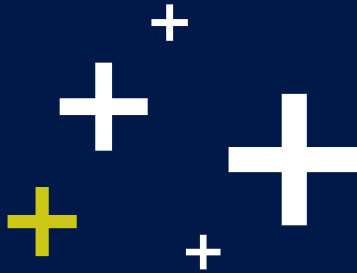


# HICAPS PROVIDER AGREEMENT TERMS AND CONDITIONS



Dear Provider,

HICAPS provides access to and use of the HICAPS System on the terms and conditions set out in the following attached documents:

- Part A – HICAPS Scheme Claiming Provider Agreement (Scheme Terms & Conditions)
- Part B – HICAPS Private Health Insurance Fund Provider Agreement (PHI Fund Terms & Conditions)

## **Scheme Terms & Conditions**

To the extent you are granted access to the HICAPS System for the purpose of processing claims for the payment of qualifying goods and services by Governmental Schemes (as defined in the Scheme Terms & Conditions), and processing related transactions, you acknowledge and agree that:

- a) your access to, and use of, the HICAPS System for such purposes is governed by and subject to the Scheme Terms & Conditions; and
- b) the Scheme Terms & Conditions constitute a contract between you and HICAPS Pty Limited (ACN 080 688 866).

### **Scheme Claiming Terms and Conditions.pdf**

## **PHI Fund Terms & Conditions**

To the extent you are granted access to the HICAPS System for the purpose of processing claims for the payment of qualifying goods and services by private health insurers, and processing related transactions, you acknowledge and agree that:

- a) your access to, and use of, the HICAPS System for such purposes is governed by and subject to PHI Fund Terms & Conditions; and
- b) the PHI Fund Terms & Conditions constitute a contract between you and each private health insurance fund with whom you transact using the HICAPS System.

### **PHI Claiming Terms and Conditions.pdf**

Please click checkbox on the online application form, to indicate that you have you have **reviewed and agree** to be bound by the Part A – Scheme Terms & Conditions and/or Part B – PHI Fund Terms & Conditions (as applicable).

If you have any questions regards the terms and conditions, please contact HICAPS Sales team at 1800 805 780 or email [HICAPSSales@HICAPS.com.au](mailto:HICAPSSales@HICAPS.com.au).

# PART A

## HICAPS SCHEME CLAIMING PROVIDER AGREEMENT

HICAPS Scheme Claiming Provider Agreement  
Between

HICAPS Pty Limited (ACN 080 688 866) ("**HICAPS**")  
and Provider

The terms and conditions set out in this HICAPS Scheme Claiming Provider Agreement apply to all Providers submitting claims in relation to any applicable Scheme via the HICAPS System.

Separate terms and conditions also apply to Providers submitting claims via the HICAPS System in relation to private health insurers.

## Background

- A. HICAPS provides Scheme claiming services to health practitioners and other entities involved in the provision of goods and services that qualify for full or partial payment by Schemes.
- B. The Provider operates a business that sells qualifying goods or services, and wishes to use the HICAPS System to initiate and process claims in respect of customers to whom the Provider provides qualifying goods and services.
- C. This Agreement sets out the terms on which HICAPS will provide the Provider with access to the HICAPS System to enable the Provider to initiate claims on Schemes for qualifying goods and services.

## General Terms

Subject to the terms of this Agreement, HICAPS agrees to provide the Provider with access to the components of the HICAPS System for which the Provider enrolls and pays the applicable fees.

### 1 Acknowledgement

The Provider agrees and acknowledges that:

- (a) the HICAPS System facilitates the submission of approved Invoices to relevant Schemes for payment in respect of Services provided to an Individual;
- (b) in circumstances where HICAPS intermediates payment by the relevant Scheme to the Provider, HICAPS is not required to make payment to the Provider unless and until HICAPS has received the relevant Invoice amount from the relevant Scheme in cleared funds; and
- (c) where HICAPS does not intermediate payment by the relevant Scheme to the Provider or where HICAPS intermediates payment by the relevant Scheme to the Provider but does not receive the relevant Invoice Amount in cleared funds, HICAPS does not accept or assume any liability for payment of Invoice Amounts to the Provider.

## 2 Representations and Warranties

The Provider represents and warrants to HICAPS that:

- (a) (licences and qualifications) it has obtained and maintains are in full force and effect all permits, licences, consents, approvals, registrations, memberships, authorisations and qualifications required for the provision of Services to the Individual;
- (b) (Transactions)
  - i. any Transactions entered into the HICAPS System are for Services which are entitled to be funded under the relevant Scheme and which have been provided in accordance with Applicable Laws and Scheme Guidelines;
  - ii. the particulars of any Transaction entered into the HICAPS System are true and correct;
- (c) (use of HICAPS System) it shall:
  - i. use Good Industry Practice to ensure that no Harmful Code is uploaded or coded into any HICAPS computer systems (including the HICAPS System) or Transaction Data in connection with the activities under this Agreement;
  - ii. not attempt to circumvent any security feature of the HICAPS System; and
  - iii. only use the HICAPS System as permitted by, and in accordance with, the terms and conditions of this Agreement;
- (d) (applicable laws) it shall comply with all applicable privacy, consumer and other laws and regulations with respect to its:
  - i. provision, use and disclosure of the Transaction Data; and
  - ii. use of the HICAPS System;
- (e) (power) it has all requisite corporate or other power to enter into this Agreement and to carry out the terms of this Agreement, that obligations under this Agreement are valid and legally binding, enforceable against it in accordance with the terms hereof, and that if the Provider is a corporation, then:
  - i. all corporate action on the part of the Provider, its officers, board of directors and shareholders necessary for the performance of its obligations under this Agreement has been taken; and
  - ii. it is a corporation in good standing in its jurisdiction of incorporation;

- (f) to the extent it enters into this Agreement on behalf of one or more persons/entities acting as a ‘Provider’ of Services to Individuals (for example where the person or entity entering this Agreement does so on behalf of a number of ‘Providers’ in a health practice) (each a “Practitioner Provider”) then unless the contrary intention appears, this Agreement is to be read as follows:
- i. where this Agreement relates to the provision of Services to an Individual, or the processing of a Transaction or Quotation, references to ‘Provider’ also include each Practitioner Provider (jointly and severally with the person/entity that enters this Agreement);
  - ii. other references in this Agreement to ‘Provider’ also include each Practitioner Provider on whose behalf it has entered this Agreement (jointly and severally with the person/entity executing this Agreement); and
  - iii. it is responsible for ensuring that each Practitioner Provider on whose behalf it has entered this Agreement is bound by, and complies with, the terms of this Agreement;
- (g) it has read and understands the entire Agreement and desires to be bound by its terms, and it has had the opportunity to consult with counsel; and
- (h) (no representations) without limiting any representations that cannot be disclaimed or limited by law, except as expressly set out in this Agreement, no representations of any kind or character have been made to induce it to execute and enter into this Agreement.

### **3 Undertakings**

The Provider undertakes to HICAPS to:

- (a) (Individual identification) take such steps as are reasonably necessary in order to ensure that the person to whom the Services are provided is the Individual in respect of whom Invoice Amounts are payable;
- (b) (Terminals) comply with the Terminal User Guide when processing Transactions through a Terminal;
- (c) (security and authentication) ensure that its HICAPS System credentials (including password details) are managed in such a manner so as to avoid any unlawful, fraudulent or improper use of the HICAPS System;
- (d) (compliance with laws) comply at all times with all Applicable Laws and Scheme Guidelines in the provision of Services to an Individual, in exercising its rights and fulfilling its obligations under this Agreement and in the collection, storage, use, disclosure and security practices in relation to Transaction Data;

- (e) (maintain insurances) maintain such insurances in respect of the provision of Services as are necessary and/or appropriate; and
- (f) (records) maintain adequate Records of the provision of Services (for at least 5 years or such period required by law) and provide to HICAPS such Records and additional information as may be required from time to time to support Invoices.

