

SCRUBIT Terms of Use

The following Terms of Use are intended to explain our obligations as a service provider and Your obligations as a customer. Please read them carefully.

These Terms are binding on any use of ScrubIT and apply to You from the time that ScrubIT provides You with access to the Application.

ScrubIT will evolve over time based on user feedback. These Terms are not intended to answer every question or address every issue raised by the use of ScrubIT. ScrubIT reserves the right to change these terms at any time, effective upon the posting of modified terms and ScrubIT will make every effort to communicate these changes to You via email or notification via the Website. It is likely the terms of use will change over time. It is Your obligation to ensure that You have read, understood and agree to the most recent terms available on the Website.

By registering to use ScrubIT you acknowledge that You have read and understood these Terms and have the authority to act on behalf of any person for whom You are using the Application. You are deemed to have agreed to these Terms on behalf of any entity for whom you use the Application.

These Terms were last updated on 20 July 2015.

1. DEFINITIONS

"Agreement"

means these Terms of Use.

"Fees"

means the fees (excluding any taxes and duties) payable by You in accordance with the fee schedule set out on the Website (which ScrubIT may change from time to time on notice to You).

"Confidential Information"

includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Application but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

"Data"

means any data inputted by You or with Your authority into the Website.

"Intellectual Property Right"

means any patent, trademark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

"Application"

means the online Operating Theatre Setup Software made available (as may be changed or updated from time to time by ScrubIT) via the Website.

"Website"

means the Internet site at the domain www.scrubit.com.au or any other site operated by ScrubIT.

"ScrubIT"

means ScrubIT Pty Ltd.

"User"

means any person or entity that uses the Application.

"Administrator"

means the person or persons who register to use the Application, and, where the context permits, includes any entity on whose behalf that person registers to use the Application.

"You"

means the User. "Your" has a corresponding meaning.

2. USE OF SOFTWARE

ScrubIT grants You the right to access and use the Application via the Website with the particular user roles available to You according to Your user type. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. You acknowledge and agree that, subject to any applicable written agreement between the Administrator(s) and the Users, or any other applicable laws:

1. the Administrator(s) determines who is a User and what level of user role access to the relevant organisation that User has;

2. the Administrator(s) is responsible for all Users' use of the Application;
3. the Administrator(s) controls each User's level of access to the relevant organisation and Administrator(s) at all times can revoke or change a User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be a User or shall have that different level of access, as the case may be;
4. if there is any dispute between a Administrator and a User regarding access to any organisation or Application, the Administrator shall decide what access or level of access to the relevant Data or Application that User shall have, if any.

3. YOUR OBLIGATIONS

1. Payment obligations:

An invoice for Fees will be issued on completion of payment and available to Administrators within the Application.

You are responsible for payment of all taxes and duties in addition to the Fees.

2. Preferential pricing or discounts:

You may from time to time be offered preferential pricing or discounts for Fees as a result of the number of transactions that You have added to the Application or that have been added with Your authority or as a result of Your use of the Application ('Organisations'). Eligibility for such preferential pricing or discounts is conditional upon Your acceptance of responsibility for payment of any Fees in relation to all of Your Organisations. Without prejudice to any other rights that ScrubIT may have under these Terms or at law, ScrubIT reserves the right to render invoices for the full (non-discounted) Fees due or suspend or terminate Your use of the Application in respect of any or all of Your Organisations in the event that any invoices for those Fees are not paid in full by the due date for payment.

3. General obligations:

You must only use the Application and Website for Your own lawful internal business purposes, in accordance with these Terms and any notice sent by ScrubIT or condition posted on the Website. You may use the Application and Website on behalf of others or in order to provide services to others but if You do so you must ensure that You are authorised to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You.

4. Access conditions:

- a. You must ensure that all usernames and passwords required to access the Application are kept secure and confidential. You must immediately notify ScrubIT of any unauthorised use of Your passwords or any other breach of security and ScrubIT will reset Your password and You must take all other actions that ScrubIT reasonably deems necessary to maintain or enhance the security of ScrubIT's computing systems and networks and Your access to the Applications.
- b. As a condition of these Terms, when accessing and using the Applications, You must:

- i. not attempt to undermine the security or integrity of ScrubIT's computing systems or networks or, where the Applications are hosted by a third party, that third party's computing systems and networks;
- ii. not use, or misuse, the Application in any way which may impair the functionality of the Application or Website, or other systems used to deliver the Application or impair the ability of any other user to use the Application or Website;
- iii. not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Applications are hosted;
- iv. not transmit, or input into the Website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
- v. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer the application/s and including any computer programs used to deliver the Application or to operate the Website except as is strictly necessary to use either of them for normal operation.

5. Usage Limitations:

Use of the Application may be subject to limitations, including but not limited to monthly transaction volumes and the number of calls You are permitted to make against ScrubIT's application programming interface. Any such limitations will be advised.

6. Communication Conditions:

As a condition of these Terms, if You use any communication tools available through the Website (such as any forum, chat room or message centre), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Application, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Application or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

When You make any communication on the Website, You represent that You are permitted to make such communication. ScrubIT is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Application. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, ScrubIT does reserve the right to remove any communication at any time in its sole discretion.

7. Indemnity.

You indemnify ScrubIT against: all claims, costs, damage and loss arising from Your breach of any of these Terms or any obligation You may have to ScrubIT, including (but not limited to) any costs relating to the recovery of any Fees that are due but have not been paid by You.

4. CONFIDENTIALITY AND PRIVACY

1. Confidentiality:

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- a. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
- b. Each party's obligations under this clause will survive termination of these Terms.
- c. The provisions of clauses 4.1.a and 4.1.b shall not apply to any information which:
 - i. is or becomes public knowledge other than by a breach of this clause;
 - ii. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - iii. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
 - iv. is independently developed without access to the Confidential Information.

