

## USER AGREEMENT FOR MERCK ExpressCheck

Merck Sharp & Dohme Corp. ("Merck"), a subsidiary of Merck & Co., Inc., is pleased to provide Merck ExpressCheck ("MEC"), an eligibility and coverage portal (the "MEC Portal"), which has been developed and is operated for Merck by VirMedica, Inc. ("VirMedica"). The MEC Portal provides you with an on-line option to obtain available patient-level private commercial insurance and Medicare Part D coverage information.

For purposes of this User Agreement, "Participant" means each health-care professional, health-care business professional, or other employee, staff member or provider associated with such professional who uses or will use the MEC Portal. "Participant Organization" means all Participants who use the MEC Portal under a single registration. An individual who registers to use the MEC Portal on behalf of a Participant Organization must be authorized to act for the Participant Organization (including all Participants within the organization) and to bind the Participant Organization (including all such Participants) to this User Agreement.

**BY CLICKING "I AGREE" BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ, ACCEPTED, AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS USER AGREEMENT. IF YOU DO NOT ACCEPT AND AGREE TO BE BOUND BY ALL OF THE TERMS OF THIS USER AGREEMENT, CLICK ON THE "I DECLINE" BUTTON. NOTE THAT YOU WILL NOT BE ABLE TO REGISTER FOR OR USE THE MEC PORTAL IF YOU CLICK ON THE "I DECLINE" BUTTON.**

This User Agreement was last revised in March 2015.

### 1. GENERAL

After registering to use the MEC Portal, Participant will be able to obtain available information concerning patient private insurance and/or Medicare Part D coverage, including confirming insurance eligibility and product coverage status, for select Merck products. Participant may also have the ability to calculate private insurance coinsurance amounts if Participant's practice bill fees and/or contracted reimbursement rates are entered and updated as needed.

#### 1.1 MEC Portal Services

As part of the services provided in connection with use of the MEC Portal (the "MEC Portal Services"), Participant may receive services provided by one or more parties under contract with Merck (the "Third-Party Service Partners"). The Third-Party Service Partners include VirMedica, POC Network Technologies Inc. ("PNT"), and TeleRx, Inc. ("TeleRx"), a wholly-owned subsidiary of Merck. VirMedica developed and operates the MEC Portal. PNT is a subcontractor of VirMedica which provides VirMedica with information about Medicare Part D insurance coverage status in response to queries made by Participants through the MEC Portal. TeleRx manually verifies private insurance coverage for the Participant when limited or no commercial insurance information is available electronically through the MEC Portal. Participants may opt in to have their inquiries routed to TeleRx for this additional manual verification check. TeleRx will contact the relevant insurer to determine the benefit coverage, and the results will be returned through the MEC Portal. Participants will be notified of the coverage results. TeleRx is also the administrator for Merck in conjunction with Merck's Commitment (defined below, in Section 5).

As a result, these Third-Party Service Partners, as well as Merck, are all parties to this User Agreement with Participant and can legally enforce the relevant terms of this User Agreement.

When a Participant or Participant Organization registers for and uses the MEC Portal, the information the Participant provides via the MEC Portal will be collected by VirMedica. Because patient information may be provided by a Participant or a Participant Organization to VirMedica and/or PNT and/or TeleRx through the MEC Portal, such information may be subject to the Privacy or Security Rules issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). As a result, each Participant or Participant Organization must enter into a business associate agreement ("BAA") with VirMedica, which shall govern the use and/or disclosure of patient information that Participant or Participant Organization provides through the MEC Portal. VirMedica shall engage the other Third-Party Service Providers for business associate purposes.

No protected patient-identifiable information, or other information that is protected from disclosure by applicable law, will be disclosed to Merck, except as required or expressly permitted by, and in accordance with, law, regulation, or judicial or administrative order. Merck may be provided, in compliance with HIPAA, de-identified patient data, including summarized or individual data collected from Participants' use of the Services. Data regarding Participants, Participant Organizations, and their use of the MEC Portal and Merck Commitment may be shared with Merck in identifiable form. All such identifiable information provided to Merck will be used in accordance to the Merck Global Data Practices Commitment to Health Care Professionals (available online at [http://www.merck.com/policy/pdf/global\\_data\\_practices\\_2009.pdf](http://www.merck.com/policy/pdf/global_data_practices_2009.pdf)). Both Merck and the Third-Party Service Partners may use additional third parties to assist them in connection with this User Agreement.

