

Thinklabs Fairness Agreement

End User License Agreement

Overview

We want you to benefit to the fullest extent from the hard work we have put into providing Services for you, our valued users. We've tried to write fair rules, using plain English wherever possible. We want you to read this Agreement carefully, so we can agree on how you will use Thinklabs Services.

It's extremely important to emphasize that medical diagnosis requires multiple sources of information analyzed by highly trained and skilled clinicians. Users must either be clinically trained or rely on the expertise of a trained physician to make diagnoses. We do not in any way guarantee the accuracy of signals, measurements or diagnoses made using our Services, because they are dependent on the skill of the persons capturing and diagnosing Data. You agree not to hold Thinklabs liable for any consequences of using our Services.

This Agreement also includes provisions for resolving legal disputes. Specifically, where allowed, you agree to binding arbitration by a neutral arbitrator and waive your right to go to court other than small claims court.

This Agreement also incorporates privacy and data security conditions that are extremely important. Please read those rules carefully before agreeing to use our Services.

Clarifying Terminology

We use terms in this agreement that are defined here to ensure clarity and avoid ambiguity:

- Thinklabs as a company is referred to as "Thinklabs", "we", "our", "us" and similar terms.
- Services means anything we provide to you other than hardware devices. For example, it includes apps, software, features, websites, communications services, customer support, community forums, content – anything we provide or offer that's intangible compared to hardware products.
- Data (also called Information or User Content) means any information that you or others generate or enter using our Services, such as audio recordings, notes, registration information, and other details that might be generated through use of Services, such as IP addresses, app crash logs, usage habits, and the like. If the Data would not have existed had you or others not used our Services, it qualifies as Data or Information or User Content. Thinklabs Privacy Choice Policy applies to Data, Information and User Content.
- Agreement means this agreement and excludes any other agreements or documents. This is the entire agreement. Note that you may also be obligated by additional agreements with

Thinklabs that apply to other services or products and you would have the opportunity to agree or decline those additional agreements separately.

Fairness - User License, not Ownership

The fundamental rules for using our Services are based on fairness. We're giving you (or sometimes selling you) the right to USE our Services, but not to OWN anything we have developed. We own the code, graphics, designs, look, logos, methods, colors, trademarks, the great ideas that are unique to us, or any patents we might own covering any and all aspects of our products and services ("stuff").

We want you to benefit from and be delighted by using our Services as intended, which is to capture information, share it using the features we provide, and so on. The features and benefits of our Services are described in the instructional material we provide in user manuals, quick reference guides, our website, our advertising, or other content we provide that describes our Services and how to use them. You are strictly forbidden from using our Services for purposes not so described and documented by us. Before using our Services for novel purposes which we have not documented, you must contact us for permission.

DO NOT ABUSE THE PRIVILEGE OF DOWNLOADING OR USING THE SERVICES AND STUFF WE OFFER. Copying us is plain old theft and you're agreeing not to do any copying or stealing from us simply by using our Services. If you're thinking of copying us, or if you're planning to try our Services only to copy our creativity and ideas, make a U-turn – uninstall our apps, close our websites, do not go any further. We won't be pleased if you violate these fairness rules, and we will have the right to sue you as you're hereby agreeing not to abuse your privilege of running our software or using our Services for unfair or illegal purposes.

We also reserve the right to refuse availability or terminate Services to one or more users, at our sole discretion, without explanation. If a paid Service, we will not bill for any Services not provided.

Using our Services and stuff might also obligate you to the rules set by third parties, such as your internet data services, device manufacturers and others. Be informed and play by the rules.

We respect the rights of others. If you believe we are violating your intellectual property rights, please contact us with a detailed description and references to patents and/or trademarks that you believe apply to the potential violation.

Responsibility for User Content

You agree that any User Content you create or enter using our Services has been legally generated or entered. It does not belong to anyone else and you have the right to enter it, including the consent of patients if it is patient data, and the organization that is employing you, if you generate the information while being employed by a third party.

You also agree that you will not copy, publish, or in any other way make use of User Content that is generated by others including us, or our other customers and Service users, other than for purposes that we or other users explicitly allow. For example, if another user sends you Data, you may use it for the purpose that you and that other user mutually understand was the purpose for sharing Data between you.

