

Surgimap Business Associate Agreement

Last updated: May 2024

User of any Nemaris Inc. ("Nemaris") products or services, including but not limited to Surgimap, Surgimap Access, or Surgimap Mobile, on any platform (collectively, "Surgimap"), acknowledges that User is a "Covered Entity" and Nemaris is a "Business Associate" as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic Clinical Health Act (the "HITECH Act"), which was enacted as part of the American Recovery and Reinvestment Act of 2009 ("ARRA"). In accordance with the terms set forth in this "Business Associate Agreement," both the User of Nemaris products or services and Nemaris itself shall use all reasonable, best efforts to protect the privacy of Protected Health Information ("PHI").

1. Terms and Terminology

Any terms used but not defined in this Agreement shall have the same meaning as those terms in HIPAA.

1.1. *Breach Notification Rule.* "Breach Notification Rule" refers to 45 CFR §§ 164.400-414.

1.2. *Business Associate.* "Business Associate" within the context of this Agreement means Nemaris, the producer of Surgimap and other products and services.

1.3. *Covered Entity.* "Covered Entity" within the context of this Agreement means the User of Nemaris products or services (e.g., a healthcare provider, a health plan, or a healthcare clearinghouse).

1.4. *Patient.* "Patient" is hereby defined as a patient of Covered Entity.

1.5. *Person.* "Person" is defined as any legal entity or individual.

1.6. *Protected Health Information.* "Protected Health Information" and/or "PHI" mean information, whether oral or recorded in any form or medium, including demographic information, that: (i) relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; (ii) identifies the individual, or for which there is a reasonable basis for believing that the information can be used to identify the individual; and (iii) is accessed by Business Associate through Covered Entity, or is created by Business Associate and used in conjunction with Business Associate's services to Covered Entity, or is made accessible to Business Associate by Covered Entity and its services. PHI includes, without limitation, Electronic Protected Health Information ("ePHI") as that term is defined at 45 CFR § 160.103.

1.7. *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information contained in 45 CFR Parts 160 and 164, Subparts A and E.

1.8. *Security Rule.* "Security Rule" refers to the Security Standards for the Protection of

ePHI that is contained in 45 CFR Parts 160 and 164, Subparts A and C.

1.9. *Services Agreement.* "Services Agreement" is defined as the Nemaris Inc. Services Agreement between Covered Entity and Business Associate, which has an effective date of the acceptance of these terms and must be reviewed and accepted prior to using Surgimap.

1.10. *Unsecured Protected Health Information.* "Unsecured Protected Health Information" and/or "Unsecured PHI" refer to information that is not secured through the use of a technology or methodology identified by the Secretary to render PHI unusable, unreadable and undecipherable to unauthorized users.

2. Business Associate's Obligations.

2.1. *Permitted Uses and Disclosures.* Business Associate shall use or disclose PHI solely as necessary to perform the services set forth in the Services Agreement and as permitted or required by this Business Associate Agreement or as required by law.

2.2. *Safeguards.* Business Associate shall use appropriate safeguards and comply, where applicable, with Subpart C of 45 CFR Part 164, to prevent the use or disclosure of PHI other than as permitted under this Business Associate Agreement.

2.3. *Mitigation.* If Business Associate uses or discloses PHI in a manner other than as permitted under this Business Associate Agreement or that would otherwise cause a Breach of Unsecured PHI, Business Associate shall use its reasonable best efforts to mitigate any harmful effects of the use or disclosure.

2.4. *Unauthorized Uses and Disclosures.* Business Associate shall notify Covered Entity of any use or disclosure of PHI not expressly authorized under this Business Associate Agreement of which Business Associate becomes aware, including Breaches of Unsecured PHI. Such notice shall be made without unreasonable delay and in no case later than 60 days after discovery by Business Associate, unless subject to a law enforcement delay under 45 CFR § 164.412. Such notification shall include, at a minimum, the information required by 45 CFR § 164.410(c).

2.5. *Subcontractors.* Business Associate will ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information, in accordance with 45 CFR § 164.502(e)(1)(ii).

2.6. *Access to PHI.* Business Associate agrees to make PHI in a Designated Record Set available to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.524. Covered Entity shall request access by giving Business Associate a written notice.

2.7. *Amendments to PHI.* Business Associate agrees to make available for amendment or make amendments to PHI in a Designated Record Set upon written request of Covered Entity pursuant to 45 CFR § 164.526.

2.8. *Accounting of Disclosures.* Business Associate will maintain and, upon written request of Covered Entity, make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.528.

2.9. *Minimum Necessary.* Business Associate represents and warrants that it will use and disclose PHI in accordance with the Privacy Rule's "minimum necessary" standards under 45 CFR § 164.502(b).

2.10. *Other Uses and Disclosures.* To the extent Business Associate is to carry out any of Covered Entity's obligations under the Subpart E of 45 CFR Part 164, Business Associate will comply with the requirements of that subpart that would apply to Covered Entity in performance of such obligations.