2. Privacy:

ScrubIT maintains a privacy policy that sets out the parties' obligations in respect of personal information. You should read that policy and You will be taken to have accepted that policy when You accept these Terms.

5. INTELLECTUAL PROPERTY

1. General:

Title to, and all Intellectual Property Rights in the Application, the Website and any documentation relating to the Application remain the property of ScrubIT.

2. Ownership of Data:

Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on full payment of the ScrubIT Fees. You grant ScrubIT a licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Application and for any other purpose related to provision of services to You.

3. Backup of Data:

You must maintain copies of all Data inputted into the Application. ScrubIT adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. ScrubIT expressly excludes liability for any loss of Data no matter how caused.

6. WARRANTIES AND ACKNOWLEDGEMENTS

1. Authority:

You warrant that where You have registered to use the Application on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Application You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

4. Acknowledgement: You acknowledge that:

- a. You are authorised to use the Application and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person you have authorised to use the Application. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the Application (whether that information and Data is Your own or that of anyone else).
- b. ScrubIT has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Application or access the Website on behalf of or for the benefit of anyone other than yourself (whether a body corporate or otherwise) you agree that:
 - i. You are responsible for ensuring that You have the right to do so;
 - ii. You are responsible for authorising any person who is given access to information or Data, and you agree that ScrubIT has no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and

- iii. You will indemnify ScrubIT against any claims or loss relating to:
 - 1. ScrubIT's refusal to provide any person access to Your information or Data in accordance with these Terms,
 - 2. ScrubIT's making available information or Data to any person with Your authorisation.
- c. The provision of, access to, and use of, the Application is on an "as is " basis and at Your own risk.
- d. ScrubIT does not warrant that the use of the Application will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Application, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Application. ScrubIT is not in any way responsible for any such interference or prevention of Your access or use of the Application.
- e. It is Your sole responsibility to determine that the Application meets the needs of Your business and are suitable for the purposes for which they are used.
- f. It is Your responsibility to check that storage of and access to your Data via the Application and the Website will comply with laws applicable to you (including any laws requiring you to retain records).

5. *No warranties:*

ScrubIT gives no warranty about the Application. Without limiting the foregoing, ScrubIT does not warrant that the Application will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

6. *Consumer guarantees:*

You warrant and represent that You are acquiring the right to access and use the Application for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Application, the Website or these Terms.

7. LIMITATION OF LIABILITY

- 1. To the maximum extent permitted by law, ScrubIT excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Application or Website.
- 2. If You suffer loss or damage as a result of ScrubIT's negligence or failure to comply with these Terms, any claim by You against ScrubIT arising from

ScrubIT's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Fees paid by You in the previous 12 months.

3. If You are not satisfied with the Application, Your sole and exclusive remedy is to terminate these Terms in accordance with Clause 8.

8. TERMINATION

1. Prepaid Fees

ScrubIT will not provide any refund for any unused prepaid Fees.

2. No-fault termination:

These Terms will continue for the period covered by the Fees paid or payable under clause 3.1. Once all prepaid Fees are consumed these Terms will automatically continue for the period that Administrators and/or Users continue to access the Application.

3. Breach:

If You:

- a. breach any of these Terms (including, without limitation, by non-payment of any Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- b. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of Fees that are more than 30 days overdue); or
- c. You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,

ScrubIT may take any or all of the following actions, at its sole discretion:

- d. Terminate this Agreement and Your use of the Application and the Website;
- e. Suspend for any definite or indefinite period of time, Your use of the Application and the Website;
- f. Suspend or terminate access to all or any Data.

- g. Take either of the actions in sub-clauses (d), (e) and (f) of this clause 8(4) in respect of any or all other persons whom You have authorised to have access to Your information or Data.

For the avoidance of doubt, if payment of any invoice for Fees due in relation to any of Your Billing Contacts, Billing Plans or any of Your Organisations (as defined at clause 3) is not made in full by the relevant due date, ScrubIT may: suspend or terminate Your use of the Application, the authority for all or any of Your Organisations to use the Application, or Your rights of access to all or any Data.

4. Accrued Rights:

Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

- a. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- b. immediately cease to use the Application and the Website.

5. Expiry or termination:

Clauses 3.1, 3.6, 4, 5, 6, 7, 8 and 10 survive the expiry or termination of these Terms.

9. HELP DESK

1. Technical Problems:

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting ScrubIT. If You still need technical help, please check the support provided within the Application and online by ScrubIT on the Website or failing that email us at support@scrubit.com.au.

2. Application availability:

Whilst ScrubIT intends that the Application should be available 24 hours a day, seven days a week, it is possible that on occasions the Application or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason ScrubIT has to interrupt the Application for longer periods than ScrubIT would normally expect, ScrubIT will use reasonable endeavours to publish in advance details of such activity on the Website.

10. GENERAL

1. *Entire agreement:*

These Terms, together with the ScrubIT Privacy Policy and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and ScrubIT relating to the Application and the other matters dealt with in these Terms.

2. *Waiver:*

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

3. *Delays:*

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

4. *No Assignment:*

You may not assign or transfer any rights to any other person without ScrubIT's prior written consent.

5. *Governing law and jurisdiction:*

The laws of New South Wales govern the use of the Application and the Website. Each of us submits to the jurisdiction of the courts of the State of New South Wales.

6. *Severability:*

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

7. *Notices:*

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to ScrubIT must be sent to support@scrubit.com.au or to any other email address notified by email to You by ScrubIT. Notices to You will be sent to the email address which You provided when setting up Your access to the Application.

8. Rights of Third Parties:

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.