

# HICAPS

## Equipment Agreement

### Terms and Conditions

This agreement is made up of this booklet and the HICAPS Equipment Agreement Details.



HICAPS Pty Limited ABN 11 080 688 866



## **Part A – Promotion**

- 1 You must:
  - (a) prominently display any signs, decals and other promotional material provided by us in a manner reasonably directed by us; and
  - (b) as soon as practicable, stop using the material referred to in 1(a) when we ask you to do so.

## **Part B – Availability of HICAPS system**

- 2.1 Subject to clause 25:
  - (a) we will make the HICAPS system available at a time determined by us; and
  - (b) where we have suspended the availability of the HICAPS system to a health fund you acknowledge that as a result we may suspend the availability of the HICAPS system to you to the extent that it relates to that health fund in which case we will, if reasonably practicable to do so, give you notice of the suspension.

## **Part C – The terminal**

### **Interest in the terminal**

- 3.1 You only have a right to use the terminal and do not have any rights to own it.
- 3.2 You must protect our interest in the terminal, including by making it clear to others that you do not own it.
- 3.3 You must not place, or allow to be placed, on the terminal any plates or marks that are inconsistent with our interests in the terminal and the interests of any other person we specify. If we ask, you must put plates on it that state our interests in the terminal and the interests of any person we specify.
- 3.4 You must not part with possession or control of the terminal without our consent.

- 3.5 You must not give another person an interest in or any form of security over this agreement or the terminal, or authorise anyone else to do so, without our consent.
- 3.6 We may enter into this agreement as principal or agent. We may also transfer the terminal or our interest in this agreement, or give another person an interest in or form of security over either of them, without getting your consent where we reasonably believe that it causes no detriment to you.

### **Delivery and installation**

- 4.1 You must prepare at your business premises at your own expense a site which meets our specifications of the installation of the terminal we supply you, including a power supply. When this is done, we will arrange for delivery and installation of the terminal at that site within a reasonable time.
- 4.2 You must arrange for a communications carrier licensed by the Australian Communications Authority and approved by us to install and rent to you a communication line for the transmission of information between your terminal and our computer.
- 4.3 You must pay the reasonable costs, charges, expenses, taxes and fees for the installation and rental of the communication line.
- 4.4 You must not exercise any of the rights, discretions and powers nor waive any provisions contained in the contract with the communications carrier licensed by the Australian Communications Authority and approved by us without our prior consent, such consent not to be unreasonably withheld.
- 4.5 Use of an existing communication line may be made provided we agree there is adequate capacity for the transactions which we reasonably believe may be processed under this agreement.

- 4.6 You must not attach the terminal to any property without our consent, such consent not to be unreasonably withheld. If it is attached to any other property, it does not become a fixture and we can still remove it in accordance with this agreement.

### **Re-location and alteration**

- 5.1 You must not move the terminal to a new position or make any alterations or additions to it without our written consent, such consent not to be unreasonably withheld.
- 5.2 If we consent, you must pay all reasonable costs associated with relocating, altering or adding to it.

### **Use**

- 6.1 You must use the terminal only in your business operations and for the purpose for which it is designed.
- 6.2 You must comply, and ensure that any person who operates the terminal complies, with the terminal operation guide when processing transactions.
- 6.3 We cannot interfere with your use of the terminal unless this agreement allows us to do so.

### **Maintenance**

- 7.1 You must take proper care of the terminal and keep it in good working order and in good repair (fair wear and tear excepted).
- 7.2 You must ensure that the terminal is serviced and maintained in accordance with our directions.
- 7.3 You must pay reasonable costs for any repairs to the terminal which are reasonably necessary because of your neglect or misuse. We must maintain the terminal at our expense in all other circumstances of normal use.
- 7.4 You must not allow any person except our employees, contractors or agents to service or repair the terminal.

### **Technical Breakdown or malfunction**

- 8.1 We must establish and maintain the HICAPS help desk.
- 8.2 You must call the HICAPS help desk immediately if the terminal is not working or is malfunctioning.

### **Access**

- 9.1 You must allow us or our representative at any reasonable time to enter the place where the terminal is to:
  - a) inspect its condition; or
  - b) repair or service it; or
  - c) check whether the terms of this agreement are being complied with; or
  - d) exercise any of our rights under this agreement.
- 9.2 We must give you reasonable notice of entry.

