

## PACLA MEDICAL TERMS AND CONDITIONS FOR SUPPLY OF BACKHUG DEVICE AND SERVICES

### 1. About us

- 1.1 **Company details.** Pacla Medical Limited (company number SC513633) (**we and us**) is a company registered in Scotland and our registered office is at Reception Business Centre, 21 Lansdowne Crescent, Edinburgh, EH12 5EH, UK. We operate the website <https://www.mybackhug.com/>.
- 1.2 **Contacting us.** To contact us email [hello@paclamedical.com](mailto:hello@paclamedical.com). How to give us formal notice of any matter under the Agreement is set out in clause 14.
- 1.3 **BackHug** means our robotic back care device whose specifications are detailed and updated from time to time in the User Manual available here <https://www.mybackhug.com/user-manual/v3>.

### 2. Our agreement with you

- 2.1 **Options.** We make the BackHug available to consumers on a subscription basis (“**Subscription**”) and on a purchase basis (“**Purchase**”). We also can provide a paid Trial basis for both Subscription and Purchase (“**Trial**”). These terms and conditions (“**Terms**”) apply for all three options. The option which applies to you will be set out in the “**Order.**” The Order is the online order form which sets out the details of the supply of the BackHug to you.
- 2.2 **Agreement.** Our agreement with you to supply the BackHug, whether on a Trial, Subscription or Purchase basis, (“**Agreement**”) is created when we notify you of our acceptance of your Order. The Agreement is comprised of these Terms, the Order and our acceptance. No other terms are implied by trade, custom, practice or course of dealing.
- 2.3 **Subscription.** If you have paid for a Subscription, your Order will specify the initial term of the Subscription. This term will be for either 12 months or 24 months. You must give us notice in writing at least one month before the end of the initial term if you do not wish the Subscription to continue. If you don’t give us such notice, the Subscription will continue beyond the initial term until terminated on one month’s notice.
- 2.4 **Trial.** If you have paid for the Trial, your Order will specify whether the Trial applies to a Purchase or Subscription. You can cancel your Purchase or Subscription (as applicable) by notifying us at the email address above prior to the end of your Trial Period (which will be 30 days from delivery unless stated otherwise in the Order). If you do not notify us within this Period, then your Agreement with us will automatically convert to Purchase or Subscription, and the fee you paid for the Trial offset against the Purchase price or Subscription fees, as applicable.

2.5 **Unavailability.** If we are unable to supply you with the BackHug for any reason, we will inform you of this by email and we will not process your order. If you have already paid for the BackHug, we will refund you the full amount including any delivery costs charged as soon as possible.

### **3. Use and Suitability of the BackHug**

3.1 **Subject to clause 11.3, we cannot accept any responsibility if you use the BackHug in contravention of this section.**

3.2 The BackHug operates by applying a firm pressure to your back with robotic fingers made of plastic and metal and covered with a rubber tip. If you are concerned that this mode of operation might cause you injury you should not use the BackHug.

3.3 The BackHug has different modes of strength which you can choose from. If you are feeling discomfort or pain while using the BackHug, reduce the strength of the BackHug. If you continue to feel discomfort or pain after reducing the strength stop using the BackHug immediately.

3.4 If you feel the BackHug's fingers touching your spine or the area close to your spine, reduce the strength of the BackHug. If you continue to feel the BackHug's fingers touching your spine or the area close to your spine after reducing the strength stop using the BackHug immediately.

3.5 Due to the manner in which the BackHug operates, you may experience some bruising after using the BackHug. If you experience bruising, do not use the BackHug until your bruises have healed. If you experience bruising you should reduce the strength of the BackHug.

3.6 When using the App to operate the BackHug, you are in total control over all treatment parameters including (but not limited to) strength of treatment. By accepting these Terms, you acknowledge that you are in control of your treatment and that you can vary any of its parameters. You should have the App available at all times during treatment so you can vary the parameters. You should start with a lower strength setting and only increase strength gradually. Never increase strength to a level where you feel pain.

3.7 If you start to feel unwell or if the session seems painful while using the BackHug, you should stop using the BackHug immediately.

3.8 After you use the BackHug, you may experience increased discomfort or have the impression of an increase in your back pain-related symptoms. This is a recognised phenomenon which therapists refer to as "initial aggravation". Initial aggravation is often experienced by people receiving manual back therapy. Your body may undergo an initial adjustment in response to BackHug treatment. This is considered to be a symptom of the healing process. Initial aggravation that may occur does not necessarily mean you should not use the BackHug, but if you have concerns please email us at [hello@paclamedical.com](mailto:hello@paclamedical.com), or consult a physician or therapist. If the

- initial aggravation leads to continued discomfort, stop using the BackHug immediately and speak to a physician.
- 3.9 If you have sensitive skin or are susceptible to bruising, you should not use the BackHug. If you experience bruising after using the BackHug, you should allow your bruises to heal before using the BackHug again.
- 3.10 Repeated use of the BackHug, particularly with strong pressure settings, may leave marks or cause dry skin or discolouration from time to time. This effect can be mitigated by wearing extra layers of clothing or by placing a blanket or other softening layer on the device during use.
- 3.11 Please note you should not use the BackHug if you:
- (a) are 18 years old or younger;
  - (b) are pregnant;
  - (c) are ill;
  - (d) have sensitive skin;
  - (e) are sensitive to pain or discomfort;
  - (f) have back, neck, shoulder or hip injuries; and/or
  - (g) have back, neck, shoulder or hip-related medical conditions.
- 3.12 If you have a prior medical condition of any kind or receive medical treatment in any area of your body, consult a physician before using the BackHug.
- 3.13 If you have reduced physical, sensory or mental capabilities, ensure you have been given instruction on how to use the BackHug and/or use the BackHug with supervision.
- 3.14 Anyone who is 75 years old or older should consult a physician before using the BackHug.
- 3.15 Please note that the recommended height for a user of the BackHug is between 4'11" ft (150 centimetres) and 6'5" (198 centimetres). The recommended weight for a user of the BackHug is 26 stone (165kg) or less. Anyone who does not fall within either of these recommended height or weight parameters should only use the BackHug on the recommendation of their general practitioner or equivalent.
- 3.16 You should not start the BackHug unless you are lying on your back on the BackHug. Ensure the BackHug is in the parked position with the leg rest retracted before getting on to the BackHug. When using the BackHug, do not twist your body and always try to maintain straight posture.
- 3.17 Remove any sharp jewellery, belts or other accessories that may damage the BackHug before use.
- 3.18 Wear soft, light clothing for each session.

- 3.19 Do not attempt to stand on or sit on the membrane, finger mechanism, or leg rest of the BackHug.
- 3.20 Do not attempt to use the BackHug for your head, abdomen, stomach or knees.
- 3.21 Do not use the BackHug for more than 60 minutes at a time, or a total of 60 minutes in a 24-hour period.
- 3.22 Do not attempt to place your fingers or hands in the cavity beneath the BackHug's leg rest when the leg rest is extended.
- 3.23 **If you do not adhere to the above terms we shall not be liable for any issues or injuries you or anyone else may experience, subject to clause 11.3.**

