

## **SOFTWARE USER LICENSE AND CONFIDENTIALITY AGREEMENT**

**PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE CAREFULLY. YOU MAY PRINT THIS LICENSE AGREEMENT FOR YOUR OWN AND/OR YOUR COMPANY'S RECORDS. IF YOU DO NOT AGREE TO SUCH TERMS AND CONDITIONS, DO NOT INSTALL OR USE THIS APPLICATION OR SERVICE AND EXIT NOW. YOU CAN REGISTER FOR USE OF THIS SERVICE EITHER YOURSELF AS LICENSEE, OR IF AUTHORIZED BY YOUR COMPANY YOU CAN REGISTER THE COMPANY AS LICENSEE, BY CLICKING THE "SIGN UP!" ICON ON THE ASSOCIATED REGISTRATION FORM. BY INSTALLING, COPYING, OR OTHERWISE USING THE SERVICE, LICENSEE AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS, INCLUDING THE WARRANTY DISCLAIMER, LIMITATIONS OF LIABILITY AND TERMINATION PROVISIONS BELOW.**

THIS USER LICENSE AND CONFIDENTIALITY Agreement (this "Agreement") is made and entered the date of Registration, (hereinafter the "Effective Date") by and between IHCFA, LLC (hereinafter "IHCFA"), a limited liability company, having its principal office at 2 Ridgedale Avenue Suite A-10, Cedar Knolls, New Jersey 07927, and the Authorized User (hereinafter the "Licensee") executing this Registration Form on behalf of a health care Provider or group of health care Providers whose addresses are listed in the IHCFA software.

WHEREAS, IHCFA has developed certain computer programs and related documentation embodied in the IHCFA Electronic Software and Web Environment, including screen displays of menus, data collection forms, and so forth (collectively, the "Software") as described hereinafter, for permitting IHCFA to process insurance claims and supporting documents on behalf of users who access IHCFA via the Internet;

WHEREAS, the Software embodies and reflects certain Trade Secrets of IHCFA;

WHEREAS, Licensee is interested in utilizing the Software;

WHEREAS, Licensee accepts an invitation to privately utilize this Software in a confidential manner, and agrees to all of the terms set forth in this Agreement;

WHEREAS, IHCFA is willing to grant access to the Software only upon the condition that Licensee accept all of the terms contained in this License and confidentiality Agreement (as defined hereinafter); and

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

### **1. DEFINITIONS**

"Trade Secrets" shall mean any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality afford IHCFA a competitive advantage over its competitors, and shall include without limitations the source code, system design and specification, programming sequences, algorithms, flowcharts, and formats pertaining to the Software. Trade secrets do not include, however, any data or information that is generally known to the public, that is included in any end-user documentation supplied to Licensee by IHCFA, that is readily apparent from output

reports or visual display of the Software or its operation in object code form, that has been or is disclosed to Licensee as a matter of right and without restriction by a third party who has lawfully obtained such data or information, that is independently developed by Licensee without reliance in any way on the Software or associated documentation, or that is approved for unrestricted release by IHCFA at any time.

“Licensed Web Environment” shall mean the portions of the Software comprising IHCFA Electronic Claims Web Environment, including the entire JavaScript client browser script and whole Web Interface, all textual and graphical elements displayed in hypertext mark-up language (html), the content and structure of data communications, and any related materials in binary form or other machine- or human-readable materials including, but not limited to, server software Implementation, client software, data files, any user guides, and any other Information or documentation provided to Licensee by IHCFA under this Agreement.

“Private User” (see section 2.1) shall mean the confidential distribution of the Software and Licensed Web Environment to Individual users for purposes of utilization, the results of which shall not be disclosed to any third party, except as specifically provided herein.

## **2. RESTRICTED LICENSE**

2.1 IHCFA shall permit access of the Software to Licensee, starting on the Effective Date and for one (1) month thereafter (hereinafter the “Evaluation Period”) for the purpose of submitting bills and medical reports to any and all Workers Compensation, No-Fault/Auto, Health, self-insured, third party administrator, , medical management companies and the New York State Workers Compensation Board which can be electronically transmitted directly from IHCFA electronically.

2.2 For the Evaluation Period only, IHCFA grants Licensee a nonexclusive, royalty-free and restricted license to use the Software solely for the purposes of evaluation only as outlined in this Agreement, but subject to payments pursuant to Section 3.0.

2.3 IHCFA may examine and test the functions of the Software as it chooses during the Evaluation period.

2.4 Licensee shall conduct an evaluation of the Software, and shall notify IHCFA before this evaluation period ends as to whether or not it wishes to continue to license the Software.

