

Microsoft Health Cloud API Developer Terms of Use

(LAST UPDATED June 2015)

These terms are an agreement (“Agreement”) between Microsoft Corporation (or based on where you live, one of its Affiliates) (“Microsoft” or “we”) and you (the developer using the APIs available at <http://developer.microsoftband.com/>). “You” or “you” means the individual who accesses or uses the APIs (and, if you represent a legal entity, it also means that entity, and you represent and warrant that you are authorized to enter into this agreement for that entity).

Microsoft may update this Agreement at any time in its sole discretion. Microsoft will indicate the last date on which the Agreement was modified at the top of the Agreement. Microsoft recommends that you review this Agreement for updates each time you use the APIs. **By using the APIs, you agree to be bound by the terms and conditions set forth in this Agreement. Please read them. If you do not agree with an update, do not use the APIs.**

Microsoft has created APIs to encourage the development of an ecosystem of health and fitness applications, devices, and services exchanging data for the benefit of users, developers, and Microsoft.

The parties agree as follows:

Section 1. Definitions.

- (a) **“API”** means the application programming interface through which data can be exchanged between Microsoft’s Platform and your Platform.
- (b) **“Application”** means a software application (including desktop, mobile or other), service, device or website developed by you that collects and displays User Data.
- (c) **“Data”** means the User data collected by a party’s Application from Users and made available to the other party through the APIs.
- (d) **“Effective Date”** means the date you first uses or accesses the API or any associated documents or materials.
- (e) **“Platform”** means a party’s APIs, Applications, Data and the User Interface.
- (f) **“Privacy Statement”** means a written document that clearly discloses to Users what is being done with User Data and any additional information that may be collected, or shared by the Application.
- (g) **“Term”** means the period during which this Agreement is effective, which begins on the Effective Date and extends until this Agreement is terminated.
- (h) **“User Interface”** means the user interface employed by a party’s Application(s).
- (i) **“User”** means a registered user of Microsoft or your Applications, as applicable.
- (j) **“User Agreement”** means a written agreement between a party and a User, that (1) governs access to, and use of the party’s Application, Platform and User Data, all as outlined in Section 3.
- (k) **“User Data”** means that subset of a party’s Data that is associated with a User.

Section 2. Intellectual property.

- (a) **API License.** Subject to your compliance with this Agreement, Microsoft grants you a nonexclusive, revocable, non-sublicensable, non-transferable, royalty free license to use the Microsoft APIs solely during the Term and solely to develop, reproduce and distribute an Application(s).

(b) Data License. Subject to your compliance with this Agreement, Microsoft grants to you a nonexclusive, revocable, sublicensable, non-transferable royalty free license to access, copy, use and display the Data solely in connection with Developer's Platform and Application(s).

(c) Reservation. All rights not expressly granted in this Agreement are reserved. Without limiting the above, and except to the extent otherwise expressly provided in this Agreement, nothing in this Agreement may be construed as a license to either party's intellectual property rights, expressly or by implication, estoppel, exhaustion, or otherwise.

Section 3. User Agreement; User Privacy; Compliance with Law; Prohibited Content.

(a) User Agreement.

(1) Each party must have a User Agreement with each of its Users (failure to do so is a material breach) for each of its Applications linked through the API and such User Agreement must be presented at the time a User authorizes the linking of accounts. The User Agreement will give the Users notice and require consent to which User Data will be retrieved from or submitted to the other party as a result of linking their accounts.

(2) Neither party will share User Data with a third party unless (A) such third party has a User Agreement and Privacy Statement with the User covering use of the third party's application and User Data and (B) the User has authorized the sharing of such User Data.

(b) Privacy.

(1) Each party will provide Users with a Privacy Statement for an Application and will make this Privacy Statement available for a User's review at the time a User authorizes the linking of accounts and from within the User Interface.

(2) Neither party will make use of User Data in a manner inconsistent with the User Agreement or Privacy Statement that they present to Users in their respective Applications.

(3) Neither party will display or distribute User Data received from the other party through the API to an external source or third party without explicit User permission and in accordance with its Privacy Statement.

