mywellness cloud API Terms of Use

Last revised: 07/02/2014

1. Introduction

The mywellness cloud is an open platform that lets millions of people around the world track, measure and improve their health and fitness. The mywellness cloud API enables the exchange of select data in order to extend and augment the mywellness cloud user experience and support complementary services in a collaborative wellness ecosystem.

By visiting the Developer Portal, registering as a Developer and/or using the mywellness cloud API, You agree to abide by the terms and conditions set forth in these mywellness cloud API Terms of Use and conditions governing the mywellness cloud platform Conditions and Privacy Policy and represent you have the authority to bind yourself or the company you represent to the Terms.

2. Definitions

In this Agreement the following words and expressions shall have the meaning ascribed to them hereinafter:

"Application"shall mean any software application that uses the mywellness cloud API or data from mywellness cloud by Technogym, the mywellness cloud websites, or other mywellness cloud Applications;

"Agreement"shall mean this mywellness cloud API Terms of Useand all its attachments, including any updates, additions and modifications;

"mywellness cloud API" or **"API"**shall mean any of the Technogym'sdocumentation, software tools and API ("Application Programming Interface") aimed to allow third parties' Applications to read/write data into the mywellness cloud database and/or to interact with any of the applications included in the mywellness cloud;

"Information" shall mean all technical, manufacturing, mechanical, software, electrical and electronic specifications, business, financial, operational, administrative, marketing or economic information, data, documents, designs, patents, materials, product samples and know how, as well as any other descriptions or documentation, including in electronic format, that Technogym may make available toYou, or provide You with, in connection withthe development of integrations between Your Application and the mywellness cloud platform;

"Other Information" shall mean the information described at Article 7.2;

"You" shall meanyou (if using as an individual) or the entityyou represent (if using as a business) wishing to use the mywellness cloud API or acquire the Information order to enable the integration of their own Application with the mywellness cloud platform.

"User Account Information" any account information supplied by a user of mywellness cloud, including but not limited to name, email, gender, height, weight, birthday, location, goals, and profile picture. User supplied account information may be supplied directly through use of the mywellness cloud website, or other mywellness cloud applications.

"User Data" user-specific data You receive through the mywellness cloud API as detailed in the mywellness cloud API Specifications.

3. License

3.1   Subject to the terms and conditions herein set forth, Technogym grants You, and You hereby accept, anon-assignable, non-exclusive, non-transferable, non-sub-licensable, worldwide, revocable and limited right and license to use the mywellness cloud API as necessary and appropriate to facilitate the development and deliveryof Your Applications for the duration of this Agreement.

4. Conditions and Restrictions on Use

4.1   You may use the mywellness cloud API to develop Applications to extend and/or enhance the use and application of the mywellness cloud platform, and data collected thereby. You may not use the API to modify or reverse engineer any functionalities of the mywellness cloud platform or to access or attempt to access mywellness's servers for purposes unrelated to the implementation of Your Application or to circumvent or attempt to circumvent the intended use of the API. You may not use the API to create any application that is intended to or does replace the mywellness cloud platform or direct users away from the mywellness platform.

4.2   You may use the API to access User Data to use in external applications according to these Terms of Use and in accordance with mywellness cloud platform Terms of Service and Privacy Policy. Any rendering or display of information must provide attribution to mywellness cloud. You may also use this API to post select data from Your application into the mywellness cloud platform, including User Data provided You have express user permissions to do so.

4.3   You are responsible for all activities that occur under Your account identifiers, on Your site, and that You post into the mywellness cloud platform. In operating Your Application, You must ensure that You are in compliance with the following requirements.

4.4   You may use the API only for purposes that are legal, proper and in accordance with mywellness cloud Terms of Use. At all times, Your Application and Your use of the API must comply with all applicable laws and regulations. You agree to comply with any laws, rules or regulations in Your locale or in the location of Your web server regarding online conduct and acceptable content, including laws regulating the export of data to the United States or Your country of residence.

4.5   You and Your Application must at all times comply and comport with the mywellness cloud platform Conditions, Privacy Policy and relevant laws. You and Your Application must not violate any law or the rights of any individual or entity, either directly or indirectly, and must not expose Technogym or mywellness cloud Users to harm or legal liability as determined by us in our sole discretion.

4.6   You are responsible for all content of and within Your application, including advertisements and user-generated content. You must not promote, or provide content referencing, facilitating, containing or using, the following:

    a) Content that infringes upon the rights of Technogym or any third party, including intellectual property rights, privacy, publicity or other personal or proprietary right, or that is deceptive or fraudulent;

    b) Content that maligns or misrepresents Technogym or any Technogym product or that uses Technogym trademarks, copyrights or other intellectual property outside the scope of the rights granted herein;

c) Gambling, including without limitation, any online casino, sports books, bingo or poker;

d) Illegal activity and/or illegal contests, pyramid schemes, sweepstakes not in compliance with relevant law, or chain letters;

e) Content that is hateful, threatening, defamatory, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence.

f) Content obtained from the mywellness cloud platform from any means other than through the API.

4.7   You must provide adequate support to users, such adequacy to be judged in our sole discretion.

4.8   Technogym may monitor Your usage of the API in order to improve our service and to ensure compliance with our policies. Use of the API is subject to reasonable restrictions on rate limit. If Technogym reasonably believes that You have exceeded such limits, Your ability to utilize the API may be temporarily slowed, suspended or permanently revoked.

4.9   You may not use my wellness cloud API and/or the Informationprovided by Technogym to develop integrations with products manufactured and/or marketed by Technogym's competitors without the prior written consent of Technogym, which it may withhold it at its sole discretion.

5.   User Data Retrieval, Storage and Related Obligations

5.1   Technogymwill issue to Youa unique electronic key to access the Service for each Application. Youwill hold the electronic key in confidence in accordance with the obligations of Confidentiality imposed under Article7 of this Agreement and will not assign, transfer or disclose such electronic key to any third party. You will be required to use the electronic key to access the mywellness cloud API and any updates or subsequent versions that Technogym may release from time to time in its sole discretion. Technogym is not required to ensure that any updates or subsequent versions of the mywellness cloud API are compatible or employable inYour Applications.

5.2   You may use the mywellness cloud API to retrieve User Data or subscribe to User Data feeds, provided however that You may not solicit or retrieve user passwords. You may so retrieve data provided that (i) retrieval was accompanied by express user consent in accord with the notice requirements of the mywellness cloud Privacy Policy, (ii) provided that You make no use of retrieved data beyond the scope of such express consent, and (iii) You have in place, prior to data retrieval, a Privacy Policy commensurate with the mywellness cloud Privacy Policy, including its requirements for user notice and limits on use of User Data.

5.3   You may not use web scraping, web harvesting, or web data extraction methods to extract data from the mywellness cloud platform or other Technogym web assets.

5.4   You neither obtain nor retain any rights in retrieved data, beyond the rights provided herein. All data remains the property of the user from whom it derived and/or of Technogym, as relevant.

5.5   You may not solicit or obtain data beyond the data necessary for the functioning of Your Application or delivery of Your service.

5.6   You may not sell or otherwise distribute for compensation, either directly or indirectly, retrieved data or data generated therefrom, or encourage others to so sell or distribute, except to the user from whom data was collected in accord with Your notice to the user as to this use, and the user's express consent.

5.7   You must delete data promptly upon request by a user from whom it was retrieved and will provide an easily accessible mechanism for users to make such a request.

5.8   If You are acquired by or merge with a third party, You may continue to use User Data or data generated therefrom within Your Application only if You obtain express consent from users from whom User Data was retrieved.

6.   Service and Price Schedule

6.1   This API is currently provided free of charge. Technogym reserves the right to charge fees for future use of, or access to the Services in its sole discretion. If Technogym elects to charge fees for the Services, such charges will be disclosed to Yousixty (60) days in advance prior to their initial imposition and You will be afforded the opportunity to terminate this Agreement without any further liability to Technogym.

6.2   Technogym currently charges fees for certain services in connection with mywellness cloud professional applications (such asPRESCRIBE, SELF, COACH, PROFILE, CHALLENGE, etc). You cannot employ the mywellness cloud API to provide similar servicesfree of charge to third parties including Technogym customers and mywellness Users.

7.   Confidentiality

7.1   Youacknowledge and accept that the Information, including any other data or information not in the public domain transferred by Technogym to You, shall be considered strictly confidential and the property and/or under the control of Technogym. Therefore, You undertake: (1) to treat and consider the Information in strict confidence and as its own proprietary information; (2) restrict the number of its employees and/or consultants and/or suppliers, that will have access to the Information and/or the any other information acquired from Technogym to those employees and consultants directly concerned with the use of the mywellness cloud API and shall procure that such key employees and consultants and/or suppliers to whom the disclosure is to be made are firstly made aware of the confidential nature of the disclosure and adhere to the terms and restrictions of this Agreement; (3) to ensure proper and secure storage for all written or pictorial or electronic or magnetic Information and/or any other Technogym information in its possession; (4) to prevent its personnel, collaborators or consultants from copying or distributing the Information and/or any other information acquired from Technogym, without prior written consent from Technogym; (5) to take all necessary precautions to prevent the Information and/or any other Technogym information from being disclosed to entities other than the Parties to this Agreement; and (6) to use the Information and/or any other information acquired from Technogym exclusively for the scope of this Agreement, as defined in Article 4 hereinabove.

7.2   You acknowledge and accept that the Information disclosed by Technogym hereunder may include, without limits, the industrial and commercial secrets, know-how and industrial and intellectual property rights of Technogym, irrespective of whether they are covered by, or have been granted any officially recognised form of legal protection, such as patents, copyrights, registered trademarks, etc. Furthermore, such data may include information about software, hardware, exercise machines and equipment, technology, design, specifications, technical drawings and prototypes produced or used by Technogym; the contents of current and potential Technogym commercial reports and customer lists; financial, marketing and promotional information; business methods, operating procedures, business plans and other information created by Technogym, which You undertake to keep in strictest confidence

7.3   The obligation of confidentiality does not apply to any information that: (1) was already known to You before it was communicated by Technogym, provided that this can be substantiated by written evidence; (2) communicated to You by a third party source who is not bound by any secrecy or confidentiality obligations or duties with respect to the information in question (written proof is

required); (3) becomes public domain without You having violated the secrecy terms contained in this clause.

7.4   You acknowledge and accept that any violation of its secrecy and confidentiality obligations with respect to the Information and any other information disclosed by Technogym to it may result in irreparable damages to Technogym. Therefore, Technogym shall be entitled to injunctive and other equitable relief, including, but not limited to, specific performance, in order to prevent the violation of the terms of this Agreement, and that Technogym may request and obtain refund from You for all legal expenses, costs and associated expenditure resulting from the implementation of such measures. This shall be considered as additional to, and not in lieu of, any and all the legal rights, faculties and remedies to which Technogym shall have recourse in the event of You violating the terms of this Agreement.

7.5   You may not exploit any of the Information in any way, either directly, indirectly or through third parties without prior written consent from Technogym, which shall consist of a suitable, detailed license or other form of written agreement. The Information may be used only in accordance with the terms of this Agreement.

7.6   This Agreement does not confer on You any rights in, or license to acquire, future inventions, commercial or industrial secrets, trademarks, copyrights or patents deriving from the Information or any other information provided by Technogym.

7.7   You must take all necessary measures to ensure that Information and/or any other information provided by Technogym does not become available to unauthorised third parties.

7.8   Immediately upon termination of this Agreement, You shall, at its own expense, return all materials and support media associated with the Information or any other information to Technogym, at its own expense. Alternatively, Technogym may request Applicant to destroy said materials and support media, and provide Technogym with a written declaration of having done so.

8. Industrial and/or Intellectual Property Rights

8.1   All copyright and industrial property rights in the mywellness cloud API, in the Information and in the software is of Technogym or of their legitimate licensors. All property and usage rights in the above belong to Technogym or its licensors. With the exception of the purposes stipulated in Article4, none of the material, or data, structures, text, artworks, codes, etc. they contain may be copied, reproduced or used, either wholly or partially, without prior written consent from Technogym.

8.2   Nothing in this Agreement may be interpreted in such a way that it hinders or prevents Technogym from taking advantage of all its legal rights and protections, or from prosecuting any violation, misuse, and misappropriation of the rights in the mywellness cloud API and/or in the software, Information and/or in any of its products, materials, processes, data or any other items, even if intangible.

8.3   You hereby declare that it will use the mywellness cloud API, the softwaretools, the Information or any other document or material received from Technogym solely and exclusively for the purpose of enabling your Application to interface, communicate and integrate with the mywellness cloud platform. You may not delete, expand, or modify in any way the mywellness cloud API, the software tools and/or any of the Information received, even partially. You may not decompile, dismantle or in any way reverse engineer the mywellness cloud API or any other software or hardware specified by Technogym and/or its suppliers without prior written consent from Technogym and within the limits permitted by the law. Any rights not expressly licensed by this

Agreement are reserved, and no other license, consent, immunity or right, whether expressed or implicit, shall be guaranteed by the Agreement, even implicitly or by interpretation.

9. Trademarks and Trade Names, Attribution

9.1   No license is granted with respect to any rights to patents, copyrights, trade secrets, trademarks, or any other rights in respect to mywellness cloud API. There are no implied licenses under this License, and any rights not expressly granted to You are reserved by Technogym.

9.2   Technogym grants You a non-exclusive, revocable license to use the mywellness cloud's trademarks in accordance with the guidelines provided at http://mywellnesscloud.github.io/api/media.html. No rights of ownership are granted or implied by this license.

9.3   The license granted herein implies no partnership or affiliation with Technogym, and Your Application content must not express or imply an affiliation or relationship with Technogym unless otherwise provided for in a separate written and duly executed agreement.

9.4   Your use of the mywellness cloud API grants Technogym a license to promote Your application, and grants us non-exclusive, revocable license to use Your trademarks and copyrights in furtherance of such promotion.

