

## TERMS OF SERVICE

Welcome to the BIOHMHealth.com or the BIOHMPet.com website (the “Site”). These Terms of Service are a contract between you and PathoBiome LLC (“the Company,” “we,” “our,” and “us”) (the “Agreement” or “TOS”). The Agreement governs your purchase and use of BIOHM Health, BIOHM Pet, and other BIOHM-powered microbiome testing products, and use of the Site, as well as any other services provided to you by us. **PLEASE READ THIS AGREEMENT, INCLUDING THE MANDATORY ARBITRATION PROVISION INCLUDED BELOW, CAREFULLY BEFORE PROCEEDING.**

You agree to the TOS when you make a purchase by checking the box that provides “I accept the Terms and conditions”, including the arbitration provision contained therein prior to your purchase. In addition, when you use any of the services (e.g., Customer Reviews) provided by the Site, you assent to the rules, guidelines, policies, terms, and conditions applicable to such service, and they are incorporated into this Agreement by this reference. We reserve the right to change this Site at any time. We also reserve the right to change this Agreement for future orders at any time.

Except as specified herein, these TOS apply to any use of the Services, including but not limited to a) submitting a Sample (yours or your pet’s) for analysis and processing, b) uploading a digital version of your or your pet’s Microbiome and interacting with it on the BIOHM website, and/or c) creating and using a free BIOHM account without providing a Sample or Microbiome. In order to use the Services, you must first agree to the TOS. You may not use the Services if you do not accept the TOS. You can accept the TOS as outlined above; or by (2) actually using the Services. In this case, you acknowledge and agree that BIOHM will treat your use of the Services as acceptance of the TOS from that point onwards. In addition, when using particular BIOHM Services, you shall be subject to any guidelines or rules applicable to such services that may be posted from time to time. All such guidelines or rules are hereby incorporated by reference into the TOS. BIOHM also may offer other services from time to time that are governed by different terms of service.

### Prerequisites

- a. Whether you buy a product, or submit your or your pet’s (hereinafter “your”) Sample as part of a service offered by BIOHM, a Sample for anyone for whom you have legal authority to agree, or otherwise provide your own Personal Information, you may not use the Services and may not accept the TOS if (1) you are not of legal age to form a binding contract with BIOHM, 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.
- b. In addition to the conditions above, if you contribute or otherwise provide your own Personal Information, you must be eighteen (18) years of age

or older to agree to these TOS on behalf of yourself or those for whom you have legal authority to agree.

- c. If your use of the Services includes creating a BIOHM account, without submitting a sample or otherwise providing Personal Information, you must be thirteen (13) years of age or older to use the Services and accept the TOS.

## Definitions

For purposes of this TOS and our Privacy Policy (which is incorporated into this TOS by reference), the following terms shall have the definitions given herein:

- a. **"BIOHM"** means BIOHM, Inc., whose principal place of business is 737 Bolivar Road, Suite 200, Cleveland, Ohio 44115. The terms "Company," "we," "us" and "our," (including as used in the Arbitration Provision herein) and in addition to the meaning set forth herein, also refer to our employees, officers, directors, parents, controlling persons, subsidiaries, affiliates, predecessors, acquired entities, successors and assigns.
- b. **"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 Microbiome and Self-Reported Information from users who have given informed consent according to the applicable BIOHM Consent to Participate in Research document, which can be found [here](#).
- c. **"Product Development"** means research performed for the purpose of new product development and new product development activities performed by BIOHM on de-identified user data. These activities may include, among other things, improving our Services and/or offering new products or services to you; performing quality control activities; conducting data analysis that may lead to and/or include commercialization with a third party.
- d. **"Service"** or **"Services"** means BIOHM's products, software, services, and website (including but not limited to text, graphics, images, and other material and information) as accessed from time to time by the user, regardless if the use is in connection with an account or not.
- e. **"Personal Information"** is information that can be used to identify you, either alone or in combination with other information. BIOHM collects and stores the following types of Personal Information:
  - i. **"Registration Information"** is the information you provide about yourself when registering for and/or purchasing our Services (e.g. name, email, address, user ID and password, and payment information).
  - ii. **"Microbiome " or "Microbiome result"** is information regarding your or your pet's microbiome (generated through processing of your Sample by BIOHM or by its contractors, successors, and

assignees; or otherwise processed by and/or contributed to BIOHM.