2.11. *Books and Records and Internal Practices.* Business Associate agrees to make all internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for the purposes of the Secretary determining Covered Entity's compliance with Subpart E of 45 CFR Part 164.

3. Obligations of Covered Entity.

3.1. *Notice of Privacy Practices.* To the extent that such limitation or restriction may affect Business Associate's use or disclosure of PHI, Covered Entity shall provide Business Associate with a copy of its Notice of Privacy Practices, and notify Business Associate of:

- a. Any limitation(s) in its Notice of Privacy Practices;
- b. Any changes in, or revocation of, permission by a Patient to use or disclose PHI; and
- c. Any restriction to the use or disclosure of PHI to which Covered Entity has agreed.

3.2. *Permissible Requests.* Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rules if done by Covered Entity.

4. Term and Termination.

4.1. *Term.* The Term of this Business Associate Agreement shall be effective as of the effective date of the Services Agreement and shall continue to be in effect until all obligations of the parties have been met, unless terminated by mutual agreement of the parties or as provided elsewhere in this Section 4.

4.2. *Termination for Cause.* Covered Entity may immediately terminate this Business Associate Agreement and the Services Agreement if, after providing Business Associate written notice of the existence of a material breach of this Business Associate Agreement, Business Associate fails to, or is unable to, cure the breach upon mutually agreeable terms within 10 days.

4.3. *Effect of Termination.*

- a. Except as provided in Section 4.3(b), upon expiration or termination of the Services Agreement for any reason, Business Associate shall return or destroy all PHI, including PHI that is in the possession of Subcontractors of Business

Associate. Business Associate shall retain no copies of PHI.

- b. To the extent that it is not feasible for Business Associate to return or destroy all PHI upon expiration or termination of the Services Agreement, then
 - i. Business Associate's obligations under this Business Associate Agreement shall continue for as long as Business Associate maintains such PHI; and
 - ii. Business Associate's further uses and disclosures of PHI shall be limited to those purposes that make the return or destruction of the PHI infeasible.

5. Miscellaneous Provisions.

5.1. *Notice.* Notices, requests, and other communications that are required to be in writing must be personally delivered, mailed by prepaid certified mail, return receipt requested, or sent by overnight carrier, and must be addressed as follows. Such notice shall be effective upon being mailed or personally delivered.

If to Business Associate:
Nemaris, Inc.
Attn: Quality Assurance
300 Griffin Brook Drive,
Methuen, MA 01844

For notices to Covered Entity, it is Covered Entity's obligation to notify Business Associate of its designated recipient of Notice in writing as it pertains to this Section 5.1.

5.2. *Mutual Representation and Warranty.* Business Associate and Covered Entity each represents and warrants to the other that all of its employees, agents, representatives, and members of its workforce, whose services may be used to fulfill obligations under this Business Associate Agreement and/or the Services Agreement, are or shall be appropriately informed of the terms of this Business Associate Agreement and are under legal obligation to fully comply with all provisions of this Business Associate Agreement.

5.3. *Business Associate Warranty.* To the extent required by law or regulations, Business Associate warrants that it has implemented a Red Flags Program in accordance with the Federal Trade Commission's Identity Theft Prevention Red Flags Rule, 16 CFR § 681.1 *et seq.*, or that it agrees to comply with Covered Entity's Red Flags Program.

5.4. *No Third Party Beneficiaries.* Nothing expressed or implied in this Business Associate Agreement is intended to confer, or shall confer, any rights, remedies, or liabilities upon any person other than Business Associate and Covered Entity.

5.5. *Effect of Assignment.* This Business Associate Agreement shall be binding upon and shall inure to the benefit of Business Associate and Covered Entity and their respective transferees, successors and assigns, except that Business Associate shall not have the right to assign or transfer this Business Associate Agreement, or Business Associate's rights and obligations hereunder, without Covered Entity's prior written consent. Upon assignment or transfer of this Business Associate Agreement, Business Associate shall return or destroy all PHI in accordance with the

terms set forth in Section 4.3.

5.6. *Regulatory References.* A reference in this Business Associate Agreement to a section in the Privacy Rule or the Security Rule or a term defined in the Privacy Rule or the Security Rule means the section or definition as in effect or as amended.

5.7. *Amendment.* Business Associate and Covered Entity agree to take such action to amend this Business Associate Agreement as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Security Rule.

5.8. *Survival.* The respective rights and obligations of Covered Entity and Business Associate under this Business Associate Agreement shall survive the termination of this Business Associate Agreement and the Services Agreement.

5.9. *Interpretation.* Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Rule.

5.10. *Captions and Headings.* The captions and headings in this Business Associate Agreement are included for convenience and reference only, and shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Business Associate Agreement.

IN WITNESS WHEREOF, Covered Entity and Business Associate have caused the execution of this Business Associate Agreement by signing below or clicking "I Agree" on the Surgimap download page.

BUSINESS ASSOCIATE

COVERED ENTITY

Nemaris, Inc.

Kelly Huller

General Counsel
