

Standard Terms and Conditions for provision of the Bill and Anaesthesia Safety Services by Schmik Solutions Pty Limited ACN 111 532 444 (“we/us/our”)

Background

Our standard terms set out the terms and conditions that govern how we provide to you our Bill and Anaesthesia Safety services, which is described in detail at <http://www.schmik.com.au/default.asp?id=286> and <http://www.schmik.com.au/default.asp?id=372> (“the Service”).

1. Provision of the Service

- 1.1 You have engaged us to provide to you the Service unless our relationship is terminated in accordance with clause 10.2. The Service will commence from the date we accept your application and process your payment for the Service. From this date all rights and obligations created in these terms and conditions will become operative.
- 1.2 We agree to provide to you the Service. This does not include any customisation of the Service for you, any development of interfaces between the Service with other applications, any consulting services associated with the Service or any on-site training, all of which we can provide to you on terms to be agreed.

2. Access to the Service

- 2.1 As part of the Service we will provide you with:
 - (a) a log-in identity and password to access the Service; and
 - (b) assistance and support to use the Service as detailed on the Schmik Bill and Anaesthesia Safety web-sites at <http://www.schmik.com.au/default.asp?id=286> and <http://www.schmik.com.au/default.asp?id=372>
- 2.2 You agree to provide the Windows mobile browser-enabled handheld device, laptop/PC/MAC as specified in the technical requirements section of the Schmik Bill and Anaesthesia Safety web-sites <http://www.schmik.com.au/default.asp?id=333> and all other equipment required to access the Service.
- 2.3 You agree that you are responsible for maintaining the secrecy and confidentiality of all identification and log-in information required by you to access the Service and you further agree not to disclose this or any other confidential information relating to the Service or Schmik to any other person, corporation, entity or organisation, whether in use or not.

3. Use of the Service

- 3.1 You agree to comply with all directions relating to the access and use of the Service as notified by us to you from time to time. This includes you reviewing and updating your Accounts Page on the Schmik Bill and

Anaesthesia Safety web-sites from time to time to keep it current.

- 3.2 We will not and can not in any way supervise, edit or control the content and form of any information or data that is entered on to the Service or accessed through the Service, so you understand and agree that we cannot be held responsible in any way for any content or information accessed via the Service.
- 3.3 You agree not to act on or through the Service so as to interfere with or disrupt other users of the Service, including, their computers, software or hardware. Such actions include the circulation of any unsolicited publicity or advertising material, propagation of computer worms and viruses, using the Service to make unauthorised access of any other computer accessible via the Service, hacking, sending harassing, obscene, indecent, offensive or threatening electronic mail, engaging in harassment or stalking by whatever means, forgery (or attempted forgery) of electronic mail messages or other content and the placement, transmission or storage of any defamatory, illegal or offensive material on the Internet. You will not access, nor permit any other party to access, the Service for any purpose or activity of an illegal, fraudulent or defamatory nature.

4. Withdrawal of Access

We reserve the right, immediately and without notice to you, to withdraw your access to the Service if this Agreement is terminated for any reason, or, in our opinion: you misuse the Service; you fail to comply with your obligations as to the use and access of the Service or you fail to comply with any provision of this Agreement including the payment of any fees.

5. Intellectual Property Rights

You agree not to breach any copyright, trademark, design, patent or other rights in relation to:

- (a) textual, graphical, audio and other material displayed on the Service or the Schmik Bill and Anaesthesia Safety web-sites;
- (b) the Schmik user interface of the Bill and Anaesthesia Safety Applications including screens, organisation, patents and operation or control features; and
- (c) all software associated with the Bill and Anaesthesia Safety Applications, (“**Intellectual Property Rights**”)

and, in addition to any other remedy available under the law, you indemnify and agree to keep indemnified us, our servants and agents against all loss, damage, costs and expenses arising as a result of your breach of our Intellectual Property Rights, or a third party's

breach of our Intellectual Property Rights where the third party's breach was through the use of the Service which is provided for you.

