



PhysioMedics Limited and Nuffield Health

Terms and Conditions for use of PhysioWizard

These Terms and Conditions apply to and govern your use of PhysioWizard. They apply as between:

- (1) you, the User (**You, Your** or **User** as defined below) of the Services (defined below); and
- (2) **PhysioMedics Limited**, a company incorporated in Scotland (No.SC389958) and having its registered office is at 16 Ravelston House Park, Edinburgh EH4 3LU (**PhysioMedics, We, Us or Our**); and
- (3) **Nuffield Health a private limited company by guarantee incorporated in England and Wales (No. 00576970) and registered as a charity in England and Wales (No. 205533) and as a charity in Scotland (No. SC041793), whose registered office is at Epsom Gateway, Ashley Avenue, Epsom, Surrey, KT18 5AL (Nuffield Health),**

each a 'Party' and collectively 'the Parties'.

By using the Services, you agree to be bound by these Terms and Conditions. Your agreement to comply with and be bound by these Terms and Conditions is deemed to occur upon your first use of the Services. If you do not agree to be bound by these Terms and Conditions, you must not use the Services and, if you have commenced use of the Services, you should stop using the Services immediately.

You must be at least 18 years of age to use the Services, and if you are under 18 years of age you must stop using the Services immediately.

1. Definitions and Interpretation

In these Terms and Conditions the following words and expressions have the following meanings:

“Account Content”	means collectively the personal information, and credentials (username and password) used by You to access the Services;
“Assessment”	means a PhysioWizard online report created by You completing an online questionnaire via the Services which shall contain User Content and be hosted on the Platform;
“Content”	means any text, graphics, images, audio, video, software, data compilations and any other form of information capable of being stored in a computer that appears on, is uploaded to or forms part of the Platform and/or the Services and is not User Content;
“Data”	means collectively all information that You submit to PhysioWizard and, where applicable, incorporates the definitions of ‘Data’ provided in the UK GDPR and the DPA;
“Data Controller” and “Data Processor”	shall have the meanings given to them in the Privacy Legislation;
“personal data” “processing” and “data subject”	shall have the meanings given to them in the Privacy Legislation;
“Database”	means the database stored on the Platform which contains, amongst other things, User Data ;
“DPA”	means the Data Protection Act 2018 as modified, amended or re-enacted;
“GDPR”	means Regulation (EU) 2016/679 as amended, replaced, supplemented or adopted into United Kingdom law from time to time;
“Intellectual Property”	means all patents, registered designs, trademarks and service marks (whether registered or not), copyright, database rights, design right, know how,

algorithm, trade secrets, information and all similar property including that subsisting (in any part of the world) in inventions, designs, performances, computer programs, semiconductor topographies, Confidential Information, business names, goodwill, Graphical User Interfaces, Menu Command Hierarchy and the styles of presentation of goods or services and in applications for protection of them in any jurisdiction;

“Nuffield Health”

the said Nuffield Health;

“PhysioWizard”

means the programme or programmes comprised in the PhysioWizard software for being an automated decision-making tool for the analysis of potential muscular-skeletal problems, created and owned by PhysioMedics and forming part of the Services;

“Platform”

means the hardware and software environment in which the Services operate, comprising one or more server computers (whether virtual or not), mirroring/ duplicating/ back-up and storage systems and relative hardware operating software, virtual machine software (where relevant), operating system software, database software, anti-virus and security software, switches, power supplies and telecommunications infrastructure;

“Privacy Legislation”

means the GDPR, for so long as applicable in the United Kingdom, the retained EU law version of the GDPR (the “UK GDPR”), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, the DPA, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic

Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner. (as amended or replaced from time to time);

“Premises” means PhysioMedics’ place of business located at 16 Ravelston House Park, Edinburgh EH4 3LU;

“ Service(s) ” means collectively any online facilities, tools, systems, services or information that PhysioMedics makes available through the Website either now or in the future;

“User” / “Users” means you/any third party that accesses the Website and is not employed by PhysioMedics or Nuffield Health and acting in the course of their employment;

“User Content” means any text, graphics, images, audio, video, software, data compilations and any other form of information capable of being stored in a computer that appears on, is uploaded to or forms part of an Assessment or the Services and has been uploaded by a User;

“User Data” means Data created via an Assessment and stored in the Database;

“Website” means the website that you are currently using (<http://www.nuffieldhealth.physiomedics.com/>) and any sub-domains of this site (e.g. subdomain. physiomedics.com) unless expressly excluded by their own terms and conditions.

