

Phy Terms and Conditions for the Use for Phy Solution and Phy App

These terms and conditions (the “**T&Cs**”) of Phyxid, Inc., 287 Park Avenue S., #525, NYC, NY 10010, USA, d/b/a Phy (email: privacy@phy.health, phone: +1 484 300 9898) (hereinafter referred to as “**Phy**”, “**we**”, “**our**” or “**us**”) govern the provision and use of Phy’s three-dimensional volumetric computer vision technology (the “**Phy Solution**”) and the associated mobile application (the “**Phy App**”) and the contractual relationship between Phy and the users of the Phy Solution and the Phy App (hereinafter referred to as “**User**” or “**You**”).

Phy is backed by decades of neuromuscular therapy and exercise physiology research and practices as well as data-driven machine learning. The Phy Solution is the result of these decades of neuromuscular therapy, exercise physiology research and the analysis of lots of data. The Phy Solution assesses and analyzes postural patterns by body scanners and offers options for exercise programs to optimize human movement, performance and posture. The scan results, analyzed information and recommendations to optimize physical mobility, performance, and posture are provided to the User in the Phy App after registration.

1. Scope

- 1.1. Phy does not offer or provide medical advice or medical care. The Phy Solution, the Phy App and the recommendations to optimize physical mobility, performance and posture as well as the content made available through the Phy Solution and the Phy App do not constitute, support or replace medical or professional advice, medical diagnosis, or medical care and medical treatment if You suffer from any pain or injuries and are not intended to provide medical advice or medical care to its Users.
- 1.2. The content and recommendations provided when using the Phy Solution and the Phy App are for informational and educational purposes only. The Phy Solution, the Phy App and the recommendations and information provided when using the Phy Solution and the Phy App are not intended to be used for or replace medical diagnosis, prevention, monitoring, prediction, prognosis, treatment or alleviation of disease, diagnosis, monitoring, treatment, alleviation of, or compensation for, an injury or disability, or investigation, replacement or modification of the anatomy or of a physiological or pathological process or state.
- 1.3. For the avoidance of doubt, Phy recommends that You never disregard, avoid, or delay in obtaining medical advice from Your doctor or other qualified healthcare provider because of content You have seen on the Phy Solution. If You experience a medical emergency, immediately call emergency services.
- 1.4. To the extent medical advice is provided to You by Your health care provider or doctor using the Phy Solution, such medical advice is based on the health care provider’s

professional judgment and Your personal health data as provided by You to such health care provider or doctor. The Phy Solution is not provided to be the sole source of information regarding Your condition and shall not be used as the basis for or to drive diagnosis or treatment decisions.

2. Subject and Use of the Phy Solution

- 2.1.** The Phy Solution is a full body scanner with a three-dimensional volumetric computer vision technology, which scans, analyzes and assesses Your full body to assess and analyzes postural patterns. No X-ray scans or similar procedures will be carried out but only surface scans will be performed. The scan results will be provided in Your Phy App for which you need to register a user account (see Section 3 below).
- 2.2.** The Phy Solution is currently available and accessible on the premises of the Therme Erding (Thermenallee 1-5, 85435 Erding, Germany) and is only made available for use by adults, i.e. individuals over the age of 18. Your age will be checked and verified before the first use of the Phy Solution. We may offer the Phy Solution at additional locations in the future. Hereinafter, we refer to any location where the Phy Solution is offered or is to be offered as “**Location**”. The use of the Phy Solution and the formation of the agreement regarding the use of the Phy Solution at such additional locations shall be governed by these T&Cs.
- 2.3.** If You are under the age of 18 and at least 13 years of age You are only allowed to use the Phy Solution and enter into this agreement with the prior approval of your parents or legal guardian.
- 2.4.** Phy will not staff any employees or representatives at the Location. The Location will be solely staffed with employees or representatives of the Location.
- 2.5.** In order to be entitled to use the Phy Solution, You have to make an appointment with the employees at the Location, accept these T&Cs, install the Phy App on Your mobile device and create a user account with Us during the appointment.
- 2.6.** The employees at the Location will give You an introduction to the Phy Solution, explain to you how it works and what needs to be observed during the scan and support you with the registration of a user account (if necessary).
- 2.7.** Once You have completed the registration of Your user account and received the introductions and explanations of the employees at the Location, you are entitled to use the Phy Solution and perform a full scan of your body. The scan results will be transferred automatically to the user account in Your Phy App and the Phy App will propose exercise programs based on the analysis of Your body scan to optimize Your movement, performance and posture.

- 2.8.** You are obliged to strictly follow the instructions of the personnel at the Location.
- 2.9.** By agreeing to these T&Cs you are not allowed to and may not:
- 2.9.1.** Access the Phy Solution or Phy App other than by the interfaces provided by Phy;
 - 2.9.2.** Use the Phy Solution or Phy App for any illegal activities or purposes;
 - 2.9.3.** Use the Phy Solution or Phy App in violation of the law;
 - 2.9.4.** Use the Phy Solution or Phy App for other than the intended purposes;
 - 2.9.5.** Interfere with or attempt to bypass any security-related features of the Phy Solution or Phy App, including by disabling or circumventing features that prevent or limit use or copying of any content provided in the course of the use of the Phy Solution or Phy App;
 - 2.9.6.** Interfere with the operation or proper working of the Phy Solution or Phy App or any user's enjoyment of the Phy Solution or Phy App;
 - 2.9.7.** Destroy, damage or modify the Phy Solution or Phy App;
 - 2.9.8.** Upload or otherwise disseminate viruses, adware, spyware, worms, or other malicious code, interfere with or disrupt any networks, equipment, or servers connected to or used to provide the Phy Solution or Phy App;
 - 2.9.9.** Copy, replicate, duplicate, decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Phy Solution or Phy App, or modify, translate, or otherwise create derivative works of any part of the Phy Solution or Phy App; or
 - 2.9.10.** attempt to or assist or permit any persons in engaging or attempting to engage in any of the aforementioned prohibited conduct.
- 2.10.** We may provide you with tools through the Phy App enabling You to export Your information and data, in particular Your Scan results, to third party services. Such third party services are not under our control and the use of these third party services are subject to the terms and conditions of these third party service providers.

3. Subject and Use of the Phy App and User Account

- 3.1.** For being entitled to use the Phy Solution and prior to being able to use the Phy Solution, it is necessary and You are obliged to make an appointment with Us and register a user account with Us through our Phy App during the appointment.
- 3.2.** The Phy App is made available for download in the Apple App Store and the Google Play Store.

- 3.3.** During the registration process and use of the PhyApp You are obliged to accept these T&Cs, confirm that you took note of our privacy notice, consent to certain data processing operations and provide the following information:
- 3.3.1.** First and last name, gender, date of birth
 - 3.3.2.** Height and weight
 - 3.3.3.** Email address and phone number
 - 3.3.4.** Password
 - 3.3.5.** Body part(s) where you experience pain and the severity of it
- 3.4.** If You are a minor, i.e. if you are under the age of 18, and want to register a user Account with us, you have to provide the following additional information
- 3.4.1.** First and last name of your parent or legal guardian
 - 3.4.2.** Email address of your parent or legal guardian
- 3.5.** We need this information on Your parent or legal guarding, as Your parent or legal guardian is required to consent to the appointment and the use of the Phy Solution and the Phy App. Your Parents have to consent to the appointment and use of the Phy Solution and Phy App within two weeks, or the data is automatically deleted.
- 3.6.** The information provided according to Section 3.3 and 3.4 must be up to date, true and accurate. You are obliged to keep this information updated and provide Us with any updates relevant to Your account data.
- 3.7.** Once You have provided all information requested during the registration process, you will receive an email with a QR code that will be used to continue and complete the registration process. This QR code is linked to your user account and entitles you to use the Phy Solution and go through the scanning process. In order to initiate the scanning process, You will have to make the requested payment through the payment methods indicated during the checkout process.
- 3.8.** Upon Completion of the scanning process you will have immediately access to the Phy App and the scan results will be transmitted to Your personal user account in the Phy App and stored in Your user account for future access.
- 3.9.** Each Phy App user account is connected to an individual User and may not be transferred to any third party without our prior written approval. The approval may not be withheld without good cause. The owner is obliged to keep the login details secret and protect them from unauthorized access by third parties.

