

Terms of Use

Effective date: November 11, 2020

Welcome to Mako Medical Laboratories, LLC. Please read on to learn the rules and restrictions that govern your use of our website(s), products, services and applications (the “Services”). If you have any questions, comments, or concerns regarding these terms or the Services, please contact us at:

Email: voicecheck@makomedical.com

Phone: 919-351-6256

Address: Mako Medical Laboratories, LLC, 8461 Garvey Drive, Raleigh, NC, 27616

Please note that the Services are currently only available to citizens or permanent residents in the U.S. ages 18 and older. You may not use the Services if you are under the age of 18 or not a citizen or permanent resident of the U.S.

These Terms of Use (the “Terms”) are a binding contract between you and **MAKO MEDICAL LABORATORIES, LLC** (“Mako Medical Laboratories, LLC,” “we” and “us”). Your use of the Services in any way means that you agree to all of these Terms, and these Terms will remain in effect while you use the Services. These Terms include the provisions in this document as well as those in the Privacy Policy and any other relevant policies. **Your use of or participation in certain Services may also be subject to additional policies, rules and/or conditions (“Additional Terms”), which are incorporated herein by reference, and you understand and agree that by using or participating in any such Services, you agree to also comply with these Additional Terms.**

Please read these Terms carefully. They cover important information about Services provided to you. **These Terms include information about future changes to these Terms, limitations of liability, a class action waiver and resolution of disputes by arbitration instead of in court. PLEASE NOTE THAT YOUR USE OF AND ACCESS TO OUR SERVICES ARE SUBJECT TO THE FOLLOWING TERMS; IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER.**

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION AGREEMENT SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

Will these Terms ever change?

We are constantly trying to improve our Services, so these Terms may need to change along with our Services. We reserve the right to change the Terms at any time, but if we do, we will place a notice within the Mako Medical Laboratories, LLC application, send you an email, and/or notify you by some other means.

If you don’t agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.



Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both you and us.

What about my privacy?

Mako Medical Laboratories, LLC takes the privacy of its users very seriously. For the current Mako Medical Laboratories, LLC Privacy Policy, please click [here](#).

Health Insurance Portability & Accountability Act

Some professionals you may interact with in connection with our Services qualify as “health care providers” under the Health Insurance Portability & Accountability Act (“Health Care Providers” and “HIPAA”, respectively). Such Health Care Providers may require you to review and acknowledge their specific HIPAA Notice of Privacy Practices; any such terms are between you and such Health Care Provider. We encourage you to review our Privacy Policy, which provides additional information on how Mako Medical Laboratories, LLC may use your Personal Data (as defined in the Privacy Policy) and any communications between you and such Health Care Provider.

Geographic Restrictions

The Services are based in the United States and provide for access and use only by persons located in the United States. You are not permitted to access or use the Services outside of the United States. If you access the Services outside of the United States, you are responsible for compliance with local laws.

What are the basics of using Mako Medical Laboratories, LLC?

You may be required to sign up for an account, select a password and user name (“Mako Medical Laboratories, LLC User ID”), and provide us with certain information or data, such as your contact information. You promise to provide us with accurate, complete, and updated registration information about yourself. You may not select as your Mako Medical Laboratories, LLC User ID a name that you do not have the right to use, or another person’s name with the intent to impersonate that person. You may not transfer your account to anyone else without our prior written permission.

You represent and warrant that you are an individual of legal age to form a binding contract.

You will only use the Services for your own internal, personal, non-commercial use, and not on behalf of or for the benefit of any third party, and only in a manner that complies with all laws that apply to you. If your use of the Services is prohibited by applicable laws, then you aren’t authorized to use the Services. We can’t and won’t be responsible for your using the Services in a way that breaks the law.

You will not share your Mako Medical Laboratories, LLC User ID, account or password with anyone, and you must protect the security of your Mako Medical Laboratories, LLC User ID, account, password and any other access tools or credentials. You’re responsible for any activity associated with your Mako Medical Laboratories, LLC User ID and account.

