

Behavidence SDK - Terms of Use

These Terms of SDK (the “**Terms**”) are an agreement between you and Behavidence Inc. (“**Behavidence**” or “**we**”, “**us**”, “**our**”) which apply to and govern the use of Behavidence’s Software Development Kit (the “**SDK**”).

Please read these Terms carefully as you will be deemed to have agreed to these Terms by accessing or using the SDK. If you do not agree to these Terms, you may not access or use the SDK.

1. About the SDK

Behavidence develops and operates an application that tracks users’ digital behavior to assess the similarity of their behavior to those diagnosed with depression, anxiety or ADHD/ADD, and produces each user’s “Mental Health Similarity Score” (MHSS) (the “**Service**”).

The SDK Behavidence makes available to you enables you to integrate the Service with your own application, platform, or services (“**Software**”), and access and use the data generated by the Service (the “**Data**”).

2. Using the SDK and the Data

- 2.1. Subject to these Terms and the SDK’s technical restrictions and limitations, Behavidence hereby grants you a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable license during the Term of these Terms to: (a) design, develop, and test the use of, the SDK as an integrated part of your Software; (b) use and call the SDK as part of your Software which you distribute internally and externally to your Software’s users; (c) use, reproduce, distribute, and transmit the Data for your own lawful commercial, business, or research purposes; and (d) use and display the Behavidence marks in conformity with Behavidence’s trademark usage guidelines, for the sole purpose of identifying that the Data originates from the Service. Any such use of the Behavidence marks shall inure to the benefit of and belong to Behavidence.
- 2.2. You hereby grant Behavidence a royalty-free, fully paid-up, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to implement, use, modify, and incorporate into the Service any suggestions, enhancement requests, recommendations, or other feedback Behavidence receives from you.
- 2.3. You are solely responsible for all costs, expenses, losses, and liabilities incurred and for all activities that you take, in connection with the design, development, testing, distribution, support and maintenance of the Software.
- 2.4. You may only use the Data in compliance with applicable laws, including, without limitation, data protection laws. You are solely responsible for any action you take and

for any decision you make as a consequence of, in reliance on, or in connection with, the Data.

3. Restrictions

- 3.1. You may only use the SDK for your lawful commercial, business, or research purposes. You must strictly follow and adhere to any SDK guidelines and instructions we convey to you with respect to the SDK.
- 3.2. Except as may be permitted by applicable law, you may not modify, make derivative works of, disassemble, de-compile or reverse engineer any part of the SDK, or otherwise attempt to uncover its underlying code, structure, implementation, or algorithms.
- 3.3. You may not use the SDK in order to develop or create, or permit others to develop or create, a product, application or service similar or competitive to the SDK or the Service.
- 3.4. You may not perform or attempt to perform any of the following in connection with the SDK: (i) breach the security of the SDK, identify, probe or scan any security vulnerabilities in the SDK, or access Data you are not intended to access; (ii) interfere with, circumvent, manipulate, overload, impair or disrupt the operation or the functionality of the SDK; (iii) work around or circumvent any technical limitations in the SDK; (iv) use any tool to enable features or functionalities that are otherwise disabled, inaccessible or undocumented in the SDK; (vii) use the SDK in a scope or manner that may adversely impact the availability, stability or responsiveness of the SDK or the Service; (viii) forge any TCP/IP packet header or any part of the header information; (ix) send any virus, worm, Trojan horse or other malicious or harmful code or attachment; or (x) transmit, or attempt to transmit, spam messages or communications.
- 3.5. You may not use robots, crawlers, and similar applications to scrape, harvest, collect or compile in bulk Data from or through the SDK. The foregoing shall not apply to acts of collecting or compiling Data through the SDK, commensurate with the operation of the Software when used by legitimate human users.
- 3.6. You may not use the SDK or the Data: (a) for any activity that constitutes a criminal offense, gives rise to civil liability, or otherwise violate any applicable law, including laws related to privacy and data protection, unauthorized computer access, consumer and child protection, obscenity or defamation; or (b) in any manner that is harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous or similarly offensive.
- 3.7. We may employ measures that help to detect and prevent fraudulent or abusive use of the SDK, as well as misuse of the SDK. We may suspend or terminate your access to or

use of the SDK, upon notice, if we, in our reasonable discretion, believe that you have engaged in fraudulent or abusive use, or misuse, of the SDK.

