



PHIO ACCESS, ENGAGE, COLLECT AND PREVENT SOFTWARE SUBSCRIPTION

STANDARD TERMS AND CONDITIONS

1. Interpretation

- a. The following definitions and rules of interpretation in this clause apply in these Conditions.

Access Services: the digital triage services provided by means of the Access Software, as further detailed in the Service description (as defined in the Call Off) and the Call Off.

Access Software: the software whose operation provides delivery of the Access Services and the Customer Services relating thereto and marketed under the name 'PHIO ACCESS' provided by the Supplier as part of the Access Services including any release of such software made available by the Supplier to all its Customers from time to time which corrects faults, adds functionality or which otherwise amends or upgrades the software (but excluding any version of the software which contains such significant differences from the previous versions as to be generally accepted in the market place as constituting a new product).

Authorised Personnel: those employees, agents and authorised contractors of the Customer who are authorised by the Customer to use the Customer Services in accordance with these Conditions and the Call Off.

Call Off: the agreement entered into between the Customer and the Supplier in connection with the provision of the Services.

Collect Services: the digital services provided by means of the Collect Software, as further detailed in the Service description (as defined in the Call Off) and the Call Off.

Collect Software: the software whose operation provides delivery of the Collect Services and the Customer Services related thereto and marketed under the name 'PHIO COLLECT' provided by the Supplier as part of the Collect Services including any release of such software made available by the Supplier to all its Customers from time to time which corrects faults, adds functionality or which otherwise amends or upgrades the software (but excluding any version of the software which contains such significant differences from the previous versions as to be generally accepted in the market place as constituting a new product).

Conditions: these terms and conditions (as varied from time to time).

Configuration Services: the services to be provided by the Supplier to the Customer to configure the Software to the Customer's specific user requirements specified in the Call Off.





Controller, processor and personal data: as defined in the Data Protection Legislation.

Customer: the person who purchases Services from the Supplier.

Customer Materials: the content provided to the Supplier by the Customer from time to time to enable the Supplier to supply the Configuration Services.

Customer Services: the software services provided by the Supplier to the Customer in accordance with these Conditions which enables the Customer to view data collected during the provision of the Access Services and/or Engage Services, Collect Services (as applicable), each within the parameters available in respect of such Services from time to time.

Data: the data inputted to and/or generated by the Software and/or the Services.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including (without limitation) the UK GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003(SI 2003/2426), in each case as amended, extended and re-enacted from time to time.

Documentation: the document(s) made available to the Customer by the Supplier which sets out a description of how to access and use the Access Services and/or Engage Services (as applicable).

Engage Services: the digital treatment services provided by means of the Engage Software, as further detailed in the Service description (as defined in the Call Off) and the Call Off.

Engage Software: the software whose operation provides delivery of the Engage Services and the Customer Services related thereto and marketed under the name 'PHIO ENGAGE' provided by the Supplier as part of the Engage Services including any release of such software made available by the Supplier to all its Customers from time to time which corrects faults, adds functionality or which otherwise amends or upgrades the software (but excluding any version of the software which contains such significant differences from the previous versions as to be generally accepted in the market place as constituting a new product).

Intellectual Property Rights or Rights in Intellectual Property: patents, utility models, rights to inventions, copyright and neighbouring and related rights, all other rights in the nature of copyright, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world and





the term **Intellectual Property** shall be interpreted to mean all property and material which is the subject of an Intellectual Property Right or Rights.

Parties: means together the Customer and the Supplier, each of which shall be referred to separately as a **Party**.

Prevent Services: the provision of a web-based interface provided by means of the Prevent Software which provides a User with clinically informed, evidence-based MSK education, micro-interventions and behaviour-change content.

Prevent Software: the software whose operation provides delivery of the Prevent Services marketed under the name 'PHIO PREVENT' including any release of such software made available by the Supplier to all its Customers from time to time which corrects faults, adds functionality or which otherwise amends or upgrades the software (but excluding any version of the software which contains such significant differences from the previous versions as to be generally accepted in the market place as constituting a new product).