No Medical Advice; Not for Emergencies



The Services are powered by your vocal biomarkers and other health information, which we receive directly from you and with your authorizations. You understand that any decisions made by a third party as a result of your use of the Services, for example allowing or denying you access to facilities, are made by that third party and not by Mako Medical Laboratories, LLC. Mako Medical Laboratories, LLC **DISCLAIMS ALL RESPONSIBILITY FOR SUCH THIRD PARTY DECISIONS AND THE CONSEQUENCES THEY MAY HAVE ON YOU.**

Mako Medical Laboratories, LLC does not offer medical advice or diagnoses, or engage in the practice of medicine. Our Services are not intended to be a substitute for professional medical advice, diagnosis, or treatment and are offered for informational and communicative purposes only. The Services are not intended to be, and must not be taken to be, the practice of medicine, nursing, pharmacy or other healthcare advice by Mako Medical Laboratories, LLC.

The Services are not meant to diagnose or treat COVID-19 or any other conditions – only your medical professional can determine the right course of treatment for you and determine what is safe, appropriate and effective based on your needs. Reliance on any information provided by Mako Medical Laboratories, LLC or in connection with the Services is solely at your own risk. You are solely responsible for any decisions or actions you take based on the information and materials available through the Services. Mako Medical Laboratories, LLC **DOES NOT GUARANTEE, AND MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO, THE ACCURACY OF THE RESULT OF USING THE SERVICES AND DOES NOT GUARANTEE THAT YOU ARE SAFE FROM INFECTION OR ANY OTHER MEDICAL CONDITION BY USING THE SERVICES OR VISITING FACILITIES THAT USE THE SERVICES.**

You acknowledge that although some Content (defined below) may be provided by individuals in the medical profession, the provision of such Content does not create a medical professional/patient relationship between you and Mako Medical Laboratories, LLC or between you and any other individual or entity, and does not constitute an opinion, medical advice, or diagnosis or treatment. Healthcare providers and patients should always obtain applicable diagnostic information from appropriate trusted sources. Healthcare providers should never withhold professional medical advice or delay in providing it because of something they have read in connection with our Services.

THE SERVICES SHOULD NEVER BE USED AS A SUBSTITUTE FOR EMERGENCY CARE. IF YOU HAVE A MEDICAL OR MENTAL HEALTH EMERGENCY, ARE THINKING ABOUT SUICIDE OR TAKING ACTIONS THAT MAY CAUSE HARM TO YOU OR TO OTHERS, YOU SHOULD SEEK EMERGENCY TREATMENT AT THE NEAREST EMERGENCY ROOM OR DIAL 911. NEITHER MAKO MEDICAL LABORATORIES, LLC NOR ITS PERSONNEL ARE LICENSED HEALTH CARE PROFESSIONALS.

Not a Medical Device

The Services are not medical devices and are not intended to be used as medical devices. Furthermore, the Services are neither regulated nor approved by the U.S. Food and Drug Administration, and are not designed to detect or prevent causes of any medical condition. The Services are not a substitute for medical care or supervision. You acknowledge, understand and agree that your use of the Services is entirely at your own risk.



What about messaging?

As part of the Services, you may receive communications through the Services, including messages that Mako Medical Laboratories, LLC sends you (for example, via email or SMS). When signing up for the Services, you will receive a welcome message and instructions on how to stop receiving messages. **By signing up for the Services and providing us with your wireless number, you confirm that you want Mako Medical Laboratories, LLC to send you information regarding your account or transactions with us which may include Mako Medical Laboratories, LLC using automated dialing technology to text you at the wireless number you provided, and you agree to receive communications from Mako Medical Laboratories, LLC, and you represent and warrant that each person you register for the Services or for whom you provide a wireless phone number has consented to receive communications from Mako Medical Laboratories, LLC.** You are responsible for any fees that your phone service provider charges for messages and data. You agree to indemnify and hold Mako Medical Laboratories, LLC harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to your breach of the foregoing.

Are there restrictions in how I can use the Services?