- 3.10.** You may grant access to Your account by additional users such as coaches, healthcare providers, friends or family members. You are obliged to ensure that any person to whom You grant access to Your account complies with these T&Cs. The Phy App does not allow You to directly collaborate with professional coaches, health care providers, friends or family members and directly share Your scan report and results with collaboration partners, but You may download your scan report and share the results with coaches, healthcare providers, friends or family members or any other recipients You deem appropriate and necessary. For the avoidance of doubt, You may not and should not share Your exercising plan for commercial purposes and only use it for private purposes. You may not and should not make Your exercising plan available to the public (for example by uploading it to host providers or platforms).
- 3.11.** The Phy App allows You to review and amend Your data provided during the registration process, access your scan results and contains a library with various videos of exercises. The Phy App enables You to access various exercise plans, track Your training, see and track Your progress, schedule further appointments for new body scan or trainings with movement coaches. You may also receive recommendations and instructions for recommended exercises through the Phy App.
- 3.12.** Your recommended exercise plan will be accessible in your Phy App for twelve (12) weeks from the date on which You received Your report regarding Your postural score and condition. During these twelve (12) weeks and subject to Your progress and completion of Your exercise plan, We will provide you with updated exercise plans. After the expiration of these twelve (12) weeks, access to the exercise plans will be denied until You purchase for (if required) and perform a new body scan either at the Location or by yourself in accordance with Section 3.13. The scan results and posture score remain available after the twelve (12) weeks period.
- 3.13.** The Phy App allows You to perform a new body scan yourself after registering and logging into Your user account by using the camera of Your mobile phone. The Phy App will provide You with further information and instructions on how to perform the body scan and position Your body. You will be required to take four (4) photos of Your entire body to provide sufficient material for the creation of Your personal posture report. We reserve the right to make the possibility to perform new body scans with Your mobile phone subject to the payment of a service fee in the future. Before the payment of this service fee becomes due in the future, we will inform You accordingly in advance. After the successful payment of this service fee (if required) and successful completion of a new body scan, We will provide You with the results and report of Your body scan as well as grant you access to Your recommended exercise plans and provide you with new exercise plans.

- 3.14. We reserve the right to delete the provided registration information after a reasonable time, if the registration process fails or remains incomplete or is cancelled.
- 3.15. The functions and features of the Phy App described in this Section 3 represent the agreed specifics and characteristics of the Phy App agreed between Us and You. Phy is expressly not obliged to provide any further characteristics, functions or features regarding the Phy App.

4. Conclusion of the Agreement

- 4.1. The provision of the Phy Solution at the Location and the provision of the Phy App in the app stores constitute our offer to conclude an agreement on the use of the Phy Solution and the provision and use of the Phy App. The availability of the Phy Solution depends on the number of bookings made by Our customers.
- 4.2. By making an appointment and completing the registration process for the user account You accept our offer to conclude the agreement regarding the use of the Phy Solution and the provision and use of the Phy App.
- 4.3. The agreement regarding the use of the Phy Solution and the use of the Phy App is concluded once You have made an appointment for the body scan and completed the registration process.
- 4.4. The agreement regarding Phy Solution will be concluded between You and Us on site at the Location where You have made an appointment for the body scan.
- 4.5. The agreement regarding the performance of future body scans is concluded as follows:
 - 4.5.1. You may either conclude a new agreement for the performance of a new body scan on the premises of the Location by scheduling a new appointment for the performance and completion of a new body scan and paying the demanded fees.
 - 4.5.2. Or You may conclude a new agreement for the performance and completion of a new body scan via the Phy App and perform the scan yourself using the camera of Your mobile phone on which the Phy App is installed.
 - 4.5.3. In case of Section 4.5.2 the steps to the conclusion of the agreement are as follows:
 - 4.5.3.1. Once the initial access to Your personal exercise plans expire, We will offer You an option in the Phy App to purchase for a continued or new access to Your exercise plans that have been made available to You based on Your previous body scan. This option will enable You to perform a new body scan using the camera of Your mobile phone and provide Us

with updated body scan data in order to provide You with an updated report of Your posture.

