

Version du 12 septembre 2018

Withings developer software agreement

For Withings digital Health APIs

Please read this Withings Developer Software Agreement carefully before accessing, downloading or using any part of the Withings API Software for Withings digital health products and Services. By accessing, downloading, installing, using or clicking on the "Accept" button while registering, downloading, installing and/or using the Software, You agree to the terms and conditions of this Agreement.

Please note that this Agreement is structured in two sections: (i) general terms that apply to most Withings developer software distributions; and (ii) additional terms and conditions applicable to certain parts of the Software or related content, services, additions and extensions that are specific to the particular Software provided. Please ensure to review the entirety of the terms provided as important restrictions relevant to your use of the Software are often included as additional terms.

General terms

1. Acceptance

This Withings Developer Software Agreement (the "Agreement") governs Your use of the Software (as defined below) and these terms and conditions constitute an agreement between You (either an individual or an entity) and Withings Ltd. including its affiliates and suppliers (collectively "Withings") defining the rights and responsibilities of You and Withings with respect to the Software.

There may be additional terms and conditions specific to the particular Software provided or applicable to certain parts of the Software or related content, services, additions and extensions.

You are not allowed to use the Software if You do not agree to these terms and conditions.

2. Definitions

"Application" means one or more software programs developed by You in compliance with the requirements set forth in this Agreement and documentation provided by Withings, under Your own trademark or brand, including bug fixes, updates, upgrades and new versions of such software programs.

“Authorized Users” means You and Your employees and contractors or, if You are an educational institution, Your faculty and staff, as applicable, who (a) each have a valid account with Withings, (b) have a demonstrable need to know or use the Software in order to develop and test Applications, and (c) to the extent such individuals will have access to Confidential Information, each have written and binding agreements with You to protect the unauthorized use and disclosure of such Confidential Information.

“Software” means (i) the Withings API software product for digital health (source code and/or object code as applicable), with the exception of Open Source Software (as defined below), documentation, sample code, simulators, tools, libraries, application programming interfaces (APIs), data, files, and materials hereby provided or made available by Withings for use by You in connection with Your Application development, and includes any updates that may be provided or made available by Withings.

“Open Source Software” means any software, which is, as included in the Software, subject to a license terms and conditions currently listed at <http://opensource.org/licenses/> or meeting the criteria listed at <http://www.opensource.org/docs/definition.php> or which is subject to any similar free or open source license terms. Open Source Software contained in the Software is licensed under the license terms accompanying such Open Source Software and not the terms of this Agreement.

“You” or **“Your”** means the person(s) or entity using the Software or otherwise exercising rights under this Agreement. If you are accepting this Agreement on behalf of your company, organization or other entity, “You” or “Your” refers to your company, organization or other entity as well.

3. Eligibility

You must be legally competent to execute this Agreement. Thereby You must be of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in most countries) and have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of Your company, organization or other entity, You have the right and authority to legally bind Your company, organization or other entity to the terms and obligations of this Agreement.

4. Registration and termination

You agree to provide truthful and complete information when registering for the Software and to keep that information updated. Providing misleading information about Your identity is forbidden.

You may terminate Your registration(s) if You no longer wish to use the Software. After termination, You may not access the Software. Withings may terminate or restrict Your access to all or any parts of the Software or related services if there is an indication that You have breached this Agreement or any applicable laws or regulations.

You may terminate this Agreement at any time by permanently uninstalling and/or deleting, at Your own costs, the Software and any backup copies, and all related materials provided by Withings and by ceasing to use the Software. All Your rights automatically and immediately terminate without notice from Withings if You fail to comply with any provision of this Agreement. In such an event, You must immediately uninstall and/or delete, at Your own cost, the Software, all backup copies, and all other related material provided by Withings as well as stop using the Software.

Withings may, in its sole discretion, provide with updates to the Software from time to time. Withings may also provide with updates that are considered as important or critical by Withings, and in such case You may not continue using the previous version of the Software and the use of the previous version of the Software may be prevented without installation of the update. Any related services or features of the Software may not be available during maintenance breaks and other times. Withings may also decide to discontinue the Software, related service or any part thereof in its sole discretion. In such case You will be provided a prior notification and Withings may terminate the Agreement accordingly.