### **Loss or damage**

10. You are responsible for any loss or damage to the terminal resulting from fire, theft, explosion, flood, civil commotion or other act in or around the place where the terminal is kept. You must pay us the full cost of replacing or repairing it. We may reasonably determine the replacement value of the terminal at our discretion.

### **Training**

- 11.1 We must give you at our own cost the terminal operation guide, and up to 30 minutes training on the use of the terminal in one visit only, that visit to be at a time mutually suitable to you and us.
- 11.2 We must provide the training referred to in 11.1 for up to four of your personnel, for each terminal installed at your business premises.
- 11.3 You are responsible for training any other person who is to operate the terminal.

## **Part D – Rent, fees, costs and other amounts**

### **Rent**

- 12.1 You must pay the rent instalments and related stamp and financial institutions duty on the payment dates. Once paid, these amounts are not refundable for any reason, except if this agreement is terminated due to our failure to comply with the fundamental provisions of this agreement.
- 12.2 We may increase the rent instalments by giving you 30 days' prior notice. If you do not agree with the increase, you may terminate this agreement. If you choose to terminate this agreement, you must comply with clause 22.5 of this agreement.

### **Direct Debit**

13. You agree payment of rent instalments and any other amount you owe us under this agreement is to be effected by us making a direct debit to an account nominated by you. If that account does not have sufficient funds or a sufficient credit limit, then the amount you owe us under this agreement must be paid promptly on demand by us.

### **Duties, taxes, fees and charges**

14. You must pay us when we ask you for it all stamp and other duties, fees, taxes and charges payable on:
  - a) this agreement; and
  - b) any payment, receipt or other transaction arising out of this agreement, including any increase in the stamp and financial institutions duty stated in the HICAPS Equipment Agreement Details.

### **No deductions from payments**

15. You must not withhold any payment under this agreement, or make a deduction from it for any reason including because:
  - a) the terminal is damaged, does not operate, or is not in your possession; or

- b) you claim to have a set-off, counterclaim, or other right against us or any other person.

### **Overdue payments**

- 16.1 You must pay interest calculated on daily balances on any amount which you do not pay on time for the period it is unpaid.
- 16.2 The rate of interest to be applied to each daily balance is a rate 2% above National Australia Bank Limited's published base rate for commercial overdrafts for that day.
- 16.3 At intervals that we determine, or, if we do not make a determination, on the first day of each month, we may add any interest payable under 16.1 which is not paid when due to the amount for which you are liable. You will then be liable for interest under 16.1 on the total amount.
- 16.4 You must promptly pay all interest payable under 16.1 or 16.3 when we ask you for it or at times specified by us.
- 16.5 Your obligation to pay an amount on the date it becomes due is not affected by 16.1 - 16.4.

### **Indemnities**

- 17.1 You indemnify us against any liability or loss arising from and any costs, charges and expenses (including legal fees and expenses) incurred in connection with:
  - a) our reasonably exercising a right under this agreement; or
  - b) our doing anything you should have done under this agreement; or
  - c) you not doing what you should have done under this agreement; or
  - d) our reasonable costs and expenses of having to seize or store the terminal; or
  - e) our interest in the terminal and the interests of any person we specify; or
  - f) a person being injured or killed or property being damaged directly or indirectly by the terminal or its use, except to the extent that the liability or loss is due to our unlawful or negligent acts.

- 17.2 Each indemnity is a continuing obligation, separate and independent from your other obligations. It continues after this agreement ends or is terminated. It is not necessary for us to incur expense or make a payment before we enforce a right of indemnity.

## **Part E – Insurance**

- 18.1 You must insure the terminal at all times against:
- a) loss or damage to the terminal caused by fire, theft or accident, up to its maximum insurable value; and
  - b) public liability for bodily injury or damage to property arising in connection with the terminal up to the amount approved by us.
- 18.2 The insurances must:
- a) be in a form and substance and with an insurer reasonably satisfactory to us; and
  - b) note our interests in the terminal, and the interests of any other person we specify.
- 18.3 You must not:
- a) do anything, or fail to do anything, which would allow the insurer to refuse or reduce a claim; or
  - b) vary the insurances without our consent, such consent not to be unreasonably withheld; or
  - c) enforce, conduct, settle or compromise any claim without our consent, such consent not to be unreasonably withheld.
- 18.4 You must produce evidence of the insurance policies and payment of premiums within 5 business days of our request or such other reasonable period requested by us.

