



Australian Government

Medicare Australia

**ONLINE CLAIMING FOR MEDICARE
SOFTWARE DEVELOPER AGREEMENT**

Medicare Australia
134 Reed Street North
Greenway ACT 2900

Details

Parties	Medicare Australia and Software Developer	
	Name	The Commonwealth as represented by the CEO of Medicare Australia (Medicare Australia)
	ABN	75 174 030 967
	Address	134 Reed Street North Greenway ACT 2900
	Telephone	1300 550 115
	Attention	General Manager, Medicare Applications Division
Software Developer	Name	[]
	ABN	[]
	Address	[]
	Telephone	[]
	Fax	[]
	Attention	[]
Recitals	A	Medicare Australia has developed a system known as online claiming to allow Providers to conduct transactions with Medicare Australia electronically.
	B	The Software Developer wishes to supply software to Providers to enable them, amongst other things, to conduct transactions with Medicare Australia electronically.
	C	Medicare Australia has agreed to allow the Software Developer's software to be used by Providers to conduct transactions with Medicare Australia electronically, on the terms and conditions set out in this agreement.

- D** In consideration of the Software Developer's software being used by Providers to conduct transactions with Medicare Australia electronically, Medicare Australia has agreed to license the CA to the Software Developer on the terms and conditions set out in this agreement.

Date of agreement The date that the last party signs this agreement.

The parties agree as follows:

1 Relationship with other Agreements

From the date of this agreement:

- (a) the Existing Agreements (if any) are replaced by this agreement; and
- (b) this agreement governs the parties' relationship with regard to any matter relating to or connected with the Software or online claiming.

This agreement is intended to operate alongside any agreement between the Software Developer and Medicare Australia relating to systems other than online claiming, for example, Medclaims.

If the Software Developer has an accrued right to receive a payment from Medicare Australia under an Existing Agreement as at the date of this agreement then, notwithstanding this clause 1, the Software Developer is entitled to receive that payment under the Existing Agreement. However, as from the date of this agreement, no further rights to payment accrue under any Existing Agreement.

2 Software

2.1 Requirements for Software

Medicare Australia will allow Providers to use a version of Software to conduct transactions with Medicare Australia electronically so long as, at the time:

- (a) the version of Software is approved by Medicare Australia for the purposes of this agreement in accordance with schedule 1;
- (b) the version of Software continues to comply with all of the Requirements;
- (c) the Software Developer has complied with and continues to comply with this agreement; and
- (d) this agreement has not been terminated.

The Software Developer must comply with its obligations in the schedules.

Medicare Australia may, from time to time, in consultation with the Software Developer, do any one or more of the following:

- (a) vary or supplement the Requirements;
- (b) approve a different version of the CA or the PKI software; or
- (c) revoke its approval of any version of the CA or the PKI software.

Any such variation, supplementation, approval or revocation of approval takes effect 30 days after notice of the event is given to the Software Developer by Medicare Australia, or on such later date as may be specified in the notice.

The Software Developer acknowledges that Providers who acquire rights to use the Software will need to obtain Medicare Australia's agreement to conduct transactions with Medicare Australia electronically.

2.2 Security

The Software Developer must ensure that the Software uses PKI software to properly authenticate and encrypt electronic communications sent to Medicare Australia using the Software.

2.3 Action required by Software Developers

If, at any time, a version of Software being used by Providers either:

- (a) ceases to be approved by Medicare Australia under this agreement in accordance with schedule 1; or
- (b) no longer complies with all of the Requirements,

the Software Developer must within 14 days, immediately do one of the following things:
 - (c) make available to all Providers using that version of Software a new version of Software that complies with all of the Requirements and is approved by Medicare Australia under this agreement in accordance with schedule 1; or
 - (d) give written notification to all Providers using that version of Software that the Software is no longer suitable for conducting transactions with Medicare Australia electronically and notify Medicare Australia that this notification to Providers has been given.

If the software changes impose unreasonable costs, the software developer can choose to undertake changes or terminate this agreement in accordance with clause 6.1.