5. Updates to the Terms

Withings reserves the right to modify or amend the terms and conditions of this Agreement at any time without prior notice. If the terms are changed in a material, adverse way, Withings will provide a separate notice advising of such change. In order to continue using the Software, You must accept and agree to the new terms of this Agreement. If You do not agree to new terms, Your use of the Software will be suspended or terminated by Withings.

6. Use of the Software

You hereby certify and agree that You will comply with the terms of this Agreement and You agree to monitor and be responsible for Your Authorized Users' use of the Software and their compliance with the

terms of this Agreement. You may not grant access to the Software for any other than Authorized Users.

The Software is made accessible to You for the sole purpose of developing and testing Your Application(s). You may install, as applicable, a reasonable number of copies of the Software on computers owned or controlled by You to be used by You or Your Authorized Users during the term of this Agreement.

As a condition to using the Software, You hereby agree that:

- (i) You will not use the Software in any manner or for any purpose that violates this Agreement or any applicable law or regulation, including without limitation, any intellectual property or other proprietary rights, any right of any person, rights of privacy, or rights of personality;
- (ii) You will not distribute or post spam, unreasonably large files, chain letters, pyramid schemes, any malicious code, viruses or any other technologies or content that may harm the Software, other users, servers or network;
- (iii) You will not use the Software in connection with any unlawful, offensive, abusive, obscene, pornographic, harassing, libelous or otherwise inappropriate content or material;
- (iv) You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You and Authorized Users in connection with the Software, Your Applications and Your related development efforts; and
- (v) You will not remove or obscure any copyright or trademark notices or other similar notices or markings or legends from the Software;
- (vi) You will not Introduce in the Software any identifying data that was brought to the attention of a health care professional, such as a doctor, by any means; and,

Notwithstanding anything to the contrary contained herein, You may not (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software, except and only to the extent permitted by applicable mandatory law; (b) modify or create derivative works of the Software, except and only to the extent permitted by Withings; or (c) distribute, communicate to the public, export, re-export, sublicense, rent, loan, lease, disclose, sell, market, commercialise, re-license, host, or otherwise transfer or make available to any third

party (including without limitation any affiliates and subcontractors) the Software (or any portions thereof).

Nothing in this Agreement or otherwise prevents Withings from developing, distributing and/or making use of any application that is directly or indirectly competing with Your Application.

7. Requirements for Your Applications

Your Application developed using the Software, or any part thereof, must comply with the following criteria and requirements, as may be modified by Withings from time to time:

- (i) Your Application will be developed and used in compliance with the this Agreement or any applicable law or regulation, including without limitation, any intellectual property or other proprietary rights, any right of any person, rights of privacy, or rights of personality;
- (ii) Your Application will be developed in compliance with the documentation, technical guidelines and other requirements as Withings may provide from time to time;
- (iii) Your Application does not and will not, to the best of Your knowledge, violate, misappropriate, or infringe any copyright, patent, trademark, trade secret, rights of privacy or other proprietary or legal right of any third party or of Withings;
- (iv) Your Application must not contain nor transfer any viruses, files, code malware or any other malicious software programs that may harm or disrupt the normal operation of the device or network;
- (v) Your Application must identify the nature and provider (including contact details) of the application, function as promoted and not contain any false, fraudulent or misleading information or representations;
- (vi) You will clearly communicate to the users of Your Application(s) (e.g. in the Application UI) that the use of the Application(s) creates data traffic;
- (vii) You will provide users of the Application(s) with easy settings to disable notifications;
- (viii) You will not design or market the Application, or any part thereof, for use in or with systems, devices or products that are critical to health and/or security of other people and property (e.g. intended for surgical implant into the body or other applications intended to support or sustain life or for any aviation or nuclear

reactor application) or any other application in which the software or its failure, malfunction or inadequacy could directly or indirectly cause or contribute to personal injury or death or significant property damage;

(ix) Your Application must not enable push notifications routed from other notification systems and servers provided by third parties;

(x) Your Application shall not send any push notifications without first obtaining user consent, (e.g. unsolicited messages, advertising, promotions, or direct marketing of any kind or for the purposes of phishing and spamming); and

(xi) Your Application shall not send any messages for the purpose of phishing or spamming, or enable anonymous or prank phone calls or SMS/MMS messaging.

