

This supplemental user agreement ("**Supplemental Agreement**") is a legally binding agreement between you (the Direct Medical Expert) and MedCo Registration Solutions (Company Number 09295557) whose registered office is at Linford Wood House, 6-12 Capital Drive, Linford Wood, Milton Keynes, MK14 6XT ("MedCo"). The Supplemental Agreement is dependent on a DME User Agreement ("**User Agreement**") also being in place between the Parties.

This Supplemental Agreement sets out the basis on which the Direct Medical Expert's (DME) shall have access to contribute Database Data to the MedCo Database (from time to time) when the Claimant choosing the expert will be an Unrepresented Claimant using the Small Claims Portal. It also sets the contractual framework within which MedCo can deliver against the Ministry of Justice's (MoJ) policy objectives. The contribution of Database Data is for the purposes specified in this Supplemental Agreement and strictly on the terms and conditions of this Supplemental Agreement.

The Supplemental Agreement sits alongside and is supplemental to the User Agreement that you will have also accepted. It is a requirement of this Supplemental Agreement that all terms of the User Agreement are met.

BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS SUPPLEMENTAL AGREEMENT WHICH WILL BIND YOU AND YOUR PERSONNEL. THIS WILL ONLY BE BINDING ON MEDCO WHERE THERE IS A VALID USER AGREEMENT ALREADY IN PLACE.

#### **RECITALS**

- (A) MedCo operates the MedCo Database containing certain information about medical experts and medical examinations. The MedCo Database will be populated with Database Data supplied by the DME and other organisations and individuals Approved by MedCo to contribute Database Data for the Permitted Purpose) and will be available to access for the benefit of Unrepresented Claimants. MedCo operates in accordance with policy decisions made by the MoJ and will from time to time issue MedCo Rules to ensure that the policy decisions are met.
- (B) MedCo and the DME have agreed that, if Approved, the DME will contribute Database Data to the MedCo Database, for specified purposes and strictly on the terms and conditions of this Supplemental Agreement.
- (C) Any DME wishing to enter into this Supplemental Agreement must also have entered into the User Agreement with MedCo. Prior to MedCo's Decision the DME will be audited against the MedCo Rules specific to DMEs authorised to accept instructions from Unrepresented Claimants to MedCo's satisfaction. If the DME is not Approved this Supplemental Agreement shall be terminated.
- (D) The continuation of this Supplemental Agreement depends entirely on the continued validity of the User Agreement. If at any point the User Agreement is suspended, access to the Service under this Supplemental Agreement will also be automatically suspended with immediate effect. If at any point the User Agreement is terminated, this Supplemental Agreement will also be automatically terminated with immediate effect.
- (E) MedCo Board authority will be required by any DME seeking to enter into this Supplemental Agreement where either: 1) any previous agreement between the Parties was terminated by MedCo; or 2) where the DME had its access to the MedCo Database suspended and that suspension was in place when the previous agreement came to an end for any reason.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

1.1 Capitalised terms appearing in this Supplemental Agreement and not defined in Clause 1.2 shall have the meaning given to them in the User Agreement.

1.2 In this Supplemental Agreement the following expressions shall, unless the context otherwise requires, have the following meanings:

**“Approved”** means MedCo approving a DME to accept instructions from Unrepresented Claimants;

**“the Commencement Date”** the date upon which the DME clicked on the "Accept" button in relation to this Supplemental Agreement;

**“Decision”** means MedCo’s decision made after the DME has completed the further Accreditation Training required by MedCo for the purposes of this Supplemental Agreement and the audit has been carried out as to whether the DME should be Approved;

**“Direct Medical Expert/DME”** a medical expert who will accept instructions direct from an Unrepresented Claimant to complete a relevant medical legal report. Direct means that instructions and payment must be made direct to the direct medical expert;

**“Permitted Purpose”**

- (a) to contribute Expert Data for inclusion in the MedCo Database to be searched upon and used by MedCo and for the benefit of Unrepresented Claimants;
- (b) to contribute Case Data for inclusion in the MedCo Database to be searched upon and used by MedCo and other individuals and organisations authorised by MedCo from time to time for the purpose of data analysis and measuring the effectiveness of DMEs and the Services;
- (c) for any other purpose notified to the DME in writing by MedCo from time to time;

**“Services”** the services to be provided by or on behalf of MedCo in granting the DME access to the MedCo Database in accordance with this Supplemental Agreement, including but not limited to Randomly offering the DME as part of a search result following a search for the benefit of Unrepresented Claimants;

- “SLAs”** are any service level standards prescribed by MedCo and/or the Moj that DMEs are expected to meet when providing a medical report for an Unrepresented Claimant;
- “Small Claims Portal”** means the portal set up by Official Injury Claim Limited to process injury claims with a value below the RTA injury small claims limit and governed by the Pre-Action Protocol For Personal Injury Claims Below The Small Claims Limit In Road Traffic Accidents;
- “Unrepresented Claimant”** means a Claimant:- (a) whose claim is not being dealt with by a solicitor or other legal representative, a claims management company or other regulated person; and (b) who instructs a MRO via the Small Claims Portal.

