

## HCAI INSURER 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 Regulatory Authority of Ontario (“FSRA”) 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 Insurer Terms and Conditions (the “Terms and Conditions”) are being entered into (the “User”) wishes to participate in the HCAI System including obtaining electronic access via Web access or direct integration with its own systems and hereby agrees that any such participation shall be on the basis of these Terms and Conditions, as amended from time to time, the 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, 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 the User, includes any Claim Information of another Insurer transmitted to, made available to or received by the User in error or to which the User has no right of access but does not include Claim Information where the User is the intended recipient.

- (d) “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 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.
- (e) “IBC” means Insurance Bureau of Canada.
- (f) “Insurer User” means an Insurer that participates in the HCAI System and includes the Motor Vehicle Accident Claims Fund (MVACF).
- (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 and communicated to the User, or as otherwise provided to the 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, service levels, 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) “PHIPA” means the *Personal Health Information Protection Act*, 2004, S.O. 2004, c.3, as amended from time to time, and includes any successors thereto;
- (k) “PIPEDA” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, as amended from time to time, and includes any successors thereto
- (l) “Privacy Laws” means (1) PIPEDA, (2) PHIPA and (3) 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, as may be amended from time to time.
- (m) “SABS” means the Statutory Accident Benefits Schedule (O. Reg. 403/96 as amended from time to time).
- (n) “Services” means the services provided by HCAI directly or through its subcontractors in connection with the transmission of Claim Requests from Providers to Insurers using the HCAI System, and the transport of Claim Responses in respect of such claims, where provided in electronic form, back from Insurers to Providers, and other ancillary activities contemplated by these Terms and Conditions.
- (o) “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.
- (p) “User Systems” means such of the User’s Systems as are used from time to time in connection with electronically receiving Claim Information from and sending Claim Information to the HCAI System.

**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 Requests as required in order to approve 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 Insurer.

(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](http://www.hcaiinfo.ca). HCAI shall use commercially reasonable efforts to notify the User of such proposed changes. Notwithstanding the foregoing, HCAI agrees that it shall not make any amendments to these Terms and Conditions except on prior written notice to IBC, and with the prior written consent of IBC, which may be denied at IBC's absolute discretion.

**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. The User shall be responsible for any LoginID issued to it or created using any Administrative LoginID issued to it, whether used by such User, personnel authorized by the User ("Authorized User Personnel"). The 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.** The 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 Authorized User 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 Authorized User 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 the 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 the User shall be deemed to constitute and shall be treated as “Confidential Information”.
- (g) Notwithstanding anything to the contrary in these Terms and Conditions, User may disclose the LoginID to an authorized agent who may use it to provide services to the User and who may authorize its subcontractors to do the same.

### **3.2 Outsourcing and Use of Subcontractors**

Use of the HCAI System shall be for the purposes specified in the 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) the User will not utilize the HCAI System to receive Claim Requests or send Claim Responses on behalf of other insurers and (ii) the User may not 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 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. Notwithstanding the foregoing, one entity in a group of affiliated Insurers may submit and receive Claim Information on behalf of its listed affiliated companies subject to execution by such User and HCAI of an HCAI Insurer Group Enrolment Addendum to these Terms and Conditions.

Notwithstanding anything to the contrary in these Terms and Conditions, an authorized agent, to the extent it is a subcontractor of User, may interface with the HCAI System to process data for the benefit of User and may authorize its subcontractors to do the same.

**3.3 Incomplete, Inaccurate or Corrupted Documents.** If the User reasonably suspects that Claim Information received from a Provider 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 Provider 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 Direct Integration**

- (a) In order to implement a link between the User System and the HCAI System, HCAI shall (upon request) provide the User with documentation, application program interfaces, software code and/or other similar materials (collectively, “Interface Materials”) in order to facilitate the development and implementation of an interface to the HCAI System. All such Interface Materials, even if incorporated by the User into its internal system for use by User constitute confidential and proprietary information of HCAI and may not be modified or disassembled, used for any other non-HCAI related purposes, used other than as an integrated part of the 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.

