

Physio Observer[©] TERMS AND CONDITIONS

These terms were updated and effective as of 21st March 2014.

1. basic agreement

This is a legal agreement ("Agreement") between Customer and communausic . BY ACCESSING AND/OR USING THE SERVICE(S), YOU ARE AGREEING, ON BEHALF OF YOURSELF AND/OR YOUR COMPANY, TO BE BOUND BY THE MOST RECENT TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT ACCESS AND/OR USE THE SERVICE(S).

This Agreement between communausic and you governs your use of the SaaS Physio Observer, without limitation, all content such as text, information, images, applications, templates software and other information, services and materials and all information made available to you or by you through this site by communausic and/or third parties. The "Customer" shall mean the entity or person invoiced by communausic for use of the Service, and "You" or "User" shall mean a unique user of the Service whether a Customer or not (as defined by unique URL, IP address or other unique identification).

This Agreement comprises the entire agreement between you and communausic and supersedes any and all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the Parties regarding the subject matter contained herein.

communausic, in its sole discretion, reserves the right to revise, update and change this Agreement from time to time without notice to you, and you agree to be bound by such modifications or revisions. Any new features that augment or enhance the current Service, including the release of new features and resources, shall be subject to this Agreement. You agree to use the Service at your own risk and you understand that communausic is responsible for the content posted on the Service. You can review the most current version of this Agreement at any time at <http://physioobserver.com>

2. Duration of use:

The use of this product is generally limited. A first agreed minimum binding is 12 (twelve) months. If the contract is not terminated, the contractual obligation extends for another year (automatic contract extension by another 12 months on the basis of the contractually agreed conditions).

3. Billing:

A fee is charged once a year. The performance will be charged for each year of use in advance. It is a payment time frame of 10 working days from date of invoice. For not timely payment a one-time payment reminder is carried out (Dunning level 1, included charges of 4%). If the unpaid invoice is not paid even after a second reminder (Dunning level 2), the database access will be closed until the full payment of all outstanding amounts. The data can be deleted from this date at any time and without consultation with the contractor.

4. Right of Use

At the time of entering into this Agreement, the Customer or User is granted a non-exclusive, non-transferable, worldwide right to use the Service. All rights not expressly granted to You are reserved by communausic.

The right of use is at all times conditioned on compliance with the terms of this Agreement, and for Customer, prompt and timely payment regarding the Service. Breach of any term of this Agreement, or non-payment or delay in payment shall terminate any right of use granted to the User or Customer under this Agreement.

The Service may not be used in any way that is illegal or promotes illegal activities or in a manner that might be libelous or defamatory or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age or is otherwise indecent.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) create Internet "links" to the Service or "frame" or "mirror" any content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (v) attempt to gain unauthorized access to the Service or its related systems or networks; or (vi) use the Service, including the content, our intellectual property rights, communausic technology and our trademarks and service marks for any commercial purposes (i.e. soliciting customers, resale, etc.) without our prior written consent.

5. Access

Access to the Service is available at <https://companyname.physioobserver.com> - upon entering into a contract with the Customer or User, communausic will provide the Customer or User with a username and password for accessing the Service.

Access to the Service is only available to the Customer and Users, subject to compliance with these Terms and Conditions and, in the case of Customer, making the applicable payments for the Service under this Agreement.

Usernames and passwords are personal, and are to be considered part of Confidential Information. The User or Customer is at all times fully liable for all acts and omissions by Users whom the User or Customer has granted access and agrees to indemnify Citrix for all claims and losses related to such acts and omissions.

6. Service Level

communausic will at all times reasonably attempt to achieve the highest possible availability and shortest possible access time of the Service, but no warranties of any kind, regarding any specific availability or time of access are granted. The Service is hosted by communausic or a subcontractor of its choice. All data stored as part of the Service may be backed up on a regular basis. If Customers with a paid service plan experience loss of data, communausic may use reasonable efforts to attempt to restore data from the most recent working backup; provided, however, communausic gives no warranties with respect to recovering or restoring any lost Customer data.

7. Your Responsibilities

You are responsible for all activity occurring under your User or Customer account and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. In addition, you shall be responsible for abiding by any and all internal policies, procedures and regulations, which are required, by your employer and/or the applicable administrators of your account. You shall: (i) notify communausic immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to communausic immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by You or other users to violate this Agreement or the intellectual property rights of third parties; and (iii) not impersonate another Podio user or provide false identity information to gain access to or use the Service. By accessing the Service, You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct

8. Data

communausic does not own any data, information or material that You or others submit to the Service in the course of using the Service ("Uploaded Data"). You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use any and all Uploaded Data that You submit. communausic shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Uploaded Data.

The Customer and/or User are fully liable for the legality of all Uploaded Data stored by the Customer and/or User on the Service. Furthermore the Customer and/or User is fully liable, if such Uploaded data is infringing upon third party rights, and accordingly agrees to indemnify communausic for all claims and losses related to such infringement and/or illegality.