2.5 No license is granted to Licensee for any other purpose than that stated herein, and Licensee may not sublicense, assign, sell, rent, loan or otherwise encumber or transfer any rights to the Software, in whole or in part, to any third party.

2.6 Licensee acknowledges that nothing in this Agreement gives Licensee the right to use any trademark(s), trade name(s), or service mark(s) of IHCFA or any third party from whom IHCFA has acquired licensing rights.

2.7 The terms and conditions set forth in this Agreement shall apply to any and all versions and components of the Software furnished by IHCFA to Licensee during the term of

this Agreement and all versions and components of the Software used by Licensee in accordance with this Agreement.

2.8 Licensee shall use the Software only for evaluation of the Software's applicability, usability, performance and design. The Software shall be used only by Licensee in accordance with the terms and conditions in this Agreement.

2.9 IHCFA agrees that Licensee shall have no obligation to purchase any licenses, products or services from IHCFA, and shall have no obligation to enter into any further transactions with IHCFA.

### **3.0 PAYMENT REQUIREMENT / SERVICES**

3.1 Licensee shall have the OPTION to request that IHCFA Mail to other Carriers whom IHCFA does not submit to electronically, and shall then be obligated to pay IHCFA in accordance with Table 1, last row, on page 11. IHCFA shall require payment via Credit Card or Electronic Funds Transfer (EFT). IHCFA shall submit a monthly invoice to Licensee detailing the number of claims mailed by IHCFA on behalf of Licensee in the prior month.

3.2 Licensee agrees to pay IHCFA, LLC if submitting paper bills and medical reports via mail or scan prior to conversion to full electronic \$0.30 for any bill considered duplicate by the Carrier.

3.3 If after the evaluation period, Licensee elects to continue the License, IHCFA shall grant Licensee the right to continue the use of the software for a period of twelve (12) months in accordance with the payment requirements of TABLE 1.

3.4 IHCFA shall have the right to modify the payment requirements of Table 1 after the initial twelve (12) month continuation period.

### **4.0 LICENSE RESTRICTIONS**

4.1 No right, title, or interest in or to the Software, including any patent rights, copyrights, trademark(s), service mark(s), or trade name(s) of IHCFA is granted under this Agreement.

4.2 Licensee shall have no right to use the Software for productive or commercial use, other than for the submission of Electronic Claims to IHCFA while participating in this Evaluation Period. Licensee acknowledges that the Software is being provided for evaluation and testing purposes only and agrees to refrain from using the Software for any other purpose other than in accordance with this Agreement.

4.3 Licensee agrees that the results of any benchmark or other performance or usability tests run on the Software may not be disclosed to any third party, except to the extent required by law, judicial or administrative process, regulatory authority or order to disclose such results.

4.4 Licensee may not duplicate or reverse engineer the software.

4.5 Except as otherwise provided by law, Licensee may not modify or create derivative works of the Software and the associated Licensed Web Environment, or disassemble or reverse engineer any portions of the Software, including, but not limited to, screen views, script or protocols of the Licensed Web Environment, or otherwise attempt to derive the server implementation.

## **5. TITLE, PROPRIETARY RIGHTS, AND DEVELOPMENT**

5.1 Licensee shall use the Software and the end-user documentation solely for such purpose of this Agreement, and shall not, without prior written approval of IHCFA, either allow any third party to use or itself use the Software or such documentation for any other purpose or for the benefit of the third party.

5.2 This Agreement conveys to Licensee only a limited right of use, fully revocable in accordance with the provisions of this Agreement. Except for such right of use, Licensee shall not assert any right, title, or interest in or to the Software or any pertinent documentation.

5.3 IHCFA hereby represents, and Licensee hereby acknowledges, that the Software and the development document contain substantial Trade Secrets of IHCFA. Such Trade Secrets have been entrusted to Licensee for use only as expressly authorized under this Agreement. Under no circumstances may Licensee decompile or reverse engineer the Software.

5.4 IHCFA claims and reserves to itself all rights and benefits afforded under U.S. Copyright law, U.S. Patent law, U.S. Trademark law, and all international patent and trademark laws, and copyright conventions in the Software and any associated documentation.

5.5 Licensee shall devote its best efforts, consistent with the practices and procedures under which it protects its own most valuable proprietary information and materials, to protect the Software and any associated documentation against any unauthorized or unlawful use or copying.