- 3.8. Except as set forth in Section 2.1 above, you may not use any name, trademark, logo, or domain name that is similar to Behavidence's trademarks (whether registered or not), logos and Internet domain names. You must refrain from any action or omission that might dilute or damage Behavidence's goodwill.

4. SDK Subscription Fee

- 4.1. Use of the SDK is subject to payment of a fee based on the terms of the subscription plan you selected when you signed up through the Behavidence website, or any other superseding terms expressly agreed in writing between you and Behavidence. Payment is charged by credit card or through any other method we support, as specified in the registration process.
- 4.2. Behavidence reserves the right to change, from time to time, the subscription fees, and the available subscription plans, by notifying you of such changes by email at least 14 days in advance. Any such changes will only take effect in the next subscription cycle, and if Behavidence's notice of the change is provided less than 14 days before the end of the then-current subscription cycle, the changes will only take effect in the subscription cycle that follows the next one. This mechanism for changing the subscription fees, and the available subscription plans, ensures that you have a meaningful opportunity to terminate your subscription before the changes take effect. Your continued use of the Service on or after the changes take effect constitute your consent to the changes.
- 4.3. Fees are exclusive of taxes that apply to the transaction. By accessing and using the SDK, you authorize Behavidence to charge you for the taxes applicable to the transaction, in accordance with applicable tax laws.
- 4.4. Your payments are processed by external service providers, and not by Behavidence. Therefore, payments may be subject to additional commissions charged by those external service providers, in accordance with these external service providers' terms and conditions. You will bear sole liability for paying such commissions.
- 4.5. If your payment fails for any reason, we will contact you to complete or cancel the transaction. If your payment fails once again, we will suspend your access to the SDK until you successfully complete the payment; and if you do not complete the payment within fourteen (14) days – we will permanently block your access.
- 4.6. You may cancel your subscription by terminating these Terms as described below.

5. Term and Termination

- 5.1. These Terms are effective and binding upon your first access to the SDK and shall continue in full force and effect until terminated pursuant to this section 5 (the "**Term**").

- 5.2. We may terminate these Terms and your rights hereunder, by written notice to you, in the event that: (i) you have breached the provisions of these Terms, and have not cured said breach within thirty (30) days of receiving Behavidence's notice thereof; or (ii) Behavidence is required to do so by law. Termination will become effective immediately upon notice to you.
- 5.3. You may terminate these Terms at any time by providing a written notice to us by email. Termination will become effective at the end of current subscription cycle. However, if you cancel your subscription within the last three business days of the current subscription cycle, your cancellation will only take effect in the subscription cycle after the one that immediately follows your cancellation request.
- 5.4. Cancellation does not entitle you to any refund of fees you paid for the then-current subscription cycle in relation to the remaining period of the subscription cycle that follows your termination.
- 5.5. Upon termination of these Terms, you must cease use of the SDK, and delete it and any related documentation from your application, platform or service, as well as from your company computers and systems. We may request you to confirm in writing that you have complied with these requirements, or terminate your access to the SDK by ourselves.
- 5.6. The following provisions survive termination of these Terms: Sections 2.4, 6, 7, 8, 11, 12 and 13.

6. Intellectual Property

Except for the limited use of the SDK permitted pursuant to section 2 above, these Terms do not grant you or assign to you, any license, right, title, or interest in or to the Service, the SDK, or the intellectual property rights therein. All rights, title and interest, including copyrights, patents, trademarks, trade names, trade secrets and other intellectual property rights, and any goodwill associated therewith, in and to the Service or any part thereof, including computer code, are and will remain at all times, owned by or licensed to Behavidence.