#### **4 Suspension**

In addition to its termination rights under clause 11, HICAPS may immediately suspend access to the HICAPS System where:

- (a) HICAPS considers that there is a security or service or other integrity risk to the HICAPS System;
- (b) HICAPS has reason to suspect that the Provider's HICAPS System credentials are being used without required authorisation or for unlawful purposes; or
- (c) HICAPS considers that it must do so in order to comply with any applicable law, or with any Australian Government, applicable Authority or Scheme statement or request.

HICAPS will endeavour to provide notice of any such suspension as soon as is reasonably practicable. The Provider acknowledges, however, that there may be instances where it will not be practicable for HICAPS to provide prior notification of a suspension of access where to do so would delay HICAPS' ability to protect its legitimate business interests (including the protection of the integrity of the HICAPS System), or where HICAPS may not be able to provide notification if prohibited by law.

#### **5 Fees and Payment Terms**

- (a) In consideration for HICAPS providing access to the HICAPS System, the Provider agrees to pay HICAPS the applicable fees notified by HICAPS to the Provider from time to time (subject to clause 5(b) below).
- (b) HICAPS will provide the Provider at least 30 days prior notice of any proposed change to the fees chargeable for access to the HICAPS System. If the Provider does not accept the proposed change in fees, the Provider may terminate this Agreement immediately by providing written notice to HICAPS, in which case:
  - i. this Agreement will terminate at the end of the 30 day notice period;
  - ii. the Provider must stop accessing and using the HICAPS System as of the effective date of termination;

- iii. the Provider must pay all fees applicable to the period prior to the effective date of termination;
- iv. HICAPS may deactivate the Provider's access to the HICAPS System from the effective date of termination.

For the avoidance of doubt, if the Provider continues to use the HICAPS system after the expiry of the notice period regarding the proposed fee change, such use constitutes the Provider's acceptance of the new fee(s).

- (c) The Provider is solely responsible for the bank account information provided to HICAPS and must promptly inform HICAPS of any changes thereto. Changes should be communicated to HICAPS by entering the updated information through the relevant HICAPS System or by contacting HICAPS.
- (d) All payments shall be made in Australian dollars. All fees are non-refundable unless otherwise explicitly stated in this Agreement.
- (e) The Provider agrees to obtain its own advice in relation to good and services, sales and other taxes applicable to payments made to the Provider.
- (f) All payments due to HICAPS shall be made without any deduction or withholding on account of any tax, duty, charge or penalty except as required by law in which case the sum payable by a party in respect of which such deduction or withholding is to be made, shall be increased to the extent necessary to ensure that, after making such deduction or withholding, HICAPS receives and retains (free from any liability in respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding being required.

## **6 Confidential Information**

Confidential Information disclosed by one party to the other party may only be used by the recipient party as necessary to perform its obligations under this Agreement. Neither party shall disclose to any third party Confidential Information disclosed by the other party without the prior written consent of the disclosing party except to the extent that such information is:

- (a) publicly available or becomes so in the future without restriction;
- (b) already in the recipient's possession and lawfully received from sources other than a party without be subject to separate confidentiality obligations;
- (c) information that is required to be disclosed under compulsion of law, provided that notice is given to the other party in order that it may challenge such disclosure; or

- (d) disclosed confidentially by a party on a need to know basis to employees, contractors, third party service providers and/or professional legal or accounting advisers; or
- (e) information that is reasonably required by a Scheme to assess and make payment in relation to Invoices submitted by the Provider including but not limited to, the Provider's name, Australian Business Number, any relevant Scheme identification number, address, contact information and bank account information (such as account name, account number and BSB number).

The Provider agrees that HICAPS may itself or through a third-party service provider, aggregate Transaction Data and use and disclose that information in de-identified form as part of research, advice and other information products HICAPS develops, including, without limitation, providing data analysis to the relevant Scheme.

## **7 Indemnity**

The Provider indemnifies, and will keep indemnified, HICAPS against, and must pay HICAPS on demand, the amount of any Loss which HICAPS, suffers, incurs or is liable for arising from, or any costs incurred in connection with:

- (a) a misrepresentation by the Provider;
- (b) a breach of this Agreement by the Provider;
- (c) any fraudulent act or omission by the Provider or its personnel; or
- (d) the provision of Services by the Provider to an Individual, except to the extent the Loss was caused by HICAPS' negligence, breach of this Agreement, fraud or willful misconduct.

## **8 Warranty and Disclaimer**

- (a) Except to the extent expressly set out in this Agreement, and only to the extent permitted by applicable law, HICAPS makes no warranty of any kind, express, implied or statutory, regarding the HICAPS System.
- (b) Without limiting clause 8(a), above, to the maximum extent permitted by law, and except with respect to any implied condition or warranty the exclusion of which would contravene any applicable law (including the Australian Consumer Law) or cause any part of this clause to be void ("Non-Excludable Condition"), HICAPS disclaims any implied warranties in respect of the HICAPS System or the use thereof by the Provider, including any implied warranties of merchantability or fit for purpose.

- (c) HICAPS's liability to the Provider for breach of any Non-Excludable Condition is limited, at HICAPS's option, to refund of the fees paid (if any) by the Provider for the use of HICAPS System affected by the breach of the Non-Excludable Condition, or to providing the the affected HICAPS System service again.
- (d) The Provider acknowledges that HICAPS has neither represented or warranted that the HICAPS System will be uninterrupted, error free or without delay or without compromise of the security systems related to the HICAPS System, or that all errors will be corrected.

## **9 Liability**

- (a) Indirect Loss. Subject to clause 9(c), neither party will be liable under or in connection with this Agreement for any Indirect Loss.
- (b) Liability Cap. Subject to clause 9(c), the total aggregate liability of each party (and of its Related Bodies Corporate) to the other party (and to its Related Bodies Corporate) for all Loss suffered or incurred by the other party arising out of or in connection with this Agreement, whether in contract, tort or otherwise, will not exceed the greater of:
  - i. \$1,000; or
  - ii. the fees paid or payable by the Provider in the 3 months prior to the event giving rise to the Loss.
- (c) Exceptions to exclusions and limitations of liability. None of the limitations or exclusions of liability in this Agreement will:
  - iii. apply to any Loss:
    - (1) that is covered by the indemnities given by the Provider under clauses 7(a) or (c) of this Agreement;
    - (2) that arises as a result of or in connection with any willful default or fraudulent act or omission of a party or its personnel; or
    - (3) that arises as a result of the Provider's breach of laws (including any Applicable Laws) that are related in any way to the subject matter of this Agreement; or
  - iv. limit recovery by HICAPS of any fees due and owing by the Provider to HICAPS under this Agreement.

## **10 Set-off**

HICAPS may set-off any amounts owing by it to the Provider against any genuinely and reasonably undisputed amounts owing by the Provider to HICAPS.

## **11 Termination**

(a) HICAPS may terminate this Agreement:

- i. with immediate effect if the Provider materially breaches this Agreement, or breaches any material term of this Agreement, and such breach is not capable of remedy, or if it is, the Provider does not rectify that failure within 30 days from the date HICAPS notifies the Provider of the breach; or
- ii. at any time by giving 30 days prior written notice.

(b) The Provider may terminate this Agreement:

- i. with immediate effect if HICAPS materially breaches this Agreement, or breaches any material term of this Agreement; or
- ii. at any time by giving 30 days prior written notice.

## **12 Amendments**

HICAPS may change any terms and conditions of this Agreement, provided that for changes that may be unfavourable to the Provider, HICAPS will provide 30 days prior notice, unless a shorter period is allowed under legislation or industry codes. Subject to the notice period requirements described above, HICAPS may amend this Agreement from time to time by posting a revised version of the Agreement to the relevant HICAPS System on its website, or sending the Provider an email notification or such other form of notification as referred to in clause 16(f).

By continuing to use the HICAPS System after any amendments to the Agreement, the Provider agrees to abide and be bound by any such changes. If the Provider does not agree with any changes made to the Agreement, the Provider must terminate the Agreement by closing the Provider's account and ceasing to use the HICAPS System.