We are explicitly not responsible, and you take full responsibility, for violations of privacy or employment laws, or any other law that applies to your generation and entry of User Content into our Services. You are obligated to understand all laws and rules that apply to you, and we are not obligated to monitor any violations you commit using our Services.

We are not responsible for User Content stored on your devices. Keep your Data and devices secure. Please read Thinklabs Privacy Choice Policy; it applies to User Content.

You are responsible for the interpretation of medical data that is captured or processed using Services. We do not guarantee the accuracy of Data you capture, or the accuracy of any interpretations arising from that Data.

Customer Support

Please contact support@thinklabs.com for customer support. We try to respond in a timely manner to all inquiries. You also may contact us to complain about improper use of our Services by others.

Payments, Trials and Automatic Renewals

We provide some Services free of charge and others that are paid, in which case we will ask you very clearly to authorize a method of payment. We will automatically renew Services annually, unless you cancel Services. If you register for a time-limited trial of a paid Service, we reserve the right to begin billing you automatically when your trial ends. It is up to you to track charges for paid Services, cancel service if you so choose, and/or to contact us if there is a problem with charges. If you choose to stop using paid Services, you must contact us to stop billing – we may not have any way of knowing that, for example, you have deleted an app for which you are paying a monthly service.

Service Limitations, Modifications, Termination

We will do our best to keep all Thinklabs Services running well. However, from time to time, we may go offline for our own internal reasons or experience a service outage due to causes beyond our control. If you are using a free Service, you agree that we have no obligation to provide uninterrupted Services. We even have the right to terminate any given free Service at any time.

If you are using a paid service, you agree to limit your recourse to obtaining a refund or credit for the Services not provided, on a pro-rated basis. For example, if service is down for one day out of a 30-day month, you would be refunded or credited 1/30th of the monthly fee.

We reserve the right to modify, terminate or disallow some or all Services to a specific user, group of users, or all users, at our sole discretion, without explanation. We also reserve the right to remove any or all User Content. You agree that we will not be held liable or responsible for such changes, terminations or removal of User Content.

You may terminate use of Services at any time by deleting software or ceasing to use Thinklabs Services. If you are using paid Services, you must contact us at support@thinklabs.com to request termination of billing. If we terminate paid Services, we will stop billing you for terminated Services.

After termination, sections of this Agreement that, by their nature, must remain in effect even after termination of the Agreement, will continue to apply. These particularly apply but are not limited to, Fairness and your agreement not to copy any of our stuff, User Content rules, dispute resolution provisions, and applicable laws.

Third-Party Applications and Devices

Thinklabs Services run on many different devices, platforms and operating systems. Services can link your Data to various third-party communications networks and you can share your data with many other apps and software. Your Data may also be uploaded and stored on third-party servers. You may send your results to other people or save them in electronic medical records.

We are only responsible for that which we can control ourselves, which is essentially limited to the code we write. Third parties are responsible for what they control, and you are responsible for your own actions, including adhering to HIPAA, GDPR, and any data security and privacy laws to which you are subject.

Changes to the Agreement

If we change this Agreement, we'll email you. Unless you cancel your service, you will be bound by the changes. Register with a valid email. It's not our fault if you don't read the emails or they end up in spam.

Legal Details

No matter how simple we try to make this Agreement, there are certain legal details we must include. These are as important to understand as any other part of this agreement, so please do read and understand them. They will apply if you and Thinklabs ever have a legal dispute. We apologize for the necessity to use more legalistic language in this section.

Entire Agreement

This Agreement covers the legal obligations between Thinklabs and you. Unless we have additional signed agreements in writing, nothing else applies, except local laws in any given jurisdiction that might override this Agreement.

Severability and Waiver

If any part of this Agreement be held unenforceable or invalid, the remaining provisions of this Agreement shall still be enforceable, to the extent permitted by law. Even if we fail to enforce provisions of this Agreement, that does not waive our right, or a third party's right to enforce this Agreement.

Assignment

Thinklabs may assign this Agreement, or delegate it, in whole or in part, to any third party.