## **Part F – Your other duties and obligations**

19. You must give us any information we consider reasonably necessary about:
- a) your financial position; or

- b) the terminal or insurances relating to it.
- 20. Anything which you must do under this agreement must be done at your cost.
- 21. You must ensure that you do not become insolvent.

**Part G – What happens if you repudiate this agreement and other rights of termination?**

- 22.1 You may terminate this agreement on the giving of 30 days' notice to us.
- 22.2 The fundamental provisions of this agreement are that you must:
  - a) pay all money due on time and as required by this agreement; and
  - b) do what you have to do under 6.1, 18 and 21.
- 22.3 You will repudiate this lease and we may immediately terminate it by notice to you if:
  - a) you do not comply with the fundamental provisions of this agreement; or
  - b) your conduct indicates that you no longer intend to be bound by this agreement.
- 22.4 We may also terminate this agreement on the giving of 30 days' notice to you.
- 22.5 On notice of termination of this agreement, you must immediately:
  - a) return the terminal to us in good working order, and in good repair (fair wear and tear excepted) to a place we nominate; and
  - b) give us any certificates of registration relating to the terminal and a signed transfer of those certificates in favour of us or a person we nominate; and
  - c) pay us all arrears of rent instalments, any rent instalment and any other amounts due on a pro rata basis; and
  - d) return the promotional material referred to in 1 and the terminal operation guide to us.

## **Part H – What you acknowledge in entering this agreement**

### **About this agreement**

23. You acknowledge that:
- a) you have not relied on our skill or judgment in deciding to enter into this agreement; and
  - b) we are entitled to complete blanks in this agreement provided that we subsequently notify you; and
  - c) unless you have told us otherwise, you do not enter into this agreement as trustee of any trust or settlement; and
  - d) payments under this agreement are deductible by you for the purpose of the Income Tax Assessment Act 1936 (Cth).

### **About the terminals**

24. You acknowledge that you are responsible for examining the terminal before accepting it and for satisfying yourself about it, including:
- a) its compliance with its description; and
  - b) its condition, suitability and fitness for your purposes; and
  - c) the validity of any manufacturer's, dealer's, or supplier's warranties or guarantees, and entitlements to patents.

### **About legal warranties and limitations**

25. You have made all necessary inquiries and have sought all necessary advice and confirm that:
- a) to the full extent permitted by law, all express and implied terms, conditions and warranties other than the ones set out in this agreement are excluded; and
  - b) whether or not the Australian Consumer Law and the Competition and Consumer Act 2010 or any law to a similar effect applies, our liability for anything in relation to the possession, installation, operation or use of the terminal or HICAPS system is limited as much as it can be to:

- (i) replacing the terminal with the same or equivalent terminal, or paying the cost of one of those things; or
- (ii) repairing the terminal or paying for its repair; or
- (iii) supplying the service or paying the cost of having the service supplied again.

Our liability to you will not be limited in this way if it is not fair or reasonable for us to rely on the limitation set out in this clause.

## **Part I – Other requirements**

### **Our certificates**

- 26.1 We may give you a certificate regarding any matter concerning this agreement including any amount payable by you to us.
- 26.2 The certificate is sufficient evidence of the accuracy of its content, unless it is proved to be false.

### **Business days**

- 27. If a date for payment of money under this agreement is not a business day, the money must be paid on the preceding business day.

### **Applicable law**

- 28.1 This agreement is governed by the laws in force in the Australian State or Territory where your principal place of business is located. If your principal place of business is not located in Australia, this agreement is governed by the laws of Victoria.
- 28.2 Any court cases involving this agreement can be held in the courts of any State or Territory of Australia. You and we submit to the non-exclusive jurisdiction of those courts.

### **Notices and other communications**

- 29.1 Notices, certificates, consents and other communications in connection with this agreement must be in writing.