- 4.5.3.2.** The option We are offering in accordance with Section 4.5.3.1 is Our explicit and binding offer to You to conclude the new agreement with Us regarding the continued provision of Your exercise plans and the performance of a new body scan, which You have to perform yourself using the camera of Your mobile phone.
- 4.5.3.3.** When You click on this option, You will be redirected to an overview outlining the relevant conditions of the agreement (e.g. that We will continue providing Your exercise plans to You, that You will be entitled to perform a new body scan using the camera of Your mobile phone, the period for which We will provide You with Your personal exercise plans (including new plans subject to the completion of old plans), fees, payment options, and applicable terms).
- 4.5.3.4.** With clicking on the “order with obligation to pay” button, You will enter into a binding agreement with Us regarding the continued provision of your exercise plan and the performance of self-performed new body scan subject to these T&Cs.
- 4.5.3.5.** You may rectify any errors at any time by going back in the Phy App and You may cancel the conclusion of the agreement by going back in the Phy App or closing it.
- 4.5.3.6.** Once We have received your order, We will send You an automatic order confirmation email confirming the receipt of your order and the conclusion of the agreement as well as outlining the key characteristics of your order, and the terms of this new agreement. You may print this email and the applicable terms of this agreement or save them on your mobile device.
- 4.5.3.7.** This new agreement will be stored by Us in accordance with applicable data protection laws. The languages available for the conclusion of this agreement are English and German.

4.6. The Phy App is available globally in the Google PlayStore and Apple App Store. The Phy Solution is currently available at the Location. We reserve the right to extend this offer in the future and intend to offer the Phy Solution at more locations.

5. Fees and Payment

5.1. You may be required to pay fees to access and use the Phy Solution. Such a payment is a one-time payment for the one-time use of Phy Solution. A new fee will be charged for

each subsequent use of Phy Solution. The download and use of the Phy App is free of charge.

- 5.2.** All fees are indicated in Euro including VAT.
- 5.3.** We or our authorized third party payment processors will charge Your payment method You specify at the time of purchase with the fees agreed upon the conclusion of the agreement regarding the use of the Phy Solution.
- 5.4.** When You decide to purchase for the continued provision of Your exercise plan and the performance of a new self-performed body scan in the Phy App, you may pay for such purchase through the Apple App Store or the Google Play Store using the payment methods offered by the operators of these app stores and available in Your region (e.g. Credit card, PayPal, etc.).
- 5.5.** We may change the fees due for the use of the Phy Solution at any time. Such changes shall not affect the amount of fees for which an agreement for one-time use of Phy Solution was already concluded but the use will take place in the future after the fee change comes into effect.
- 5.6.** Any fees required are immediately due for payment. You shall be in default of payment at the latest if you do not pay Us within 30 days of the due date and receipt of an invoice or equivalent payment schedule.

6. Warranties

- 6.1.** Regarding the access and use of the Phy Solution and the access, use and provision of the Phy App the statutory warranty rights apply.
- 6.2.** The Phy App is defective if, when used by You in accordance with these T&Cs, it does not have the contractually agreed functions or characteristics or the possibility of use or access is not provided to the contractually agreed extent. In the event of defects, You are entitled to the following rights in particular:
 - 6.2.1.** You may demand that We remedy the defect, i.e., that We rectify the Phy App to achieve the contractually agreed condition at Our expense.
 - 6.2.2.** If Our subsequent performance fails, is impossible, We do not fulfill Your claim for subsequent performance to the extent required by law, a defect becomes apparent despite subsequent performance, or We refuse subsequent performance, You may terminate the agreement with Us, provided that the defect is not insignificant.

- 6.2.3.** You may also terminate the agreement if the defect is so serious that immediate termination of the contract is justified, or if it is obvious from the facts that We will not be able to remedy the defect properly.
- 6.2.4.** In the cases specified in Section 6.2.2 and 6.2.3 You may also reduce the fees owed to Us by sending Us a corresponding notice. The fees will be reduced in proportion to the ratio between the value of the Phy App in a defect-free condition at the time of delivery and the actual value of the defective Phy App. If You have paid Us more than the reduced amount, We are obliged to refund the overpayment.
- 6.3.** If we are unable to fulfill Our obligation to provide You with the Phy App without defect after Your request, You may terminate the agreement.
- 6.4.** We are obliged to ensure that updates are provided during the term of the agreement in order to maintain the Phy App in the quality and conditions agreed in the agreement.
- 6.5.** Your warranty rights are excluded, if You were aware of the defect at the time of the conclusion of the agreement or where the defect or functional impairment is the result of
- 6.5.1.** the incorrect operation or use of the Phy App on your part;
 - 6.5.2.** the use of the Phy App in violation of these T&Cs; or
 - 6.5.3.** necessary maintenance work. If technically foreseeable and possible, We will announce planned maintenance work that restricts the availability of the Phy app in good time in advance (at least 3 weeks).