Indemnification

You agree to indemnify and hold Thinklabs harmless from and against all damages, losses, and expenses of any kind (including reasonable attorney fees and costs) arising out of or related to: (1) your breach of the Agreements or any one of them; (2) any Data you post or otherwise contribute; (3) any activity in which you engage on or through the Thinklabs' Services; and (4) your violation of any law or the rights of a third party.

Governing Law

This Agreement shall be interpreted subject to the laws of Colorado, USA, and you agree that any dispute will be resolved in the State of Colorado, USA.

Arbitration

You and Thinklabs agree that any dispute between you and Thinklabs arising in connection with these Agreements or to your relationship with Thinklabs as a user of the Services will be determined by mandatory, binding, individual (not class) arbitration, following what are known as "AAA Rules." You and Thinklabs further agree that the arbitrator shall have the exclusive power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the Arbitration Agreement or to the arbitrability of any claim or

counterclaim. Arbitration is more informal than a lawsuit in court. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. There may be more limited discovery than in court. The arbitrator must follow this agreement and can award the same damages and relief as a court (including attorney fees), except that the arbitrator may not award any relief, including declaratory or injunctive relief, benefiting anyone but the parties to the arbitration. This arbitration provision will survive termination of the Agreements.

You agree to make every effort to limit the cost of arbitration for both sides and to cooperate to find a mutually agreeable resolution to any disputes as efficiently as reasonably possible.

Notwithstanding the above, you and Thinklabs both agree that nothing in this Arbitration Agreement will be deemed to waive, preclude, or otherwise limit either of our rights, at any time, to (1) bring an individual action in a U.S. small claims court or (2) bring an individual action seeking only temporary or preliminary individualized injunctive relief in a court of law, pending a final ruling from the arbitrator. In addition, this arbitration agreement doesn't stop you or us from bringing issues to the attention of federal, state, or local agencies. Such agencies can, if the law allows, seek relief against us on your behalf (or vice versa).

If this arbitration section is considered invalid, you agree to pursue legal recourse in Colorado, USA.

No Class Action

YOU AGREE NOT TO JOIN A CLASS OR REPRESENTATIVE GROUP ACTION AGAINST THINKLABS.

Time Limit

As far as applicable law will allow, you agree not to bring any legal action of any kind against Thinklabs arising out of the use of Services more than one year after any problem occurred about which you are bringing the legal action.

Indemnification

You agree to indemnify and hold Thinklabs harmless from and against all damages, losses, and expenses of any kind (including reasonable attorney fees and costs) arising out of or related to: (1) your breach of the Agreements or any one of them; (2) any Data you enter using our Services; (3) any activity in which you engage on or through Thinklabs Services; and (4) your violation of any law or the rights of a third party.

Limitations

YOU AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY PROBLEMS OR DISSATISFACTION WITH THINKLABS SERVICES IS TO UNINSTALL ANY THINKLABS SOFTWARE AND TO STOP USING THINKLABS SERVICES. YOU AGREE THAT THINKLABS HAS NO OBLIGATION OR LIABILITY ARISING FROM OR RELATED TO THIRD PARTY

APPLICATIONS OR THE CONTENT THEREOF MADE AVAILABLE THROUGH OR IN CONNECTION WITH THINKLABS SERVICES, AND WHILE YOUR RELATIONSHIP WITH SUCH THIRD PARTY APPLICATIONS MAY BE GOVERNED BY SEPARATE AGREEMENTS WITH SUCH THIRD PARTIES, YOUR SOLE AND EXCLUSIVE REMEDY, AS WITH RESPECT TO THINKLABS, FOR ANY PROBLEMS OR DISSATISFACTION WITH THIRD PARTY APPLICATIONS OR THE CONTENT THEREOF, IS TO UNINSTALL AND/OR STOP USING ANY SUCH THIRD PARTY APPLICATIONS.