- iii. **"Sample(s)"** means the biological Samples or specimens you provide to BIOHM for processing in order to generate your or your pet's Microbiome.
  - iv. **"Self-Reported Information"** is all information about yourself or your pet, including known disease conditions, other health-related information, personal traits, ethnicity, family history, and other information that you enter into surveys, forms, or features while signed in to your BIOHM account.
  - v. **"User Content"** is all information, data, text, software, music, audio, photographs, graphics, video, messages, or other materials - *other than* Personal Information and Self-Reported Information-generated by users of BIOHM Services and transmitted, whether publicly or privately, to or through BIOHM.
  - vi. **"Web Behavior Information"** is information on how you use the BIOHM website (e.g. browser type, domains, page views) collected through log files, cookies, and web beacon technology.
  - vii. **"You", "Your," and any derivative thereof**, including lower-case versions, means you, the user, whether acting on behalf of yourself, another person you are legally authorized to represent (such as your minor child), or where applicable, your pet.
- f. **"Aggregated Microbiome and Self-Reported Information"** is Microbiome and 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.

## **Description of the Services**

The Services include access to the BIOHM public websites, personal analytical services, including the collection and analysis of your Sample, and various products. Unless explicitly stated otherwise, each new feature that augments or enhances the current Service shall be subject to the TOS. You acknowledge and agree that the Services are provided "AS-IS" and are based on the current state of the art of research and technology in use by BIOHM at the time of the purchase or viewing. As research progresses and scientific knowledge and technology evolve, BIOHM is constantly innovating in order to provide the best possible experience for its users. You acknowledge and agree that the form and nature of the Services which BIOHM provides may change from time to time without prior notice to you. As part of this continuing innovation, you acknowledge and agree that BIOHM may stop (permanently or temporarily) providing some Services (or any features within the Services) to you or to users generally at BIOHM's sole discretion, without prior notice to you. You may stop using the Services at any time. You do not need to specifically inform BIOHM when you stop using the Services unless you are requesting closure of your account, destruction of your Sample, or deletion of your Personal Information.

BIOHM assumes no responsibility for the use of Services outside the terms of this TOS or other applicable terms.

In order to use the Services, 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 the Services or on the amount of storage space used for the provision of any Service, such fixed upper limits may be set by BIOHM at any time, at BIOHM's discretion.

### **Consent to Sample Storage and Additional Sample Analyses**

By using the Services and choosing to have BIOHM store either your Sample or material extracted from your Sample, you are consenting to having BIOHM and its contractors access and analyze your stored de-identified Sample, using the same or more advanced technologies (such as genetic sequencing of the gut microbiome), in a manner consistent with our Terms of Service and Privacy Policy. Unless we notify you otherwise, we will store your de-identified 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 TOS. All of the same safeguards to any further use of your Sample will be provided as in our Terms of Service and Privacy Statement.

### **Additional DNA Analyses of Stored Participant Samples**

In addition, for research purpose, your de-identified microbiome 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.

### **Risks and Considerations Regarding BIOHM Services**

**Once you obtain your Personal Information, 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 services 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 or your pet's veterinarian, prior to collecting your

Sample for testing to learn more so you can make an informed decision about whether testing is right for you. A physician or your pet's veterinarian can help you understand your results and options.

**Some people feel a little anxious about getting your 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 at no charge to the user. 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, (up to 0.35% of all Samples fail the second attempt at testing according to BIOHM data obtained in 2014 for all microbiome testing),\* 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 (or your pet's veterinarian) 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 indicate 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 indicate 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 (or your pet's veterinarian).

**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 service 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 Microbiome Information Nondiscrimination Act 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, or your pet's veterinary record, and through that route be accessible to other health care providers and/or insurance companies (including pet 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, or your pet's veterinarian, 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 or your pet's 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 (or your pet's veterinarian) 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.