## 2. PARTICIPANT ELIGIBILITY CRITERIA

Participant must be, or be acting for, a U.S.-based health-care provider licensed to prescribe the Merck products to which the MEC Portal relates. Participants may only use the MEC Portal in the United States. Health-care providers, or Participants acting for health-care provider, sanctioned by the General Services Administration, Office of Inspector General, or other applicable regulatory body, who are not eligible to participate in Medicare, Medicaid, or other Federal health care programs, are not eligible to participate in, or use any of, the MEC Portal Medicare Part D capabilities.

Participant must comply with all applicable requirements of HIPAA and all applicable state and/or local laws relative to privacy and security. Participant must comply with any applicable laws or regulations relative to the billing and collections of payments from patients for services rendered. Participant must comply with all applicable payer contractual obligations or requirements, including, but not limited to, separate agreements concerning the processing of Part D claims, such as agreements a Participant or Participant Organization may have with PNT. VirMedica reserves the right to verify with PNT whether Participant or Participant Organization has any such agreement with PNT. Additional eligibility criteria apply to the Merck Commitment (see Section 5.)

## 3. PRIVATE INSURANCE INFORMATION

The private insurance information made available through the MEC Portal is provided by VirMedica and/or TeleRx. This private insurance information provides coverage information only for patients who are privately insured by a U.S. based insurance carrier. Participant acknowledges that neither Merck nor the Third-Party Service Partners control the payment transaction for private insurance claims. Neither Merck nor any Third-Party Service Partners will be responsible for performance of, or payment or collection from, insurance companies making payment on behalf of a Participant's patients.

### 3a. MEDICARE PART D INFORMATION

The MEC Portal provides access to certain information regarding Medicare Part D insurance. Information for all other government-funded programs, such as Medicaid, Medicare Part B, Veterans

Benefits, and TRICARE, is not available through the MEC Portal. Medicare Part D information is made available through the MEC Portal by PNT.

The Medicare Part D coverage status information provided through the MEC Portal by PNT reflects information made available to PNT by certain, but not all, Medicare Part D plans. For Medicare Part D Plans with whom PNT contracts for access to coverage information, the information received by Participant reflects information provided to PNT by the applicable Part D Plan. Such information is subject to change pursuant to the applicable Part D plan benefit design as additional claims are processed. Thus, the information provided to Participant by PNT may not reflect the available reimbursement for a patient at a future time when a claim is submitted to the Part D plan.

For Medicare Part D plans that do not contract with PNT, only Medicare Part D eligibility information will be made available to Participant. No coverage information will be available through the MEC Portal for these plans.

**MERCK DOES NOT MAKE ANY REPRESENTATION OR GUARANTEE AS TO THE ACCURACY OF THE INFORMATION PROVIDED BY PART D PLANS THROUGH PNT, AND SUCH INFORMATION IS NOT SUBJECT TO MERCK'S COMMITMENT TO ACCURACY THAT IS DESCRIBED IN SECTION 5 OF THIS USER AGREEMENT.**

Participants who have separate agreements with PNT may use the MEC Portal to obtain coverage information, but will need to separately access PNT's TransactRx™ Vaccine Manager to adjudicate claims for vaccines administered to appropriate patients insured by Part D plans that utilize TransactRx™ Vaccine Manager. This User Agreement and Participants' use of the MEC Portal is not intended to conflict with or obviate any of the terms and conditions contained in Participant's "END USER AND PARTICIPATING PROVIDER AGREEMENT" with PNT, including, but not limited to, any requirement to submit claims for services provided to applicable patients through PNT's TransactRx™ Vaccine Manager. The TransactRx™ Vaccine Manager was created and is administered independently by PNT.

#### **4. MEC PORTAL REGISTRATION PROCESS**

a. To register to use the MEC Portal, an individual authorized to act as or on behalf of a Participant or Participant Organization must complete registration at [www.checkcoveragenow.com](http://www.checkcoveragenow.com). The registration process needs to be completed only once on behalf of each Participant or Participant Organization. By registering to use the MEC Portal, the Participant Organization and each Participant agrees to abide by the terms and conditions of this User Agreement and the business associate agreement between Participant or Participant Organization and VirMedica. The Participant who registers to use the MEC Portal on behalf of other Participants within a Participant Organization shall inform such other Participants within their Participant Organization of the terms and conditions of registration and of this User Agreement, as necessary, to ensure compliance with the terms and conditions.

b. The following information will be needed to complete the registration process and to register other Participants within a Participant Organization:

- Address of each of Participant's or Participant Organization's office locations
- Name of provider(s) whose patients' benefits will be verified
- Provider's NPI#

- Tax ID#
- Names of contracted private insurance carriers for each Participant

If Participant wishes to use the MEC Portal to make certain calculations regarding private insurance (for example, patient coinsurance amounts) the following information must also be entered:

- >Provider-specific contracted reimbursement rates for each private insurance carrier
- Practice bill fees for CPT codes related to the select Merck products included in the MEC Portal

c. Participants will need to provide the following data to request patient insurance information:

- Name of provider whose patients' benefits will be verified
- Provider's NPI#
- Tax ID#
- Contracted private insurance carriers for each Participant
- Patient name, DOB, insurance information

#### 5. COMMITMENT TO ACCURACY FOR PRIVATE INSURANCE RESPONSES

The MEC Portal is designed to provide fast online access to private insurance and Medicare Part D coverage for many of your patients. For private insurance responses received through the MEC Portal, our intention is to provide accurate information. In connection with the use of the MEC Portal, Merck is offering this Commitment to Accuracy for Private Insurance Responses ("Merck Commitment"). The Merck Commitment is made solely by Merck, by and through TeleRx. TeleRx is the only third party that may have any obligation under this Agreement with regard to the Merck Commitment. The Merck Commitment does not apply to Medicare Part D information provided through the MEC Portal. The Merck Commitment does apply to coverage inquiries manually conducted by TeleRx, including inquiries made after an "undetermined" response is returned.

If the MEC Portal provides inaccurate private insurance coverage information, and such inaccuracy causes the Participant to collect less than the patient's actual payment responsibility shown on the patient's private insurance explanation of benefits ("EOB") form, Participant may be entitled to compensation from Merck under the Merck Commitment. **It is important to note that the Merck Commitment is NOT applicable to Participants and/or Participant Organizations located in, or in connection with patients who reside in, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, Rhode Island, or Vermont or to patients who are insured by a qualified health plan purchased through a health insurance exchange established by a state government or the federal government.**

To make a claim under the Merck Commitment, the Participant must provide TeleRx, the Administrator of the Merck Commitment, with a completed request form (available through the MEC Portal), a copy of the private insurer's EOB, and a copy of the MEC Portal verification result that Participant believes to be incorrect (a "Claim Request"). If a Participant did not maintain a copy of the MEC Portal verification report, Participant may obtain a copy from MEC Portal coverage history. As part of its claim under the Merck Commitment, the Participant must certify that the response(s) received by the Participant's office to the Patient Coverage Verification confirmed that coverage was available and that

the Participant's office properly sought coverage from the relevant carrier, but such claim for reimbursement was denied.

The Claim Request Form should be mailed to TeleRx for processing. In connection with the Claim Request, TeleRx will not provide patient-identifiable information to Merck. However, while validating a Claim Request, TeleRx may request from VirMedica such information as was provided or obtained through Participant's use of the MEC Portal, including certain patient-identifiable information. By submitting or causing to be submitted a Claim Request, Participant authorizes VirMedica, consistent with Participant's BAA with VirMedica, to provide to TeleRx, such information as is necessary to facilitate Participant's request for payment under the Merck Commitment. Claim Requests apply only to the MEC Portal, not to responses that may be available through other reimbursement programs from Merck or to information that is manually collected by TeleRx, even if such information is processed through the MEC Portal.

**Before submitting a Claim Request to TeleRx, Participant must obtain each patient's written authorization to disclose such patient's patient-identifiable information to TeleRx for the purposes of processing the Claim Request and investigating coverage information in connection with a claim, as described in the Claim Request and in this User Agreement.** Such permission must be to the extent, and in the form, required by all applicable state and federal laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), codified in pertinent part at 42 U.S.C. § 1320d et seq., and the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009), codified in pertinent part at 42 U.S.C. § 17921 et seq. ("HITECH Act"), and all rules and regulations promulgated thereunder. In processing a Claim Request, TeleRx's activities may include contacting the patient's insurer to confirm and/or verify the information requested on the request form (e.g., patient name, date of birth, insurance information, other medical or health information, provider information, and insurer's reimbursement decision). In turn, the insurer may transfer such information back to TeleRx. To the extent such information reasonably can be used to identify the patient, TeleRx will use it solely for facilitating and responding to the Claim Request, which may include reporting such information back to Participant.