In this Agreement unless the contrary intention appears, a reference to this Agreement or another instrument includes any variation or replacement of them.

### **13 Jurisdiction**

This Agreement is governed by the law in force in the Australian State or Territory in which the Provider's principal place of business is located. Any legal proceedings involving this Agreement can be held in the courts of any State or Territory of Australia. The Provider and HICAPS we will submit to the non-exclusive jurisdiction of those courts and courts of appeal.

### **14 GST Law**

For the purposes of the GST Law, in relation to each Transaction which is a Taxable Supply, the Provider makes the Taxable Supply through HICAPS as agent and the Provider has the obligation to issue a Tax Invoice relating to the Taxable Supply.

### **15 Assignment**

Neither party may transfer, novate or assign any of its rights or obligations under this Agreement (including by way of declaration of trust or grant of security interest) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

### **16 Miscellaneous**

- (a) **Subcontractors.** HICAPS may appoint a subcontractor to perform all or part of its obligations under this Agreement (including any of its Related Bodies Corporate) on the basis that HICAPS, by subcontracting, shall not be relieved of any of its obligations under this Agreement.
- (b) **Compliance with anti-slavery laws.** Without limiting the Provider's obligations under clause 2(d), in performing its obligations under this Agreement, the Provider must:
  - i. not use any form of Forced Labour, Slavery or Servitude (as such terms are defined in clause 16(c) below);
  - ii. not engage in any activity, practice or conduct that would constitute an offence under any Anti-slavery Law (as defined in clause 16(c)) if such activity, practice or conduct was carried out in Australia or other relevant jurisdiction as the case may be;
  - iii. have and maintain throughout the term of this Agreement its own policies and procedures that are designed to ensure its compliance with Anti-slavery Laws;
  - iv. include, in each of its contracts with its subcontractors and/or suppliers, anti-slavery provisions that are at least as onerous as those set out in this clause 16(b);

- v. provide evidence of the implementation of the policies and procedures referred to in clause 16(b)(iii) and 16(b)(iv) when requested to do so by HICAPS.

(c) For the purposes of clause 16(b), the following definitions will apply:

**Anti-slavery Law** means any law which prohibits the use of Slavery, Servitude, Forced Labour, or other similar conditions, including Division 270 of the Criminal Code Act.

**Criminal Code Act** means the *Criminal Code Act 1995* (Cth).

**Forced Labour** means:

- (a) (as defined in the Criminal Code Act) the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:
  - (i) to cease providing the labour or services; or
  - (ii) to leave the place or area where the victim provides the labour or services; and
- (b) similar conditions or practices.

**Slavery** means:

- (a) (as defined in the Criminal Code Act) the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person; and
- (b) similar conditions or practices.

**Servitude** means:

- (a) (as defined in the Criminal Code Act) the condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception:
  - (i) a reasonable person in the position of the victim would not consider himself or herself to be free:
    - a. to cease providing the labour or services; or
    - b. to leave the place or area where the victim provides the labour or services; and

- (ii) the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services, whether or not coercion, threat or deception is used against the victim or another person; and
- (b) similar conditions or practices.
- (c) **Discretion**. Any discretion conferred on HICAPS under this Agreement will be exercised reasonably and in accordance with HICAPS' legitimate business interests.
- (d) **Information from HICAPS**. The Provider can obtain from HICAPS on request general descriptive information about the services of HICAPS as well as the following information and support, including:
  - i. complaint handling procedures;
  - ii. the advisability of the Provider informing HICAPS promptly when it is in financial difficulty; and
  - iii. the advisability of the Provider reading the terms and conditions applying to each service provided to it.
- (e) **Notices**. HICAPS may give the Provider any notice in connection with this Agreement by a notice in the national or local media, by writing to the Provider, by sending a message to an email address the Provider has provided, or by messages delivered through the Provider's Terminal.
- (f) **Precedence**. In the event of any inconsistencies between the terms and conditions of this Agreement and the terms and conditions of the use of the Terminal between the Provider and HICAPS, the terms and conditions applicable to the use of the Terminal (including the Terminal User Guide) shall take precedence.

## 17 Dictionary

In this Agreement:

**'Agency'** has the meaning given to that term in the NDIS Act;

**'Agency Guidelines'** means any guidelines issued by the Agency (including price guides);

**'Agreement'** means this HICAPS Scheme Claiming Provider Agreement between the Provider and HICAPS, including the HICAPS Application Form;

**'Applicable Laws'** means all legislation and subordinate legislation in force from time to time in Australia (including common law and equity as applicable from time to time) and relevant to the provision of the particular Services to Individuals (including, in relation to the NDIS, the NDIS Act and the NDIS Rules and, in relation to the TAC, the *Transport Accident Act 1986* (Vic));

**'Australian Government'** means the Government of the Commonwealth of Australia or any State or local government;

**'Authority'** means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive or administrative body;

**'Cancel Request'** means an electronic message sent to the Scheme through the Network by the Provider for cancellation of a prior Transaction Request;

**'Confidential Information'** means information provided by one party to the other relating to the disclosing party's business, operations or strategies, intellectual or other property, or actual and prospective customers, suppliers or competitors but excluding, for the avoidance of doubt, Transaction Data which will be handled in accordance with any Agreement between the Individual and HICAPS and otherwise in accordance with the HICAPS Privacy Policy;

**'Good Industry Practice'** includes but is not limited practices that are consistent with relevant ISO, IEC and AS/NZ standards and other guides and publications from industry recognised bodies, as reasonably determined by HICAPS. Good Industry Practice does not require certification;

**'GST Law'** has the meaning given to that term in the A New Tax System (*Goods and Services Tax*) Act 1999 (Cth);

**‘Harmful Code’** means any “back door”, “time bomb”, “Trojan Horse”, “worm”, “drop dead device”, “virus” or other computer software routine intended or designed to:

- (a) disable, damage, erase, disrupt or impair the normal operation of any HICAPS computer system (including the HICPAS System) or any other software or data on HICAPS’ computer systems; or
- (b) otherwise have a material adverse impact on the confidentiality, integrity or availability of the Transaction Data;

**‘HICAPS’** means HICAPS Pty Limited (ACN 080 688 866), and where the HICAPS System used by the Provider includes hardware and software provided to the Provider by a Related Body Corporate of HICAPS Pty Limited, such Related Body Corporate is deemed to be a subcontractor of HICAPS Pty Limited under this Agreement;

**‘HICAPS Application Form’** means a form completed by the Provider when registering for use of the HICAPS System, including the details the Provider provides in such form, as such details may be updated by the Provider or HICAPS from time to time;

**‘HICAPS Privacy Policy’** means the privacy policy found at <https://www.hicaps.com.au/common/privacy>, as updated or amended from time to time;

**‘HICAPS System’** means the computer hardware and software, including, without limitation, the Switch and Terminals and all releases, updates and amendments to the computer hardware and software provided by HICAPS or any of its Related Bodies Corporate for the purposes of facilitating Quotations and initiating and processing Transactions in accordance with this Agreement;

**‘Indirect Loss’** means any Loss suffered or incurred by a party as a result of a breach of or default under this Agreement by the other party which does not arise naturally or directly (that is, according to the usual course of things), from the breach or default, including any:

- (a) loss of revenue;
- (b) loss of profit;
- (c) loss of reputation; or
- (d) loss of opportunities, including opportunities to enter into or complete arrangements with third parties, provided, however, that the following Losses will be deemed not to be Indirect Losses:
- (e) costs incurred in mitigating or remedying the effects of the breach or default;

(f) additional administrative and management costs; and

(g) costs incurred that are rendered unnecessary;

**‘Individual’** means a person who is a participant or client in the relevant Scheme and, in relation to the NDIS, has the meaning given to the term ‘participant’ in the NDIS Act;

**‘Invoice’** means a request for payment in respect of Services provided by the Provider to the Individual;

**‘Invoice Amount’** means an amount paid under a Scheme in respect of the provision of Services to an Individual (including, in relation to the NDIS, an NDIS Amount);