2.4 Provision of information to Medicare Australia

The Software Developer must from time to time provide the following information to Medicare Australia in writing, within 30 days of receiving a request for the information from Medicare Australia:

- (a) the names of the Providers who, to the knowledge of the Software Developer, use the Software to exchange electronic documents with Medicare Australia
- (b) the version of the Software used by each such Provider; and
- (c) the characteristics of each such version of the Software (including the version of the CA and PKI software used by the Software).

The Software Developer must ensure that its arrangements with Providers are such that the Software Developer is not prevented by contract or statute from complying with its obligation to Medicare Australia under this clause 2.4.

3 Privacy

3.1 Application

This clause 3 applies only where, and to the extent that, the Software Developer deals with “personal information” (within the meaning of the *Privacy Act 1988*) for the purposes of this agreement. In these circumstances, the Software Developer may be a “contracted service provider” for the purposes of the *Privacy Act 1988*.

3.2 Obligations

The Software Developer must, when doing anything connected with this agreement:

- (a) comply with the Information Privacy Principles applying to Commonwealth agencies under the *Privacy Act 1988*, as if it were a Commonwealth agency; and
- (b) not do anything that, if done by Medicare Australia, would be a breach of the *Privacy Act 1988* by Medicare Australia

The Software Developer must also:

- (c) promptly notify Medicare Australia of any breach of paragraph (a) or (b) of this clause
- (d) include equivalent requirements to this clause 3.2 (including this paragraph) in any subcontract entered into that relates to this agreement; and
- (e) permit Medicare Australia and the Office of the Privacy Commissioner reasonable access on reasonable notice to its premises, records, equipment and Representatives to enable Medicare Australia or the Office of the Privacy Commissioner to monitor compliance by the Software Developer with its obligations under this clause.

4 Liability and indemnity

4.1 Limitation of liability

To the extent permitted by law, Medicare Australia is not liable to the Software Developer for any claim, loss, liability or expense (including consequential and indirect loss or damage) incurred by the Software Developer or its Representatives arising out of, or connected with, the CA, the approval of Software or the presence of the Software Developer or its Representatives at or near Medicare Australia's premises, whether the claim is based in contract, tort (including negligence), statute or otherwise.

4.2 General Indemnity by Software Developer

The Software Developer indemnifies Medicare Australia and its Representatives against any claim, loss, liability or expense (including consequential and indirect loss or damage and legal expenses on a solicitor/own client basis) arising out of, or connected with any of the following:

- (a) the Software Developer's breach of this agreement;
- (b) the negligence, wrongful act or omission (including fraud) of the Software Developer or a Representative of the Software Developer; or
- (c) the suitability, performance or fitness for purpose of the Software (or the CA to the extent that this product forms part of the Software or is used with the Software).

4.3 IP Indemnity by Software Developer

Medicare Australia must notify the Software Developer as soon as practicable if any claim, demand or suit is brought, made, commenced or threatened against Medicare Australia in which it is alleged that Medicare Australia has infringed the intellectual property rights of a third party by its use of the Software in accordance with this agreement.

If Medicare Australia:

- (a) complies with this notification obligation;
- (b) fully co-operates with the Software Developer in relation to the defence of the claim, demand or suit (as the case may be); and
- (c) has complied with, and complies with, all of its obligations under this agreement,

the Software Developer must indemnify Medicare Australia to the extent that Medicare Australia's use of the Software in accordance with this agreement is found to infringe the intellectual property rights of a third party.

4.4 IP Rights

Intellectual Property Rights in the Software and other items produced by the Software Developer under this Agreement will remain the property of the Software Developer.

5 Representations

5.1 Endorsement

Medicare Australia does not endorse the Software Developer or the Software in any way and the Software Developer must not represent to any third party that Medicare Australia has or will provide such endorsement.

5.2 Terminology

When communicating to the public or to customers or potential customers regarding the features and functionality of the Software, the Software Developer must describe the functionality of the Software (insofar as it relates to online claiming using the same terminology and concepts as Medicare Australia itself uses from time to time in relation to online claiming).