(4) Each party will respect and adhere to the privacy settings configured by a User with respect to such party's use of the other party's API.

(c) Compliance with Law. When performing this Agreement, each party will comply with all applicable laws, including, but not limited to, privacy and security laws, rules and regulations.

(d) Responsibility and Ownership. You are responsible for all content of and within its Application(s), including advertisements and User Data.

Section 4. Applications.

(a) Deletion of User Data. Each party agrees to use reasonable efforts to delete all data received by them from the other party through an API concerning a User at the User's request, and provide an accessible mechanism for Users to make such a request. This provision shall survive any expiration or termination of this Agreement.

(b) Security. You will not use the client ID or access token assigned to Users for any purpose outside of an Application and the infrastructure, code, or services necessary to build and run such Application. You may not share such anonymous unique IDs with a data broker, information broker, or any other service. You may not give the client ID or access token assigned for access to Microsoft's API to another person, unless that person is an agent acting on the receiving party's behalf as an operator of an Application, or include functionality that proxies, requests or collects Users' passwords.

(c) Restrictions. You will not attempt or encourage others to:

- (1) perform wholesale export of Data for the purpose of account migration or service duplication;
- (2) use data scraping, Data harvesting, web crawlers, or other Data extraction methods to extract data from Microsoft's API, Platform or databases;
- (3) use or access the API for the purpose of monitoring the performance or functionality of Microsoft's Platform or for any other benchmarking or competitive purposes;
- (4) modify, create derivative works of, reverse engineer, reverse compile, or disassemble any elements of Microsoft's Platform or Application(s);
- (5) distribute, sell, lease, rent, lend, or sublicense any part of Microsoft's API to any third party except as included within, and necessary to, distribute an Application(s);
- (6) destroy, overwrite or delete User Data without explicit User intent and confirmation;
- (7) obtain Data from Microsoft's Application(s) or Platform by any means other than through the appropriate API;
- (8) infringe third party intellectual rights;
- (9) use Microsoft's trademarks, including but not limited to Microsoft, the Band, and Windows, in naming your Application(s) or in a way that suggests your Application(s) come from or are endorsed by Microsoft; or
- (10) with respect to Microsoft's API, share the client ID or access token provided for use of such API with any third party.

(d) Account Links. You will offer its Users a path back to their Microsoft account, as applicable, from the Applications where Data is displayed.

(e) Disconnect Applications. You will provide an accessible mechanism for Users to disconnect the Applications.

(f) API Changes. Microsoft may disable or upgrade the Microsoft APIs at any time without notice to you.

(g) Application Login. Your Users will be provided the opportunity to connect their Microsoft Account to your Application through Microsoft's API authentication.

(h) Advertising. Neither party will use Data received from the other party for any advertising purposes (e.g., targeted advertising based on User Data) unless such usage is expressly permitted by that Party's User Agreement and/or Privacy Statement.

(i) Monitoring. Microsoft may collect and use all data regarding the use of its API.

(j) Rate Limits. Microsoft reserves the right to limit the number of API calls from an Application in a given period of time.

Section 5. Confidential Information. Any communications between the parties are confidential information and shall be treated as such. Any ideas, suggestions, comments, and other input you provide Microsoft regarding the APIs or Microsoft Applications ("**Feedback**") is voluntary and, if provided, Microsoft has the unrestricted right to use Feedback for any purpose, including in development, manufacture, promotion, sale, and maintenance of its products and services. You will not give Feedback: (i) subject to license terms that seek to require any recipient product or service incorporating or derived from the Feedback, or any recipient intellectual property, to be licensed or otherwise shared with any third party; or (i) in which you do not have sufficient rights to make the grant in this **Error! Reference source not found.**

Section 6. Representations and warranties. You represents and warrants to Microsoft that you have all rights, including all copyright, trademark and other intellectual property rights, in your Platform necessary to offer the Application(s) to Users.