Participants must comply with all terms and conditions of this User Agreement. Payment restrictions apply. All claims pursuant to the Merck Commitment are further subject to an aggregate quarterly maximum cap which, if exceeded, will result in the suspension of the Merck Commitment for at least the remainder of the quarter. Merck reserves the right to limit or refuse a Claim Request. Merck also reserves the right to modify or cancel any part of the Merck Commitment, including, as necessary, the quarterly cap.

Inaccurate responses from the MEC Portal that are due to the Participant's, or anyone acting on behalf of the Participant, having provided inaccurate or incomplete information are not eligible for payment under the Merck Commitment. Merck warrants information only as of the time the information is provided. Claims pursuant to the Merck Commitment that arise because of changes in private insurance status or coverage occurring after such information was provided are not eligible for compensation. Additionally, the following provisions apply:

- Participant (or the licensed health-care professional on whose behalf Participant is acting) must have properly sought reimbursement from the patient's private insurance carrier.
- The product dose administered must have been purchased for the purpose of administering it to privately insured patients whose insurers Participant (or the licensed health-care professional on whose behalf Participant is acting) would normally bill.
- An MEC Portal verification and EOB are necessary for each dose of a product that has a multi-dose regimen.
- The patient-specific information submitted using the MEC Portal must be accurate and the same as the information set forth on the EOB.

- The EOB provided with the Claim Request must contain data necessary to verify the eligibility of the claim.
- The Participant (or the licensed health-care professional on whose behalf Participant is acting) may not seek payment for any portion of the Claim Request from the patient or any other party.
- The product must have been administered as indicated in the applicable prescribing information.
- The coverage status, co-pay, and/or coinsurance on the private insurance EOB must be different from what was provided via the MEC Portal response by \$10 or more.
- Participant (or the licensed health-care professional on whose behalf Participant is acting) must comply with all requirements set forth on the Claim Request form.

#### Claim Request Timelines

Participants will have 120 calendar days from date information was received from the MEC Portal to submit a Claim Request.

#### Payment Amounts

If the private insurance co-pay difference is equal to, or greater than, \$10, using the simple formula (EOB Co-pay – MEC Portal Co-pay), then, up to the payment maximum listed for the relevant product in the Product Payments Limits per Claim List ("Claim List") below, the difference will be paid to the entity (i.e., the Participant Organization, or Participant if no Participant Organization is listed) whose tax ID is listed on the MEC Portal verification.

If the private insurance coinsurance difference is equal to, or greater than, \$10 using the simple formula (EOB Coinsurance – MEC Portal Coinsurance) then Participant will be paid the difference up to the payment maximum listed for the relevant product in the Claim List below.

If the private insurance coverage status listed the product as covered by that patient's insurance carrier, but the patient EOB shows \$0 product coverage, then Participant will be paid the payment maximum listed for the relevant product in the Claim List below.

#### Product Payment Limits per Claim ("Claim List")

Product	Payment Minimum	Payment Maximum
GARDASIL® [Human Papillomavirus Quadrivalent (Types 6, 11, 16, and 18) Vaccine, Recombinant]	\$10.00	\$110.00
GARDASIL® 9 (Human Papillomavirus 9-valent Vaccine, Recombinant)	\$10.00	\$140.00
ZOSTAVAX® (Zoster Vaccine Live)	\$10.00	\$160.00
PNEUMOVAX®23 (Pneumococcal Vaccine Polyvalent)	\$10.00	\$50.00

## 6. ADDITIONAL PARTICIPANT OBLIGATIONS

At all relevant times, Participant must comply with all then-current terms and conditions concerning the MEC Portal, including, but not limited to, the following:

Participant shall provide the necessary computer equipment (hardware), telecommunication equipment, operating system software (including virus protection) and other necessary application software required to operate or otherwise use the MEC Portal. Merck and its Third-Party Service Partners shall not be liable to the extent that any software or hardware impedes or deters the operation of the Services.

Participant shall be responsible for updating, from time to time, as needed, and at Participant's expense, Participant's software and/or hardware to new versions of the same or similar products, in order to use the MEC Portal. Participant is responsible for determining and resolving any compatibility issues in connection with changing software or hardware configurations.

Participant must comply with all applicable laws and regulations. This includes compliance with laws and regulations related to patient identifiable information, to the extent applicable. Participant represents and warrants that Participant has obtained or will obtain any and all patient permissions, consents, and/or authorizations required by law or regulation to enable the disclosure to, and use by, Merck's Third-Party Service Partner(s) and their respective subcontractors of identifiable patient information for the purpose of requesting insurance verifications or otherwise using the MEC Portal, including, without limitation, to complete the delivery of the Services, to verify the accuracy of the information obtained in connection with the delivery of the Services, and to enable processing of Claim Requests, if submitted.

