

HCAI PAPER PROVIDER TERMS AND CONDITIONS

Health Claims for Auto Insurance Processing (“HCAI”) operates a centralized accident benefits health claims transactions processing system (known as the “Health Claims for Auto Insurance” system or the “HCAI System”) that permits medical and rehabilitation treatment and assessment plans and invoices, in the form approved by the Ontario insurance regulator, the Financial Services Commission of Ontario (“FSCO”) under the Insurance Act (Ontario), (“Claim Requests”) to be submitted centrally to automobile insurers (“Insurers”) by health care providers or their intermediaries (“Providers”). Where a Provider does not elect to submit Claim Requests in an electronic format, the HCAI System will convert the Claim Requests submitted by the Provider in paper form to electronic form before transmitting it to the Insurer. The entity on whose behalf these HCAI Paper Provider Terms and Conditions (the “Terms and Conditions”) are being entered into (the “User”) hereby agrees that participation in the HCAI System shall be on the basis of these Terms and Conditions. If, at a future date, the User optionally elects to switch to electronic submission and wishes to access the HCAI System by electronic means then User agrees that such use will be subject to the HCAI Electronic Access Terms and Conditions, the then current version of which will be set out at <<http://www.hcaiinfo.ca>>.

ARTICLE 1 DEFINITIONS AND RIDERS

1.1 Definitions.

- (a) “Data Entry Centre” means a data entry centre utilized by HCAI to convert paper-based Claim Requests into an electronic form suitable for submission to the HCAI System.
- (b) “Dependent Provider” means a Provider who delivers services through and on behalf of the User to claimants, for whose services payment is made to such User, and who is not interfacing directly with HCAI in electronic format.
- (c) “Insurer User” means an Insurer that participates in the HCAI System.
- (d) “Operating Procedures” means the operating procedures for the HCAI System as may from time to time be posted by HCAI at < <http://www.hcaiinfo.ca/> > or such other locations as specified by HCAI, or as otherwise provided to User. The nature of the types of information to be covered in the Operating Procedures includes items such as general information about HCAI, details on how to contact the helpdesk, HCAI operating hours, information on how to change enrolment information, paper submission processes and procedures, work flow and HCAI business rules.
- (e) “Personal Information” means any information about an identifiable individual as further defined in the Privacy Laws.
- (f) “Privacy Laws” means the *Personal Information Protection and Electronic Documents Act* (Canada), the *Personal Health Information Protection Act, 2004* (Ontario) and any other laws enforceable in Ontario, now existing or which may be enacted in the future, that govern the collection, use, processing and/or disclosure of personal information, and any amending or successor legislation and regulations made pursuant thereto, all as may be amended from time to time.
- (g) “SABS” means the Statutory Accident Benefits Schedule (O. Reg. 403/96 as amended from time to time).
- (h) “Services” means the services provided by HCAI directly or through its subcontractors in connection with the transmission of Claim Requests from Users to Insurer Users using the HCAI System and other ancillary activities contemplated by these Terms and Conditions.
- (i) “User” means a facility and any individual Provider that has agreed to these Terms and Conditions.

ARTICLE 2 TERMS AND CONDITIONS

2.1 Enrolment Application. The User represents and warrants that all information contained in the HCAI Enrolment Form is true, correct and complete as of the date of the HCAI Enrolment Form. The individual executing the HCAI Enrolment Form hereby represents and warrants that he or she is duly authorized to bind the User. User agrees that it will not submit any Claim Requests on behalf of any Provider except a Dependent Provider where such Dependent Provider has first signed a Dependent Provider HCAI Terms and Conditions form (Appendix A of this document). User agrees to retain copies of any such signed forms and to retain such copies and to make them available, upon request, to HCAI, for a period of three (3) years following the last date upon which a Claim Request is submitted on behalf of the Dependent Provider named in such form. User agrees to maintain a current list of Dependent Providers. User also agrees that from time to time HCAI may audit the User's records that are relevant to confirming the User's performance of its obligations relating to the foregoing. For further certainty, a Dependent Provider may deliver services to more than one User and will be required to execute the Dependent Provider HCAI Terms and Conditions in respect of each User to which he or she delivers services.

2.2 Additional User Obligations. User shall ensure that Claim Requests submitted by or on behalf of such User shall conform to the submission requirements set out in the Operating Procedures. User is solely responsible for the contents of any Claim Requests submitted by or on behalf of User and for obtaining any required rights, permissions, consents, releases or approvals.

2.3 Termination. HCAI may suspend or discontinue operation of the HCAI Service in the event it ceases to be designated as the sole central processing agency under applicable law or in the event there is a change in applicable law such that Providers are no longer required to submit Claim Requests solely through the HCAI Service. User may terminate its participation in the HCAI Service upon providing written notice to HCAI. In the event of any permanent discontinuance, these Terms and Conditions shall terminate.