## **YOUR USE OF THE SITE**

Subject to the terms of this Agreement, we hereby grant you a limited, revocable, non-transferable and non-exclusive license to access and use the Site by displaying it on your internet browser only for the purpose of shopping for products sold on the Site and not for any commercial use or use on behalf of any third party, except as explicitly permitted by us in advance. Any breach of this Agreement shall result in the immediate revocation of the license granted in this paragraph without notice to you.

### **Customer Conduct - Unlawful and Prohibited Uses**

Except as permitted in the this Agreement, you may not reproduce, distribute, display, sell, resell, lease, transmit, create derivative works from, translate, modify, reverse-engineer, disassemble, decompile or otherwise exploit this Site or any portion of it unless expressly permitted by us in writing. You may not make any commercial use of any of the information provided on the Site or make any use of the Site for the benefit of another business unless explicitly permitted by us in advance. We reserve the right to refuse service, terminate accounts, and/or cancel orders at our discretion, including, without limitation, if we believe that customer conduct violates applicable law or is harmful to our interests.

As a condition of your use of the Services, you warrant to BIOHM that you will not use the Services for any purpose that is unlawful or prohibited by these terms, conditions, or notices. 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. You may not use the Services outside of the country to which your Sample collection kit was shipped from BIOHM. Furthermore you agree not to use the Services to: (1) 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; (2) 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; (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) or any information that violates or infringes the copyrights, patents, trademarks, service marks, trade secrets, or other proprietary rights of any person;; (6) use any information received through the Services to attempt to identify other customers, to contact other customers, or for any forensic use; (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 BIOHM or any other party; (9) harm minors in any way; (10) advertise or offer to sell or buy any goods or services for any business purpose, unless such area specifically allows such messages; (11) 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; (12) 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; (13) 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 site, unless explicitly permitted by BIOHM; (14) engage in "framing," "mirroring," or otherwise simulating the appearance or function of BIOHM's website; (15) attempt to or actually override any security component of BIOHM 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, including through the use of any bugs, viruses, worms, trap doors, Trojan horses or other harmful code or properties; (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 BIOHM; or (18) intentionally or unintentionally violate any applicable local, state, national, or international law, or any regulations having the force of law.

## **ACCOUNT CREATION, CUSTOMER ACCOUNT, PASSWORD, AND SECURITY OBLIGATIONS**

**In consideration of your use of the Services, you agree to: (a) provide true,**

**accurate, current, and complete Registration Information about yourself as prompted by the Service; and (b) maintain and promptly update the Registration Information to keep it true, accurate, current, and complete. If you provide any 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 has the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof). The Services are for use only in the country to which your Sample collection kit was shipped from BIOHM. You shall immediately notify us of any unauthorized use of your password or identification or any other breach or threatened breach of this Site's security.**

We may assign you a password and account identification to enable you to access and use certain portions of this Site. Each time you use a password or identification, you will be deemed to be authorized to access and use the Site in a manner consistent with the terms of this Agreement, and we have no obligation to investigate the authorization or source of any such access or use of the Site.

**YOU WILL BE SOLELY RESPONSIBLE FOR ALL ACCESS TO AND USE OF THIS SITE BY ANYONE USING THE PASSWORD AND IDENTIFICATION ORIGINALLY ASSIGNED TO YOU WHETHER OR NOT SUCH ACCESS TO AND USE OF THIS SITE IS ACTUALLY AUTHORIZED BY YOU, INCLUDING WITHOUT LIMITATION, ALL COMMUNICATIONS AND TRANSMISSIONS AND ALL OBLIGATIONS (INCLUDING WITHOUT LIMITATION FINANCIAL OBLIGATIONS) INCURRED THROUGH SUCH ACCESS OR USE.**

### **ADDITIONAL USER REPRESENTATIONS & WARRANTIES**

By accessing BIOHM Services, you agree to, acknowledge, and represent as follows:

- (a) You understand that information you learn from BIOHM is not designed to independently diagnose, prevent, or treat any condition or disease or to ascertain the state of your health in the absence of medical and clinical information. You understand that the BIOHM services are intended for informational and educational purposes only, and that while BIOHM information might point to a diagnosis or to a possible treatment, it 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.
- (b) You give permission to BIOHM, its contractors, successors and assignees to perform the services on your Sample and you specifically request BIOHM to disclose the Microbiome results to you and to others you specifically authorize.
- (c) You represent that you are eighteen (18) years of age or older if you are

providing a Sample or accessing your Microbiome results. You are guaranteeing that any Sample you provide is your Sample; if you are agreeing to these TOS on behalf of a person for whom you have legal authorization, you are confirming that the Sample provided will be the Sample of that person.

- (d) You are warranting that any Service 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 these TOS, 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's, health and wellness.
- (e) If you are a customer outside the U.S. 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.
- (f) You are warranting that you are not an insurance company or an employer attempting to obtain information about an insured person or an employee.
- (g) You are aware that some of the information you receive may provoke strong emotion.
- (h) 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.
- (i) 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 TOS.
- (j) Waiver of Property Rights: You understand that by providing any Sample, having your Sample processed, accessing your Microbiome, or providing other Personal Information, including 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 Personal Information, Microbiome, or Self-Reported Information.

**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 BIOHM 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) and you will defend and indemnify BIOHM and its affiliates against any liability, costs, or damages arising out of the breach of the representation.**

### **LIMITED LICENSE**

You acknowledge that all User Content, whether publicly posted or privately transmitted, 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 via the Service.

You acknowledge that the Services content presented to you as part of the Services, whether original BIOHM Services content or sponsored content within the Services, is protected by copyright and/or other intellectual property rights that are owned by BIOHM and/or the sponsors who provide that content to BIOHM (or by other persons or companies on their behalf). BIOHM grants you a Limited License to copy and distribute free of charge, for non-commercial purposes only, any of the Services content with the exception of content from "MD's Perspectives" in the "For the Experts" section of the website and any other content marked as not subject to this Limited License on the website, provided you: (i) provide the Services content as it appears on the BIOHM website with no changes including but not limited to presenting selections which might tend to misrepresent the substance of the Services content; (ii) include the following attribution on the first page of any materials you distribute: © BIOHM Health LLC. All rights reserved; distributed pursuant to a Limited License from BIOHM; (iii) agree you have no right to offer anyone else any further right with respect to this Services content. Aside from the Limited License provided in this paragraph, you may not modify, rent, lease, loan, sell, distribute, or create derivative works based on this Services content (either in whole or in part) unless you have been specifically told that you may do so by BIOHM or by the owners of that content, in a separate agreement.

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 the TOS 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 the Services (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.

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 and refuse any and all current or future use of the Service (or any portion thereof).

### **MATERIAL POSTED THROUGH THE SERVICE**

BIOHM will not, at all times, control any of the User Content posted via the Service and, as such, does not guarantee the accuracy, integrity, or quality of such non-BIOHM content. You understand that by using the Services, 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 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 the Services.

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 the Services. Without limiting the foregoing, BIOHM and its designees shall have the right to remove any content that violates the TOS 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.

### **REVIEWS AND COMMENTS**

Except as otherwise provided elsewhere in this Agreement or on the Site, anything that you submit or post to the Site and/or provide us, including without limitation, ideas, know-how, techniques, questions, reviews, comments, and suggestions (collectively, "Submissions") is and will be treated as non-confidential and nonproprietary, and we shall have the royalty-free, worldwide, perpetual, irrevocable and transferable right to use, copy, distribute, display, publish, perform, sell, lease, transmit, adapt, create derivative works from such Submissions by any means and in any form, and to translate, modify, reverse-engineer, disassemble, or decompile such Submissions. All Submissions shall automatically become our sole and exclusive property and shall not be returned to you. In addition to the rights applicable to any Submission, when you post comments or reviews to the Site, you also grant us the right to use the name that you submit with any review, comment, or other Content, if any, in connection with such review, comment, or other content. You represent and warrant that you own or otherwise control all of the rights to the reviews, comments and other Content that you post on this Site and that use of your reviews, comments, 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 Submissions or Content. We may, but shall not be obligated to, remove or edit any Submissions (including comments or reviews) for any reason.

## INTELLECTUAL PROPERTY

All text, graphics, button icons, images, audio clips, and software (collectively, "Content"), belongs exclusively to PathoBiome LLC, or its affiliates. The collection, arrangement, and assembly of all Content on this Site (the "Compilation") belongs exclusively to PathoBiome LLC or its affiliates. All software used on this Site (the "Software") is the property of PathoBiome LLC, its affiliates or its Software suppliers. The Content, the Compilation and the Software are all protected by U.S. and international copyright laws. The use of any of our trademarks or service marks without our express written consent is strictly prohibited. You may not use our trademarks or service marks in connection with any product or service in any way that is likely to cause confusion. You may not use our trademarks or service marks in any manner that disparages or discredits us. You may not use any of our trademarks or service marks in meta tags without prior explicit consent.

**User Content.** BIOHM does not claim ownership of the User Content you provide to BIOHM (including feedback and suggestions) or post, upload, input, or submit to the Service. 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 the Services. 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 the Limited License granted in Section 9 above) 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 the Services. 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.

### **BIOHM's Proprietary Rights**

You acknowledge and agree that BIOHM (or BIOHM's licensors, as applicable) own all legal right, title, and interest in and to the Services, including any intellectual property rights (including but not limited to patents) which subsist in the Services (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 BIOHM and that you shall not disclose such information without BIOHM'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 information presented to you through the Services or sponsors is protected by copyrights, trademarks, service marks, patents, or other proprietary rights and laws. Except as expressly authorized by BIOHM, you agree not to-and not to permit anyone else to-modify, rent, lease, loan, sell, distribute, or create derivative works of, reverse engineer,

decompile, or otherwise attempt to extract the source code of the Services or Software or any part thereof, in whole or in part. Software, if any, that is made available to download from the Services, excluding software that may be made available by end-users through the Services, is the copyrighted work of BIOHM and/or its suppliers. Your use of the Software is governed by the terms of the end user license agreement, if any, which accompanies or is included with the Software ("License Agreement"). You may not install or use any Software that is accompanied by or includes a License Agreement unless you first agree to the License Agreement terms.

BIOHM Health LLC, BIOHM, and other BIOHM logos and product and service 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, other than through the Limited License in Section 9, nothing in the TOS gives you a right to use any BIOHM Marks and you agree not to display, or use in any manner, BIOHM Marks.

You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) that may be affixed to or contained within the Services.

Unless you have been expressly authorized to do so in writing by BIOHM, you agree that in using the Services, you will not use any trade mark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names, or logos.

For any Software not accompanied by a License Agreement, BIOHM 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 BIOHM, in writing. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by BIOHM, in the manner permitted by the TOS. Unless BIOHM 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 BIOHM for use in accessing the Service. Any rights not expressly granted herein are reserved.

## **ABOUT OUR PRIVACY POLICY**

Please review our Privacy Policy, which is incorporated into this Agreement, to understand our practices. While our Privacy Policy includes information about how we may use your personal information and about our data security, we make no express or implied promise regarding the security used by the Site or that your information will not be accessed in an unauthorized manner despite the security we provide.

### **General Practices Regarding Use and Storage of your Samples and Personal Information**

In order to use the Services, you agree to the Privacy Policy described herein. You may not use the Services if you do not accept the Privacy Policy. You can acknowledge and agree to the Privacy Policy by (1) clicking to accept or agree to the Privacy Policy, where this option is made available to you by BIOHM for any Service; or by (2) actually using the Services.

You acknowledge that BIOHM may establish general practices and limits concerning use of the Services, including without limitation the maximum number of days that Personal Information, Samples, and Services content will be retained by the Service, the maximum disk space that will be allotted on BIOHM'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 BIOHM 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 Personal Information due to malfunction or destruction of data servers or other catastrophic events. You further acknowledge that BIOHM reserves the right to change these general practices and limits in its sole discretion.

You acknowledge and agree that BIOHM has the right to monitor any use of its systems by its personnel at any time and maintain copies documenting such monitoring. Our Privacy Policy sets forth the only expectations of privacy any individual should have in terms of usage of the BIOHM Services, website, or other systems.

