

# Terms of Use

Last updated: December 2018

## 1. Acceptance of Terms

The Nemaris Services or Surgimap Services (as defined below) that Nemaris provides to User (as defined in the Nemaris Inc. Services Agreement) in connection with Surgimap.com and Nemaris.com are subject to the following Terms of Use ("TOU"). Nemaris reserves the right to update the TOU and package an updated TOU with software upgrades at any time. The most up-to-date version of the TOU will always be available on Surgimap.com. Violating these TOU may result in the suspension or deletion of a User's account.

1. This TOU, which incorporates by reference some other provisions applicable to use of Surgimap.com including but not limited to those from the Business Associate Agreement and Nemaris Inc. Services Agreement ("Services Agreement"), and the Nemaris Privacy Policy sets forth the terms and conditions that apply to use of Surgimap.com by User. By using Nemaris' Surgimap.com, User agrees to comply with all of the terms and conditions hereof. The right to use Surgimap.com is personal to User and is not transferable to any other person or entity. For that reason, all medical professionals who directly benefit from Surgimap Services must have their own active Surgimap account. User is responsible for all use of User's account (under any login name or password) and for ensuring that all use of User's account complies fully with the provisions of this TOU. User shall be responsible for protecting the confidentiality of User's password(s), if any.
2. Nemaris shall have the right at any time to change or discontinue any aspect or feature of Surgimap.com, including, but not limited to, content, hours of availability, and equipment needed for access or use.
3. For the purposes of these TOU, Surgimap.com, Nemaris.com, Nemaris.net, and Surgimapspine.com are to be treated interchangeably.

## 2. Changed Terms

Nemaris reserves the right at any time to change or modify the terms and conditions that apply to User's use of Surgimap.com, or any part thereof including the software platform featured on the site, or to impose new conditions on User, including but not limited to usage or service fees. Such changes, modifications, additions or deletions shall be effective immediately upon issuance of reasonable notice. Reasonable notice may take the form of postings on Surgimap.com, email notifications, conventional

mailings, in-software prompts, or other commercially viable means. Any use of Surgimap.com by User after such notice shall be deemed to constitute acceptance by User of such changes, modifications or additions.

### **3. Description of Surgimap Services**

Through Surgimap.com or Nemaris.com, Nemaris provides User with access to a variety of presently available resources or other resources that might be made available in the future, mainly product information (collectively "Surgimap Services," "Nemaris Services," or "Services"). The Surgimap Services, including any updates, enhancements, new features, and/or the addition of any new Web properties in Surgimap.com or Nemaris.com, are subject to these TOU.

### **4. Equipment**

User shall be responsible for obtaining and maintaining all telephone, wireless services, computer hardware, software, and other equipment needed for access to and use of Surgimap.com and all charges related thereto.

### **5. User Conduct**

1. User shall use Surgimap.com for lawful purposes only. User shall not post or transmit through Surgimap.com any material which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable, which encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law, or which, without Nemaris' express prior approval, contains advertising or any solicitation with respect to products or services. Any conduct by a User that in Nemaris' discretion restricts or inhibits any other User from using or enjoying Surgimap.com will not be permitted. User shall not use Surgimap.com to advertise or perform any commercial solicitation, including, but not limited to, the solicitation of users to become subscribers of other information services that compete with Nemaris Services or Surgimap software.
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4. The foregoing provisions of Section 5 are for the benefit of Nemaris, its subsidiaries, affiliates and its third party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

## 6. Use of Surgimap Services

The Surgimap Services contain e-mail services (e.g., newsletters, case collaboration messages), bulletin board services, chat areas, news groups, forums, communities, personal web pages, calendars, photo albums, file cabinets and/or other message or communication facilities that are designed to enable User to communicate with others (each a "Communication Service" and collectively, "Communication Services"). User agrees to use the Communication Services only to post, send and receive messages and materials that are proper, HIPAA-compliant, and, when applicable, related to the particular Communication Service. By way of example, and not as a limitation, User agrees that when using the Communication Services, User will not:

- \*Use the Communication Services in connection with surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise).
- \*Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- \*Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, material or information.
- \*Upload, or otherwise make available, files that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless User own or control the rights thereto or have received all necessary consent to do the same.
- \*Use any material or information, including images or photographs, which are made available through the Surgimap Services in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party.
- \*Upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another.
- \*Advertise or offer to sell or buy any goods or services for any business purpose, unless such Communication Services specifically allows such messages.
- \*Falsify or delete any copyright management information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.