8. Ownership and Intellectual Property Rights

The Software and all rights, without limitation including title and intellectual property rights therein, are owned by Withings and/or its licensors and affiliates and are protected by international treaty provisions and all other applicable national laws of the country in which it is being used. The structure, organization, and code of the Software are the valuable trade secrets and confidential information of Withings and/or its licensors and affiliates.

No right or license, express or implied, is granted to any part of the Software except as expressly set forth above. In addition, no licenses or immunities are granted to the combination of the Software with any other software or hardware not delivered by Withings under this Agreement. Also, any and all licenses with respect to Withings or third party patents (including essential patents) are specifically excluded from the scope of this Agreement, and those licenses need to be acquired separately from Withings or the respective right holders, as the case may be.

You and Your affiliates, as the case may be, covenant and agree not to bring suit before any court or administrative agency or otherwise assert any claim against Withings or any of its affiliates, suppliers, licensees or customers based on any of Your patent or Your affiliate's due to reproduction, development, use, manufacturing, marketing, selling, distribution, licensing, importing, sub-licensing or other disposal of the Software or implementations thereof.

You and Your affiliates shall impose the obligation stated in clause above on any third party to whom You or Your affiliates may assign or transfer Your patents. This obligation is restricted to suits or other assertions based on such assigned or transferred patents.

You shall be released from Your covenant and agreement not to sue under this section in relation to a particular beneficiary (but not in relation to any other beneficiary) in the following event: (i) You are first sued for patent infringement related to the Software by such other beneficiary who benefits from Your covenant and agreement as set forth herein; and (ii) the suit is based on Your infringement of such other beneficiary's patent rights which if held by You would be subject to the covenant and agreement not to sue provided for above in this section.

For the purposes of this section, patent means any patent, utility model and any divisional, re-exam, re-issue, continuation and continuation-in-part thereof as well as any corresponding application globally.

9. Fees

Your use of the Software may be or may become subject to charges. Withings reserves the right to charge for the Software and to change its fees from time to time, at its discretion.

10. Availability

The Software may not be available in all countries and may be provided only in selected languages. The Software or some features may be network dependent, contact Your network service provider for more information.

11. Support and maintenance

Withings has no obligation to furnish You with technical or other support unless separately agreed in writing between You and Withings. In case of such support given by Withings, You understand and agree that the support has been given on "as is" and "as available" basis and Withings will have no obligations or liabilities related to such support.

12. Feedback

By submitting feedback ("Feedback") to Withings related to the Software, You acknowledge and agree that (1) Withings may have similar development ideas to the Feedback; (2) Your Feedback does not contain confidential or proprietary information related to Your own activities or those of any third party; (3) Withings is not under any obligation of confidentiality with respect to the Feedback; and (4) You are not entitled to any compensation of any kind from Withings. You hereby grant Withings a worldwide non-exclusive, sublicensable, assignable, fully paid up, royalty-free, perpetual and irrevocable license to use, reproduce, adapt, translate, exploit, copy, publicly perform, display, distribute, further develop and modify for any purpose such Feedback, and to prepare derivative works thereof, or incorporate such Feedback into other works as well as sublicense products and Software resulting from such works.

13. Links to Third Party Sites and Services

For Your easy accessibility Withings may include links to sites and services on the Internet that are owned or operated by third parties and that are not part of the Software. Upon following a link to such a third-party site, You shall review and agree to that site's rules of use before using such site or service.

