

Beta Terms of Service

Last Revised: January 1, 2024

These Beta Terms of Service ("Beta Terms") supplement the (a) EmergeGen AI US, Inc. Master Services Agreement, or (b) written license or subscription agreement ("EmergeGen AI US, Inc. Terms") previously executed or accepted by and between you ("Customer") and EmergeGen AI US, Inc. ("EmergeGen"). The EmergeGen Terms shall apply in full force and effect except as modified in these Beta Terms. The Effective Date of the Beta Terms is the date of Customer's initial access or use of the beta services identified by EmergeGen ("Beta Services"). **CUSTOMER UNDERSTANDS AND AGREES THAT EMERGEGEN AI US, INC. WILL TREAT CUSTOMER'S USE OF THE BETA SERVICES AS ACCEPTANCE OF THESE BETA TERMS.**

1. EMERGEGEN AI US, INC. BETA SERVICES

- 1.1 Incorporation.** The EmergeGen Terms and [Privacy Policy](#) re incorporated by reference herein and control for any term not specifically addressed in these Beta Terms.
- 1.2 Eligibility.** Customer may only receive access to the Beta Services if Customer is in good standing with EmergeGen, and Customer must remain so for the duration of access to the Beta Services. In the event that Customer ceases to be a customer of EmergeGen, access to the Beta Services will be terminated immediately.
- 1.3 Description.** The Beta Services may be a separate, stand-alone service accessible apart from the generally available service to which you subscribe, or it may be a feature or functionality of that service. Further description of the Beta Services is provided prior to access of the Beta Services, or when an additional Beta Service is made available, and such description may be updated from time to time by EmergeGen.
- 1.4 Access and Use of the Beta Services.** Subject to compliance with these Beta Terms, Customer and as applicable, its Authorized Users (as defined in the EmergeGen Terms), has a non-exclusive, non-sublicensable, non-transferable, revocable right to access and use the Beta Services solely for Customer's evaluation and testing purposes for the period indicated by EmergeGen ("**Beta Period**"). Customer's rights to access and use the Beta Services are further limited in accordance with the limitations on access and use of the EmergeGen Services and EmergeGen Data (as defined under the applicable EmergeGen Terms). Customer may access and use the Beta Services solely for Customer's internal business purposes.
- 1.5 Beta Services.** Customer acknowledges that, as of the Effective Date, the Beta Services are pre-release, have not been fully tested, and may contain errors or bugs that may result in permanent loss or corruption of certain data provided by Customer in connection with the Beta Services ("**Customer Data**") or result in incorrect calculations. EmergeGen is not obligated to provide support or maintain any level of availability for the Beta Services, though EmergeGen will endeavor to provide support as needed. EmergeGen may not make a version of Beta Services (or any updates or future versions) generally available or otherwise available for production use. EmergeGen may not backup Customer Data or other information accessed by the Beta Services, and such Customer Data or information may not be available for retrieval or otherwise compatible or usable with EmergeGen Services or EmergeGen Data (as defined under the applicable the EmergeGen Terms).