Participant is responsible for ensuring that all practice, provider and patient information entered into the MEC Portal is complete and accurate as of the time of entry and is updated, as needed, in a timely fashion. Neither the Third-Party Service Partners nor Merck shall be held liable or responsible for any incorrect or incomplete information generated by the use of the MEC Portal; to the extent such inaccurate information results from Participant's failure to provide complete and accurate information.

Participant must maintain, in connection with the operation of MEC Portal, adequate technical, physical, and procedural access controls and system security requirements and devices to ensure data privacy, confidentiality, integrity, authorization, authentication, nonrepudiation, virus detection and eradication, and other data and network security, as required (among other privacy and security standards) by law. Participant shall be solely responsible for his or her own HIPAA Privacy and Security compliance obligations. By entering into this User Agreement, Participant certifies that it has conducted a risk assessment that takes into account the MEC Portal, and that Participant is compliant with HIPAA, the HITECH Act, and all regulations promulgated thereunder.

Participants shall not do any of the following:

- Use the MEC Portal for any purpose or in any manner not specifically authorized by this User Agreement.
- Submit false or misleading information through the MEC Portal.
- Create or recreate the source code for any or all of the MEC Portal, or re-engineer, reverse engineer, decompile, disassemble, modify, or alter any or all of the MEC Portal.

- Modify, adapt, translate, or create derivative works based upon any part of the MEC Portal, or combine or merge any part of the MEC Portal with, or into, any other software, content, or documentation except as explicitly authorized by this User Agreement.
- Refer to or otherwise use any part of the MEC Portal as part of any effort to develop a program having any functional attributes, visual expressions, or other features similar to those of the MEC Portal.
- Remove, erase, or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in the MEC Portal, or fail to preserve all copyright and other proprietary notices in any copy of any portion of the MEC Portal made by Participant.
- Use the MEC Portal to gain or attempt to gain unauthorized access to (i) any services for which Participant does not have expressed permission, or (ii) software or computer systems belonging to any third party that has access to the MEC Portal.
- Attempt to do or assist any party in attempting to do any of the foregoing.
- Refer to the MEC Portal and/or use Merck's or any Third-Party Service Partner's name or logo in any materials or communications without express written permission from, as applicable, Merck or a Third-Party Service Partner.

## 7. LICENSE, TERM, AND TERMINATION

Participant is hereby granted a nonexclusive, nontransferable, and nonsublicensable license to access and use the MEC Portal and the MEC Portal Services provided therein during the term of this User Agreement, subject to the restrictions herein, only as herein described and for no other purpose. Participant understands and agrees that he or she has no legal or equitable title or other right in the MEC Portal, the MEC Portal Services, or any system, or proprietary technology innovations, software, or intellectual property used to provide the MEC Portal Services. All rights and licenses granted to Participant immediately cease upon termination of this User Agreement. Participant may not sublicense this limited right of access or use, nor sell, assign, rent, lease, pledge, transfer, or in any way encumber the MEC Portal Services. Participant agrees to inform the applicable Third-Party Service Partner or Merck of any unauthorized use of the MEC Portal, the MEC Portal Services, or the Claim Request process of which Participant becomes aware.

Participant acknowledges and agrees that, without cause, the MEC Portal, the MEC Portal Services, the Merck Commitment, and any system, or proprietary technology innovations, software, or intellectual property used to provide them, as well as their availability, may be terminated or discontinued. Participant furthermore acknowledges and agrees that Participant or Participant Organization may be disqualified from using the MEC Portal, the MEC Portal Services, and/or the Merck Commitment and that changes may be made to this User Agreement, the MEC Portal the MEC Portal Services, and/or the Merck Commitment, or any portion thereof. Additionally, Participant acknowledges and agrees that MEC Portal accounts or sessions that are inactive for an extended period of time may be logged off or disconnected with or without notice to Participant.

Participant acknowledges and agrees that any discontinuation or termination of a specific Participant's or Participant Organization's access to the MEC Portal under any provision of this User Agreement may be effected without prior notice, and Participant acknowledges and agrees that his or her access to the MEC Portal may be immediately deactivated and/or all information they have provided through the MEC Portal may be immediately deleted to the extent permitted by law.