You agree that Withings has no control over the content of third-party sites and cannot assume any responsibility for services provided or material created or published by such sites. A link to a third-party site does not imply that Withings endorses the site or the products or services referenced in the site.

You agree that Withings is neither responsible nor liable for any such links or any third party Internet site.

14. Confidentiality

You agree that all material and information in any form received from Withings, including, but not limited to Software and its copies, as well as all translations of computer programs contained in the Software, Withings's products, designs, business plans, business opportunities, finances, research, development, know-how, personnel, or third-party confidential information, will be considered and referred to collectively as "Confidential Information". Confidential Information, however, does not include: (a) information that Withings makes generally available to the public; (b) information that You can demonstrate to have had rightfully in Your possession prior to disclosure to You by Withings; (c) information that is independently developed by You without the use of any Confidential Information; or (d) information that You rightfully obtain from a third party who has been given the right to transfer or disclose it by Withings. You agree to keep confidential and not to disclose, publish, or disseminate any Confidential Information to any third party. You further agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. You agree not to use Confidential Information otherwise for Your own or any third party's benefit without the prior written approval of an authorized representative of Withings in each instance.

You further agree that despite of any other confidentiality agreements You may have between You and Withings, Withings will not be responsible for keeping confidential any information You provide to Withings through the use of the Software or any related services. Neither Withings nor any of its employees accept or consider unsolicited ideas, including but not limited to ideas for new advertising campaigns, new promotions, new products or technologies, processes, materials, marketing plans or new

product names. If, despite the request that You not send us Your ideas and materials, You still send them, please understand that Withings makes no assurances that Your ideas and materials will be treated as confidential or proprietary.

The rights and obligations of this section 14 shall remain in force for five (5) years from the date of the disclosure of Confidential Information.

15. No warranties

You acknowledge that the software is provided "as is" without warranty Of any kind, express or implied, and to the maximum extent permitted by Applicable law neither withings, its licensors or affiliates, nor the Copyright holders make any representations or warranties, express or Implied, including but not limited to the warranties of merchantability, Accuracy of documentation and support material, or fitness for a Particular purpose or that software will not infringe any third party Patents, copyrights, trademarks, or other rights. There is no warranty By withings or by any other party that the functions contained in the Software will meet your requirements or that the operation of the Software will be uninterrupted or error-free. You assume all Responsibility and risk for the selection of the software to achieve Your intended results and for the installation, use, and results Obtained from it.

16. Indemnity

You agree to defend and indemnify Withings from and against all third party claims and all liabilities, assessments, losses, costs or damages resulting from or arising out of (i) Your breach of this Agreement, (ii) Your infringement or violation of any intellectual property, other rights or privacy of a third party, and (iii) misuse of the Software by a third party where such misuse was made available by Your failure to take reasonable measures to protect Your username and password against misuse.

17. Limitation of liability

To the maximum extent permitted by applicable law, in no event shall Withings, its employees, licensors or affiliates be liable for any lost Profits, revenue, sales, data, or costs of procurement of substitute Goods or software, property damage, personal injury, interruption of Business, loss of business information, or for any special, direct, Indirect, incidental, economic, cover, punitive, special, or Consequential damages, however caused and whether arising under Contract, tort, negligence, or other theory of liability arising out of The use of or inability to use the software or the software, even if Withings or its licensors or affiliates are advised of the possibility of

Such damages. Because some countries/states/jurisdictions do not allow
The exclusion of liability, but may allow liability to be limited, in
Such cases, withings, its employees or licensors or affiliates' liability
Shall be limited to u.s. \$50. Nothing contained in this agreement shall
Prejudice the statutory rights of any party dealing as a consumer.
Nothing contained in this agreement limits withings's liability to you in
The event of death or personal injury resulting from withings's negligence.
Withings is acting on behalf of its employees and licensors or affiliates
For the purpose of disclaiming, excluding, and/or restricting
Obligations, warranties, and liability as provided in this agreement,
But in no other respects and for no other purpose.

