

TERMS & CONDITIONS FOR BIOHM HEALTH OFFERINGS

(Last Updated: April, 2024)

BIOHM Health, Inc. (“**BIOHM**”, “**the Company**”, “**We**”, “**Our**” or “**Us**”, as used interchangeably herein), directly or through its parent company and related affiliates, including BIOHM Health, LLC, operates various websites (“**Websites**”), including www.BIOHMHealth.com, www.BIOHMtesting.com, and www.guttesting.com. At those Websites, We make available various offerings subject to the terms and conditions set forth herein.

These Terms and Conditions (hereinafter, “**Agreement**”), set forth the terms of the agreement between You (“**You**” or “**Your**”) and BIOHM applicable to:

- Your purchase at or through any of the Websites of any of Our products (“**Products**”), services (“**Services**”), or subscriptions (“**Subscriptions**”), including without limitation, Your purchase of any of Our test kits, nutritional supplements, wellness coaching or consultations, apparel, and any submission by You of a Sample (as “**Sample**” is defined below) or Self-Reported Information (as “**Self-Reported Information**” is defined below) to Us for analysis, review or other Service we perform involving Your Sample or information; and,
- Your downloading, installation, and use of Our BIOHM software application (“**App**”), as may be made available for download by You to Your mobile or other electronic computing device via the Apple® IOS store or otherwise; and,
- Your accessing and/or using of any software services other than Our App which We provide or make available via any portal or login screens accessible at any of Our Websites (individually and collectively with the App, “**Software**”), including via the “Gut Test Portal” button on the biohmhealth.com website and the “Gut Quiz” made available at “guttesting.com;” and,
- Your use of any of Our Websites.

These and Our other various Products, Services, Software and Subscriptions may be referred to herein individually as an “**Offering**” and in the plural as “**Offerings**.” “**Sample**” means a biological sample or other physical specimen You provide to BIOHM for processing in order to analyze and generate a profile of Your microbiome results. “**Self-Reported Information**” means information You provide Us about You, including known disease conditions, other health-related information, personal traits, ethnicity, family history, and other information about You.

EVERY DISPUTE BETWEEN YOU AND US, EXCEPT DISPUTES RESOLVED IN SMALL CLAIMS COURT, IS SUBJECT TO A CLASS ACTION WAIVER AND MUST BE RESOLVED BY INDIVIDUAL BINDING ARBITRATION. PLEASE READ THE ARBITRATION PROVISION BELOW AS IT AFFECTS YOUR RIGHTS UNDER THIS CONTRACT.

1. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN YOU AND US

We are relying on Your full and complete agreement to be bound by all of the terms set forth or incorporated herein and You acknowledge that We would not make any Offerings available to You if You did not so agree.

You manifest Your assent to and agree to be bound by this Agreement when You do any of the following:

- You complete the steps to purchase or otherwise receive the benefit of an Offering at or through a Website, including by checking a box or screen that provides “I accept the **TERMS & CONDITIONS FOR BIOHM HEALTH OFFERINGS**” (or words to similar effect); or,
- You use or request that We provide You the ability to access or download any of Our Software or that We provide You with any of Our Offerings, in each case, as made available at or through any of Our Websites; or,
- You upload, submit or transmit any information to Us, including any Sample or any Self-Reported Information; or,
- You download, install, and/or use Our App or any other of Our Software; or,
- You create, modify, access or use an account linked to any of Our Software; or,
- You otherwise use or review Our Websites.

In agreeing to be bound by this Agreement, You agree to comply with all of the rules, guidelines, policies, terms, and conditions applicable to Our Offerings, and they are incorporated into this Agreement by this reference. If You do not agree to be bound by this Agreement, do not attempt to obtain, use, or receive the benefit of any of Our Offerings, including by taking any of the actions listed above.

This Agreement may be revised or amended by the Company at any time and without notice to You. When changes to this Agreement are made, BIOHM will make the updated version of this Agreement available at its Websites and, when appropriate, in its Offerings. Once made available, such revisions and amendments shall be immediately binding on You. You agree that it is Your obligation and responsibility to periodically review Our various Websites to see if this Agreement has been revised or amended. You acknowledge and agree that if You purchase, access, use, or receive the benefit of any of Our Offerings after the date on which this Agreement has been revised by Us, such action constitutes Your acceptance of the updated Agreement.

2. WHO CAN USE OUR OFFERINGS.

While We strive to make Our Offerings available to everyone, there are restrictions on who may purchase or otherwise receive the benefit of Our Offerings. By purchasing, receiving the benefit or, or using any of Our Offerings, You represent, warrant and agree that:

- You are of legal age to form a binding contract with BIOHM under the laws of the jurisdiction in which You are resident or from which You purchase, receive the benefit of or otherwise use the Offerings; and,
- You are not restricted or prohibited from purchasing, receiving the benefit of or using any Offerings under the laws of the jurisdiction in which You are resident or from which You use any of Our Offerings.
- You are using or reviewing Our Websites from a location either in the United States or Canada.
- **YOU UNDERSTAND THAT INFORMATION YOU LEARN FROM BIOHM THROUGH YOUR PURCHASE OR USE OF ANY OF OUR OFFERINGS IS NOT DESIGNED TO PREDICT, DIAGNOSE, PREVENT, OR TREAT ANY CONDITION OR DISEASE OR TO ASCERTAIN THE STATE OF YOUR HEALTH. YOU UNDERSTAND THAT THE BIOHM SERVICES ARE INTENDED**

FOR INFORMATIONAL AND/OR EDUCATIONAL PURPOSES ONLY AND SHOULD ALWAYS BE CONFIRMED AND SUPPLEMENTED BY ADDITIONAL MEDICAL AND CLINICAL TESTING AND INFORMATION. YOU ACKNOWLEDGE THAT BIOHM URGES YOU TO SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER HEALTH CARE PROVIDER IF YOU HAVE QUESTIONS OR CONCERNS ARISING FROM YOUR MICROBIOME RESULTS.

In addition, if You transmit, submit or otherwise provide to Us any Sample, Self-Reported Information or other Personal Information, You represent, warrant and agree that You are, or the person to whom such material relates, is thirteen (13) years of age or older and that such information is either Your information or information belonging to a person for whom You have the legal right to provide such material. You also give permission to BIOHM, its contractors, affiliates and their respective successors and assignees to perform any of Our or their respective services, analysis or evaluation off or on Your Sample as they may elect and/or as You have requested and You specifically request BIOHM to disclose the microbiome results to You and to others You specifically authorize. **“Personal Information”** means information that can be used to identify You, either alone or in combination with other information and includes but is not limited to Self-Reported Information.

3. CONSIDERATIONS AND RISKS REGARDING BIOHM OFFERINGS.

Our Offerings, including Our Services, are not intended to diagnose, treat, cure or prevent any disease. Our Company is not a licensed medical service provider and any information available or provided by Us through the use of Our Offerings is not and should not be interpreted as medical advice, diagnosis or treatment. Your access or use of Our Offerings does not form and shall not be construed to form a physician-patient relationship. You understand and acknowledge that You should consult with Your medical care providers, regarding all medical and wellness matters affecting You and Your implementation or utilization of any information provided by Us.

IF AT ANY TIME YOU HAVE REASON TO BELIEVE THAT YOU ARE HAVING A MEDICAL EMERGENCY, YOU SHOULD IMMEDIATELY CALL 911 AND SEEK IMMEDIATE MEDICAL ATTENTION.

Once You receive analysis of any Information (including any sample) You submit to Us, the knowledge is irrevocable. You should not assume that any information We may be able to provide to You, whether now or as research advances, will be welcome or positive. You should also understand that as research advances, in order for You to assess the meaning of Your microbiome in the context of such advances, You may need to obtain further Offerings from BIOHM, Your physician, nutritionist, or other health care provider.

We encourage You to talk to a health professional with special training in digestive health conditions, prior to collecting Your Sample so You can make an informed decision about whether testing is right for You. A physician can help You understand Your results and options.

Some people feel a little anxious about getting their microbiome results. This is normal. If You feel very anxious, You should speak to Your physician or a healthcare provider prior to collecting Your Sample for testing.

You may learn information about Yourself that You do not anticipate. This information may evoke strong emotions and has the potential to alter Your life and worldview. You may discover things about Yourself that trouble You and that You may not have the ability to control or change. These outcomes could have social, legal, or economic implications.

The laboratory may not be able to process Your Sample, and the laboratory process may result in errors.

The laboratory may not be able to process Your Sample if Your Sample does not contain a sufficient volume of biologic material, You do not provide enough of a Sample, or the results from processing do not meet Our standards for accuracy. If the initial processing fails for any of these reasons, BIOHM will reprocess the same Sample once at no charge to You. If the second attempt to process the same Sample fails, BIOHM will offer to send another kit to the user to collect a second Sample at no charge. If the user sends another Sample and BIOHM's attempts to process the second Sample are unsuccessful, BIOHM will not send additional Sample collection kits and the user will be entitled solely and exclusively to a complete refund of the amount paid to BIOHM, less shipping and handling, provided the user shall not resubmit another Sample through a future purchase of the Service. If the user breaches this policy agreement and resubmits another Sample through a future purchase of the Service and processing is not successful, BIOHM will not offer to reprocess the Sample or provide the user a refund. Even for processing that meets Our high standards, a small, unknown fraction of the data generated during the laboratory process may be un-interpretable or incorrect (referred to as "**Errors**"). As this possibility is known in advance, users are not entitled to refunds where these Errors occur.

You should not change Your health behaviors solely on the basis of information from BIOHM. Make sure to discuss Your results with a physician or other healthcare provider before You act upon the results of the BIOHM Services. For most common diseases, the microorganisms We know about are only responsible for a small fraction of the risk. There may be unknown markers, environmental factors, or lifestyle choices that are far more important predictors. If Your data indicates that You are not at elevated risk for a particular disease or condition, You should not feel that You are protected. The opposite is also true; if Your data indicates You are at an elevated risk for a particular disease or condition, it does not mean You will definitively develop the disease or condition. In either case, if You have concerns or questions about what You learn through BIOHM, You should contact Your physician or other health care provider.

Microbiome research is not comprehensive. While We measure many of the data points from Your microbiome, only a small percentage of them are known to be related to human traits or health conditions. The research community is rapidly learning more about the human and other animal gut microbiomes, and an important mission of BIOHM is to conduct and contribute to this research. In addition, many ethnic groups are not included in microbiome studies. Because interpretations provided in Our Services rely on these published studies, some interpretations may not apply to You. Future scientific research may change the interpretation of Your microbiome. In the future, the scientific community may show previous research to be incomplete or inaccurate.

Your microbiome results that You share with others could be used against Your interests. You should be careful about sharing Your microbiome results with others. Currently, very few businesses or insurance companies can and do request access to any genetic information which may be included in Your microbiome, but this could change in the future. While the "Genetic Information Nondiscrimination Act" ("**GINA**") was signed into law in the United States in 2008, its protection against discrimination by employers and health insurance companies for employment and coverage may not apply to gut microbiome genetic information. In addition, GINA does not cover life, long-term care, or disability insurance providers. Some, but not all, states and other jurisdictions have laws that protect individuals

with regard to their genetic information. You may want to consult a lawyer to understand the extent of legal protection of Your microbiome before You share it with anybody.

Furthermore, microbiome results that You choose to share with Your physician or other health care provider may become part of Your medical record, and through that route be accessible to other health care providers and/or insurance companies in the future.

BIOHM Services are for informational and educational use only. We do not provide medical advice. The microbiome results provided by BIOHM is for Your personal informational and educational use only. This means two things. First, many of the microbiome discoveries that We report have not been clinically validated, and the technology We use, which is the same technology used by the scientific community, to date has not been widely used for clinical testing. As a result of the current state of gut microbiome knowledge and understanding, Our Services are for informational and educational purposes only. The Services are not intended to be used by the customer for any diagnostic purpose and are not a substitute for professional medical or veterinary advice. You should always seek the advice of Your physician or other health care provider, with any questions You may have regarding diagnosis, cure, treatment, mitigation, or prevention of any disease or other medical condition or impairment or the status of Your health.

BIOHM does not endorse, warranty or guarantee the effectiveness of any specific course of action, resources, tests, physician or other health care providers, drugs, biologics, medical devices or other products, procedures, opinions, or other information that may be mentioned on Our Website. If We provide to You on Our website any recommendations that identify for You, based on Your microbiome and Self-Reported Information and scientific literature or research, potentially actionable information, this information is intended for informational purposes only and for discussion with Your physician or other healthcare provider. As explained on Our Website, BIOHM believes that (a) Your microbiome is only part of the picture of any individual's state of being, (b) the state of the understanding of the human gut microbiome is rapidly evolving and at any given time We only comprehend part of the picture of the role of microbiome science, and (c) only a trained physician or other health care provider can assess Your current state of health or disease, taking into account many factors, including in some cases Your microbiome as well as Your current symptoms, if any. Reliance on any information provided by BIOHM, BIOHM employees, others appearing on Our Website at the invitation of BIOHM, or other visitors to Our Website is solely at Your own risk.

4. YOUR SUBMISSION OF A SAMPLE.

Consent to Sample storage and additional Sample analyses. When You send us a Sample, You are choosing to have BIOHM and/or its contractors store either Your Sample or material extracted from Your Sample, and to have BIOHM and/or its contractors access and analyze Your stored pseudonymized Sample, subject to Our [Privacy Policy](#). Unless We notify You otherwise, We or Our contractors will store Your pseudonymized Sample indefinitely at Our laboratory or identifiable Samples for a period of up to ten (10) years. We will contact You to get Your permission in the unlikely event We need to re-analyze Your identifiable Sample or perform future analysis that is not described in this Agreement. All of the same safeguards to any further use of Your Sample will be provided as provided herein and/or Our [Privacy Policy](#) and the [Consent to Participate in Research Agreement](#).

Submission of Sample by Product Expiration Date. You are required to submit Your Sample to BIOHM before the Product Expiration Date, or You will be required to separately purchase an additional new gut

microbiome test kit and resubmit Your Sample. **“Product Expiration Date”** means the twelve (12) month period beginning on the purchase date of the microbiome test kit.

Purging of Testing / Analytic Results if You do Not Register an Account with Us.

If You purchase a test kit and submit a Sample for analysis, in order to receive the results of analysis or other review performed thereon, You are required to create a user account via either Our Website and/or through Our App. If You fail to create such an account within 180 days of Our receipt of Your sample, we shall have the right to delete any information associated with Your Sample (including without limitation the analytical lab results) and We shall have no obligation to provide You with such results.

Additional DNA analyses of stored participant Samples. In addition, for research purposes, Your pseudonymized microbiome data may be reanalyzed in the future using another technology. The analysis may focus on particular regions of the human gut microbiome or on the whole microbiome. While the field of large-scale sequence analysis is still in its early stages, We can use methods that are being developed to compare sequence data with large public databases of certain variations to identify and characterize functional microbiome variation.

Consent to participate in research. Subject to the terms of Our [Privacy Policy](#), You grant Your consent for Your Personal Information, (including Your Samples, microbiome, and Self-Reported Information) to be used in BIOHM Research as described in the applicable Consent to Participate in Research agreement which is made available for Your review [here](#) and which is incorporated into and forms part of this Agreement. In accordance with Our [Privacy Policy](#) and the [Consent to Participate in Research Agreement](#), We may include Your information in the aggregated microbiome and Self-Reported Information We disclose to third parties for the purpose of publicity or publication in a peer-reviewed scientific journal. BIOHM may also include Your information in Aggregated microbiome and Self-Reported Information disclosed to third-party non-profit and/or commercial research partners who will not publish that information in a peer-reviewed scientific journal. BIOHM Research may be sponsored by, conducted on behalf of, or in collaboration with third parties, such as non-profit foundations, academic institutions or pharmaceutical companies. BIOHM Research may study a specific group or population, identify potential areas or targets for therapeutics development, conduct or support the development of drugs, diagnostics or devices to diagnose, predict or treat medical or other health conditions, work with public, private and/or non-profit entities on genetic research initiatives, or otherwise create, commercialize, and apply this new knowledge to improve health care. **“BIOHM Research”** means scientific research that BIOHM performs with the intent to publicize and/or publish in a peer-reviewed scientific journal. BIOHM Research only uses “Self-Reported Information” from users who have given informed consent according to the applicable BIOHM “Consent to Participate in Research” agreement, which can be found [here](#). **“Aggregated Self-Reported Information”** is Self-Reported Information that has been combined with that of other users and analyzed or evaluated as a whole, such that no specific individual may be reasonably identified.

Waiver of property rights. You understand that by providing any Sample, having Your Sample processed, accessing Your Personal Information (including Your microbiome results), or providing Self-Reported Information, You acquire no rights in any research or commercial products that may be developed by BIOHM or its collaborating partners. You specifically understand that You will not receive compensation for any research or commercial products that include or result from Your microbiome results or Self-Reported Information.

5. PURCHASES OF OUR OFFERINGS.

Charges and payment. In order to complete Your purchase, You must provide a valid payment method when You order any of Our Offerings which are for sale. When You purchase one of Our Offerings and supply payment method information (including any credit card, debit card, PayPal, Apple® Pay, or other similar payment processing services information), You authorize Us to charge Your payment method for all fees and charges applicable to Your purchase. You represent and warrant that You are authorized to use such payment method for making the subject purchase, and You agree to pay all fees and charges incurred using that payment method by Your account. You agree and authorize Us to provide Your payment method information and related Personal Information to Our designated third-party service provider(s) including payment processors for their use in charging You for the Offering ordered by You. All fees and charges for Our Offerings are exclusive of sales tax and other applicable taxes, and You are responsible for payment of any and all applicable taxes. Sales tax as used herein shall mean any sales or use tax, functional equivalent of a sales tax, or other tax measured by sales proceeds that We are permitted or required to pass on to Our customers.

We reserve the right to accept or reject orders for any Offering for any reason. Price and availability of Our Offerings are subject to change without notice.

YOU AGREE THAT ANY PAYMENT SUBMITTED BY YOU IS SUBMITTED ON BEHALF OF YOURSELF, WITHOUT EXPECTATION OF ANY REIMBURSEMENT BY THIRD-PARTY PAYERS. WE DO NOT UNDERTAKE TO SUBMIT ANY INFORMATION PROVIDED BY YOU FOR REIMBURSEMENT OR PAYMENT FROM PRIVATE INSURANCE CARRIERS, MEDICARE, MEDICAID, OR ANY OTHER THIRD-PARTY PAYERS.

Shipping Policy.

Fulfillment and delivery time. For orders placed with Standard Shipping, allow 1-2 business days (business day means Monday to Friday, except holidays) from the date an order is received by Our warehouse for the order to be processed and prepared for shipping. Once an order ships from the warehouse, the Customer will receive the order within 3-5 business days of the shipment date. Note that during high-volume periods, orders typically take 2 additional business days to process and ship.

Shipping carriers and rates. BIOHM ships orders to US, Army Post Office (APO), and Diplomatic Post Office (DPO) addresses. The shipping carrier varies depending on the weight of each package. Carrier details and tracking numbers will be specified within all the shipping notification emails sent to the Customer on the shipment date. The rate charged for the shipping of Your order is based on the weight of Your Offering, and Your location.

Shipping tracking. If a tracking number is provided by the shipping carrier, We will update Your order with the tracking information. Please note that some orders using First Class USPS mail will not have tracking numbers.

Questions. If You have any questions about the delivery and shipment of Your order, please contact Us at Support@BIOHMHealth.com.

Product Return, Refund and Cancellation Policy.

Return/Refund policy. Your satisfaction is Our number one priority at BIOHM. If for any reason, You are not satisfied with Your purchase of an Offering capable of being returned, You may return Your purchased Offering for a refund/store credit, following the guidelines below:

Unopened Items:

- If returned within the first 60 days after purchase, We will provide a full cash refund, less shipping charges.
- If returned within 61-90 days after purchase, We will provide a store credit equal to the value of Your purchase, less shipping charges.
- The customer is responsible for shipping charges.
- As soon as We receive Your returned items at Our Distribution Center, We will gladly process Your refund or store credit. Please allow 5-10 business days for Your return shipment to arrive at Our Distribution Center once You drop it in the mail. Once We process Your return, You will see:
 1. Refund payment within 30 business days depending on Your issuing bank and/or billing cycle, or
 2. Store credit within 5-10 business days.

Opened Items:

- If returned within the first 90 days after purchase, We will provide a store credit equal to the value of Your purchase, less shipping charges.
- The customer is responsible for shipping charges
- As soon as We receive Your returned items at Our Distribution Center, We will gladly process Your return and provide a store credit within 5-10 business days.

All return requests should be sent to the following email:

Support@BIOHMHealth.com

To ensure that Your return is processed as quickly as possible, please do provide Your original packing slip with Your return or Your original order number.

For any questions, please feel free to reach out to Us at:

Support@BIOHMHealth.com.

BIOHM Subscription cancellation/modification policy. Cancellations/modifications must be made before 11:59PM EST the day before Your renewal order processes. Once Your order processes, it cannot be cancelled or modified. If You cancel/modify Your subscription after the order has processed, Your cancellation/modification will take effect after that ship date.

Typographical Errors. In the event an Offering is listed at an incorrect price or with incorrect information due to typographical error or error in pricing or Offering related information received from Our suppliers,

We shall have the right to refuse or cancel any orders placed for an Offering listed at the incorrect price. We shall have the right to refuse or cancel any such orders whether or not the order has been confirmed and Your payment card charged. If Your payment card has already been charged for the purchase and Your order is canceled, We shall immediately issue a credit to Your payment card account in the amount of the charge.

6. ACCOUNTS

Account Creation, Customer Account, Password, and Security Obligations.

Some of Our Offerings require You to create an account to participate or receive the benefit of certain of Our Offerings. In creating an account with Us, You agree to: (a) provide true, accurate, current, and complete account registration information about Yourself, and (b) maintain and promptly update such information so that it remains true, accurate, current, and complete. If You provide any account registration information that is untrue, inaccurate, not current, or incomplete, or if BIOHM has a reasonable ground to suspect that such information is untrue, inaccurate, not current, or incomplete, BIOHM reserves the right to suspend or terminate Your account. We may ask You from time to time to confirm Your account by sending emails, texts or other communications and if You fail to confirm Your account as requested by Us we shall have the right to immediately suspend or delete Your account. You consent to receive notices, including agreements, disclosures, and other communications, electronically from us at the email address You have provided. You agree that these electronic notices satisfy any legal requirements that such communications be in writing.

We may assign You (or You may create) a password to enable You to access and use Your account. You will be solely responsible for all access to and use of Our Offerings by anyone using the password and identification originally assigned to You whether or not such access to and use of the associated Offering is actually authorized by You, including without limitation, all purchases, communications and transmissions and all obligations (including without limitation financial obligations) incurred through such access or use. You agree that You will not share Your account information with anyone and agree to notify Us immediately of any unauthorized use of Your account by anyone or any other breach of security that You become aware of.

You may not use an account for any purpose that is unlawful or prohibited this Agreement or in any manner that could damage, disable, overburden, or impair any of Our Offerings or interfere with any other party's use and enjoyment of any of Our Offerings. If You violate the terms of this section and/or BIOHM has a reasonable ground to suspect that You have violated the terms of this section, BIOHM has the right to suspend or terminate Your account.

If You use an account in connection with the submission of a Sample, You may do so only while You are physically residing in the country to which Your Sample collection kit was shipped from BIOHM.

In order to use many of Our Offerings, You must obtain Internet access, either directly or through devices that access web-based content and pay any service fees associated with such access. You are solely responsible for paying such fees. In addition, You must provide all equipment necessary to make such Internet connection, including a computer and modem or other access device. You are solely responsible for providing such equipment. You acknowledge and agree that while BIOHM may not currently have set a fixed upper limit on the number of transmissions You may send or receive through its various Offerings

or on the amount of storage space used for the provision of same, such fixed upper limits may be set by BIOHM at any time, at BIOHM's discretion.

7. USE RIGHTS AND RESTRICTIONS

Your Rights to Download, Access and/or Use Our Offerings. Subject to the terms and conditions of this Agreement, for so long as we determine in Our sole and exclusive discretion, on a non-exclusive, personal, non-transferable, non-sublicensable, and revocable basis, You may for Your personal and non-commercial use only, download and install Our App on a mobile phone or other personal electronic device, access and use Our Software (either via a web-based portal identified by Us or via the App), and access and use Our Websites by displaying same on Your personal computing device's internet browser. The Company reserves the right to suspend or terminate this Agreement and/or Your ability to access and use any of these Offerings without liability to You, without notice to You, and for any reason, including, without limitation, if You violate any of the terms of this Agreement. The foregoing rights shall be revoked and shall terminate immediately and without notice to You upon any breach by You of this Agreement.

Restrictions Related to Your Use of Our Offerings. In accessing and/or using any of Our Offerings, including without limitation through an account, You agree that You are subject to the following "Restrictions on Use" and that You will not: (1) sell, license, sub-license, distribute, rent, lease, digitally transmit, transfer, or assign the ability to access and use all or any part of Our Offerings; (2) copy, reproduce or publicly display all or any part of Our Offerings; (3) reverse engineer, decompile, or disassemble all or any part of Our Offerings, or otherwise attempt to obtain any of the source code, object code, executable code, or media files related to all or any part of Our Offerings; (4) remove or obscure any product identification, proprietary, copyright, or other notices contained in or on Our Offerings; (5) modify, translate, or create derivative works based upon all or any part of Our Offerings; (6) access Our Offerings other than for Your personal use or if You are not legally recognized as an adult by the applicable laws in the jurisdiction in which You reside; (7) incorporate all or any part of Our Offerings into any other product or service or create Internet "links" to or from all or any part of Our Offerings or "frame" or "mirror" any part of Our Offerings; (8) interfere with or disrupt the integrity or performance of all or any part of Our Offerings or the ability of You or others to access and use same, the data contained therein or any equipment used by You or others to connect to Our Offerings; (9) attempt to gain unauthorized access to any of Our Offerings or access any of Our Offerings through automated or non-human means; (10) access or use any App or any of Our other Software if You are under the age of 18, from a location outside of the United States of America or Canada, or if You are not a resident of either the United States of America or Canada; (11) upload, post, email, or otherwise transmit any material that is derogatory, defamatory, libelous, indecent, pornographic, obscene, 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; (12) impersonate any person or entity, including, but not limited to, anyone affiliated with BIOHM, or falsely state or otherwise misrepresent Your affiliation with a person or entity; (13) add Your own headers, forge headers, or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through an Offering; (14) "stalk" or otherwise harass another person; (15) 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) or any information that violates or infringes the copyrights, patents, trademarks, service marks, trade secrets, or

other proprietary rights of any person; (16) use any information received through the Offerings to attempt to identify other customers, to contact other customers, or for any forensic use; (17) download any file posted by another user of the Offerings that You know, or reasonably should know, cannot legally be distributed in such manner; (18) upload, post, email or otherwise transmit any content that infringes any patent, trademark, trade secret, copyright, or other proprietary rights of BIOHM or any other party; (19) harm minors in any way; (20) advertise or offer to sell or buy any goods or services for any business purpose; (21) 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, except in those areas that are designated for such purpose and only to the extent such content is authorized by law; (22) upload, post, email, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (23) use manual or automated software, devices, scripts robots, other means or processes to access, "scrape," "crawl" or "spider" any web pages or other services contained in the Website, unless explicitly permitted by BIOHM; (24) engage in "framing," "mirroring," or otherwise simulating the appearance or function of BIOHM's Website; (25) attempt to or actually override any security component of Our Offerings; (26) interfere with or disrupt any of the servers or networks connected to any of Our Offerings, or disobey any requirements, procedures, policies, or regulations of networks connected to Our Offerings, including through the use of any bugs, viruses, worms, trap doors, Trojan horses or other harmful code or properties; (27) violate any code of conduct, directives, instructions, or other guidelines which may be applicable to Our Offerings that have been communicated to You by anyone on behalf of BIOHM; or (28) intentionally or unintentionally violate any applicable local, state, national, or international law, or any regulations having the force of law. You agree that You will not use Our Offerings for activities prohibited by applicable state, federal, international law or rules or regulations.

We make no claims regarding Our Offerings outside the United States. If You access Our Offerings from outside the United States, You do so at Your own risk and You are responsible for compliance with the laws of such jurisdiction. You may not assign (or grant a sublicense of) Your rights to use Our Offerings, grant a security interest in or over Your rights to use Our Offerings, or otherwise transfer any part of Your rights to use Our Offerings. You agree not to modify Our Offerings in any manner or form, or to use modified versions of Our Offerings, including (without limitation) for the purpose of obtaining unauthorized access to Our Offerings. You agree not to access Our Offerings by any means other than through the interface that is provided by BIOHM for use in accessing Our Offerings. Any rights not expressly granted herein are reserved.

This is a non-exhaustive list of things You may not do in connection with regard to Our Offerings. If We have not within this Agreement expressly provided that You may do something with respect to an Offering, We do not authorize You to do it. We may decide that any conduct You engage in violates this Agreement, including these Restrictions on Use, and should We do so, We reserve the right to cause the immediate revocation or suspension of Your ability to access and use all or any part of Our Offerings.

You acknowledge and agree that You are solely responsible for (and that BIOHM has no responsibility to You or to any third party for) any breach of Your obligations under this Agreement and for the consequences (including any loss or damage which BIOHM may suffer) of any such breach. In case of breach of any one of these agreements BIOHM has the right to suspend or terminate Your account and refuse any and all current or future use of any of Our Offerings (or any portion thereof) and You will defend and indemnify BIOHM and its affiliates against any liability, costs, or damages arising out of the breach of the representation.

8. ADDITIONAL REPRESENTATIONS & WARRANTIES RELATED TO THIS AGREEMENT.

In addition to the other representations, warranties and covenants made by You herein, You represent and warrant as follows:

- You are warranting that any Offering You purchase, or any Sample You provide is for personal, non-commercial, non-legal or non-journalistic purposes only, and not for the intent to reverse-engineer and/or analyze for business, legal or journalistic purposes. You specifically acknowledge and agree that by accepting this Agreement, in the event You violate this provision (including the very act of simply completing the purchase process), that You have proactively taken steps to damage BIOHM's business interests, and by doing so, You accept legal liability and actual consequential, incidental, indirect, punitive or special damages of any kind whatsoever that are alleged by BIOHM. You also agree to pay any and all direct and indirect attorneys' fees and expenses incurred by BIOHM in order to explore or pursue claims regarding violation of this provision, whether successful or not. Put simply, BIOHM Services were created to help others explore and optimize their health and wellness. We have spent a tremendous amount of intellectual capital and other resources to create the BIOHM Services. We will aggressively pursue anyone who purchases BIOHM for any reason other than for optimizing their own, or somebody they care for, health and wellness.
- If You are a customer outside the United States providing a Sample, You confirm that this act is not subject to any export ban or restriction in the country in which You reside. You also agree that any Sample You provide, and all resulting data may be transferred and/or processed outside the country in which You reside.
- You are warranting that You are not an insurance company or an employer attempting to obtain information about an insured person or an employee.
- You are aware that some of the information You receive may provoke strong emotion.
- You take responsibility for all possible consequences resulting from Your sharing with others access to Your Personal Information, including Your microbiome result and Your Self-Reported Information.
- You understand that all Your Personal Information will be stored in BIOHM databases and will be processed in accordance with the BIOHM [Privacy Policy](#) and this Agreement.

You agree that You have the authority, under the laws of the state or jurisdiction in which You reside, to provide these representations and warranties. In case of breach of any one of these representations and warranties BIOHM has the right to suspend or terminate Your account and refuse any and all current or future use of any of Our Offerings (or any portion thereof) and You will defend and indemnify BIOHM and its affiliates against any liability, costs, or damages arising out of the breach of the representation and warranty.

9. INTELLECTUAL PROPERTY.

You acknowledge and agree that the Company or its third party licensees or affiliates shall have and retain exclusive and full ownership of all right, title, and interest in and to all of Our Offerings, including all

associated media and media files, all data associated with microbiome testing and/or analysis, all aggregated, pseudonymized or de-identified data of any kind that is associated with microbiome testing and/or analysis, all designs, formulations, know-how, production methods, modifications, improvements, enhancements, and derivative works to all or any part of any of Our Products, Services, Software, Websites, and/or any of the content presented or made available therein (including, without limitation, product design, composition, and formulation, video, text, design, graphics, logos, icons, images, audio clips, downloads, interfaces, code and software, as well as the selection and arrangement thereof), and any and all intellectual property rights therein, including, without limitation, any and all patents, copyrights, moral rights, rights in inventions, rights in mask works, rights in and to software code of any kind (including all software routines, machine readable or executable code, source code, database structure, database content, and all Company APIs), rights in proprietary algorithms, processes and workflows executed by or otherwise related to any of Our Offerings, and any other form of an intellectual property interest recognized anywhere in the world. Any rights not expressly granted to You herein are reserved by Company. You further acknowledge that Our Offerings may contain information which is designated confidential by BIOHM and that You shall not disclose such information without BIOHM's prior written consent.

You agree that the Company may use Your feedback, comments, know-how, techniques, questions, reviews, comments, suggestions, or ideas relating to the Our Offerings ("**Feedback**") in any way, including in future modifications of Our Offerings, other products or services, advertising, or marketing materials. You grant the Company a perpetual, worldwide, fully transferable, sub-licensable, non-revocable, fully paid-up, royalty free, and unlimited license to use all Feedback that You provide or disclose to the Company. Except as otherwise expressly provided elsewhere in this Agreement or in Our [Privacy Policy](#), anything that You submit or post to Our Websites, and/or otherwise provide or communicate to Us, is and will be treated as non-confidential Feedback.

BIOHM Health LLC, BIOHM, and other BIOHM logos and Our Offerings various names are trademarks of BIOHM and these marks together with any other BIOHM trade names, service marks, logos, domain names, and other distinctive brand features are the "**BIOHM Marks.**" Unless You have agreed otherwise in writing with BIOHM, nothing in this Agreement gives You a right to use any BIOHM Marks and You agree not to display, or use in any manner, BIOHM Marks. The use of any of Our trademarks or service marks without Our express written consent is strictly prohibited. You agree that You shall not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained within any of Our Offerings.

Third-party trademarks, service marks and logos are the property of their respective owners. Nothing on this Website shall be construed as granting, by implication, estoppel, or otherwise, any license or right to use any trademark, logo or service mark displayed on the Website without the owner's prior written permission.

REVIEWS AND COMMENTS

In addition to the rights applicable to Feedback, when You post comments or reviews ("**User Reviews**") to one of Our Websites, You also grant Us the right to use the name that You submit with such User Review and to post same publicly on Our Websites or elsewhere at Our discretion. You represent and warrant that You own or otherwise control all of the rights to each User Review and any other content that You post on Our Websites and that Our use of Your User Reviews or other content by Us will not infringe upon or violate the rights of any third party. You shall not use a false email address, pretend to be someone other than

Yourself or otherwise mislead Us or third parties as to the origin of any Feedback, User Review, or other content You submit to Us or post to any Website. We may modify, edit and/or revise Your User Review at Our sole and exclusive discretion.

USER CONTENT

You acknowledge that all User Content is the sole responsibility of the person from which such User Content originated. This means that You, and not BIOHM, are entirely responsible for all User Content that You upload, post, email, or otherwise transmit to Us or to or through any of Our Offerings. BIOHM does not claim ownership of the content You provide to BIOHM (including feedback and suggestions) or post, upload, input, or submit to any of Our Offerings (“**User Content**”). Unless otherwise specified, You retain copyright and any other rights You already hold over User Content that You create and submit, post, or display on or through any of Our Offerings. However, by submitting, posting, or displaying User Content, You give BIOHM, its affiliated companies, sublicensees (including but not limited to sublicensees who avail themselves of this limited license granted herein) and successors and assigns a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display, distribute, reproduce, edit, reformat, and create derivative works from any User Content that You submit, post, or display on or through any of Our Offerings. You acknowledge and agree that this license includes a right for BIOHM to make such User Content available to other companies, organizations, or individuals with whom BIOHM has relationships, and to use such User Content in connection with the provision of those services.

10. WE USE CONTRACTORS TO HELP SUPPLY AND FULFILL OUR OFFERINGS

We utilize the services of third party contractors, including without limitation, outside data-hosting providers, outside analytic laboratories, contract manufacturers and others. You agree and acknowledge that We shall have no responsibility or liability of any kind for any actions or inactions of any such provider. Your ability to access and use any of Our Offerings shall not be subject to any uptime or availability commitment or standard from Us. We make no warranty or representation regarding the expected uptime or availability of same and We shall have no liability with respect to Your inability to access and use any of Our Offerings for any reason. Our third party contractors may make errors in the work that they perform or fail to comply with legal obligations applicable to them, and if they do, We shall have no liability to You for same regardless of circumstance, including without limitation, in performing any analysis and/or testing of any Sample You submit.

11. WE MAKE INFORMATION ABOUT THIRD PARTY VENDORS AVAILABLE TO YOU

Certain Information may be available at Our Websites about other third party providers. This information may be inaccurate and should be used by You with caution. We are not responsible if any information made available on Our Websites concerning such providers is not accurate, complete or current. The material on Our Websites is provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete and more timely sources of information. Any reliance on any information provided at or through Our Websites is at Your own risk.

The Website may include hyperlinks to third-party content, services, applications, advertising or websites (“**Third-Party Material**”). You acknowledge and agree that BIOHM is not responsible for and does not endorse or make any warranties regarding any such Third-Party Material or the providers thereof. We have not reviewed all the information on those other websites and are not responsible for the content of those or any other websites or any products or services that may be offered through those or any other websites. You further acknowledge and agree that BIOHM shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods, or services available on or through any such hyperlinked website or resource.

Further, by providing information about any third-party or links to any third party website, We are not making any representations of any kind about such party. For example, we are not making any representations about the quality, competency, capabilities, service offerings, suitability or business practices of any of these companies. In all such cases, You should assume that You need to verify any item of information provided in any of Our Offerings that is important to You, including the accuracy and reliability of information about third party providers. If You do business with any of these third-parties: We are not a party to that relationship; We will have no responsibility for the performance or non-performance of such third-party; and, We shall have no liability for any harm or damages You may incur as a result of such relationship.

BIOHM does not guarantee the accuracy, integrity, or quality of non-BIOHM originated content. You understand that by using any of Our Offerings, You may be exposed to content that is offensive, indecent, or objectionable. Under no circumstances will BIOHM be liable in any way for any non-BIOHM originated content, including, but not limited to, any errors or omissions in any such content, or for any loss or damage of any kind incurred as a result of the use of any such content posted, emailed, or otherwise transmitted via any of Our Offerings.

You acknowledge that BIOHM and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, review, filter, modify, refuse, or move any content that is available via any of Our Offerings. Without limiting the foregoing, BIOHM and its designees shall have the right to remove any content that violates this Agreement or is deemed by BIOHM, in its sole discretion, to be otherwise objectionable. You acknowledge and agree that You must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content.

12. OUR PRIVACY POLICY AND OUR COOKIE POLICY.

Both Our [Privacy Policy](#) (“**Privacy Policy**”) and Our [Cookie Policy](#) are incorporated into and form a part of this Agreement. Our [Privacy Policy](#) includes information about how We may use Your Personal Information, including Your Self-Reported Information, the results of any analysis or testing We or Our third party laboratories perform on any Sample You submit, and about Our data security. In case of any conflict between the terms of this Agreement and Our [Privacy Policy](#) with respect to matters addressed by Our [Privacy Policy](#), the terms of Our [Privacy Policy](#) shall control.

We are not subject to the Health Insurance Portability and Accountability Act of 1996 (sometimes called “**HIPAA**”). You expressly agree and acknowledge that none of the Personal Information You provide to Us constitutes “Protected Health Information” as that term is defined by HIPAA and that You have no expectation that we will or are required to comply with HIPAA.

13. TERMINATION AND EFFECT OF TERMINATION

This Agreement will continue to apply until terminated by either You or BIOHM as set out in this section.

If You want to terminate an Account, Your rights to use the App or any of Our other Offerings, subject to Section 5 above with respect to Product Return, Refunds and Cancellations, You may do so by notifying BIOHM at any time in writing, which will entail closing all accounts for all of the Offerings to which Your termination applies. Your notice should be sent, in writing, to BIOHM's address, which is set out in this Agreement, or online via email to Support@BIOHMHealth.com. If You provide notice online, BIOHM will send You an email asking You to confirm Your request, and Your notice will be effective following receipt of a second email confirmation from You. You may stop using any of Our Offerings at any time. You do not need to specifically inform BIOHM when You stop using any Offering unless You are requesting closure of Your account, destruction of Your Sample, or deletion of Your Personal Information.

In addition to any other legal or equitable remedies, We may, without prior notice to You, immediately terminate the Agreement or revoke any or all of Your rights granted under this Agreement. Without limiting the foregoing sentence, BIOHM may at any time, terminate its legal agreement with You (and in conjunction therewith, Your password and Account(s)), and/or Your ability to continue to use or receive the benefit of Our Offerings if: (1) You have violated any provision of this Agreement (or have acted in manner which shows that You do not intend to, or are unable to comply with, the provisions of this Agreement); (2) BIOHM is required to do so by law (for example, where the provision of any of Our Offerings to You is, or becomes, unlawful); (3) the partner with whom BIOHM offered any of Our Offerings to You has terminated its relationship with BIOHM or ceased to continue business in a manner with us that allow Us to offer any of Our Offerings to You; (4) BIOHM is transitioning to no longer providing any of Our Offerings to users in the country or state in which You reside or from which You use any of Our Offerings; or (5) the provision of any of Our Offerings to You by BIOHM is, in BIOHM's opinion, no longer commercially viable.

Any suspected fraudulent, abusive, commercial, or illegal activity that may be grounds for termination of Your use of any of Our Offerings may be referred to appropriate law enforcement authorities, and You proactively accept legal liability, and liability for associated legal costs and expenses, regarding any legal action BIOHM decides to pursue against You personally and any entity You are affiliated with. You acknowledge and agree that BIOHM shall not be liable to You or any third party for any termination of Your access to any of Our Offerings.

Upon any termination of this Agreement, You shall immediately cease all access to and use of the Website and We shall, in addition to any other legal or equitable remedies, immediately revoke all password(s) and account identification issued to You and deny Your access to and use of this Website in whole or in part. Any termination of this Agreement shall not affect the respective rights and obligations (including without limitation, payment obligations) of the parties arising before the date of termination.

14. CHANGES TO PRODUCTS AND SERVICES.

This Agreement also covers each new feature that augments or enhances Our Offerings. You acknowledge and agree that the form and nature of Our Offerings may change from time to time without prior notice

to You. BIOHM reserves the right to discontinue or suspend providing its Offerings and/or change any Offering at its sole discretion and without prior notice to You.

BIOHM reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, any of Our Offerings (or any part thereof) with or without notice. You acknowledge and agree that (i) modifications may result in a delay in computations for some of the BIOHM features or Offerings, and (ii) BIOHM shall not be liable to You or to any third party for any modification, suspension, or discontinuance of any of Our Offerings. Offerings that You use may from time to time automatically download and install updates from BIOHM. These updates are designed to improve, enhance, and further develop any of Our Offerings 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 BIOHM to deliver these to You) as part of Your use of any of Our Offerings.

15. MANDATORY ARBITRATION.

This Section 15 (captioned “**Mandatory Arbitration**”) sets forth Our agreement with respect to how disputes arising under this Agreement shall be resolved. Under the terms of this Section 15 (the “**Arbitration Provision**”), and except as set forth below, Claims (as defined below) will be resolved by individual (and not class-wide) binding arbitration in accordance with this provision if You or We elect it. If a Claim is arbitrated, neither You nor We will have the right to: (1) have a court or a jury decide the Claim; (2) engage in information-gathering (discovery) to the same extent as in court; (3) participate in a class action, private attorney general or other representative action in court or in arbitration; or (4) join or consolidate a Claim with those of any other person. “**Claim**” means any demand, cause of action, complaint, claim, asserted right, or request for monetary or equitable relief, whether past, present or future, and based upon any legal theory, including contract, tort, consumer protection law, fraud, statute, regulation, ordinance, or common law, which arises out of or relates to this Agreement or Your purchase, use, or receiving the benefit of any of Our Offerings. The term Claim is intended to be interpreted as broadly as permitted under applicable law.

Agreement to arbitrate claims. By agreeing to this Agreement, You waive Your right to sue Us in Court. If You do not agree, do not purchase, use, or receive the benefit of any of Our Offerings.

Electing arbitration. The party initiating arbitration must notify the other party in writing (the “**Notice**”). Your Notice to Us shall be sent to BIOHM Health LLC, 425 Literary Road, Suite #100, Cleveland, Ohio 44113 (“**Notice Address**”). Our Notice to You shall be sent to the most recent address for You in Our files, or to the email address We have on file for You. If You purchased an Offering for resale (if and when permitted hereunder), any arbitration will take place in Cuyahoga County, Ohio, unless You and the Company agree otherwise. If You purchased an Offering as a consumer (i.e., as an end-user of the Products), any arbitration will take place in any venue in which a federal court would have jurisdiction over Your Claims, unless You and the Company agree otherwise.

If a party files a lawsuit in court asserting a Claim and the other party elects arbitration, such Notice may be asserted in papers filed in the lawsuit (for example, a motion by the defendant to compel arbitration of Claims asserted by the plaintiff in a lawsuit filed in court). After arbitration is compelled by a court, either party may commence the arbitration proceeding in accordance with the rules and procedures of the arbitration administrator specified in this section.

Arbitration costs. We will pay the filing, administrative and/or arbitrator's fees ("**Arbitration Fees**") that We are required to pay pursuant to the arbitrator's rules or the law. In addition, with respect to Arbitration Fees that You are required to pay under the arbitrator's rules in connection with an individual arbitration You have commenced against Us or that is compelled by a court, We will pay, or reimburse You for Your payment of, any Arbitration Fees that exceed the filing fee for the federal court located in the venue in which the arbitration will take place if (a) You did not purchase the Offering for resale (i.e., bought them as the consumer end user), and (b) the amount of Your Claim does not exceed \$75,000. For Us to pay these fees or reimburse You for Your payment of these fees, You must notify Us in writing of Your request for reimbursement at the Notice Address. If this reimbursement provision applies, and You have already paid a filing fee to file a case in state or federal court, You will not be required to pay that amount again if the court compels arbitration.

Arbitration administrator and rules. The party electing arbitration must choose between one of two administrators: (1) the American Arbitration Association ("**AAA**"), or (2) JAMS. The rules or codes of procedures in effect at the time the arbitrator is elected that apply to the claims (for example, the AAA or JAMS consumer rules will apply to Your claim if You are a consumer) will apply to the arbitration, and these rules are incorporated into this Agreement to the extent they are consistent with this Agreement. You may obtain a copy of the rules/codes, and more information about initiating an arbitration, by (1) contacting AAA at 1800-778-7879 or visiting www.adr.org, or (2) contacting JAMS at 1-800- 352-5267 or visiting www.jamsadr.com. The arbitrator is bound by the terms of this Agreement. If neither AAA nor JAMS can serve, the parties may agree on another administrator, or a court may appoint one.

What law the arbitrator will apply. The arbitrator will not be bound by judicial rules of procedure and evidence that would apply in a court, or by state or local laws that relate to arbitration proceedings. The arbitrator will, however, apply the same statutes of limitation and privileges that a court would apply if the matter were pending in court. In determining liability or awarding damages or other relief, the arbitrator will follow the applicable substantive law, consistent with the Federal Arbitration Act (FAA), that would apply if the matter had been brought in court. The law of the State of Ohio applies to this Agreement, and will be applied by the arbitrator, as set forth above in the Choice of Law section above.

The Arbitrator's decision and award. At the timely request of either party, the arbitrator shall provide a brief written explanation of the grounds for the decision. The arbitrator may award any damages or other relief or remedies that would apply under applicable law to an individual action brought in court.

Effect of arbitration award; appeal. The arbitrator's award shall be final and binding on all parties, except for any right of appeal provided by the Federal Arbitration Act.

Federal Arbitration Act. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Provision.

Class action waiver. Neither You nor the Company will have the right: (a) to participate in a class action, private attorney general action or other representative action in court or in arbitration, either as a class representative or class member; or (b) to join or consolidate Claims with claims of any other persons. No arbitrator shall have authority to conduct any arbitration in violation of this provision or to issue any relief that applies to any person or entity other than You and/or Us individually. The parties acknowledge that the Class Action Waiver is material and essential to the arbitration of any Claims and is non-severable from this Arbitration Provision. If the Class Action Waiver is voided, found unenforceable, or limited with respect to any Claim for which You seek class-wide relief, then the parties' Arbitration Provision (except

for this sentence) shall be null and void with respect to such Claim, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. The Arbitration Provision, however, shall remain valid with respect to all other Claims. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.

16. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITIES.

TO THE MAXIMUM EXTENT ALLOWED BY LAW, ALL OF OUR OFFERINGS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS.

BIOHM MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH REGARD TO ANY OFFERING AND BIOHM EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT: (1) YOUR USE OF OUR OFFERINGS ARE AT YOUR SOLE RISK; (2) BIOHM HAS NOT MADE ANY REPRESENTATION OR WARRANTY TO YOU THAT: (a) THE OFFERINGS WILL MEET YOUR REQUIREMENTS, (b) ANY OF OUR OFFERINGS WILL BE UNINTERRUPTED, ACCESSIBLE TIMELY, UNFAILINGLY, SECURE, OR ERROR-FREE, (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF OUR OFFERINGS WILL BE ACCURATE OR RELIABLE, (d) THE QUALITY OF OUR OFFERINGS PURCHASED OR OBTAINED BY YOU FROM US WILL MEET YOUR EXPECTATIONS OR REQUIREMENTS, AND/OR (e) ANY ERRORS IN ANY OF OUR OFFERINGS WILL BE CORRECTED; (3) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF ANY OF OUR OFFERINGS IS 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; (4) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM BIOHM OR THROUGH OR FROM ANY OFFERING SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT; AND (5) YOU SHOULD ALWAYS USE CAUTION WHEN GIVING OUT ANY PERSONAL IDENTIFYING INFORMATION ABOUT YOURSELF OR THOSE FOR WHOM YOU HAVE LEGAL AUTHORITY. BIOHM DOES NOT CONTROL OR ENDORSE ANY ACTIONS RESULTING FROM YOUR PARTICIPATION IN OR USE OF ANY OF OUR OFFERINGS AND, THEREFORE, BIOHM SPECIFICALLY DISCLAIMS ANY LIABILITY WITH REGARD TO ANY ACTIONS RESULTING FROM YOUR PARTICIPATION IN SAME.

TO THE MAXIMUM EXTENT ALLOW BY LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT BIOHM SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF BIOHM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE OUR OFFERINGS; (b) ANY ACTION YOU TAKE BASED ON THE INFORMATION YOU RECEIVE IN THROUGH OR FROM THE OFFERINGS, (c) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL, (d) 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 OFFERINGS; (e) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (f) THE IMPROPER

AUTHORIZATION FOR THE SERVICES BY SOMEONE CLAIMING SUCH AUTHORITY; OR (g) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICES.

Some states do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to You. The disclaimers, exclusions, and limitations of liability under this agreement will not apply to the extent prohibited by applicable law. If any portion of this section is found to be invalid or otherwise unenforceable, Our liability shall be limited to the fullest extent permitted by applicable law.

17. INDEMNITY.

YOU SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS BIOHM AND OUR OWNERS, DIRECTORS, OFFICERS, MEMBERS MANAGERS, PARTNERS, SUBCONTRACTORS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS (INDIVIDUALLY AND COLLECTIVELY, "**COMPANY INDEMNIFIED PARTIES**") FROM AND AGAINST ANY AND ALL DAMAGES, EXPENSES, LIABILITIES, COSTS, OR OTHER LOSSES, INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS INCURRED BY ANY SUCH COMPANY INDEMNIFIED PARTY THAT ARISE FROM OR OCCUR AS A RESULT OF, IN WHOLE OR IN PART, (I) YOUR ACCESS TO AND/OR USE OF ANY OF OUR OFFERINGS; (II) YOUR VIOLATION OF ANY TERM OF THIS AGREEMENT; (III) YOUR VIOLATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT OR OTHER THIRD PARTY RIGHTS, INCLUDING WITHOUT LIMITATION ANY RIGHT OF PRIVACY OR PUBLICITY; or (IV) YOUR NEGLIGENT OR OTHER TORTIOUS CONDUCT OR YOUR VIOLATION OF ANY APPLICABLE LAW, RULE, OR REGULATION.

IF YOU HAVE SUBMITTED A SAMPLE OR OTHERWISE PROVIDED YOUR OWN PERSONAL INFORMATION, YOU WILL DEFEND AND HOLD HARMLESS THE COMPANY INDEMNIFIED PARTIES FROM ANY LIABILITY ARISING OUT OF THE USE OR DISCLOSURE OF ANY INFORMATION OBTAINED FROM GENOTYPING YOUR SAMPLE AND/OR ANALYZING YOUR PERSONAL INFORMATION, WHICH IS DISCLOSED TO YOU CONSISTENT WITH OUR PRIVACY STATEMENT OR RESULTS FROM ANY THIRD-PARTY ADD-ONS TO TOOLS WE PROVIDE. IN ADDITION, IF YOU CHOOSE TO PROVIDE YOUR MICROBIOME AND/OR SELF-REPORTED INFORMATION TO THIRD PARTIES - WHETHER INDIVIDUALS TO WHOM YOU FACILITATE ACCESS, INTENTIONALLY OR INADVERTENTLY, OR TO THIRD PARTIES FOR DIAGNOSTIC OR OTHER PURPOSES - YOU AGREE TO DEFEND AND HOLD HARMLESS THE COMPANY INDEMNIFIED PARTIES FROM ANY AND ALL LIABILITY ARISING FROM SUCH DISCLOSURE OR USE OF YOUR MICROBIOME AND/OR SELF-REPORTED INFORMATION.

18. MISCELLANEOUS.

a. **COPYRIGHT COMPLAINTS.** If You believe that Your work has been copied in a way that constitutes copyright infringement, please contact us at Support@BIOHMHealth.com.

b. **Conflicts; Severability; Survival.** The Arbitration Provision is intended to be broadly interpreted. In the event of a conflict between the provisions of this Arbitration Provision and the AAA or JAMS rules, or any other terms of the Agreement, the provisions of this Arbitration Provision shall control. If any part of this Arbitration Provision is deemed or found to be unenforceable for any reason, the remainder shall be enforceable, except as provided by the Class Action Waiver. This Arbitration Provision shall survive the termination of any relationship between Us, including the termination of the Agreement.

c. **Limitation of claims.** You agree that regardless of any statute or law to the contrary, any Claim or cause of action arising out of, related to or connected with the use of one of Our Websites or this Agreement must be filed within one (1) year after such Claim or cause of action arose or be forever banned. This provision only applies if You purchased Products from a Website for resale to others (that is, it does not apply to consumer transactions).

d. **Severability.** If any these provisions shall be deemed invalid, void, or for any reason unenforceable, that condition shall be deemed several and shall not affect the validity and enforceability of any remaining provision.

e. **Survival of terms.** When this Agreement comes to an end, all of the legal rights, obligations, and liabilities that You and BIOHM have benefited from, been subject to (or which have accrued over time while this Agreement has been in force) or which are by their nature intended to continue indefinitely, shall be unaffected by this cessation, and shall continue to apply to such rights, obligations, and liabilities indefinitely.

f. **Notice.** Notices to You may be made via either email or regular mail. BIOHM may also provide notices of changes to this Agreement or other matters by displaying notices or links to notices to You generally on or through one or more of Our Offerings. Official notices to Us related to this Agreement must be sent to Us at:

BIOHM Health LLC
ATTN: Chief Executive Officer
425 Literary Road, Suite #100
Cleveland, Ohio 44113

Additionally, BIOHM accepts service of process and demands for arbitration at this address. Any notices that You provide without compliance with this section on Notices shall have no legal effect. Please send any questions or comments (including all inquiries unrelated to copyright infringement) regarding this Website to: BIOHM Health LLC, 425 Literary Road, Suite #100, Cleveland, Ohio 44113.

g. **Entire agreement.** This Agreement constitutes the entire agreement between You and BIOHM regarding the subject matter hereof, superseding any prior agreements between You and BIOHM 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.

h. **Waiver.** The failure of BIOHM to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement 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 this Agreement remain in full force and effect.

i. **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.

j. **Section titles.** The section titles in this Agreement are for convenience only and have no legal or contractual effect.

k. **Amendments.** We reserve the right to modify, supplement or replace the terms of the Agreement, effective upon posting at www.BIOHMHealth.com or notifying You otherwise. If You do not want to agree to changes to the Agreement, You can terminate the Agreement at any time pursuant to the termination provisions of this Agreement.

l. **Assignment.** You may not assign or delegate any rights or obligations under the Agreement. Any purported assignment and delegation shall be ineffective. We may freely assign or delegate all rights and obligations under the Agreement, fully or partially without notice to You. We may also substitute, by way of unilateral novation, effective upon notice to You, BIOHM for any third party that assumes Our rights and obligations under this Agreement.

These Terms of Service were last updated April, 2024.