SurgiQ

Terms & Conditions document

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SurgiQ Terms and Conditions

Please read these terms of service (the "**Terms**", "**Terms of Service**" or the "**Agreement**") carefully before using the service (the "**Service**") provided and operated by SurgiQ Ltd ("**Us**", "**We**", the "**Company**", the "**Provider**" or "**SurgiQ**"). These terms and conditions are for products and services procured through the G-Cloud framework from SurgiQ Ltd.

1 Definitions

"Agreement": means this Agreement.

"**Applicable Legislation**": means this Agreement will be constructed in accordance with English Law and that English courts will have jurisdiction.

"**Confidential Information**": for the purpose of this Agreement means any and all information supplied to, obtained by or which comes to the knowledge of SurgiQ as a result of this Agreement with respect to the Customer including, without limitation, all patient and client information (including patient names, addresses, telephone numbers and medical history), and all operational procedures except that Confidential Information does not include information which SurgiQ can prove is information which is in the public domain at the date of disclosure by Customer to SurgiQ, is received by SurgiQ without obligation of confidence from a third party who is in lawful possession of such information free of any obligation of confidence and is not otherwise prohibited from transmitting such information to SurgiQ by a contractual, legal or fiduciary obligation.

"**Customer**": the person, statutory body, organisation, firm or company who obtains any Services from the SurgiQ.

"**Order Form**" means an ordering document specifying the Services to be provided hereunder that is entered into between the Customer and Us, including any addenda and supplements thereto. By entering into an Order Form hereunder, the Customer agrees to be bound by the terms of this Agreement.

"**Party**": means either Customer or SurgiQ and "**Parties**" means both Customer and SurgiQ.

"**Services**": defined in SurgiQ Service definition document(s).

"**Software**": shall mean the SurgiQ computer programs described in Services, and all related files and documents as may be amended from time to time.

2 Conditions of Use

SurgiQ will provide the Services to the Customer, which is subject to the conditions stated below in this Agreement.

3 Standard of Performance

SurgiQ will perform the Services to the same standard of care, skill, and diligence exercised by persons providing, on a commercial basis, other services similar to the Services.

SurgiQ will at all times undertake its business interactions with the Customer and its stakeholders with the utmost integrity and transparency.

SurgiQ will ensure that all persons who perform the Services are competent to perform the Services and are properly trained, instructed, and supervised.

SurgiQ will be solely responsible for the acts and omissions of SurgiQ's employees and agents in performing the Services.

SurgiQ will perform the Services in accordance with:

a. all Applicable Legislation;

b. the provisions of this Agreement

c. any instructions or directions that may be given by the Customer to SurgiQ from time to time with respect to the provision of the Services stated in the Order Form;

d. all policies, guidelines and directives established from time to time by the Customer (including in particular, any policies of Customer regarding confidentiality);

e. all required permits and licenses.

Where by virtue of this Agreement or of any law or governing body having jurisdiction with respect to the same, the Services are required to be provided by a duly qualified or licensed practitioner, professional, or a person with a specified qualification, level of training, or competence and experience, SurgiQ will, upon request of the Customer from time to time, provide evidence satisfactory to the Customer that SurgiQ and all persons engaged by SurgiQ to deliver the Services have the requisite qualification, level of training, competence or experience, holds or have been issued all required licenses, certificates and memberships and that such licenses, certificates and memberships are in good standing.

4 Copyright

Content published by SurgiQ (digital downloads, images, texts, graphics, logos) is the property of SurgiQ Ltd and/or its content creators and protected by international copyright laws. The entire compilation of the content found on the SurgiQ service and produced by SurgiQ for the purposes of being listed on the Digital Marketplace (G-Cloud 10) platform is the exclusive property of SurgiQ Ltd, with copyright authorship for this compilation by SurgiQ Ltd.

5 Applicable Law and Disputes

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall

have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation.

6 Additional Services

If the Customer requires any further assistance that is not covered by the Service purchased via this framework, SurgiQ will be delighted to scope and provide a price for any additional work.

