

# Surglogs Terms and Conditions

Last Modified: March 1<sup>st</sup> 2019

The following terms and conditions (“Terms”) govern your acquisition and use of our services including website, application and any other content made available from or through this website and applications. The terms and conditions as outlined below also apply in their entirety to the free trial services, unless specified otherwise.

By creating an account on our website, you ACCEPT and AGREE to these terms and conditions. If you do not agree with our terms and conditions, you may not access or otherwise use the website, mobile applications (“applications”) or any other Surglogs’ services or product.

## 1. Intellectual Property Rights

As between you and Surglogs, Surglogs owns, solely and exclusively, all rights, title and interest in and to the Web Site, all the content (including, for example, audio, photographs, illustrations, graphics, other visuals, video, copy, text, software, titles, files, etc.), code, data and materials thereon, the look and feel, design and organization of the website and applications, and the compilation of the content, code, data and materials on the website and applications, including but not limited to any copyrights, trademark rights, patent rights, database rights, moral rights, sui generis rights and other intellectual property and proprietary rights therein. Your use of the Web Site does not grant to you the ownership of any content, code, data or materials you may access on or through the website or applications.

If you provide us with any “submitted material” including but not limited to survey responses, messages (written or oral), blog posts, emails, suggestions, any form of feedback, etc. related to improving Surglogs services, you hereby assign to us all rights, title and interest in and to such “submitted material”. By submitting or sending “submitted material” to us, you: grant us and our affiliates a royalty-free, unrestricted, worldwide, perpetual, irrevocable, non-exclusive and fully transferable, assignable and sub licensable right and license to use, copy, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, display and incorporate in other works any “submitted materials” (in whole or part) in any form, media, or technology now known or later developed, including for promotional and/or commercial purposes. We cannot be responsible for maintaining any “submitted material” that you provide to us, and we may delete or destroy any such “submitted material” at any time.

## 2. Usage and changes to Terms

You may only use Surglogs in accordance with these terms and conditions. Surglogs is intended to help automate and streamline administration in healthcare facilities, including but without limitation to hospitals, ambulatory surgery centers, outpatient surgery centers, doctor’s offices, urgent care, nursing homes, etc. and by using our services you agree you are an authorized person working within such facility, where you were granted access by the

administrator or you were granted access directly by Surglogs as an individual. You also warrant to Surglogs that you are acting in accordance with your employment agreement when using Surglogs at your healthcare facility. You may not use Surglogs for any purpose that is unlawful or prohibited by these terms and conditions. Surglogs reserves the right to refuse service, terminate accounts and cancel subscriptions at our own discretion, including but without limitation, if Surglogs believes your conduct violates our terms and conditions, is unlawful or potentially harmful to our interests.

We reserve the right to revise and update any provision of these terms and conditions at any time and in its sole discretion by providing a notice to you that these terms and conditions have been modified. By continuing your use of Surglogs services after this notice you agree to the updated Terms and Conditions and accept all the modifications.

### **3. Access and Account Security**

You are required to have an Internet connection (hard-wired and/ or Wi-Fi) with a speed of 5MB/s or higher in all locations from which Surglogs will be accessed. Additionally, you are strongly advised to keep all your devices from which Surglogs will be accessed up-to-date, with all required HIPAA security policies and procedures in place, including but not limited to antivirus system and firewall. Your mobile devices from which Surglogs is accessed should have the latest firmware installed along with the latest Surglogs application version for best performance.

Surglogs performs regular updates, upgrades and adds new features and modules from time to time. For this reason, Surglogs reserves the right to cease or change the functionality of Surglogs or its part, module, or specific function in our sole discretion without notice. Surglogs reserves the right to restrict or suspend access to some or all parts of Surglogs, as necessary in our sole discretion. We will not be liable if for any reason all or any part of Surglogs is unavailable at any time or time period.

You are responsible for protecting your username, password, pin and for keeping them secure. If you knowingly or unknowingly share access to your Surglogs account to any person or company, Surglogs is in no way responsible including but without limitation for any damage, loose of data, functionality, etc. You must immediately report to Surglogs if your credentials were compromised or stolen and report the incident to your employer following the HIPAA security and privacy guidelines your employer has in place.

### **4. Prohibited User Conduct**

You warrant and agree that, while using the Surglogs website and applications and the various services and features offered on or through Surglogs, you shall not:

- In any way that violate any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the U.S. or other countries).
- Exploit, harm or attempt to exploit or harm third parties in any way by exposing them to inappropriate content or otherwise.

- Transmit, or procure the sending of, any advertising or promotional material, including any "junk mail", "chain letter" or "spam" or any other similar solicitation.
- Impersonate or attempt to impersonate Surglogs, a Surglogs employee, another user or any other person or entity (including, without limitation, by using e-mail addresses associated with any of the foregoing).
- Engage in any other conduct that restricts or inhibits anyone's use or enjoyment of Surglogs, or which, as determined by us, may harm Surglogs or users of Surglogs or expose them to liability.

