Thryve Health SDK: General Terms and Conditions

Version: 1.2 (05 January 2020)

Your Contact

Friedrich Lämmel (CEO)

info@thryve.de

mHealth Pioneers GmbH
Schleiermacherstraße 25
10691 Berlin

GENERAL TERMS AND CONDITIONS

Version: 1.2 (05 January 2020)

mHealth Pioneers GmbH, Schleiermacherstraße 25, 10961 Berlin, Germany ("We" or the "Company"), is the developer and owner of the exclusive rights of use for the Thryve health API(s), Thryve health monitoring SDK(s) and other software parts that allow the recording, harmonization and distribution of health and wellness related data derived from digital devices (collectively the "System").

1 GENERAL CONDITIONS

a) These General Terms and Conditions ("Terms" or "GTC") apply for the conclusion of contracts on the use of the System and all other services (collectively the "Services") of the Company ("Enterprise Service Agreement"), and to the entities that use the Services directly or indirectly ("You" or "Customer"). Customer can use the Services to enable users of Customer's product or service (the "End Users") to generate and/or integrate health- and wellbeing-related data.

b) Customer can also use the Services to draw data of his End Users from other health- and wellbeing-related services, if required to do so by the respective End User. With the integration of the Services, Customer explicitly requests the Company to provide the Services on his behalf to his End Users.

c) Company only provides the Services under these Terms to Customers who are not consumers within the meaning of Section 13 of the German Civil Code (BGB). Use of the Services is thus not permitted if it cannot be attributed either to the Customer's commercial or self-employed professional activity.

2 DATA PRIVACY

a) The parties acknowledge that the Company provides Services to the Customer's End Users on behalf of the Customer ("vicarious agent") and it's consent according to Art. 6 Par. 1 lit. a GDPR, which can be withdrawn at any time. By connecting an account at another service provider with Company's Services, Customer's End Users explicitly request Company on behalf of Customer to transfer their data from the respective service provider to Customer's system (on the basis of Art. 20 EU GDPR).

b) You ensure the protection of your End User's privacy, and the provision of all privacy-related information required by the provision of Company's Services, in a manner consistent with applicable privacy protection laws. It is your responsibility to ensure compliance with the respective legal regulations with respect to, among others and not exclusively, service terms and privacy statements.

c) Any personal data generated by providing this Service within the Company's systems ("Customer Data") is owned by the Customer's End User. In providing the Service, the Company will duly fulfil all its obligations towards the Customer and it's End User with regards to data privacy regulations.

3 LICENSED SERVICES

a) Company hereby grants a limited, non-exclusive, non-transferable and terminable license to you ("Customer") to access and use the Services and shall make the Services you license from Company available to Customer solely for the purposes contemplated herein, pursuant to this GTC and during the term of this GTC. You agree that your payment obligations hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by us regarding future functionality or features.

b) Overview
   i. Company provides the necessary means to Customer to make use of its service: via (1) integration of health SDK(s) and use of the Company API or via (2) the use of the Explorer SDK.
   ii. Company's maintenance includes (1) releases of updates or expansions of features and functionalities included in the System and (2) patching/bugs correction. It does not include any maintenance of content.

c) Services and Customer Data
   i. The Services enable Customer to offer integration of individual health and wellbeing related data into his product or service to his End Users. End Users may choose to do so at their sole discretion.
   ii. The terms of this GTC shall also apply to any modules or features subsequently provided by Company to Customer, and/or that have been

licensed by Customer that augment or enhance the Services.

iii. Company shall host the Services and may update the functionality and user interface of the Services from time to time in its sole discretion as part of its ongoing mission to improve the Services and Customers' user experience.

iv. Company strives to improve the understanding of wearable data and will continuously research and validate deriving new or additional information from processed data, also with external research partners. In accordance with privacy regulations, Company will only use completely anonymized data for this purpose.

v. No other rights with respect to the Services are granted under this GTC. Without limiting the generality of the foregoing, the Customer's use of the Services is subject to the payment obligations set forth in the 4 FEES AND PAYMENTS Section of this GTC.

d) Upgrades

i. "Upgrades" means new versions of, and updates to, the Company's Services, whether for the purpose of fixing an error, bug or other issue in the Company's system or enhancing the functionality of the system.

ii. Customer acknowledges that from time to time the Company may apply upgrades to the System, and that such upgrades may result in changes of appearance and/or functionality of the Services.

iii. Upgrades that require technical changes on the side of Customer to allow continuiity of Service use will be announced four weeks in advance, if not required more urgently by law or public authority.