- 1.6 Third Party Products.** The Beta Services may interoperate with products and services not provided by EmergeGen (“**Third Party Products**”). EmergeGen does not warrant or support Third Party Products, and as between EmergeGen and Customer, Customer assumes all responsibility for the Third Party Products and any disclosure, modification or deletion of Customer Data by the Third Party Products. EmergeGen shall have no liability for, and Customer is not relieved of any obligations under the Beta Terms or entitled to any refund, Credit, or other compensation due to any unavailability of the Third Party Products or any change in the ability of EmergeGen to interoperate with the Third Party Products.
- 1.7 Beta Use Information and Feedback.** In consideration of the rights granted in these Beta Terms, Customer agrees to provide periodic feedback on the usability of the Beta Services, including errors, proposed enhancements, and other feedback as may be reasonably requested by EmergeGen. Without limiting the rights and obligations set forth in the EmergeGen Terms, EmergeGen owns all right, title and interest to such feedback without restriction or obligation to the Customer. EmergeGen will not publish feedback in a way that is attributable to Customer without consent.
- 1.8 Fees.** There are no additional fees due for use of the Beta Services. This does not affect the fees due under the Order Form and the EmergeGen Terms. In addition, Customer understands that use of the Beta Services after the Beta Period may be subject to payment of fees under a separate commercial agreement with EmergeGen.
- 1.9 Confidential Information.** The Beta Services, and any related information or materials provided or made available by EmergeGen under these Beta Terms, are EmergeGen Confidential Information, and Customer Data input or uploaded to the Beta Services are Customer Confidential Information. Each party’s obligations regarding protection of Confidential Information under the EmergeGen Terms shall also apply to Confidential Information exchanged under these Beta Terms.

2. WARRANTY

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE EMERGEGEN TERMS (INCLUDING ANY REPRESENTATIONS AND WARRANTIES CONTAINED THEREIN), EMERGEGEN PROVIDES THE BETA SERVICES ON AN AS-IS BASIS, AND HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE BETA SERVICES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. EMERGEGEN DISCLAIMS ANY WARRANTY THAT THE BETA SERVICES WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM EMERGEGEN OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE BETA TERMS.

3. TERMINATION

- 3.1 Modification and Termination.** EmergeGen reserves the right to modify or terminate the Beta Services, or Customer’s use of the Beta Services, to limit or deny access to the Beta Services, at any time, in its sole discretion, for any reason, with or without notice and without liability to Customer. Customer may discontinue use of the Beta Services at any time.

- 3.2 Rights and Obligations Upon Expiration or Termination.** Upon expiration or termination of these Beta Terms, Customer's and Authorized Users' right to access and use the Beta Services shall immediately terminate, Customer and its Authorized Users shall immediately cease all use of the Beta Services.

4. INDEMNIFICATION

Customer agrees to hold harmless and indemnify EmergeGen, its affiliates and subsidiaries, officers, directors, agents, and employees from and against any third party claim arising from or in any way related to Customer's and its Authorized User's (i) breach of the Beta Terms, (ii) your use of the Beta Services, (iii) violation of applicable laws, rules or regulations in connection with the Beta Services, or (iv) data provided in connection with the Beta Services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, costs (including reasonable attorneys' fees). In such a case, EmergeGen will provide you with written notice of such claim, suit or action.

5. LIMITATION OF LIABILITY

- 5.1 Total Liability.** THE PARTIES ACKNOWLEDGE THAT THE BETA PRODUCTS ARE PROVIDED WITHOUT CHARGE FOR LIMITED TESTING AND FEEDBACK PURPOSES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF EMERGEGEN AND ITS SUPPLIERS ARISING OUT OF OR RELATED TO THESE BETA TERMS SHALL NOT EXCEED \$500.
- 5.2 Consequential Damages.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EMERGEGEN AND ITS AFFILIATES AND SUPPLIERS WILL NOT BE LIABLE UNDER THESE BETA TERMS FOR (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR (II) LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE ARISING OUT OF OR RELATING TO THESE BETA TERMS, INCLUDING THE USE OR INABILITY TO USE THE BETA SERVICES, OR USE THE EMERGEGEN SERVICES.

6. GENERAL

- 6.1 Publicity.** EmergeGen may request a testimonial or case study from Customer related to Customer's use of the Beta Services.
- 6.2 Changes to the Terms.** EmergeGen reserves the right to make changes to the Beta Terms from time to time, and will notify Customer in such an event. Customer understands and agrees that if you use the Beta Services after the date on which the Beta Terms have changed, EmergeGen will treat your use as acceptance of the updated Beta Terms.
- 6.3 Compliance with Laws** Both parties agree to comply with all applicable local, state, national and foreign laws, rules, and regulations.