

eStore Member Subscriber Agreement

Version: 29.01.24

This Agreement is made and entered into between the Subscriber (Physio First Member) and Physio First on the day the “Subscriber” completes the enrolment process for an eStore on the **Physio First** platform.

Background

A. Physio First owns certain application rights and licenses for the operation of its platform and related websites. Physio First agrees to provide the Subscriber with a non-exclusive License to use its software, content and other services outlined in this agreement.

B. The Subscriber desires to enter into a Distribution Agreement with Physio First whereby Physio First will License the Subscriber to distribute such Content to Customers via the Internet hereinafter referred to as “eStore”.

C. Physio First agrees to grant the Subscriber the right to a License to operate the eStore and distribute Products in accordance with the terms of this Agreement and as specified herein.

NOW, the parties hereby agree as follows:

1. Definitions.

- a. The Content. Physio First’s proprietary computer programming and related source code; Physio First’s technical information and related explanatory written materials, files, or instructions; upgrades, updates, modified versions, additions, and copies of the Software, if any, licensed to you by Physio First (collectively, “Upgrades”); and all modifications provided by Physio First and hosted on Physio First computers pursuant to this agreement.
- b. Customer(s). An individual, corporation, or other legal entity that voluntarily accesses the eStore via the Internet for the purpose of evaluating and/or purchasing Products made available by Physio First on the eStore.
- c. Product(s). All items provided by product vendor companies and agreed by Physio First that are loaded into the database and displayed on the eStore.
- d. License. The non-exclusive, limited term right granted to the Subscriber to use the Content owned by Physio First to operate a private labelled eStore for the distribution of Products to Customers.
- e. Physio First Trademark(s). The trademarks, trade names, and logos owned by Physio First and Licensed to the Subscriber to promote the Services provided under the terms of this Agreement.
- f. Sales Territory. Any customer or business operating or residing in the United Kingdom and further described as any Customer using a UK bank credit card and having a UK ship to address.
- g. eStore. An Internet shopping site based on available templates and technology from Physio First, private-labelled and identified with the Subscriber’s name, address and contact information. The eStore shall contain products to be offered to the Subscriber’s Customers. The store is operated and maintained by Physio First for the sole purpose of receiving and processing orders from the Subscriber’s Customers or the subscriber.
- h. Reseller Information Portal (RIP). The platform upon which Physio First is able to offer the Subscriber an eStore that is operated, maintained and supported by eComNow UK Ltd

- i. Service. All services provided by Physio First to the Subscriber and Customers including but not limited to:
 - i. The design, publishing and hosting of the eStore
 - ii. The processing of all Customers' orders, including credit card authorisation, packaging and shipping orders, invoice confirmation and tracking advice via e-mail.
 - iii. Customer Support M-F via e-mail.
 - iv. Subscriber Support M-F via e-mail.

2. License

- a. Rights Granted to the Subscriber. In accordance with the terms of this Agreement and Exhibits, Physio First grants the Subscriber, for as long as they remain a fully paid-up member of Physio First, a limited term, non-transferable, non-exclusive license and right to:
 - i. One private-label eStore with Subscriber's name and contact information including all inventory preloaded on the eStore.
 - ii. Offer all Products available on the eStore to the Subscriber's Customers.
 - iii. Advertise the eStore and/or Products to Customers.
 - iv. Use the Content to view orders, run sales reports and have access to the Reseller Information Portal (RIP) to operate all features of the eStore.
 - v. Receive a commission on all Product sales conducted on the eStore.
- b. Software Options. Software modules will be made available to the Subscriber from time to time. The Subscriber shall have the sole right to use or decline the use of any module.
 - i. eComNow Marketing Program: This module allows the Subscriber to customise their eStore, make personalised Product recommendations to Customers, share marketing material, view sales data and other features offered from time to time.
- c. Rights Reserved. The Content is the property of Physio First or its licensors, the Subscriber has no rights in the foregoing except those expressly granted by this Agreement. Nothing herein shall be construed as restricting Physio First's right to sell, lease, license, modify, publish or otherwise distribute the Content in whole or in part, to any other person or entity.

3. Distribution

- a. Promotion. The Subscriber will promote Products based on the stated specifications described on the eStore.
- b. Cost of Distribution. All costs relating to the Reseller Information Portal (RIP) with the exception of the Hosting Fees (as set out in paragraph 6 b) shall be at the sole expense of Physio First.

4. Delivery Obligations/Options

- a. Initial Deliverables. Physio First shall deliver the Content and one complete functioning private label eStore to the Subscriber within three (3) days maximum from the date of this Agreement.
- b. New Versions. During the term of this Agreement, Physio First will give the Subscriber advance notice of its plans for each new release.
- c. New Products. Each party understands and acknowledges that Physio First is responsible for 100% of the Products available on the eStore. Such Products shall be updated periodically with items being added and deleted based on availability and Physio First's relationship with their chosen vendor companies. Physio First makes no representations or warranties with respect to continued availability of any specific Products covered by this Agreement, or the nature or

availability of any future modifications, updates, or enhancements of the Content thereto. Physio First will use its best effort to expand the Product offering with quality merchandise at prices designed to ensure that product resale is competitive during the term of this Agreement.