6. Payment of Fees

- 6.1 You are required to make all payments to us for our provision of the Service to you by means of cheque or direct deposit. Payments are to be made in advance of you receiving the Service at such other intervals that you may agree with us from time to time.
- 6.2 If paying by cheque you must send to us before the due date for payment a bankable cheque for the correct amount payable to Schmik Solutions Pty Ltd.
- 6.3 If paying by direct deposit you must pay the correct amount in to our nominated bank account on or before the due date for payment.
- 6.4 We will notify you by email about renewal of your subscription for the Service at least one month before your current subscription expires. The renewal notice will specify the renewal date, the amount payable and options for payment. If you do not pay the renewal fee by the due date you will be denied access to the Service until payment is made and processed.
- 6.5 We may, by notice in writing to you, specify a different frequency and/or method for you to make payments to us for our provision of the Service to you. You must comply with the new frequency and/or method of payment within 14 days after receipt of a written notice from us. If we make any changes to our fees or our fee structure then you will be notified and any change will not apply to your period of current fee commitment unless you agree otherwise in writing.
- 6.6 If you are in default of making a payment under clause 6, we may charge interest at the rate for the time being fixed under section 2 of the Penalty Interest Rate Act 1983 until the overdue amount is paid.

7. GST

You are required to remit additional amounts to us representing the Goods and Services Tax ("GST") payable for our supply of the Service to you imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

8. Confidentiality

- 8.1 In relation to any confidential information you disclose to us, we will:
 - (a) take all reasonable steps to ensure that the information is protected from misuse, unauthorised access, modification or disclosure; and
 - (b) ensure that access to the information is limited to those of our employees and contractors who are required to access that information for the purposes of us providing the Service to you.
- 8.2 At your request, we will notify you of the methods we use to protect your confidential information from

misuse, unauthorised access, modification or disclosure.

9. Privacy

- 9.1 To enable us to provide the Service to you, we will from time to time collect your personal information or that of your employees and contractors.
- 9.2 Personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 9.3 When collecting personal information, we must comply with the Privacy Act 1988 (Cth) ("the Privacy Act") and the 10 National Privacy principles under the Privacy Act, and our privacy policy which can be found on the Schmik Bill and Anaesthesia Safety web-sites at <http://www.schmik.com.au/default.asp?id=24>.
- 9.4 To provide the Service to you, we may disclose, on a confidential basis, personal information of you or your employees and contractors to third parties engaged by us to perform administrative or other services with the consent of the individual to whom the personal information pertains or where required by law.
- 9.5 Any personal information we collect and hold may be accessed and corrected by the individual to whom the personal information pertains.
- 9.6 We have taken measures to ensure that information that for Medical Specialist Applications is stored there securely. Only authorised personnel have access to that information.

10. Termination

- 10.1 Without limiting the generality of any other clause in this Agreement, we may terminate this Agreement immediately by notice to you either through the login process, by email or by post.
- 10.2 Our requirement to provide our Service to you will terminate:
 - (a) at the end of your subscription period if you do not renew your subscription in accordance with our renewal notice;
 - (b) if either of us fail to rectify any material breach of our standard terms within 30 days of receiving a written notice from the other requiring rectification of the breach; or
 - (c) upon either of us entering into receivership, liquidation, bankruptcy or any other form of insolvency administration.
- 10.3 On termination of this Agreement:
 - (a) we may retain any moneys paid by you if termination results from any of the circumstances described in clause 10.2;
 - (b) you will receive a refund of your fee paid for the unexpired portion of your

subscription period, if we terminate the provision of the Service to you without cause or if termination occurs due to our failure to rectify a material breach of our obligations to you under this Agreement;

- (c) we will delete all patient records within 6 months of the date of termination;
- (d) we are discharged from any further obligations to you under this Agreement; and
- (e) we may pursue any additional or alternative remedies provided by law.

10.4 If you wish to cancel the Service you may do so at any time by sending an email to info@schmik.com.au. Your cancellation will be processed as soon as practicable after your email requesting cancellation is received. You may continue to use the Service for the remainder of the period for which you have paid. Regardless of the date on which you cancel the Service, you will not be credited for the balance of the period for which you have already paid in advance. Our records or lack of will be conclusive evidence of the cancellation or not, of the Service.

11. Disclaimer

11.1 General Disclaimer

- (a) We are not liable for any loss or damage in connection with our provision of the Service to you, or for any information or data that is entered in to or accessed from the Service by you or anyone else.
- (b) We are not liable for any loss or damage in connection with use of the Service by the billing services or hospitals and practice-based billing personnel.
- (c) You acknowledge that the initial features of the Service, such as search for cases, minimum data required for completion, customisable hospital and Surgeon drop-down lists, up-to-date CMBS codes etc, may be enhanced or altered at any time in response to feedback from users of the Service or for other reasons. We are not liable to you for any alteration to, or removal of, a function on the Service.
- (c) These general disclaimers are not restricted or modified by any of the specific warnings or disclaimers set out in sub-clause 11.2.