- (b) HCAI will use commercially reasonable efforts to continue to support older application program interfaces (API) and communication protocols 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 User to update its internal systems to support any Changes to the HCAI System, including the HCAI System application program interface or communication protocols, and 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.
- (d) The User shall provide Claimant identification information to the HCAI System for use by the HCAI System in validating Claim Requests submitted by Providers;
- (e) Where the User elects to submit file feeds, it shall submit such file feeds in compliance with (i) schema provided and (ii) batch schedule set by HCAI; and
- (f) Where the User acts as an intermediary and accepts the direct submission of a Claim Request from a Provider, such User shall submit a copy of the applicable Claim Request and its associated response to 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 the User advance notice of the HCAI System Changes and such information about the Changes as may be necessary to enable the User to make any necessary Changes to its 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 Providers and of a type associated with or related to the type of documents the User sends to Provider 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 Authentication of Users.** HCAI does not validate the identity of users and the HCAI System will be operated in a manner analogous to the post office with no validation, confirmation or accreditation being performed with respect to any non-Insurer user. In any event, HCAI does not guarantee the identity of any user and shall not be liable in the event a user is not who they purport to be.

**3.10 Service Level Targets.**

- (a) HCAI will make the HCAI System available in accordance with the commitments set out in the Operating Procedures, which commitments will be consistent with the requirements of the SABS and any associated Guideline issued by FSRA;
- (b) HCAI will make a Claim Request by HCAI available for access by the Insurer to whom it is addressed in a timely manner consistent with the SABS and any associated Guideline issued by FSRA.

**ARTICLE 4  
USER OBLIGATIONS**

**4.1 Information and Authority.** The User represents and warrants that all information provided to HCAI in connection with User's sign up to use the HCAI System is true, correct and complete as of the date of such sign up. The User shall promptly, but in any event within ten (10) Business Days, after the occurrence of any change in any such information, notify HCAI in writing of such change in accordance with the Operating Procedures. The individual executing these Terms and Conditions hereby represents and warrants that he or she is duly authorized to bind the User.

**4.2 Regulatory compliance.** User, its contractors, subcontractors and agents shall comply with (a) Applicable FSRA 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 the User is notified or otherwise becomes aware that the HCAI System is experiencing a disruption. In such event, the User shall proceed in accordance with the Operating Procedures.

**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.** The 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. The User is solely responsible for the contents of any Claim Responses 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.

**4.6 Access to Data.** The User represents and warrants, that it shall not access or use the data of a subsidiary or affiliate submitted to HCAI, whether partially or wholly owned by the User, without securing the necessary consent from such subsidiary or affiliate under Canadian Privacy laws.

**4.7 Payment Obligation.**

- (a) Each User will be required to pay a proportional share of the total costs of HCAI development and start up costs, which amount can be paid at the beginning as a one time development cost or by monthly instalment within a period not to exceed the first 24 months from the User's use start of the service. Cost sharing will be based upon an allocation formula set by the HCAI Board of Directors. Each User will also be required to pay a fee in respect of its ongoing use of the HCAI System based upon HCAI's annual budget as apportioned between the Insurer participants, plus its apportioned share of any

required special assessments, all as determined from time to time based upon the allocation formula set by the HCAI Board of Directors.

- (b) User also agrees to pay a transaction fee, as negotiated from time to time between HCAI and any data entry center utilized (“DEC”) by HCAI, in respect of Claim Requests addressed to such User and submitted to the HCAI System in non-electronic form by providers utilizing such DEC. Such transaction fees shall will be billed to insurers directly by such DEC and include a component that will be paid by the DEC to HCAI to compensate HCAI for start up and ongoing management costs. In the event a DEC makes a claim against HCAI for such transaction fee then such transaction fee may be added by HCAI to the amount payable by User to HCAI pursuant to subsection (a) above.
- (c) User agrees to pay invoices received from HCAI within 30 days. Any invoice not paid when due shall accrue interest at the rate of 1% per month (12.68% per annum, compounded monthly), or the maximum rate permitted by law, whichever is less. User shall also reimburse HCAI for any reasonable collection costs incurred due to non-payment by such User.