18. Export control

You acknowledge that the Software may be subject to export control
restrictions of various countries. You shall fully comply with all
applicable export license restrictions and requirements as well as with
all laws and regulations relating to the importation of the Software
and/or Applications and shall procure all necessary governmental
authorizations, including without limitation, all necessary licenses,
approvals, permissions or consents, where necessary for the
re-exportation of the Software or Applications.

19. Government End Users

A "U.S. Government End User" shall mean any agency or entity of the
government of the United States. The following shall apply if You are a
U.S. Government End User. The Software is a "commercial item," as that
term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of
"commercial computer software" and "commercial computer software
documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995).
Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through
227.7202-4 (June 1995), all U.S. Government End Users acquire the
Software with only those rights set forth herein. The Software
(including related documentation) is provided to U.S. Government End
Users: (a) only as a commercial end item; and (b) only pursuant to this
Agreement.

20. Miscellaneous

20.1 Notices

All notices of the Software should be delivered to:

Withings SA
2 rue Maurice Hartmann
92130 Issy-les-Moulineaux
France

20.2 Assignment

You shall not be entitled to assign or transfer all or any of Your rights, benefits and obligations under this Agreement without the prior written consent of Withings, which shall not be unreasonably withheld. Withings shall be entitled to assign or transfer any of its rights, benefits or obligations under this Agreement on an unrestricted basis.

20.3 Severability

If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms.

20.4 Privacy

The Withings Privacy Policy and any additional privacy supplements govern the use of Your personal data.

20.5 Governing law and dispute resolution

These Withings Terms and Conditions are governed by French law. In the event that litigation arises out of or in connection with your use of any Products and Services provided by Withings, the Parties undertake to seek an amicable solution before any legal action. In case of dispute, only the French courts will be competent.

If despite all our efforts to meet your expectations you do not get satisfaction after our customer service, you can make free use of a consumer mediator. The Paris Mediation and Arbitration Center will help you in your efforts if you contact them: (i) via their online form (www.cmap.fr), (ii) by email at consommation@cmap.fr or (iii) by ordinary mail or recommended to the CMAP Mediation Consumption, 39 avenue Franklin D. Roosevelt, 75008 PARIS.

20.6 Entire Agreement

This is the entire agreement between Withings and You relating to the Software, and it supersedes any prior representations, discussions, undertakings, end-user agreements, communications, or advertising relating to the Software.

Additional terms

Withings API Additional Terms for digital Health

In addition to the terms set forth above, the Withings Privacy Policy and following additional terms shall apply to Your use of the Withings API's and related services ("Service").

1. Definitions

“Withings API Service” means the service offered by Withings that enables You to incorporate the Withings APIs, as made available by Withings from time to time, into Your Applications and to have end-users access and use it on such Applications.

“Withings API Developer Package” means the Withings software, Withings API(s), documentation and any and all other material made accessible to You by Withings from time to time that enables You to incorporate the Withings APIs into Your Applications and is designated by Withings as being a part of the Withings API Developer Package.

“Withings API(s)” means the interface information made accessible to You by Withings from time to time that enables You to incorporate the Withings API For Developers into Your Applications.

“User Content” means the identity and user measurement data a user of Withings’s connected health products elects to share with You.

2. Service Offering, Registration and Termination

You agree to provide truthful and complete information when registering for the Service and to keep that information updated. Providing misleading information about Your identity is forbidden. You are personally responsible for any use of the Withings API Service. You agree to take due care in protecting Your Application using Withings API, Your token and/or developer key against misuse by others and promptly notify Withings about any misuse. Where requested by Withings, You agree to include and use the token and/or developer key, as applicable, in each request You make to access to the Withings API(s).

You may terminate Your registration if You no longer wish to use the Service. After termination, You may not access the Service.

3. Changes

Withings may, in its sole discretion, change, improve and correct the Service from time to time. Withings may also provide with updates to the Service that are considered as important or critical by Withings, and in such case You may not continue using the previous version of the Service and the use of the previous version of the Service may be prevented without installation of the update. The Service may not be available during maintenance breaks and other times. Withings may also decide to discontinue the Service or any part thereof in its sole discretion. In

such case You will be provided a prior notification and Withings may terminate the Agreement accordingly.