1.3 Unless otherwise stated, references to clauses are to clauses in this Supplemental Agreement.

## 2. Commencement and Duration

2.1 Subject to a User Agreement being in place between the parties at all material times, this Supplemental Agreement shall commence on the Commencement Date and shall continue until terminated by either party in accordance with Clause 9 of this Supplemental Agreement, save in the circumstance set out in in 2.1(a) and (b) below:

- (a) any agreement between the Parties has been terminated at any point by MedCo; or
- (b) MedCo has suspended the DME’s access to the MedCo Database under any previous agreement and the suspension remained in place when the previous agreement came to an end for any reason.

## 3. Incorporation of the Terms of the User Agreement

3.1 Terms identical to those contained in the User Agreement (including the Schedules to it), other than Clause 10 of the User Agreement, are imported into, and apply equally to, this Supplemental Agreement as if they had been set out in the body of this Supplemental Agreement. The only provisions expressed in this Supplemental Agreement are those which are supplemental to such terms and they must be complied with in addition to the terms incorporated into this Supplemental Agreement by virtue of this Clause 3.1.

3.2 For the purposes of construing:-

- 3.2.1 this Supplemental Agreement, any reference in it to “this Supplemental Agreement”;  
or
- 3.2.2 the User Agreement, as incorporated into this Supplemental Agreement, any reference in it to “this User Agreement”,

shall, in either such case, be deemed to be a reference to the terms of this Supplemental Agreement and to those of the User Agreement as so incorporated.

3.3 In the event of any inconsistency between the terms of this Supplemental Agreement and the terms of the User Agreement, as incorporated into this Supplemental Agreement, the terms of this Supplemental Agreement shall prevail.

3.4 Notwithstanding Clause 3.1, for the avoidance of doubt:-

3.4.1 this Supplemental Agreement shall take effect as a contract between the parties which is separate to, and independent of, the User Agreement entered into by the parties; and

3.4.2 nothing in this Supplemental Agreement is intended to, nor shall it, affect the terms of the User Agreement entered into by the parties.

#### **4. Warranties**

4.1 The DME warrants and undertakes to MedCo that in order to allow MedCo to be in a position to make a Decision on whether the DME should be Approved it will:

- (a) complete the further Accreditation Training required by MedCo for the purposes of this Supplemental Agreement; and
- (b) fully co-operate with the audit required under clause 5.1.

4.2 The DME warrants and undertakes to MedCo that if Approved:

- (a) it will provide the Database Data in accordance with MedCo Data Validation Rules and upload case data in accordance with those MedCo Data Validation Rules and the terms of this Supplemental Agreement within 6 months of the date of selection by an Unrepresented Claimant or within 30 calendar days of the medical report being uploaded to Small Claims Portal, whichever is sooner;
- (b) on the Commencement Date it has met the MedCo Rules specific to DMEs authorised to accept instructions from Unrepresented Claimants and that it will maintain compliance with those MedCo Rules specific to DMEs authorised to accept instructions from Unrepresented Claimants for the term of this Supplemental Agreement;
- (c) it will Reaffirm this Supplemental Agreement on the same date that it Reaffirms its User Agreement and at least annually when Reaffirming its User Agreement thereafter;
- (d) it will not interpose a third party between itself and the Unrepresented Claimant; and
- (e) all instructions and payments will be made direct to itself.

#### **5. Audits**

5.1 Prior to MedCo's Decision, the DME wishing to accept instructions from Unrepresented Claimants must successfully pass an audit in the form determined by MedCo and complete further Accreditation Training required by MedCo for the purposes of this Supplemental Agreement. The audit will assess compliance with and adherence to the MedCo Rules which are specific to DMEs, particularly those relating to accepting instructions from Unrepresented

Claimants. The audit shall be carried out at MedCo's discretion. Following the audit of the DME and its completion of such further Accreditation Training, MedCo will make a Decision.

5.2 During the term of this Supplemental Agreement and for a period of two years after the termination or expiry of this Supplemental Agreement MedCo (or its Personnel) may (subject to such representative complying with the confidentiality provisions set out in Clause 16 of the User Agreement) conduct an audit of the DME's compliance with this Supplemental Agreement. Each such audit may include (but shall not be limited to) reviewing the DME's:

- (a) access to and use of the Database Data for the purposes of this Supplemental Agreement
- (b) compliance with any MedCo Rules specific to DMEs authorised to accept instructions from Unrepresented Claimants and SLAs;
- (c) integrity, confidentiality and security of any data relating to MedCo and Data Subjects;
- (d) compliance with Applicable Law and Civil Procedure Rules.

The Audit Guide, as revised from time to time, sets out a summary of the audit process which can be found at [www.medco.org.uk](http://www.medco.org.uk), sets out a summary of the audit process and requirements for the provision of information and other matters. The MRO should be familiar with and present all information requested by MedCo as detailed in the Audit Guide.

## 6. Liability and Indemnities

6.1 Clause 10 of the User Agreement is expressly excluded from this Supplemental Agreement

6.2 The DME shall indemnify MedCo against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by MedCo arising out of or in connection with:

- (a) any breach by the DME of the warranties contained in Clause 4.2;
- (b) any claim made against MedCo for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use by MedCo or Authorised Users of the Case Data and Expert Data.