Services: such of the Configuration Services, the Access Services, the Engage Services, the Collect Services, the Prevent Services and the Customer Services as the Supplier agrees to provide as part of the Call Off (as specified in the Call Off).

Software: the Access Software and/or the Engage Software and/or Collect Software and/or Prevent Software (as the context permits).

Subscription: a permission to gain access to the Access Services and/or Engage Services and/or Collect Services and/or Prevent Services (as the context may permit) which may be granted to a User whose entitlement to use the relevant Services has been authorised by the Customer and shall be based upon one or more of the models further described in clause 3(b).

Supplier: EQL Limited (company number: 11806513), a company registered in England and Wales with its registered office address at Speed Medical House, Matrix Park, Chorley, Lancashire, PR7 7NA.

Term: means the term of the Call Off.

Terms of Use: the Supplier's terms of platform use (as such subsist from time to time) that a User will be required to read and accept prior to accessing each of the Access Services, the Engage Services, the Collect Services and the Prevent Services.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

User: means a person who uses the Access Services and/or the Engage Services and/or the Collect Services and/or Prevent Services (as applicable) with the authorisation of the Customer.





- b. Clause headings shall not affect the interpretation of these Conditions and references to clauses are to the clauses of these Conditions.
- c. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- d. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- e. A reference to writing or written includes e-mail (to the email address notified for this purpose from time to time).
- f. Terms in these Conditions relating to the Access Services, the Engage Services, the Collect Services and the Prevent Services shall only apply to the extent those Services are stated in the Order Form (as defined in the Call Off) to be purchased as part of the Call Off.

2. Basis of contract

- a. The presentation of a draft Call Off by the Customer to the Supplier constitutes an offer by the Customer to purchase Services in accordance with such draft Call Off and these Conditions.
- b. The draft Call Off shall only be deemed to be accepted when a duly authorised representative of each of the Supplier and the Customer have signed the Call Off, at which point and on which date a contract (incorporating these Conditions) between the Supplier and the Customer for the provision of the Services shall come into existence.

3. Subscriptions

- a. Subject to the Customer purchasing the Subscriptions in accordance with the terms (including but not limited to payment for the Subscriptions) agreed in writing between the Customer and the Supplier, the restrictions set out in this clause 3 and the other terms and conditions of these Conditions, the Supplier hereby:
 - i. provided the Customer has agreed in the Order Form (as defined in the Call Off) to purchase the Access Services, agrees to make available the Access Services to the Users during the Term;
 - ii. provided the Customer has agreed in the Order Form (as defined in the Call Off) to purchase the Engage Services, agrees to make available the Engage Services to the Users during the Term;
 - iii. provided the Customer has agreed in the Order Form (as defined in the Call Off) to purchase the Collect Services, agrees to make available the Collect Services to the Users during the Term;





- iv. provided the Customer has agreed in the Order Form (as defined in the Call Off) to purchase the Prevent Services, agrees to make available the Prevent Services to the Users during the Term;
- v. agrees to make available the Customer Services to the Authorised Personnel during the Term;
- vi. grants to the Customer a non-exclusive, non-transferable permission, without the permission to grant sub-licences to use the Documentation during the Term, solely in connection with the physiotherapy services provided by the Customer.

Unless expressly stated otherwise, the rights granted pursuant to this clause are granted on a non-exclusive and non-transferable basis and apply during the Term.

- b. Subscriptions purchased may be either:
 - i. “Per use” Subscriptions, whereby the Customer purchases a Subscription per each User’s use of the Access Services, Engage Services or Collect Services; or
 - ii. “Per capita” Subscriptions, whereby the Customer purchases, in advance, Subscriptions based upon the number of Users who it wishes to grant access to the Access Services, Engage Services, Prevent Services or Collect Services, who are then granted unlimited access to the relevant Services for an agreed period of time,

and the Parties shall confirm in the Order Form (as defined in the Call Off) which of the above Subscription models shall apply to the Call Off and the payment terms applicable to that Subscription model.

