents of ours, as well as our business entity itself. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL WE BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR OTHER NON-DIRECT DAMAGES OF ANY KIND WHATSOEVER WHETHER SUCH LIABILITY IS PREDICATED ON CONTRACT, STRICT LIABILITY, OR ANY OTHER THEORY AND REGARDLESS OF WHETHER YOU ARE ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.