

This user agreement ("**User Agreement**") is a legally binding agreement between you, a Direct Medical Expert ("**DME**") 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 User Agreement sets out the basis on which the DME shall have access to contribute Database Data to the MedCo Database from time to time, and this is accepted by MedCo. 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 User Agreement and strictly on the terms and conditions of this User Agreement.

The User Agreement also sets out how MedCo will arrange for the provision of Accreditation Training. The User Agreement sets out the terms on which MedCo agrees to list the DME on the MedCo Database as an Accredited DME, once it has completed the Accreditation Training and has satisfied MedCo's Due Diligence checks.

BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS USER AGREEMENT WHICH WILL BIND YOU AND YOUR PERSONNEL. THIS WILL ONLY BE BINDING ON MEDCO IN CERTAIN CIRCUMSTANCES SEE RECITAL (D) AND CLAUSE 2.1 BELOW

## 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 (at varying levels) by certain authorised parties who will select a MRO or DME to provide the Claimant with a medical report. 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 the DME will contribute Database Data to the MedCo Database, for specified purposes and strictly on the terms and conditions of this User Agreement.
- (C) MedCo will arrange for the provision of Accreditation Training. The DME will provide medical legal reports of a quality expected of an Accredited medical expert and MedCo will monitor the quality standards.
- (D) MedCo Board authority will be required by any DME seeking to enter into this User 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 In this User Agreement the following expressions shall, unless the context otherwise requires, have the following meanings:

**"Accredited"** means the status granted by MedCo once the DME has completed the Accreditation Training.

<b>“Accreditation Training”</b>	means the training MedCo requires a DME to undertake to attain the status of being Accredited by MedCo and which can only be maintained by completing further training as and when required by MedCo. This includes, but is not limited to, Continuous Professional Development (CPD) training;
<b>“Alternative Business Structure”</b>	as defined in the Legal Services Act 2007;
<b>“Anonymised”</b>	Means anonymised in line with the ICO code of practice available at <a href="https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf">https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf</a> . as updated or amended from time to time;
<b>“Applicable Law”</b>	means all applicable statutory rules, regulations, instruments and provisions in force from time to time including the rules, codes of practice, practice requirements and accreditation terms stipulated by any Regulatory Body to which each Party is subject from time to time including but not limited to those set out in Schedule 2 of this User Agreement;
<b>“Authorised User”</b>	all individuals and/or organisations authorised by MedCo from time to time to access and use the MedCo Database and obtain and use the Database Data;
<b>“Business Hours”</b>	the period from 9.00 am to 5.00 pm on any Working Day;
<b>“Case Data”</b>	The data items added to the MedCo Database by the DME after completing a medical legal report as more particularly detailed in the MedCo Data Validation Rules;
<b>“Charges”</b>	means the definition in Clause 8.1;
<b>“Civil Procedure Rules”</b>	means the rules of court governing the practice and procedure to be followed in civil litigation proceedings in England and Wales as established by the Civil Procedure Act 1997 and updated periodically by the Civil Procedure Rule Committee. For the purposes of this User Agreement, any reference to the Civil Procedure Rules incorporates reference to the relevant Practice Directions and Pre-Action Protocols relating to pre-issue conduct, as made and approved from time to time by the Head of Civil Justice;
<b>“Claim”</b>	means a claim for personal injury brought by a Claimant pursuant to the Relevant Pre-Action Protocol following a road traffic accident;
<b>“Claimant”</b>	means an individual who is the subject of a Claim;
<b>“the Commencement Date”</b>	the date upon which the DME clicked on the "Accept" button in relation to this User Agreement, save in the circumstances set out in Clause 2.1 of this User Agreement;
<b>“Confidential Information”</b>	means all confidential information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or other memory device and wherever located) disclosed by a Party to the other Party in connection with this User Agreement,

including but not limited to: (a) the terms of this User Agreement; (b) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients of the disclosing Party; and (ii) the operations, processes of the disclosing Party; and (c) any information developed by the Parties in the course of carrying out this User Agreement;

<b>“Data Contributor”</b>	all individuals and organisations authorised by MedCo from time to time to access and/or use the MedCo Database to contribute Database Data;
<b>“Data Controller”</b>	shall have the meaning given to it in the Data Protection Legislation;
<b>"Database Data"</b>	the Expert Data and Case Data, provided by the Data Contributors and other data as determined by MedCo from time to time;
<b>"Data Protection Legislation"</b>	means all applicable data protection and privacy legislation, regulations and guidance including: Regulation (EU) 2016/679 (the "General Data Protection Regulation" or the "GDPR") and Data Protection Act 2018 (or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any applicable guidance or codes of practice issued by any Data Protection Regulator from time to time (all as amended, updated or re-enacted from time to time);
<b>“Data Protection Regulator”</b>	means the Information Commissioner’s Office, the Article 29 Working Party, the European Data Protection Board and any other supervisory authority with jurisdiction over either Party, and in each case any successor body from time to time;
<b>“Data Subject(s)”</b>	shall have the meaning set out in the Data Protection Legislation;
<b>“Direct Financial Link”</b>	<p>means a relationship between the DME and another party which the MoJ has determined constitutes a direct financial link (or as amended from time to time and set out at <a href="http://www.medco.org.uk">www.medco.org.uk</a>, covering a relationship between the DME and any Law Firm, Insurer or personal injury claims management company with which DME has a contract of service or by which DME is employed to provide medical legal reports in:</p> <ul style="list-style-type: none"><li>(a) soft tissue injury claims within the meaning of paragraph 1.1(16A) of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents; and</li><li>(b) road traffic accident related personal injury claims, valued at not more than £5,000, to which the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents applies</li></ul>