5.6 Licensee agrees that IHCFA owns all right, title and interest in the Software and in all patents, trademarks, trade names, inventions, copyrights, know-how and trade secrets relating to the design, manufacture, operation or service of the Software. All rights not expressly granted are hereby reserved by IHCFA. Unauthorized copying or use of the Software, or failure to comply with the restrictions provided in this Agreement, will result in automatic termination of this Agreement. Nothing in this Agreement shall change IHCFA's ownership rights to their respective intellectual property, including but not limited to the Software.

5.7 Licensee acknowledges and understands that IHCFA evaluates, designs, develops, and acquires technology, software applications, Web environments, and other products, and for this reason any such technology, software applications, Web environments or products that are independently developed, evaluated, designed or acquired by IHCFA may contain ideas or concepts similar to those that might be developed by Licensee, whereby

nothing in this Agreement shall prevent IHCFA from licensing, acquiring or independently developing and marketing, directly or indirectly through third parties, products similar to and competitive with Web environments developed by Licensee. Nothing herein shall be construed to grant Licensee any rights in any such products so developed or acquired, or any rights to the revenues or any portion thereof derived by IHCFA from the use, sale, lease, license or other disposal of any such independently developed products.

5.8 Licensee acknowledges that, subject to the terms of the Agreement, IHCFA shall have the right, in its sole discretion and without incurring any liability, to modify the Software or discontinue its use or distribution at any time with reasonable notice to Licensee.

## **6. LICENSEE'S DUTIES**

6.1 Licensee agrees to utilize and evaluate the Software during the Evaluation Period, and Licensee may report its evaluation, findings and recommendations to IHCFA via the iHCFA HELP desk.

6.2 Notwithstanding any other provision in this Agreement, IHCFA shall have the right to use any ideas, information, understandings, communications including all suggestions, comments, feedback, ideas, or know-how (whether in oral or written form), and concepts derived from Licensee's use of the Software without restriction and without compensation.

## **7. IHCFA'S DUTIES**

7.1 IHCFA represents, warrants and covenants that to the best of its knowledge and belief, the Software will be fully compliant with, and shall operate in accordance with, applicable Federal and state laws and regulations, and third party payor requirements. Notwithstanding anything to the contrary herein, throughout the term of this Agreement, IHCFA shall modify the Software, at no additional cost to Licensee, so that it complies with any changes in applicable statutory or regulatory requirements, and third party payor requirements, which become effective from time to time.

7.2 IHCFA will make its best efforts to support the Software and the Licensed Web Environment and to provide Licensee with updates, bug fixes, or error corrections (collectively "Software Updates"). If IHCFA at its sole option supplies Software Updates to Licensee, the Software Updates will be considered part of the Software, and subject to the terms and conditions of this Agreement.

7.3 The parties acknowledge that the federal Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (hereinafter "HIPAA") requires the implementation of measures to protect the security of electronic protected health information that may be maintained or transmitted by the Software. Notwithstanding anything to the contrary, IHCFA warrants and covenants that, at no additional cost to Licensee, the Software will have all technical security features required by HIPAA's security regulations, including, without limitation, unique user identification, emergency access procedures, automatic logoffs, audit controls, authentication mechanisms for electronic protected health information, persons and entities, and integrity controls. All technical

security features of the Software shall meet the minimum standards set forth in HIPAA's security regulations.

7.4 IHCFA represents, warrants and covenants that it shall at all times conduct itself, and ensure that its employees, contractors and agents conduct themselves, in compliance with and provide all products and services, as the case may be, in full compliance with the policies of Licensee and all applicable federal, state and local laws, rules and regulations, including, without limitation, HIPAA, as modified or amended from time to time.

7.5 IHCFA shall not be obligated to make any version or component of the Software available to Licensee as a final product. The Software is under continual development and refinement and subsequent versions of the Software may be released without notice. Licensee acknowledges that it may be required to update the Software, which shall be provided by IHCFA, in order to continue the Private User Evaluation.

## **8. TERM OF AGREEMENT; TERMINATION**

8.1 This Agreement will commence on the Effective Date, and at the option of Licensee will continue for twelve (12) after the Evaluation Period, unless sooner terminated as provided herein.

8.2 Licensee shall have the right subject to the approval of IHCFA to automatically continue the License for additional twelve (12) month periods relative to Section 6.1.

8.3 Either Licensee or IHCFA may terminate this Agreement upon ten (10) days written notice to the other party.

8.4 IHCFA may terminate this Agreement immediately should Licensee materially breach any of the provisions thereof including but limited to non-payment to IHCFA.