- \*Restrict or inhibit any other user from using and enjoying the Communication Services.
- \*Violate any code of conduct or other guidelines which may be applicable for any particular Communication Service.
- \*Harvest or otherwise collect information about others, including e-mail addresses.
- \*Violate any applicable laws or regulations.
- \*Create a false identity for the purpose of misleading others, including Nemaris.
- \*Use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users of the Services or other user or usage information or any portion thereof.
- \*Use outputs from Surgimap Services to build competitive products or in a manner inconsistent with Surgimap Branding Guidelines.

Nemaris has no obligation to monitor the Communication Services. However, Nemaris reserves the right to review materials posted to the Communication Services and to remove or modify any materials and content in its sole discretion. Acting in a manner proscribed above is considered a material breach of these TOU and Nemaris reserves the right to terminate User's access to any or all of the Communication Services in that instance without notice. Nemaris reserves the right at all times to disclose any information as it deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in Nemaris' sole discretion.

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## **7. Member Account, Password & Security**

Surgimap Services require all users (specifically all medical professionals who benefit either directly or indirectly from Surgimap Services) to open their own accounts, and a User must complete the registration process by providing Nemaris with current, complete and accurate information as prompted by the applicable registration form. User also will choose a password and a user name. User is entirely responsible for maintaining the confidentiality of User's password and account. Furthermore, User is entirely responsible for any and all activities that occur under User's account. User agrees to notify Nemaris immediately of any unauthorized use of User's account or any other breach of security. Nemaris will not be liable for any loss that User may incur as a result of someone else using User's password or account, either with or without User's knowledge. However, User could be held liable for losses incurred by Nemaris or another party due to someone else using User's account or password. User may not use anyone else's account at any time, without the permission of the account holder. Nor may User establish an account for the purpose of providing a third party service offering if those third parties have not created personal Surgimap accounts in their own names.

## **8. Representations and Attestations**

User understands and acknowledges that Surgimap.com and the products featured therein for download, viewing, or use are intended for use by medical professionals (e.g., clinicians, practitioners, surgeons, nurses, support staff, researchers, etc.). User attests to the fact that User is considered a medical professional of some kind or someone who provides a service (e.g., film reading, measuring, simulations) to medical professionals, and User understands that Surgimap Services do not and not intended to supplant User's professional opinions about the nature of patient care. User attests to User's understanding that User must exercise independent judgment when evaluating and verifying any and all information contained in any Surgimap Service including but not limited to the Surgimap software platform.

If User is considered to be a research professional in the medical field, User attests to the fact that User has obtained all proper permissions (e.g., from an Independent Review Board, patient, hospital) to undertake any and all studies for which User is utilizing a Surgimap Service including the Surgimap software platform. User understands and acknowledges that it is not Nemaris' responsibility to verify the validity of such permissions or remind User to seek them.

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## **15. Unsolicited Idea Submission Policy**

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## **16. Monitoring**

Nemaris shall have the right, but not the obligation, to monitor the content of Surgimap.com, including chat rooms and forums, to determine compliance with this Agreement and any operating rules established by Nemaris and to satisfy any law, regulation or authorized government request. Nemaris shall have the right in its sole discretion to edit, refuse to post, or remove any material submitted to or posted on Surgimap.com if and when such features of the site are activated. Without limiting the foregoing, Nemaris shall have the right to remove any material that Nemaris, in its sole discretion, finds to be in violation of the provisions of this Agreement or is otherwise objectionable.

## **17. Indemnification**

User agrees to defend, indemnify and hold harmless Nemaris, its affiliates and their respective directors, officers, employees and agents from and against any actual or alleged claims, actions, demands, costs, fees, liabilities, expenses, and settlements (including, without limitation, reasonable legal, accounting and expert fees), arising from or related to the gross negligence or intentional misconduct of User in connection with any use of the Surgimap Services including Surgimap and/or Surgimap.com, by User or in association with User's account.

## **18. Termination**

Either Nemaris or User may terminate this Agreement at any time. Without limiting the foregoing, Nemaris shall have the right to terminate User's accounts immediately in the event of a material breach of this Agreement. For more details on termination of accounts, please review the Nemaris Business Associate Agreement.

## **19. Miscellaneous**

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