5.3 Representations about suitability

The Software Developer must not represent to any person that a version of the Software is suitable for conducting transactions with Medicare Australia electronically unless, at the time the representation is made:

- (a) the version of Software is approved by Medicare Australia under this agreement in accordance with schedule 1;
- (b) the version of Software complies with all of the Requirements; and
- (c) this agreement has not been terminated.

6 Termination

6.1 Termination without default

This agreement may be terminated by either party at any time for any reason. Termination under this clause 6.1 takes effect 60 days after notice of termination is given to the other party.

6.2 Termination for default

Medicare Australia may terminate this agreement if any of the following occur:

- (a) the Software Developer breaches this agreement in a manner incapable of remedy;
- (b) the Software Developer breaches this agreement in a manner capable of remedy, and then fails to remedy the breach within 14 days of receipt of a notice from Medicare Australia requiring remedy of the breach; or

- (c) the Software Developer becomes an “insolvent under administration” or an “externally-administered body corporate” within the meaning of those terms in section 9 of the *Corporations Act 2001*.

The Software Developer may terminate this agreement if Medicare Australia breaches a fundamental term of this agreement in a manner incapable of remedy.

Termination under this clause 6.2 takes effect immediately upon notice of termination being given to the Software Developer.

6.3 Effect of termination

If this agreement is terminated, the following applies:

- (a) the parties must continue to comply with their obligations under clauses 3, 4, 5 and 6 and 7.
- (b) the Software Developer must immediately give written notification to all Providers using Software that Software is no longer suitable for conducting transactions with Medicare Australia electronically and notify Medicare Australia that this notification to Providers has been given;
- (c) the Software Developer must immediately cease using the CA and return all copies to Medicare Australia, along with any records required by schedule 2 to be maintained in relation to that software; and

the Software Developer must comply with a notice given by Medicare Australia under clause 2.4, provided the notice is given within 30 days of the date of termination.

7 Costs

7.1 Costs of Software Developer

Medicare Australia is not liable to the Software Developer for any costs, losses or damages incurred directly or indirectly by the Software Developer as a result of any of the following:

- (a) changes to the Requirements from time to time during the term of this agreement;
- (b) changes to Medicare Australia’s systems, processes and policies from time to time during the term of this agreement (including changes that render the Software less valuable or marketable);
- (c) the exercise by Medicare Australia of any of its rights under this agreement, including its right to approve (and revoke its approval of) versions of the CA and the PKI software;
- (d) Medicare Australia’s refusal to approve Software, Medicare Australia’s revocation of its approval of Software or Medicare Australia’s delay in deciding whether or not to approve Software; and
- (e) the performance by the Software Developer of any of its obligations under this agreement.

8 Notices

8.1 Form

All notices or other communications to a party in connection with this agreement must be in writing and must be:

- (a) sent to the party's address set out in the Details (or an alternative address notified by the party to the sender); and
- (b) marked to the attention of the person identified in relation to the party in the Details (or another person notified by the party to the sender).

8.2 Time of delivery

Notices are taken to be received:

- (a) if hand-delivered, on the day of delivery;
- (b) if sent by prepaid ordinary post, 3 business days after posting; or
- (c) if sent by fax, at the time the sender receives an "ok" transmission report indicating that all pages have been received.

9 General

9.1 Assignment

The Software Developer may not assign or otherwise deal with its rights under this agreement without the prior written consent of Medicare Australia.

If the Software Developer transfers its rights to Software to another person (**Purchaser**), such that the Purchaser becomes responsible for the continuing licensing, support and maintenance of the Software, the Purchaser will need to enter into an agreement (substantially in the form of this agreement) with Medicare Australia if Providers are to continue to use the Software to conduct transactions with Medicare Australia.

9.2 Conduct on premises

The Software Developer must ensure that, whenever its Representatives are on Medicare Australia's premises or using Medicare Australia's equipment or facilities, they comply with Medicare Australia's policies, procedures and rules and all reasonable directions given to them by Medicare Australia in relation to occupational health and safety, smoking in the workplace, computer use and computer and physical security.