**‘Loss’** means any loss, damage, liability, charge, expense, outgoing or costs (including all legal and other professional costs on a full indemnity basis) of any nature or kind;

**‘NDIS’** has the meaning given to the term ‘National Disability Insurance Scheme’ in the NDIS Act;

**‘NDIS Act’** means the *National Disability Insurance Scheme Act 2013* (Cth);

**‘NDIS Amount’** has the meaning given to the term in the NDIS Act;

**‘NDIS Rules’** means the legislative instruments made under the NDIS Act;

**‘Network’** means the HICAPS System, the communication line between a Scheme and the Switch and the communication line between the Switch and a Terminal, and an Online Application, through which Quotations and Transactions are initiated and processed;

**‘Online Application’** means any web based or mobile digital platform authorised by HICAPS, including without limitation digital platforms provided or managed by any Related Body Corporate of HICAPS, that allows for the processing and transmission through the Network of Quotations, Transactions and/or requests for booking Service appointments (if applicable), excluding use or involvement of any Terminal;

**‘Provider’** means the person or persons named in the HICAPS Application Form, and if there are more than one, means each of them separately and every two or more of them jointly;

**‘Quotation’** means a Quotation Request and Quotation Response;

**‘Quotation Request’** means an electronic request to the Scheme given through the Network by a Provider or an Individual in response to a request by an Individual for an estimate of the Individual’s available benefits from the relevant Scheme to satisfy (in whole or in part) the cost of the Services identified in the request for that Individual;

**‘Quotation Response’** means an electronic response given through the Network by, or on behalf of, the Scheme to a Quotation Request;

**‘Records’** means records of the provision of Services including treatment plans, appointment schedules, signed receipts and other supporting documentation;

**‘Related Body Corporate’** has the meaning given in the *Corporations Act 2001* (Cth);

**‘Scheme’** means a scheme funded by any Australian Government or Authority or any other care or entitlement scheme in relation to which Invoices may be submitted through the HICAPS System;

**‘Scheme Guidelines’** means any guidelines, policies or directives issued by the relevant Scheme or any authorised body on behalf of the relevant Scheme (including, in relation to the NDIS, the Agency Guidelines);

**‘Services’** means the goods and/or services provided by the Provider to an Individual (including, in relation to the NDIS, Supports) in respect of which a Scheme may pay a benefit;

**‘Supports’** has the meaning given to that term in the NDIS Act;

**‘Switch’** means the computer hardware and software, including front end processors, required for routing data between Terminals and the relevant Scheme computer systems, or an Online Application and the relevant Scheme computer system, capable of the following functions including, without limitation:

- (a) receiving a Quotation Request, Transaction Request, or Cancel Request from a Provider and forwarding it to a Scheme; and
- (b) receiving a Quotation Response or Transaction Response from a Scheme and forwarding it to a Provider or an Individual;

**‘TAC’** means the Transport Accident Commission;

**‘Taxable Supply’** has the meaning given to that term in the GST Law;

**‘Tax Invoice’** has the meaning given to that term in the GST Law;

**'Terminal'** means any electronic device, and software, and all related equipment (excluding any Online Applications) supplied by or on behalf of HICAPS to the Provider to be used for the purposes of processing and transmitting Transactions through the Network;

**'Terminal User Guide'** means a guide to the operation of a Terminal provided by HICAPS to the Provider;

**'Transaction'** means a Transaction Request and Transaction Response, or Cancel Request and Transaction Response;

**'Transaction Data'** means, in relation to a Transaction, any information in relation to an Individual and/or information about the nature of the treatment, services or goods provided by the Provider to an Individual in respect of which an Invoice has been submitted;

**'Transaction Request'** means an electronic request to the Scheme given through the Network by a Provider for authorisation of a claim;

**'Transaction Response'** means an electronic response given through the Network by, or on behalf of, a Scheme to a Transaction Request, or Cancel Request; and

# **PART B**

## **HICAPS PRIVATE HEALTH INSURANCE PROVIDER AGREEMENT**

# 1. INTERPRETATION

## Definitions

1.1 The following terms shall have the following meanings unless the contrary intention appears:

**Agreement** means this HICAPS Private Health Insurance Fund Provider Agreement Terms and Conditions and includes the HICAPS Application Form.

**Approved Modality** for a Fund means a health modality in which the Fund has agreed to accept transactions through the Network in relation to claims for health services.

**Business Day** means any day other than a Saturday, Sunday or a national or State public holiday.

**Card** means a card supplied by a Fund which complies with:

- (a) the Australian Standard 3524 of 2008 entitled “Identification Cards - Financial Transaction Cards”; or
- (b) such other specifications as agreed between a Fund and HICAPS, such as digital version or a Digital Card.

**Cancel Request** means an electronic message sent to a Fund through the Network by You for cancellation of a prior Transaction Request.

**Cardholder** means a member of a Fund or a person designated by a Fund as a patient who holds a Card and may be entitled to benefits from the Fund in respect of Goods or a Health Service.

**Confidential Information** means the terms of this Agreement and any data or information about a party’s business, operations or customers supplied to, or acquired by, another party under this Agreement or during the negotiations preceding this Agreement by any director, employee, agent, adviser, or officer of the second party and includes, without limitation, as confidential information of a Fund any data or information developed, collated, or obtained by or for You pursuant to, for the purposes of or in connection with this Agreement including, without limitation, information about Quotations and Transactions processed for a Fund through the Network but does not include Transaction Data.

**Digital Card** means any authorised media that may be used to contain membership identification details and transfer those details to the HICAPS System.

**Funds** means each of the private health insurance companies with which HICAPS has entered into a Fund Agreement, as described in the HICAPS Application Form.

**Fund Agreement** means an Agreement between a Fund and HICAPS relating to the provision of the HICAPS System to the Fund for the purposes of that Fund.

**Fund Contact Point** means a telephone operator, or similar immediately available communication modality, acting as a central point of contact for general problem assistance for HICAPS and a Health Service Provider in relation to the Network so far as it relates to the Fund's participation in that service.

**Fund Host System** means the computer hardware and software, including, without limitation, front end processors and all releases, updates and amendments to the computer hardware and software provided by a Fund for the purposes of processing Quotations and Transactions in accordance with this Agreement.

**Good Industry Practice** includes but is not limited practices that are consistent with relevant ISO, IEC and AS/NZ standards and other guides and publications from industry recognised bodies, as reasonably determined by the Fund or HICAPS. Good Industry Practice does not require certification.

**Goods** means goods provided to a Cardholder by You in your capacity as a Health Service Provider.

**Harmful Code** means any "back door", "time bomb", "Trojan Horse", "worm", "drop dead device", "virus" or other computer software routine intended or designed to:

- (a) disable, damage, erase, disrupt or impair the normal operation of any Fund or HICAPS computer system (including the HICPAS System and the Fund Host System) or any other software or data on a Fund's or HICAPS' computer systems; or
- (b) otherwise have a material adverse impact on the confidentiality, integrity or availability of the Transaction Data.

**Health Service** means a service provided to a Cardholder by You in your capacity as a Health Service Provider.

**Health Service Provider** means a person practising as a dentist, physiotherapist, chiropractor, pharmacist, psychologist, ambulance provider, or optometrist, or any other person practising a health or health related service or otherwise rendering products or services in respect of whom a Fund may pay a benefit for a particular service or product rendered by that person to a Cardholder.

**HICAPS** means HICAPS Pty Limited (ACN 080 688 866), and where the HICAPS System used by You includes hardware and software provided to You by a Related Body Corporate of HICAPS Pty Limited, references to "HICAPS" is deemed to also include such Related Body Corporate.

**HICAPS Application Form** means the form completed by You when registering for use of the HICAPS System, including the details You provide in such form, as such details may be updated by You or HICAPS from time to time.

**HICAPS Services** means the services which HICAPS provides under this Agreement, including any services provided via any of HICAPS' Related Bodies Corporate.