<b>“Direct Medical Expert” / “DME”</b>	a medical expert who will accept instructions direct from an Authorised User to complete a relevant medical legal report. Direct means that instructions and payment should be made direct to the DME;
<b>“Due Diligence”</b>	means the checks that MedCo will undertake before approving the DMEs Registration. These checks will be with any relevant Regulatory Body or any other checks that MedCo considers necessary;
<b>"Ethics Policy"</b>	the MedCo Ethics Policy as attached at Schedule 1 of this User Agreement as amended from time to time by MedCo;
<b>“Expert Data”</b>	means the full name, contact details and GMC number (or equivalent) / HCPC number of medical experts within the MedCo Database;
<b>“Group”</b>	any subsidiary or holding company (as defined in section 1159 of the Companies Act 2006) of MedCo from time to time;
<b>“Insurer”</b>	means any insurance company, Lloyd's syndicate or compensator authorised to underwrite motor insurance and <b>“Insurers”</b> shall be construed accordingly;
<b>“Law Firm”</b>	an organisation which is entitled to carry on a “reserved legal activity” in accordance with the Legal Services Act 2007 (including an organisation practising under an Alternative Business Structure (ABS) licence);
<b>“MedCo Articles of Association”</b>	means the Memorandum and Articles of Association of MedCo, as incorporated on 4 November 2014 and as amended from time to time;
<b>“MedCo Board”</b>	means the board of directors of MedCo;
<b>“MedCo Charging Policy”</b>	the charges for the provision of the Services set out at <a href="http://www.medco.org.uk">www.medco.org.uk</a> (as amended by MedCo from time to time);
<b>"MedCo Database"</b>	the MedCo branded online application which shall provide DMEs with web based browser access to the Database Data in accordance with the terms and conditions of this User Agreement;
<b>“MedCo Data Validation Rules”</b>	rules set out at <a href="http://www.medco.org.uk">www.medco.org.uk</a> (as amended by MedCo from time to time);
<b>“MedCo Rules”</b>	rules made by the MedCo Board from time to time in accordance with their powers as defined by the MedCo Articles of Association;
<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 MoJ on <a href="http://www.medco.org.uk">www.medco.org.uk</a> (or as otherwise stipulated by MoJ from time to time);

<b>"Peer Review"</b>	means a peer review assessment, by a panel of experts appointed by MedCo, of DME's medical -legal reports and as further specified in Clause 11;
<b>"Permitted Purpose"</b>	<p>(a) to contribute Expert Data for inclusion in the MedCo Database to be searched upon and used by MedCo, Authorised Users and other individuals and organisations authorised by MedCo from time to time;</p> <p>(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;</p> <p>(c) for any other purpose notified to the DME in writing by MedCo from time to time;</p>
<b>"Personal Data"</b>	shall have the meaning set out in the Data Protection Legislation;
<b>"Personnel"</b>	all persons employed by or on behalf of MedCo or the DME (as appropriate) to perform respective obligations under this User Agreement together with MedCo's or the DME's (as appropriate) servants, representatives, agents, and suppliers and approved sub-contractors used in the performance of its obligations under this User Agreement ;
<b>"Privacy Policy"</b>	shall mean the notice containing the information required to be provided to a Data Subject by the Data Protection Legislation;
<b>"Process(ing)"</b>	shall have the meaning set out in the Data Protection Legislation;
<b>"Qualifying Criteria"</b>	the criteria set by the MoJ (as amended from time to time);
<b>"Quality Assessment"</b>	means a quality assessment of the Case Data provided by the DME and where appropriate by considering Anonymised copies of medical reports and as further specified in Clause 11;
<b>"Randomly"</b>	means that, as directed by the MoJ, an algorithm is applied to the search to ensure that no MRO or DME is at risk of never being presented in a search as may happen if the search was purely random;
<b>"Reaffirm"</b>	the DME confirming, at least annually and when requested to do so by MedCo, in the format required by MedCo, that the obligations and warranties under this User Agreement are met;
<b>"Register"</b>	means completing the online form, as directed to do so by MedCo, and accepting the terms of this User Agreement;
<b>"Regulatory Body"</b>	means any competent governmental, statutory, regulatory or enforcement authority or regulator concerned with the activities carried on by any Party or any part, division or

element thereof in respect of the activities carried out pursuant to this User Agreement including the General Medical Council, Health and Care Professions Council, the Solicitors Regulation Authority, Bar Standards Board, the Financial Conduct Authority, the Information Commissioner and HM Revenue and Customs and their relevant successors (for the avoidance of doubt, this does not include any regulator whose authority arises pursuant to any voluntary code of conduct);

<b>“Relevant Pre-Action Protocol”</b>	means any Pre-Action Protocol which applies or may apply to road traffic accidents including but not limited to the RTA Protocol, or the RTA Small Claims Protocol, as amended from time to time;
<b>“RTA Protocol”</b>	means the 'Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents';
<b>“Services”</b>	the services to be provided by or on behalf of MedCo of granting the DME access to the MedCo Database in accordance with this User Agreement, including but not limited to Randomly offering the DME as part of a search result following a search by Authorised Users or other organisations;
<b>“Shared Personal Data”</b>	the Personal Data contributed and/or uploaded to the MedCo Database by the DME for the Permitted Purpose;
<b>“Short Notice Audit”</b>	means an audit carried out with limited prior notice in accordance with the Audit Guide published at <a href="http://www.medco.org.uk">www.medco.org.uk</a> , as revised from time to time;
<b>“SLAs”</b>	are any service level standards prescribed by MedCo and/or the MoJ that DMEs are expected to meet;
<b>“Small Claims Track Protocol”</b>	the pre-action protocol for use in RTA claims in the small claims track that require Claimants to obtain a medical report to be sourced via MedCo;
<b>“User”</b>	any individual authorised by MedCo to access the MedCo Database;
<b>“Working Day”</b>	any day save for Saturday, Sunday and public holidays in England and Wales.

1.2 In this User Agreement:-

- (a) any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;
- (b) references to Clauses and to Schedules are to Clauses of and the Schedules to this User Agreement;
- (c) reference to any gender includes any other gender and the singular includes the plural and vice versa;
- (d) the headings are for ease of reference only and shall not affect the construction of this User Agreement;

- (e) references to the Parties are (unless otherwise stated) to the Parties to this User Agreement; and
- (f) the words 'include', 'includes', 'including' and 'included' will be construed without limitation unless inconsistent with the context.

1.3 The Schedules form part of this User Agreement and will have the same force and effect as if expressly set out in the body of this User Agreement.