- c. The Customer hereby acknowledges and agrees that the Supplier shall not grant access to the Access Services, the Engage Services, the Prevent Services or Collect Services to any User who has not accepted the relevant Terms of Use or otherwise satisfied any access requirements reasonably prescribed by the Supplier from time to time.
- d. The delivery of the Services to the Customer shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are the same as or similar to those provided to the Customer.

4. Intended Use

- a. The Customer hereby acknowledges and agrees that:
 - i. the primary purpose of the Access Services is the collection of structured clinical data from a lay-user for presentation to a ‘qualified individual practitioner’ (being a person who at all times either: (i) is registered with the Health and Care Professions Council (HCPC) and authorised by the HCPC to provide physiotherapy services to patients; or (ii) holds appropriate and current qualifications, in the territory in which the Users are located, to take clinical responsibility for, and make clinical decisions in respect of, Users). The Access Services make no attempt to diagnose a User nor suggest a specific course of treatment for that User and shall not be used as a substitute for professional





- medical advice/diagnosis, assistance or treatment or procedure performed in person by a qualified individual practitioner;
- ii. the exercise plans and progression suggestions made available by the Engage Services should be used by qualified individual practitioners as a support tool only and should not be relied upon solely or in substitution for the carrying out by a qualified individual practitioner of a full medical examination, regular progress review and/or provision of a tailored injury management plan;
 - iii. the primary purpose of the Collect Services is the collection of structured clinical data from a lay-user for presentation to a 'qualified individual practitioner' (being a person who at all times either: (i) is registered with the Health and Care Professions Council (HCPC) and authorised by the HCPC to provide physiotherapy services to patients; or (ii) holds appropriate and current qualifications, in the territory in which the Users are located, to take clinical responsibility for, and make clinical decisions in respect of, Users). The Collect Services make no attempt to diagnose a User nor suggest a specific course of treatment for that User and shall not be used as a substitute for professional medical advice/diagnosis, assistance or treatment or procedure performed in person by a qualified individual practitioner;
 - iv. the primary purpose of the Prevent Services is the provision of informational and educational content for Users with a view to helping them reduce their risk of MSK injury, highlighting early risk factors and symptoms and encouraging healthy movement behaviours before clinical intervention is required;
 - v. it shall use the Access Services, Engage Services, Prevent Services and Collect Services in accordance with any documentation and information provided by the Supplier to the Customer from time to time in respect of its intended use;
 - vi. any clinical decision taken by the Customer concerning injury or condition management and/or advice given to Users shall be based solely on the relevant qualified individual practitioner's own skill and experience; and
 - vii. it shall be solely responsible for ensuring the suitability of the Access Services, Engage Services, Prevent Services and Collect Services for the Users and providing the User with all such information, guidance and advice as is reasonably required in respect of their usage of the Access Services and/or the Engage Services and/or Prevent Services and/or Collect Services (as the case may be).
- b. Without prejudice to any other right or remedy available to it, if the Supplier knows or, acting reasonably, has reason to suspect that the Customer's use of the Services is in breach of clause 4(a), the Supplier may, without any liability whatsoever to the Customer, suspend the supply of the relevant Services until the Customer is able to provide evidence to the Supplier's reasonable satisfaction of its compliance with clause 4(a).
- c. The Customer hereby acknowledges and agrees that any breach of clause 4(a) shall constitute a Material Breach of the Call Off in respect of which the Supplier may





terminate this Agreement in accordance with clause 18.5.1 of the Call-Off Contract (as defined in the Call Off).