8.5 Upon termination or expiration of this Agreement, Licensee must cease use of and destroy the Software, any records or copies thereof and any related materials, and provide to IHCFA a written statement certifying that Licensee has complied with the foregoing obligations within thirty (30) days.

8.6 Rights and obligations under this Agreement, which by their nature should survive, shall remain in effect after termination or expiration hereof.

8.7 Remedies on default - In the event of a default, including but not limited to Licensee's failure to make payment to IHCFA within thirty (30) days from the date of Invoice, IHCFA shall have the right to obtain judgment for the amount of the payments delinquent under the present Agreement plus interest at 1% (one percent) per month on such delinquent payments from the due date, costs of collection, and reasonable attorney's fees without prejudicing IHCFA's right to subsequently obtain judgment for additional damages, expenses, attorney's fees, and the like.

## 9. CONFIDENTIAL INFORMATION

9.1 For purposes of this Agreement, "Confidential Information" means: (i) proprietary or confidential information of each party, relating in any way to the business and affairs of such party; (ii) Licensee's Evaluation and feedback based on the Software; (iii) individually identifiable health information of patients received from or on behalf of Licensee and (iv) the terms, conditions and existence of this Agreement. Each party may not disclose or use Confidential Information of the other party except for the purposes specified in this Agreement.

9.2 The receiving party shall protect against the disclosure of the disclosing party's Confidential Information with the same degree of care, but not less than a reasonable degree of care, as the receiving party uses to protect the receiving party's own Confidential Information. The receiving party's obligations regarding Confidential Information will expire no less than five (5) years from the date of receipt of the Confidential Information, except for any identified trade secrets which will be protected in perpetuity. Licensee agrees that the Software contains IHCFA's trade secrets. Confidential Information disclosed by IHCFA under this Agreement shall only be used by Licensee in furtherance of this Agreement or performance of Licensee's obligations hereunder.

9.3 Notwithstanding any provisions contained in this Agreement concerning nondisclosure and non-use of the Confidential Information, the nondisclosure obligations of Section 8.1 will not apply to any portion of Confidential Information that the receiving party can demonstrate in writing is: (i) now, or hereafter through no act or failure to act on the part of the receiving party becomes, generally known to the public; (ii) known to the receiving party at the time of receiving the Confidential Information without any obligation of confidentiality; (iii) hereafter rightfully furnished to the receiving party by a third party without restriction on disclosure; or (iv) independently developed by the receiving party without any use of the Confidential Information,

9.4 Confidential Information shall not be disclosed to any third parties without the written consent of the disclosing party. The receiving party agrees to promptly notify the disclosing party in writing of any known misuse, misappropriation, or unauthorized disclosure of Confidential Information.

9.5 The parties acknowledges that disclosure of Confidential Information in breach of this Agreement would cause the non-breaching party immediate, substantial, and irreparable harm, the monetary value of which would be extremely difficult to determine. Accordingly, the parties agree that, in addition to any other remedies that may be available in law, equity or

otherwise, the non-breaching party shall be entitled to seek injunctive relief against any breach or threatened breach of the restrictions set forth in this Section.

9.6 Additionally, IHCFA and Licensee hereby agree to all of the terms and conditions set forth in the HIPAA Business Associate Agreement, which shall be executed along with this Agreement, the terms of which shall be incorporated herein and made a part hereof.

9.7 Upon the expiration or termination of this Agreement all Confidential Information of Licensee in IHCFA's possession or control together with all related materials, copies or derivative versions thereof in any form shall, at Licensee's option, be returned to Licensee, or destroyed by IHCFA. IHCFA agrees to certify in writing to Licensee that IHCFA has returned or destroyed all such Confidential Information of Licensee together with all related materials, copies and derivative versions in any form.

## **10. OBLIGATION FOR EXPENSES**

10.1 Except as otherwise expressly provided in this Agreement, each party shall bear all expenses it may incur in acting pursuant to this Agreement.

## **11. DISCLAIMER OF WARRANTY**

**11.1 EXCEPT AS OTHERWISE SET FORTH HEREIN, THE SOFTWARE IS PROVIDED BY IHCFA "AS IS." ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED, EXCEPT TO THE EXTENT THAT SUCH DISCLAIMERS ARE HELD TO BE LEGALLY INVALID.**

11.2 IHCFA does not warrant that the operation of the Software will be uninterrupted or error-free. Licensee acknowledges that the Software may be modified hereafter, and it is possible that the Software will undergo significant changes.