## **2. Commencement and Duration**

2.1 This User Agreement shall commence on the Commencement Date and shall continue until terminated by either Party in accordance with Clause 15 of this User Agreement, save in the circumstances set out in 2.1(a), (b) and (c) below.

If:

- (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; or
- (c) the DME has failed to accept this User Agreement, declare Direct Financial Links and pay any Charges within 2 months from the date they are notified by MedCo under any pre-operational agreement that they are approved to Register as DME,

MedCo will not be bound by this User Agreement unless the MedCo Board has previously confirmed in writing that the DME may Register

## **3. Obligations**

### **3.1 MedCo's obligations**

3.1.1 From the Commencement Date until termination of this User Agreement, MedCo shall use reasonable endeavours to:

- (a) allow the DME access to contribute Database Data to the MedCo Database;
- (b) make the MedCo Database available to the DME in accordance with the terms of this User Agreement; and
- (c) either provide or arrange for the provision of training modules which must be undertaken by DME to achieve and maintain Accredited status.

### **The DME's obligations**

3.2.1 From the Commencement Date until termination of this User Agreement, the DME shall:

- (a) provide the Database Data, in accordance with the terms of this User Agreement applying the process set out in MedCo Data Validation Rules;
- (b) use its best endeavours to ensure that all Database Data is accurate and complete;

- (c) upload the Case Data, at the earliest possible opportunity and in any event no later than 6 months from the date of selection by an Authorised User or within 30 calendar days of the medical report being sent to the Authorised User, whichever is sooner;
- (d) supply the Expert Data at the earliest opportunity;
- (e) following notification from MedCo that Database Data is inaccurate, together with any necessary documentary evidence reasonably required by the DME, use all reasonable endeavours to ensure that the record is amended to show an accurate reflection of the event within 48 hours;
- (f) pay the Charges in accordance with Clause 8;
- (g) comply with any requirement for Peer Review and following which, undertake any additional training or other steps as required by MedCo;
- (h) provide copies of appropriately Anonymised medical reports if requested by MedCo;
- (i) act in accordance with the MedCo Rules and the Ethics Policy;
- (j) comply with any SLAs published by MedCo from time to time; and
- (k) act with reasonable skill and care in performing its obligations under this User Agreement and in compliance with all Applicable Law.

#### **4. Access to and Use of Database Data**

- 4.1 Subject to the DME fully complying with its obligations pursuant to this User Agreement, MedCo grants to the DME a non-exclusive licence to access the MedCo Database for the Permitted Purpose during the term of this User Agreement.
- 4.2 The MedCo Database is provided to the DME on an "as is" basis. MedCo makes no warranties as to the accuracy of the MedCo Database or its fitness for the purposes envisaged by this User Agreement.
- 4.3 The DME warrants and undertakes to MedCo that the DME will:
  - (a) not attempt to access or use the MedCo Database for any purposes other than the Permitted Purpose;
  - (b) use the MedCo Database in accordance with the terms of this User Agreement only;
  - (c) not permit any third party to obtain access to the MedCo Database without the prior written consent of MedCo and will notify MedCo of any circumstances the DME is aware of relating to any use of the Database Data or the MedCo Database by the DME or any other party other than for the Permitted Purpose (including marketing purposes);
  - (d) not use for purposes other than the Permitted Purpose any part of any infrastructure, network or communication devices or links relating to the MedCo Database;
- 4.4 MedCo shall be entitled to create or collect any reasonable data or information about the DME's use of the MedCo Database ("Usage Data") for the purpose of regulatory



compliance requirements or by operation of law or as otherwise stipulated by MedCo from time to time.

- 4.5 MedCo shall be entitled to disclose any Usage Data, Expert Data or Case Data:
- (a) to any relevant Regulatory Body; or
  - (b) to a third party for the purposes of the prevention of fraud including but not limited to Insurance Fraud Bureau and Claims Portal Limited; or
  - (c) to any other party, for any other purpose as permitted by Applicable Law.
- 4.6 In the event that the DME contributes Expert Data to the MedCo Database, MedCo shall not contact the relevant individuals contained within the Expert Data (unless such individuals were known to MedCo prior to, or independently of, the DME's disclosure of such details pursuant to this User Agreement) or provide to any third party a DME's complete list of Expert Data without the prior permission of the DME unless MedCo is required to disclose such details by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction.
- 4.7 The DME shall keep its own records of information submitted and received by parties via the MedCo Database and shall not rely on the MedCo Database for any data storage purposes or use or rely on it as a case management system.
- 4.8 MedCo reserves the right to issue reports from time to time to the DME setting out the DME's compliance with the MedCo Data Validation Rules.

## **5. Warranties**

- 5.1 The DME warrants and undertakes to MedCo that:
- (a) they will not agree to or prepare a medical legal report where any part of their fee for preparing the report is contingent upon the nature of the expert evidence or upon the outcome of the case;
  - (b) having attained Accredited status, the DME will provide medical reports of the appropriate quality, as determined by MedCo, and will comply with the Accreditation Training process as required by MedCo from time to time;
  - (c) they have a licence to practise with GMC or equivalent registration with HCPC and that they will notify MedCo immediately if within the term of the User Agreement they no longer hold a licence to practise and at that point the user agreement will terminate with immediate effect.
  - (d) on the Commencement Date, the DME has notified (and during the term of the User Agreement will notify) MedCo in writing of any Direct Financial Link it has or will have with a third party (together with all details reasonably requested by MedCo relating thereto) and will under no circumstances accept an instruction to complete a medical legal report from an Authorised User or other relevant organisation (as reasonably stipulated by MedCo from time to time) to which the DME has a Direct Financial Link;
  - (e) in complying with 5.1(b) it will only declare Direct Financial Links in accordance with the definition provided within the terms of this User Agreement as amended from time to time the DME will Reaffirm the User Agreement and declare his/her position with regards to Direct Financial Links on an annual basis when requested to do so by MedCo in the format required by MedCo;
  - (f) the DME has the right and authority to enter into this User Agreement and to perform the actions and undertake the obligations contemplated hereunder. Without prejudice to the foregoing, the DME represents and

warrants that, subject to the terms of this User Agreement, at all times during the term of this User Agreement the DME has the right and authority to grant the licence to MedCo to use Expert Data and Case Data in accordance with the terms of this User Agreement and to provide the Expert Data and Case Data for the purposes contemplated by this User Agreement free from all liens, claims, encumbrances and other restrictions;