## **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. The User may terminate these Term and Conditions upon at least thirty (30) days prior written notice to HCAI. HCAI may terminate these Terms and Conditions in the event HCAI ceases to be designated as the central processing agency under the applicable regulations.

## **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 connection with the sign up process 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 Response 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 and where HCAI reasonably believes it to be in the best interest of the continued operation of the HCAI System, HCAI shall have the right, subject to providing reasonable prior notice to the User and FSRA, to: suspend the User’s ability to electronically access the HCAI System. 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 amount of fees paid by User to HCAI in the previous 12 month period. User’s liability to HCAI in respect of any claim shall be limited to \$50,000 per incident. Despite the foregoing, in no event will either HCAI or Insurer be liable for any indirect, special, incidental, consequential, aggravated, exemplary or punitive damages or losses. Without derogating from the foregoing, in no event shall HCAI be liable for any damages, claims or expenses, including fines, incurred by the Insurer in the event of any error, disruption or delay in the transmission or processing of any Claim Information. 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). The foregoing exclusions of and limitations of HCAI’s liability shall not apply to a breach of confidentiality, privacy or security to the extent that HCAI is entitled to recover damages from a subcontractor in respect of such breach (and HCAI’s liability to User in respect of such damages, to the extent otherwise excluded by the above exclusions and limitations shall be limited to the amounts actually recovered by HCAI from such subcontractor).
- (c) Nothing in subsections (a) to (b) above affects any liability or obligation of any Insurer to any Provider or to a Provider’s patients or clients as might otherwise arise in law, including without limitation under the SABS or the Insurance Act (Ontario).
- (d) 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. In accordance with the Personal Information Protection and Electronic Documents Act (Canada), HCAI shall take steps that are reasonable in the circumstances to ensure that all personal information and personal health information in its custody or under its control is protected against theft, loss and unauthorized use and disclosure and to ensure that all records containing personal information or personal health information are protected against unauthorized copying, modification or disposal. Exhibit A sets out supplementary privacy obligations and is hereby incorporated by reference. In the event of any conflict between Exhibit A and the other terms and conditions contained herein, Exhibit A shall take precedence.



**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 Chief Executive Officer or by the Authority 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 and a Provider, any obligation imposed by law upon an Insurer or a Provider, or any liability that an Insurer or Provider 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). The User agrees that any Claim arising out of or relating to this Agreement or the operation of the HCAI System shall only be brought by User in a court of competent jurisdiction in Ontario. Failure of either HCAI or the 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.

Exhibit A –Supplementary Privacy Obligations

Definitions:

- (a) “Applicable Laws” means all laws of Canada and Ontario, and all applicable municipal and local laws
- (b) “Central Processing Agency Services” means all services required to be performed by the HCAI pursuant to and in accordance with the SABS, these HCAI Insurer Terms and Conditions and an agreement between HCAI and IBC;
- (c) “Data” means all information, including without limitation Personal Information and Personal Health Information, provided to HCAI by or on behalf of SABS claimants, health care providers, Insurers or others on behalf of such entities;
- (d) “Data Access Chart” means a chart, attached as Schedule A to an agreement between FSRA and IBC concerning the designation of HCAI as the central processing agency pursuant to the SABS, and as may be amended from time to time by the signed agreement of IBC and FSRA, that sets out what information may or may not be disclosed to persons or categories of persons, the persons or categories of persons to whom such information may or may not be disclosed, and the circumstances in which such information may or may not be disclosed
- (e) “PHI” or “Personal Health Information” means personal health information as defined in PHIPA;
- (f) “PI” or “Personal Information” means personal information as defined in PIPEDA;
- (g) “Privacy Breach” means any collection, use or disclosure of Data that is PHI or PI made otherwise than in accordance with PHIPA or PIPEDA or other applicable privacy laws, and without limiting the generality of the foregoing includes any unauthorized, inadvertent or improper collection, use or disclosure of Data that is PHI or PI by or to any person or persons not entitled thereto, or of any access to Data that is PHI or PI by any persons not entitled thereto, and any practice or procedure that contravenes PHIPA or PIPEDA or other applicable privacy laws;
- (h) “Privacy Complaint” means any complaint about an alleged Privacy Breach or about alleged theft, loss, destruction or unauthorized access, disclosure, copying, use or modification of Data that is PHI or PI.
- (i) “Subcontractor” means any entity with whom HCAI contracts in respect of Central Processing Agency Services or any portion thereof;