9.3 Variation and waiver

A provision of this agreement or a right created under it may not be waived or varied except in writing signed on behalf of both parties.

9.4 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter.

9.5 Governing law

This agreement is governed by the law in force in the Australian Capital Territory and each party submits to the non-exclusive jurisdiction of the courts of that place.

10 Interpretation

10.1 Definitions

These meanings apply in this agreement (including the schedules) unless the contrary intention appears:

CA means the online claiming client adaptor developed by Medicare Australia (including any operating manual or instructions and any further versions).

Existing Agreements means any agreements or understandings (written, oral or arising from conduct) between Medicare Australia and the Software Developer in force as at the date of this agreement that relate to, or are connected with, Software (including an earlier version of this standard form agreement), but does not include any agreement between Medicare Australia and the Software Developer relating to systems other than online claiming.

Medical Practitioner has the same meaning as does the expression in the *Health Insurance Act 1973* but for the avoidance of doubt does not include an Optometrist.

Online claiming means the Medicare Australia electronic claiming system known as online claiming, as varied, renamed, enhanced or replaced from time to time, and includes ECLIPSE.

PKI software means software that enables a user to use Gatekeeper recognised digital certificates to send and receive authenticated and encrypted electronic communications using Public Key Infrastructure.

Provider means a Medical Practitioner approved by Medicare Australia to conduct transactions with Medicare Australia electronically using online claiming.

Representative, in relation to a party, includes an employee, agent, officer, director, auditor, adviser, partner, consultant, joint venturer or sub-contractor of that party.

Requirements means the requirements set out in clause 1 of schedule 1, and any other requirements relating to the CA, PKI software or online claiming from time to time notified to the Software Developer by Medicare Australia under clause 2.1.

Software means software licensed to third parties by the Software Developer that has the functionality of allowing users to conduct transactions with Medicare Australia electronically using online claiming.

10.2 References to general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(clauses and schedules)** a clause or schedule is a reference to a clause in, or schedule to, this agreement;
- (b) **(singular includes plural)** the singular includes the plural and vice versa;
- (c) **(gender)** any gender includes all genders;
- (d) **(medical practitioner)** Medical Practitioner includes an agent of a Medical Practitioner;
- (e) **(person and organisation)** the words “person” and “organisation” both include an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency.

10.3 Headings

Headings are for convenience only and do not affect the interpretation of this agreement.

EXECUTED as an agreement

Schedule 1 – Requirements and Approval of Software

1 Requirements

The following are requirements for the Software:

- (a) the Software must use a version of the CA from time to time approved by Medicare Australia for the purposes of this agreement;
- (b) the Software must use a version of the PKI software from time to time approved by Medicare Australia for the purposes of this agreement;
- (c) the Software must allow a Provider to properly conduct transactions with Medicare Australia using online claiming
- (d) the Software must use the PKI software and relevant private and public keys to properly encrypt and decrypt communications between Medicare Australia and a user of the Software, and to enable such communications to be properly authenticated; and
- (e) if the Software purports to have ECLIPSE functionality, the Software must allow a Provider to properly conduct transactions with Medicare Australia and health funds electronically.

2 Support

The Software Developer must:

- (a) forthwith take remedial action if it becomes aware that Software approved under this schedule (being Software being used by a Provider) no longer complies with all of the Requirements; and
- (b) provide help desk support for at least 8 continuous hours each business day to answer questions about the Software from Providers.

3 Approval of Software

3.1 Approval under Existing Agreements

A version of Software given a notice of integration by Medicare Australia under an Existing Agreement is taken to be approved by Medicare Australia under this schedule.

3.2 Assessment of Software

The Software Developer may request Medicare Australia to approve a version of Software. The Software Developer must, if requested by Medicare Australia, demonstrate that the version of Software submitted to Medicare Australia for approval complies with all of the Requirements.

Medicare Australia may conduct such operational acceptance tests on a version of the Software submitted to it for approval as it considers appropriate.