- (g) the use of the Expert Data and Case Data by MedCo and any other users of the MedCo Database (including without limitation the Authorised Users) will not infringe the intellectual property rights of a third party;
- (h) the disclosure to MedCo of any Expert Data or Case Data for the purposes envisaged by this User Agreement is in accordance with Data Protection Legislation;
- (i) all information provided to MedCo (to include but not limited to contact details, ICO registration details and professional registration details) is complete and will be kept up to date;
- (j) any Personal Data the DME collects and provides to MedCo under this User Agreement ("Shared Personal Data") is obtained and transferred to MedCo in accordance with Data Protection Legislation and is accurate and up to date;
- (k) prior to the disclosure to MedCo in relation to the Shared Personal Data, the DME has provided the Data Subjects of the Shared Personal Data with a Privacy Policy on the DME's own behalf and on behalf of MedCo. MedCo's Privacy Policy can be found at [www.medco.org.uk](http://www.medco.org.uk).

5.2 The DME warrants and undertakes to MedCo that the DME will:

- (a) keep its Expert Data current and up to date (including but not limited to its active or inactive status);
- (b) maintain its registration with the General Medical Council, Health and Care Professions Council or other governing body throughout the term of this User Agreement;
- (c) ensure its list of practicing addresses provided to MedCo is current and up to date and in accordance with MedCo Guidance on practicing addresses;
- (d) resubmit any unsuccessful contributions of Case Data within 48 hours.

## 6. Data

6.1 MedCo shall be entitled to disclose any data about DME and any Database Data:

- (a) to any relevant Regulatory Body;
- (b) to a third party for the purposes of the prevention of fraud including but not limited to Insurance Fraud Bureau and Claims Portal Limited; or
- (c) to any other party, for any other purpose as permitted by Applicable Law.

## 7. Intellectual Property

7.1 The Parties hereby acknowledge that the intellectual property rights in the Database Data as a whole shall be the property of MedCo and MedCo shall have the right to grant licences to the Authorised Users and other third parties, from time to time, to use and access the Expert Data and Case Data inputted onto the MedCo Database by the DME.

- 7.2 With effect from the Commencement Date, the DME grants to MedCo and its Group (and any of their Personnel) and the Authorised Users a royalty-free, worldwide, non-exclusive, non-transferable, irrevocable licence to use any and all intellectual property rights in the Database Data for the purposes envisaged by this User Agreement (including but not limited to incorporation of such Database Data into the MedCo Database).
- 7.3 The DME agrees that (save for the Database Data) it will not have any interest or right of ownership whatsoever (including any intellectual property right) in the MedCo Database.
- 7.4 MedCo hereby reserves the right to grant a sub-licence in respect of Database Data to any other person (including, but not limited to, for the purpose of their establishing or administering the MedCo Database).
- 7.5 Nothing in this User Agreement grants the DME the right to use the MedCo logo without prior authorisation which is at the entire discretion of the MedCo Board.

## **8. Charges**

- 8.1 The DME shall pay to MedCo the sums stipulated by MedCo in the MedCo Charging Policy (the "Charges").
- 8.2 The Parties agree that MedCo may review and amend the Charges set out in the MedCo Charging Policy by giving not less than 30 days' notice to the DME.
- 8.3 The DME shall pay each relevant invoice (which shall include VAT and all other applicable taxes and duties (where appropriate)), submitted to it by MedCo in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by MedCo.
- 8.4 In the event that the DME fails to pay MedCo by the due date any undisputed Charges payable by the DME, MedCo may (without prejudice to any other right or remedy that it may have):
- (a) charge interest on such sum from the due date for payment at the annual rate of 3% above the base rate from time to time of Bank of England accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment;
  - (b) suspend all Services until payment has been made in full; and
  - (c) following a DME's suspension for failure to pay, terminate the User Agreement on 28 days' notice.
- 8.5 Each Party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other Party under this User Agreement against any amounts payable by it to that Party.
- 8.6 All amounts payable by the DME under this User Agreement are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under this User Agreement by MedCo to the DME, the DME shall pay to MedCo such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.7 The DME agrees that all Charges paid to MedCo are non-refundable.

## **9. Audits**

9.1 During the term of this User Agreement and for a period of two years after the termination or expiry of this User Agreement, MedCo (or its Personnel) may (subject to such representative complying with the confidentiality provisions set out in Clause 16 of this User Agreement) conduct audits of the DME's compliance with this User 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;
- (b) compliance with this User Agreement;
- (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.

9.2 During the term of this User Agreement, a DME wishing to accept instructions from unrepresented claimants must successfully pass an audit in the form determined by MedCo and further Accreditation Training. 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.

### 9.3 Short Notice Audit

9.3.1 During the term of this User Agreement, MedCo may carry out a Short Notice Audit if MedCo reasonably believes that there are one or more serious breaches of a material term of this User Agreement.

9.3.2 The Short Notice Audit will be carried out in accordance with the Audit Guide published at [www.medco.org.uk](http://www.medco.org.uk) as revised from time to time.

9.4 Except where:

- (a) an audit is imposed on MedCo by a Regulatory Body or government;
- (b) the DME is deemed to have failed a prior audit;
- (c) MedCo reasonably suspects or is aware of a breach of the terms of this User Agreement; or
- (d) a Short Notice Audit is undertaken,

MedCo (or its Personnel) may not conduct an audit on more than one occasion in any calendar year.

9.5 MedCo shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the DME or its relevant Personnel.

9.6 The DME and the DME's Personnel shall, on demand, provide to MedCo, the DME's Personnel and any relevant Regulatory Body (or their respective agents or representatives) all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information reasonably requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites controlled by the DME or the DME's Personnel (as appropriate) and to any equipment used (whether exclusively or non-exclusively) in relation to this User Agreement; and
- (c) access to the relevant DME Personnel.

All information provided to MedCo or obtained by MedCo from the DME or the DME's Personnel shall be kept confidential in accordance with the terms of this User Agreement.