2. Data Processing



In terms of the Privacy Legislation, in connection with Your use of the Services, PhysioMedics is processing your personal data as Data Processor for and on behalf of Nuffield Health which is the Data Controller.

3. Intellectual Property

3.1 Subject to the exceptions in Clause 5 of these Terms and Conditions, all Content included in the Services, including (without limitation) any material contained within Assessments, underlying code and software and the Database, is the property of PhysioMedics, or Our affiliates or licensors. By continuing to use the Services You acknowledge that such material is protected by applicable United Kingdom and international Intellectual Property and other laws.

3.2 You may print, reproduce, copy, distribute, store or in any other fashion re-use Content from the Services as specified in Clause 5 of these Terms and Conditions for personal or educational purposes only unless otherwise indicated in the Services or unless We have given Our express written permission for You to do so. Specifically, You agree that:

3.2.1 You will not systematically copy Content from the Services with a view to creating or compiling any form of comprehensive collection, compilation, directory or database unless We have given Our express written permission for You to do so.

4. Intellectual Property in Assessments

4.1 The Intellectual Property rights subsisting in the User Content of Assessments belong to the User to which that/those Assessment(s) relate(s) unless it is expressly stated otherwise.

4.2 Where expressly indicated, certain Content available through the Services and the Intellectual Property rights subsisting therein belongs to other parties.

4.3 Unless expressly stated to be so, the Content described in this Clause 4 is not covered by any permission granted by these Terms and Conditions to use Content from the Services. The exceptions in Clause 5 continue to apply.

4.4 For the avoidance of doubt, the Database is not and shall not be considered User Content.

5. Fair Use of Intellectual Property

Material from the Website may be re-used without written permission where any of the exceptions detailed in Chapter III of the Copyright Designs and Patents Act 1988 apply.

6. Third Party Intellectual Property

6.1 Unless otherwise expressly indicated, all Intellectual Property rights including, but not limited to, copyright and trademarks, in Content (other than User Content) belong to the manufacturers or supplier of the Services as may be applicable.

6.2 Subject to Clause 5 You may not reproduce, copy, distribute, store or in any other fashion re-use such material unless otherwise indicated on the Website or unless given express written permission to do so by the relevant manufacturer or supplier.

7. Assessments

7.1 PhysioWizard indicates the possible causes of Your pain or symptoms and provides information which is commonly of benefit to those suffering from similar pain or symptoms. **Your Assessment, generated by PhysioWizard is for information purposes only and is NOT a substitute for professional medical advice, diagnosis or treatment.** If You have any concerns regarding Your health e.g. if Your symptoms get worse, You must see Your doctor or call NHS111 or 999 if there is perceived immediate danger or threat to life. If You have difficulties communicating or hearing call 18001 111 on a textphone and follow their advice rather than that given by the PhysioWizard report. If Your symptoms get rapidly worse or persist go immediately to A&E or call NHS111 or if You have difficulties communicating or hearing call 18001 111 on a textphone and follow their advice. **PhysioWizard is not appropriate for managing medical emergencies.** Neither PhysioMedics nor Nuffield Health shall be liable to You or any third party for Your or any third party's reliance on the terms of Your Assessment generated by PhysioWizard.

7.2 **Your Assessment, generated by PhysioWizard, relies on the accurate and truthful input of information and answers by You. False, misleading and inaccurate information and answers will result in an inaccurate Assessment. Please be honest and thorough and do not withhold relevant**

information such as a previous or current medical condition when asked, as this will lead to an inaccurate report.