You represent, warrant, and agree that you will not provide or contribute anything, including any Content (as that term is defined below), to the Services, or otherwise use or interact with the Services, in a manner that:

- (a) infringes or violates the intellectual property rights or any other rights of anyone else (including Mako Medical Laboratories, LLC);
- (b) violates any law or regulation, including, without limitation, any applicable export control laws, privacy laws or any other purpose not reasonably intended by Mako Medical Laboratories, LLC;
- (c) is dangerous, harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- (d) jeopardizes the security of your Mako Medical Laboratories, LLC User ID, account or anyone else's (such as allowing someone else to log in to the Services as you);
- (e) attempts, in any manner, to obtain the password, account, or other security information from any other user;
- (f) violates the security of any computer network, or cracks any passwords or security encryption codes;
- (g) runs Maillist, Listserv, any form of auto-responder or "spam" on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure);
- (h) "crawls," "scrapes," or "spiders" any page, data, or portion of or relating to the Services or Content (through use of manual or automated means);
- (i) copies or stores any significant portion of the Content; or
- (j) decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

A violation of any of the foregoing is grounds for termination of your right to use or access the Services.



What are my rights in the Services?

The materials displayed or performed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations and so forth (all of the foregoing, the “Content”) are protected by copyright and/or other intellectual property laws. You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the Services, and you won’t use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell, commercialize or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else’s (including Mako Medical Laboratories, LLC’s) rights.

Subject to these Terms, we grant each user of the Services a worldwide, non-exclusive, non-sublicensable and non-transferable license to use (i.e., to download and display locally) Content solely for purposes of using the Services. Use, reproduction, modification, distribution or storage of any Content for any purpose other than using the Services is expressly prohibited without prior written permission from us. You understand that Mako Medical Laboratories, LLC owns the Services. You won’t modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), create derivative works based on, or otherwise exploit any of the Services. The Services may allow you to copy or download certain Content, but please remember that even where these functionalities exist, all the restrictions in this section still apply.

Who is responsible for what I see and do on the Services?

Any information or Content publicly posted or privately transmitted through the Services is the sole responsibility of the person from whom such Content originated, and you access all such information and Content at your own risk, and we aren’t liable for any errors or omissions in that information or Content or for any damages or loss you might suffer in connection with it. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Services. We can’t guarantee the identity of any users with whom you interact in using the Services and are not responsible for which users gain access to the Services.

You are responsible for all Content you contribute, in any manner, to the Services, and you represent and warrant you have all rights necessary to do so, in the manner in which you contribute it.

The Services may contain links or connections to third-party websites or services that are not owned or controlled by Mako Medical Laboratories, LLC. When you access third-party websites or use third-party services, you accept that there are risks in doing so, and that Mako Medical Laboratories, LLC is not responsible for such risks. If you use the Services to connect with the online records or portal of your healthcare provider or lab, you are subject to the terms of use and authorizations between you and such healthcare provider or lab.

Mako Medical Laboratories, LLC has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third-party websites or by any third party that you interact with through the Services. In addition, Mako Medical Laboratories, LLC will not and cannot monitor, verify, censor or edit the content of any third-party site or service. We encourage you to



be aware when you leave the Services and to read the terms and conditions and privacy policy of each third-party website or service that you visit or utilize. By using the Services, you release and hold us harmless from any and all liability arising from your use of any third-party website or service, including any third party service (e.g., a healthcare provider or lab) we connect with on your direction.

Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Mako Medical Laboratories, LLC shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings.

If there is a dispute between participants on this site or Services, or between users and any third party, you agree that Mako Medical Laboratories, LLC is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release Mako Medical Laboratories, LLC, its directors, officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. You shall and hereby do waive California Civil Code Section 1542 or any similar law of any jurisdiction, which says in substance: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Will Mako Medical Laboratories, LLC ever change the Services?

We're always trying to improve our Services, so they may change over time. We may suspend or discontinue any part of the Services, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Services. We reserve the right to remove any Content from the Services at any time, for any reason (including, but not limited to, if someone alleges you contributed that Content in violation of these Terms), in our sole discretion, and without notice.

Do the Services cost anything?

Creating an account and using the Services is currently free, but we reserve the right to charge for certain or all Services in the future. We will notify you before any Services you are then using begin carrying a fee, and if you wish to continue using such Services, you must pay all applicable fees for such Services.

What if I want to stop using the Services?

