

# HICAPS Digital User Agreement

Terms and Conditions



## Summary of some key terms

This is a brief summary of some key terms of your Digital User Agreement Terms and Conditions. Please note this high level summary is not intended to be relied upon as an exhaustive or accurate list of all the terms. We recommend you carefully read through the Terms and Conditions and any other documents we provide before accessing HICAPS' services.

### HICAPS Digital User Agreement

	Topic	What?	Clause
1	Acting reasonably	We are required to act fairly and reasonably when exercising a discretion under the terms of this agreement.	Clause 12
2	Termination	We may suspend or terminate the licence granted to you and remove access to the HICAPS System under limited circumstances, including where there has been a material breach of these terms.	Clause 6.1
3	Sharing information	We may use third party service providers in connection with the provision of the HICAPS System or as required for HICAPS' internal business purposes. We may share information you provide or make available to us with such third parties to the extent required for these purposes.	Clause 8.2
4	Suspension of access	Where it is in HICAPS' legitimate business interests to do so, we may suspend your access to the HICAPS System at any time without notice or compensation.	Clause 8.3
5	Amendments	We may change the terms and conditions from time to time by posting a revised version on the HICAPS App and/or HICAPS Website. Where the change is unfavourable to you, we will notify you in writing. If you do not agree with these changes, you must terminate the Agreement by closing your account and cease using HICAPS' service.	Clause 9

# Your use of the HICAPS System constitutes acceptance of this agreement.

## 1 Definitions

In these Terms and Conditions:

**Account** means the account of a User on HICAPS System restricted by a username and password which is used to access HICAPS System;

**Agreement** means the agreement constituted by these Terms and Conditions, the Policies, any Further Agreement and your completion of the online registration form;

**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 party any data or information developed, collated or obtained by or for You pursuant to, for the purposes of or in connection with this Agreement;

**Further Agreement** means any further agreement between yourself and HICAPS in relation to a particular use of HICAPS System;

**Intellectual Property Rights** means all intellectual property rights, including: patents, copyright, rights in circuit layouts, registered designs, trademarks; and any application or right to apply for registration of any of those rights;

**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 Apps** means the HICAPS applications for use on a device;

**HICAPS Digital Platform** means the electronic device comprising of services, applications and solutions that allows You to access by way of an electronic interface the claims and payments systems offered by HICAPS and its Related Body Corporates under this Agreement.

**HICAPS Website** means the website at [www.HICAPS.com.au](http://www.HICAPS.com.au);

**HICAPS Privacy Policy** means the privacy policy issued by HICAPS made available on the relevant HICAPS Digital Platform, HICAPS App and/or HICAPS Website (as updated or amended from time to time);

**HICAPS System** means the computer hardware and software and services offered by HICAPS, including, without limitation, the use of HICAPS Digital Platform, HICAPS App and/or the HICAPS Website 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 the HICAPS Digital Platform, HICAPS App and/or the HICAPS Website in accordance with this agreement.

**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;

**Policies** mean the policies applicable to HICAPS (including the HICAPS Privacy Policy) made available on the HICAPS App and/or HICAPS Website (as updated or amended from time to time);

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

**Terms and Conditions** means these Terms and Conditions (as updated or amended from time to time);

**User** means a person who has an Account created by HICAPS for the purpose of allowing that person to access and use HICAPS System for the

purpose of purchasing or receiving payment in respect of goods and/or services; and

**You** means the User and **your** is interpreted accordingly.

In these Terms and Conditions, any use of the verb includes, or of words such as for example or such as, do not limit anything else that is included in general speech.

## **2 Acceptance of Terms and Conditions**

By creating an Account, you agree to be bound by these Terms and Conditions and any Policies.

## **3 Grant of Licence**

HICAPS grants you a revocable, non-exclusive and non-transferable licence to participate in the HICAPS System.