- 9.7 MedCo shall, where possible, provide reasonable notice of its intention to conduct an audit, which should be, unless otherwise agreed, no less than 10 days, except where MedCo undertakes a Short Notice Audit.
- 9.8 Failure to provide access and fully co-operate with an audit, including a No Notice Audit, may result in MedCo suspending the Services as set out in Clause 14.
- 9.9 The DME shall pay such fee as stipulated in the MedCo Charging Policy for an audit under this Clause.

## **10. Liability and Indemnities**

- 10.1 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 4.3 and Clause 5;
  - (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 DME of the Case Data and Expert Data;
- 10.2 Notwithstanding that MedCo shall use its reasonable endeavours to ensure 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; and
  - (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.
- 10.3 To the extent necessary, and to the fullest extent permitted by law, MedCo hereby excludes all representations, undertakings, terms, warranties, conditions and guarantees (whether express or implied) relating to the Database Data in that regard.
- 10.4 The maximum aggregate liability of MedCo, under or in connection with this User 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 during the preceding 12 month period pursuant to this User Agreement or the sum of £500.

- 10.5 With the exception of liability under an indemnity, which shall be unlimited, neither Party shall be liable to the other Party under this User 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.
- 10.6 Nothing in this User 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 User Agreement.
- 10.7 Unless expressly stated to the contrary, each Party shall ensure that its Personnel comply with the terms and conditions set out in this User 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.

## **11. Quality Assessment and Peer Review**

- 11.1 The Moj has a policy requirement to improve the quality of medical reporting. MedCo is required by the Moj to keep the quality of medical reports under review. Quality Assessment and/or Peer Review will be arranged through the expert audit and peer review (EAPR) sub-committee in order that MedCo may meet that requirement.
- 11.2 EAPR may carry out reviews of Case Data at any time and for any reason. Where EAPR, in its sole discretion, considers that issues arise from review, the DME will be contacted by EAPR and should co-operate with EAPR's requests.
- 11.3 When a DME, within the first six months of registration, receives over 100 selections, EAPR may in its sole discretion choose to carry out a Quality Assessment without sight of any Case Data. Should EAPR decide to carry out a Quality Assessment, the DME will be contacted by EAPR and should co-operate with EAPR's requests;
- 11.4 During the term of this User Agreement MedCo may keep the quality of medical reports under review by way of:
- (a) Quality Assessment – in which the quality of the DME's reports is kept under review. Such review will include, but is not limited to, issues of the DME's conduct, where such issues have been raised with EAPR or are apparent from a review of the Case Data. Quality Assessment will usually include examination of the Case Data provided by the DME and, where appropriate, consideration of Anonymised copies of medical reports;
  - (b) Peer Review – is carried out by a panel of medical professionals experienced in conducting relevant medical-legal work who report their findings to EAPR. The peer review will involve a review of the DME's Anonymised medical reports to establish and ensure that the quality of the medical reports produced is of the highest standard. The identity of the DME will not be notified to the panel, and the identity of the members of the panel will not be notified to the DME.
- 11.5 Quality Assessment or Peer Review may result in the DME's access to the Service being suspended in accordance with Clause 14 if EAPR consider this appropriate. The DME may also be required, at their own expense, to complete further training or other steps as assessed and advised by EAPR.
- 11.6 If MedCo concludes that the findings of the Quality Assessment or Peer Review are such that the DME should no longer be Accredited:

- (a) that will constitute a material breach of the DMEs obligations under this Agreement;
- (b) MedCo will withdraw the DME's Accredited status; and
- (c) MedCo will terminate this User Agreement forthwith in accordance with the termination procedure set out in Clause 15 of this Agreement.

## **12 Escalation Procedure**

- 12.1 If a dispute arises out of or in connection with this User Agreement or the performance, validity or enforceability of it (a "Dispute") then, except as expressly provided in this User Agreement, the Parties shall follow the procedure set out in this Clause:
- 12.2 Either Party, within 14 days of a Dispute arising, shall give to the other written notice of the Dispute, setting out its nature and full particulars together with relevant supporting documents ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, a member of MedCo's Personnel or representative of the relevant MedCo committee (as specified by MedCo) ("MedCo Representative") and the DME shall attempt in good faith to resolve the Dispute;
- 12.3 If the MedCo Representative and DME are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a more senior member of MedCo's Personnel or representative of the relevant committee (as specified by MedCo) ("Medco Senior Representative"), who shall attempt in good faith to resolve it with the DME; and
- 12.4 If the MedCo Senior Representative and the DME are for any reason unable to resolve the Dispute within 30 days of it being referred to them, and where both Parties agree, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("ADR Notice") to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR Notice unless otherwise agreed in writing between the Parties.
- 12.5 Neither Party may commence any court proceedings in relation to the whole or part of the Dispute until 30 days after service of the ADR Notice, save that proceedings may be issued in any case if the right to issue would otherwise be prejudiced.
- 12.6 If the Dispute is not resolved within 30 days after service of the ADR Notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with Clause 21 of this User Agreement.
- 12.7 MedCo may record the escalation meetings, subject to the attendees of the meeting giving their explicit consent to the meeting being recorded. No other party may record the escalation meetings but MedCo will make transcripts of the meetings available upon request

## **13 Written warning**

- 13.1 If the DME does not comply with any term of this User 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.

## **14. Suspension**

- 14.1 If the DME does not comply with any term of this User 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).

