

HCAI ELECTRONIC ACCESS TERMS AND CONDITIONS

Health Claims for Auto Insurance Processing (“HCAI”) operates an electronic 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 electronically to automobile insurers (“Insurers”) by health care providers or their intermediaries (“Providers”) and which also permits the communication of a response by a Insurer recipient of such Claim Request back to the originating Provider (“Claim Response”). The entity on whose behalf these HCAI Electronic Access Terms and Conditions (the “Terms and Conditions”) are being entered into (the “User”) wishes to participate in the HCAI System using electronic access (including Web access and/or an interface from a Provider User’s practice management system (“PMS”)) and hereby agrees that any such participation shall be on the basis of these Terms and Conditions, the current version of which will also be set out at <<http://www.hcaiinfo.ca>>. If, at a future date, the User optionally elects to switch to paper submission of Claim Requests then User agrees that such use will be subject to the HCAI Paper Provider 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) “Changes” means any updates, upgrades, enhancements, new versions, new releases, changes, modifications, additions, deletions, substitutions or replacements (in whole or in part); and “Change” means any one of the foregoing.

(b) “Claim Information” means a Claim Request and/or any associated Claim Response.

(c) “Confidential Information” of HCAI:

(i) means any and all proprietary information and/or materials concerning the HCAI System including any communication protocols and application programming interfaces (collectively, “HCAI System Information”) and any other confidential information or materials of HCAI, or of third parties and in the possession or control of HCAI, and any information derived from any of the foregoing;

(ii) as between HCAI and any User, includes any Claim Information of another User or an Insurer transmitted to, made available to or received by a User in error or to which a User has no right of access but does not include Claim Information where the User is the intended recipient.

(d) “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.

(e) “HCAI System Information” means any and all proprietary information regarding Systems utilized by HCAI and/or to provide the Services including (i) the schema (database structure, field format, and similar types of information) for files utilized by the HCAI System, (ii) proprietary communication protocols utilized by the HCAI System; (iii) application program interfaces and/or middleware utilized to interface a third party practice management system to HCAI; and (iv) software, hardware, technology, implementation tools, documentation, screens displays, designs, images, other programs or specifications and all other information and materials comprising or related to the HCAI System.

(f) “Insurer User” means an Insurer that participates in the HCAI System.

(g) “LoginID” means any electronic passwords, keys, codes or identifiers issued by HCAI or the HCAI System for use by the User in connection with the submission, receipt or accessing of Claim Information or otherwise accessing the HCAI System.

- (h) “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, submission processes and procedures, work flow and HCAI business rules.
- (i) “Personal Information” means any information about an identifiable individual as further defined in the Privacy Laws.
- (j) “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.
- (k) “SABS” means the Statutory Accident Benefits Schedule (O. Reg. 403/96 as amended from time to time).
- (l) “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 the transport of Claim Responses in respect of such claims, where provided in electronic form, back from Insurer Users to Users, and other ancillary activities contemplated by these Terms and Conditions.
- (m) “System(s)” means computer equipment (including servers and related data-processing equipment), together with associated components, communications (including network communications) and connecting equipment peripherals, firmware and other hardware and supporting equipment; software, including operating software, utilities or system software, and applications software, together with supporting documentation and materials; and related services.
- (n) “User” means a facility and any individual Provider that has agreed to these Terms and Conditions and that participates in the HCAI System.
- (o) “User Systems” means such of the User’s Systems as are used from time to time in connection with electronically transmitting Claim Information to and receiving Claim Information from HCAI.

ARTICLE 2 ACCESS RIGHTS, OWNERSHIP, CONFIDENTIALITY AND AMENDMENTS

2.1 Access. During the Term, the User may submit Claim Information through, and receive Claim Information addressed to such User from, the HCAI System.

2.2 Confidentiality and Authorized Use. Except as required by applicable Canadian law, User shall maintain in strict confidence all Confidential Information and shall not directly or indirectly (i) disclose, make available, or provide or permit access to or use of, any Confidential Information for any purpose; (ii) reproduce or make Copies, or permit any third party to reproduce or make Copies, of any Confidential Information, in whole or in part; or (iii) use any of the Confidential Information for any purpose other than as permitted under these Terms and Conditions. Notwithstanding the foregoing, User may use, make copies of and disclose Claim Responses as required in order to provide treatment for claimants or to otherwise satisfy the requirements of the SABS and may use HCAI System Information strictly as required in order to use the HCAI System as permitted under these Terms and Conditions but for no other purpose.