7.3 The Assessment generated by PhysioWizard is not clinically suitable for any person under 18 years of age.

7.4 Whilst reasonable endeavours have been made to ensure that all information, advice and recommendations provided by PhysioWizard will be accurate and up to date, Neither PhysioMedics nor Nuffield Health give any warranty or representation that this is the case. Neither PhysioMedics nor Nuffield Health give any guarantee of any specific results from the use of PhysioWizard and/or the Services.

7.5 You use the Services at Your own risk. Neither PhysioMedics nor Nuffield Health shall be liable to You for Your use of the Services.

8. Accounts

8.1 In order to use the Services You will create an Account created in PhysioWizard on referral from Nuffield Health . This will contain certain personal details. By being referred from Nuffield Health into PhysioWizard, You represent and warrant that:

8.1.1 all information You submit is accurate and truthful; and

8.1.2 You will keep this information accurate and up-to-date.

8.2 Sharing of Accounts is not permitted unless expressly authorised in writing by PhysioMedics or Nuffield Health. PhysioWizard access relies on you having and providing on booking a valid email address which is not shared or accessed by any unauthorised third parties. Neither PhysioMedics nor Nuffield Health accept any liability for any losses or damages incurred as a result of Your email address details being shared by You. If You use a shared computer, it is recommended that You do not save Your email details in Your internet browser.

8.3 If You have reason to believe that Your details have been obtained by another without consent, You should contact Nuffield Health immediately to suspend Your access to the Services.

8.4 If You terminate Your Account, Your details and Assessment(s) will be stored for a period of 5 years and thereafter either be deleted in whole or in part and/or anonymised in accordance with the Privacy Legislation, where applicable.

9. Termination and/or Suspension

9.1 In the event (1) that any of the provisions of sub-Clause 10.1, below, are not followed, Nuffield Health reserve the right to suspend or terminate Your access to the Service(s). Any Users suspended or terminated in this way must not attempt to use the Services under any other name or by using the access credentials of another User, with or without the permission of that User.

9.2 If We terminate or suspend Your Account as a result of Your breach of these Terms and Conditions, You will not be entitled to any remedy or recourse.

10. Use of Services

10.1 When using the Services You should do so in accordance with the following rules:

10.1.1 You must not use obscene or vulgar language;

10.1.2 You must not submit User Content that is unlawful or otherwise objectionable. This includes, but is not limited to, User Content that is abusive, threatening, harassing, defamatory, ageist, sexist or racist;

10.1.3 You must not submit User Content that is intended to promote or incite violence;

10.1.4 You must not submit User Content which contains any material that is unlawful or otherwise objectionable (including that which may be in breach of rules, regulations or legislation in force in the United Kingdom or any other jurisdiction) in which Your User Content can be lawfully accessed;

10.1.5 It is advised that submissions are made using the English language(s) as Nuffield Health may be unable to respond to enquiries submitted in any other languages;

10.1.6 The means by which You identify yourself must not violate these Terms and Conditions or any applicable laws; and

10.1.7 You must not impersonate other people, particularly employees and representatives of PhysioMedics or Nuffield Health or Our or Nuffield Health's affiliates.

10.2 You agree that You will be liable to Us and/or Nuffield Health as the case may be and will, to the fullest extent permissible by law, recompense both Us and Nuffield Health for any breach of the warranties given by You under sub-Clause 10.1. You will be responsible for any loss or damage suffered by Us and/or Nuffield Health as a result of such breach.

11. Termination and Cancellation

11.1 If PhysioMedics or Nuffield Health terminates Your Account, You will be notified by email and an explanation for the termination may be provided. Notwithstanding the foregoing, both We and Nuffield Health reserve the right to terminate.

11. Services and Availability

12.1 Whilst every effort has been made to ensure that all descriptions of Services available from PhysioMedics and/or Nuffield Health correspond to the actual Services, neither PhysioMedics nor Nuffield Health is responsible for any variations from these descriptions. This does not exclude liability for mistakes due to negligence on the part of either PhysioMedics and/or Nuffield Health [and refers only to variations of the correct Services, not different Services altogether].