e) Restrictions

i. The license granted in this GTC and Customer's use of the Services shall not include sub-licensing, renting or time-sharing of the Services.

ii. Customer agrees that the license granted herein is not a concurrent user license and that the rights granted to Customer are provided to Customer on the condition that Customer does not (and does not allow any third party to) copy, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Services or any part thereof otherwise attempt to discover any source code, modify the Services in any manner or form, or use unauthorized modified versions of the Services, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Services.

iii. Customer is expressly prohibited from sublicensing use of the Services to any third parties except to the extent necessary for a Customer to provide services to its members. Customer agrees that Company shall own all rights, title and interest in and to all intellectual property rights in the Services.

iv. Except as provided in this GTC, the license granted to Customer to use the Services does not convey any rights in the Services, expressed or implied, or ownership in the Services or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by Company.

f) Customer Support

i. Customer will be responsible for receiving and responding to all calls for support from any Customer members or users (End Users) for the Services and for performing initial problem analysis, diagnosis, and replication of the problem at Customer's location. Problems will be deemed replicated if they occur persistently, if it seems reasonably likely they originate in the

Services, and if Customer reasonably cooperates with Company by providing logs and other information about the problem, its occurrences, and provides assistance to Company to help isolate the problem.

ii. Company provides online and email technical support. Customer shall contact Company Support by email at the following address: support@thryve.health. In order for Company to process Customer's support request, Customer shall: (1) Identify him or herself and the part of the Service affected, (2) Describe the nature of the outage, (3) Provide contact information in the form of email for follow up communications.

iii. Exceptions: Company has no obligation to provide support services for problems in the operation or performance of the Services caused by a non-Company software or hardware product. If Company determines that it is necessary to perform support services for a problem caused by a Customer-generated error, then Company will notify Customer thereof as soon as Company is aware of such Customer-generated error, perform the professional services needed to resolve the problem and invoice the efforts at the then-current time and materials rates for all such professional services performed by Company.

4 FEES AND PAYMENTS

Fees and payments are set forth in the Enterprise Service Agreement between Customer and Company.

5 SERVICE LEVEL AGREEMENT

a) Companies duties

i. Company will apply all commercially reasonable efforts to deliver its services in accordance with a Service Availability threshold of 99.9%. The availability refers to the proportion of the time in which it was possible for the Customer to access the Health API with an existing Internet connection (plus the time period in which access was not possible due to planned maintenance work or disruptions outside of Company's control), in proportion to the length of one month. In case of potential incidents, we will recognize the credits detailed at 5 SERVICE LEVEL AGREEMENT a) iii.

ii. Planned outage and maintenance will be communicated in advance and will be performed with the aim of interrupting the Service as little as possible.

iii. For the purpose of the recognition of credits we will monitor our API service unavailability on a monthly basis and refund Customer based on the following table. This refund of service credits shall be a Customer's exclusive remedy.

API service availability	**Refund percentage**
From 98.0 to 99.9%	10%
From 95.0 to 98.0%	30%
Less than 95.0%	50%

iv. The eligible service credits refund to a Customer is calculated based on the unavailability level reported by the Company's monitoring system.

v. Reimbursements made in respect of compensation under this paragraph will be provided as free Service credits from the next subscription period, following the occurrence of the unavailability or service malfunctions for which

Company may be held liable. Customers may make a claim by sending an email at support@thryve.health within one (1) month after the unavailability is detected and for which Customer would seek the compensation provided for in the terms of this paragraph.

vi. The total service credits provided by Company to a Customer in any given month shall in no circumstances exceed the price paid by the Customer for the Service during that month.

b) Customers duties

i. To ensure service availability, Customer will inform Company about the monthly forecasted number of End User access to the service on a yearly basis.

ii. If Customer expects a substantial increase in End User access to the Services, e.g. due to roll-out of the Service in a new product or territory, Customer will inform Company accordingly at least two weeks before the expected increase.

iii. In the event that any of the components of the Service is unavailable or malfunctions, Customer shall contact Company via support@thryve.health.

6 CONTENT RESPONSIBILITY

a) In using the Services, Customer understands that it is liable for all information, in whatever form, made available to Customer's customers (End Users) via the Services provided by Company ("Information"). Customer agrees not to use the Services to:

i. Upload, post, email, transmit or otherwise make available any Information that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;

ii. Harm minors in any way.

b) Customer understands and agrees that any uploading, accessing or downloading will be at Customer's sole risk and Company shall not be responsible to Customer in any way. Further, Company does not provide any warranty as to Customer's use of third-party content, software or services that Customer obtains via the Services.

c) Customer represents and warrants that information provided by Customer when registering or subsequently is true and accurate and not misleading.