7. Confidential Information

You acknowledge that the information about the operation of the SDK and the Service are Behavidence's confidential information, and that the SDK's features, performance, limitations, and other characteristics comprise confidential and proprietary information as well as trade secrets of Behavidence. You hereby acknowledge that any unauthorized disclosure, use, or copying of the foregoing with respect to the SDK or these Terms may cause Behavidence inestimable serious financial loss. Accordingly, you shall treat the SDK and these

Terms as confidential and not divulge them to anyone outside your employees. The obligations set forth in this Section shall survive termination of these Terms.

8. Privacy and Data Protection

- 8.1. Behavidence collects and processes the data received through your use of the SDK in order to provide your Software users' MHSS based on their digital behavior, as more fully described in Behavidence's Privacy Policy [<https://www.behavidence.com/privacy-mobile>] ("Privacy Policy").
- 8.2. You must communicate an appropriate privacy notice to the users of the Software, as required under applicable data protection and privacy laws, and where necessary under such laws, seek and obtain appropriate user consent to such processing. Your privacy notice must also conspicuously reference Behavidence's Privacy Policy which describes Behavidence's privacy and data protection practices.
- 8.3. You and Behavidence are each independently responsible for their compliance with data protection and privacy laws applicable to their respective processing activities. Where the GDPR applies to such processing, the Joint Controller Addendum annexed to these Terms of Use applies as between you and Behavidence.

9. Quality; Modifications; Support

- 9.1. We make effort to ensure that the SDK operates properly at all times. However, as the SDK relies on software and third party networks, infrastructure, hardware, and devices, we cannot guarantee that the SDK will always operate in an uninterrupted or error-free manner, or that it will always be available, free from faults, omissions or malfunctions. If we receive notice of any failure or malfunction in the SDK, or if we become aware of them by ourselves, we will make an effort to regain the SDK's availability as soon as practicable. Such incidents will not be considered a breach of these Terms.
- 9.2. We may, at any time and in our sole discretion, discontinue or terminate the operation of the SDK, or any part thereof, temporarily, or permanently, for all users or for certain users, without any liability to you. We may also suspend the provision of the SDK, in whole, or in part, for all users, or for certain users, for periodic maintenance or similar purposes.
- 9.3. We may, but are not obligated to, provide updates, modifications, adaptations, improvements, or enhancements to the SDK, or any of its features, user interfaces, designs or any other aspect related thereto, without notice to you. Such updates, modifications, adaptations, improvements, or enhancements to the SDK might cause errors, glitches, or malfunctions in the SDK's interoperability with interfacing components. You will have no plea, claim or demand against us, and we will have no liability to you, for any such interoperability errors or malfunctions.

- 9.4. During the Term, Behavidence, either directly or with the assistance of third parties, will endeavor to respond to your technical questions, problems, and inquiries, during our business days and hours, within a reasonable time, and you agree to cooperate with Behavidence to reproduce malfunctions as requested. However, Behavidence makes no warranties to any specific response-time or to the successful or satisfactory resolution of the question, problem, or inquiry. Behavidence may decline to provide support for matters that Behavidence deems, in its sole discretion, to require unreasonable time, effort, costs or expenses.

10. Disclaimer of Warranty

USE OF THE SDK IS AT YOUR OWN RISK. THE SERVICE IS NOT AND SHOULD NOT BE REGARDED AS A SUBSTITUTE FOR PSYCHOLOGICAL, PSYCHIATRIC, MEDICAL OR OTHER PROFESSIONAL ADVICE, GUIDANCE, COUNSELING OR TREATMENT.

THE SDK IS PROVIDED TO YOU "AS IS" AND "WITH ALL FAULTS". WE DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SDK, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, COMPATIBILITY AND PERFORMANCE.

