SurgiCare Software LLC - Subscription Agreement

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY SELECTING A CHECKBOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM OR EMAIL THAT REFERENCES THIS AGREEMENT, YOU AGREE TO 1) THE TERMS OF THIS AGREEMENT AND 2) ANY TERMS AS LISTED IN FINAL QUOTATIONS PROVIDED BY SURGICARE.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with SurgiCare Software prior written consent. In addition, You may not access the Services for purposes of monitoring SurgiCare availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on June 1, 2023. It is effective between You and SurgiCare Software, LLC as of the date of You accept this Agreement.

FEES AND PAYMENTS

Payment obligations for the subscription period are non-cancelable and fees paid are non-refundable. You are responsible for paying for each pricing period for the entirety of the period, whether or not the software is actively used. Quantities purchased cannot be decreased during the relevant subscription term.

Subscriptions to paid Services are available on monthly and yearly subscription plans. Your subscription will be automatically renewed at the end of each subscription period unless you inform us that you do not wish to renew the subscription. The subscription fee will be charged to the Credit Card last used by you. If you do not wish to renew the subscription, you agree to inform us at least seven (7) days prior to the renewal date. In the event of termination of the subscription by SurgiCare Software, you will be refunded the subscription fee for the unused portion of the subscription period.

SurgiCare Software reserves the right to change the subscription fee for your applicable plan (monthly, yearly) at the conclusion of any subscription period upon thirty (30) days prior written notice and to charge for use of Services that are currently available free of charge at any time and for any reason.

Special order hardware purchased through SurgiCare Software is non-returnable/refundable. Normally stocked hardware purchased through SurgiCare may be returned at the discretion of SurgiCare provided the hardware is a) in like-new condition in the original packaging, and b) returned within 30 days from purchase. Hardware returned within these parameters will be subject to a 20% restocking fee, and customer is responsible for all shipping charges.

DATA OWNERSHIP

We respect your right to ownership of inventory and purchasing content created or stored by you. You own the content created or stored by you. Unless specifically permitted by you, your use of the Services does not grant SurgiCare Software the license to use, reproduce, adapt, modify, publish or distribute the content created by you or stored in your user account for SurgiCare Software's commercial, marketing or any similar purpose. However, you grant SurgiCare Software permission to access, copy, distribute, store, transmit, reformat, publicly display and publicly perform the content of your user account solely as required for the purpose of providing the Services to you.

OUR RESPONSIBILITIES

Provision of Purchased Services: We will (a) make the Services and Content available to You pursuant to this Agreement and the applicable Order Forms, (b) provide SurgiCare Software standard support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased, and (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give at least 8 hours electronic notice and which We shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Eastern time), and (ii) any unavailability caused by circumstances beyond SurgiCare Software's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving SurgiCare Software's employees), Internet service provider failure or delay, Non-SurgiCareSoftware.com Application, or denial of service attack.

Protection of Your Data: We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by SurgiCare Software personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, or (b) as You expressly permit in writing.

Our Personnel: We will be responsible for the performance of SurgiCare Software personnel (including SurgiCare Software employees and contractors) and their compliance with SurgiCare Software obligations under this Agreement, except as otherwise specified herein.

Beta Services: From time to time, we may create areas of the site as Beta. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. We may discontinue Beta Services at any time in SurgiCare Software sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

USE OF SERVICES AND CONTENT

Subscriptions: Unless otherwise provided in the applicable Order Form, (a) Services and Content are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

Usage Limits: Services and Content are subject to usage limits, including, for example, the maximum number of inventory items as specified in order forms. Unless otherwise specified, the specific subscription plan in an Order Form refers to the maximum number of inventory items added to the system, and additional items above this quantity will not be allowed. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding SurgiCare Software efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Our request.

Usage Restrictions: You will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) access any Service or Content in order to build a competitive product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law).

ILLEGAL ACTIVITIES

You agree to be solely responsible for the contents of your transmissions through the Services. You agree not to use the Services for illegal purposes or for the transmission of material that is unlawful, defamatory, harassing, libelous, invasive of another's privacy, abusive, threatening, harmful, vulgar, pornographic, obscene, or is otherwise objectionable, offends religious sentiments, promotes racism, contains viruses, or that which infringes or may infringe intellectual property or other rights of another. You agree not to use the Services for the transmission of "junk mail", "spam", "chain letters", "phishing" or unsolicited mass distribution of email. We reserve the right to terminate your access to the Services if there are reasonable grounds to believe that you have used the Services for any illegal or unauthorized activity.

DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. SURGICARE SOFTWARE, LLC EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SURGICARE SOFTWARE, LLC MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR VIRUS FREE. USE OF ANY MATERIAL DOWNLOADED OR OBTAINED THROUGH THE USE OF THE SERVICES SHALL BE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE TELEPHONE, WIRELESS DEVICE OR DATA THAT RESULTS FROM THE USE OF THE SERVICES OR THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM SURGICARE SOFTWARE, LLC, ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

LIMITATION OF LIABILITY

YOU AGREE THAT SURGICARE SOFTWARE, LLC SHALL, IN NO EVENT, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS OR DAMAGE WHATSOEVER OR FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICE, EVEN IF SURGICARE SOFTWARE, LLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH SURGICARE SOFTWARE, LLC RELATED TO ANY OF THE SERVICES SHALL BE TERMINATION OF SUCH SERVICE. IN NO EVENT SHALL SURGICARE SOFTWARE, LLC's ENTIRE LIABILITY TO YOU IN RESPECT OF ANY SERVICE, WHETHER DIRECT OR INDIRECT, EXCEED THE FEES PAID BY YOU TOWARDS SUCH SERVICE.

INDEMNIFICATION

You agree to indemnify and hold harmless SURGICARE SOFTWARE, LLC, its officers, directors, employees, suppliers, and affiliates, from and against any losses, damages, fines and expenses (including attorney's fees and costs) arising out of or relating to any claims that you have used the Services in violation of another party's rights, in violation of any law, in violations of any provisions of the Terms, or any other claim related to your use of the Services, except where such use is authorized by SURGICARE SOFTWARE, LLC.

ARBITRATION

Any controversy or claim arising out of or relating to the Terms shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The decision of the arbitrator shall be final and unappealable. The arbitration shall be conducted in New York and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Notwithstanding anything to the contrary, SURGICARE SOFTWARE, LLC may at any time seek injunctions or other forms of equitable relief from any court of competent jurisdiction.

SUSPENSION AND TERMINATION

We may suspend your user account or temporarily disable access to whole or part of any Service in the event of any suspected illegal activity, extended periods of inactivity, or requests by law enforcement or other government agencies. Objections to suspension or disabling of user accounts should be made to SurgiCare Software within thirty days of being notified about the suspension. We may terminate a suspended or disabled user account after thirty days. We will also terminate your user account on your request. In addition, we reserve the right to terminate your user account and deny the Services upon reasonable belief that you have violated the Terms and to terminate your access to any Beta Service in case of unexpected technical issues or discontinuation of the Beta Service. Termination of user account will include denial of access to all Services, deletion of information in your user account such as your e-mail address and password and deletion of all data in your user account.

END OF TERMS OF SERVICE

If you have any questions or concerns regarding this agreement, please contact us at 800-591-1048

ELECTRONIC SIGNATURE DISCLOSURE

By selecting the "Agree to Terms" checkbox during the sign-on procedure and providing credit card information you have acknowledged that you have read and agreed to the terms and conditions outlined in this Agreement.