**HICAPS System** means the computer hardware and software, including, without limitation, the Switch and Terminals and all releases, updates and amendments to the computer hardware and software provided by HICAPS or any of its Related Bodies Corporate for the purposes of facilitating Quotations and initiating and processing Transactions in accordance with this Agreement.

**HICAPS User Guide** means a guide to using the HICAPS System, including any Terminal User Guide to the extent You use a Terminal.

**Important Declaration** means the declaration that:

- (a) states that the products and services provided by the Health Service Provider:
  - (i) are not subject to any other form of compensation or reimbursement.
  - (ii) do not breach any Fund rules; and
  - (iii) where relevant are based on relevant clinical prescriptions; and
- (b) authorises the Fund to pay proceeds directly to You and to verify any aspect of the claim.

**Insolvency Event** means the happening of any of these events in relation to a party:

- (a) an application is made to a court for an order or an order is made that the party be wound up; or
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the party, or one of them is appointed, whether or not under an order; or
- (c) except to amalgamate while solvent the party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) the party resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or to transfer its business as an ongoing concern to another person; or

- (e) the party is or states that it is insolvent; or
- (f) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), the party is taken to have failed to comply with a statutory demand; or
- (g) the party is or makes a statement from which it may be reasonably deduced that the party is the subject of an event described in section 459C(2)
  - (b) or section 585 of the *Corporations Act 2001* (Cth); or
- (h) the party takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Merchant Service Transaction** means a credit, debit, gift or charge card transaction performed in accordance with a merchant Agreement for all or any part of the cost of goods or services.

**Network** means the HICAPS System, the Fund Host System, the communication line between a Fund and the Switch and the communication line between the Switch and a Terminal, and an Online Application, through which Quotations and Transactions are initiated and processed.

**Online Application** means any web based or mobile digital platform authorised by HICAPS and the Fund, including without limitation digital platforms provided or managed by any Related Body Corporate of HICAPS, that allows for the processing and transmission through the Network of Quotations, Transactions and/or requests for booking Health Service appointments, excluding use or involvement of any Terminal.

**Provider Number** means the identifier registered with HICAPS for the Registered Provider Location.

**Quotation** means a Quotation Request and Quotation Response.

**Quotation Request** means an electronic request to a Fund given through the Network by a Cardholder or a Health Service Provider in response to a request by a Cardholder for an estimate of the Cardholder's available health insurance benefits through membership in the Fund to satisfy (in whole or in part) the cost of the Goods or Health Services identified in the request for that Cardholder.

**Quotation Response** means an electronic response given through the Network by, or on behalf of, the Fund to a Quotation Request.

**Registered Provider Location** means the location address specified in the HICAPS Application Form.

**Related Body Corporate** has the meaning given in the *Corporations Act* 2001 (Cth).

**Relevant Laws** means any legislation, code of practice, guidelines or standards issued by relevant regulators or industry bodies in so far as they relate to this Agreement, a Fund, You, the Goods or Health Services or the HICAPS System.

**Switch** means the computer hardware and software, including front end processors, required for routing data between Terminals and the Fund Host System, or an Online Application and the Fund Host System, capable of the following functions including, without limitation:

- (a) receiving a Quotation Request, Transaction Request, or Cancel Request from a Health Service Provider and forwarding it to a Fund; and
- (b) receiving a Quotation Response or Transaction Response from a Fund and forwarding it to a Health Service Provider or a Cardholder.

**Tax Invoice** means a tax invoice within the terms of subsection 29-70 of the A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time. In addition, this must also include (without limitation) the following information:

- (a) Provider Number,
- (b) provider name,
- (c) appropriate item numbers and associated item descriptions,
- (d) itemised charges, itemised benefit amounts (where a benefit was paid by a Fund),
- (e) any discounts,
- (f) application date of service per item,
- (g) item and transaction level response codes and descriptors,
- (h) patient name and patient ID, and
- (i) system data required for Transaction verification, including system date and time and retrieval reference number.

**Terminal** means any electronic device, and software, and all related equipment (excluding any Online Applications) supplied by or on behalf of HICAPS to You to be used for the purposes of processing and transmitting Quotations and Transactions through the Network.

**Terminal User Guide** means a guide to the operation of a Terminal provided by HICAPS to You.

**Transaction** means a Transaction Request and Transaction Response, or Cancel Request and Transaction Response.

**Transaction Data** means in relation to a Transaction:

- (a) any identification of a Cardholder for whom an insurance claim is or has been made in the Transaction;
- (b) information about the nature of the treatment, services or goods provided by You to a Cardholder for whom an insurance claim is or has been made on a Fund in the Transaction; and
- (c) information related to the identification of the Health Service Provider, including but not limited to the Provider Number.

**Transaction Request** means an electronic request to a Fund given through the Network by a Health Service Provider for approval of a health insurance claim by a Fund.

**Transaction Response** means an electronic response given through the Network by, or on behalf of, a Fund to a Transaction Request, or Cancel Request.

**You** or **Yourself** means the person or persons named in the HICAPS Application Form, and if there are more than one, means each of them separately and every two or more of them jointly.

**We** or **Us** means a Fund, and if there are more than one, each of them separately.

## **Interpretation**

- 1.2 In this Agreement unless the contrary intention appears:
- (i) a reference to this Agreement or another instrument (including, without limitation, the HICAPS User Guide) includes any variation or replacement of them;
  - (ii) a reference to a member includes a contributor or any other person, regardless of how designated by a Fund, who pays premiums to the Fund for health insurance.

## **Operation**

- 1.3 This Agreement is intended to operate as a separate Agreement between You and a Fund. Accordingly, the rights, obligations and liabilities of a Fund pursuant to this Agreement are several and are not joint or joint and several with any other Fun

## **Application to Health Service Providers**

- 1.4 If You have entered into this Agreement on behalf of one or more Health Service Providers, then (unless the contrary intention appears) this Agreement is to be read as follows:
- where the Agreement relates to the provision of treatment, Goods or Health Services to a Cardholder or the processing of a Transaction or Quotation, references to You also include the Health Service Provider who has provided the relevant treatment, Goods or Health Services (jointly and severally with You); or
  - other references in this Agreement to You also include each of the Health Service Providers (jointly and severally with You).
  - You are responsible for ensuring that each Health Service Provider on whose behalf you have entered this Agreement is bound by, and complies with, the terms of this Agreement to the extent that they apply to that Health Service Provider as set out in this clause 1.4.

## **2. CONDITIONS PRECEDENT**

- 2.1 This Agreement will not come into force until HICAPS has made the HICAPS System available to You and a Fund.

## **3. HICAPS SYSTEM**

- 3.1 A Fund will at its own discretion, decide from time to time:
- whether it will make the Terminal or an Online Application available to its members and Health Service Providers; and
- 3.2 the Approved Modalities in respect of which it will transact with its members and Health Service Providers using the Network. A Fund agrees to settle health insurance claims initiated by You through the Network in accordance with this Agreement, except that:
- a Fund does not agree to settle health insurance claims or respond to Quotation Requests through the Network using Terminals or an Online Application if that method of transacting is not made available by that Fund (including if either the Fund's or Your participation in an Online Application has been terminated under clause 7);
  - a Fund does not agree to settle health insurance claims or respond to Quotation Requests through the Network for Goods or Health Services that are not within an Approved Modality; and

- this Agreement does not impose any obligations on a Fund in relation to:
  - (i) health insurance claims or Quotation Requests submitted using a Terminal or an Online Application if that method of transacting is not made available by that Fund; or
  - (ii) Goods or Health Services outside the Approved Modalities.