7 Deployment

SurgiQ will work with the Customer's teams to help deploy and optimise the SurgiQ Service and platform, and the Customer will provide access to and coordinate the work needed by its own staff.

8 Ownership

Subject to this section, the Customer acknowledges and agrees that all rights, titles and interests in anything conceived, developed or made by SurgiQ in connection with the delivery of the Services, including all intellectual property rights associated thereto, will be for the benefit of SurgiQ and will be the property of SurgiQ.

Any intellectual property in the SurgiQ Service and platform (including any modifications) will be owned by SurgiQ.

The Customer will also not be able to copy, sublicense or transfer the software licence, which SurgiQ gives you as part of the SurgiQ services so if anyone else needs to use the SurgiQ platform, please let Us know.

The Customer retains all intellectual property rights in:

i. its own trademarks and logos;

ii. any data that you provided to SurgiQ (for example in relation to patients) (this data shall be the "**Customer Data**"). The Customer gives us a non-exclusive, non-assignable and royalty free licence to use this intellectual property in order to provide the services to the Customer as part of the project. SurgiQ may also use Customer Data, in anonymised form, for analytic purposes in order to understand and improve our services on a perpetual basis.

SurgiQ retains all intellectual property rights in:

i. the SurgiQ platform and Service including any modifications;

ii. SurgiQ trademarks and logos;

9 Confidentiality

SurgiQ will not own any of the data, which is entered, exchanged, stored or manipulated in connection with the Services (the "**Customer Data**"). SurgiQ acknowledges that the Customer Data contains Confidential Information, which is protected by the following section:

SurgiQ will treat as confidential and will not, without the prior written consent of the Customer, publish, release, disclose or permit to be published, released or disclosed either before or after the termination of this Agreement, any Confidential Information nor will SurgiQ use or exploit, directly or indirectly, any Confidential Information for any purpose other than for the fulfilment of SurgiQ's obligations under this Agreement. Notwithstanding the foregoing, SurgiQ will be entitled to disclose Confidential Information if required by law including the Freedom of Information and Protection of Privacy Act or Information Governance Protocol within the UK provided that SurgiQ will promptly notify, consult with, and cooperate with the Customer, prior to any disclosure, in any attempt to resist or narrow such disclosure or to obtain an order or other assurance so that such information will be accorded confidential treatment.

The Customer agrees, unless required by law, not to make SurgiQ's confidential information available in any form to any third party or to use this confidential information for any purpose other than the implementation of this Agreement. Customer agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. In the event SurgiQ has quoted on areas that are classified as trade secrets unique to SurgiQ, it shall be the responsibility of SurgiQ to draw such areas to the attention of the Customer in writing to secure confidentiality of the trade secret. The foregoing obligation shall survive cancellation, termination or expiration of this Agreement.

10 Limitation to Liability

Please note that SurgiQ's liability to the Customer will be limited to the amount of fees which the Customer has paid to SurgiQ for the SurgiQ Services or as specified in the call-off agreement and agreed between the parties, and that SurgiQ is not liable to Customer for any loss which is indirect or a side effect of Customer's main loss or damage and which SurgiQ and the Customer could not anticipate or expect to happen when the Customer started using the SurgiQ services, for instance if Customer loses revenue or salary, profit, opportunity or reputation. Both Customer and SurgiQ agree that nothing in these terms limits or excludes either Party's liability for death or personal injury caused by that Party's negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or any other liability, which cannot be limited or excluded by Applicable Law. Customer and SurgiQ agree that your relationship with SurgiQ is not intended to be, and does not create, a partnership and that no rights are given to any other third party unless otherwise agreed in writing.