Obligations:

- 1.1 User acknowledges and agrees that it will not disclose, or cause to be disclosed, any Data that is PI or PHI to any person, including any investigative body, except in the circumstances permitted by applicable law including, without limiting the generality of the foregoing, s. 7 (3 (d) of PIPEDA (e.g., the Insurer has reasonable grounds to believe that the information relates to a breach of an agreement or a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed).
- 1.2 HCAI agrees to provide the Central Processing Agency Services in a manner that complies at all times with the requirements of the SABS and all other Applicable Laws.
- 1.3 HCAI warrants that it will at all times take all measures consistent with leading industry practices having regard to applicable practices recommended from time to time by the federal and provincial privacy commissioners to retain, transfer and dispose of Data that is PHI and PI in a secure manner, safeguard the security and confidentiality of all Data that is PHI and PI in accordance with all Applicable Laws, including without limitation PIPEDA (including without limitation section 7 (3) (d) thereof) and PHIPA (including without limitation section 49 thereof) and, without limiting the generality of the foregoing, at all times will:
  - (a) protect and maintain the security and integrity of all Data that is PHI and PI which is under the custody and control of HCAI and keep it in a physically secure location, protected safe from theft or loss and from unauthorized use, disclosure, alteration, copying, destruction, disposal, modification or intermingling with other records and databases, and to implement,

use and maintain appropriate administrative, technical and physical safeguards, products, tools, measures and procedures to do so;

- (b) except as permitted pursuant to Section 1.5 or Section 1.7 below, restrict access to Data that is PHI and PI to only those of its directors, officers, employees, agents, partners, affiliates or subcontractors who need it for the purpose of providing Central Processing Agency Services and who have been specifically authorized by HCAI to have such access for the purpose of providing Central Processing Agency Services and who have agreed in writing to keep the PHI and PI confidential;
  - (c) not store, or allowed to be stored, even on a temporary or cached basis, outside of Canada, nor transmit or allow the transmission of any Data that is PHI outside of Canada as part of the internal operation of the HCAI System (expressly including the Databank) except for any transmission of packets of data exchanged by means of the internet that may occur outside Canada in the normal course of providing Central Processing Agency Services (but for further certainty, HCAI will not be required to monitor or restrict the location of users of the HCAI System);
  - (d) comply with all Applicable Laws, including without limitation PIPEDA and PHIPA, even if such compliance would constitute or give rise to a contravention of the laws of any other jurisdiction;
  - (e) resist any subpoena, warrant, order, demand or request for Data that is PI or PHI made by any court or other authority unless it is a Canadian court of competent jurisdiction, except where the individual to whom the applicable PI or PHI relates has provided his or her consent to such disclosure of such PI or PHI;
  - (f) immediately bring an application in a court of competent jurisdiction in Ontario, on notice to IBC and FSRA, to set aside any subpoena, warrant, order, demand or request made by a foreign court or other foreign authority for the disclosure of any Data that is PI or PHI that is the subject of or protected by Canadian privacy laws unless the individual to whom the PI or PHI relates has provided his or her consent to such disclosure of such PI or PHI;
  - (g) use technology, tools and leading practices to prevent any Data that is PI and PHI in the HCAI System from at any time being retained, transferred and disposed of other than in a secure manner;
  - (h) not subject, or allow to be subjected, any Data that is PHI or PI to any form of data-mining software for any purpose whatsoever; and
  - (i) retain Data that is PHI and PI for only as long as required to fulfil the identified purposes for which it was collected, and thereafter destroy, erase or make it anonymous, in accordance with guidelines and procedures developed and implemented by HCAI in accordance with Principle 5 of PIPEDA.
- 1.4 HCAI shall immediately notify IBC, FSRA and any applicable User of any Privacy Breach, suspected Privacy Breach or Privacy Complaint of which it becomes aware, to promptly and fully cooperate with the Office of the Information and Privacy Commissioner/Ontario, the Office of the Privacy Commissioner of Canada, IBC, FSRA, and such other persons as IBC, FSRA or the applicable User may direct in the investigation of any Privacy Breach, suspected Privacy Breach or Privacy Complaint, and to provide FSRA with a copy of any report arising out of such investigation.
- 1.5 HCAI shall at all times to enforce (with respect to Data that is PI and PHI under its custody and control) and to comply with the provisions of the Data Access Chart, and in particular to take all reasonable steps required or reasonably necessary to ensure that no Data is disclosed to or accessed by any person, including IBC, and any Insurer, except to the limited extent and in the limited circumstances, if any, permitted by or required by Applicable Law, and as reflected in the Data Access Chart.