11. Limitation of Liability and Indemnity

- 11.1. YOU ARE SOLELY RESPONSIBLE FOR ALL COSTS, EXPENSES, LOSSES, AND LIABILITIES INCURRED TO YOU AND FOR ALL ACTIVITIES YOU UNDERTAKE IN CONNECTION WITH THE SDK AND THE MHSS ASSIGNED TO USERS. YOU ASSUME SOLE AND EXCLUSIVE LIABILITY FOR ANY ACTIONS YOU CARRY OUT, AT YOUR OWN DISCRETION, BASED THE MHSS ASSIGNED TO USERS. IN NO EVENT, SHALL BEHAVIDENCE AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ADVISORS, CONSULTANTS, SUBCONTRACTORS AND ASSIGNEES (COLLECTIVELY, THE "STAFF") BE LIABLE, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, STATUTE OR OTHERWISE, FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS OR FOR ANY LOSS OF USE OR DOWNTIME, LOSS OF PROFITS, SAVINGS OR REVENUES, LOSS OF GOODWILL, LOSS OF BUSINESS, LOSS OR CORRUPTION OF DATA, OR ANY DAMAGE RELATING YOUR USE OF, OR RELIANCE ON, THE SDK OR THE MHSS ASSIGNED TO USERS.
- 11.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AND AGGREGATE LIABILITY OF BEHAVIDENCE AND OUR STAFF FOR ANY AND ALL DAMAGES INCURRED BY YOU, ARISING OUT OF, OR RELATED TO, THESE TERMS, THE SERVICE, TGE DATA, OR THE SDK, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, STATUTE OR OTHERWISE, SHALL BE LIMITED TO THE SUBSCRIPTION FEES YOU PAID TO BEHAVIDENCE FOR YOUR USE OF THE SDK (IF ANY) IN THE TWELVE MONTHS PRECEDING THE EVENT PURPORTEDLY GIVING RISE TO THE DAMAGES.

- 11.3. You agree to defend, indemnify and hold harmless Behavidence and our staff, at your own expense, from, and against, any damages, loss, costs, expenses and payments, including reasonable attorney's fees and legal expenses, arising from your breach of Sections 2, 3, 7, or 8.

If we seek indemnification from you, we will provide you with (i) prompt written notice of any indemnifiable claim; (ii) all reasonable assistance and cooperation in the defense of such indemnifiable claim and any related settlement negotiations, at your expense; and (iii) exclusive control over the defense or settlement of such indemnifiable claim, provided, however, that we may settle or reach compromise on any such claim without your consent, if and to the extent such settlement or compromise does not impose any liability (monetary, criminal or otherwise) on you. We will have the right to participate, our own expense, in the defense (and related settlement negotiations) of any indemnifiable claim with counsel of our own selection.

12. Governing Law and Venue

- 12.1. Regardless of your jurisdiction of residence or incorporation, or where you access or use the SDK from, these Terms and your use of the SDK will be exclusively governed by and construed under the laws of the State of New York, excluding any otherwise applicable rules of conflict of laws.
- 12.2. Any and all disputes, claims or controversies between you and Behavidence regarding these Terms, the Service, or the use of the SDK, which are not amicably resolved within thirty (30) days, shall be settled through binding arbitration (rather than in court) by telephone, online or based solely upon written submissions without in-person appearance, administered by the American Arbitration Association (AAA), under its Commercial Arbitration Rules, which are deemed to be incorporated by reference into this section. The venue of arbitration shall be New York City, New York. The number of arbitrators shall be one. The substantive law for arbitration shall be the laws of the State of New York, and the Federal Arbitration Act shall apply. Judgment on the arbitral decision may be entered into in any court having general or specific jurisdiction.

Notwithstanding anything to the contrary, a party may lodge a claim against the other party: (a) pursuant to the indemnity clause above, in any court adjudicating a third party claim against the other party; and (b) for interim, emergency, or injunctive relief, in any other court having general jurisdiction over the other party.