6.3 Notwithstanding that MedCo shall use its reasonable endeavours to procure that the Database Data is accurate, the DME acknowledges and agrees that:

- (a) the Database Data has been supplied by third parties (which may include the DME or its Personnel);
- (b) MedCo has no control whatsoever over the accuracy, completeness or usefulness (for a specified purpose or otherwise) of that data;

- (c) MedCo does not make or include any representations, warranties or guarantees relating to and including but not limited to the accuracy, completeness or suitability of the Database Data.
- 6.4 MedCo hereby excludes to the fullest extent permitted by law all representations, undertakings, terms, warranties, conditions and guarantees (whether express or implied) relating to the Database Data in that regard.
- 6.5 The maximum aggregate liability of MedCo under or in connection with this Supplemental Agreement in respect of all claims by the DME against MedCo giving rise to the liability of MedCo whether for breach of contract, negligence or other tort or breach of statutory duty or otherwise shall not exceed the greater of 100% of Charges paid by the DME to MedCo pursuant to this Supplemental Agreement during the preceding 12 month period or the sum of £500.
- 6.6 With the exception of liability under an indemnity, which shall be unlimited, neither party shall be liable to the other party under this Supplemental Agreement for any loss of profit or for any indirect special or consequential loss or damage of any kind (including without limitation, any loss or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect) howsoever arising and whether caused by negligence, breach of contract or otherwise.
- 6.7 Nothing in this Supplemental Agreement shall limit the liability of any party for death or personal injury caused by the negligence of that party, its servants or agents; fraud or fraudulent misrepresentation; any matter of which liability cannot be excluded by law; or any claim for payment under an indemnity contained in this Supplemental Agreement.
- 6.8 Unless expressly stated to the contrary, each party shall ensure that its Personnel comply with the terms and conditions set out in this Supplemental Agreement (as appropriate). Each party shall be liable for the actions or omissions of its Personnel) as if they were actions or omissions of the relevant party.
- 7. Written warning**
- 7.1 Clause 13 of the User Agreement is expressly excluded from this Supplemental Agreement.
- 7.2 If the DME does not comply with any term of this Supplemental Agreement, and MedCo is satisfied that a written warning is appropriate, MedCo will issue a written warning to the DME setting out the action that the DME is required to take to resolve the issue.
- 8. Suspension**
- 8.1 Clause 14 of the User Agreement is expressly excluded from this Supplemental Agreement.
- 8.2 If the DME does not comply with any term of this Supplemental Agreement and MedCo is satisfied that a written warning is not appropriate, MedCo may, without liability, suspend the Services or such part of the Services as is relevant until such time as the non-compliance has been remedied to MedCo's reasonable satisfaction (either by way of audit or as otherwise agreed by MedCo).

8.3 If at any point the User Agreement is suspended, access to the MedCo Database under this Supplemental Agreement will also be suspended automatically and contemporaneously until the suspension under the User Agreement ceases.

## **9 Termination**

9.1 Clause 15 of the User Agreement is expressly excluded from this Supplemental Agreement.

9.2 If the DME is not Approved this Supplemental Agreement will terminate on the date the DME is notified in writing of MedCo's Decision.

9.3 MedCo shall be entitled to terminate this Supplemental Agreement forthwith without liability, on written notice to the DME in the event that the provision by MedCo of the Services is discontinued for any reason whatsoever.

9.4 MedCo and or the DME shall be entitled to terminate this Supplemental Agreement at any time by service of 90 days' prior written notice on the other party.

9.5 MedCo shall be entitled to terminate this Supplemental Agreement forthwith by written notice to the DME in the event that the DME commits any material breach of this Supplemental Agreement which in the reasonable opinion of MedCo cannot be remedied in accordance with Clause 8 Suspension in this Supplemental Agreement. For the avoidance of doubt the parties consider termination of the User Agreement for any reason to be a material breach of this Supplemental Agreement which is not capable of remedy.

9.6 The DME shall be entitled to terminate this Supplemental Agreement forthwith by written notice to MedCo in the event that MedCo commits any material breach of this Supplemental Agreement and has failed (in the case of a breach capable of remedy) to remedy the breach within 30 days of the receipt of a written notice from the DME specifying the breach, requiring that it be remedied and indicating that failure to remedy the breach may result in termination of this Supplemental Agreement.

9.7 On termination of this Supplemental Agreement for any reason:

- (a) subject to Clause 9.7(d) the DME will no longer have access to the MedCo Database;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Supplemental Agreement which existed at or before the date of termination, subject to the limitations set out in Clause 6 of this Supplemental Agreement;
- (c) clauses of this Supplemental Agreement or the User Agreement which expressly or by implication have effect after termination shall continue in full force and effect; and
- (d) termination of this Supplemental Agreement shall not affect the requirement under Clause 4.2(a) of this Supplemental Agreement to upload Case Data, if access to the MedCo Database is permitted by MedCo. The period of time the DME may continue accessing the MedCo Database, for the purpose of uploading Case Data, shall be determined by the MedCo Board.