

# Terms of Use / User Agreement

## Terms and Conditions of Use

PLEASE READ THESE TERMS OF USE ("**AGREEMENT**" OR "**TERMS**") CAREFULLY BEFORE USING THE SERVICES OFFERED BY THE SOCIETY FOR MINIMALLY INVASIVE SPINE SURGERY ("SMISS," "**WE**" OR "**US**"). THIS AGREEMENT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF SMISS'S ONLINE MEDICAL SOCIETY RESOURCE (AS FURTHER DEFINED BELOW, THE "**SERVICE**"). BY USING THE SERVICE IN ANY MANNER, INCLUDING BUT NOT LIMITED TO VISITING OR BROWSING THE SITE(S), YOU AGREE TO BE BOUND BY THIS AGREEMENT. THIS AGREEMENT APPLIES TO ALL USERS OF THE SERVICE, INCLUDING USERS WHO ARE ALSO CONTRIBUTORS OF CONTENT, INFORMATION, AND OTHER MATERIALS OR SERVICES ON THE SITES.

The "**Service**" is SMISS's online medical society resource which is comprised of (a) www.SMISS.org, (the "**Site**"), (b) information, text, data, images, video and other content displayed on the Site (collectively, "**SMISS Content**") and (c) certain products and services offered through the Site. The Service is offered subject to acceptance without modification of all of these Terms and all other operating rules, policies and procedures that may be published from time to time on the Site by SMISS. In addition, some services offered through the Service may be subject to additional terms and conditions promulgated by SMISS from time to time and your use of such services is subject to those additional terms and conditions, which are incorporated into these Terms by this reference.

The Service is available only to individuals who are at least 16 years old. You represent and warrant that (a) if you are an individual, you are (i) at least 18 years old or (ii) if you are between the ages of 13 and 18, you have parental permission to enter into this Agreement and to use the Service; (b) all registration information you submit is accurate and truthful; and (c) your use of the Service does not violate any applicable law or regulation. SMISS may, in its sole discretion, refuse to offer the Service to any person or entity and change its eligibility criteria at any time. This provision is void where prohibited by law and the right to access the Service is revoked in such jurisdictions.

## Disclaimers

**THE SERVICE DOES NOT PROVIDE MEDICAL ADVICE. SMISS CONTENT IS GENERAL IN NATURE AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. SMISS CONTENT IS IN NO WAY INTENDED TO SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS OR TREATMENT. ALWAYS CONSULT A TRAINED MEDICAL PROFESSIONAL WITH ANY QUESTIONS YOU MAY HAVE REGARDING A MEDICAL CONDITION. NEVER DISREGARD MEDICAL ADVICE AS A RESULT OF SOMETHING THAT YOU MAY HAVE READ ON THE SITES. IF YOU THINK YOU HAVE A MEDICAL EMERGENCY, CALL YOUR DOCTOR OR 911 IMMEDIATELY.**

**THE SERVICE DOES NOT ENDORSE OR RECOMMEND ANY PHYSICIAN, SURGEON OR OTHER MEDICAL PROVIDER NAMED BY THE SERVICE. IF YOU CHOOSE TO SEEK MEDICAL ADVICE FROM ANY PHYSICIAN, SURGEON OR OTHER MEDICAL PROVIDER NAMED BY THE SERVICE, YOU DO SO ENTIRELY AT YOUR OWN RISK.**

The decision to rely on information provided by the Service or on a third party website accessed from a link on any of the Sites is solely at your own risk. While it is our goal to provide accurate and up-to-date information, we do not guarantee that any SMISS Content is accurate, complete or up-to-date, and we do not assume liability for the accuracy, completeness, currency or timeliness of any SMISS Content. Often opinions expressed in SMISS Content are the opinions of the authors of such SMISS Content (each, an "**Author**"). In some cases, the Authors may comment on products, devices, treatments or procedures, including some that are not yet and/or may never be approved by the US Food and Drug Administration (or any other applicable regulatory authority). SMISS DOES not in any way endorse, promote or encourage the use of any products, devices, treatments or procedures or any other opinion or conclusion of any Author.

## **Registration**

As a condition to using certain aspects of the Service, you may be required to register with SMISS and select a password and screen name ("**User ID**"). You shall provide SMISS with accurate, complete, and updated registration information and may be required to verify your email by clicking on a unique URL sent to your email address. SMISS reserves the right to refuse registration of or cancel any User ID in its sole discretion. You are solely responsible for activity that occurs on your account and shall be responsible for maintaining the confidentiality of your SMISS password. You shall never use another user's account without such other user's express permission. You will immediately notify SMISS in writing of any unauthorized use of your account, or other account related security breach of which you are aware.