Participant may terminate his or her registration in the MEC Portal at any time upon contacting the Program Customer Support Center at 800-347-0611. Upon receipt of such notice, Participant's access to the MEC Portal shall be terminated. Terminating a registration will not affect any actions taken in reliance on that registration before notice of termination was received.

## 8. MONITORING THE MEC PORTAL

VirMedica has the right, but no obligation, to monitor the MEC Portal, consistent with the MEC Portal's privacy policy and terms of use, this User Agreement, and any other notices given to Participant, to satisfy any law, regulation, or authorized governmental request. VirMedica reserves the right to refuse to post or to remove any information or materials from any portion of the MEC Portal, in whole or in part, that, in VirMedica's or Merck's sole discretion, are in violation of any law, regulation, or authorized governmental request. Neither VirMedica nor Merck is responsible or liable for the existence, deletion, or failure to store any other content maintained or transmitted by, or to, the MEC Portal not otherwise covered under business requirements or functional specifications (i.e., Web design and content) agreed upon by VirMedica and Merck.

## 9. LOGIN AND PASSWORD

Each Participant shall be required to create and maintain a confidential, unique participant identifier ("Participant ID") and password that will allow Participant to access the MEC Portal. Each Participant is solely responsible for his or her Participant ID and password, including whether to permit others to use it to access the MEC Portal and any attendant transaction(s) or use of MEC Portal related therewith. VirMedica, as operator of the MEC Portal, shall have no obligation to monitor or report the use or attempted use of any Participant ID or password.

## 10. COMMUNICATIONS

Participant consents to receive communications in connection with the MEC Portal from, or on behalf of, Merck's Third-Party Service Partners via the mailing address, telephone number, fax number, e-mail address, or other contact information provided by Participant. Participant represents and warrants that he or she is authorized to give such consent to communicate via such mailing address, telephone number, fax number, e-mail address, or other contact information provided.

## 11. FEES AND EXPENSES

There are no fees for use of the MEC Portal, the Services, or the Merck Commitment. Participant is responsible for any expenses incurred that are related to his or her access, use or implementation of the MEC Portal. A Participant who separately utilizes PNT's *TransactRx™ Vaccine Manager* may be subject to fees and expenses as provided for in the relevant agreement with PNT.

## 12. DATA

Data about Participants or Participant Organizations, as well as de-identified patient data and coverage results, may be disclosed by the Third-Party Service Partners to Merck, and thereafter may be used by, or on behalf of, Merck for any lawful purpose.

## 13. INDEMNITY

- a. To the extent not prohibited explicitly by law, Participant agrees to defend, indemnify, and hold harmless Merck, the Third-Party Service Partners, and their respective successors and assigns, and their respective directors, officers, employees, agents, and representatives

(individually, the "Indemnified Party"; collectively, the "Indemnified Parties") from any and all actions, suits, claims, demands, debts, liabilities, obligations, losses, damages, proceedings, costs, and expenses, including legal fees (collectively, "Losses") suffered or incurred in connection with a breach by Participant of this User Agreement.

- b. With respect to a matter as to which an Indemnified Party is entitled to indemnification from Participant, such Indemnified Party shall, as soon as reasonably practical after receipt of a claim, demand, or suit, provide to such Participant notice of the nature of the matter and the amount demanded or claimed, together with copies of any written documents received with respect to such matter. Failure to give such notice shall not relieve Participant from the responsibility to indemnify the Indemnified Parties, except to the extent such Participant is prejudiced. Further, if Participant does not promptly assume control over the defense, the Indemnified Party may, at its option and through counsel of its choice, assume control over the defense without waiving any rights it has to indemnity under this Section.

#### 14. LIMITATION OF LIABILITY

OTHER THAN FOR INFRINGEMENT OF MERCK'S OR A THIRD-PARTY SERVICE PARTNER'S INTELLECTUAL PROPERTY RIGHTS, BREACH OF PARTICIPANT'S INDEMNITY OBLIGATIONS UNDER THIS USER AGREEMENT, BREACH OF PARTICIPANT'S WARRANTIES OR REPRESENTATIONS IN CONNECTION WITH THIS USER AGREEMENT, OR BREACH BY PARTICIPANT OF ITS CONFIDENTIALITY OBLIGATIONS, NO PARTY OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR AFFILIATES WILL BE LIABLE TO ANOTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND; DAMAGES FOR LOSS OF OR DAMAGE TO DATA; OR DAMAGES FOR LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS REVENUE, ANTICIPATED PROFITS, LOST BUSINESS, OR INJURY TO BUSINESS REPUTATION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING FROM OR RELATED TO THIS USER AGREEMENT, THE MEC PORTAL, THE SERVICES OR THE MERCK COMMITMENT. IN NO EVENT SHALL MERCK OR A THIRD-PARTY SERVICE PARTNER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER PROVISION OF THIS USER AGREEMENT. IN NO EVENT SHALL VIRMEDICA'S, PNT'S, TELERX'S OR MERCK'S AGGREGATE LIABILITY TO PARTICIPANT WITH RESPECT TO ANY LEGAL CLAIMS ARISING FROM, OR RELATED TO, THE SUBJECT MATTER OF THIS USER AGREEMENT, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE EXCEED \$200 (TWO HUNDRED DOLLARS)