**15 Termination**

- 15.1 MedCo shall be entitled to terminate this User 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.
- 15.2 MedCo or the DME shall be entitled to terminate this User Agreement at any time by service of 90 days' prior written notice on the other Party.
- 15.3 MedCo shall be entitled to terminate this User Agreement forthwith by written notice to the DME in the event that the DME or its Personnel:
- (a) commits any material breach of this User Agreement which, in the reasonable opinion of MedCo, cannot be remedied in accordance with Clause 13 by written warning or Clause 14 by suspension. For the avoidance of doubt, the Parties consider a breach of Clause 2 or 3 of Schedule 2 to be a material breach of this User Agreement which is not capable of remedy;
  - (b) enters into liquidation, whether compulsorily or voluntarily (otherwise than for the purposes of and followed by amalgamation or reconstruction of insolvency), or compounds its creditors or has a receiver, manager, administrator or administrative receiver appointed over all or any substantial part of its undertaking, assets or income or takes or suffers any similar action in consequence or debtor
  - (c) undergoes a Change of Control (unless MedCo has provided its written consent in accordance with the terms of this User Agreement).
- 15.4 The DME shall be entitled to terminate this User Agreement forthwith by written notice to MedCo in the event that MedCo commits any material breach of this User 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 User Agreement.
- 15.5 On termination of this User Agreement for any reason:
- (a) subject to Clause 15.5(d), the DME will no longer have access to the MedCo Database or the Database Data;
  - (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 User Agreement which existed at or before the date of termination, subject to the limitations set out in Clause 10;
  - (c) Clauses which expressly or by implication have effect after termination shall continue in full force and effect; and
  - (d) termination or suspension of this User Agreement shall not affect the requirement under Clause 3.2.1(a) to upload Case Data, if access to the Database is permitted by MedCo. The period of time the DME may continue accessing the Database, for the purpose of uploading Case Data, shall be determined by the MedCo Board.
  - (e) At the point access to the Database is ended following termination, MedCo will calculate any outstanding fees due in accordance with the MedCo Charging Policy and will issue a final invoice which should be paid in accordance with Clause 8.



**16 Confidentiality**

- 16.1 Each Party shall ensure that all Confidential Information of the other Party is kept confidential and shall apply the same security measures and degree of care to the Confidential Information it applies to its own Confidential Information. Neither Party shall make or cause or permit to be made or caused any use or disclosure of any Confidential Information except to the extent permitted under this User Agreement.
- 16.2 Each Party shall be permitted to disclose Confidential Information of the other Party to the extent that it is required to do so by any Applicable Law or regulations or by any public, governmental, supervisory or regulatory authority or by any legally binding order of any court or tribunal provided in any such case that:
- (a) the disclosure or use is limited strictly to those parts of the Confidential Information of the other Party which are required to be disclosed pursuant to this Clause 16;
  - (b) it gives the other Party as much notice of such disclosure as possible; and
  - (c) it uses reasonable endeavours to ensure the recipient of such Confidential Information is made aware that such information is confidential.
- 16.3 The obligations contained in Clauses 16.1 to 16.2 shall not apply to any Confidential Information of either Party:
- (a) to the extent that such Confidential Information was publicly available or generally known to the public or lawfully in the possession of the other Party at the time of the disclosure except as a result of any breach by that other Party of its obligations hereunder; or
  - (b) to the extent that the other Party acquires or has acquired such Confidential Information free from any obligation of confidentiality from a third party who is not in breach of any obligation as to confidentiality.
- 16.4 Either Party may disclose Confidential Information to its Personnel, officers, insurers or reinsurers who require such Confidential Information for the purpose of carrying out the Party's obligations under this User Agreement. Each Party shall ensure that all of its Personnel or officers to which Confidential Information is disclosed are aware prior to receiving the Confidential Information in question of the confidential nature of the Confidential Information and of the relevant Party's obligations pursuant to this Clause.
- 16.5 Neither Party shall make any announcement in relation to the matters contemplated in this Clause, in each case, save with the prior written consent of the other Party.
- 16.6 Each Party may, provided that the it has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first notifying the other Party of such disclosure.
- 16.7 Upon termination of this User Agreement, at the request of MedCo, the DME shall destroy or return to MedCo all documents and materials (and any copies) containing, reflecting, incorporating or based on MedCo's Confidential Information and certify in writing to MedCo that it has complied with this Clause.
- 16.8 Each Party acknowledges that damages alone would not be an adequate remedy for the breach of this Clause. Accordingly, without prejudice to any other rights and remedies it may have, each Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of this Clause.
- 16.9 The provisions of Clause 16 shall survive the termination or expiry of this User Agreement.

**17. Change of Control**

17.1 Without prejudice to any other right or remedy available to MedCo, in the event of a Change of Control of the DME, the DME shall not be entitled to exercise its rights under this User Agreement until it has notified MedCo of the Change of Control and obtained MedCo's consent in writing to such Change of Control (which shall not be unreasonably withheld, delayed or conditioned).

**18. Force Majeure**

18.1 None of the Parties shall be liable to the other for any failure or delay in performing its obligations under this User Agreement which is due to any cause beyond that Party's reasonable control ('**force majeure**'), that Party having used all its reasonable endeavours to remove or avoid such force majeure with all reasonable despatch.

18.2 If any Party is rendered unable wholly or in part by force majeure to carry out its obligations under this User Agreement for a period in excess of 30 days then the non-defaulting Party shall be entitled to terminate this User Agreement forthwith on written notice to the others. Subject to the obligations pursuant to Clause 15, neither Party shall have any liability to the other in respect of the termination of this User Agreement pursuant to this Clause.

**19. Assignment and Sub-Contracting**

19.1 This User Agreement is personal to the DME, and all rights under it may not be assigned or transferred by the DME.

19.2 MedCo may, at any time, assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this User Agreement, and may subcontract or delegate in any manner any or all of its obligations under this User Agreement to any third party.

**20. Entire Agreement**

20.1 This User Agreement (which includes the contents of the Schedules to this User Agreement) constitutes the entire agreement between the Parties in respect of the subject matter covered by it and supersedes all previous communications, negotiations, understandings or representations whether oral or written between the Parties. For the avoidance of doubt, in the event of any inconsistency or conflict between the terms of this User Agreement and any prior agreements in relation to this subject matter (which the Parties hereby acknowledge and agree has been lawfully terminated), the provisions of this User Agreement shall prevail.

**21. Proper Law and Jurisdiction**

21.1 This User Agreement shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.

**22. Notices**

22.1 Any notice to be given to a Party under or in connection with this User Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing; or
- (b) sent by email to the DME's email addresses or such email address as that Party may have specified to the other Party in writing.

22.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post, at the expiration of two clear days after the time of posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours, it shall be deferred until Business Hours resume.

**23. Variations**

23.1 MedCo may, subject to Board approval, make reasonable changes to this User Agreement on 30 days' prior written notice.

**24. Severability**

24.1 If any provision of this User Agreement is or becomes illegal, void or invalid, that shall not affect the legality and validity of the other provisions.