You're free to do that at any time by contacting us at voicecheck@makomedical.com-tech.com; please refer to our Privacy Policy, as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Services.

Mako Medical Laboratories, LLC is also free to terminate (or suspend access to) your use of the Services or your account for any reason in our discretion, including your breach of these Terms. Mako Medical Laboratories, LLC has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.



Account termination may result in destruction of any Content associated with your account, so keep that in mind before you decide to terminate your account.

If you have deleted your account by mistake, contact us immediately at voicecheck@makomedical.com – we will try to help, but unfortunately, we can't promise that we can recover or restore anything.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us, including without limitation the arbitration agreement.

What about Mobile Applications?

You acknowledge and agree that the availability of our mobile application is dependent on the third party stores from which you download the application, e.g., the App Store from Apple or the Android app market from Google (each an "App Store"). Each App Store may have its own terms and conditions to which you must agree before downloading mobile applications from such store, including the specific terms relating to Apple App Store set forth below. You agree to comply with, and your license to use our application is conditioned upon your compliance with, such App Store terms and conditions. To the extent such other terms and conditions from such App Store are less restrictive than, or otherwise conflict with, the terms and conditions of these Terms of Use, the more restrictive or conflicting terms and conditions in these Terms of Use apply.

I use the Mako Medical Laboratories, LLC App available via the Apple App Store – should I know anything about that?

These Terms apply to your use of all the Services, including our iOS applications (the "Application") available via the Apple, Inc. ("Apple") App Store, but the following additional terms also apply to the Application:

- (a) Both you and Mako Medical Laboratories, LLC acknowledge that the Terms are concluded between you and Mako Medical Laboratories, LLC only, and not with Apple, and that Apple is not responsible for the Application or the Content;
- (b) The Application is licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms as they are applicable to the Services;
- (c) You will only use the Application in connection with an Apple device that you own or control;
- (d) You acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application;
- (e) In the event of any failure of the Application to conform to any applicable warranty, including those implied by law, you may notify Apple of such failure; upon notification, Apple's sole warranty obligation to you will be to refund to you the purchase price, if any, of the Application;



- (f) You acknowledge and agree that Mako Medical Laboratories, LLC, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the Application;
- (g) You acknowledge and agree that, in the event of any third-party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights, Mako Medical Laboratories, LLC, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
- (h) You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
- (i) Both you and Mako Medical Laboratories, LLC acknowledge and agree that, in your use of the Application, you will comply with any applicable third-party terms of agreement which may affect or be affected by such use; and
- (j) Both you and Mako Medical Laboratories, LLC acknowledge and agree that Apple and Apple's subsidiaries are third-party beneficiaries of these Terms, and that upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third-party beneficiary hereof.

What else do I need to know?

Warranty Disclaimer. Mako Medical Laboratories, LLC and its licensors, suppliers, partners, parent, subsidiaries or affiliated entities, and each of their respective officers, directors, members, employees, consultants, contract employees, representatives and agents, and each of their respective successors and assigns (Mako Medical Laboratories, LLC and all such parties together, the "Mako Medical Laboratories, LLC Parties") make no representations or warranties concerning the Services, including without limitation regarding any Content contained in or accessed through the Services, and the Mako Medical Laboratories, LLC Parties will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services or any claims, actions, suits procedures, costs, expenses, damages or liabilities arising out of use of, or in any way related to your participation in, the Services. The Mako Medical Laboratories, LLC Parties make no representations or warranties regarding the accuracy of the result of the Services or the safety of any facilities that use the Services. THE SERVICES AND CONTENT ARE PROVIDED BY MAKO MEDICAL LABORATORIES, LLC (AND ITS LICENSORS AND SUPPLIERS) ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitation of Liability. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT,



STRICT LIABILITY, OR OTHERWISE) SHALL ANY OF THE MAKO MEDICAL LABORATORIES, LLC PARTIES BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, (B) ANY SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, (C) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF ONE-HUNDRED (\$100) DOLLARS OR (D) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL OR CERTAIN OTHER DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

Indemnity. To the fullest extent allowed by applicable law, you agree to indemnify and hold the Mako Medical Laboratories, LLC Parties harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms.