Additionally, you shall not:

- Use Surglogs outside of the scope of your employment/retention or in any way in which Surglogs was not designed or intended to be used.
- Use Surglogs in any manner that could disable, overburden, damage, or impair Surglogs or the networks and systems that support Surglogs.
- Use Surglogs in a manner that infringes on a third party's intellectual property rights or violates a third party's rights of privacy or publicity.
- Remove, circumvent, disable, damage or otherwise interfere with any security-related features that enforce limitations on the use of Surglogs;
- Attempt to gain unauthorized access to Surglogs, other accounts, computer systems or networks connected to Surglogs, through hacking, password mining or any other means or to interfere or attempt to interfere with the proper working of Surglogs or any activities conducted through Surglogs;
- Use any robot, spider or other automatic device, process or means, or any manual process, to access Surglogs for any purpose, including monitoring or copying any of the material on Surglogs.
- Engage in any behavior that interferes with the proper working of Surglogs.
- Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.
- Copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of Surglogs.
- Use Surglogs in the operation of a service bureau, outsourcing or time-sharing service.
- Use Surglogs for the purpose of building a competitive product or service or copying its features or user interface.
- Permit access to Surglogs by a competitor of Surglogs.
- Sublicense, license, sell, lease, rent or otherwise make Surglogs or available to third parties.

## 5. User Data

Surglogs is designed to store and maintain data related to managing healthcare facilities, including but not limited to: Compliance documentation, Logbooks, Credentialing documentation, Educational logs, Drills, In-services, OSHA documentation, SDS Logs, Preference Cards, Controlled Substances, Patient Charts, QI logs, Safety Checks, Checklists, ePHI, pictures, files, etc. Any documents, content, data, images, files and information that

you enter or upload into Surglogs shall be deemed "User Data". Subject to these Terms, you hereby grant to Surglogs a non-exclusive, worldwide, royalty-free right to (a) collect, use, copy, store, transmit, modify and create derivative works of User Data, in each case solely to the extent necessary to provide the applicable service to you and (b) for services that enable you to share User Data or interact with other people, to distribute and publicly perform and display User Data as you direct or enable through Surglogs. Surglogs may, in accordance with Surglogs HIPAA security and privacy policy also access your account or instance in order to respond to your support requests.

## **6. Payment**

You will pay Surglogs the fee set forth in each Order (the "Subscription Fee") for each term. Any delays in payment will result in a penalty equal to 2% of the total amount of the Subscription Fee for a yearly subscription and \$25 dollars late fee for a monthly subscription. Surglogs service will be terminated if the payment is 30 days past due.

## **7. Assignment**

You may not, without Company's prior written consent, assign, delegate, pledge or otherwise transfer these Terms, or any of its rights or obligations under these Terms to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. Company may assign these Terms without consent from you to any of its affiliates or in the event of a merger, corporate reorganization, or acquisition of all or substantially all the assets of Company.

## **8. Severability and Waiver**

You acknowledge and agree that each provision of this Agreement shall be enforceable independently of every other provision. Furthermore, in the event that any provision is deemed to be unenforceable for any reason, the remaining provisions shall remain effective, binding, and enforceable. The Parties further acknowledge and agree that the failure of any Party to enforce any provision of this Agreement shall not constitute a waiver of that provision, or of any other provision of this Agreement.

## **9. Limited Liability**

IN NO EVENT WILL COMPANY, ITS SUCCESSORS, ASSIGNS, AFFILIATES, OR EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, PERSONNEL, LICENSORS, CONTRACTORS AND REPRESENTATIVES BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, SURGLOGS, ANY WEBSITES LINKED TO IT, ANY CONTENT ON SURGLOGS OR ANY SERVICES OR ITEMS OBTAINED THROUGH SURGLOGS, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH

OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE OR IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

AS BETWEEN YOU AND COMPANY, YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH US IS TO DISCONTINUE YOUR USE OF SURGLOGS AND ITS RELATED SERVICES AND NOTIFY YOUR ADMINISTRATOR. IN THE EVENT THAT THE FOREGOING LIMITATION OF LIABILITY IS NOT VALID UNDER APPLICABLE LAW OR FOR ANY OTHER REASONS, IN NO EVENT SHALL OUR LIABILITY OR THE LIABILITY OF OUR AFFILIATES, SUCCESSORS, ASSIGNS, LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS EXCEED A TOTAL OF \$100 US DOLLARS.

#### **10. Disclaimer of Warranties**

SURGLOGS IS PROVIDED "AS IS." WE MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER TO YOU OR ANY OTHER PERSON RELATING IN ANY WAY TO SURGLOGS. WE DISCLAIM ALL OTHER WARRANTIES THAT SURGLOGS IS MERCHANTABLE, OF SATISFACTORY QUALITY, ACCURATE, TIMELY, FIT FOR A PARTICULAR PURPOSE OR NEED, OR NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SURGLOGS, A REPRESENTATIVE OF SURGLOGS OR ANY OTHER PERSON SHALL CREATE A WARRANTY OR REPRESENTATION.