5. Support Obligations.

- a. Support to Customers. Physio First will provide support to Customers utilising the Content per the conditions stated on the Customer Support Policy section of the eStore and further described in "Exhibit A". Physio First reserves the right to change the Customer Support Policy terms from time to time without notice to the Subscriber. The Subscriber shall be responsible for direct support to Customers not covered in "Exhibit A".
- b. Support to Subscriber. Physio First will provide, without charge, support services to the Subscriber Monday through Thursday, 9:00AM-5:00PM and Friday 9:00AM-4:30PM. The Subscriber will receive diagnostic and problem responses for all eStore services, information regarding site availability, site access, customer status, reporting and accounting issues. Typical e-mail response will be within 4 hours but no greater than 24 hours, Monday to Friday.

6. Payments & Reporting

- a. Set-Up Fees. Physio First is providing eStores as a member benefit at no charge.
- b. Hosting Fees. Physio First is providing eStores, and associated hosting fees, at no charge. Please refer to your Offer Page for specific details, and rest assured that if any changes occur in the future, you will be duly informed.
- c. Taxes. Physio First will pay, or require its affiliate vendors to pay, all VAT levied upon the distribution of Products sold to Customers and will account to HMRC for all Vat due and has received the following advice from accountants regarding this:
 - i. The supply of physiotherapy equipment is a taxable supply for VAT purposes i.e., 20% Vat is chargeable on the sale of the equipment and all Vat arising from expenditure that is directly attributable to selling the equipment is recoverable by Physio First.
 - ii. On the basis that the contract in place between Physio First and the equipment vendors agrees that Physio First is taking over ownership of the equipment before it is sold to the end consumer, Physio First is obliged to report the purchase and sale of the equipment (and the associated VAT) on its VAT returns.
 - iii. PF needs to isolate all expenditure that is directly attributable to the sale of the equipment such as equipment purchase costs, transaction fees, online marketplace running costs, professional fees/compliance costs associated with setting up and maintaining the sales activity etc. All input VAT arising from these costs is recoverable on Physio First's VAT returns. The VAT recovery is achieved by disclosing these costs separately as "costs directly attributable to taxable supplies" within the partial exemption workings as part of the VAT return preparation.
 - iv. The member's share of the profit arising from the sale of the equipment is treated as commission income for the member. This is because they are receiving income for facilitating a sale of equipment without ever taking over ownership of the equipment. The member is therefore acting as a sales agent and their percentage profit share is treated as commission income subject to 20% Vat. This income must be reported on the members' Vat returns if they are VAT registered businesses. However, most members are conducting trading activities that are wholly/mostly exempt from Vat and therefore are unlikely to be Vat registered. In this case, the members will have to monitor their levels of taxable supplies in comparison to the Vat registration threshold. Members may be required to become Vat registered if their total taxable supplies exceed the VAT registration threshold. The current Vat registration threshold is £85,000 of taxable supplies in a 12-month period and members should understand this potential Vat obligation, which is why this content appears here.
 - v. From an invoicing perspective, the vendor must issue Vat invoices to Physio First in relation to the equipment that Physio First is purchasing from them. The members must also raise invoices to Physio First in respect of their commission charges (with 20% VAT charged on top of the commission if members are Vat registered). Physio First will also be able to recover all VAT charged on commission invoices issued by Vat registered members, but it is acknowledged that there will not be many (if any) of them.
- d. Commission Payment. In consideration of all Products sold through the e-Store, Physio First shall pay the Subscriber a commission on all Products sold and payment collected. The commission shall be paid net at the end of each month, at the discretion of Physio First.

- e. Payment Reports. The Subscriber shall have access via the Reseller Information Portal (RIP) to run sales reports for all Products sold on the eStore. The RIP shall provide detailed information outlining all sales and related commissions due to the Subscriber. Sale and commission reports are also available to the Subscriber via the eComNow UK Marketing Program.