3.3 A Fund is not responsible for ensuring the availability of the HICAPS System to You.

3.4 You must do the following:

- not disadvantage a Cardholder, such as by charging a fee, solely because a health insurance claim is to be processed through the Network in respect of Goods or a Health Service (however, this clause does not prevent charging for Merchant Service Transactions in accordance with your merchant Agreement);
- provide the Goods or Health Service to a Cardholder to which a Transaction Request relates prior to initiating the Transaction Request;
- not make any representation in connection with Goods or a Health Service which may bind a Fund;
- stop accepting a Card in respect of a Fund if:
  - (i) acting in accordance with its legitimate business interests, the Fund tells You to do so; or
  - (ii) this Agreement terminates in respect of that Fund;
- immediately stop using the Network to process health insurance claims using a Transaction request and request quotations using a Quotation request in respect of a Fund when the Fund requests You to do so in circumstances where (but not limited to) the Fund reasonably suspects that there has been inappropriate activity and/or You are in breach of this Agreement;
- retain and return a Card to a Fund where the Fund, acting in accordance with its legitimate business interests, requires You to do so;
- notify HICAPS of the name and provider number of any Health Service Provider who may use a Terminal or an Online Application in respect of this Agreement and use reasonable endeavours to notify HICAPS immediately in writing of any change in those details including the removal or addition of any such Health Service Provider;
- where a Cardholder requires a Quotation and the Fund has agreed to process Quotation Responses, ensure that a Quotation Request is forwarded to the Cardholder's Fund and a Quotation Response is received

by return before the Goods and/or Health Service the subject of Quotation is provided to that Cardholder. Quoting must only be done at the request of the cardholder once the Goods or Health Service has been determined and agreed to by the Cardholder. The details in the Quotation must be accurate, true, and supported by relevant evidence which must be provided to the relevant Fund upon request;

- not process a Transaction Request health insurance claim unless:
  - (i) specifically authorised by Relevant Laws; and
  - (ii) You reasonably believe that each claim is valid.
- only process Transactions and submit Quotation Requests for the provision of Goods or Health Service(s) performed (or, in the case of Quotation Requests, to be performed) at the Registered Provider Location, except where a Fund authorised the provision of Goods or Health Service(s) and processing of Transactions at a location other than the Registered Provider Location; and
- where applicable, ensure that the identifier of any Goods or Health Service(s) contained in any Quotation Request or Transaction Request is in accordance with any applicable Agreement or understanding between Funds and the relevant professional association about the descriptions of services for which private health insurers will pay health insurance claims.

3.5 A Fund must establish and maintain a Fund Contact Point for the term of this Agreement which must be made available during the Fund's normal business hours.

## **4. HANDLING TRANSACTIONS**

4.1 You must comply with the Terminal User Guide when processing Transactions and Quotations through a Terminal.

4.2 In relation to a health insurance claim to be made on a Fund You must do the following:

- where the claim is to be processed through a Terminal:
  - (i) process the claim through a Terminal in a Cardholder's presence as soon as reasonably practicable after the related Goods and/or Health Service has been provided to the Cardholder;
  - (ii) only process the claim through a Terminal using a Card;
  - (iii) use reasonable care to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card and, in particular, use reasonable endeavours to verify the identity of a Cardholder independently from the Card;

- (iv) require the Cardholder to review and sign the receipt, certifying the Important Declaration, generated by a Terminal where a Transaction Request, or Cancel Request is made;
- (v) give the Cardholder a copy of the signed receipt referred to in paragraph 4.2(a)(iv) and retain the original signed receipt referred to in paragraph 4.2(a)
  - (iv) for at least 24 months or any longer period required by law after the Transaction Request has been processed through a Terminal;
- (vi) ensure that the signed receipt referred to in paragraph 4.2(a)
  - (iv) accurately describes the Goods and/or Health Service(s) that have been provided to the Cardholder and that such a description is consistent with the identifier of the Goods and/or Health Service(s) used in the Transaction Request;
- (vii) provide a Fund with evidence, including treatment plans, treatment records, laboratory records, appointment schedules, signed receipts, copies of Tax Invoices, and other supporting documentation as requested, by the Fund acting reasonably, of a Transaction processed for the purposes of that Fund within 10 Business Days of the Fund requesting that evidence or such reasonable period requested by the Fund; and
- (viii) retain other documentation referred to in paragraph 4.2(a)
  - (vii) for at least five years or any longer period required by law.
- where the claim is to be processed through an Online Application:
  - (i) process the claim at the time the Cardholder has ordered and committed to purchase the Goods and/or Health Service;
  - (ii) use reasonable care to detect unauthorised use of the Cardholder's details;
  - (iii) require the Cardholder review the claim details, including item numbers, item descriptions and claim amounts, and record the Cardholder's acceptance of the Important Declaration generated by your website, where a Transaction Request or Cancel Request being made;
  - (iv) provide the Cardholder with a Tax Invoice, and retain a copy of that Tax Invoice for at least 24 months or any longer period required by law after the Transaction Request has been processed through the Online Application;

- (v) provide a Fund with evidence, including treatment plans, treatment records, laboratory records, appointment schedules, signed receipts, copies of Tax Invoices, and other supporting documentation as requested, by the Fund acting reasonably, of a Transaction processed for the purposes of that Fund within 10 Business Days of the Fund requesting that evidence or such reasonable period requested by the Fund; and
- (vi) retain other documentation referred to in 4.2(b)(v) for at five years or any longer period required by law.
- only use a Terminal or Online Application authorised by HICAPS and the Fund for processing the claim through the Network; and
- where Goods that have been claimed in a Transaction are returned to You and You have agreed to process a refund or provide alternative replacement Goods, and where the claim for those would differ from the original claim, agree a process with the Fund for reversing or adjusting the claim for Goods within 10 Business Days or other period reasonably agreed with the Fund.

4.3 Where You initiate a health insurance claim on behalf of a Cardholder, You must take all reasonable steps to satisfy Yourself that:

- all particulars are true and correct including, without limitation, all item numbers and codes that are included in a Transaction Request represent an accurate description of the Goods and/or Health Service delivered;
- the Transaction Request will be valid and acceptable; the relevant Cardholder is not disputing liability for the Goods and/ or Health Service the subject of the Transaction Request; and
- the Goods and/or Health Service(s) in the Transaction were performed or supplied at the Registered Provider Location unless otherwise authorised by the Fund.

## 5. SETTLEMENT OF TRANSACTIONS

- 5.1 You and a Fund acknowledge that the Fund is solely responsible for verifying the details of a Transaction Request or Cancel Request and for approving or rejecting the Transaction Request or Cancel Request. A Fund is under no obligation to approve a Transaction Request or Cancel Request.
- 5.2 Where a Fund approves a Cancel Request, the Transaction Request to which the Cancel Request relates is immediately cancelled.
- 5.3 A Transaction Request is not valid if:
- the Transaction Request is illegal or any particulars of a health insurance claim are not true;
  - the Transaction Request is not authorised by a Cardholder to which a Transaction Request relates;
  - in the case of Transaction Requests made via a Terminal, You have not provided the Goods and/or Health Service(s) to the patient/customer;
  - in the case of Transaction Requests made via an Online Application, You have not:
    - (i) provided the Goods or Health Service(s) to the patient/ customer; or
    - (ii) in respect of Goods to be delivered to, or made available for collection by, a patient/ customer that is not physically present, you have not completed the sale and initiated the process for delivery or collection of the relevant Goods, to the Cardholder to which the Transaction Request relates before processing the Transaction Request;
  - another person provided the Goods and/or Health Service(s) to which the Transaction Request relates;
  - the Cardholder does not confirm that each claim is certified by the Cardholder in accordance with clause 4.2 of this Agreement;
    - (i) in the Fund's reasonable opinion, you have breached either clause 3.4 or 4.2 of this Agreement; or
    - (ii) this Agreement was terminated in respect of that Fund before the date of the Transaction Request; and this clause applies even if a Fund has approved the Transaction Request.
- 5.4 A Transaction Request is not acceptable if the Cardholder disputes liability for the Goods and/or Health Service the subject of the Transaction Request at any time for any reason and this clause applies even if a Fund has approved the Transaction Request.