7. Right of Withdrawal

- 7.1.** If You are a consumer within the meaning of Section 13 German Civil Code (*BGB*) (i.e. a natural person who places the order for a purpose that cannot be attributed to their commercial or self-employed professional activity) You may exercise Your right of withdrawal regarding the conclusion of the agreement for the provision and use of the Phy App and regarding the new self-performed body scan, without paying any penalty and without stating any reason under the conditions set forth in this Section 7.

7.2. Withdrawal Policy

Right of Withdrawal

You have the right to withdraw from this agreement within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day of the conclusion of the agreement.

To exercise Your right of withdrawal, You must inform Us, Phyxid, Inc., 287 Park Avenue S., #525, NYC, NY 10010, USA, d/b/a Phy, phone: +1-484-300-9898, email: privacy@phy.health, of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, or email). You may use the attached model withdrawal form, but it is not mandatory.

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

Effects of Withdrawal

If You withdraw from this contract, We shall reimburse to You all payments received from You, including the costs of delivery (with the exception of the supplementary costs resulting from Your choice of a type of delivery other than the least expensive type of standard delivery offered by Us), without undue delay and in any event not later than 14 days from the day on which We are informed about Your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as You used for the initial transaction, unless We have expressly agreed otherwise; in any event, You will not incur any fees as a result of such reimbursement.

If You have requested that the services begin during the withdrawal period, You must pay Us a reasonable amount corresponding to the proportion of the services already provided until the time You notify Us of Your exercise of the right of withdrawal with regard to this agreement, compared to the total scope of the services provided for in the agreement.

– End of instruction on withdrawal right –

Model withdrawal form according to Annex 1 B to Directive 2011/83/EU

(If you want to withdraw the agreement, please fill in this form and send it back).

- Phyxid, Inc., 287 Park Avenue S., #525, NYC, NY 10010, USA, d/b/a Phy, email: privacy@phy.health,
- I/We (1) hereby give notice that I/We (1) withdraw from my/our (1) contract of sale of the following goods (1)/for the provision of the following service (1)
- Ordered on (1)/received on (1)
- Name of consumer(s)
- Address of consumer(s)
- Signature of consumer(s) (only if this form is notified on paper)
- Date

(1) Delete as appropriate

- 7.3. Your right of withdrawal expires if We have begun to fulfill the contract with regard to the provision of the Phy App.
- 7.4. Your right of withdrawal regarding the agreement on the option to perform a new body scan yourself expires, if We have provided You with the possibility to perform the body scan yourself via the Phy App and Your mobile phone, provided however, that before We started to provide this service to You, (1) You have expressly agreed that We provide this service before the withdrawal period expires, and (2) You have confirmed Your knowledge that Your right of withdrawal expires upon complete fulfillment of the agreement.

8. Term, Termination and Suspension of Your User Account

- 8.1. The contracts regarding the provision and use of the Phy Solution and the Phy App are concluded for an unlimited term. We may terminate the agreement with one (1) month notice. You may terminate the agreement at any time (e.g. by deleting Your user account and the Phy App from Your mobile device).
- 8.2. The contracts regarding the provision of access to the exercise plan expires after twelve (12) from the date on which You have received Your report regarding Your postural score and condition. If You have purchased a new body scan (either on the premises of the Location or in the Phy App) and have received Your new report regarding Your postural score and condition, Your access to Your exercise plans and success will be restored for an other twelve (12) weeks from the date of receipt of Your report. Subject to the termination rights in Sections 8.3 and 8.4 and Our right to temporarily or permanently suspend Your user account in accordance with Section 8.7, we may not restrict or remove your access to the exercising plans during this twelve (12) week period. You are entitled to terminate the agreement concerning the provision of the exercising plans and related materials in accordance with Sections 8.1 and 8.3. This does not affect your obligation to pay the agreed fees for the performance of the body scan
- 8.3. Termination for good cause by either party remains unaffected. Good cause for Us is given in particular if:
 - 8.3.1. You breach your obligations under Section 2.9 of these T&Cs and fail to remedy such breaches within the deadline specified in Our prior warning;
 - 8.3.2. the information provided during the registration process is incorrect;
 - 8.3.3. You grant any unauthorized third party access to Your user account; or
 - 8.3.4. You are a minor and Your parents or legal guardian refuse to consent or do not give their consent in due time to the use of the Phy Solution and Phy App within two weeks of scheduling the appointment.