11.2 Specific Warnings and Disclaimers

- (a) The Trade Practices Act 1974 (Cth) and similar State and Territory legislation in Australia may confer rights and remedies on you in relation to our provision of the Service to you which cannot be excluded, restricted or modified ("non-excludable rights"). We do not exclude any non-excludable rights but do exclude all other conditions and warranties imposed by custom, law or statute.

- (b) Except as provided for by the non-excludable rights:
 - (i) the Service are provided to you without warranties of any kind, either express or implied; and
 - (ii) we do not warrant that the Service will be complete or free from all errors.
- (c) Subject to sub-clause 11.2(a), under no circumstances (including but not limited to any act or omission on our part or on the part of our employees or contractors) will we be liable (including liability for negligence) for any direct, indirect, special or consequential damages, including without limitation loss of profits, data or use, incurred by you or any third party, whether in an action in contract or tort, which result from our provision of the Service to you.
- (d) To the fullest extent permitted by law, our liability for breach of an implied warranty or condition, which cannot be excluded is limited at our option to the following:
 - (i) in the case of our provision of Service to you, our provision of the Service to you again or the cost of having like Service provided to you again;
 - (ii) in the case of goods supplied or offered by us as part of our provision of the Service to you, the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired.

12. Indemnity

You release and indemnify us, our servants and agents against all actions, claims and demands (including the cost of defending or settling any action, claim or demand), which may be instituted against us:

- (a) arising out of a breach of this Agreement by you or through your negligence or that of, your agents, employees or sub-contractors or of any other person for whose acts or omissions you are vicariously liable;
- (b) by your servants, employees or agents or their personal representatives or dependants arising out of the performance of this Agreement;
- (c) arising out of the use of the Service provided to you being used by anyone other than you.

13. Force Majeure

We shall not be liable for any delay or failure to perform our obligations pursuant to this Agreement if such delay is due to Force Majeure. If a delay or failure by us to perform our obligations is caused or anticipated due to Force Majeure, the performance of our obligations will be suspended. If a delay or failure by us to perform our obligations due to Force Majeure exceeds 60 days, we may

immediately terminate the Agreement by written notice to you or as provided in clause 15 if this means of notifying you is available. If this Agreement is so terminated we will refund moneys previously paid by you pursuant to this Agreement services not provided to you. "Force Majeure" means a delay caused by an event such as an "act of God" or any other event reasonably beyond our control.

14. Notices

- 14.1 Unless notified elsewhere, a notice required or permitted to be given by either you or us to the other pursuant to this Agreement must be in writing and shall be treated as being duly given and received if it is delivered personally to the other, left at that other's address, sent by pre-paid mail to the other's address or transmitted by facsimile to the other.
- 14.2 Notification about renewing your subscription for the Service and other notices about changes to the Service or the Schmik Bill and Anaesthesia Safety web-site, including changes to fees or the fee structure, will be sent to you via the email address that is nominated on your Accounts Page.

15. General Provisions

- 15.1 You consent to us sub-contracting for the performance of this Agreement or any part of this Agreement. You also consent to us engaging individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of the Services.
- 15.2 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing. We may assign our rights and obligations to a related body corporate.

15.3 Neither party shall, at law or in equity, assign, transfer or otherwise deal with any of its rights or obligations under the standard terms without the prior written consent of the other, which consent shall not be unreasonably withheld.

15.4 No term of this Agreement shall be deemed to be waived except by notice in writing. A waiver made in writing will not prejudice the rights of the party making the waiver in respect of any subsequent breach of the Agreement by the other party. Any failure by to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by one party to the other, will not be construed as a waiver of that party's rights under this Agreement.

15.5 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement will remain otherwise in full force apart from such provisions, which will be deemed deleted.

15.6 Any express statement of the right of us under this Agreement is without prejudice to any other right of ours expressly stated in this Agreement or existing at law.

15.7 Subject to any provision to the contrary, this Agreement is to enure to the benefit of and be binding on the parties and their successors, trustees, permitted assigns or receivers but is not to enure to the benefit of any other persons.

15.8 The covenants, conditions and provisions of this Agreement, which are capable of having effect when this Agreement ends will remain in full force and effect following the expiration of the Agreement.

15.9 This Agreement will be governed by and construed according to the law of the State of Victoria.