2.4 Limitation of Liability.

(a) While HCAI will strive to convert the Claim Requests from paper form into electronic form, and to promptly make them available in electronic form to the Insurers to whom they are addressed in accordance with the purposes described in the preamble, HCAI makes no warranties or representations with respect to the conversion and transmission of Claim Requests or the Services, including any warranties or representations that the Services will be free of delays, errors or omissions. WITH RESPECT TO THE HCAI SYSTEM, THE SERVICES, OR ANY CLAIM REQUESTS, HCAI EXPRESSLY DISCLAIMS ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS, IMPLIED OR EXPRESS, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. Access to and use of the HCAI System and/or any Claim Requests provided by the HCAI System, shall as between User and HCAI, be on an "as is" and "as available basis". HCAI does not guarantee that access to or operation of the HCAI System shall be uninterrupted, timely, error-free or secure.

(b) HCAI'S total liability of any kind to the User and any other person in respect of any and all claims shall be limited in the aggregate to the lesser of: (I) \$500 per User OR (II) \$5,000 per incident. Despite the foregoing, in no event will HCAI be liable for any indirect, special, incidental, consequential, aggravated, exemplary or punitive damages or losses. This exclusion and limitation is intended to operate notwithstanding the nature of the claim or legal theory (including but not limited to negligence, product liability, tort, misrepresentation or breach of contract, whether or not a fundamental breach or breach of a fundamental term).

(c) User's exclusive remedy and HCAI's sole liability in respect of any breach by HCAI of its obligations in respect of the HCAI System, the Services or otherwise arising from or related to these Terms and Conditions shall be for HCAI to re-perform any component of its obligations which did not materially conform to the requirements of these Terms and Conditions provided User provides HCAI with written notice of its non-conformance, deficient performance or failure to perform within thirty (30) days of the date of such occurrence.

(d) Nothing in subsections (a) to (c) above affects any liability or obligation of any Insurer to the User or to the User's patients or clients as might otherwise arise in law, including without limitation under the SABS or the Insurance Act (Ontario).

(e) User agrees that any claim relating to the HCAI System, its operation, availability, suspension, termination or otherwise (whether as a result of any action or inaction of HCAI or any change or suspension of the SABS as they relate to the HCAI System) shall be made solely against HCAI and in no event shall User have a claim against any other entity or person.

2.5 Privacy. Personal Information shall be collected, used, stored, retained and disclosed by HCAI and User in accordance with applicable Privacy Laws.

2.6 Non-Assignability. These Terms and Conditions are not assignable by the User without the prior written consent of HCAI. HCAI may assign these Terms and Conditions without the consent of the User to (a) any current or future corporate affiliate of HCAI; (b) any entity formed by HCAI to carry on the business of operating the HCAI System; (c) any third party entity that takes over the operation of the HCAI System from HCAI; but in any event only to an assignee that has been designated by the Superintendent of Financial Services as the Central Processing Agency pursuant to the SABS. Subject to this restriction, these Terms and Conditions shall enure to the benefit of, and bind, the parties and their respective successors and assigns.

2.7 Entire Agreement. These Terms and Conditions constitute the entire agreement and understanding of the parties relating to the subject matter of these Terms and Conditions and supersede all prior understandings, discussions, negotiations, commitments, warranties and agreements (including any pilot agreement between the parties), written or oral, express or implied, between them. No employee, agent or representative of HCAI is authorized to make any additional representation, warranty or covenant on behalf of HCAI. For further certainty, these Terms and Conditions are not intended to alter any agreement between an Insurer User and a User, any obligation imposed by law upon an Insurer User or a User or any liability that a User or an Insurer would have otherwise have to the other under applicable law.

2.8 Survival of Provisions. All obligations under these Terms and Conditions which expressly or by their nature survive termination or expiry of these Terms and Conditions will continue in full force and effect subsequent to and in spite of such termination or expiration until they are satisfied or by their nature expire. For further certainty, the provisions of Sections 2.4, 2.5, 2.7 and 2.9 are intended to survive any termination or expiration of these Terms and Conditions.

2.9 General. These Terms and Conditions shall be interpreted and governed by the laws in force in Ontario (and the laws of Canada applicable in Ontario). Failure of either HCAI or a User to complain of any act or failure to act of the other, or to declare the other in default, shall not constitute a waiver of their respective rights under or in connection with these Terms and Conditions. No waiver of any rights under these Terms and Conditions shall be effective unless in writing, duly executed by the party against whom they are to be effective. If any provision of these Terms and Conditions are held to be invalid, illegal or unenforceable, such provision will be curtailed and limited (or severed) only to the extent necessary to make it legally valid and enforceable and such curtailment or limitation (or severance) shall not affect any other provisions of these Terms and Conditions. Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of that party or any subcontractor. Furthermore, HCAI shall not be liable for any delay or failure in performance caused by a subcontractor utilized by HCAI provided that HCAI had utilized commercially reasonable efforts to obtain timely performance by such subcontractor.