

Service Level Agreement ekey bionyx

Version: 07/04/2024

Item of agreement

This contract is formed by ekey biometric systems GmbH, based in Linz, Austria, FN 229357s (hereafter "ekey"), and the respective operator or user of physical (biometric) access control systems (hereafter "operator").

The item of this agreement is the usage of the software service "ekey bionyx" (hereafter "bionyx"). ekey provides bionyx to the respective operator so that they may administer their access points and respective authorizations on the basis of the conditions of this contract.

Consent to the agreement

This contract is bindingly accepted by the operator, and thus comes into effect, when a new operator logs into the bionyx app by clicking on the button "Consent to contract terms". The operator thereby declares their consent to the terms of this agreement, in particular the terms of use and service. If the operator does not click on the button "Consent to contract terms", bionyx cannot be used. The operator receives no access to the account or services.

Contract beginning and duration, cancellation

The agreement for the provision of bionyx begins when the operator creates an account in the bionyx app and upon acceptance of this agreement, and is effective indefinitely.

ekey is authorized to cancel the agreement at any time, with a notice of at least 1 month; ekey may decide whether to announce this cancellation via email or postal mail to the operator, or by displaying a notification of cancellation in the bionyx app. In the latter instance, this announcement is considered to have been made once it would be visible in the bionyx app when the operator opens it. After the cancellation period has expired, the operator's bionyx account and all data stored therein and access authorizations are automatically deleted; **all entered data are thus automatically and irrevocably lost. The operator is thus generally responsible for transferring the saved data and authorizations before the cancellation period has ended, namely to a suitable access control system approved by ekey.**

The operator is always authorized to immediately cancel the agreement without abiding by a cancellation period, but this also prevents the operator from using bionyx and accessing the data stored therein. The deletion of the operator's bionyx account is considered immediate cancellation of the agreement.

If an account is not accessed for more than 5 years (the operator does not log in), and if no connections to devices have been made, this is also considered cancellation at the end of this 5-year period, whereupon the account will automatically be deleted. **All entered data are thus automatically and irrevocably lost.**

An immediate cancellation of the agreement without notice is also possible in case of compelling cause.

Rights of the operator

For the duration of this agreement, the operator receives the non-exclusive, non-transferable and temporary right to use the functions of bionyx while they are available and to the extent facilitated by ekey.

Blocking operators

ekey is authorized to temporarily or permanently block the user's access to the cloud services if there are concrete indications that the user is violating or has violated the terms of use in this agreement and/or acted against the law. When deciding whether to block a user, ekey will consider the user's interests to a reasonable extent.

Compensation, price adjustment

When using the bionyx app, the operator is obligated to pay the usage fee accepted during registration.

The usage fee is index-adjusted. The standard for the index adjustment is the 2020 Consumer Price Index = 100, or a similar index.

The starting basis for this index adjustment calculation is the index disclosed in December of the first full contract year. The usage fee increases and decreases to the extent that the Consumer Price Index has changed compared to the starting basis or the index number underlying the last fee adjustment. The changes to the usage fee caused by index fluctuations are computed in yearly increments on the basis of the disclosed index number for December of the respective year, and the new usage fee is disclosed to the user.

Other applicable terms and declarations

The following additional contracts and declarations, which are available on the ekey homepage, apply in addition to this agreement.

- Data privacy statement
- Privacy policy
- Terms of Business

The scope of service of bionyx for purposes of this agreement is offered at the maturity level of the latest release. ekey reserves the right to alter or discontinue the services at any time. ekey is not liable for any resulting expenses, costs, subsequent costs or damages, provided ekey is not responsible for such damages due to malice or gross negligence. There is no liability for damages caused by ekey or its proxies due to minor negligence.

As part of these services, it cannot be guaranteed that data entered by the customer will be retained. The operator must accept the possibility of loss of data. ekey is thus not liable for expenses, costs, subsequent costs or damages caused by data loss, provided ekey or its proxies are not responsible for these damages due to malice or gross negligence.

Point of transfer of service

ekey provides bionyx in a Microsoft server center in the EU so that the operator can use and access the services. The point of transfer of service for the bionyx services is the net access point of the server center contracted by ekey (router in the server center). ekey is not responsible for outages or unavailability of hardware or software components, Internet or other networks outside of the server center and beyond this point of transfer of service. The operator is solely responsible for ensuring the connection between the operator's devices and Internet, the maintenance of the network connection, and the acquisition and provision of the hardware and software by the operator for connecting to the Internet. This also applies to the connection between the operator's devices (app) and the Internet.