## **4 Your Obligations**

- 4.1 You are responsible for maintaining the confidentiality of the Account identification, password, security questions and answers and any other information specific to your Account. This includes ensuring the ongoing security of such items by regularly updating your security information.
- 4.2 You must take every reasonable precaution to prevent the spread or diffusion of any software contamination including computer viruses and trojans.
- 4.3 You must comply with all applicable laws in accessing or using the HICAPS System.
- 4.4 You must urgently but in any event by no later than the end of the next day report any unauthorised use of the Account to HICAPS.

## **5 Intellectual Property Rights**

You acknowledge that these Terms and Conditions do not transfer any Intellectual Property Rights to you in HICAPS, the HICAPS Apps, the HICAPS Website or its contents.

## 6 Termination

- 6.1 HICAPS may, acting reasonably and in accordance with its legitimate business interests having regard to clause 12, suspend or terminate the licence granted under clause 3 and remove your access to and your participation in the HICAPS System at any time, for example (but not limited to):
- (a) where there is a material breach of any of these Terms and Conditions (including a misleading, inaccurate or incorrect representation and warranty under clause 8.6); or
  - (b) if there is a reasonable suspicion that the Account has been used for unauthorised, unusual or illegal activity; or
  - (c) if the Account has not been accessed for more than 12 months.
- 6.2 Users may terminate this Agreement by calling HICAPS Sales number **1800 805 780**.
- 6.3 On termination of these Terms and Conditions your access to the HICAPS System will be removed by HICAPS.
- 6.4 Despite any other provision of this Agreement, this clause 6 and clauses 5, 7, 8 and 10 will survive termination of this Agreement.

## 7 Indemnity

You agree to indemnify HICAPS and hold us, our officers, directors and employees and Related Body Corporates harmless from any loss, claim or legal liability (including legal fees) arising out of your breach of the Agreement or your breach of any law or the rights of a third party relating to your use of the HICAPS System, except to the extent HICAPS' fraud, negligence or misconduct (or the fraud, negligence or misconduct of HICAPS' officers, directors, employees or Related Body Corporates) contributed to the relevant loss, claim or legal liability.

## 8 Miscellaneous

- 8.1 HICAPS does not guarantee continuous, uninterrupted or secure access to the HICAPS System.
- 8.2 You acknowledge and agree that HICAPS may use third party service providers in connection with the provision of the HICAPS System or as required for HICAPS' internal business purposes (The Purposes). HICAPS may share information you provide or make available to us with such third parties to the extent required for The Purposes.
- 8.3 HICAPS may, acting reasonably, suspend your access to the HICAPS System in whole or in part at any time without notice or compensation where it is in HICAPS' legitimate business interests, having regard to clause 12.
- 8.4 You may not assign or otherwise transfer any rights or obligations under this Agreement without the prior written consent of HICAPS. HICAPS may, acting reasonably and in accordance with its legitimate business interests and having regard to clause 12, assign or otherwise transfer any rights or obligations under this Agreement at any time.
- 8.5 The Agreement and any other documents, information, statements, notifications, notices or other communications ('**Relevant Communications**') in relation to your Account and/or your use of the HICAPS System may be provided to you by electronic means. You agree to receive all communications from us by electronic means and that Relevant Communications will be made available on the relevant HICAPS App and/or HICAPS Website.
- 8.6 If these Terms and Conditions are accepted by a User's guardian, financial manager, care co-ordinator, plan manager, attorney, nominee or other representative (**Representative**), the Representative represents and warrants to HICAPS that:
  - (a) upon accepting these Terms and Conditions and any Further Agreement on behalf of the

User, it has full power and authority to accept these Terms and Conditions and any Further Agreement;

- (b) each time the Representative uses the HICAPS System, it has full power and authority to use the HICAPS System on behalf of the User.

- 8.7 The Representative agrees to provide such evidence as is reasonably required by HICAPS of the Representative's power and authority to accept these Terms and Conditions, any Further Agreement and use the HICAPS System on behalf of the User on demand by HICAPS.
- 8.8 The Representative indemnifies, and will keep indemnified, HICAPS, it's officers, directors and employees harmless from any loss, claim or legal liability (including legal fees) against, and must pay HICAPS on demand, the amount of any Loss which HICAPS pays, suffers, incurs or is liable for arising from or any costs incurred in connection with the representations and warranties given in clause 8.6 above being incorrect, inaccurate and/or misleading when made, except to the extent HICAPS' fraud, negligence or misconduct (or the fraud, negligence or misconduct of HICAPS' officers, directors or employees) contributed to the relevant loss, claim or legal liability.