IN NO EVENT WILL THINKLABS, ITS OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS, DIRECTORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, ASSIGNS, SUPPLIERS, OR LICENSORS BE LIABLE FOR (1) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES; (2) ANY LOSS OF USE, DATA, BUSINESS, OR PROFITS (WHETHER DIRECT OR INDIRECT), IN ALL CASES ARISING OUT OF THE USE OF OR INABILITY TO USE THINKLABS SERVICES, DEVICES THIRD PARTY APPLICATIONS, OR THIRD PARTY APPLICATION CONTENT, REGARDLESS OF LEGAL THEORY, WITHOUT REGARD TO WHETHER THINKLABS HAS BEEN WARNED OF THE POSSIBILITY OF THOSE DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE; OR (3) AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THINKLABS SERVICES, THIRD PARTY APPLICATIONS, OR THIRD PARTY APPLICATION CONTENT MORE THAN THE AMOUNTS PAID BY YOU TO THINKLABS DURING THE PRIOR TWELVE MONTHS IN QUESTION.

THIS SECTION APPLIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

Warranty Disclaimer

THINKLABS SERVICES AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THINKLABS SERVICES ARE PROVIDED “**AS IS**” AND ON AN “**AS AVAILABLE**” BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE THINKLABS ENTITIES DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THINKLABS SERVICES, ALL MATERIALS AND CONTENT AVAILABLE THROUGH THINKLABS SERVICES, AND ANY SOFTWARE OR HARDWARE ASSOCIATED OR USED WITH THINKLABS SERVICES, OR THE AVAILABILITY OF ANY OF THE FOREGOING, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; (B) ANY WARRANTY ARISING OUT OF THE COURSE OF DEALING, USAGE, OR TRADE; AND (C) ANY WARRANTY AS TO WHETHER THE DATA OR OTHER INFORMATION AVAILABLE ON OR TRANSMITTED BY THINKLABS SERVICES IS TRUE, COMPLETE OR ACCURATE. YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT THINKLABS IS NOT RESPONSIBLE FOR ANY HEALTHCARE OR RELATED DECISIONS MADE BY YOU OR YOUR HEALTHCARE PROFESSIONAL BASED UPON DATA COLLECTED, TRANSMITTED OR DISPLAYED BY OR ON THINKLABS HARDWARE OR SERVICES, WHETHER SUCH DATA IS ACCURATE OR INACCURATE. THE THINKLABS ENTITIES DO NOT WARRANT THAT THINKLABS SERVICES OR ANY PORTION OF THINKLABS SERVICES, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THINKLABS SERVICES, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL

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THE ABOVE PARAGRAPHS APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES, IN PARTICULAR A DISCLAIMER OF WARRANTIES PROVIDED OR IMPLIED BY LAW, SUCH AS LEGAL GUARANTEES OF CONFORMITY FOR GOODS OFFERED TO CONSUMERS IN THE EU, AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

Export Control

Thinklabs' products may be subject to U.S. export and re-export control laws and regulations or similar laws applicable in other jurisdictions, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. You warrant that you are (1) not located in any country to which the United States has embargoed goods or has otherwise applied any economic sanctions; and (2) not a denied party as specified in any applicable export or re-export laws or regulations or similar laws applicable in other jurisdictions.

You agree to comply with all applicable export and re-export control laws and regulations, including the EAR, trade and economic sanctions maintained by OFAC, and the ITAR. Specifically, you agree that you shall not – directly or indirectly – sell, export, reexport, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Thinklabs under the Agreements to any destination, entity, or person prohibited by any applicable laws or regulations of the United States or any other jurisdiction without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

Related to Apple

You acknowledge that these Terms are between you and Thinklabs only, not with Apple, and Apple is not responsible for the Services and the content thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App. In the event of any failure of the App to conform to any applicable warranty, then you may notify Apple and Apple will refund the purchase price for the App to you, if any; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the App. Apple is not responsible for addressing any claims by you or any third party relating to the App or your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third-party claim that the App or your possession and use of the App infringes that third party's intellectual property rights. You agree to comply with any applicable third-party terms, when using the App. Apple, and Apple's subsidiaries, are third-party beneficiaries of these Terms, and upon your acceptance of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third party beneficiary of the Terms. You hereby represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

Contact Us

If you have questions or concerns, please contact us, as follows:

Email: support@thinklabs.com

Tel: 1-303-525-3458

Mail: Thinklabs, 6500 S. Quebec Street, Suite 210, Centennial CO, 80111 USA

If you are contacting us in connection with a legal dispute, you must use registered post, Fedex or other services that require a signature, and send it to our physical mailing address shown above.