Note: Medicare Australia may or may not, at its discretion require the Software Developer to demonstrate that the version of software complies with all of the requirements.

3.3 Notice of Integration

If Medicare Australia considers that a version of the Software submitted to it for approval complies with all of the Requirements and that the Software Developer is complying with this agreement, Medicare Australia will approve the version of the Software by giving a notice of integration to that effect to the Software Developer.

For the avoidance of doubt, if the Software Developer supplements, changes or updates an approved version of the Software, the version as supplemented, changed or updated will need to be given a new notice of integration in order to be taken to be approved for the purposes of this agreement.

3.4 Revocation of approval

If at any time Medicare Australia considers that a version of the Software approved by it under this schedule does not comply with all of the Requirements, Medicare Australia may revoke a notice of integration issued in respect of that version of the Software (whether issued under this or any other agreement) with immediate effect by giving a notice to that effect to the Software Developer. If a notice of integration in respect of a version of the Software is revoked, that version of Software is taken not to be approved under this schedule.

Schedule 2 - Software Licence

1 Grant of licence

1.1 Non-exclusive, non-transferable licence

Medicare Australia grants the Software Developer a non-exclusive, non-transferable, royalty free licence to the CA to use, copy, sub-license and distribute the CA subject to this schedule 2.

Medicare Australia and the Software Developer acknowledge that Medicare Australia will separately license the PKI software to the Software Developer and to Providers.

1.2 Authorised use by Software Developer

The Software Developer may only use the CA:

- (a) in Australia (or in another country approved by Medicare Australia); and
- (b) for the purpose of developing, testing and supporting the Software.

1.3 Distribution of CA by Software Developer

The Software Developer may only distribute and sublicense the CA:

- (a) in its entirety without modification;
- (b) as part of, or together with, the Software;
- (c) in Australia; and
- (d) if the Software Developer does not give, or purport to give, the person to whom the CA is sub-licensed:
 - a right to further sub-license the CA;
 - a right to do anything with the CA that the Software Developer cannot do; or
 - a right to do anything with the CA that cannot be done with the Software generally.

1.4 Conditions of licence

The Software Developer must:

- (a) not reverse assemble or reverse compile the CA;
- (b) take all reasonable steps to protect the CA against theft, unauthorised use, copying or access, and notify Medicare Australia immediately if any of these occur; and
- (c) not remove any copyright or other proprietary legend from the CA, and ensure that any copy includes these legends.

2 Ownership

2.1 Ownership of CA

Nothing in this agreement in any way transfers the ownership of the CA.

2.2 Records

The Software Developer must keep records of:

- (a) any copies it makes of the CA, including the place the copies are located.
- (b) the names and addresses of all persons to whom the Software Developer has distributed or sub-licensed the CA; and
- (c) the terms on which the CA was distributed or sub-licensed by the Software Developer.

The Software Developer must allow Medicare Australia to access these records on reasonable notice.

2.3 Source code

Nothing in this agreement confers a right for the Software Developer or any other person to use or acquire the source code for the CA.

3 General

3.1 Updates and Replacements

Medicare Australia may update or replace the CA at any time.

[USE ONLY IF THE SOFTWARE DEVELOPER IS ANOTHER COMMONWEALTH GOVERNMENT AGENCY]

EXECUTED for and on behalf of)
the Commonwealth as)
represented by the)

-----)
[insert officer holder – eg)
Secretary, CEO])

of -----)
[insert agency details])
by its duly authorised)
representative:)

.....
Signature

.....
Name of signatory

Position:

DATE:

[USE ONLY IF THE SOFTWARE DEVELOPER IS A GOVERNMENT AGENCY OR STATUTORY AUTHORITY (EG STATE)]

EXECUTED for and on behalf of)
-----)

[INSERT AGENCY DETAILS])
as represented by the)

-----)
[insert officer holder – eg,)
Secretary, CEO, GM, CIO])

of -----)
[insert agency name / details])
by its duly authorised)
representative:)

.....
Signature

.....
Name of signatory

DATE: