

# Terms of Services

Updated: February 11, 2021

Physicians Laboratory Services, Inc. / Physicians Laboratory, P.C. (“PhysLab”, “we”, “our”) offers a variety of laboratory testing services conducted by PhysLab or by its contractors, successors, assignees; or otherwise processed by and/or contributed to PhysLab.

The following Terms of Service (“Terms of Service”) govern all use of (1) the [www.physlab.com](http://www.physlab.com) patient portal (the “Site”); and/or (2) any of the testing services offered by PhysLab made available through the Site (together with the Site, collectively the “Services”).

Please review these Terms of Service as they govern your use of the Services. BY ACCESSING, BROWSING, OR USING THE SERVICES, OR BY CLICKING TO AGREE TO THESE TERMS OF SERVICE WHEN THAT OPTION IS MADE AVAILABLE TO YOU, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE AND OUR PRIVACY STATEMENT, INCLUDING, WITHOUT LIMITATION, BINDING ARBITRATION. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE AND OUR PRIVACY STATEMENT THEN PLEASE DO NOT USE OR ACCESS THE SERVICES.

Note that Section 22 of these Terms of Service contains a mandatory arbitration clause that requires the use of arbitration on an individual basis and limits the remedies available to you in the event of disputes or claims in connection with these Terms of Service or the Site.

## 1. SERVICES

PhysLab is providing the Site to you so you can conveniently store, access and manage your laboratory results within your patient portal account on the Site. The information you store on the Site is not intended to be, and should not be used for advice, diagnosis or treatment purposes. Such information may not always be accurate or up-to-date. Information provided to you through the Site should not be regarded as medical or health care advice, diagnosis or treatment. Always seek the advice of your physician or other qualified health care provider with any questions you may have regarding interpretation of your laboratory test results, a medical condition or other health related issues. In the case of a health emergency, seek immediate assistance from emergency personnel. Never delay obtaining medical advice or disregard medical advice because of information you access on or through the Site.

PhysLab controls and operates the Services from its offices within the United States. Claims relating to, including the use of, the Services, PhysLab Content, and the Content contained herein are governed by the laws of the United States and the State of Nebraska, regardless of your country of origin or where you access PhysLab, and notwithstanding of any conflicts of law principles and the United Nations Convention for the International Sale of Goods. PhysLab and you agree that the exclusive jurisdiction for any claim or action arising out of or relating to these Terms of Service or your use of these Services shall be filed only in the state or federal courts located in Nebraska, United States of America, and you further agree and submit to the exercise of personal jurisdiction of such courts for the purpose of litigating any such claim or action that is not subject to binding arbitration as set forth herein. You expressly submit and consent in advance to such jurisdiction in any action or suit commenced in such court, and you hereby waive any objection that you may have based upon lack of personal jurisdiction, improper venue or *forum non conveniens*. If you do not agree, please do not use these Services. If you choose to access

these Services from another location, you do so on your own initiative and are responsible for compliance with applicable local laws.

While we are licensed in Nebraska as a clinical laboratory, not all jurisdictions require our Services to be subject to license. Therefore, we are not universally licensed by all state, federal, or international authorities for laboratory testing conducted for health and disease-related purposes. In addition, there are certain jurisdictions in which we do not offer our Services because we do not have required licenses. Do not use or attempt to use our Services if you live within such a jurisdiction.

Your access to or use of the Services constitutes your acceptance of all the provisions of these Terms of Service. Except as otherwise provided herein, these Terms of Service apply to any use of the Services, regardless of whether or not you submit a biological sample or not, including but not limited to (a) submitting biological specimen for testing and processing, (b) uploading a digital version of your information generated through processing of your biological specimen by PhysLab or by its contractors, successors, and assignees; or otherwise processed by and/or contributed to PhysLab (“Testing Information”) and interacting with it on the Site, and/or c) creating and using a free PhysLab account without providing your biological specimen or Testing Information. In order to use the Services, you must first agree to these Terms of Service. You may not use the Services if you do not accept the Terms of Service. You can accept the Terms of Service by (i) clicking to accept or agree to the Terms of Service, where this option is made available to you by PhysLab; (ii) by accessing the Site and creating an account; (iii) placing an order; or by (iv) actually using the Services. In this case, you acknowledge and agree that PhysLab will treat your use of the Services as acceptance of the Terms of Service. In addition, when using particular Services, you shall be subject to any guidelines or rules applicable to such services that may be posted from time to time on the Site or otherwise made available to you. All such guidelines or rules are hereby incorporated by reference into the Terms of Service. PhysLab also may offer other services from time to time that are governed by different terms of service.

You may not use the Services or accept the Terms of Service if (1) you are not of legal age to form a binding contract with PhysLab, or (2) you are a person barred from receiving the Services under the laws of the jurisdiction in which you are resident or from which you use the Services. This applies whether you submit your own biological specimen, a biological specimen for anyone for whom you have legal authority to agree, otherwise provide your own Testing Information, create an account, or place an order.

In addition, if you contribute or otherwise provide your own Testing Information, you must be nineteen (19) years of age or older to agree to these Terms of Service on behalf of yourself or those for whom you have legal authority to agree. You must be at least 19 years old to purchase a test. To protect your privacy when you share your Testing Information with us, each adult who submits a sample must create his/her own account. You also certify that you aren’t listed on any sanctions list published by the U.S. Departments of Commerce, Treasury or State, including, but not limited to the Specially Designated Nationals and Blocked Persons List and the Denied Persons List. PhysLab retains the right to block or otherwise prevent delivery of any type of e-mail or other communication to or from the Site as part of our efforts to protect the Site, protect our customers or stop you from breaching this Agreement.

**PhysLab Services are for informational and educational use only. We do not provide medical advice or treatment services.** You use the Service at your own risk. The Service does not constitute medical advice or treatment services and is not a substitute for seeking professional

medical advice and/or assistance. You should not rely on the Service as a substitute for qualified medical guidance.

The Services include access to the PhysLab public website and laboratory testing services, including the collection and analysis of your biological specimen. Unless explicitly stated otherwise, each new feature of the Site shall be subject to the Terms of Service. You acknowledge and agree that the Services are provided "AS-IS". You acknowledge and agree that the form and nature of the Services which PhysLab provides may change from time to time without prior notice to you. As part of this continuing innovation, you acknowledge and agree that PhysLab may stop (permanently or temporarily) providing some Services (or any features within the Services) to you or to users generally at PhysLab's sole discretion, without prior notice to you. You may stop using the Services at any time. You do not need to specifically inform PhysLab when you stop using the Services unless you are requesting closure of your account. PhysLab assumes no responsibility for the use of Services outside of these Terms of Service or other applicable terms.

In order to use the Services, you must obtain Internet access and provide all equipment necessary to make such Internet connection. You are solely responsible for providing such equipment. You acknowledge and agree that while PhysLab may set a fixed upper limit on the number of transmissions you may send or receive through the Services or on the amount of storage space used for the provision of any Service at any time, at PhysLab's discretion.

The Services are part of a private network operated by PhysLab for the convenience of PhysLab's users. It has been designed so that you may manage certain personal health-related information stored in your account. The laboratory test results released into your account may not constitute a complete record of all the tests performed at a PhysLab facility, or all the information we have about you in our systems. PhysLab releases laboratory test results into your account based on the demographic information in our systems submitted by you, your physician, or other providers and any persons to whom you have granted custodial rights over your account. In addition, please note that there may be a delay before certain laboratory test results are released into your account.

## 2. USER REPRESENTATIONS AND WARRANTIES

By accessing the Services, you agree to, acknowledge, covenant, warrant and represent as follows:

- a. You understand that the information you learn from PhysLab cannot be relied upon as medical advice, treatment or diagnosis. You acknowledge that PhysLab urges you to seek the advice of your healthcare provider if you have questions or concerns arising from your Testing Information.
- b. You represent that you are eighteen (19) years of age or older.
- c. You understand that all your Personal Information will be stored in PhysLab databases and will be processed in accordance with the PhysLab [Privacy Statement and Notice of Privacy Practices, as applicable](#).

**You agree that you have the authority, under the laws of the state or jurisdiction in which you reside, to provide these representations. In case of breach of any one of these representations PhysLab has the right, in its sole discretion, to suspend or terminate your account and refuse any and all current or future use of the Services (or any portion thereof) and you will hold harmless, defend and indemnify PhysLab and its affiliates against any liability, costs, or damages arising out of the breach of these representations and warranties.**

### 3. ACCOUNT CREATION, PASSWORD, AND SECURITY OBLIGATIONS

In consideration of your use of the Services, you agree to: (1) provide true, accurate, current, and complete Registration Information (as defined below) about yourself as prompted by the Service; and (2) maintain and promptly update the Registration Information to keep it true, accurate, current, and complete. As part of the registration process you may be requested to provide certain personal data, including among others name, address, email address, telephone number, payment information, username, password and certain health information (collectively the "Registration Information"). If you provide any Registration Information that is untrue, inaccurate, not current, or incomplete, or if PhysLab has a reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, PhysLab has the right, in its sole discretion, to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof).

After you have purchased our Service, you will create a password and account designation. Select a password that would be difficult to guess, and change it regularly as an added precaution. To create an account, you must be at least 19 years old and you must provide truthful and accurate information about yourself. Don't try to and do not impersonate anyone else when you create your account. If your information changes at any time, please update your account to reflect those changes. You agree to update such information to keep it true and accurate. PhysLab is not responsible or liable for any inaccurate information you provide.

You are solely responsible for any and all activity that occurs on your account, and you must keep your password confidential and secure. Except as otherwise required by applicable law, you are responsible for all transactions and other activities authorized or performed using your username and password, whether authorized or unauthorized by you.

We reserve the right to take such action in our discretion to help ensure the security of the Services, including, without limitation, terminating an account. Notwithstanding the above, we may rely on the authority of anyone accessing your account or using your password, and in no event, and under no circumstances, shall we be held liable to you for any liabilities or damages arising out of (a) any action or inaction of PhysLab under this provision or (b) any compromise of the confidentiality of your account or password or any unauthorized access to your account or use of your password except to the extent such compromise, access or use is caused solely by PhysLab's breach of the express terms of these Terms of Service, as proved by clear and convincing evidence. You may not use anyone else's account at any time. If you suspect or become aware of any unauthorized activity or access to your username or password you must contact us immediately at (800)642-1117. Additionally, you agree to ensure that you exit from your account at the end of each session. Except as otherwise expressly stated in these Terms of Service or required by applicable law, PhysLab cannot and will not be liable for any loss, theft, or damage arising from your failure to comply with this Section.

### 4. PHYSLAB PRIVACY STATEMENT AND DISCLOSURE OF INFORMATION

In order to use the Services, you must first acknowledge and agree to the [Privacy Statement](#). You may not use the Services if you do not accept the Privacy Statement. You can acknowledge and agree to the Privacy Statement by (1) clicking to accept or agree to the Privacy Statement, where this option is made available to you by PhysLab for any Service; or by (2) actually using the Services.

You acknowledge and agree that PhysLab has the right to monitor any use of its systems by its personnel at any time and maintain copies documenting such monitoring. Our Privacy Statement

sets forth the only expectations of privacy any individual should have in terms of usage of the Services, Site, or other systems.

You acknowledge and agree that PhysLab is free to preserve and disclose any and all Personal Information to law enforcement agencies or others if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process (such as a judicial proceeding, court order, or government inquiry) or obligations that PhysLab may owe pursuant to ethical and other professional rules, laws, and regulations; (b) enforce the Terms of Service; (c) respond to claims that any content violates the rights of third parties; or (d) protect the rights, property, or personal safety of PhysLab, its employees, users, clients, and the public. In such event we will notify you through the contact information you have provided to us, unless doing so would violate the law or a court order. You understand that the technical processing and transmission of the Services, including your Personal Information, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks, or devices. Finally, PhysLab may, in its sole discretion, restrict access to the website for any reason.

Please refer to our Privacy Statement [www.physlab.com](http://www.physlab.com) for information about how we collect, use and disclose information about you.

#### 5. SITE CONTENTS, OWNERSHIP, AND USE RESTRICTIONS

The information contained on the Site, including all text, graphics, images, photographs, videos, illustrations, trademarks, trade names, service marks, logos, slogans and other content contained therein (collectively, the "Content") are copyrights, trademarks, trade dress or other intellectual property owned by, controlled by, or licensed to PhysLab or their respective owners, and are protected under both United States and foreign laws.

As a condition of your use of the Services, you represent and warrant to PhysLab that you will not use the Services for any purpose that is unlawful or prohibited by these Terms of Service. You may not use the Services in any manner that could damage, disable, overburden, or impair the Services or interfere with any other party's use and enjoyment of the Services. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Services.

Furthermore you agree not to use the Services or to: (1) upload, post, email, or otherwise transmit any material that is, or may reasonably be considered to be derogatory, defamatory, obscene, libelous, hateful, racially, ethnically or religiously biased or offensive, such as slurs, epithets, or anything that might reasonably be construed as harassment or disparagement based on race, color, national origin, sex, sexual orientation, age, disability, religious or political beliefs, or other statutorily protected status; (2) impersonate any person or entity, including, but not limited to, anyone affiliated with PhysLab, or falsely state or otherwise misrepresent your affiliation with a person or entity; (3) add your own headers, forge headers, or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Service; (4) "stalk" or otherwise harass another; (5) upload, post, email, or otherwise transmit any content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements); (6) use any information received through the Services to attempt to identify other customers, to contact other customers; (7) download any file posted by another user of the Service that you know, or reasonably should know, cannot legally be distributed in such manner; (8) upload, post, email or otherwise transmit any content that infringes any patent, trademark, trade secret, copyright, or other proprietary rights ("Rights") of

PhysLab or any other party; (9) harm minors in any way; (10) solicit, for commercial purposes, any users of the Services with respect to advertisements or offers to sell or buy any goods or services for any business purpose, unless such area specifically allows such messages; (11) create, upload, post, email, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation that interfere with other users' enjoyment of the Services, except in those areas that are designated for such purpose and only to the extent such content is authorized by law; (12) upload, post, email, or otherwise transmit any material that contains software viruses, worms, defects, Trojan horses or any other computer code, files, programs or items of a destructive nature designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (13) launch any automated system, including without limitation, "robots," "spiders," "offline readers," etc., that accesses the Site in a manner that sends more request messages to the PhysLab servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser; (14) engage in "framing," "mirroring," or otherwise simulating the appearance or function of PhysLab's website; (15) attempt to or actually override any security component of PhysLab web services; (16) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies, or regulations of networks connected to the Service; (17) violate these Terms of Service, any code of conduct or other guidelines which may be applicable for any particular area of the Service or have been communicated to you by anyone affiliated with PhysLab; (18) intentionally or unintentionally violate any applicable local, state, national, or international law, or any regulations having the force of law; or (19) use the Services to violate the security of any computer network, crack passwords or security encryption codes, transfer or store illegal material.

You acknowledge and agree that you are solely responsible for (and that PhysLab has no responsibility to you or to any third party for) any breach of your obligations under the Terms of Service and for the consequences (including any loss or damage which PhysLab may suffer) of any such breach. In case of breach of any one of these agreements PhysLab has the right to suspend or terminate your account and refuse to grant you or your authorized designees any and all current or future use of the Services (or any portion thereof) and you will hold harmless, defend and indemnify PhysLab and its affiliates against any liability, costs, or damages arising out of the breach of the foregoing representation and warranty.

If you violate the terms of this Section and/or PhysLab has a reasonable ground to suspect that you have violated the terms of this Section, PhysLab has the right to suspend or terminate your account and refuse to grant you or your authorized designees any and all current or future use of the Service (or any portion thereof).

#### 6. NO RESALE OF SERVICE

Unless otherwise agreed in a separate agreement between you and PhysLab, you agree not to disassemble, reverse engineer, display, distribute, license, perform, publish, reproduce, duplicate, copy, create derivative works from, modify, sell, resell, exploit, transfer, or transmit for any commercial purposes, all or any portion of the Service, use of the Service, or access to the Service.

#### 7. GENERAL PRACTICES REGARDING USE AND STORAGE

You acknowledge that PhysLab may establish general practices and limits concerning use of the Services, including without limitation the maximum number of days that Personal Information and Services content will be retained by the Service, the maximum disk space that will be allotted on PhysLab's servers on your behalf, and the maximum number of times (and the maximum duration

for which) you may access the Services in a given period of time. You acknowledge and agree that PhysLab has no responsibility or liability for the deletion of or failure to store any messages, other communications, or other content maintained or transmitted by the Services; or for the loss of Genetic and Microbiome Information due to malfunction or destruction of data servers or other catastrophic events. You further acknowledge that PhysLab reserves the right to change these general practices and limits in its sole discretion.

Because you control the extent to which the information stored in your account is shared, PhysLab assumes no liability or responsibility for how your information is used or disclosed once it has been submitted to and stored on the Site. In addition PhysLab assumes no liability for any actions taken, including any further use or disclosure of your information, by persons to whom you have provided access to your laboratory test results and/or other information stored in your account and through the Services. You agree that you will hold PhysLab harmless against any and all actions, claims or damages resulting from any use or misuse of the Services or any use or disclosure of your laboratory test results and/or other information stored in or accessed through the Services.

#### 8. MODIFICATIONS TO SERVICE

PhysLab reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. You acknowledge and agree that (1) modifications may result in a delay for some of the PhysLab features or Services, and (2) PhysLab shall not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services.

The Software (as defined below) that you use may from time to time automatically download and install updates from PhysLab. These updates are designed to improve, enhance, and further develop the Services and may take the form of bug fixes, enhanced functions, new software modules, and completely new versions. You agree to receive such updates (and permit PhysLab to deliver these to you) as part of your use of the Services.

#### 9. TERMINATION

This Terms of Service is effective until terminated by either party. We may terminate or suspend these Terms at any time without notice to you. If you want to terminate your legal agreement with PhysLab, you may do so by notifying PhysLab at any time in writing, which will entail closing your account utilized for online result access. Your notice should be sent, in writing, to PhysLab's address, which is set out on the Site, or online via [info@physlab.com](mailto:info@physlab.com). If you provide notice online, PhysLab will call or send you an email asking you to confirm your request and your notice will be effective following receipt of confirmation from you.

We may terminate or suspend the Services at any time (and in conjunction therewith, your password and account(s)) with no notice to you for any reason. Conditions of termination or suspension may include, but are not limited to: (1) you have breached any provision of the Terms of Service (or have acted in manner which shows that you do not intend to, or are unable to comply with the provisions of the Terms of Service); (2) PhysLab is required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful); (3) the partner with whom PhysLab offered the Services to you has terminated its relationship with PhysLab or ceased to offer the Services to you; (4) PhysLab is transitioning to no longer providing the Services to users in the country or state in which you reside or from which you use the Services; or (5) the provision of the Services to you by PhysLab is, in PhysLab's opinion, no longer commercially viable.

Any suspected fraudulent, abusive, or illegal activity that may be grounds for termination of your use of the Services may be referred to appropriate law enforcement authorities. You acknowledge and agree that PhysLab shall not be liable to you or any third party for any termination of your access to the Services.

Upon termination of these Terms of Service, you shall destroy all Content obtained from the Services and all related documentation thereof, whether made under the Terms of Service or otherwise. The Terms of Service will terminate immediately without notice from PhysLab if in PhysLab's sole discretion you fail to comply with any provision of the Terms of Service. Upon termination, you must destroy all Content obtained from the Services, whether made under the provisions of the Terms of Service or otherwise.

#### 10. SURVIVAL OF TERMS

Provisions of these Terms of Service that, by their nature, should survive termination of these Terms of Service will survive termination of these Terms of Service.

#### 11. PHYSLAB'S PROPRIETARY RIGHTS

You acknowledge and agree that PhysLab (or PhysLab's licensors, as applicable) owns all legal right, title, and interest in and to the Services, including any intellectual property rights therein (whether those rights happen to be registered or not, and wherever in the world those rights may exist). You further acknowledge that the Services may contain information which is designated confidential by PhysLab and that you shall not disclose such information without PhysLab's prior written consent.

You further acknowledge and agree that the Services and any necessary software used in connection with the Services ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that the Services and Contents are protected by copyrights, trademarks, service marks, patents, or other proprietary rights and laws.

Except as explicitly stated in these Terms, PhysLab and its licensors reserve all rights in and to the Services, Software and the Content. We may, but are not obligated to, monitor your use of the Services and Content. You are hereby granted a limited, nonexclusive, nontransferable, non-sub licensable, revocable license to access and use our Services, Software, and Content for your own personal, non-commercial use. However, such license is subject to these Terms of Service and does not include any right to (1) sell, resell, rent, lease, loan, or commercially use our Services or Content; (2) copy, reproduce, distribute, publicly perform or publicly display Content, except as expressly permitted by us or our licensors; (3) modify, reverse engineer, decompile, or otherwise attempt to extract the source code of the Services, Software, of Content, remove any proprietary rights notices or markings, or otherwise make any derivative uses of our Services or Content; (4) use any data mining, robots or similar data gathering or extraction methods; and (5) use our Services or Content other than for their intended purposes. Any use of our Services or Content other than as specifically authorized herein, without our prior written permission, is strictly prohibited and will terminate the license granted herein.

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For any Software not accompanied by a License Agreement, PhysLab grants you a personal, non-transferable, and non-exclusive right and license to use the object code of its Software on a single computer. You may not (and may not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in, or otherwise transfer any right in the Software unless this is expressly permitted or required by law, or unless you have been specifically told that you may do so by PhysLab, in writing. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by PhysLab, in the manner permitted by the Terms of Service. Unless PhysLab has given you specific written permission to do so, you may not assign (or grant a sublicense of) your rights to use the Software, grant a security interest in or over your rights to use the Software, or otherwise transfer any part of your rights to use the Software. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Service. You agree not to access the Service by any means other than through the interface that is provided by PhysLab for use in accessing the Service. Any rights not expressly granted herein are reserved.

## 12. DISCLAIMER OF WARRANTIES

We provide our Services using a commercially reasonable level of care and promise to do our best to make sure you enjoy the Services. But there are certain things that we don't promise about our Services.

OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS OF SERVICE, NEITHER PHYSLAB NOR ITS AGENTS OR SERVICE PROVIDERS (THE "SERVICES ENTITIES") MAKE ANY SPECIFIC PROMISES ABOUT THE SERVICES, THE CONTENT OF THE SITE, AND THE PHYSLAB CONTENT. FOR EXAMPLE, WE DON'T MAKE ANY COMMITMENTS ABOUT THE CONTENT WITHIN THE SERVICES, THE SPECIFIC FUNCTION OF THE SERVICES, OR THEIR RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. WE PROVIDE THE SERVICES "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

THE SERVICES ARE NOT INTENDED TO, AND DO NOT, CONSTITUTE MEDICAL ADVICE, TREATMENT OR DIAGNOSIS. BY OBTAINING SERVICES, YOU ACKNOWLEDGE AND AGREE THAT YOU WILL NOT RELY ON THE SERVICES AS MEDICAL ADVICE, TREATMENT, DIAGNOSIS, OR OTHERWISE UTILIZE IN CONNECTION WITH THE MANAGEMENT OF YOUR HEALTH UNLESS UNDER THE DIRECTION OF AN APPROPRIATELY QUALIFIED HEALTHCARE PROFESSIONAL.

SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTIES OR CONDITIONS OF TITLE, FITNESS FOR A PARTICULAR PURPOSE, SECURITY AND NON-INFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, WE EXCLUDE ALL SUCH WARRANTIES.

ALTHOUGH PHYSLAB BELIEVES THE CONTENT TO BE ACCURATE, COMPLETE, AND CURRENT, PHYSLAB DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION ACCESSIBLE ON THIS SITE IS ACCURATE, COMPLETE, OR CURRENT. PHYSLAB DOES NOT WARRANT THAT THE SERVICES, DESCRIPTIONS, INFORMATION OR CONTENT INCLUDED ON THE SITE OR APPLICATION WILL BE AS REPRESENTED BY THIRD PARTY PROVIDERS, WILL BE FREE OF DEFECTS OR LAWFUL TO SELL, OR WILL BE SATISFACTORY TO YOU, OR THAT THIRD-PARTY PROVIDERS WILL PERFORM AS PROMISED.

WITHOUT LIMITING THE FOREGOING, WE AND OUR THIRD-PARTY SERVICE PROVIDERS MAKE NO WARRANTY THAT (1) THE SERVICES WILL MEET YOUR REQUIREMENTS, (2) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, (3) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE OR WILL NOT CONTAIN ERRORS, OR (4) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS OR (5) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

The Content and Services may be out of date and PhysLab makes no commitment to update the information regarding Content and the Services. However, in an effort to provide you with the most current information, PhysLab will, from time to time, make changes in the Content and in the Services described on this Site. PhysLab does not operate as a broker or an accounting, financial, or investment planner or advisor. PhysLab does not provide financial, business, accounting, securities, tax, or legal advice.

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT: (1) YOUR USE OF THE SERVICES ARE AT YOUR SOLE RISK. (2) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. (3) NO INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM PHYSLAB OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS OF SERVICE. (4) YOU SHOULD ALWAYS USE CAUTION WHEN GIVING OUT ANY PERSONALLY IDENTIFYING INFORMATION ABOUT YOURSELF OR THOSE FOR WHOM YOU HAVE LEGAL AUTHORITY. PHYSLAB DOES NOT CONTROL OR ENDORSE ANY ACTIONS RESULTING FROM YOUR PARTICIPATION IN THE SERVICES AND, THEREFORE, PHYSLAB SPECIFICALLY DISCLAIMS ANY LIABILITY WITH REGARD TO ANY ACTIONS RESULTING FROM YOUR PARTICIPATION IN THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY ERRORS.

### 13. LIMITATION OF LIABILITY

EXCEPT WHERE PROHIBITED, PHYSLAB SHALL NOT BE LIABLE FOR (1) THE PERFORMANCE OF THE SERVICES OR THE INABILITY TO USE THE SERVICES; (2) ANY ACTION YOU TAKE BASED ON THE INFORMATION YOU RECEIVE IN THROUGH OR FROM THE SERVICES (2) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF \$100; (3) ANY EVENT BEYOND OUR REASONABLE CONTROL; (4) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL (5) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES; (6) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS

OR DATA; (7) THE IMPROPER AUTHORIZATION FOR THE SERVICES BY SOMEONE CLAIMING SUCH AUTHORITY; OR (8) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING FROM YOUR USE OF THE SERVICES OR ANY THIRD PARTY'S USE OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST DATA, COMPUTER FAILURE, OR THE VIOLATION OF YOUR RIGHTS BY ANY THIRD PARTY, EVEN IF THE SERVICES ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED (COLLECTIVELY, "DAMAGES").

THIS DISCLAIMER OF LIABILITY FOR DAMAGES INCLUDES, BUT IS NOT LIMITED TO DAMAGES FOR (1) LOSS OF USE, GOODWILL, DATA, OPPORTUNITY, OR PROFITS, OR COST OF PROCURING SUBSTITUTE SERVICES; (2) THE TRANSMISSION OF ANY VIRUSES, DATA OR HARMFUL CODE THAT MAY AFFECT YOUR EQUIPMENT OR ANYONE ELSE'S EQUIPMENT; (3) ANY INCOMPATIBILITY BETWEEN THE SERVICE'S FILES AND YOUR BROWSER OR OTHER WEBSITE ACCESSING PROGRAM, (4) ANY FAILURE OF ANY ELECTRONIC OR TELEPHONE EQUIPMENT, COMMUNICATION OR CONNECTION LINES, UNAUTHORIZED ACCESS, THEFT, OPERATOR ERRORS, OR ANY FORCE MAJEURE, ALL ARISING OUT OF OR IN CONNECTION WITH THE USE, COPYING, OR DISPLAY OF THE CONTENT OF THIS SITE.

SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES; AS A RESULT, THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU IN WHOLE OR IN PART AND THE FOREGOING PARAGRAPH SHALL NOT APPLY TO A RESIDENT OF NEW JERSEY TO THE EXTENT DAMAGES TO SUCH NEW JERSEY RESIDENT ARE THE RESULT OF PHYSLAB'S NEGLIGENT, FRAUDULENT, OR RECKLESS ACT(S) OR INTENTIONAL MISCONDUCT.

#### 14. NOTICE

Official notices related to this Terms of Service must be sent to us at:

Physicians Laboratory Services, Inc.  
4840 F St  
Omaha, NE 68117

Additionally, PhysLab accepts service of process at this address. Any notices that you provide without compliance with this section on Notices shall have no legal effect.

#### 15. CHANGES TO THE TERMS OF SERVICE

PhysLab may make changes to the Terms of Service from time to time, without providing notice to you. When these changes are made, PhysLab will make a new copy of the Terms of Service available on its website and any new additional terms will be made available to you from within, or through, the affected Services.

You acknowledge and agree that if you use the Services after the date on which the Terms of Service have changed, PhysLab will treat your use as acceptance of the updated Terms of Service.

#### 16. VIOLATION OR SUSPECTED VIOLATION OF TERMS OF SERVICE

If you violate the terms of these Terms of Service and/or PhysLab has a reasonable ground to suspect that you have violated the terms of these Terms of Service, PhysLab has the right to

suspend or terminate your account and refuse any and all current or future use of the Services (or any portion thereof).

#### 17. CONSENT TO USE ELECTRONIC COMMUNICATIONS

To the extent permitted by applicable law, you consent to electronically receive all records, notices, communications, and other items for all Services provided to you under these Terms of Service and in connection with your relationship with us (collectively, "Communications") that we may otherwise be required to send or provide you in paper form (e.g., by mail). By accepting and agreeing to these Terms of Service electronically, you represent that: (a) you have read and understand this consent to receive Communications electronically; (b) you satisfy the minimum hardware and software requirements specified below; and (c) your consent will remain in effect until you withdraw your consent as specified below.

Your consent to receive Communications electronically will remain in effect until you withdraw it. You may withdraw your consent to receive further Communications electronically at any time by contacting us at (800)642-1117. If you withdraw your consent to receive Communications electronically, we will close your account, and you will no longer be able to use your account or the Services, except as expressly provided in these Terms of Service. Any withdrawal of your consent to receive Communications electronically will be effective only after we have a reasonable period of time to process your withdrawal. Please note that withdrawal of your consent to receive Communications electronically will not apply to Communications electronically provided by us to you before the withdrawal of your consent becomes effective.

In order to ensure that we are able to provide Communications to you electronically, you must notify us of any change in your email address and your mobile device number or other text message address by updating your account. You should print and save and/or electronically store a copy of all Communications that we send to you electronically.

In order to access and retain Communications provided to you electronically, you must have the appropriate software systems and hardware systems to accept such electronic Communications.

We reserve the right, in our sole discretion, to communicate with you in paper form. In addition, we reserve the right, in our sole discretion, to discontinue the provision of electronic Communications or to terminate or change the terms and conditions on which we provide electronic Communications. Except as otherwise required by applicable law, we will notify you of any such termination or change by updating these TOS, without obligation to deliver notice to you of such termination or change.

All notices from us intended for receipt by you shall be deemed delivered and effective when sent to the email address you provide to us. Please note that by submitting Transmissions (as defined below), creating a user account or otherwise providing us with your email address, postal address or phone number, you are agreeing that we or our agents may contact you at that address or number in a manner consistent with our Privacy Statement.

Access and use of the Service and any content or information made available through the Service is personalized for each subscriber and intended only for the subscriber's own personal use and only in compliance with this Agreement.

#### 18. THIRD PARTY LINKS

The Site may also contain links to third party websites that are not owned or controlled by PhysLab. PhysLab makes no representations or warranties regarding any websites, information

or content that may be accessible through this Service that is not maintained, controlled or created by PhysLab. Further, PhysLab assumes no responsibility for the content, privacy policies, cookies, or practices of any third-party websites.

PhysLab will not censor or edit the content of any third-party websites. Additionally, because PhysLab does not control non- PhysLab sites or the products advertised therein, you acknowledge and agree that PhysLab is not responsible for the availability of such non-PhysLab sites, products, or services, and is neither responsible nor liable for any content, advertising, products, services or other materials on or available from such sites. In no event shall any reference to any non- PhysLab site, product or service be construed as an approval or endorsement by PhysLab of such site, product or service. Please see our Privacy Statement here for further details. By using the Site, you expressly relieve PhysLab from any and all liability arising from your use of any third-party website.

You are authorized to use the Services, solely for your own personal and non-commercial use, and all other uses are prohibited. You agree not to use the Services to act on behalf or for the benefit of a third-party, nor to allow a third-party to have access to your username or password in order to use the Services.

#### 19. SECURITY

We maintain physical, electronic, and procedural safeguards and personnel policies, consistent with generally accepted industry standards that are designed to guard the Site, our systems Transmissions provided by our Users. We will maintain any personally identifiable information that we collect and/or receive in accordance with our Privacy Statement.

#### 20. NOTICE FOR CALIFORNIA RESIDENTS

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: If you have a question or complaint regarding the Site, please send an email to [info@physlab.com](mailto:info@physlab.com). You may also contact us by writing to 4840 F St., Omaha, NE 68117 or by calling (800)642-1117. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

#### 21. THIRD-PARTY BENEFICIARY; ADDITIONAL TERMS

You agree that our third-party services providers are third-party beneficiaries of the applicable provisions of these Terms of Service, with all rights to enforce such provisions as if such service providers were a party to these Terms of Service.

In conjunction with your access or use of the Services, you may be subject to additional terms, rules, policies, and conditions that are posted on the Site (the "Additional Terms"), which are hereby incorporated by reference into these Terms of Service. In the event of a conflict between any Additional Terms and these Terms of Service, these Terms of Service will control.

#### 22. DISPUTE RESOLUTION

**PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.**

## Binding Arbitration

If the Parties are unable to resolve any controversy or claim arising out of or relating to the Site, use of the Site, these Terms of Service and/or the Privacy Statement (each a "Dispute") through informal negotiations, you and PhysLab agree that the Dispute (except those Disputes expressly excluded below) shall be settled by binding arbitration to be held in Nebraska in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. To the extent permitted by law, PhysLab shall pay the administrative fees associated with the arbitration, except for the first \$300.00 in administrative fees for any arbitration that is initiated by me, and each of us shall separately pay our counsel fees and expenses. The arbitrator shall apply Nebraska law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized at law. If any part of this arbitration provision is deemed to be invalid, unenforceable or illegal (other than that claims will not be arbitrated on a class or representative basis), or otherwise conflicts with the rules and procedures established by the American Arbitration Association, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. If, however, the portion that is deemed invalid, unenforceable or illegal is that claims will not be arbitrated on a class or representative basis, then the entirety of this arbitration provision shall be null and void, and neither you nor PhysLab shall be entitled to arbitrate their dispute. BY AGREEING TO THE ARBITRATION OF DISPUTES AS SET FORTH HEREIN, YOU AGREE THAT YOU ARE WAIVING YOUR RIGHT TO A JURY TRIAL AND LIMITING YOUR RIGHT TO APPEAL AND YOU UNDERSTAND THAT YOU ARE WAIVING YOUR RIGHTS TO OTHER AVAILABLE RESOLUTION PROCESSES, SUCH AS A COURT ACTION. DO NOT USE THIS SITE IF YOU DO NOT AGREE TO THE FOREGOING BINDING ARBITRATION PROVISIONS.

## Class Action Waiver

The parties agree to bring any dispute in arbitration only on their own behalf, and not on a class or collective actions basis. Accordingly:

There will be no right or authority for any dispute to be brought, heard or arbitrated as a class or collective action ("Class Action Waiver"). The Class Action Waiver shall not be severable from this Arbitration Agreement in any case in which: (a) the dispute is filed as a class and/or collective action and (b) a civil court of competent jurisdiction (subject to appeals if any to an appellate court) finds the Class Action Waiver is unenforceable. In such instances, the class and/or collective action must be litigated in a civil court of competent jurisdiction.

Notwithstanding any other clause or language in this document, Arbitration Agreement and/or any rules or procedures that might otherwise apply by virtue of this document or by virtue of any arbitration organization rules or procedures that now apply or any amendments and/or modifications to those rules, any claim that the Class Action Waiver or any portion of the Class Action Waiver, is unenforceable, inapplicable, unconscionable, or void or voidable, shall be determined only by a court of competent jurisdiction and not by an arbitrator.

The Class Action Waiver and any other provision of this Arbitration Agreement, shall be severable in any case in which the dispute is filed as an individual (non-class and non-collective) action and severance is necessary to ensure that the action proceeds in arbitration.

## 23. MISCELLANEOUS

a. **Entire Agreement.** The Terms of Service constitute the entire agreement between you and PhysLab and govern your use of the Services, superseding any prior agreements between you and PhysLab on this subject. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, or third-party software.

b. **Waiver.** The failure of PhysLab to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. If any provision of the Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms of Service remain in full force and effect.

c. **Term for cause of action.** You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or the Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred.

d. **Admissibility of printed version.** A printed version of this agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

e. **Section titles.** The section titles in the Terms of Service are for convenience only and have no legal or contractual effect.

f. **Severability Clause.** If any portion of these Terms of Service is found to be unenforceable, the remaining portion will remain in full force and effect.

g. **Assignment:** You may not assign or delegate any rights or obligations under these Terms of Service. Any purported assignment and delegation shall be ineffective. We may freely assign or delegate all rights and obligations under these Terms of Service, fully or partially without notice to you. We may also substitute, by way of unilateral novation, effective upon notice to you, PhysLab for any third party that assumes our rights and obligations under this Agreement.

## 24. NOTICE AND TAKE DOWN PROCEDURES

If you believe any information, Content, or Transmissions (together, the "Materials") on the Services infringe your copyright or trademark rights, you may request such Materials be removed by following the notice and take down procedures of the Digital Millennium Copyright Act. To follow those procedures, contact the Information Technology Department at PhysLab (address below) and provide the following information:

1. A clear statement identifying the works, or other materials believed to be infringed.
2. A statement from the intellectual property owner ("Owner") or authorized representative that the Materials are believed to be infringing and not authorized by the Owner.
3. Sufficient information about the location of the allegedly infringing Materials so that Accretive can find and verify its existence.
4. Your name, telephone number and e-mail address.
5. A statement from you under penalty of perjury that the information supplied is accurate, and that you are authorized to act on the Owner's behalf.
6. A signature or the electronic equivalent from the Owner or authorized representative.

PhysLab's agent for notice of copyright or trademark issues on the Site can be reached as follows:

Physicians Laboratory Services, Inc.  
4840 F St  
Omaha, NE 68117  
Attn: I.T. Department

PhysLab shall be free to use any ideas, concepts, know-how, or techniques contained in such information for any purpose whatsoever including, but not limited to, developing, manufacturing, or marketing products incorporating such information. You further agree that PhysLab may use information about your demographics and use of this Site in any manner that does not reveal your identity.

## 25. CONTACT US

If you have questions or comments about this policy, you may email us at [info@physlab.com](mailto:info@physlab.com) or by post to: Physicians Laboratory Services, Inc.  
Attn: I.T. Department  
4840 F St  
Omaha, NE 68117