7 MARKETING EFFORTS

a) Customer agrees to display the Company logo on its website, collateral material, etc.

b) Customer agrees that Company may during the term of this GTC make written and oral reference to the fact that Customer is a customer of Company including posting Customer's logo and/or linking to Customer's web site. Company agrees that Customer may also during the term of this GTC make written and oral reference to the fact that Company is a service provider of Customer.

c) Company reserves the right to use Customer's descriptions of its services in its press releases, marketing channels and any other publicity materials as well as the right to link to Customer's site.

8 INTELLECTUAL PROPERTY RIGHTS, USE OF DATA, TRADE NAMES AND TRADEMARKS

a) Each party agrees that all right, title and interest and all intellectual property rights in and to the materials developed independently by the other party or a third party shall vest in and be the sole and exclusive property of that party or such third party.

b) All right, title, and interest in and to the Services and all intellectual property rights in the Services will remain vested in Company.

c) Neither party will at any time do, permit or cause to be done, any act or thing that would

tend to impair or dilute in Customer's case, Company's rights in the Services, or either party's trademarks, service marks, and trade names.

d) Customer acknowledges and agrees that Company may use aggregate data derived from Customer's use of the Services hereunder. Company may use in its marketing and advertising the total number of users, total number of stored records, total transaction volumes, and other aggregate statistics to attract new customers. Customer further acknowledges and agrees that the use of such data by Company will not infringe upon any person's or entity's intellectual property rights or other proprietary or other interests and, further, that the use of such data by Company will not result in any violation of applicable law or any agreement to which Customer is a party or by which Customer is bound. This section shall survive the termination of this GTC with respect to data transmitted hereunder prior to the date of termination.

e) Company will not contact a Customer with third party advertising or promotion without such Customer's explicit permission.

f) Customer further acknowledges that Company may, in its sole discretion, preserve or disclose any data provided by or for Customer, as well as Customer's information, such as e-mail addresses, IP addresses, timestamps, and other user information, if required to do so by law.

9 AMENDMENTS TO THE GTC

a) Company reserves the right to amend the services offered and the GTC, insofar as the particular amendment is necessary to represent changes which were not foreseeable when the particular order was issued, and non-compliance with it would damage the contractual balance between Company and Customer, particular insofar as

   i. Company is obligated to bring the Services into compliance with the law applicable to them, particularly when the applicable legal position changes; and/or

   ii. thus complies with a court decision or an administrative decision against Company, and/or

   iii. must amend the Products due to mandatory technical requirements from the App Store operator.

b) At no point is Company's fulfilment of the primary contractual obligations restricted by the service changes. In particular, the functionality of the Products is not changed.

c) In circumstances other than in clause 9 a), Company notifies the Customer in advance of the changes to the GTC. Insofar as the Customer does not raise an objection to them applying within four weeks of receiving the notification, the amendments are deemed to be accepted with effect for the future. In the event of an ongoing contractual year, the amendments are first deemed to be accepted, notwithstanding the above sentence, from the start of the following contractual year, unless it is reasonable for them to come into force earlier, taking the Customer's interests into consideration. If the Customer objects to the amendments, Company is entitled to terminate the contractual relationship. Company will refer to the effect of silence and the right to terminate in the notification.

d) Any amendment to the contractual object and the primary contractual obligations which would lead to a change in the structure of the agreement as a whole is excepted from the power to make amendments under paragraph 9c). In these circumstances, Company will notify the Customer of the intended amendments, and offer to continue the contractual relationship on the amended terms.

10 TERMINATION

a) Customer may terminate this Agreement at any point in time upon one month's prior written notification to Company, if not explicitly stated otherwise in the individual Enterprise Service Agreement.

b) The Customer is permitted use of the Services for the agreed contractual term. The contractual term begins on the date of signature, regardless

of the date on which the Customer starts accessing or using the service.

c) Company particularly has the right to terminate without notice for good cause in the following circumstances: (i) the Customer becomes insolvent or over-indebted; (ii) an application is made to open an insolvency procedure over the Customer's assets (where the provision in Section 112 of the German Insolvency Code (InsO) is unaffected) or (iii) the Customer is in default with payment of the agreed ongoing payment or a non-negligible part thereof for two consecutive months or, over a period extending more than 2 months, is in default with making the ongoing payment, amounting to the ongoing payment to be made for two months.

d) Termination must always take place in writing.