If communausic on its own or through any third party has notice that Uploaded Data stored by the Customer and/or User is in violation of any law or infringes third party rights, communausic shall have the unfettered right to - without liability to the Customer or User - immediately suspend access to such data without prior notice to the User or Customer. The Customer and/or User may be notified by communausic of any such action under this Section, when reasonable and possible.

9. Intellectual Property Rights

communausic alone (and its successor or assigns, or its licensors, where applicable) shall own all right, title and interest, including all related intellectual property rights, in and to the Physio Observer technology, the content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Service. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Service, Physio Observer technology, or intellectual property rights. The Physio Observer name, the Physio Observer logo, and the product names associated with the Service are trademarks of communausic or its affiliated companies, and no right or license is granted to use them.

All copyrights and/or other intellectual property rights, title and interests in a) software on which the Service is based and made available to the Customer and/or User, b) source codes or other software components of the Service, c) content of the website physioobserver.com and the Service including text and graphics, excluding Uploaded Data, d) trademarks, names etc. are the sole property of communausic and its affiliated companies, and/or third parties having granted communausic license for its use, and the Customer and/or User shall gain no rights to said intellectual property rights other than the limited right of use as stipulated in this Agreement.

The Customer and/or User shall not reproduce or redistribute any software, content or trademarks, intellectual property in any form, except as allowed in this Agreement.

The Customer and/or User retain all intellectual property rights to Uploaded Data stored by such Customer and/or User on the Service.

10. Representations & Warranties

You represent and warrant that you have the legal power and authority to enter into this Agreement. COMMUNAUTIC WARRANTS THAT (i) ANY SERVICES PROVIDED HEREUNDER WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER; (ii) THE SERVICES WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE APPLICABLE SERVICE DOCUMENTATION UNDER NORMAL USE AND CIRCUMSTANCES; AND, (iii) THE FUNCTIONALITY OF THE SERVICES WILL NOT BE MATERIALLY DECREASED DURING THE TERM. CITRIX'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER THIS WARRANTY WILL BE, AT THE SOLE OPTION OF COMMUNAUTIC AND SUBJECT TO APPLICABLE LAW, TO PROVIDE RESTORED SERVICE(S) WHICH CONFORMS TO THESE WARRANTIES OR TO TERMINATE THE SERVICE(S).

11. Indemnification

You shall defend, indemnify and hold communausic, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Service or any Uploaded Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by You of your representations and warranties made herein; or (iii) a claim arising from the breach by You or other Users of this Agreement.

I shall include, but not be limited to: products, services, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the Services provided by Citrix hereunder.

12. Disclaimer of Warranties

COMMUNAUTIC AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. CITRIX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY CITRIX AND ITS LICENSORS. CITRIX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS.

13. Limitation of Liability

IN NO EVENT SHALL COMMUNAUTIC BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY OR OTHER DAMAGES RELATED TO THIS AGREEMENT OR WHETHER DIRECT OR INDIRECT: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, (iv) LOST PROFITS, AND (v) COSTS OF RECOVERY OR ANY OTHER DAMAGES, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, AND INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR OTHERWISE, AND WHETHER OR NOT COMMUNAUTIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Force Majeure

Neither Party will be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond its reasonable control, but only for so long as such conditions persist. Force majeure events include, but are not limited to: natural disasters (e.g., lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; activities of local exchange carriers, telephone carriers, wireless carriers, Internet service providers, and other third parties; explosions and fires; embargoes, strikes, and labor disputes; governmental decrees; and any other cause beyond the reasonable control of a Party.

15. Term and Termination

Should you elect to cancel your Physio Observer Account, please note that you will not be issued a refund for any charged and paid fees. It is your responsibility to keep your contact and payment information current.

communausic may terminate the use of the product at any time if You violate one of these rules. A contract termination by the contractor has to be done in writing, at least two months before the expiry of the twelve-month contract. Terminated at a later date, the contract will automatically be renewed for an additional year of use. At the end of this renewed annual contract, the access to the database for the contractor will be blocked, all access permissions will be deleted. All contents are maintained for three months. After these three months all data will be deleted. Within this three-months-period, a copy can be requested by the contractor. Form and extent of this copy of the data is set by communausic. There will be costs for that (per hours or daily rates).

You agree and acknowledge that communausic has no obligation to retain the Uploaded Data, and may delete such Uploaded Data without prior notice (i) if You have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within ten (10) days' notice of such breach or (ii) upon termination of this Agreement for any reason. If the Customer and/or User require communausic to assist in restoring Uploaded Data that has been deleted, if such recovery is possible, communausic will be entitled to request payment, at communausic's standard rates, for such work.

16. Modification to Terms

communausic reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Physio Observer website at http://physioobserver.com/site_notice/ You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.