

## **Terms and Conditions of Use**

By registering for an account with the South Carolina Workers' Compensation Commission's new web-portal based claims management system, Key Element Reporting Management & Incident Tracking, ("KERMIT"), you accept the terms and conditions of use as listed below. This serves as your agreement with the Commission, acting through the KERMIT administrator, for the purpose of electronically filing workers compensation submissions using KERMIT and will remain in effect for as long as you are enrolled as an active user ("User") with an assigned login identification ("User ID"). Use of the KERMIT system in any capacity constitutes acceptance of these Terms and Conditions of Use; if you have any objection to any of these terms and conditions, then you must report your objection to your Organizational Administrator and request the immediate termination of your KERMIT account.

### **A. User Terms And Conditions:**

A User accepts and agrees to comply with the following terms and conditions:

- That delivery of a submission through KERMIT constitutes valid service of the submission upon User.
- Provide accurate and complete information during the account registration process, as required by the Commission.
- Do not use or attempt to use a User Identification that is obscene, offensive, potentially libelous, or deceptive. A deceptive User ID includes but is not limited to a User ID that could be construed to give a false or misleading impression of the individual owner's identity or association with any other legal entity.
- Be responsible for the security and use of User's ID and password. Any data entry, filing, or other interaction with KERMIT using a User ID and password shall be deemed to be made by that User or with that User's express authorization.
- Immediately notify the Director of Technology for the Commission of any breach of user security, including any use of a User ID and password by an individual not expressly authorized to do so by User.
- If an individual will cease using an assigned User ID and password, the Organization's KERMIT administrator should be notified immediately to terminate use of the User ID and password.
- Use of KERMIT shall be for the sole purpose of conducting lawful business with the Commission.
- Use of Kermit shall comply with the state of South Carolina Constitution and the United States Constitution.
- Agree to suspension of User's account by the KERMIT administrator if it is determined that the account is being misused, abused, or fraudulently used. Account access shall also be suspended if any information provided during the account registration process is false or fraudulent.
- Understand that misuse, abuse or fraud may also result in civil liability, criminal prosecution, a grievance being filed with the appropriate licensing agency, or any combination thereof.
- Cooperate with the Organization's KERMIT administrator, Director of the Commission, and law enforcement during investigations into misuse, abuse, or fraud.
- Assume all risk and waive any claim for damages resulting from use of KERMIT.

## **B. System Use:**

A User accepts and agrees to the following provisions related to use of the KERMIT:

- User will use the KERMIT login process with a User ID and password.
- The Workers' Compensation Act provides that "the records of the Commission, in so far as they refer to accidents, injuries and settlements, shall not be open to the public, but only to parties satisfying the Commission of their interests in such records and of the right to inspect them." S.C. Code § 42-19-40 (1976). The South Carolina Supreme Court has held that the term "parties" specifically refers to employees and employers. *Blue Cross and Blue Shield v. S.C. Indus. Commission*, 274 S.C. 204, 262 S.E.2d 35 (1980).
- Unavailability of KERMIT shall neither constitute a basis for an extension of time in which to file any matter with the Division nor in any way affect any applicable statute of limitations, except as provided by law.

A user is expressly and emphatically restricted from all the following:

- using KERMIT in any way that is, or may be, damaging to KERMIT;
- using the KERMIT contrary to applicable laws and regulations, or in a way that causes, or may cause, harm to KERMIT, or to any person or business entity;
- engaging in any data mining, data harvesting, data extracting or any other similar activity in relation to KERMIT, or while using KERMIT;
- creating fraudulent KERMIT user accounts for the purpose of misrepresenting the user's identity, or unlawfully accessing other KERMIT users' accounts.

## **C. Technical Requirements:**

A User accepts and agrees to the following Technical Requirements:

- The Commission may delay, limit, or deny access to KERMIT due to system outages, scheduled maintenance or backups, or unforeseen events that may occur.
- The User assumes all risk and waives any claim for damages against the Commission, or the State of South Carolina, resulting from use of KERMIT.

## **Miscellaneous Provisions**

A User accepts and agrees to the following Miscellaneous Provisions related to use of KERMIT:

- By use of KERMIT, User acquires no ownership or intellectual property interest in the system, its content or related materials, including but not limited to User ID or password; User profile information; documents, submissions, or information filed electronically; user interface design, format or content; titles or terminology; logos or other artwork; or training materials and documentation. User agrees that all such intellectual property is the sole property of the Commission, and that no such content may be reproduced without permission.
- A User is prohibited from developing, producing, or disseminating any derivative work or product based upon or intended to interact with KERMIT without the express written permission of the Commission.

- A User may not employ any software that collects, intercepts, or otherwise mines information or content from KERMIT.
- Any challenge or dispute regarding these Terms and Conditions of Use, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined, governed, and construed in accordance with the laws of the State of South Carolina.
- If any section of the Terms and Conditions of Use shall, for any reason, be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions.
- The Terms and Conditions of Use shall survive for as long as the User has an account for KERMIT, is a party in an action that is filed using KERMIT, or, is counsel for a party in a case that is filed using KERMIT.
- Except where otherwise stated in statute and rule, the Commission reserves the right to edit or remove any material submitted to KERMIT, stored on the Commission's servers, or hosted or published within KERMIT.
- The Commission reserves the right, at its sole discretion, to modify or replace these Terms at any time. If a revision is material, the Commission will provide notice of updated Terms taking effect. What constitutes a material change will be determined at our sole discretion.
- Certain areas of KERMIT are restricted from access by a user and the Commission may further restrict access by a user to any areas of KERMIT, at any time, in its sole and absolute discretion.
- A KERMIT User agrees to make every attempt not to upload documents that contain viruses or other malware.

#### **WARRANTIES:**

The information contained herein is provided "as is" without warranty of any kind, either expressed or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, or non-infringement. The State of South Carolina assumes no responsibility for errors or omissions in this publication or other documents which are referenced by or linked to this publication. References to corporations, their services and products, are provided "as is" without warranty of any kind, either expressed or implied. In no event shall the State of South Carolina be liable for any special, incidental, indirect or consequential damages of any kind, or any damages whatsoever, including, without limitation, those resulting from loss of use, data or profits, whether or not advised of the possibility of damage, and on any theory of liability, arising out of or in connection with the use or performance of this information. This publication could include technical or other inaccuracies or typographical errors. Changes are periodically added to the information herein; these changes will be incorporated in new editions of this publication. The State of South Carolina may make improvements in the products and/or the program(s) described in this publication at any time.