## **Privacy**

SMISS's current privacy statement is located at [www.smiss.org](http://www.smiss.org) (the "**Privacy Policy**") and is hereby incorporated into these Terms. For inquiries in regard to the Privacy Policy, or to report a privacy related problem, please contact [info@smiss.org](mailto:info@smiss.org).

## **Use of SMISS Content**

You are authorized to download, view and print one copy of the SMISS Content for your personal, non-commercial use only, provided that the SMISS Content is not modified in any way and all copyright and other proprietary notices are not altered. No SMISS Content (or portion thereof) may be sold, resold, copied, reproduced or redistributed without our prior written approval. SMISS Content is protected by copyright under both United States and foreign laws. SMISS and its licensors and content providers own all rights, title and interests in and to the SMISS Content. Any use of SMISS Content not expressly permitted by these Terms is a breach of these Terms and may violate copyright, trademark, and other laws. SMISS Content and features are subject to change or termination without notice.

## **User Rules and Conduct**

The Service is provided to you only for your personal, non-commercial use. Any unauthorized use of the Service (including without limitation, reselling the Service or any SMISS Content) is expressly prohibited. In connection with using the Service, you agree to abide by all applicable local, state, national and international laws, regulations and rules.

By way of example, and not limitation, you agree not to (a) take any action or (b) upload, post, submit or otherwise distribute or facilitate distribution of ("**Post**") any material (including text, communications, software, photographs, videos, sound recordings, data or other information or content) that:

- is unlawful, deceptive, misleading, fraudulent, threatening, abusive, harassing, libelous, invasive of another's privacy, tortious, obscene, profane or which otherwise violates these Terms or any other agreement between you and SMISS;
- infringes any patent, trademark, trade secret, copyright, right of publicity, privacy right or other right of any party;
- reveals any material, non-public information about any business;
- reveals any personal information about another individual, including another person's name, address, phone number, electronic mail address, credit card information or any other information that could be used to track, contact or impersonate that person;
- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (ie, "spamming"), chain letters or any form of lottery or gambling;
- imposes an unreasonable or disproportionately large load on SMISS's computing, storage or communications infrastructure, or attempts to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or otherwise;
- contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware or network system or to damage or obtain unauthorized access to any system, data or other information of SMISS or any third party;
- harvests, scrapes or collects any information from the Site;
- uses any script, bot or other automated means that only simulates compliance with these Terms or other requirement applicable to the Service;
- disguises the source of User Submissions Posted by you; or
- impersonates any person or entity, including any employee or representative of SMISS or other Site Affiliate.

SMISS may, at its sole discretion, immediately suspend or terminate your access to the Service should your conduct fail (or appear to fail) to strictly conform to any provision of this section.

## **User Submissions**

The Service may also provide you with the ability to Post content, videos, audio clips, written forum comments, data, text, photographs, software, scripts, graphics, works of authorship or other content or information to the Services (the "**User Submissions**"). By Posting User Submissions through the Service:

- You hereby do and shall grant SMISS a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable and transferable license to use, modify, reproduce, distribute, prepare derivative works of, display, publish, perform, and otherwise fully exploit ("**Use**") the User Submissions in connection with the Sites, the Service and SMISS's (and its successors and assigns) business, including without limitation for promoting and redistributing part or all of

the Sites (and derivative works thereof) or the Service in any media formats and through any media channels (including, without limitation, third party websites). You also hereby do and shall grant each user of the Sites and/or the Service a non-exclusive license to access your User Submissions through the Sites and the Service, and to Use such User Submissions as permitted through the functionality of the Sites and the Service and under these Terms. For clarity, the foregoing license grant to SMISS does not affect your other ownership or license rights in your User Submission(s), including the right to grant additional licenses to the material in your User Submission(s), unless otherwise agreed in writing;

- You represent and warrant: that you own or otherwise control all rights to Use such User Submissions and that disclosure and Use of such User Submissions by SMISS (including without limitation, publishing content on or at the Sites) will not infringe or violate the rights of any third party, including without limitation any privacy, publicity, contract or other rights of any person or entity;
- You understand that SMISS shall have the right to reformat, excerpt, or translate any materials, content or information submitted by you; and that all information publicly Posted or privately transmitted through the Sites is the sole responsibility of the person from which such content originated; and that SMISS cannot guarantee the identity of or the authenticity of any data Posted by any other users with whom you may interact in the course of using the Service.