### **Use of Microbiome and/or Self-Reported Information.**

You understand that BIOHM, in performing the required technical steps to provide the Services to our users, may (a) transmit or distribute your User Content over various public networks and in various media; and (b) make such changes to your User Content as necessary to conform and adapt that content to the technical requirements of connecting networks, devices, services, or media. You acknowledge and agree that this license shall permit BIOHM to take these actions. You represent and warrant to BIOHM that you have all the rights, power, and authority necessary to grant the above license.

Your Sample, once submitted to and analyzed by us, is processed in an irreversible manner and cannot be returned to you. See our website for more

information on Sample processing. Any Personal Information derived from your Sample remains your information, subject to rights we retain as set forth in these TOS. You understand that you should not expect any financial benefit from BIOHM as a result of having your Sample processed; made available to you; or, as provided in our Privacy Statement and Terms of Service, shared with or included in Aggregated Microbiome and Self-Reported Information shared with research partners, including commercial partners. BIOHM reserves the right to redistribute, sell, license, or otherwise share de-identified Samples after they have been processed and Microbiome results have been returned to you.

Disclosure of individual-level identifiable Microbiome and/or Self-Reported Information to third parties will not occur without explicit consent, unless required by law. BIOHM may use and disclose Aggregated Microbiome and Self-Reported Information for research and proprietary purposes. BIOHM cannot control any further distribution of Microbiome and/or Self-Reported Information that you share publicly on the BIOHM website.

**Waiver of Property Rights.** As stated above, 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.

If you have given 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 document, 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.

Further, you acknowledge and agree that BIOHM 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 BIOHM may owe pursuant to ethical and other professional rules, laws, and regulations; (b) enforce the BIOHM TOS; (c) respond to claims that any content violates the rights of third parties; or (d) protect the rights, property, or personal safety of BIOHM, its employees, its users, its clients, and the public. In such event we will notify you through the contact information you have provided to us in advance, 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 (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks, or devices. Finally, BIOHM may, in its sole discretion, restrict access to the website for any reason.

Please refer to our Privacy Policy [[link](#)] to read about data protection related to your information.

## **TERMINATION AND EFFECT OF TERMINATION**

The TOS will continue to apply until terminated by either you or BIOHM as set out in this Section.

If you want to terminate your legal agreement with BIOHM, you may do so by notifying BIOHM at any time in writing, which will entail closing your accounts for all of the Services that you use. Your notice should be sent, in writing, to BIOHM's address, which is set out in TOS, or online via email to [care@BIOHMHealth](mailto:care@BIOHMHealth). 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.

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.

BIOHM may at any time, terminate its legal agreement with you (and in conjunction therewith, your password and account(s)) if: (1) you have breached any provision of the TOS (or have acted in manner which shows that you do not intend to, or are unable to comply with, the provisions of the TOS); (2) BIOHM 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 BIOHM offered the Services to you has terminated its relationship with BIOHM or ceased to offer the Services to you; (4) BIOHM 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 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 the Services 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 the Services.

Upon any termination of this Agreement, you shall immediately cease all access to and use of the Site 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 Site 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.

### **Survival of Terms**

When the TOS come 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 the TOS have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and shall continue to apply to such rights, obligations, and liabilities indefinitely.

### **INTERNATIONAL ACCESS**

This Site may be accessed from countries other than the United States. This Site may contain products or references to products that are not available outside of the United States. Any such references do not imply that such products will be made available outside the United States. If you access and use this Site outside the United States you are responsible for complying with your local laws and regulations. If you access and use this Site from outside the United States, you understand that United States privacy laws may not offer the same protections as those in your country of residence.

### **TYPOGRAPHICAL ERRORS**

In the event a product is listed at an incorrect price or with incorrect information due to typographical error or error in pricing or product information received from our suppliers, we shall have the right to refuse or cancel any orders placed for product 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.

### **LINKS**

The Service provides, and third parties may provide, links to other sites and resources on the Internet. Because BIOHM has no control over such sites and resources, you acknowledge and agree that BIOHM is not responsible for the availability of such external sites or resources, and does not endorse and is not

responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. 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 site or resource.