13. Miscellaneous

- 13.1. Assignment. You may not assign these Terms without Behavidence's prior written consent. Any purported assignment without our prior written consent is void. To the greatest extent permissible by law, Behavidence may assign these Terms in their entirety,

including all rights, duties, liabilities, performances and obligations herein, upon notice to you and without obtaining your further specific consent, to a third-party. By virtue of such assignment, the assignee will assume our stead, including all right, duties, liabilities, performances and obligations hereunder, and we will be released therefrom.

- 13.2. Relationship of the parties. The relationship between the parties hereto is strictly that of independent contractors, and neither party is an agent, partner, joint venturer or employee of the other.
- 13.3. Complete Terms and Severability. These Terms (together with any additional written agreement regarding your subscription plan, if any) constitute the entire and complete agreement between you and us concerning the SDK and supersede all prior oral or written statements, understandings, negotiations and representations with respect to the SDK. If any provision of these Terms is held invalid or unenforceable, that provision shall be construed in a manner consistent with the applicable law to reflect, as nearly as possible, the original intentions of the parties and the remaining provisions will remain in full force and effect. Behavidence may amend these Terms immediately by putting you on notice of such amendments, if new legislation, statutory instrument or other governmental regulation or the terms under which Behavidence provides the SDK make such amendments necessary. Otherwise, Behavidence may amend these Terms through advance notice to you, and your continued use of the SDK following the effective date of the change signifies your assent to the revised Terms.
- 13.4. No waiver. Neither party will, by mere lapse of time, without giving express notice thereof, be deemed to have waived any breach, by the other party, of any terms or provisions herein. The waiver, by either party, of any such breach, will not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.

Joint Controller Addendum

WHEREAS, in order to account for the implications of the provision of the SDK on the parties' interrelated activities on processing personal data pursuant to applicable data protection and privacy law, you (the "Customer") and Behavidence introduce the following understandings and arrangements which determine the rights and obligations of the parties for the joint processing of personal data, in accordance with Art. 26 of the GDPR;

THEREFORE, the parties have agreed as follows:

1. **Definitions.** Capitalized terms not defined in this Addendum shall have the meaning ascribed to them in the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).
2. **Scope.** This Addendum applies to the parties' jointly-coordinated collection and initial Processing of Personal Data in the context of the Service. With respect to other areas of Processing the same or other Personal Data (such as those performed outside the scope of the Service or those subsequently performed by a party for its own independent purposes), where the parties do not jointly determine the purposes and means of data processing, each party is an independent controller pursuant to Article 4(7) of the GDPR.
3. **Nature of Controllorship**
 - 3.1. In context of joint controllership, the Customer influences the Processing of Personal Data due to its generation of user-traffic which are the Data Subjects from which Personal Data is collected and Processed through the SDK.
 - 3.2. In context of joint controllership, Behavidence influences the Processing in its determination of which Personal Data is collected from Data Subjects and subsequently Processed through the Service and the method of that collection and Processing which is based on the SDK and the Service.
 - 3.3. The legal basis under EU/EEA law for processing the Data Subject's app usage data for the purpose of assessing their MHSS, is the necessity of processing for the performance of the contract between the Customer and the Data Subject, under which the Customer provides the Data Subject the service of assessing their MHSS.
4. **Compliance.** Each party shall ensure compliance with the legal provisions of the GDPR, particularly in regard to the lawfulness of Processing under Joint-Controllorship. Both parties shall ensure that only Personal Data which are necessary for the legitimate conduct of the Processing is collected and agree to observe the principle of data minimization within the meaning of Article 5(1)(c) of the GDPR.
5. **Notice to Data Subjects.** The parties acknowledge their obligation to provide the Data Subject with any information referred to in Articles 13 and 14 of the GDPR in a concise, transparent, intelligible, and easily accessible form, using clear and plain language. The Customer shall provide the information concerning the Joint-Controller Processing described in this

Addendum, to the Data subject, free of charge. That information shall include the essential content of this joint controllership Addendum. In addition, the Customer shall provide each Data Subject information about Behavidence's subsequent Processing of that Personal Data for Behavidence's own purposes, as described in Behavidence's privacy policy.