#### **4. Cancellation, return and refund**

- 4.1 Your right to cancel during a Trial Period is explained at section 2.3 above.
- 4.2 In addition, you may cancel a Trial prior to the Delivery Date being fixed by contacting us at [hello@paclamedical.com](mailto:hello@paclamedical.com). Please include details of your order to help us to identify it.
- 4.3 Where you are returning the BackHug at the end of a Trial or Subscription we will bear the costs of collection and transport of the BackHug.
- 4.4 If you are obliged to return the BackHug to us, you agree:
  - (a) to return the BackHug to us no later than 3 days after the termination of your Trial or Subscription, unless we agree to allow you a longer time period for return;
  - (b) to return the BackHug to us in good condition save for wear and tear on a date mutually and reasonably agreed by both Parties;
  - (c) where reasonably requested to do so by us, repackage the BackHug safely in accordance with the User Manual;
  - (d) that you will be liable for any reasonable costs incurred by us due to our inability to collect the BackHug on the agreed date which occur as a result of your actions.
  - (e) that you will pay us a late collection fee in the amount of means £12 (inclusive of VAT) for each day that you fail to return the BackHug to us after the agreed return date; and
  - (f) that if we are unable to collect the BackHug on the agreed date, we reserve the right to collect the BackHug at a later date, provided that three (3) days' notice is given to you;
  - (g) that if you fail to return the BackHug to us in accordance with this clause 4, we reserve the right to collect the BackHug from your premises.

4.5 You also have a statutory right as a consumer to cancel the Agreement within 14 days of receiving the BackHug. To exercise this right you should contact us at [hello@paclamedical.com](mailto:hello@paclamedical.com) and include details of your Order. You will be responsible for the delivery costs involved.

4.6 You can also cancel the Agreement and return the BackHug if a fault arises within 30 days of the date of Delivery and you notify us of the fault and your cancellation.

## **5. Delivery, transfer of risk and title**

5.1 We will use our reasonable endeavours to deliver the BackHug, as specified in your order, to the location specified by you on a date mutually agreed by the Parties (**Delivery Date**). The Delivery Date may be varied if we both agree in writing by email.

5.2 Occasionally our delivery to you may be affected by an Event Outside Our Control. See clause 13 (Events Outside Our Control) for our responsibilities when this happens.

5.3 Delivery is complete once the BackHug has been unloaded at the address for delivery set out in your order and the BackHug will be at your risk from that time.

5.4 If we fail to deliver the BackHug, we will reimburse any fees paid but to the extent permitted by law shall have no further liability.

5.5 Ownership of the BackHug remains with us if we supply the BackHug to you on a Trial or Subscription basis. Where we supply the BackHug on a Purchase basis you will own the BackHug when we have received payment in full including of all applicable delivery charges.

## **6. Fees and delivery charges**

6.1 The fee for your Trial, Subscription or Purchase will be specified in your Order. Such fees shall not include any delivery fees unless specified in your Order.

6.2 You can pay any fees using direct debit, a debit card or credit card, a standing order, or any other means of payment as agreed between us.

6.3 Payment for any fees and all applicable delivery charges is in advance.

(a) If your order is for a Trial or a Purchase of the BackHug, you will pay the fee before we agree on the Delivery Date.

(b) If your order is for a Subscription to the BackHug, you will pay the fee monthly until your Subscription ends or is terminated.

6.4 Without prejudice to any other right or remedy that you may have, if you fail to pay us any sum due under this Agreement on the due date you will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this

clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 1%.

6.5 All sums payable to us under this Agreement will be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **7. The BackHug App**

7.1 In order to use the BackHug you will need to use the BackHug app ("**App**") which we make available for free download from App Store and Google Play, along with new updates.

7.2 The App requires a smartphone device using either Apple iOS 7.0 or later and on Google Android 7.0 or later operating systems. You may need to upgrade the operating system on your smartphone if we change the operating system version(s) on which the App is supported. You may not be able to install or use the App on a jail-broken or rooted device. Some features may not be available on all devices or operating systems. The App should not be used on tablets, notebooks or any device other than supported smartphone handsets.

7.3 You are authorised to use the App solely in relation to your use of the BackHug which we supply to you, and for no other purpose.

7.4 Where you Purchase the BackHug, you are entitled to use the software integrated in the BackHug for a period of 5 years from delivery. We reserve the right to charge a reasonable fee for the use of such software after this period has expired.

7.5 All Intellectual Property Rights in the App belong solely to us. You have no Intellectual Property Rights in, or to, the App other than the right to use them in accordance with these Terms.