YOU UNDERSTAND THAT WE CANNOT AND DO NOT GUARANTEE OR WARRANT THAT FILES AVAILABLE FOR DOWNLOADING FROM THE INTERNET OR SURGLOGS WILL BE FREE OF VIRUSES OR OTHER DESTRUCTIVE CODE. YOU ARE RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES AND CHECKPOINTS TO SATISFY YOUR PARTICULAR REQUIREMENTS FOR ANTI-VIRUS AND MALWARE PROTECTION AND ACCURACY OF DATA INPUT AND OUTPUT, AND FOR MAINTAINING A MEANS EXTERNAL TO SURGLOGS FOR ANY RECONSTRUCTION OF ANY LOST DATA. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF SURGLOGS OR ANY SERVICES OR ITEMS OBTAINED THROUGH SURGLOGS OR YOUR DOWNLOADING OF ANY MATERIAL POSTED ON SURGLOGS, OR ON ANY WEBSITE LINKED TO SURGLOGS.

FURTHER, WE DO NOT ENDORSE AND MAKE NO WARRANTY REGARDING THE ACCURACY OR RELIABILITY OF ANY OPINION, INFORMATION, ADVICE OR STATEMENT ON SURGLOGS. UNDER NO CIRCUMSTANCES WILL WE BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY YOUR RELIANCE ON INFORMATION OBTAINED THROUGH SURGLOGS. IT IS YOUR RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION, OPINION, ADVICE OR OTHER CONTENT AVAILABLE THROUGH SURGLOGS. PLEASE SEEK THE ADVICE OF PROFESSIONALS, AS APPROPRIATE, REGARDING THE EVALUATION OF ANY SPECIFIC INFORMATION, OPINION, ADVICE OR OTHER CONTENT ON SURGLOGS.

## **11. Indemnification**

You agree to defend, indemnify and hold Surglogs and its affiliates' directors, officers, employees and agents harmless from any and all claims, liabilities, costs and expenses, including reasonable attorneys' fees, arising in any way from your use of the Surglogs' website and applications, your placement or transmission of any message, content, information, software or other materials through the website and applications, your breach or violation of the law or of these Terms and Conditions, your failure to comply with applicable law, including any HIPAA regulations and policies, your use and/or installation of third party products and applications and bodily injury (including death) or damage to real property or tangible personal property of Surglogs caused by you. Surglogs reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with Surglogs' defense of such claim.

## **12. Force Majeure**

No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.

## **13. Termination**

Surglogs may terminate, change, suspend or discontinue any aspect of the website, application or the website's and application's services at any time. Surglogs may restrict, suspend or terminate your access to the website and/or its services if we believe you are in breach of our terms and conditions or applicable law, or for any other reason without notice or liability.

If you decided to terminate Surglogs services, you will be allowed to access your past data "User Data" via Surglogs website and use that data for export or print for a period of one year after which your data will no longer be available. You won't be able to actively input, add, upload, create, store or collect new data using Surglogs services during this one-year period.

## **14. Independent Contractors**

The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.

## **15. Third Party Websites, Products and Services**

Surglogs does not intent to offer any third-party products or services nor does Surglogs intent to contain links to third-party websites. If Surglogs does offer third-party products, services and links to third party websites (all collectively referred to as "Linked Sites"), you acknowledge and agree that Surglogs has no responsibility for the information, content, products, services, advertising, code or other materials which may or may not be provided by or through Linked Sites, even if they are owned or run by affiliates of Surglogs. Surglogs disclaims any liability for links (i) from another website to Surglogs and (ii) to another website from Surglogs. Surglogs cannot guarantee the standards of any website to which links are provided on Surglogs nor shall Surglogs be held responsible for the contents of such sites, or any subsequent links. Surglogs does not represent or warrant that the contents of any third-party web site are accurate, compliant with state or federal law, or compliant with copyright or other intellectual property laws. Surglogs is not responsible for or any form of transmission received from any Linked Sites. Any reliance on the contents of a third-party website is done at your own risk and you assume all responsibilities and consequences resulting from such reliance.

## **16. Confidentiality**

If you receive any confidential or proprietary information from Surglogs, you shall not disclose it to any third party except as necessary to perform your obligations under these Terms or as required by law. If you receive a valid request pursuant to a legal requirement of a competent government body to disclose any of Surglogs' confidential information, to the extent permitted by law, you shall promptly notify Surglogs and provide Surglogs as much time as possible to respond to such request and you shall only disclose the minimum amount of confidential information as possible subject to the maximum available confidentiality protections. Surglogs and any technical documentation relating to Surglogs shall be considered Surglogs' confidential information.

## **17. Governing Law**

These Terms will be governed by and construed in accordance with the laws of the State of California, without resort to its conflict of law provisions. The state or federal court in San Diego, California, will be the jurisdiction in which any suits should be filed if they relate to these Terms. Prior to the filing or initiation of any action or proceeding relating to these Terms, the parties must participate in good faith mediation in San Diego, California. If a party initiates any proceeding regarding these Terms, the prevailing party to such proceeding is entitled to reasonable attorneys' fees and costs for claims arising out of these terms and conditions.

## **18. Entire Agreement**

This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.