6. **Data Subject Requests.** The parties shall take all necessary technical and organizational measures to ensure that the rights of Data Subjects, in particular those pursuant to Articles 12 to 22 GDPR, are guaranteed at all times within the statutory time limits. To this end:
 - 6.1. Behavidence shall store personal data in a structured, commonly used, and machine-readable format.
 - 6.2. Because the GDPR provides that the data subject may exercise their rights under Articles 15 to 22 GDPR against each of the parties, if one party receives a Data Subject request concerning the Joint-Controller Processing described in this Addendum, it shall communicate that request to the other party as soon as possible.
 - 6.3. Unless otherwise agreed by the parties in a particular case, Behavidence shall perform the Data Subject's request while the Customer is responsible for communicating with the Data Subject regarding their request, insofar as it concerns the Joint-Controller Processing described in this Addendum. The Customer shall also verify the Data Subject's identity before substantively addressing their request.
 - 6.4. If Personal Data are to be deleted at the request of a Data Subject, the parties shall inform each other in advance. A party may object to the deletion for a legitimate interest, for example, if there is a legal obligation to retain the data set for deletion.
 - 6.5. The parties shall cooperate and provide each other with the necessary information regarding their respective Processing activities to allow for the proper handling of Data Subject requests.
7. **Errors and Omissions.** The parties shall inform each other immediately if they become aware of any material errors or suspected issues regarding their data protection obligations concerning the Joint-Controller Processing described in this Addendum.
8. **Personal Data Breach.** Both parties are obliged to inform their applicable Supervisory Authority and the Data Subjects affected by a Personal Data Breach in accordance with Articles 33 and 34 of the GDPR concerning the Joint-Controller Processing described in this Addendum. The parties shall inform each other about any such notification to the Supervisory Authority without undue delay, and to the extent practicable, in advance thereof. The parties also agree to forward the information required for the notification to one another without undue delay.
9. **Data Protection Impact Assessment.** If a data protection impact assessment pursuant to Article 35 of the GDPR is required, the parties shall provide reasonable support to each other.

10. Documents.

10.1. Documentations within the meaning of Article 5(2) of the GDPR, which serve as proof of proper Personal Data Processing, shall be archived by each party beyond the end of the contract in accordance with legal provisions and obligations.

10.2. Each party shall include the Joint-Controller Processing described in this Addendum in the records of processing activities pursuant to Article 30(1) of the GDPR, in particular, with a comment on the nature of the Processing operation as one of joint responsibility.

11. **Confidentiality.** The parties shall ensure that all employees authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality in accordance with Articles 28(3), 29, and 32 of the GDPR for the duration of their employment, as well as after termination of their employment. The parties shall also ensure that they observe the confidentiality provisions prior to taking up their duties and are familiarized with the data protection legislation and rules relevant to them.

12. **Data Security.** The parties shall independently ensure that they are able to comply with all existing storage obligations with regard to the Personal Data for each of their storage activities. For this purpose, they must each implement appropriate technical and organizational measures (Article 32 et seq. of the GDPR).

13. **Data Protection By Design and By Default.** The implementation, default-setting, and operation of the systems shall be carried out in compliance with the requirements of the GDPR and other regulations. In particular, compliance with the principles of data protection by design and data protection by default will be achieved through the implementation of appropriate technological and organizational measures corresponding to the state of the art.

14. Processors.

14.1. Each party undertakes to conclude a contract pursuant to Article 28 of the GDPR with regard to its use of Processors in the Processing of the Personal Data for which the party administers.

14.2. The parties shall inform each other in a timely manner of any intended change with regard to the involvement or replacement of subcontracted Processors. The parties shall only commission Processors who meet the requirements of the GDPR and the provisions of this Addendum.