## **9 Amendments**

HICAPS may, acting reasonably amend these Terms and Conditions and/or Policies from time to time by posting a revised version of such Terms and Conditions and/or Policies to the relevant HICAPS App and/or HICAPS Website. Where the change is unfavourable to you, HICAPS will notify you in writing (such as by email). By continuing to use HICAPS System after any amendments to the Terms and Conditions and/or Policies, you agree to abide and be bound by any such changes. If you do not agree with any changes made to the Terms and Conditions and/or Policies, you must terminate the Agreement by closing your Account and ceasing to use HICAPS.



## **10 Governing Law**

These Terms and Conditions are governed by the law in force in the Australian State or Territory in which the User'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 User and HICAPS submit to the non-exclusive jurisdiction of those courts and courts of appeal.

## **11 Confidentiality Information**

11.1 Subject to the remainder of this clause:

- (a) all Confidential Information relating to a party is passed to and received by the other party in the strictest confidence; and
- (b) 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.

11.2 Without limitation to the remainder of this clause, each party agrees:

- (a) to use Confidential Information of the other party only for the purposes of fulfilling its

- obligations under this Agreement;
- (b) 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;
  - (c) to urgently, but in any event by no later than the end of the next day, 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);
  - (d) 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;
  - (e) 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;
  - (f) to urgently, but in any event by no later than the end of the next day, 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
  - (g) 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.

- 11.3 The obligations of a party under this clause do not apply to any data or information which the party demonstrates:
- (a) was in widespread use and generally available at the time of the use or disclosure;
  - (b) was already in the party's possession at the date of this agreement; or
  - (c) 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.

## **12 Discretions**

When HICAPS exercise a right or discretion under the terms of this Agreement (like considering a request you make or deciding whether or not to do something), HICAPS will do it in a way that is fair and reasonable. When HICAPS exercises a discretion under this Agreement it may consider a number factors including but not limited to:

- (a) the provision of an efficient and consistent whole of industry solution for claiming services;
- (b) the requirements of any Scheme, the Australian Government or applicable regulator from time to time;
- (c) protecting the systems of HICAPS, Schemes and other providers and persons involved in the claiming services provided by HICAPS (and personal information held by any of them);
- (d) the relevant legal obligations, industry codes, relevant payment Scheme rules and the expectations of regulators of HICAPS;
- (e) protecting HICAPS customers and staff;
- (f) what you have told HICAPS about yourself and how you will use the HICAPS System and claiming services (including if it's misleading, incorrect or you haven't provided HICAPS with all of the information it reasonably needs when asked);

- (g) how the HICAPS System and services are intended to be used (and how you have used them);
- (h) HICAPS public statements, including those relating to protecting vulnerable persons, the environment or sustainability;
- (i) community expectations and any impact on HICAPS' reputation;
- (j) whether HICAPS need to take any action to protect you or another person from a potential fraud or scam; and
- (k) risk management, including sanctions risk management.

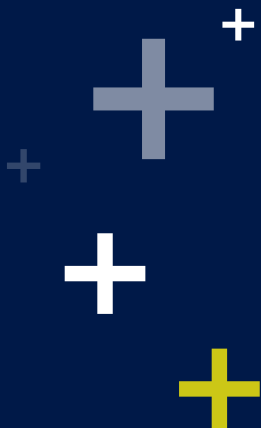
### **13 Privacy**

You acknowledge that when using the HICAPS System, HICAPS may collect, store and use your personal information in accordance with the HICAPS Privacy Policy. This Policy is accessible via the link on the HICAPS website.

### **14 Force Majeure**

HICAPS' provision of services through this Agreement will be suspended to the extent caused by any event beyond its reasonable control (including without limitation, war, riot, natural disaster, communication network congestion or unavailability, or labour dispute).





# More Information

Visit [hicaps.com.au](http://hicaps.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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