Assignment. You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without Mako Medical Laboratories, LLC's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

Choice of Law. These Terms are governed by and will be construed under the Federal Arbitration Act, applicable federal law, and the laws of the State of Delaware, without regard to the conflicts of laws provisions thereof.

Arbitration Agreement. Please read the following ARBITRATION AGREEMENT carefully because it requires you to arbitrate certain disputes and claims with Mako Medical Laboratories, LLC and limits the manner in which you can seek relief from Mako Medical Laboratories, LLC. Both you and Mako Medical Laboratories, LLC acknowledge and agree that for the purposes of any dispute arising out of or relating to the subject matter of these Terms, Mako Medical Laboratories, LLC's officers, directors, employees and independent contractors ("Personnel") are third-party beneficiaries of these Terms, and that upon your acceptance of these Terms, Personnel will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third-party beneficiary hereof.

(a) Arbitration Rules; Applicability of Arbitration Agreement. The parties shall use their best efforts to settle any dispute, claim, question, or disagreement arising out of or relating to the subject matter of these Terms directly through good-faith negotiations, which shall be a precondition to either party initiating arbitration. If such negotiations do not resolve the dispute, it shall be finally settled by binding arbitration in Fairfax County, VA. The arbitration will proceed in the English language, in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the "Rules") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes. The arbitrator shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction.

(b) Costs of Arbitration. The Rules will govern payment of all arbitration fees. Mako Medical Laboratories, LLC will pay all arbitration fees for claims less than seventy-five thousand (\$75,000) dollars. Mako Medical



Laboratories, LLC will not seek its attorneys' fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.

(c) *Small Claims Court; Infringement.* Either you or Mako Medical Laboratories, LLC may assert claims, if they qualify, in small claims court in Fairfax County, VA or any United States county where you live or work. Furthermore, notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction, to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

(d) *Waiver of Jury Trial.* YOU AND MAKO MEDICAL LABORATORIES, LLC WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. You and Mako Medical Laboratories, LLC are instead choosing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited review by a court. In any litigation between you and Mako Medical Laboratories, LLC over whether to vacate or enforce an arbitration award, YOU AND MAKO MEDICAL LABORATORIES, LLC WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.

(e) *Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor Mako Medical Laboratories, LLC is entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in (g) below.

(f) *Opt-out.* You have the right to opt out of the provisions of this Section by sending written notice of your decision to opt out to the following address: Mako Medical Laboratories, LLC, 8461 Garvey Drive, Raleigh, NC 27616 postmarked within thirty (30) days of first accepting these Terms. You must include (i) your name and residence address, (ii) the email address and/or telephone number associated with your account, and (iii) a clear statement that you want to opt out of these Terms' arbitration agreement.

(g) *Exclusive Venue.* If you send the opt-out notice in (f), and/or in any circumstances where the foregoing arbitration agreement permits either you or Mako Medical Laboratories, LLC to litigate any dispute arising out of or relating to the subject matter of these Terms in court, then the foregoing arbitration agreement will not apply to either party, and both you and Mako Medical Laboratories, LLC agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, Fairfax County, VA, or the federal district in which that county falls.

(h) *Severability.* If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration Agreement section will be null and void. This arbitration agreement will survive the termination of your relationship with Mako Medical Laboratories, LLC.

Miscellaneous. You will be responsible for paying, withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with your activity in connection with the Services, provided



that the Mako Medical Laboratories, LLC may, in its sole discretion, do any of the foregoing on your behalf or for itself as it sees fit. The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder. If any provision of these Terms are found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable. You and Mako Medical Laboratories, LLC agree that these Terms are the complete and exclusive statement of the mutual understanding between you and Mako Medical Laboratories, LLC, and that these Terms supersede and cancel all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms. You hereby acknowledge and agree that you are not an employee, agent, partner, or joint venture of Mako Medical Laboratories, LLC, and you do not have any authority of any kind to bind Mako Medical Laboratories, LLC in any respect whatsoever.

Except as expressly set forth in the sections above regarding the Apple Application and the arbitration agreement, you and Mako Medical Laboratories, LLC agree there are no third-party beneficiaries intended under these Terms.