Section 7. Excluded damages. Microsoft is not liable for (and you will not seek from Microsoft) any special, incidental, consequential, exemplary, punitive, or other indirect damages (including damages for loss of data or profits), foreseeable or unforeseeable, arising out of this Agreement regardless of whether liability is based on breach of contract, tort, strict liability, breach of warranty, or otherwise, even if such party has been advised the damages are possible.

Section 8. Limited liability. The maximum, aggregate liability of Microsoft to you for any claim related to this Agreement is limited to direct damages incurred in reasonable reliance, in an amount not exceeding the greater of \$100 or the aggregate fees paid by you for access to the APIs during the last calendar year (if applicable).

Section 9. Disclaimer. Microsoft's performance, APIs, Platform, Data, Applications along with any other materials provided are provided "as-is," "with all faults," and "as available"; and (b) any other warranties related to this Agreement (express, implied, statutory, or otherwise, and including any warranties or conditions of product liability, fitness for a particular purpose, non-infringement, merchantability, and workmanlike effort) are excluded.

Section 10. Ineffective disclaimer. Microsoft's liability for breach of an implied warranty that cannot, by law, be disclaimed or excluded is, if permitted by Law, limited, at Microsoft's election: (a) for goods, to replacing, repairing, or supplying equivalent goods (or paying the cost of the foregoing or refunding the purchase price); and (b) for services, to supplying (or paying a third party to supply) the services again or refunding the purchase price.

Section 11. Indemnification. You agree to indemnify, defend, and hold harmless Microsoft and its affiliates from any claims, including attorneys' fees, related to your use of the Microsoft APIs, Data, your Application(s) or Microsoft Marks.

Section 12. Regulatory Compliance. You agrees that your development, marketing, sales, and distribution of the Application(s) shall be in compliance with all applicable legal requirements, including compliance with the medical device regulatory requirements of the U.S. Federal Food, Drug, and Cosmetic Act and any associated requirements, or similar laws, regulations, or policies in other countries or territories. To the extent required by law, you are solely responsible for obtaining or filing any approval, clearance, registration, permit, or other regulatory authorization and shall comply with the requirements of such authorization.

Section 13. Term and termination. Either party may terminate this Agreement for convenience at any time with no prior notice. Microsoft may immediately suspend your access to the API and Data at any time and without notice to you.

Section 14. No High Risk Use. WARNING: The APIs are not fault-tolerant. The APIs are not designed or intended for medical use or use with any program where failure or fault of any kind of the APIs could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). You are not licensed to, and you agree not to, use, distribute or sublicense the use of the APIs in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft navigation and control of other modes of human mass transportation, nuclear or chemical facilities.

Section 15. General terms.

(a) Entire Agreement. These terms constitute the entire agreement among the parties with respect to

the subject matter hereof and supersedes all prior proposals, understandings and communications between the parties with respect to that subject matter.

(b) Law. This Agreement is governed by Washington State law (disregarding conflicts of law principles), and the parties consent to exclusive jurisdiction and venue in the state and federal courts of King County, Washington. Neither party will claim lack of personal jurisdiction or forum non conveniens in these courts. In any action or suit related to this Agreement, the prevailing party is entitled to recover its costs, including reasonable attorneys' fees.

(c) Performance. Each party may delegate performance to its subcontractors and may also sublicense that intellectual property licensed under this Agreement to its subcontractors only so that such subcontractors may use such intellectual property to provide services to such party. The delegating party is liable for its subcontractors' performance and failures.

(d) Interpretation. If a court of competent jurisdiction finds any term of the Agreement unenforceable, the Agreement will be deemed modified as necessary to make it enforceable, and the rest of the Agreement will be fully enforced to effect the parties' intent.

(e) Notices. All notices in connection with this Agreement may be delivered in writing or via email at the addresses provided. You agree to provide Microsoft with its email and keep such email up to date in order to receive notices under this Agreement.

(f) Miscellaneous. Each party is an independent contractor to the other and has no authority to act on behalf of or bind the other, and this Agreement does not create any other relationship (e.g., employment, partnership, or agency). All rights and remedies under this Agreement are cumulative. Each party will pay its own costs to perform (except if expressly stated otherwise).