SMISS does not endorse and has no control over any User Submission. SMISS has the right, but not the obligation, to monitor the Site, Service, SMISS Content, or User Submissions. SMISS may remove any User Submission at any time for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such User Submission), or for no reason at all.

### **Third Party Sites**

The Site may permit you to link to other websites or resources on the Internet, and other websites or resources may contain links to the Site. Medical information may be presented on these other websites. When you access third party websites, you do so at your own risk. We are not responsible for and do not endorse any third-party content or services. Third party websites are not under our control, and you acknowledge that we are not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply our endorsement or any association with any website, its operators, or any Third Party Providers, products, services, opinions, or websites accessed through the Sites. You further acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource.

### **Copyright and Trademark Notices**

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## **Termination**

SMISS may terminate your access to all or any part of the Service at any time, with or without cause, with or without notice, effective immediately. If you wish to terminate your account, you may do so at any time by sending an email to info@SMISS.org that includes your e-mail address and username (if applicable). Upon any termination, all rights and obligations of the parties shall cease and you shall immediately cease using the Service, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) and all remedies for breach of the Terms shall survive and (b) all provisions of the Terms which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## **Warranty Disclaimer**

THE SITE AND SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE SITE AND SERVICE ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INTEGRATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, SMISS AND ITS AFFILIATES, LICENSORS, SUPPLIERS, AUTHORS AND ADVERTISERS DO NOT WARRANT THAT: (A) ANY INFORMATION WILL BE TIMELY, ACCURATE, RELIABLE OR CORRECT; (B) THE SERVICE WILL BE SECURE, ERROR-FREE, UNINTERRUPTED OR AVAILABLE AT ANY PARTICULAR TIME OR PLACE; (C) ANY DEFECTS OR ERRORS WILL BE CORRECTED; (D) THE SERVICE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (E) ANY RESULT OR OUTCOME CAN BE ACHIEVED. YOUR USE OF THE SERVICE IS SOLELY AT YOUR OWN RISK.

## **Indemnification**

You shall defend, indemnify, and hold harmless SMISS, its affiliates and each of its, and its affiliates employees, contractors, directors, suppliers and representatives from all liabilities, claims, and expenses, including reasonable attorneys' fees, that arise from or relate to (a) your use of the Sites, Service and/or SMISS Content, (b) your User Submissions, (c) your violation of the Terms, or (d) infringement by you, or any third party using the your account, of any intellectual property or other right of any person or entity. SMISS reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with SMISS in asserting any available defenses.

## **Limitation of Liability**

SMISS shall not be responsible or liable for any unauthorized access to, alteration or use of your account, transmissions or data, or any material or data sent or received or not sent or received through the Service. You agree that SMISS is not responsible or liable for any threatening, defamatory, obscene, offensive, illegal or other content or conduct of any third party or any infringement of another's rights, including intellectual property rights.

IN NO EVENT SHALL SMISS (OR ITS AFFILIATES, LICENSORS, SUPPLIERS, ADVERTISERS, AUTHORS OR THIRD PARTY PROVIDERS (COLLECTIVELY WITH

SMISS, THE "**SMISS PARTIES**") BE LIABLE CONCERNING ANY SUBJECT MATTER RELATED TO THE SITE OR SERVICE, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR, INCLUDING BUT NOT LIMITED TO ANY (A) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL, EVEN IF SMISS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (C) DIRECT DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIFTY DOLLARS (\$50.00). THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

SOME STATES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

## **Governing Law and Jurisdiction**

These Terms are governed by the laws of the State of Illinois, without regard to its conflicts of laws principles. You expressly agree that the exclusive jurisdiction for any dispute between you and any of the SMISS Parties or any of their affiliates, subsidiaries, employees, officers or directors shall be in the 18th Judicial Circuit Court, DuPage County, State of Illinois, and you expressly consent to the jurisdiction and venue of such courts in connection with any such dispute. Any claim or cause of action brought by you arising out of or relating to the Service or any other subject matter of this Agreement must be brought by you within one year after such claim or cause of action arises. If any provision of these Terms is found to be invalid by any court having competent jurisdiction, such provision shall be limited or eliminated to the minimum extent necessary such that the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect.