Purpose of use

The functions and services of bionyx must solely be used by operators and other users for the purpose specified by ekey. The following, non-exhaustive uses of bionyx are prohibited, or require special approval from ekey:

- Personal safety (used to protect life and body)
- Medical installations and systems
- Military installations and systems
- Usage in vehicles, ships, airplanes, construction machinery and cargo transportation systems
- Usage in machines
- Usage in critical infrastructures and banks
- Uses that do not comply with legal regulations

Access to services

A username, password and email address are required to access bionyx. The password must meet the minimum security requirements specified by ekey, and which are visible to the operator when setting the password. The operator must ensure safe storage of, and prevention of unauthorized access to the access info. A new password can be requested if the operator has forgotten the password. Access is no longer possible if the operator has forgotten the access info (username and/or email).

Operating devices

The ekey bionyx app (hereafter "app") is used to operate and administer bionyx. The app can be used with mobile end devices (smartphone, tablet) with Android and iOS operating systems.

If an operating device can no longer be updated due to technical developments of smartphones and their operating systems like Android or iOS, rendering the operation of the app on this device impossible, the operator must find a substitute and modernize or replace the device. ekey is solely responsible for determining which operating system versions the app supports.

The operator is only allowed to make changes and expansions to the app if such is allowed by law or has been agreed upon with ekey. Copyright mentions, serial numbers, version numbers, trademarks or other identifying characteristics in the app must not be altered or removed by the operator. This also applies to the obscuring of such characteristics on the screen display.

Access control devices

The operator is only authorized to connect access control devices approved by ekey, and with approved firmware versions, to bionyx.

The access control devices must be installed according to the operating instructions, and used in the specified area and as intended. The devices must not be used, or must be replaced, in the event of considerable damage (e.g., broken casing). The devices must not be manipulated in any way.

Availability of the bionyx cloud service

ekey provides the operator with bionyx without the assurance of specific availability. A claim to the usage of bionyx is only effective within ekey's technical and operational capacities, and in accordance with the app provided by ekey for operation.

Unexpected maintenance measures and technical defects (such as power outage, hardware and software errors, technical data line issues) can cause temporary operational disruptions or limitations.

ekey reserves the right to suspend operations of the platform, including the functions and services provided, in the event of technical errors or expected failure to meet product goals, or inefficient operation of bionyx. ekey is not liable for any resulting expenses, costs, subsequent costs and/or damages, provided these damages were not caused by gross negligence or malice by ekey or its proxies.

Change to services

ekey has the right to perform technical updates on bionyx, in particular with regard to new functions and to add extra protection, e.g., due to technical innovations, changes to legislation, changes to judicature or changes to economic conditions, and to alter the technical characteristics and functions of the services or to discontinue functions.

ekey endeavors to provide the devices and bionyx with updates, in particular security updates, throughout the product life cycle. ekey is obliged to provide updates, in particular security updates, for the devices and bionyx for 2 years from the time of delivery. The operator commits himself to install a provided update within a reasonable period of time.

Consent to push notifications

With this agreement the operator consents to receiving push notifications or other notifications in the app. These notifications solely concern information on the operating and maintenance states of bionyx. Furthermore, the user must use a suitable end device with the respective app for using bionyx and for receiving push notifications on their smartphone.

Preventing unauthorized access

The operator is responsible for ensuring no unauthorized parties obtain access to bionyx. If the operator or ekey detects unauthorized access, this must be immediately reported (within 3 business days) to the other party, and precautions must be taken to prevent this from recurring in the future.

Liability limitations

ekey is always only liable for damages incurred by the operator, and/or other persons who are protected in accordance with this agreement, to the extent that ekey caused the damages on the basis of malice or gross negligence.

If the operator or other person protected in accordance with this contract is not a consumer as defined by the Austrian Consumer Protection Act, ekey is only liable for damages caused by malice or severely gross negligence by ekey; there is no liability for loss of profits or other subsequent damages.

Copyright

The operator acknowledges that ekey is the sole holder of all usufructuary rights to bionyx. Any violation of these usufructuary rights, in particular use of bionyx beyond the usufruct approval granted through this agreement, is prohibited and constitutes an illegal infringement of ekey's protected rights.

Applicable law

This contract is subject to Austrian material law, to the exclusion of conflicts of laws and UN CISG.

End_____