2.3 Title and Ownership of HCAI System and HCAI System Information. The User acknowledges and agrees that:

(a) HCAI and its licensors are and shall at all times remain the sole owner(s) of all right, title and interest in the HCAI System and the HCAI System Information, including all intellectual property rights (such as copyright) and other proprietary rights and trade secrets therein.

(b) Nothing in the foregoing or otherwise in this Agreement is intended to provide the User with any right, title or interest in (i) the HCAI System or HCAI System Information; or (ii) any Claim Information of another User.

(c) User shall not disclose or make available any HCAI System Information to any third party without the prior written consent of HCAI. User agrees to protect all such proprietary information as it protects its own proprietary information.

2.4 Amendments to these Terms and Conditions. The User acknowledges and agrees that HCAI reserves the right to amend these Terms and Conditions or the Operating Procedures from time to time. Such amendments shall become effective sixty (60) days after posting of an amended version by HCAI on www.hcaiinfo.ca. HCAI shall use commercially reasonable efforts to notify web access users of such proposed changes.

ARTICLE 3 OPERATIONS

3.1 LoginIDs

(a) **User Responsibility.** The User shall not disclose any LoginID to, or permit any access to or use of any LoginID by, any third party. User shall be responsible for any LoginID issued to it or created using any Administrative LoginID issued to it, whether used by such User, an Authorized User Personnel or by any third party whether or not authorized, but excluding any use by an unauthorized third party who obtained such LoginID due to an unauthorized and negligent disclosure by HCAI or its subcontractors. User shall be responsible for properly managing LoginIDs created using administrative LoginIDs issued to such User (including revocation of any LoginIDs that are lost, compromised or no longer required).

(b) **Protection of LoginID.** User shall be responsible for protection of LoginIDs, including (i) providing notification to the help desk or as otherwise set out in the Operating Procedures of any loss or suspected loss of a LoginID and (ii) imposing obligations on its personnel to comply with the requirements set out in these terms and conditions in respect of LoginID and those contained in User's own security policies.

(c) **No Unauthorized Use.** User and its personnel will not utilize, or attempt to utilize, any LoginID of another User.

- (d) **Limitation on Use.** LoginID shall be used solely in connection with the HCAI System and for no other purpose.
- (e) **Signed Writings.** Any communication that is validated by a User utilizing LoginID issued to or generated by such User shall be deemed to constitute a signed written document executed by such User.
- (f) **Deemed to be Confidential Information.** Any LoginID issued to or generated by a User shall be deemed to constitute and shall be treated as “Confidential Information”.

3.2 Outsourcing and Use of Subcontractors

Use of the HCAI System shall be for the purposes specified in the HCAI Terms and Conditions only. The User is expressly prohibited from any reselling or sublicensing its access to the HCAI System. Other than in respect of a registered HCAI User: (i) Users will not utilize the HCAI System to submit Claim Requests on behalf of other health care providers or individual health providers and (ii) No User may use the HCAI System to provide a service bureau service to third parties. For further certainty, the foregoing shall also not preclude the use of a subcontractor by a User who has outsourced its claim processing business processes to such subcontractor, or use of an HCAI Data Entry Center, and provided (i) such subcontractor has agreed to abide by applicable terms and conditions regarding its use of the HCAI System, (ii) such subcontractor is interfacing with the HCAI System solely in order to process the data of such User, (iii) such User hereby assumes responsibility for the actions of such subcontractor, and (iv) such User hereby assumes responsibility for ensuring that access and processing by such subcontractor will be performed in accordance with applicable Canadian laws, including Privacy Laws and regulations.

3.3 Incomplete, Inaccurate or Corrupted Documents. If a User reasonably suspects that Claim Information received from an Insurer or otherwise received from the HCAI System was incompletely or inaccurately transmitted, or corrupted in transmission, or not intended for it (collectively, “Questionable Communications”), it shall so notify the Insurer and/or HCAI, as applicable, and shall not rely upon any such information, or respond to any request, contained in those Questionable Communications until it receives confirmation of the validity and completeness of those Questionable Communications. If requested by the entity that transmitted the Questionable Communications, the receiving party shall return or destroy such Questionable Communications as directed by the transmitting party.

3.4 User Systems.

The User shall obtain, install and test, at its own expense, all of the User Systems and associated communication services required in order to electronically send and receive Claim Information from the HCAI System and through the HCAI/User messaging link, or to otherwise interact and communicate with the HCAI System.

