

This supplemental user agreement ("**Supplemental Agreement**") is a legally binding agreement between you (the Medical Reporting Organisation) and MedCo Registration Solutions (Company Number 09295557) whose registered office is at Suite 44, Shenley Pavilions Chalkdell Drive, Shenley Wood, Milton Keynes, Buckinghamshire, England, MK5 6LB ("MedCo"). The Supplemental Agreement is dependent on a MRO User Agreement ("**User Agreement**") also being in place between the Parties.

This Supplemental Agreement sets out the basis on which the Medical Reporting Organisation (MRO) 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 MRO 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 MRO have agreed, if Approved, that the MRO will contribute Database Data to the MedCo Database, for specified purposes and strictly on the terms and conditions of this Supplemental Agreement.
- (C) All MROs accessing the MedCo Database must meet both the minimum Qualifying Criteria as set by the Ministry of Justice and the Supplementary Qualifying Criteria as set by the Ministry of Justice for those MROs who wish to provide services to Unrepresented Claimants. High Volume National (HVN) MROs must also meet the additional Qualifying Criteria.
- (D) Any MRO wishing to enter into this Supplemental Agreement must also have entered into the User Agreement with MedCo. Prior to MedCo's Decision the MRO will meet the Supplementary Qualifying Criteria and be audited against it to MedCo's satisfaction. If the MRO is not Approved this Supplemental Agreement shall be terminated.
- (E) 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.

- (F) MedCo Board authority will be required by any MRO seeking to enter into this Supplemental Agreement where either: 1) any previous agreement between the Parties was terminated by MedCo; 2) or where the MRO 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:

<b>“Approved”</b>	means MedCo approving a MRO to accept instructions from Unrepresented Claimants;
<b>“the Commencement Date”</b>	the date upon which the MRO clicked on the "Accept" button in relation to this Supplemental Agreement;
<b>“Decision”</b>	means MedCo’s decision made after the MRO has been audited against the Supplementary Qualifying Criteria as to whether the MRO should be Approved;
<b>“MRO ”</b>	a Medical Reporting Organisation that meets the definition of an MRO and the other minimum Qualifying Criteria as outlined in the “Qualifying Criteria for Medical Reporting Organisations” document published by the Ministry of Justice (“MoJ”) on <a href="http://www.medco.org.uk">www.medco.org.uk</a> (or as otherwise stipulated by MoJ from time to time) and also meets the Supplementary Qualifying Criteria;
<b>“Permitted Purpose”</b>	(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 MROs and the Services;

(c) for any other purpose notified to the MRO in writing by MedCo from time to time;

**“Services”**

the services to be provided by or on behalf of MedCo in granting the MRO access to the MedCo Database in accordance with this Supplemental Agreement, including but not limited to Randomly offering the MRO as either a HVN MRO or a non HVN MRO as part of a search result following a search made for the benefit of 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 save in the circumstances set out in 2.1(a) and (b) below, and shall continue until terminated by either party in accordance with Clause 9 of this Supplemental Agreement.

(a) If any agreement between the Parties has been terminated at any point by MedCo, MedCo will not be bound by this User Agreement unless the MedCo Board has previously confirmed in writing that the MRO may Register or;

(b) If MedCo has suspended the MRO'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 other reason by MedCo, MedCo will not be bound by this User Agreement unless the MedCo Board has previously confirmed in writing that the MRO may Register.

**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 9 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 MRO warrants and undertakes to MedCo that in order to allow MedCo to be in a position to make a Decision on whether the MRO should be approved it will fully co-operate with the audit required under clause 5.1.

4.2 The MRO 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 Supplementary Qualifying Criteria and that it will maintain compliance with those Supplementary Qualifying Criteria 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.

## 5. Audits

- 5.1 Prior to MedCo's Decision the MRO wishing to accept instructions from Unrepresented Claimants must successfully pass an audit in the form determined by MedCo. The audit will assess compliance with and adherence to the Supplementary Qualifying Criteria. The audit shall be carried out at MedCo's discretion. Following the audit of the MRO, MedCo will make a Decision.
- 5.2 During the term of this Supplemental Agreement and for a period of two years after the termination of this Supplemental Agreement MedCo (or its Personnel) may (subject to such representative complying with the confidentiality provisions set out in Clause 14 of the User Agreement) conduct an audit of the MRO's compliance with this Supplemental Agreement. Each such audit may include (but shall not be limited to) reviewing the MRO's:
- (a) access to and use of the Database Data for the purposes of this Supplemental Agreement;
  - (b) compliance with the Supplementary Qualifying Criteria
  - (c) compliance with any MedCo Rules;
  - (d) integrity, confidentiality and security of any data relating to MedCo and data subjects;
  - (e) compliance with Applicable Law and Civil Procedure Rules.

The Audit Guide as revised from time to time, 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 9 of the User Agreement is expressly excluded from this Supplemental Agreement.
- 6.2 The MRO 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 MRO 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 and/or other Users and Unrepresented Claimants 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 MRO acknowledges and agrees that:

- (a) the Database Data has been supplied by third parties (which may include the MRO and or its Personnel),
  - (b) MedCo has no control whatsoever over the accuracy, completeness and 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 and 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 MRO 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 MRO 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 11 of the User Agreement is expressly excluded from this Supplemental Agreement
- 7.2 If the MRO 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 MRO setting out the action that the MRO is required to take to resolve the issue.

**8. Suspension**

- 8.1 Clause 12 of the User Agreement is expressly excluded from this Supplemental Agreement
- 8.2 If the MRO 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 13 of the User Agreement is expressly excluded from this Supplemental Agreement.
- 9.2 If the MRO 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 MRO in the event that the provision by MedCo of the Services is discontinued for any reason whatsoever.
- 9.4 MedCo and or the MRO 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 MRO in the event that the MRO and/or its Personnel 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 MRO 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 an MRO 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 MRO 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 MRO may continue accessing the MedCo Database, for the purpose of uploading Case Data, shall be determined by the MedCo Board.