- 1.6 HCAI and the User acknowledge and agree that each does not and shall not at any time claim any intellectual property rights to any of the Data, or to any copies or representations thereof provided that the foregoing does not preclude HCAI or User from obtaining or claiming intellectual property rights in any new data, databases, reports or other derivative works created by such entity.
- 1.7 HCAI acknowledges and agrees that it will:
- (a) not on its own initiative disclose, or allow to be disclosed, any Data that is PHI or PI to any person, including any investigative body, in any circumstances except as required or permitted by law; and
  - (b) not disclose, or allow to be disclosed, any Data that is PHI or PI to any investigative body on behalf of an Insurer if requested to do so by an Insurer unless the Insurer certifies in writing that such disclosure is permitted by PIPEDA including, without limiting the generality of the foregoing, section 7 (3) (d) thereof (the Insurer has reasonable grounds to believe that the PHI or PI relates to a breach of an agreement or a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed). Any request made by an Insurer pursuant to this clause shall specify the PIPEDA provision applicable in the circumstances.
- 1.8 Subject to Section 7.1(b) of these HCAI Insurer Terms and Conditions, HCAI agrees to indemnify User (or to cause its third party subcontractors to indemnify User) for any judgments awarded against User to a third party by a court of competent jurisdiction for any damages sustained by such third party whose Data that is PHI or PI may be disclosed or accessed as the result of a Privacy Breach by HCAI or its subcontractors as such damages are explicitly provided for under PIPEDA, PHIPA or Applicable Law. For further certainty, the foregoing is not intended to create, support or indemnify against a new cause of action, whether in contract, tort or otherwise, regarding privacy breaches beyond those provided for under Applicable Laws (expressly including PIPEDA and PHIPA).
- 1.9 User acknowledges that neither FSRA nor Her Majesty the Queen in Right of Ontario are or shall at any time or in any manner be prevented or restricted, either by these HCAI Insurer Terms and Conditions or otherwise by HCAI or User, from making public disclosure of the particulars of any Privacy Breach or suspected Privacy Breach. Notwithstanding the foregoing, User and HCAI shall not be responsible for any liability incurred by FSRA and/or Her Majesty the Queen in Right of Ontario to any third parties as a result of such disclosure but without negating their liability with respect to the underlying Privacy Breach that was the subject of the disclosure. User further acknowledges that any good faith public disclosure by FSRA or Her Majesty the Queen in Right of Ontario of a Privacy Breach or suspected Privacy Breach shall be without any liability to Users or any of their officers, employees, agents or other persons acting on their behalf.
- 1.10 HCAI acknowledges that its shall not be relieved of any obligation or liability to the User under these terms or conditions as a result of the use of any Subcontractor by HCAI