3.5 Accessing the HCAI System through PMS

- (a) HCAI is not responsible for supporting any issues relating to the use of a PMS system, including the submission of Claim Requests or other exchange of Claim Information between such PMS system and the HCAI System. All support requests relating to such issues must be addressed by a User directly with their PMS system vendor.
- (b) In order to implement a link between a PMS system and the HCAI System, HCAI shall provide PMS vendors with documentation, application program interfaces, software code and/or other similar materials (collectively, “Interface Materials”) in order to facilitate the development and implementation by such PMS vendors of an interface to the HCAI System (subject to entering into appropriate agreements with such PMS vendors). All such Interface Materials, even if incorporated by such PMS vendors into their PMS system for use by User constitute confidential and proprietary information of HCAI and may not be modified or disassembled by Users, used for any other non-HCAI related purposes, used other than as an integrated part of the PMS system in which they are incorporated or be distributed to third parties. Such Interface Materials are provided on an “as is” and “as available” basis and at User’s sole risk. HCAI expressly disclaims all warranties, conditions and/or other responsibility for such Interface Materials, including but not limited to any implied warranty or condition of

merchantability or fitness for a particular purpose. HCAI does not guarantee that User's use of such Interface Materials shall be uninterrupted, timely, error-free or secure.

- (c) The Interface Materials may contain run-time libraries or other code generated by commercially available off-the-shelf development tools and licensed by third parties on a royalty free basis but subject to specific license terms. HCAI will identify any such applicable third party license terms to the PMS vendors and on www.hcaiinfo.ca. Users agree that their access to or use of any such third party components incorporated in any Interface Materials shall be subject to such applicable third party license terms.
- (d) HCAI will use commercially reasonable efforts to continue to support older application program interfaces (API) and communication protocols for PMS software for a period of not less than six months following the release of a new version of such API, communication protocol or other HCAI System Change. It will be the responsibility of the PMS vendors to provide an update of their PMS systems to support any Changes to the HCAI System, including the HCAI System application program interface or communication protocols, and of Users to implement any such updates, within such timeframe.

3.6 Additional User Obligations

- (a) User shall cooperate with audits of the HCAI System or security investigations regarding any breaches of or unauthorized access to the HCAI System.
- (b) User shall ensure that it will only use the HCAI System in accordance with the Operating Procedures.
- (c) User shall not modify or disable any encryption technology utilized by the HCAI system or implemented for use in communicating with the HCAI system.

3.7 HCAI System Changes.

- (a) **General.** The User acknowledges and agrees that HCAI may, from time to time, make Changes to the HCAI System, which Changes may impact on the HCAI/User messaging link and the electronic transmissions between the parties that are contemplated by this Agreement.
- (b) **Notice.** To the extent reasonably possible, HCAI agrees to give User and PMS vendors advance notice of the HCAI System Changes and such information about the Changes as may be necessary to enable such entities to make any necessary Changes to their Systems that may be required in order to ensure the uninterrupted use and operation of the HCAI/User messaging link.
- (c) **Corresponding User Systems Changes.** The User shall be responsible for implementing, at its own cost, any commercially reasonable Changes to the User Systems that may be required, in response to the HCAI System Changes, in order to ensure the uninterrupted use and operation of the HCAI/User messaging link. For the avoidance of doubt, the User acknowledges that it may be unable to submit, access and/or use Claim Information if the User does not make all required Changes to the User Systems in response to any HCAI System Changes.
- (d) **Testing.** The parties agree to reasonably co-operate in developing and implementing (and updating or modifying, as needed from time to time) testing procedures to periodically test the HCAI/User messaging link and any Changes made to the HCAI/User messaging link from time to time. Each party shall be responsible for its own costs of such testing.

3.8 Receipt of Information, Documents and Other Communications Through Electronic Means. The User hereby designates the HCAI System for the purpose of receiving (i) information and documents sent to the User by Insurers and of a type associated with or related to the type of documents the User sends to Insurer Users through the HCAI System or (ii) which relate to communications from HCAI. User also consents to the delivery of such information and documents, and any communications from HCAI, by electronic means through the HCAI System.

3.9 SUBMISSIONS. A User shall be set up to submit Claim Requests through the HCAI System using only a single mode, either electronic or through a Data Entry Center, at any one time and shall provide the HCAI Help Desk with reasonable notice prior to switching from one mode to the other.

3.10 SUSPENSION. HCAI may at any time temporarily limit or suspend in whole or in part a particular User's electronic access to the HCAI System if such User or its Authorized User Personnel have engaged, or if HCAI has reasonable grounds to believe that such User or its Authorized User Personnel have engaged, in conduct or activity prohibited by these Terms and Conditions. HCAI may also permanently suspend a particular User's electronic access to the HCAI System if such User or its Authorized User Personnel continue to engage in conduct or activity prohibited by these Terms and Conditions, or which HCAI reasonably believes will likely place its operation of the HCAI System at risk.