#### 15. OTHER PROVISIONS

- Assignment. Participant may not transfer or assign any or all of its rights or obligations under this User Agreement without the express prior written consent of VirMedica and Merck, which consent may be granted or withheld in their sole discretion. Any purported transfer or assignment by Participant of any right or obligation under this User Agreement otherwise than in accordance with the provisions of this paragraph shall be null and void and a breach of this User Agreement.
- Entire Agreement. Except as may be expressly provided otherwise herein, this User Agreement, along with the most recent business associate agreement with VirMedica, constitutes the entire agreement with Participant and/or Participant Organization concerning the subject matter thereof. No prior or contemporaneous representations, inducements, promises, or terms and conditions, oral or otherwise, between Participant and Merck or one or more of the Third-Party Service Partners with

reference thereto will be of any force or effect.

- Amendment and Waiver. No modification or amendment to this User Agreement will be valid or binding against Merck or any of the Third-Party Service Partners unless reduced to writing and duly executed by an authorized representative of Merck and the respective Third-Party Service Partners. The failure of any party at any time to require performance by Participant of any provision of this User Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by any party of any breach of any provision of this User Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this User Agreement.
- Severability. If any of the terms and conditions of this User Agreement are ruled illegal, invalid, or unenforceable, the validity or enforceability of the remainder of this User Agreement will not be affected thereby; and each of the other terms and conditions will be valid and enforceable to the fullest extent permitted by law.
- Governing Law. This User Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey without regard to its choice of law or arbitration provisions (other than its principles of conflicts of law).
- Headings. The headings of the sections used in this User Agreement are included for convenience only and are not to be used in construing or interpreting this User Agreement.
- Notice. Except as otherwise expressly provided herein, notices under this User Agreement shall be deemed delivered (i) when personally delivered, (ii) on the second business day after deposit when sent by certified or registered mail, (iii) on the next business day when sent with next-business-day instruction through a recognized overnight document delivery service; or (iv) with respect to notice to Participant hereunder, by e-mail to the e-mail address provided by Participant through the Site as updated by Participant from time to time. Participant shall be solely responsible for providing a valid e-mail address and hereby agrees the registration e-mail currently on file within the MEC Portal may be relied upon as current.
- Force Majeure. No party shall be liable for any failure to perform its obligations under this User Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control of such party, including without limitation acts of God, acts of terrorists, acts of domestic or foreign governments, change in any law or regulation, fires, floods, explosions, epidemics, disruptions in communications, power, or other utilities, strikes or other labor problems, riots, or unavailability of supplies.
- Successors and Assigns. This User Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns as permitted by this User Agreement.
- Injunctive Relief. Recognizing the unusual nature of computer software and trade secrets, Participant acknowledges and agrees that any violation by Participant of its covenants in this User Agreement relating to VirMedica's intellectual property, PNT's intellectual property or Merck's intellectual property, including without limitation the MEC Portal, the Software, and the MEC Portal Services, would result in damage to VirMedica and/or PNT and/or Merck that is largely intangible but nonetheless real and that is incapable of complete remedy by an award of damages. Accordingly, any such violation shall give VirMedica, PNT and Merck the right to obtain a court-ordered injunction or other appropriate order to enforce specifically those covenants. For purposes of this paragraph, "Software" means (a) the software in connection with MEC Portal and any other software applications, computer programs, systems, Portals, modules, code (both source and object), or databases, including without limitation all interfaces, navigational devices, menus, menu structures or arrangements, data structures or queries,

icons, help or other operational instructions and the literal and nonliteral expressions of ideas are made available to Participant as a part of the Services or that operate, cause, direct, manipulate, access, or otherwise affect the MEC Portal or Participant data and (b) any and all subsequent modifications, revisions, updates, releases, refinements, improvements, enhancements, and derivative works based on any of the foregoing regardless of how or when effected or created.