- 5.5 Subject to clause 5.8, where a Fund approves a Transaction Request or Cancel Request, it must calculate for each day the following:  $T - C$  where:
- T = the total of amounts the Fund has authorised for payment as a result of each Transaction Request made on the relevant day;
- C = the total of amounts the subject of each Cancel Request which is authorised by a Fund and which has not previously been the subject of settlement under this clause.
- 5.6 Each Fund must pay to You the amount calculated for the purposes of clause 5.5 within 10 Business Days of the day for which the amount is calculated or other period reasonably agreed with You, if that amount is a positive amount. If the amount is a negative amount then it must be paid by You to the Fund within 10 Business Days of the day for which the amount is calculated in the manner agreed between them or other period reasonably agreed with the Fund.
- 5.7 A payment to You under clause 5.6 must be made by the Fund by direct credit to the bank account nominated by you or as otherwise agreed.
- 5.8 Where a Fund has settled a Transaction Request pursuant to clause 5.6, the Fund may require You to pay back the amount relating to the Transaction Request if the Transaction Request is not valid or acceptable and the Fund may direct HICAPS to debit the account nominated by You for settlement adjustments.
- 5.9 You must not withhold any payment under this Agreement or make a deduction from it for any reason including because you claim to have a set-off, counterclaim, or other right against a Fund or any other person.
- 5.10 You acknowledge and agree that you must promptly advise HICAPS of any changes to your bank account details and that any failure to do so means that the Fund will not be able to make payments to your bank account in accordance with this Agreement. If you do not advise HICAPS of your requisite bank account details by the second anniversary of the Fund receiving a valid claim, the Fund will not be liable to pay you for that claim.
- 5.11 A Fund must establish a fair policy for dealing with disputes about Transactions.
- 5.12 You acknowledge and agree that HICAPS will give a Fund details of your business that You have provided, including but not limited to the Provider Number, for the purpose of processing Transactions and otherwise administering its health insurance business.

## **6. CARD NOT PRESENT TRANSACTIONS**

- 6.1 As sales activity via the internet and other remote channels is increasing, Health Service Providers need to ensure that they are familiar with the increased risks of submitting claims when a Card is not physically present for verification.
- 6.2 Any Transaction conducted via the telephone, fax, mail or internet is known as a 'card not present' Transaction and carries additional risks.
- 6.3 If a Cardholder disputes a 'card not present' Transaction, the Health Service Provider is at risk of having that Transaction reversed. The risk of all 'card not present' Transactions resides with the Health Service Provider, not the Fund, HICAPS, any of HICAPS Related Bodies Corporate or the Cardholder.
- 6.4 It is important that You have policies and procedures in place to verify the identity of the Cardholder before allowing the Transaction to go ahead.
- 6.5 The Fund has the right to reverse a Transaction if, upon reasonable request, sufficient evidence verifying the Cardholder's identity is not promptly made available to the Fund. This right exists even after the Transaction has been paid.

## **7. CONFIDENTIAL INFORMATION**

- 7.1 Subject to the remainder of this clause:
  - all Confidential Information relating to a party is passed to and received by the other party in the strictest confidence; and
  - a party holding Confidential Information of the other party must not disclose, divulge, or grant access to such Confidential Information other than to its directors, employees, agents, advisers, officers, or service providers to the extent required under this Agreement, and shall not permit any of the directors, employees, agents, advisers, officers, or service providers to disclose, divulge or grant access to such information to other persons except to the extent required by law. A party who has received Confidential Information from another party under this Agreement must, at the request of the other party, have delivered to that party all documents or other materials containing or referring to that Confidential Information which are in its possession, power or control or in the possession, power or control of any other person who has received that information from the party to whom the request is directed.

- 7.2 Without limitation to the remainder of this clause, each party agrees:
- to use Confidential Information of the other party only for the purposes of fulfilling its obligations under
  - this Agreement;
  - not to disclose Confidential Information of the other party without the written authority of that party except for the purpose of fulfilling its obligations under this Agreement;
  - to immediately notify the other party where it becomes aware that disclosure of Confidential
  - Information may be required by law and any applicable stock exchange requirements (including any stock exchange disclosure requirements);
  - not to transfer Confidential Information outside Australia, or allow a person outside Australia to have access to it, without the prior approval of the other party;
  - to ensure that any person requiring access to Confidential Information (including, without limitation, any employee or approved sub-contractor of the other party) makes an undertaking not to access, use, disclose or retain Confidential Information except in performing their duties to the party and is informed by the party that failure to do so may lead to the party taking action against the relevant person;
  - to immediately notify the other party where it becomes aware of a breach of its obligations of confidentiality under this Agreement by itself or as a result of the actions of any other person; and
  - to take all reasonable measures to ensure Confidential Information is protected against loss, and against unauthorised access, use, modification, disclosure and that only authorised personnel have access to Confidential Information.
- 7.3 The obligations of a party under this clause do not apply to any data or information which the party demonstrates:
- was in widespread use and generally available at the time of the use or disclosure;
  - was already in the party's possession at the date of this Agreement; or
  - was subsequently developed, collated or obtained by the party wholly independently of this Agreement and without any breach of any obligation of confidence owed to the other party.
- 7.4 Notwithstanding any other clause in this Agreement, unless You advise otherwise, You agree that HICAPS and the Fund may, acting reasonably, publish contact details of your business that You have provided (including,

but not limited to business name, Registered Provider Location, telephone number, facsimile number, email address and website) to promote the HICAPS service , including publishing details of Health Service Providers that use HICAPS services in any format (including searches and maps). Where You have entered into this Agreement on behalf of any other Health Service Providers, You confirm and warrant that those Health Service Providers have provided You with their prior authorisation and consent to enter this Agreement on their behalf, including that You have their authorisation to agree on their behalf that HICAPS or the Fund may acting reasonably publish contact details of those Health Service Providers' business (including, but not limited to business name, Registered Provider Location, telephone number, facsimile number, email address and website) to promote the HICAPS service, including publishing details of Health Service Providers that use HICAPS services in any format (including searches and maps).

- 7.5 You declare that where personal and/ or business information (including, but not limited to business name, Provider Number, Registered Provider Location, telephone number, facsimile number, email address and website) has been or will be provided in the HICAPS Application Form or will be provided by the applicant's nominated authority when completing the HICAPS

Application Form, or is otherwise provided as a result of the ongoing use of the HICAPS System, the applicant has made or will make each such individual aware of the fact and:

- that their personal and/or business information has been collected by HICAPS to for the purpose of managing, administering and processing Transactions, and protecting against fraud;
- that their personal and/or business information (including, but not limited to business name, Provider Number, Registered Provider Location, telephone number, facsimile number, email address and website) may be disclosed to other organisations involved in the provision, management, administration and processing of Transactions, or as required or otherwise permitted by law, or with their consent;
- that the applicant may not be able to obtain the HICAPS service the subject of the HICAPS Provider Agreement application if that individual's personal and/or business information is not provided;
- that the individual can gain access to their personal and/or business information by contacting HICAPS.

7.6 HICAPS respect your privacy and handle your information in accordance with our privacy policy. For more information please see the Privacy Statement on the HICAPS website go to <https://www.hicaps.com.au/common/privacy>

## **8. WARRANTIES**

8.1 You represent and warrant that:

- (licences and qualifications) You have obtained and maintain in full force and effect all permits, licences, consents, approvals, registrations, memberships, authorisations and qualifications required for the provision of the Health Services You provide to Cardholders;
- (Transactions) the particulars of any Transaction entered into the HICAPS System are true and correct;
- (use of HICAPS System) You shall:
  - (i) use Good Industry Practice to ensure that no Harmful Code is uploaded or coded into any Fund or HICAPS computer systems (including the HICAPS System and Fund Host System) or Transaction Data in connection with the activities under this Agreement;
  - (ii) not attempt to circumvent any security feature of the HICAPS System or HICAPS Service; and
  - (iii) only use the HICAPS System as permitted by, and in accordance with, the terms and conditions of this Agreement;
- (applicable laws) You shall comply with all applicable privacy, consumer and other laws and regulations with respect to Your:
  - (i) provision, use and disclosure of the Transaction Data; and
  - (ii) use of the HICAPS System;
- (power) You have all requisite corporate or other power to enter into this Agreement and to carry out the terms of this Agreement, that this Agreement constitutes a valid and legally binding obligation, enforceable against You in accordance with its terms, and if You are a corporation, then:
  - (i) all corporate action on the part of You, your officers, board of directors and shareholders necessary for the performance of Your obligations under this Agreement has been taken; and
  - (ii) You are a corporation in good standing in Your jurisdiction of incorporation;

- You have read and understand the entire Agreement and desire to be bound by its terms, and have had the opportunity to consult with counsel;
- (no representations) without limiting any representations that cannot be disclaimed or limited by law, except as expressly set out in this Agreement, no representations of any kind or character have been made to induce You to execute and enter into this Agreement.

8.2 You undertake to Funds to:

- (security and authentication) ensure that your HICAPS System credentials (including password details) are managed in such a manner so as to avoid any unlawful, fraudulent or improper use of the HICAPS System;
- (compliance with laws) comply at all times with all Relevant Laws in the provision of Health Services to Cardholders, in exercising Your rights and fulfilling Your obligations under this Agreement and in the collection, storage, use, disclosure and security practices in relation to Transaction Data; and
- (maintain insurances) maintain such insurances in respect of the provision of Health Services as are necessary and/or appropriate.

## **9. TERMINATION**

9.1 This Agreement automatically ends:

- upon receipt of a signed HICAPS merchant closure form or upon receipt of other written notification from HICAPS that it will no longer provide You access to the HICAPS System (whether via a Terminal or an Online Application). For the avoidance of doubt if You have been using both a Terminal and one or more Online Applications and You terminate Your use of one of these products, this Agreement will continue to apply to the other product(s) unimpeded;
- on the giving of 30 days' notice to You if it has been more than 2 years since You processed a claim through a Terminal or an Online Application; or
- to the extent that it relates to a Fund, upon termination of a Fund Agreement between HICAPS and that Fund.

9.2 You or a Fund may end this Agreement to the extent that it relates to that Fund immediately if:

- the other party commits a material breach of its obligations under this Agreement which breach is not remedied within 60 days of receipt of a notice in writing requesting the breach be remedied or is not remedied within that period to the satisfaction of the party giving the notice; or
- an Insolvency Event has occurred in relation to that other party.

- 9.3 A Fund may also end this Agreement to the extent that it relates to that Fund (whether as a whole or in relation to the Fund's use of either the Terminal or an Online Application) on the giving of 60 days' notice to You.
- 9.4 The ending of this Agreement or any part of it to the extent that it relates to a Fund does not affect a party's rights and obligations which arose before it ended and, if the party terminating this Agreement is a Fund, that termination does not affect the continued operation of this Agreement so far as other Funds are concerned.
- 9.5 Unless otherwise agreed to by Us, the Provider shall within 10 Business Days after the termination of this Agreement at its cost return to HICAPS the Terminal, provided that in the event that the Terminal is not returned within this period, the Provider agrees to continue making payment to HICAPS for any fees (if applicable) relating to that Terminal until such time as it has been returned back to HICAPS.

## **10. COSTS AND EXPENSES**

- 10.1 Each party shall bear its own costs and expenses in connection with the preparation, negotiation and execution of this Agreement except for stamp duty.
- 10.2 You agree to pay any stamp duty payable or assessed in connection with this Agreement.

## **11. JURISDICTION**

- 11.1 This Agreement and the transactions contemplated by it are governed by the laws in force in the Australian State or Territory in which your principal place of business is located.
- 11.2 Any legal proceedings involving this Agreement can be held in the courts of any State or Territory of Australia. You, the Funds and HICAPS submit to the non-exclusive jurisdiction of those courts.

## **12. MISCELLANEOUS**

### **Assignment**

12.1 A party may not assign its rights under this Agreement.

### **Sub-contractors**

12.2 A Fund may appoint a sub-contractor to perform all or part of its obligations under this Agreement on the basis that the Fund, by sub-contracting, shall not be relieved of any of its obligations under this Agreement.

### **Relevant Laws**

12.3 Each party must comply with all Relevant Laws:

- in exercising its rights and fulfilling its obligations under this Agreement; and
- governing the collection, storage, use, disclosure and security practices in relation to Transaction Data.

### **Compliance with anti-slavery laws**

12.4 Without limiting Your obligations under clause 12.3, in performing its obligations under this Agreement You must:

- a. not use any form of Forced Labour, Slavery or Servitude (as such terms are defined in clause 12.5 below);
- b. not engage in any activity, practice or conduct that would constitute an offence under any Anti-slavery Law (as defined in clause 12.5) if such activity, practice or conduct was carried out in Australia or other relevant jurisdiction as the case may be;
- c. have and maintain throughout the term of this Agreement its own policies and procedures that are designed to ensure Your compliance with Anti-slavery Laws;
- d. include, in each of Your contracts with Your subcontractors and/or suppliers, anti-slavery provisions that are at least as onerous as those set out in this clause 12.4;
- e. provide evidence of the implementation of the policies and procedures referred to in clause 12.4(c) and 12.4(d) when requested to do so by HICAPS or a Fund.

12.5 For the purposes of clause 12.4, the following definitions will apply:

**Anti-slavery Law** means any law which prohibits the use of Slavery, Servitude, Forced Labour, or other similar conditions, including Division 270 of the Criminal Code Act.

**Criminal Code Act** means the *Criminal Code Act 1995* (Cth).

**Forced Labour** means:

- (a) (as defined in the Criminal Code Act) the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:
  - (i) to cease providing the labour or services; or
  - (ii) to leave the place or area where the victim provides the labour or services; and
- (b) similar conditions or practices.

**Slavery** means:

- (a) (as defined in the Criminal Code Act) the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person; and
- (b) similar conditions or practices.

**Servitude** means:

- (a) (as defined in the Criminal Code Act) the condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception:
  - (i) a reasonable person in the position of the victim would not consider himself or herself to be free:
    - to cease providing the labour or services; or
    - to leave the place or area where the victim provides the labour or services; and
  - (ii) the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services, whether or not coercion, threat or deception is used against the victim or another person; and
- (b) similar conditions or practices.

12.6 Any discretion conferred on a Fund under this Agreement will be exercised reasonably and in accordance with the Fund's legitimate business interests.

### **Information from HICAPS**

12.7 You can obtain from HICAPS on request general descriptive information about the services of HICAPS, including:

- complaint handling procedures;
- the advisability of You informing HICAPS promptly when you are in financial difficulty; and
- the advisability of You reading the terms and conditions applying to each service provided to you.

### **Notices**

12.8 HICAPS or a Fund may give You any notice in connection with this Agreement by a notice in the national or local media, by writing to You, by sending a message to an email address you have provided, or by messages delivered through Your Terminal.

### **Variations**

12.9 HICAPS may change any terms and conditions of this Agreement. HICAPS will give You 30 days prior notice of a change that may be unfavourable to You, unless a shorter period is allowed under legislation or industry codes. If the change is favourable to You, HICAPS will provide notice by posting a revised version of the Agreement on its website. If you don't agree with a change HICAPS makes or is proposing to make, You may terminate this Agreement by notifying HICAPS in writing.

12.10 HICAPS does not control the terms on which any Fund, or the Commonwealth of Australia (as provider of Medicare benefits) engages with You. If a Fund, or the Commonwealth of Australia, changes the terms on which it deals with you and this requires a change to HICAPS services, HICAPS will give 30 days prior notice, or a shorter period if HICAPS gives notice of the change with reasonable promptness after we are notified of the change. However, HICAPS need not give notice if the Fund, or the Commonwealth of Australia has publicised the change.





# MORE INFORMATION

Visit [hicans.com.au](https://hicans.com.au), or  
Call HICAPS hotline on **1800 80 57 80**  
Monday to Friday 8am – 6pm (EST)



HICAPS Pty Ltd ABN 11 080 688 866

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**a  nab company**