## **International Use**

SMISS makes no representation that the Service is appropriate or legally available for use in locations outside the United States and accessing and using the Service is prohibited from territories where doing so would be illegal. If you are accessing the Service from other locations, you do so at their own initiative and are responsible for compliance with local laws.

## **Modifications**

SMISS reserves the right, at its sole discretion, to modify or replace any of the Terms, or change, suspend, limit or discontinue the Service at any time by posting a notice on the Sites or by sending you an email. It is your responsibility to check the Terms periodically for changes. Your continued use of the Service following posting of any changes to the Terms constitutes acceptance of those changes.

## **Miscellaneous**

The Terms are the entire agreement between you and SMISS with respect to the Service, and supersede all prior or contemporaneous communications and proposals

(whether oral, written or electronic) between you and SMISS with respect thereto. If any provision of the Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Terms will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. The Terms are personal to you, and are not assignable, transferable or sublicensable by you except with SMISS's prior written consent. SMISS may assign, transfer or delegate any of its rights and obligations hereunder without consent. No agency, partnership, joint venture, or employment relationship is created as a result of the Terms and neither party has any authority of any kind to bind the other in any respect. All notices under the Terms will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.

## **Digital Millennium Copyright Act Notice**

SMISS has adopted the following general policy toward copyright infringement in accordance with the Digital Millennium Copyright Act (<http://lcweb.loc.gov/copyright/legislation/dmca.pdf>). The address of SMISS's Designated Agent to Receive Notification of Claimed Infringement ("**Designated Agent**") is listed at the end of this policy.

It is SMISS's policy to (a) block access to or remove content that it believes in good faith to be copyrighted material that has been illegally copied and distributed by any of our advertisers, affiliates, Authors, Third Party Providers, content providers, members or users; and (b) remove and discontinue service to repeat offenders.

### *Procedure for Reporting Copyright Infringements:*

If you believe that content residing on or accessible through the Service infringes a copyright, please send a notice of copyright infringement containing the following information to the Designated Agent listed below:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that has been allegedly infringed;
2. Identification of works or materials being infringed;
3. Identification of the content that is claimed to be infringing including information regarding the location of the content that the copyright owner seeks to have removed, with sufficient detail so that SMISS is capable of finding and verifying its existence;
4. Contact information about the notifier including address, telephone number and, if available, e-mail address;
5. A statement that the notifier has a good faith belief that the content is not authorized by the copyright owner, its agent, or the law; and
6. A statement made under penalty of perjury that the information provided is accurate and the notifying party is authorized to make the complaint on behalf of the copyright owner.

*Once Proper Bona Fide Infringement Notification is Received by the Designated Agent:*

It is SMISS's policy:

1. to remove or disable access to the infringing content;
2. to notify the content provider, member or user that it has removed or disabled access to the content; and
3. that repeat offenders will have the infringing content removed from the system and that SMISS will terminate such content provider's, member's or user's access to the service.

*Procedure to Supply a Counter-Notice to the Designated Agent:*

If the content provider, member or user believes that the content that was removed or to which access was disabled is either not infringing, or the content provider, member or user believes that it has the right to post and use such content from the copyright owner, the copyright owner's agent, or pursuant to the law, the content provider, member or user must send a counter-notice containing the following information to the Designated Agent listed below:

1. A physical or electronic signature of the content provider, member or user;
2. Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
3. A statement that the content provider, member or user has a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
4. The content provider's, member's or user's name, address, telephone number, and, if available, e-mail address and a statement that such person or entity consents to the jurisdiction of the Federal court for the judicial district in which the content provider's, member's or user's address is located, or if the content provider's, member's or user's address is located outside the United States, for any judicial district in which SMISS is located, and that such person or entity will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Designated Agent, SMISS's may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at SMISS's discretion.

*Please contact SMISS's Designated Agent at the following address:*

**Designated Agent to Receive Notification of Claimed Infringement:**

Nancy Henkel, CMP

SMISS

301 S. County Farm Road, Suite L

Wheaton, IL 60187

Phone: 331-218-0780

Email: [info@smiss.org](mailto:info@smiss.org)



## Contact

If you have any questions about these Terms, the Service or any other issue related to SMISS, you may contact SMISS at the following address:

SMISS

301 S. County Farm Road, Suite L

Wheaton, IL 60187

Phone: 331-218-0780

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