- Survival: Participant acknowledges and agrees that sections 16, 17, 18, 19, and 20 below shall survive the termination, cancellation, or discontinuance of this User Agreement

## 16. PARTICIPANT DECLARATIONS

- Participant verifies that the information provided in his or her registration is complete and accurate.
- Participant represents and warrants that that he or she is, or is acting on behalf of, a professional duly licensed to provide health-care products and/or services in the jurisdiction(s) where he or she conducts such activities.

## 17. DISCLAIMER OF WARRANTIES

PARTICIPANT ACKNOWLEDGES AND AGREES THAT SERVICES -- MEC PORTAL SERVICES OR OTHERWISE -- ARE PROVIDED "AS IS" WITH NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FOR THE AVOIDANCE OF DOUBT AND WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY (I) THAT THE SERVICES PROVIDED WILL NOT INFRINGE UPON ANY INTELLECTUAL PROPERTY OF A THIRD PARTY, NOR (II) THAT THE OPERATION OF THE SERVICES WILL BE ERROR FREE IN ALL CIRCUMSTANCES, NOR (III) THAT ANY DEFECTS IN THE SERVICES WILL BE CORRECTED, NOR (IV) THAT THE OPERATION OF THE SERVICES WILL NOT BE INTERRUPTED FOR REASONABLE PERIODS OF TIME BY REASON OF DEFECT THEREIN OR BY REASON OF FAULT ON THE PART OF THE THIRD-PARTY SERVICE PARTNERS OR MERCK. NOR IS THERE ANY WARRANTY THAT THE SERVICES OR ANY EQUIPMENT, SYSTEM, OR NETWORK ON WHICH THE SERVICES ARE USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. PARTICIPANT WILL BE EXCLUSIVELY RESPONSIBLE AS BETWEEN THE PARTIES FOR, AND NEITHER THE THIRD-PARTY SERVICE PARTNERS NOR MERCK MAKE ANY WARRANTY OR REPRESENTATION WITH RESPECT TO, ANY OF THE FOLLOWING: (I) DETERMINING WHETHER THE SERVICES WILL ACHIEVE THE RESULTS DESIRED BY PARTICIPANT; (II) SELECTING, PROCURING, INSTALLING, OPERATING, AND MAINTAINING COMPUTER HARDWARE, SOFTWARE OR TELECOMMUNICATIONS FOR PARTICIPANT'S ACCESS TO AND USE OF THE SERVICES; (III) TRAINING PARTICIPANT'S PERSONNEL IN COMPUTER OPERATIONS; (IV) ENSURING THE ACCURACY OF ANY PARTICIPANT DATA; AND (V) UNAUTHORIZED ACCESS TO FACILITIES OR TO PARTICIPANT'S DATA OR PROGRAMS DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND THE THIRD-PARTY SERVICE PARTNERS' OR MERCK'S REASONABLE CONTROL.

## 18. EXCLUSIONS AND LIMITATIONS

PARTICIPANT ACKNOWLEDGES AND AGREES THAT NOTHING IN THIS USER AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF

CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS IN SECTIONS 14 AND 17 WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU, AND MERCK'S AND THE THIRD-PARTY SERVICE PARTNERS' LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

#### 19. ARBITRATION

Any controversy, claim or dispute arising out of or relating to the performance, construction, interpretation or enforcement of this User Agreement, including disputes as to the scope of this clause, shall be resolved through good-faith negotiations between the parties. If such efforts prove unsuccessful, all such controversies, claims or disputes shall be submitted to mandatory, final, confidential, binding arbitration pursuant to the Federal Arbitration Act (9 USC Sec. 1 et seq.). The arbitration award shall be final and binding and it may be confirmed and enforced in any court of competent jurisdiction. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, unless agreed to otherwise by the parties. Each party shall pay for all attorney fees it incurred in connection with the arbitration and shall share equally in the costs of the arbitration. Such arbitration shall take place in Whitehouse Station, New Jersey. The foregoing notwithstanding, relief may be sought in any court of competent jurisdiction in any action to enforce any judgment obtained against Participant arising out of any such proceeding.

#### 20. MUTUAL CONSIDERATION

The parties understand and agree that the mutual undertakings provided for in this User Agreement for the MEC Portal are good and sufficient consideration for their respective obligations hereunder.

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07/15

*Mary Dunn*  
This instrument has been pre-audited in the manner required  
by the Local Government Budget and Fiscal Control Act.