- 8.4.** We may terminate the agreement regarding the use of the Phy Solution and the Phy App with You if you object to or refuse to consent to the changes in accordance with Section 11.2.
- 8.5.** You may terminate the agreement regarding the use of the Phy Solution and the Phy App with Us if you do not agree with the proposed changes pursuant to Section 11.2.2.
- 8.6.** Notice of termination must be given in text form (e.g., by email).
- 8.7.** We reserve the right to temporarily or permanently suspend your user account for the Phy App, if we have specific, actual indications that You or anyone who You granted access to Your user account breaches these T&Cs, infringes any third party rights or is in violation of the statutory law. This applies in particular when We have concrete indications that
- 8.7.1.** You or anyone who you granted access to Your user account breaches Your obligations under Section 2.9;
- 8.7.2.** the information provided during the registration process is incorrect;
- 8.7.3.** You grant any unauthorized third party access to Your user account;
- 8.7.4.** You are minor and Your parents or legal guardian refuse to consent or do not give their consents in due time to the use of the Phy Solution and the Phy App within two weeks of scheduling the appointment;
- 8.7.5.** You continue to use the Phy App or Phy Solution after the effective date of the termination;
- 8.7.6.** Your use of the Phy Solution or Phy App is likely to result in damages to Our systems and tools,
- 8.7.7.** You repeatedly fail to comply with Your obligation to pay the fees. This is particularly the case if the total in arrears reaches the amount of two (2) full payments; or
- 8.7.8.** In the event of termination for good cause.
- 8.8.** Your right to use the Phy Solution and the Phy App ends immediately upon termination of the underlying agreement. In the event of termination, you are obliged to immediately cease use of the Phy Solution and the Phy App at the time the termination takes effect.

9. Liability

- 9.1.** Either party is only liable towards the other party if (i) it is assuming a guarantee (*Garantie*), (ii) acts intentionally, fraudulently or is gross negligent, (iii) in cases of injury to life, body or health, or (iv) in case of a breach of essential contractual obligations (*wesentliche Vertragspflichten*), i.e. a duty the fulfilment of which is essential for enabling

the due performance of the agreement and on the fulfilment of which the relevant party habitually relies and may rely on. However, in case of a slightly negligent violation of essential contractual obligations, either party's liability towards the other shall be limited to foreseeable damages which are characteristic for such type of contracts (*vertragstypisch vorhersehbarer Schaden*). Apart from that, neither party shall be liable towards the other, irrespective of its legal basis (contract, tort, etc).

- 9.2. If and to the extent that a party's liability is limited or excluded pursuant to the preceding sections, this shall also apply to the corresponding personal liability of the respective party's employees, vicarious agents, and legal representatives
- 9.3. You are liable for any willful or negligent breach of these T&Cs by any person to whom You have granted access to Your user account or Phy Solution, as for Your own willful or negligent breaches of these T&Cs.
- 9.4. Liability for the loss of data that You have uploaded while using the Phy App or that was transmitted to your user account by scanning is limited to the recovery costs that would have been incurred with regular and proper data backup.
- 9.5. The limitations of liability in this Section 9 do not apply with regard to liability under the Product Liability Act (ProdHaftG).

10. Privacy and Data

- 10.1. The collection and processing of Your personal data is subject to and further described in Our privacy notice. Our privacy notice can be accessed under the following link: [Privacy-Notice-EU-en.pdf](#)
- 10.2. If you have any further questions regarding the processing of your personal data, you may contact our privacy team at privacy@phy.health.
- 10.3. You are obligated to secure your data and protect it against loss, and to make regular backups.
- 10.4. Upon Your request, You may switch to another data processing service offering the same service type and export all exportable data and digital assets to such data processing service. You may also request to switch to Your own on-premises ICT infrastructure and have all Your exportable data and digital assets exported to you on-premises ICT infrastructure. The transition period for the completion of the switching process shall not exceed thirty (30) days after the expiration of the termination period specified in Section 8.1 ("**Transition Period**"). At Your request, this transition period of thirty (30) days can be extended once for a period that You consider more appropriate for your purposes ("**Extended Transition Period**"). This Extended Transition Period may not exceed a

period of six (6) months. Instead of requesting a switch, You may also request the deletion of your exportable data and digital assets.