13. Privacy

13.1 Your use of the Services as a data subject is covered by Nuffield Health's Privacy Policy which can be found here [<https://www.nuffieldhealth.com/privacy>] as well as Nuffield Health's Physiotherapy Transparency Statement which can be found here <https://www.nuffieldhealth.com/your-datas-journey-through-nuffield-health-physiotherapy-services>

13.2 PhysioMedics will process all personal data in accordance with the Privacy Legislation and Nuffield Health's Privacy Policy and Physiotherapy Transparency Statement.

13.3 PhysioMedics may compile statistics about the use of products and Services including data on traffic, usage patterns, user numbers, and other

information. All such data will be anonymised and will not include any personal data, or any anonymised data that can be combined with other data and used to identify a User. PhysioMedics may from time to time share such data with third parties such as prospective investors, affiliates, partners, and advertisers. Data will only be shared and used within the bounds of the Privacy Legislation and other applicable laws.

13.4 By using the Services You agree to:

13.4.1 Your anonymised Data being used for research and statistical analysis;

13.4.2 Your Data being used for future ethically approved studies;

13.4.3 Your Data being looked at/studied by the NHS or regulatory/other medical authorities.

13.4.4 PhysioMedics or their contractors and agents contacting You for the following Purposes:

a) Product support and feedback.

13.5 In certain circumstances, PhysioMedics may be legally required to share certain Data held by it, which may include Your personal data, for example, where PhysioMedics are involved in legal proceedings, where PhysioMedics are complying with legal requirements, a court order, or a governmental authority.

13.6 PhysioMedics uses analytics services provided by Google Analytics, to collect and analyse anonymous usage information, enabling PhysioMedics to better understand how the Services are used. This, in turn, enables PhysioMedics to improve the Services.

13.7 Your Assessment(s) will be stored by PhysioMedics for a period of 5 years and thereafter either deleted in whole or in part and/or anonymised in accordance with the Privacy Legislation where applicable. The purpose of this retention of Your Assessment is to allow PhysioMedics to address any issues generated by an Assessment directed either at PhysioMedics and/or Nuffield Health within the five year period.

13.8 If You have any questions about the Software or these Terms and Conditions please contact PhysioMedics by email at hello@physiomedics.com or by post to Our Premises. Please ensure that Your query is clear.

13.9 PhysioMedics and/or Nuffield Health may change these Terms and Conditions from time to time (for example, if the law changes). Any changes will be immediately posted on this Website and You will be deemed to have accepted the amended Terms and Conditions on Your first use of the Services following the alterations. PhysioMedics recommend that You check this page regularly to keep up-to-date.

13. Legal Rights and Disclaimers

14.1 Neither PhysioMedics nor Nuffield Health gives any warranty or representation that the Services will be compatible with all systems, or that they will be secure, or that they will operate on an uninterrupted or error-free basis.

14.2 Save for the discretionary screening and approval as detailed in Clause 10, Neither PhysioMedics nor Nuffield Health has control over, or involvement in, any User Content and accept no responsibility for any actions taken by any Users or products provided by third parties.

14.3 Whilst reasonable endeavours have been made to ensure that all information provided in the Services will be accurate and up to date, neither PhysioMedics nor Nuffield Health give any warranty or representation that this is the case. Neither PhysioMedics nor Nuffield Health give any guarantee of any specific results from the use of the Services.

14.4 Whilst PhysioMedics and Nuffield Health exercise all reasonable skill and care to ensure that the Services are secure and free of errors, viruses and other malware, You are strongly advised to take responsibility for Your own internet security, that of Your personal details and Your computers.

15. Availability of the Website and Modifications

15.1 Neither PhysioMedics nor Nuffield Health accept any liability for any disruption or non-availability of the Services resulting from external causes including, but not limited to, ISP equipment failure, host equipment failure, communications network failure, power failure, natural events, acts of war or legal restrictions and state-mandated censorship.