- 29.2 They must be:
- a) left at the address last notified; or
  - b) sent by prepaid post to the address last notified; or
  - c) sent by facsimile to the facsimile number last notified.
- 29.3 If they are sent by post, they are taken to be received on the third day after posting.
- 29.4 If they are sent by facsimile, they are taken to be received on production of a transmission report by the transmitting machine which indicates that the whole facsimile was sent.
- 29.5 They take effect from the time they are received unless another time is specified in them.

### **Variation**

30. A term of this agreement, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

### **Discretion**

31. Any discretion conferred on us under this agreement will be exercised reasonably and in accordance with our legitimate business interests.

## **Part J – Meaning of words**

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

*card* means a card supplied by a health fund which complies with the Australian Standard 3524 of 1988 entitled “Identification Cards - Financial Transaction Cards” or which complies with such other specifications as agreed between a health fund and us for use of the network.

*cardholder* means a member of a health fund or a person designated by a health fund as a patient who holds a card and may be entitled to benefits from the health fund in respect of a health service.

*fund host system* means the computer hardware and software, including front end processors and all releases, updates and amendments to the computer hardware and software, provided or to be provided by a health fund for the purposes of processing transactions.

*health fund* means any person registered as a health benefits organisation in accordance with the National Health Act 1953 (Commonwealth).

*health service* means a service provided to a cardholder by a health service provider in their capacity as a health service provider.

*health service provider* means a person practising as a dentist, physiotherapist, chiropractor or optometrist or any other person practising a health or health related service in respect of whom a health fund may pay a benefit for a particular service rendered by that person.

*HICAPS help desk* means telephone operators acting as a central point of contact for fault reporting and general problem assistance for a health fund and health service provider in relation to the network.

*HICAPS system* means the computer hardware and software, including the switch and terminals and all releases, updates and amendments to the computer hardware and software provided or to be provided by us for the purposes of initiating and processing transactions.

*including* when introducing a list of items, does not limit the meaning of the words to those items or to items of a similar kind.

*insolvent* means bankrupt, insolvent, in receivership, in receivership and management, in liquidation, in provisional liquidation, under official management or administration, wound up, subject to any arrangement, assignment or composition or protected from any creditors under any statute.

*network* means the HICAPS system, fund host system, the communication line between a health fund and the switch and the communication line between the switch and a health service provider through which transactions are initiated and processed.

*person* includes firm, partnership, committee, and incorporated and unincorporated bodies.

*reversal request* means an electronic message given through the network by a health service provider for cancellation of a prior transaction request (other than the last transaction request made through the terminal from which the message is sent).

*switch* means the computer hardware and software, including front end processors, required for routing data between terminals and the fund host system capable of the following functions including, without limitation:

- (a) receiving a transaction request, reversal request or void request from a health service provider and forwarding it to a health fund; and
- (b) receiving a transaction response from a health fund and forwarding it to a health service provider.

*terminal* means any electronic device, and software, and all related equipment to be used for the purposes of processing and transmitting transactions through the network including the electronic device, software and equipment set out in the Equipment Agreement Details.

*terminal operation guide* means a guide to the operation of the terminal as amended from time to time.

*transaction* means a transaction request and transaction response, reversal request and transaction response or a void request and transaction response.

*transaction request* means an electronic request to a health fund given through the network by a health service provider for authorisation of a health insurance claim on the health fund.

*transaction response* means an electronic response to a health fund given through the network by a health service provider for authorisation of a health insurance claim on the health fund.

*void request* means an electronic message to a health fund given through the network by a health service provider for cancellation of the last transaction request made through the terminal from which the message is sent.

*we* means HICAPS Pty Limited (ACN 080 688 866) and its successors and assigns.

*you* means the person or persons named in the HICAPS Equipment Agreement Details as the renter, and if there are more than one, means each of them separately and every two or more of them jointly.

In this agreement unless the contrary intention appears:

- (a) a reference to this agreement or another instrument includes any variation or replacement of them;
- (b) a reference to a time of day is a reference to that time in Melbourne;
- (c) a reference to a member includes a contributor or any other person, regardless of how designated by a health fund, who pays premiums to the health fund for health insurance; and
- (d) the singular includes the plural and vice versa.

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