5. Personal Data

- a. Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a Party's obligations, responsibilities or rights under the Data Protection Legislation.
- b. The Customer shall not, and shall procure that no User or Authorised Personnel shall, unless agreed otherwise with the Supplier, disclose any personal data relating to Users to the Supplier.
- c. Where it is agreed that personal data relating to the Users may be disclosed to the Supplier, the Parties acknowledge and affirm that in respect of the personal data processed by the Supplier on behalf of the Customer in connection with the provision of the Access Services, Engage Services, Prevent Services, Collect Services and the Customer Services the Customer is determining the purpose and approving the manner in which that personal data is processed in connection with the provision of such Services and, accordingly, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation.
- d. Notwithstanding clause 5(c), the Supplier may obtain feedback from Users in connection with their use of the Services and, in respect of personal data collected or used by the Supplier in connection with such feedback, the Supplier shall be a controller for the purpose of the Data Protection Legislation.
- e. Without prejudice to the generality of clause 5(a), where the Supplier is processing personal data as processor the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of such personal data to the Supplier and processing of the personal data for the duration and purposes of the provision of the Services so that the Supplier may lawfully process such personal data on the Customer's behalf.

6. Price and Payment terms

- a. The price and payment terms applicable to the Services shall be as set out in the Call Off.
- b. On each anniversary of the Start Date (as defined in the Call Off), the Supplier may increase the price of the Services to reflect any percentage increase in the Retail Prices Index (or any superseding or replacement index) during the previous year upon 90 days' prior written notice to the Customer.

7. Proprietary Rights

- a. Except as expressly set out herein:





- i. the Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights relating to the Software, the Data and the Documentation used to provide the Services or developed during the provision of the Services; and
 - ii. these Conditions do not grant the Customer any permission to use or exploit any such Intellectual Property.
- b. The Parties agree that all Intellectual Property arising out of or in connection with the Customer's receipt and use of the Services (including use of the Services by the Users and the Authorised Personnel) shall belong to the Supplier and the Customer hereby:
 - i. assigns to the Supplier all and any future copyright in such Intellectual Property; and
 - ii. agrees to assign to the Supplier all other such Intellectual Property and all such Rights to Intellectual Property.
- c. The Supplier confirms that it has all the authorities in relation to the Services, Software and the Documentation that are necessary to grant all the permissions it purports to grant under, and in accordance with, these Conditions.
- d. The Customer grants to the Supplier free of charge a royalty-free, non-transferable licence to copy and modify any Customer Materials, for the Term for the purpose of branding and thereafter hosting the landing page(s) for the Customer, Users and Authorised Personnel (as applicable) to access the Customer Services, Access Services, Engage Services, Prevent Services and Collect Services (as applicable).

8. Customer Indemnity

- a. The Customer shall defend, indemnify and hold harmless the Supplier against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable professional fees) arising out of or in connection with:
 - i. any claims, actions or proceedings made by or on behalf of any third party (including without limitation a User, but excluding any employee or agent of the Customer when they are not a User) for death or personal injury arising from the Supplier's negligence, excluding any death or personal injury caused by any bug or virus contained in the Software;
 - ii. any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Customer Materials, the Customer's and any Users' or Authorised Personnel's use of the Services and/or the Documentation;
 - iii. the use of or reliance on (in accordance with the terms of this Agreement) any Data made available by the Customer;
 - iv. any breach of clause 4(a);
 - v. the enforcement of these Conditions; and





vi. otherwise, the Customer's and any Users' or Authorised Personnel's' use of the Services and/or Documentation.

b. The Customer's liability pursuant to the Supplier pursuant to clause 8(a) shall be subject to the Supplier's compliance with the following:

- i. the Customer being given prompt written notice of any such claim;
- ii. the Supplier providing reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- iii. the Customer being given sole authority to defend or settle the claim.

c. During this Agreement and for a period of six years afterwards the Customer shall maintain in force, with reputable insurance companies, insurance, to the level (per claim and in aggregate) and on terms, necessary to ensure that the Supplier is able to fully and effectively enforce its rights against the Customer pursuant to clause 8(a). The Customer shall, on demand, provide evidence to the Supplier's reasonable satisfaction of its compliance with this clause 8(c).

9. Variation. No variation of these Conditions shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

10. Waiver. No failure or delay by a Party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11. Severance

- a. If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Conditions.
- b. If any provision or part-provision of these Conditions is deemed deleted under clause 11(a) the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12. Governing law. These Conditions and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

13. Jurisdiction. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions or their subject matter or formation (including non-contractual disputes or claims).