- 10.5.** For the purpose of these T&Cs the following terms shall have the following meaning:
- 10.5.1.** “Data processing service” shall mean any digital service that is provided to a customer and that enables ubiquitous on-demand network access to a shared pool of configurable, scalable and elastic computing resources of a centralized, distributed, or highly distributed nature that can be rapidly provisioned and released with minimal management effort or service provider interaction.
- 10.5.2.** “Same service type” shall mean a set of data processing services that share the same primary objective, data processing service model and main functionalities.
- 10.5.3.** “Digital assets” shall mean elements in digital form, including applications, for which You have the right of use, independently from the contractual relationship with US.
- 10.5.4.** “Exportable data” shall mean the input and output data, including metadata, directly or indirectly generated, or cogenerated by Your use of Our Phy App, excluding any assets or data protected by intellectual property rights or constituting a trade secret of providers of data processing services or third parties.
- 10.6.** You are obliged to provide us with the name, address and relevant contact details of the receiving data processing service. Furthermore, You are obliged to provide us with the contact details of the personnel relevant for the initiation and performance of the switching process.
- 10.7.** The following procedures and methods are available to You for switching and transferring content to another data processing service of the same service type or to an ICT infrastructure on Your own premises: Email transfer.
- 10.8.** To the best of Our knowledge, there is currently no other data processing service of the same type that can process and use the input data We use to generate similar or comparable output data.
- 10.9.** It is Your responsibility to assess and ensure that the receiving data processing service is capable of receiving and processing the data and digital assets exported by Us as part of the switching process. We are not obliged and not responsible to ensure that the exported data and digital assets can be used and displayed in the same way in the IT environment of the receiving data processing service as in the service We offer.
- 10.10.** We will provide reasonable assistance to You and third parties authorized by You for completing and facilitating the switching process and act with due care to maintain business continuity and continue the provision of the functions and services under Our

contracts. Throughout the switching process, We ensure to maintain a high level of security, in particular regarding the security of the data during the transfer to the new data processing service and the Retrieval Period specified in Section 10.11.

10.11. You may also request the retrieval of Your data within a period of thirty (30) days, starting after the expiration of the Transition Period or the Extended Transition Period (as the case may be) (“**Retrieval Period**”).

10.12. We shall support Your exit strategy relevant to the contracted services, including by providing all relevant necessary information at Your request, provided that such information does not constitute a trade secret. Such information request may include the request of detailed information regarding the technical process and procedures of the switching process.

10.13. The contract concerning the provision and use of the Phy App shall be considered terminated upon the successful completion of the switching process, and, where You do not wish to switch but to erase all Your exportable data and digital assets, upon expiration of the termination period specified in Section 8.1. We will inform You accordingly on the termination of the contracts.

10.14. The following categories of data and digital assets can be ported during the switching process:

10.14.1. body scan data collected by the Phy Solution;

10.14.2. account data;

10.14.3. scores and progress data;

10.14.4. input data such as full name, email address, date of birth, weight, height, sex, body regions in which You experience pain and the level of pain, and activity level;

10.14.5. images taken during the body scan

10.14.6. output data such as recommended movement plans, measurements, assessment reports and the generated 3D model.

10.15. The following categories of data and digital assets are specific to the internal functioning of Our Phy App and are therefore exempted from the exportable data and digital assets specified in Section 10.14, as the provision and export of such data constitute a risk of breach of trade secrets:

10.15.1. information and data on the logics and algorithms used to generate the model of Your body, the measurements we use, generate and associated

calculations, and the interplay between the data points used to generate the model of Your body;

10.15.2. methods and algorithms used to generate the posture score;

10.15.3. methods and algorithms used to generate the scale for focus and attention areas of Your body

10.16. In order to enable and carry out the switching to a new data processing service that offers the same service type, We are not obliged to develop new technologies or services or disclose digital assets that are protected by intellectual property rights or that compromise Your security and integrity or that of the receiving data processing service to you or any other provider of data processing services.