9.5   Your user agreements, including privacy policy and terms of use, must include the following: "mywellness cloud is a registered trademark of Technogym. This Application is intended for use with the mywellness cloud platform. This Application is not offered by Technogym and Technogym does not service or warrant this Application."

9.6   You may not use the Technogym or mywellness cloud name or related trademarks in any of Your Application names or URLs.

10. Press Releases

10.1   You may not promote or publicize Your integration with the mywellness cloud API until authorized to do so by Technogym in writing.

11. Declarations and Warranties. Limitation of Liability

11.1   Technogym hereby informs You that, to the best of its knowledge, the mywellness cloud API, software Tools and/or the Information is not the subject of any disputes or lawsuits.

11.2   Technogym neither assures nor confirms that it will be possible to integrate the mywellness cloud platform with your Applicationand does not provide any warranties or representation that You shall achieve the purpose for which it requested knowledge and use of the mywellness cloud API and/or the Information. Technogym shall not issue any additional declarations or guarantees regarding the mywellness cloud API and/or the Information, and neither declares nor guarantees that any modifications and/or integrations executed on the basis of the mywellness cloud API and/or the Information will function correctly, or that they will not violate patents and/or copyrights held by third parties.

11.3   In particular, Technogym does not guarantee that, following modifications or additions to, and/or any interventions onYour Application, in conformity with the purpose stipulated in Article 4, the Application will continue to function correctly, nor that it will be free from defects or errors, nor that it will be possible to correct any such defects.

11.4   Technogym shall not be liable for any error or misinterpretation in using the mywellness cloud API and/or the Information nor in adapting, incorporating and applying the knowledge embodied in such API and/or Information in Your Application.

11.5   Technogym may not be held responsible for any damages, whether direct or indirect, resulting from the use, or inability to use the mywellness cloud API and/or the Information for the purpose authorised in Article 4.

12. Assignment

12.1   You may not assign this Agreement, whether in whole or in part, without prior written consent from Technogym and any unauthorised acts of assignment or subletting shall be null and void.

12.2   Any unauthorised transfer shall confer on Technogym the right to terminate this Agreement, ipso jure, without prior notice.

13. Update

13.1   Technogym may update or modify the mywellness cloud API, mywellness cloud API Terms of Use, and other terms and conditions, from time to time at its sole discretion by posting the changes on this site or by otherwise notifying You (such notice may be via email). You acknowledge that these updates and modifications may adversely affect how Your Application accesses or communicates with the mywellness cloud API. If any change is unacceptable to You, Your only recourse is to terminate this agreement by ceasing all use of the mywellness cloud API and mywellness cloud User Data. Your continued access or use of the mywellness cloud API or any mywellness cloud User Data will constitute binding acceptance of the change.

14. Duration

14.1   This Agreement is effective from date of acceptance for an undetermined period of time and may be terminated according to the provisions hereinafter.

15. Suspension, Limitation and Termination

15.1   Your rights to use mywellness cloud API shall automatically terminate upon Your violation of any provision of this Terms of Use.

15.2   Technogym may suspend, limitor terminate Your access to the API and Your right to use it at any time, for any reason, or for no reason at all. Technogym may provide notice of termination by any means including, without limitation, posting on the mywellness cloud website, by electronic mail, or by any other communication.

15.3   You may also terminate this Agreement by ceasing to use mywellness cloud API.

15.4   Following termination for any reason by either party, You are required to delete all data You receive or have received through the mywellness cloud API.

15.6.   All the obligations defined in this Agreement that, by their nature, extend beyond the duration of this Agreement, shall remain in effect until the expiry dates of the corresponding clauses, such as, for example, Article 7, Article 11 and Article 16.

16. ApplicableLaw and Settlement of Disputes

16.1   This Agreement shall be governed by laws of Italy with the exception of that body of laws governing the international conflict of laws.

16.2   In the event of a dispute, the Parties shall endeavour in good faith to resolve the disagreement by a meeting to be held within ten (10) working days of a request made by either party. In the event no agreement is reached within sixty (60) days after the first meeting of the Parties, the following provision shall apply.

16.3   Any disputes arising between the Parties as a consequence to and in connection with this Agreement shall be settled definitively by recourse to the UNCITRAL arbitration rules in force at the date the dispute arises. The arbitration shall be held in Milan, Italy and the language of the arbitration shall be English. Each of the Parties waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such court's jurisdiction, regardless of such Party's residence or domicile, for any such action or proceeding.

11.4.   Irrespective to the foregoing, Technogym reserves the right to enforce its rights in any court of competent jurisdiction, including the court where You have your registered office or any assets.

17. Miscellaneous

17.1   All the communication and documentation to be exchanged between the Parties pursuant to the provisions of this Agreement shall be delivered in English.