## **12. LIMITATION OF LIABILITY**

**12.1 IN NO EVENT SHALL IHCFA BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING ANY OR ALL GENERAL, SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR USE OF THE SOFTWARE, DATA, INFORMATION INCLUDING CONFIDENTIAL INFORMATION OR OTHER MATERIAL FURNISHED TO LICENSEE HEREUNDER, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT IHCFA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

12.2 Licensee acknowledges that the Software and all related materials are in or under development and that the Software and these materials may have defects or deficiencies, which cannot or will not be corrected by IHCFA. Licensee will hold IHCFA harmless from

any claims based on Licensee's use of the Software for any purposes, and from any claims that later versions or releases of any Software furnished to Licensee are incompatible with the Software provided to Licensee under this Agreement.

12.3 Licensee shall have the sole responsibility to adequately protect and backup Licensee's data or equipment used in connection with the Software.

12.4 IHCFA shall not be liable to Licensee for lost data, inaccurate output, work delays or lost profits resulting from Licensee's use of the Software.

12.5 Neither party will be liable for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement, including loss of business, revenue, profits, use, data or other economic advantage, however it arises, whether for breach or in tort, even if that party has been previously advised of the possibility of such damage.

### **13. GENERAL TERMS**

13.1 Any action relating to or arising out of this Agreement shall be governed solely by New Jersey law, and controlling U.S. Federal law. This provision shall survive termination of this Agreement.

13.2 The parties are independent contractors of one another. Nothing herein shall be deemed to create any relationship of agency, partnership, or joint venture between the parties.

13.3 Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement, without the prior written consent of the other party, except that IHCFA may assign this Agreement to any other company.

13.4 The Software and technical data delivered under this Agreement are subject to U.S. export control jurisdiction and may be subject to export or import regulations in other countries. Licensee agrees to comply strictly with all such applicable International and national laws and regulations, including the U.S. Export Administration Regulations, as well as end-user, end use, and destinations restrictions issued by the U.S. and other governments, and Licensee agrees to be responsible for obtaining such licenses to export, re-export or import as may be required.

13.5 If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. The waiver of any breach or default shall not constitute a waiver of any other right in this Agreement or any subsequent breach or default. No waiver shall be effective unless in writing and signed by an authorized representative of the party to be bound. Failure to pursue, or delay in pursuing, any remedy for a breach shall not constitute a waiver of such breach.

13.6 All notices required or permitted hereunder shall be in writing and shall be addressed to the appropriate party as set forth above, unless another address shall have been designated, and shall be delivered by hand or by registered or certified mail, postage prepaid.

13.7 This Agreement is the parties' entire agreement relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter during the term of this Agreement. No modification to this Agreement will be binding, unless in writing and signed by an authorized representative of each party. The parties hereto have executed this Agreement as of the date the Licensee indicates acknowledgement via registration of a user account on the IHCFA's website, <http://www.ihcfa.com/net/main/register.aspx>.

**OPTIONAL SIGNATURE IF PRINTED**

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

**LICENSEE**

**IHCFA**

By: \_\_\_\_\_

By: *William J. DeGasperis*

Name:

Name: William J DeGasperis

Title:

Title: Managing Member of iHCFA, LLC

# TABLE I

## Pricing Schedule

IHCFA pricing structure is based on four (4) components:

1. Volume of Claims received
2. How we receive your claims
3. If the Payor is **DIRECT** or **INDIRECT** with iHCFA\*
4. If you elect to have us Mail bills to other Carriers.

### HOW WE RECEIVE YOUR CLAIMS

	<b>Electronic</b>	<b>Scan / FTP</b>	<b>Mail</b>
<b>Volume / Month</b>	<b>COST PER BILL for DIRECT Payor vs. VOLUME</b>		
750 or more	\$0.25	\$0.45	\$0.50
500 to 749	\$0.30	\$0.50	\$0.60
100 to 499	\$0.35	\$0.55	\$0.70
99 or less	\$0.40	\$0.60	\$0.80
Duplicate Bills	\$0.00	\$0.30	\$0.30
OPTIONAL SERVICE: <b>Mail to other Carriers</b>	<b>\$1.00</b>	<b>\$1.00</b>	<b>\$1.00</b>

**INDIRECT** Payors are optionally chosen by a Provider and are \$0.50 above the cost shown above, EXCLUDING the Optional Mailing Service

**Clarifications when Provider is mailing to IHCFA:**

1. Bill = 6 procedure or one (1) HCFA-1500 bill. Paper bills only.
2. Pricing is based on five (5) pages per bill including supporting documents
3. If bill exceeds five pages on average over a month, prices are subject to change.