10.17. Provided that the switching process has been successfully completed, We delete all exportable data and digital assets generated directly by You or related directly to You after the expiration of the Retrieval Period or the expiration of an alternative period that is later than the expiry of the Retrieval Period and that has been agreed with You, unless we are obliged to retain such data due to statutory retention periods.

10.18. We do not charge any switching charges.

10.19. Upon termination of the contract pursuant to Section 8, You may notify Us of Your decision (i) to switch to a different provider of data processing services offering the same type of service (in this case You shall provide us with the necessary details of that service provider (including name, address, and relevant contact details), or (ii) to switch to an on-premises ICT infrastructure, or (iii) that all of Your exportable data and digital assets shall be deleted.

10.20. Where compliance with the Transition Period is technically unfeasible, We will notify You within fourteen (14) working days of making the switching request and will justify the technical unfeasibility. In this notification, We will indicate an alternative transition period not exceeding seven (7) months (“**Alternative Transition Period**”). During this Alternative Transition Period, we shall ensure the continuity of our service.

10.21. Our online register containing details and specifications of all data structures and data formats, as well as information regarding the current status of the relevant standards and open interoperability specifications, can be accessed at the following link: [EU-Data-Act-Information-en.pdf](#).

10.22. On Our website, accessible at www.phy.health, we publish information on the jurisdiction to which Our ICT infrastructure is subject and on the technical and organizational measures we have implemented to prevent international government access to or

international government transfer of non-personal data stored in the EU if such access or transfer would be in violation of EU law or national law.

- 10.23.** You are obliged to take all necessary and reasonable measures to ensure an efficient, fast, and effective switch in accordance with your switch request. You are responsible for importing the exportable data and digital assets on Your ICT infrastructure at Your own premises or into the system of the other data processing service of the same service type (with the support of this other data processing service provider, if necessary).
- 10.24.** You grant Us a non-exclusive, irrevocable, cost-free, sublicensable right of use, limited to the successful completion of the switch, to the digital assets stored with Us and whose transfer You request as part of the switch. This right of use includes the right to reproduce, distribute, edit, adapt, modify, and make publicly available the digital assets to the extent necessary for the execution of the switch.
- 10.25.** You are obliged to notify to Us the completion of the switching.

11. Miscellaneous

- 11.1.** Any change or amendment of these T&Cs requires text form.
- 11.2.** We may propose changes to these T&Cs to You in text form (e.g., by email) with at least 30 days' notice before the proposed effective date. The changes offered to You will only take effect under the following conditions:
- 11.2.1.** If the proposed change is a significant change, We ask for Your consent to these changes. Significant changes are changes that significantly shift the previously agreed contractual relationship, in particular the relationship between performance and consideration, to your disadvantage or would be equivalent to the conclusion of a completely new agreement (e.g., changes to the type and general scope of services, term, and right of termination). Changes due to a change in the law, a final court ruling, or a preliminary injunction do not constitute a significant change.
- 11.2.2.** If the proposed changes are not significant, these changes will take effect if you do not object to the changes in written text form (e.g., by email) before the effective date specified in the notice. In the event of such changes, we will inform you in the notice of the changes about your right to object to the changes, the deadline for such an objection, the consequences of failing to meet this deadline, and Your right to terminate the contract.
- 11.2.3.** If You continue to use the Phy App after receipt of the notice of a change in accordance with Sections 11.2.1 and 11.2.2, You agree to the proposed changes.

- 11.3.** We are neither willing nor obliged to participate in dispute resolution proceedings before consumer arbitration boards.
- 11.4.** These T&Cs shall exclusively be governed by and construed under the laws of Germany excluding its provisions on the conflict of laws and CISG. If You are a consumer and Your habitual residence is in another country than Germany at the time you accept these T&Cs, the applicability of mandatory legal provisions of that country remains unaffected by the choice of law made in sentence 1 of this Section 11.4.
- 11.5.** Should any provision of these T&Cs be or become invalid in whole or in parts or should a loophole requiring closing show up, the validity of the other provisions shall not be affected. Rather, the parties shall be obliged to replace the invalid or unenforceable provisions with another valid provision as close to the economic effect as possible.

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