### **7.6 Accounts.**

- (a) In order to use the BackHug, you must register for and maintain a user account (**Account**) on the App.
- (b) You must be at least 18 years old, or the age of legal majority in your jurisdiction (if greater than 18), to register for an Account.
- (c) Account registration requires you to submit to us certain personal information, such as your name, email address, gender and age. You will also need to submit information about your weight, height and any pain or discomfort you are experiencing in your back.
- (d) You will maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information may result in your inability to access and use the BackHug.
- (e) You must keep the log-in details for your Account secure.

- (f) If you allow another individual to use your Account, we shall not be liable for any injuries or issues which arise as a result of their use of your Account.

**7.7 Acceptable Use Restrictions.** You must not:

- (a) use the App in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the App;
- (b) transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App;
- (c) use the App in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
- (d) collect or harvest any information or data from the App or our systems or attempt to decipher any transmissions to or from the servers running the App.

**7.8 App Data.**

- (a) **Personal data** means any information about an individual from which that person can be identified. It does not include data where the identity has been removed (anonymous data)
- (b) **Use of personal data.** We use your personal data as described in our website privacy notice (which is available [LINK]) in relation to the supply of the BackHug under the Agreement.
- (c) **Health Data:** when you register an Account we require to obtain certain information regarding your health in order to help with the best use of the BackHug. We require your consent to use this data because health data has additional conditions we must comply with under data protection legislation. If you don't want to disclose any health information to us then you will not be able to complete the Account registration and use the BackHug properly.

**8. Maintenance**

8.1 Use of the BackHug must be in accordance with the User Manual.

8.2 You should not tamper with the BackHug, and you may not in any way investigate the inner mechanical or electronic elements or workings of the BackHug.

8.3 In relation to Subscriptions, we will perform all services reasonably required to ensure that the BackHug functions according to the User Manual throughout the term of your Subscription, including repairing the BackHug or replacing the BackHug, if required. However, we shall be entitled to charge for repairs to the BackHug for defects caused by misuse or failure to use and maintain the BackHug in accordance with the User Manual.

## **9. Manufacturer's Warranty and Repairs**

- 9.1 This clause 9 only applies if your order is for a Purchase of the BackHug.
- 9.2 We will provide a manufacturer's warranty (**Warranty**) lasting 365 days from the Effective Delivery Date or Payment date, whichever is later (**Warranty Period**). We will perform all services reasonably required to ensure that the BackHug functions according to the BackHug Customer Manual during the Warranty Period.
- 9.3 On expiry of the Warranty Period, you may enter into a Service Agreement. This Service Agreement will cover the costs of repairs to the BackHug, subject to an advance regular monthly payment by you to us. Any repairs to the BackHug after the end of the Warranty Period and not covered by the Service Agreement will be chargeable. Repairs to the BackHug may only be performed by technicians approved by us from time to time and subject always to the terms of the Service Agreement.
- 9.4 We will not be liable for any claims under the warranty in this clause 9 if:
- (a) you make any further use of the BackHug after giving notice to us;
  - (b) you alter or repair the BackHug without our written consent;
  - (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions or failure to use the BackHug in accordance with the User Manual; or
  - (d) the BackHug differs from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

## **10. Disposal of the BackHug**

- 10.1 This clause only applies if your order is for a Purchase of the BackHug.
- 10.2 You should only dispose of the BackHug in compliance with any and all applicable laws, statutes, regulations and codes from time to time in force applicable to disposal of such devices.
- 10.3 The BackHug is sold solely for your personal use and is not provided for resale or any other purpose.

## **11. Our liability: your attention is particularly drawn to this clause**

- 11.1 References to liability in this clause 11 include every kind of liability arising under or in connection with the Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.