Except as set forth in Privacy Policy, Withings shall not be responsible for any removal or loss of the information or content You have submitted ("Material") to the Service when Your registration is terminated. After the Material is removed from the Service by either You or Withings, traces and copies of the Material may still remain.

Withings reserves the right to modify or amend these terms and conditions at any time without prior notice. If the terms are changed in a material, adverse way, Withings will provide a separate notice advising of such change. In order to continue using the Service, You must accept and agree to the new terms and conditions. If You do not agree to new terms, Your use of the Service will be suspended or terminated by Withings.

4. Use of Withings API Developer Package

The Withings API Developer Package is made accessible to You for the purposes of incorporating the Withings APIs into Your Application and for the limited purposes of evaluating, testing, and controlling Your Application.

When using the Withings API Developer Package and/or the Service, unless otherwise agreed in writing with Withings, You hereby agree that You will not:

- (i) use or incorporate, without Withings's prior written permission, the Service, Withings API Developer Package or any part thereof, in connection with any Application or other service (a) where such Application's functionality is substantially similar to the Withings Mate application distributed by Withings or its affiliates; or (b) which has the primary purpose of capturing or collecting User Content without providing the user with additional functionality;
- (ii) collect User Content without the express prior consent of the user;
- (iii) remove, obscure, modify or omit, any copyright or trademark notices or other similar notices or markings or legends or branding requirements from the Withings API Developer Package, whether such notices, markings or legends or other branding requirements originate from Withings or a third party;
- (iv) access, or use the Service through any technology or means other than those provided by the Service or Withings API(s), or through other explicitly authorized means Withings may designate;

(v) use the Withings API Developer Package or the Service in any manner or for any purpose that violates this Agreement or any law or regulation, including without limitation, any intellectual property or other proprietary rights, any right of any person, rights of privacy, or rights of personality; or

(v) use the Withings API(s) to issue queries that are not in response to end user actions; or

You also agree (i) to comply with these terms, applicable laws and good manners; (ii) not to distribute or post spam, unreasonably large files, chain letters, pyramid schemes, viruses or any other technologies that may harm the Service, or the interest or property of the Service users; (iii) not to use the Service in connection with any unlawful, offensive, abusive, pornographic, harassing, libelous or otherwise inappropriate Material and comply with Withings usage guidelines as may be provided by Withings from time to time; and (iv) to respect the privacy of others. You agree to comply with Withings technical guidelines and other guidelines as Withings may provide from time to time.

5. Privacy

You agree that Your use of the Services and Withings API will comply with the Withings Privacy Policy (http://www.Withings.com/en_int/privacy) and applicable Withings privacy supplement.

If your Application enables You or any party to gain access to information about users, including but not limited to personally identifiable information or non-personally identifiable usage information ("Information"), You must provide users with notice about what Information is accessible and how such Information will be used or disclosed so that users may make informed decisions about whether or not to use Your Application. You must obtain content from a user for any Information and/or User Content you may collect and use of such Information and/or User Content. Furthermore, you must make Your privacy policy regarding the use of Information publicly available.

6. Availability

The Service may not be available in all countries and may be provided only in selected languages..

7. Your Services

You may interact with users, including consumers, on or through the Service. You agree that any such interactions by You do not involve Withings and are solely between You and the other user(s).

8. Links to Third Party Sites and Content

Withings may include links to sites on the Internet that are owned or operated by third parties and that are not part of the Service. Upon following a link to such a third-party site, You shall review and agree to that site's rules of use before using such site.

You agree that Withings has no control over the content of third-party sites and cannot assume any responsibility for services provided or material created or published by such sites. A link to a third-party site does not imply that Withings endorses the site or the products or services referenced in the site.

In addition, users may create links within the Service to content that has not otherwise been submitted to the Service. You agree that Withings is neither responsible nor liable for any such links.

9. Reporting

You agree to implement those reporting mechanisms specified by Withings (if any).