**25. Waiver**

25.1 A waiver of any right or remedy under this User Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

25.2 Failure or delay by any of the Parties in exercising any right or remedy of that Party under this User Agreement shall not, in any circumstances, operate as a waiver of it, nor shall any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.

25.3 Any waiver of a breach of, or default under, any of the terms of this User Agreement shall not be deemed a waiver of any subsequent breach of default and shall in no way affect the other terms of this User Agreement.

**26. Parties**

26.1 A person who is not a Party to this User Agreement has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this User Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **Schedule 1**

### **Ethics Policy**

This policy is for Authorised Users, Medical Reporting Organisations (MROs) and Direct and/or Indirect Medical Expert ("Expert"). The policy sets out the standards of conduct, and professional behaviours that you must adhere to.

All Authorised Users, MROs and Experts should at all times conduct themselves in accordance with their own professional regulator's standards. This policy is intended to complement those professional standards. If in the unlikely event you consider that there is any conflict between the provisions of this policy and your own regulator's professional standards then those standards should prevail. Any such conflict must be advised to MedCo immediately.

Authorised Users, MROs and Experts not adhering to the standards set out in this document will be acting in breach of their agreement(s) with MedCo ("Agreement"). MedCo reserves the right to conduct investigations which may lead to suspension or termination of any of their Agreement. Referrals may also be made to other regulatory agencies or organisations including but not limited to the Solicitors Regulatory Authority, Financial Conduct Authority, General Medical Council, Insurance Fraud Bureau, Health and Care Professions Council and Information Commissioner's Office.

#### **The Standards**

As an Authorised User, a MRO or an Expert the standards of conduct, performance and ethics that you must keep to are to:

1. Act in the best interests of the Claimant;
2. Respect the confidentiality of the Claimant;
3. Keep high standards of personal and professional conduct;
4. Provide to Medco any important information about your conduct and competence;
5. Keep your professional skills and knowledge up to date;
6. Keep accurate records;
7. Behave with integrity;
8. Comply with the relevant Civil Procedure Rules, Practice Directions and Protocols;
9. Comply with the MedCo Rules and the Agreement.

#### **Applying the Standards**

As an Authorised User, MRO, or Expert you must make sure that you are familiar with the standards and that you keep to them. If concerns are raised about you as an Authorised User, MRO, or Expert,

MedCo may consider such factors as it, at its own discretion, considers necessary (including without limitation the factors set out in this policy) when deciding whether it needs to take any action.

The standards are written in broad terms and are designed to apply to all Authorised Users, MROs and Experts as far as possible. MedCo acknowledges that some of the standards may not apply to all Authorised Users, MROs, or Experts.

MedCo aims to ensure that a high standard of professional conduct is maintained by Authorised Users, MROs and Experts. This is so that the general public and all Authorised Users, MROs and Experts can have confidence in the Services provided by MedCo and those organisations and individuals who use the MedCo Database. The standards are to be considered objectively and there are no hard and fast rules as to how the standards are to be met. Authorised Users, MROs and Experts, as autonomous and accountable professionals, will need to make reasonable decisions about their practice and how best to meet the standards. MedCo has however set out general guidelines to provide a little more detail as to what is expected of you. If you have any queries, please contact [enquiries@medco.org.uk](mailto:enquiries@medco.org.uk).

## **The Standards of Conduct and Ethics**

### **1. Act in the best interests of the Claimant**

The Claimant must be kept at the centre of all decisions made when acting as an Authorised User, MRO or an Expert. Each Authorised User, MRO and Expert involved in the process is responsible for promoting the Claimant's best interests in all dealings with the Claimant. You must respect that those interests will vary when providing a service as an Authorised User or MRO or an Expert.

You must not allow your views about a Claimant's sex, age, colour, race, disability, sexual orientation, marital status, pregnancy and maternity, social or economic status, lifestyle, culture, religion or beliefs to impact on the way that you deal with each individual Claimant.

You must maintain and uphold your professional standards at all times when dealing with the Claimant.

### **2. Respect the confidentiality of the Claimant**

You must treat information about the Claimant as confidential and use it only for the purposes for which they have provided it. You must not knowingly release any personal data or confidential information to anyone who is not entitled to it, and you should check that people who ask for the information are entitled to it.

You must keep to the conditions of the Data Protection Legislation and always follow and keep up to date with best practice for handling confidential information. You must also ensure that where you engage a third party' assistance in preparing reports that they are following such best practice and meeting the requirements of the Data Protection Legislation.

### **3. Keep high standards of personal and professional conduct**

You must maintain high standards of both personal and professional conduct so as to ensure that the general public and all other Authorised Users, MROs and Experts will have confidence in you as an Authorised User or as a MRO or an Expert and your actions should not undermine confidence in the Services provided by MedCo. As an Authorised User, MRO, or Expert you are expected to co-operate

with MedCo and its Personnel in a professional manner including, but not limited to, responding to MedCo's correspondence and dealing with complaints in a timely manner. Any unacceptable behaviour towards MedCo Personnel will not be tolerated.

#### **4. Provide to us any important information about your conduct and competence**

You must inform MedCo immediately if you have important information about your conduct or competence, or about the conduct and competence of any other MedCo Authorised User or MRO or Expert which comes to your attention, to the extent it is permitted by Applicable Law. In particular you must advise MedCo immediately if:

- You are convicted of a criminal offence, receive a conditional discharge for an offence or accept a police caution;
- You are disciplined by your professional regulator;
- You are referred on any conduct issue to a Regulatory Body
- Any allegation of serious misconduct or criminal offences is made against you;
- You are suspended or placed under a practice restriction because of concerns about your conduct or competence;
- You have been declared bankrupt, entered into any individual voluntary arrangements or had a County Court judgment issued against you.

MedCo will investigate any report they receive about you in accordance with this policy and the terms of your Agreement. MedCo will take such action as it considers necessary, which may include removing your access to the MedCo Database or your Accredited status and reporting you to your Regulatory Body as appropriate.

#### **5. Keep your professional skills and knowledge up to date**

You must make sure that your professional skills, knowledge and performance are of good quality, up to date, and relevant to your scope of practice.