7. Confidentiality and personal data

- a. Both parties, and their employees, agents, or representatives will not at any time or in any manner, both during the term of this Agreement and for a period of ten years following the termination of this Agreement, either directly or indirectly, use for the personal benefit of the party, or divulge, disclose, or communicate in any manner, any information that is proprietary to the parties. The parties, their employees, agents, and representatives agree to treat such information as strictly confidential and to take reasonable steps to protect such confidentiality.
- b. During the Term or any extension or renewal of this Agreement Physio First will not contact the Customers of the Subscriber in any manner whatsoever without prior notice to the Subscriber unless such communication relates to an order by the Customer via the eStore, to conduct a survey solely on behalf of and for the benefit of Physio First with prior notice to Subscriber, or as otherwise provided herein.
- c. By signing this agreement, you are consenting to the sharing of your personal data and that of your customer in accordance with “Our eStore Member Benefit” section of Physio First’s Privacy Statement – [privacy-policy](#)

8. Indemnification

- a. By Physio First. Physio First will defend, indemnify and hold Subscriber harmless from and against any and all liabilities, losses, damages, costs and expenses (including legal fees and expenses) associated with any claim or action brought against the Subscriber for actual or alleged infringement of any UK patent, copyright, trademark, service mark, trade secret, or other proprietary rights based upon the duplication, sale, license, or use of the Content by the Subscriber in accordance with this Agreement. Upon notice of an alleged infringement, or if in the Subscriber’s opinion such a claim is likely, it shall have the right, at its option, to obtain the right for the Subscriber or its Customers to continue to exercise the rights granted under this Agreement, or in its sole discretion, may terminate this Agreement.
- b. By Subscriber. The Subscriber shall indemnify and hold Physio First harmless from and against any and all liabilities, losses, damages, costs and expenses (including legal fees and expenses) associated with any claim or action brought against Physio First that may arise from claims based on representations, warranties, or misrepresentations made by the Subscriber or any other improper or unauthorised act or failure to act on the part of the Subscriber.

9. Limitation of Liability

Each Party’s liability shall be limited to direct damages and except as provided in the section entitled “indemnification” will not exceed the amount of the license fees paid by the subscriber to Physio First. In no event will either party be liable for incidental, special or consequential damages (including lost profits) suffered by the other party, even if it has previously been advised of the possibility of such damages.

10. Term and Termination.

- a. Term. This Agreement will continue in effect for one (1) year from the date hereof ("Initial Term") or until the subscriber ceases to be a fully paid up member of Physio First. The Agreement shall automatically renew from year to year unless terminated by either party.
- b. Termination by either party: Either party may terminate this Agreement at any time without cause by providing the other party (10) days written notice to their identified email address. The Subscriber shall not be eligible for a refund from previous month's charges.
- c. Effect on Customers. Termination by either party will not affect the rights of any Customers regarding the warranty of Products.

11. General Provisions.

- a. Transfer. The Subscriber may not transfer the rights of this Agreement without the written consent of Physio First.
- b. Notices. All notices and demands hereunder shall be in writing via certified mail and shall be deemed complete upon receipt.
- c. Governing Law. This Agreement shall be governed by and construed in accordance with laws of England and Wales.
- d. Relationship of the Parties. Each party is acting as an independent contractor and not as an agent, partner, or joint venture with the other party for any purpose. Except as provided in this Agreement, neither party shall have the right, power, or authority to act or to create any obligations, express or implied, on behalf of the other.
- e. Survival of Certain Provisions. The indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.
- f. Headings. The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.
- g. All Amendments in Writing. No provisions by either party shall be valid unless in writing and signed by an authorised representative of both parties.
- h. Execution. This Agreement is deemed accepted by the Subscriber upon the completion of the enrolment process provided by Physio First.
- i. Entire Agreement. The parties have read this Agreement and agree to be bound by its terms, and further agree that it constitutes the complete and entire agreement of the parties and supersedes all previous communications, oral or written, and all other communications between them relating to the license and to the subject hereof. No representations or statements of any kind made by either party, which are not expressly stated herein, shall be binding on such party.

“EXHIBIT A”

Customer Support Policy

ORDER STATUS

- **Courier Policy.** All products sold are shipped by reputable couriers. Customers may choose their desired option of (3-5 days), 2nd day or next day delivery. You may select your freight option at the time of order by line item.
- **Has my order been shipped?** When your order is shipped you should receive a confirmation by email with a tracking number from the respective carrier.
- **How can I track my order?** Your confirmation email includes instructions on how to track your order on the freight carrier’s website. Please check your email for this information, go to site provided and follow the instructions on tracking your shipment.
- **What is your policy on backorders?** All orders not shipped within seven (7) days from order date will be cancelled. If your order is cancelled, you will receive an email notification regarding your order. Credit card charges for cancelled orders are not processed for payment and will not appear on your credit card statement.

Due to the dynamic nature of our product offering, we do not hold or process back orders so please check our site again for your desired item.

- **My order never arrived.** In some cases, the delivery of products can be delayed up to ten days due to weekends, distance from the shipping point to your door or misdirection from the carrier. All orders should be received within (14) days from your order date. If you do not receive your order within this period, please contact us customer@physiofirststore.org.uk and be sure to include your name, date of order and order confirmation number.

RETURN POLICY

The return policy is as per the returns policy delineated by our carefully selected vendors, the details of which are set out by them here:

- Trimbio – <https://trimbio.co.uk/returns-policy/>
- TalarMade – <https://talarmade.com/termsandconditions/>