e) Once the contractual term has expired, it is no longer possible for the Customer to access Company's Services - subject to an extension of the Agreement or conclusion of a new Licence Agreement.

f) Customer agrees that Company at its sole discretion, has the right (but not the obligation) to delete or deactivate Customer's account, block Customer's email or IP address, or otherwise terminate Customer's access to or use of the Services (or any part thereof), immediately and without notice, and remove and discard any Content within the Services, for any reason, including, without limitation, if Company believes that Customer has acted inconsistently with the GTC. Further, Customer agrees that Company shall not be liable to Customer or any third party for any termination of such access to the Services. Further, Customer agrees not to attempt to use the Services after said termination.

g) Upon the termination or expiration of this Agreement for any reason, Customer's rights under this Agreement will cease, including all rights to use the Services.

h) No termination of this Agreement will affect any obligation to make payment of outstanding amounts owed by Customer to Company.

i) Company reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. Customer agrees that Company shall not be liable to Customer or to any third party for any modification, suspension or discontinuance of the Services.

11 NO WARRANTY / LIMITATION OF LIABILITY

a) The Parties' liability is limited to intent and gross negligence (except for personal injury, claims under the Product Liability Act and existing insurance cover). The Parties shall not be mutually liable for loss of profit and other financial losses incurred by the other Party, its employees or vicarious agents while using the services, unless the damages are caused intentionally or by gross negligence or insurance cover exists for this purpose.

b) Liability for personal injury is governed by the statutory provisions.

12 INDEMNITY

CUSTOMER HEREBY AGREES, AT CUSTOMER'S EXPENSE, TO INDEMNIFY, DEFEND AND HOLD COMPANY HARMLESS FROM AND AGAINST ANY LOSS, COST, DAMAGES, LIABILITY, AND/OR EXPENSE ARISING OUT OF OR RELATING TO (A) THIRD PARTY CLAIMS, ACTIONS OR ALLEGATIONS OF INFRINGEMENT, MISAPPROPRIATION OR THE LIKE BASED ON INFORMATION, DATA OR CONTENT CUSTOMER SUBMITTED IN CONNECTION WITH THE SERVICES, (B) ANY FRAUD, MANIPULATION OR OTHER BREACH OF THESE TERMS BY CUSTOMER, OR (C) THIRD PARTY CLAIMS, ACTIONS OR ALLEGATIONS BROUGHT AGAINST COMPANY ARISING OUT OF CUSTOMER'S USE OF THE SERVICES.

13 MISCELLANEOUS

a) This GTC does not create any joint venture, partnership, agency, or employment relationship between the parties.

b) The provisions of the German Civil Code shall be applicable in case of any issues not provided for herein.

c) The Limitation of Liability, Intellectual Property Rights, Use of Data, Trade Names and Trademarks, Limited Warranty, Fees and Payments, and Miscellaneous Sections will survive termination or expiration of this GTC.

d) Company shall not be liable for any loss or delay (including any failure to meet an eventually agreed service level commitment) resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage, war or military hostilities, criminal acts of third parties, and any payment date or delivery of Services date shall be extended to the extent of any delay resulting from any force majeure event.

e) Customer understands that the technical processing and transmission of Services, including Customer's data, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

f) Company's failure to exercise or enforce any right or provision of this GTC shall not constitute a waiver of such right or provision. If any provision of this GTC is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this GTC remain in full force and effect. Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or this GTC must be filed within one year after such claim or cause of action arose or be forever barred.

g) Company may assign this GTC at any time to a subsidiary or parent company or to a successor to its business as part of a merger or sale of substantially all of its assets. Customer may not assign or transfer its interest in this GTC without Company's prior written consent, which consent shall not be unreasonably withheld.

h) The parties hereby agree to use reasonable good faith efforts to resolve any dispute hereunder by promptly identifying a contact person and instructing such individual to negotiate in good faith with the other party's contact person to resolve any such dispute. With respect to any dispute not resolved within two months of identifying the relevant contact persons, the parties hereby agree to submit any unresolved dispute arising under this GTC to mediation under the terms of the „Deutschen Institution für Schiedsgerichtsbarkeit e. V. (DIS)"("German institution of mediation"). If any dispute is not resolved by mediation within six months of selection of a mediator, the dispute shall be submitted to court. The exclusive place of jurisdiction is Company's registered office.

i) The section titles in the GTC are for convenience only and have no legal or contractual effect.

You are contracting with: mHealth Pioneers GmbH, Schleiermacherstraße 25, 10961 Berlin
info@thryve.health