Experts will in any event need to maintain Accredited status as granted by MedCo and will be required to undertake appropriate levels of training, targeted at provision of reports undertaken via MedCo. All Authorised Users and MROs will be required to ensure that they maintain up to date knowledge on Data Protection Legislation and all other relevant Applicable Law.

#### **6. Keep accurate records**

Accurate records should be maintained of all engagement with the Claimant and on all aspects relating to use of the MedCo Database.

MedCo has a right of audit and may wish to examine your records should this prove necessary.

#### **7. Behave with integrity**

All Authorised Users, MROs and Experts will be expected to behave with integrity at all times. This covers their dealings with Claimants, MedCo and other Authorised Users MROs and Experts.

This will include (but is not limited to):

- Making full and frank disclosure of any Direct Financial Link that one Authorised User may have with a MRO or Direct Medical Expert (or vice versa) and keeping that disclosure updated if there are any changes;
- Ensuring that referral fees are not requested, paid or received in breach of the Legal Aid Sentencing and Provision of Offenders Act 2012;
- Not providing any misleading information in their dealings with MedCo;
- Not engaging in any other practice that would undermine the public confidence in MedCo, the Service, Authorised Users or MROs or Experts.

#### **8. Comply with the relevant Civil Procedure Rules, Practice Directions and Protocols**

You should ensure that you are up to date with all relevant provisions and that the provisions are adhered to. This should include making the relevant fraud checks required by the RTA protocol.

#### **9. Comply with the MedCo Rules and the Agreement**

You should ensure that they are familiar with the terms of your Agreement and the MedCo Rules and ensure that these are adhered to. Any revisions will be published and you should familiarise themselves with any updated versions. MedCo has also published Guidance as to how it will interpret the Qualifying Criteria. Such Guidance will form the basis of audit of MROs all MROs should familiarise themselves with and act in accordance with that guidance as updated from time to time.

## Schedule 2

Without limitation to the obligation in Clause 3.2.1(h) to comply with all Applicable Law, the Parties agree to comply with the specific laws and regulations set out in this Schedule 2.

### 1. Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The DME hereby confirms and agrees that it shall not request, receive or pay referral fees in contravention of Legal Aid, Sentencing and Punishment of Offenders Act 2012.

### 2. Data Protection Requirements

- 2.1 The Parties acknowledge that each Party shall be a Data Controller of the Shared Personal Data. Each Party shall comply with its obligations as a Data Controller under Data Protection Legislation.
- 2.2. Without prejudice to Clause 2.1 of this Schedule, DME shall ensure that:
- 2.2.1 any Shared Personal Data:
- 2.2.1.1 has been collected and disclosed to MedCo in accordance with the Data Protection Legislation; and
- 2.2.1.2 is accurate and up to date.
- 2.2.2 prior to the disclosure to MedCo of Shared Personal Data, it has:
- 2.2.2.1 provided the relevant Data Subjects of the Shared Personal Data with a Privacy Policy on its own behalf and on behalf of MedCo which expressly refers to the disclosure of the Shared Personal Data to MedCo; and
- 2.2.2.2 referred Data Subjects to MedCo's Privacy Policy at <https://www.medco.org.uk/privacy-policy> for information on how MedCo will Process the relevant Personal Data.
- 2.2.3 to the extent that consent of the Data Subjects is necessary for compliance with Data Protection Legislation, it has obtained the consent of the Data Subjects to: (i) its transfer of the Shared Personal Data to MedCo; and (ii) the Processing of the Shared Personal Data by MedCo; and it will immediately notify MedCo in the event that a Data Subject withdraws or amends this consent;
- 2.2.4 it implements and maintains appropriate technical and organisational measures to preserve the confidentiality and integrity of the Shared Personal Data and prevent any unlawful Processing or disclosure or damage, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects (the "**Security Measures**");
- 2.3. The DME shall notify MedCo promptly, and in any event within 24 hours, of any known breach of technical and organisational Security Measures where the breach has affected or could have affected the Shared Personal Data (the "**Security Breach**"). DME shall also notify MedCo of the steps it has taken to remedy and mitigate the Security Breach and will provide MedCo with any information that MedCo requests.
- 2.4 The DME shall notify MedCo (to the extent legally permitted) promptly, and in any event within 24 hours, should it receive a request, complaint or enquiry from either a Data Protection Regulator or Data Subject with regard to the Shared Personal Data ("**Enquiry**"). The DME shall keep MedCo regularly updated on all such Enquiries and shall notify MedCo when the Enquiry has been resolved.
- 2.5 The DME shall, within 10 Working Days of receiving a written request, provide to MedCo such information as is reasonably required to satisfy MedCo that the DME is compliant with the Data Protection Legislation.



**3. Anti-Bribery**

- 3.1 Each Party shall ensure that it and persons associated with it or other persons who are performing Services in connection with this User Agreement shall:
- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“Relevant Requirements”);
  - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (c) not do, or omit to do, any act that will cause or lead MedCo to be in breach of any of the Relevant Requirements or Relevant Policies.
  - (d) immediately report to MedCo any request or demand for any undue financial or other advantage of any kind received by the DME in connection with the performance of this User Agreement;
  - (e) have and shall maintain in place throughout the term of this User Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010 (“the Relevant Policies”), to ensure compliance with the Relevant Requirements, the Relevant Policies and Schedule 2, Clause 3.1(b) and will enforce them where appropriate.
- 3.2 The DME, if requested, shall provide MedCo with any reasonable assistance, at the DME’s reasonable cost, to enable MedCo to perform any activity required by any relevant government or agency in any jurisdiction for the purpose of compliance with any of the Relevant Requirements
- 3.3 The DME shall immediately notify MedCo if, at any time during the term of this User Agreement, its circumstances, knowledge or awareness changes such that it would not be able to warrant its compliance with the obligations in Schedule 2, Clause 3.1 at the relevant time.
- 3.4 For the purpose of Schedule 2, Clause 3, the meaning of “adequate procedures” and “foreign public official” and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 3.5 Regardless of any other provision in this User Agreement, MedCo shall not be obliged to, or omit to do any act which would, in its reasonable opinion put it in breach of any of the Relevant Requirements.