ARTICLE 4 USER OBLIGATIONS

4.1 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 User shall promptly, but in any event within ten (10) Business Days, after the occurrence of any change in any such information (such as any change in the identity of the Providers on whose behalf Claim Requests are being submitted, including any departures or new additions), notify HCAI in writing of such change in accordance with the Operating Procedures. The individual executing the HCAI Enrolment Form hereby represents and warrants that he or she is duly authorized to bind the User, and any individual health providers identified as affiliated with such User and on whose behalf User submits any Claim Requests.

4.2 Regulatory compliance. User, its contractors, subcontractors and agents shall comply with (a) Applicable FSCO requirements; and (b) all applicable Canadian laws, in respect of their electronic access to and use of the HCAI System.

4.3 Disruptions. User shall temporarily cease submission of Claim Information through the HCAI System if User is notified or otherwise becomes aware that the HCAI System is experiencing a disruption. To the extent a User has a Claim Request outstanding to which it has not received a Claim Response, it is the User's responsibility to check for a Claim Response.

4.4 Data Retention. User shall make and retain copies of Claim Information as reasonably required for User's business purposes and its regulatory requirements. HCAI assumes no obligation to make or retain copies of any information sent to or through the HCAI System, including any Claim Information, except to the extent HCAI, at its sole discretion, deems necessary to allow HCAI to operate the HCAI System, provide the Services or as otherwise permitted under these Terms and Conditions.

4.5 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. Each User shall designate a coordinator and agree to channel requests to the help desk and other areas of the HCAI System through such coordinator.

ARTICLE 5 TERM AND TERMINATION

5.1 Term and Termination. Subject to the provisions of these Terms and Conditions, the term of these Terms and Conditions (the "Term") shall continue in force until otherwise terminated in accordance with the provisions of these Terms and Conditions. Either party may terminate these Term and Conditions upon at least thirty (30) days prior written notice to the other party. HCAI may also terminate these Terms and Conditions without further notice as permitted under Section 6.2.

ARTICLE 6 DEFAULT AND TERMINATION

6.1 Events of Default. "Events of Default" shall include any one or more of the following:

- (a) the User becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors or an order is made or resolution passed for the winding up of the User, or the User is dissolved;
- (b) the User ceases to operate or ceases to carry on business in the normal course;
- (c) the User has knowingly submitted false or misleading information to HCAI (including any inclusion of false or misleading information in the HCAI Enrolment Form or any modification of such information) or makes a false representation in these Terms and Conditions;
- (d) the User or any person utilizing the HCAI System on such User's behalf (1) knowingly, (2) recklessly, or (3) repeatedly and negligently, includes fraudulent, false or misleading information in any Claim Request or otherwise uses or attempts to use the HCAI System in the perpetration of a fraud;
- (e) the User or any person who utilizes the HCAI System on such User's behalf or who is given access to the HCAI System by such User, discloses, distributes, makes available or provides access to any Confidential Information to any person, or for any reason, not authorized in these Terms and Conditions, or the User otherwise breaches Section 2.2 (Confidentiality and Authorized Use) or Article 7.2 (Privacy);
- (f) the User fails to meet any other term or condition of these Terms and Conditions and such default is not curable or such default is curable but the User fails to cure it within ten (10) days of receiving notice of such default from HCAI;

6.2 Remedies. Upon the occurrence of an Event of Default, HCAI shall have the right, effective immediately and without notice, to: (a) terminate these Terms and Conditions; or (b) suspend, cancel or revoke the User's ability to electronically access the HCAI System or any or all of the rights or privileges of the User under these Terms and Conditions. HCAI may also pursue any appropriate administrative, civil and/or criminal remedies for default of any of the provisions of these Terms and Conditions.

**ARTICLE 7
GENERAL**

7.1 Limitation of Liability.

- (a) While HCAI will strive to promptly make the Claim Requests 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 Claim Information (including their transmission) or the Services, including any warranties or representations that the Services or any Claim Information will be accurate, complete or up-to-date, or free of delays, errors or omissions or that any Confidential Information or Claim Information will be fit for any purpose. WITH RESPECT TO THE HCAI SYSTEM, THE SERVICES, OR ANY CLAIM INFORMATION, 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 Information 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 reperform 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.

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

7.3 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.

7.4 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 supersedes 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. Except as expressly provided in these Terms and Conditions, these Terms and Conditions may be amended or modified only by an instrument in writing executed by each of the parties. 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 otherwise have to the other under applicable law.

7.5 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 following provisions are intended to survive any termination or expiration of these Terms and Conditions: Section 2.2, 2.3 and this Article 7.

7.6 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.