- 11.2 We are only responsible to you for foreseeable loss and damage caused by our breaking these Terms or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time you accepted these terms, both we and you knew it might happen.
- 11.3 Nothing in these Terms limits or excludes our liability for:
- (a) death or personal injury caused by our negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any other liability that cannot be limited or excluded by law.
- 11.4 Subject to clause 11.3 and applicable law, our total liability to you for all losses arising under or in connection with the Agreement will in no circumstances exceed the sums paid by you under the Agreement in any 12 month period.
- 11.5 Except as expressly stated in these Terms, we do not give any representations, warranties or undertakings in relation to the BackHug. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law.
- 11.6 If the App becomes defective in such a way that it damages a device or digital content belonging to you, we will either repair the damage or pay you compensation. However, we will not be liable for damage that you could have avoided by following our advice to apply an update offered to you free of charge or for damage that was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.

## **12. Termination**

- 12.1 Without limiting any of our other rights, we may suspend the supply or delivery of the BackHug to you, or terminate this Agreement with immediate effect by giving written notice to you if:
- (a) you commit a material breach of any term of these Terms and (if such a breach is remediable) fail to remedy that breach within [14] days of you being notified in writing to do so;
  - (b) you fail to pay any amount due under this Agreement on the due date for payment; or
  - (c) your financial position deteriorates to such an extent that in our reasonable opinion your capability to adequately fulfil your obligations under this Agreement has been placed in jeopardy.
- 12.2 Termination of this Agreement shall not affect your or our rights and remedies that have accrued as at termination.

12.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

### **13. Events Outside Our Control**

13.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Agreement that is caused by any act or event beyond our reasonable control (**Event Outside Our Control**).

13.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Agreement:

- (a) we will contact you as soon as reasonably possible to notify you; and
- (b) our obligations under the Agreement will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control.
- (c) Where the Event Outside Our Control affects our delivery of the BackHug to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.

13.3 You may cancel the Agreement affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us. If you opt to cancel, you will return (at our cost) the BackHug and we will refund the price you have paid, including any delivery charges.

### **14. Communications between us**

14.1 Any notice or other communication given under or in connection with this Agreement must be in writing:

- (a) If by you, by email to support@paclamedical.com or any other email address nominated by us; and
- (b) if by us, to the email address specified in your Order or any other email address nominated by you.

14.2 A notice or other communication is deemed to have been received at 9.00 am the next working day after transmission.

14.3 In proving the service of any notice, it will be sufficient to prove that such email was sent to the specified email address of the addressee.

14.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 15. Intellectual Property Rights

- 15.1 **Intellectual Property Rights** means any patents, rights to inventions and discoveries, copyright, trademarks, service marks, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, moral rights, rights in confidential or proprietary information, (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 15.2 All Intellectual Property Rights in the BackHug remain owned by, or validly licensed to us.
- 15.3 We warrant that the receipt and your use of the BackHug as permitted under this Agreement shall not infringe the Intellectual Property Rights of any third party.

## 16. General

- 16.1 **Entire agreement.** The Agreement is the entire agreement between us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Agreement.
- 16.2 **Assignment and transfer.**
- (a) We may assign or transfer our rights and obligations under the Agreement to another entity.
  - (b) You may not assign or transfer your rights or your obligations under the Agreement.
- 16.3 **Variation.** Any variation of the Agreement only has effect if it is in writing and signed by you and us (or our respective authorised representatives).
- 16.4 **Waiver.** If we do not insist that you perform any of your obligations under the Agreement, or if we do not exercise our rights or remedies against you, or if we delay in doing so, that will not mean that we have waived our rights or remedies against you or that you do not have to comply with those obligations. If we do waive any rights or remedies, we will only do so in writing, and that will not mean that we will automatically waive any right or remedy related to any later default by you.
- 16.5 **Severance.** Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- 16.6 **No partnership or agency.** Nothing in this Agreement is intended to, or will be deemed to, establish any partnership or joint venture between you and us, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of

any other party. You and we confirm we are both acting on our own behalf and not for the benefit of any other person.

16.7 **Third party rights.** The Agreement is between you and us. No other person has any rights to enforce any of its terms.

16.8 **Governing law and jurisdiction.** This Agreement and the Terms are governed by English law and each party irrevocably agrees to submit all disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the English courts.