11 Data Processing

The Customer acknowledges and agrees that its personal data will be processed by and on behalf of SurgiQ in connection with the Services.

i. In this clause the terms “personal data”, “data subject”, “controller”, “processor”, “personal data breach” and “processing” shall have the meanings ascribed to them under the Data Protection Laws).

ii. For the purposes of the Data Protection Laws, Supplier is the controller of the data in the Services.

iii. Both parties will comply with all applicable requirements of the Data Protection Laws.

iv. If the transfer of Personal Data to a jurisdiction outside the European Economic Area (EEA) is required for the performance or receipt of the Services, the parties shall, if necessary to comply with their respective obligations under the Data Protection Laws, execute the standard contractual clauses approved by the European Commission for international data transfers (decision 2010/87/EU).

v. If either party becomes aware of any unauthorized or unlawful conduct or activities, or any breach of the terms of this Agreement relating to personal data, such party shall promptly notify the other in writing as soon as reasonably practical and the parties shall take reasonable actions to prevent any further unauthorized or unlawful conduct or activities or breach of the terms of this Agreement relating to Personal Data.

12 Term and Termination

The Service (and licence to use the SurgiQ platform and to receive the SurgiQ Services) shall commence and end on the dates specified in the Order Form. SurgiQ Staff will always try first to resolve any issues within a reasonable timeframe, except for where SurgiQ feels that the Customer is not complying with these Terms or SurgiQ needs to protect the safety and security of its Customers and the SurgiQ Service. In this case, SurgiQ will provide the Customer with the reason for termination as soon as is practically possible. If the SurgiQ Service is terminated, the Customer will still need to pay all fees and charges, which the Customer has incurred up until the date of termination. The Customer will need to pay for any Service, which the Customer continues to receive after termination (such as applicable data storage fees and charges and any fees for in-process tasks completed after the termination). The Customer will also not be entitled to any credits for any period of suspension after termination.

13 Pricing and Payment

Due to the nature of the work We do, all work and costs are subject to scoping by SurgiQ Staff. This is to ensure the suitability of products and services for the intended outcomes. The exact details and associated costs will be determined in advance of any work commencing.

Payment of SurgiQ invoices must be made within 30 days of the invoice date. We will charge the Customer interest on any late payments and for any reasonable expenses we incur in collecting Customer's late payments. SurgiQ may stop providing the Customer with the SurgiQ Service if payments are not received within 60 days of the invoice date.

All prices exclude VAT, which will be charged at the applicable rate.

14 Force majeure

Neither Party shall have any liability to the other under the Agreement if it is prevented from, fails to or is delayed in performing its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lockouts or other industrial disputes (whether involving the workforce of the party relying on this clause or any other party), failure of a utility service or transport network or communication system, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

Nothing in Condition described in this paragraph shall excuse the Customer from its obligations to pay all sums due under or in connection with the Agreement in accordance with these Conditions.

15 Anti-Bribery

Each party undertakes that it shall not, directly or indirectly pay, offer, give or promise to pay or authorise the payment of any monies or other items of value to:

a. an official or employee of a government department, agency or instrumentality, state-owned or controlled enterprise or public international organisation;

b. any other person at the suggestion, request or direction or for the benefit of any of the above-described persons

if any such payment, offer, act or authorisation is for purposes of influencing official actions or decisions or securing any improper advantage in order to obtain or retain business, or engaging in acts or transactions otherwise in violation of the Anti-Bribery Legislation.

Each party shall maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Anti-Bribery Legislation and will enforce them where appropriate.

16 Standard Service Level Agreement

Prices are inclusive of maintenance, version upgrade to future releases, standard SLA (availability & technical support) as reported below, and account management.

	Standard SLA	***Notes***
Support availability	Mon-Fri, 9:00 am – 5:30 pm	Excluding bank holiday
Client access to support	Ticket system & email	Online support platform
Time to first response	< 4 working hours	
Time to resolution (critical)	< 8 working hours	e.g. system or data not available, blocking normal activity / workflow; a task cannot be performed because of a system issue
Time to resolution (non critical)	< 32 working hours	e.g. minor, non-blocking issue; a task is slowed down because of a system issue
System availability	99% of time	Over a 365 days period

An upgrade to the SLA (support beyond normal hours, reduced response time, increased availability) can be arranged on terms to be agreed upon signing the contract.