15.2 Both PhysioMedics and Nuffield Health reserve the right to alter, suspend or discontinue any part (or the whole of) the Services. These Terms and

Conditions shall continue to apply to any modified version of the Website unless it is expressly stated otherwise.

16. Limitation of Liability

16.1 To the fullest extent permitted by law, both PhysioMedics and Nuffield Health exclude all liability for any losses or damage that are not foreseeable or which were not in Your, Our and Nuffield Health's contemplation when we entered into this Contract (known as 'indirect or consequential loss or damage) including, but not limited to, liability for loss of income or revenue; loss of business; loss of profits; loss of anticipated savings; or loss of goodwill. Neither PhysioMedics nor Nuffield Health accept any liability to any User for any loss or damage, whether foreseeable or otherwise, in contract, delict/tort (including negligence), for breach of statutory duty, or otherwise, arising out of or in connection with the use of (or inability to use) the Services or the use of or reliance upon any Content.

16.2 To the fullest extent permitted by law, both PhysioMedics and Nuffield Health exclude all representations, warranties, conditions and guarantees (whether express or implied, whether by statute, common law or otherwise) that may apply to any Content or the Services.

16.3 Both PhysioMedics and Nuffield Health exercise all reasonable skill and care to ensure that the Services are free from viruses and other malware. Neither PhysioMedics nor Nuffield Health any liability for any loss or damage resulting from a virus or other malware, a distributed denial of service attack, or other harmful material or event that may adversely affect your hardware, software, data or other material that occurs as a result of your use of the Services (including the downloading of any content from it) or any other site referred to on the Website.

16.4 Nothing in these Terms and Conditions excludes or restricts either PhysioMedics or Nuffield Health's liability for fraud or fraudulent misrepresentation, for death or personal injury resulting from negligence, or for any other forms of liability which cannot be excluded or restricted by law.

16.5 Subject to 16.1, 16.2 and 16.4 above, in no event shall either PhysioMedics' or Nuffield Health's total liability to You (for anyone event or series of related events) exceed in total 150% of the total amount paid by You for the Services in the 12 months immediately preceding the first incident out of

which the liability arose. For the avoidance of doubt, this limitation of liability shall apply to a breach by either PhysioMedics and/or Nuffield Health of the Privacy Legislation.

16.6 Your consumer rights are not affected. For full details of consumers' legal rights, including those relating to digital content, please contact your local Citizens' Advice Bureau or Trading Standards Office.

17. No Waiver

In the event that any party to these Terms and Conditions fails to exercise any right or remedy contained herein, this shall not be construed as a waiver of that right or remedy.

18. Previous Terms and Conditions

In the event of any conflict between these Terms and Conditions and any prior versions thereof, the provisions of these Terms and Conditions shall prevail unless it is expressly stated otherwise.

19. Third Party Rights

Nothing in these Terms and Conditions shall confer any rights upon any third party. The agreement created by these Terms and Conditions is between You, PhysioMedics and Nuffield Health as specified in these Terms and Conditions.

20. Communications

20.1 All notices / communications shall be given to Us either by post to Our Premises at the address given above or by email to support@physiomedics.com. Such notice will be deemed received 3 days after posting if sent by first class post, the day of sending if the email is received in full on a business day and on the next business day if the email is sent on a weekend or public holiday.

21. Law and Jurisdiction

21.1 These Terms and Conditions, and the relationship between You, Us and Nuffield Health (whether contractual or otherwise) shall be governed by and construed in accordance with the laws of England and Wales.



21.2 If You are a consumer, any disputes concerning these Terms and Conditions, the relationship between You, Us and Nuffield Health, or any matters arising therefrom or associated therewith (whether contractual or otherwise) shall be subject to the jurisdiction of the courts of England, Wales, Scotland, or Northern Ireland, as determined by Your residency. If You are not resident in the United Kingdom any disputes concerning these Terms and Conditions, the relationship between you, Us and Nuffield Health or any matters arising therefrom or associated therewith (whether contractual or otherwise) shall be subject to the jurisdiction of the English courts.

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