### **Dealings with Information Providers and Listed Resources**

Your correspondence or business dealings with-or participation in promotions of-information providers, vendors, and/or resources found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties, or representations associated with such dealings, are solely between you and such information provider or resource. You acknowledge and agree that BIOHM shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such information provider or resources on the Service.

### **COPYRIGHT COMPLAINTS**

If you believe that your work has been copied in a way that constitutes copyright infringement, please contact us at [DMCAcomplaint@biohmhealth.com]

### **APPLICABLE LAW**

This Site is controlled by us in the State of Ohio, USA. As such, the laws of the State of Ohio will govern any and all claims related to or arising out of your use of the Site or these disclaimers, terms, and conditions, without giving effect to any principles of conflicts of laws.

### **MANDATORY ARBITRATION**

**READ THIS ARBITRATION PROVISION CAREFULLY:** This Section impacts how legal claims arising under this Agreement are resolved. Under the terms of this provision (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 purchasing of products from the Site, whether related to the product(s)' quality, representations

about the product(s), information you entered into the Site, or otherwise. 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 BIOHM products or use BIOHM services, including the Sites.

**Electing Arbitration:** The party initiating arbitration must notify the other party in writing (the "Notice"). Your Notice to us shall be sent to PathoBiome LLC, 737 Bolivar Road, Suite 4500, Cleveland, Ohio, 44115 ("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 the products for resale, any arbitration will take place in Cuyahoga County, Ohio, unless you and the Company agree otherwise. If you purchased the products 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 products 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 1-

800-778-7879 or visiting [www.adr.org](http://www.adr.org), or (2) contacting JAMS at 1-800- 352-5267 or visiting [www.jamsadr.com](http://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.

**Conflicts; Severability; Survival:** This 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.

## **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 the Site or this Agreement must be filed within one (1) year after such Claim or cause of action arose or be forever barred. This provision only applies if you purchased products from the Site for resale to others (that is, it does not apply to consumer transactions).

## **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.

## **OUR ADDRESS**

Please send any questions or comments (including all inquiries unrelated to copyright infringement) regarding this Site to: PathoBiome LLC, 737 Bolivar Road, Suite 200, Cleveland, Ohio 44115.

## **MODIFICATIONS TO SERVICE**

BIOHM 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 (i) modifications may result in a delay in computations for some of the BIOHM features or Services, and (ii) BIOHM shall not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services.

The Software 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 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 BIOHM to deliver these to you) as part of your use of the Services.

You acknowledge that BIOHM may offer different or additional technologies or features to collect and/or interpret Personal Information in the future and that your initial purchase of the Service does not entitle you to any different or additional technologies or features for collection or interpretation of your Personal Information without fee, and that you will have to pay additional fees in order to have your Personal Information collected, processed, and/or interpreted using

any future or additional technologies or features.

## **DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT: (1) YOUR USE OF THE SERVICES ARE AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. 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. (2) BIOHM MAKES NO WARRANTY THAT (a) THE SERVICES WILL MEET YOUR REQUIREMENTS; (b) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, UNFAILINGLY SECURE, OR ERROR-FREE; (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS AND (e) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED. (3) 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. (4) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM BIOHM OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS. (5) YOU SHOULD ALWAYS USE CAUTION WHEN GIVING OUT ANY PERSONALLY 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 THE SERVICES AND, THEREFORE, BIOHM SPECIFICALLY DISCLAIMS ANY LIABILITY WITH REGARD TO ANY ACTIONS RESULTING FROM YOUR PARTICIPATION IN THE SERVICES.

## **LIMITATION OF LIABILITY**

WITHIN THE LIMITS ALLOWED BY APPLICABLE LAWS, 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 THE SERVICES; (b) ANY ACTION YOU TAKE BASED ON THE INFORMATION YOU RECEIVE IN THROUGH OR FROM THE SERVICES, (v) 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 SERVICES; (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.

## **INDEMNITY**

You agree to defend and hold BIOHM, and its subsidiaries, affiliates, officers, agents, contractors, partners, employees, successors, and assigns harmless from any claim, or demand, including reasonable attorneys' fees, made by any third party due to or arising out of User Content you submit, post to, or transmit through the Service; your use of the Service; your connection to the Service; your violation of the TOS; or your violation of any rights of another.

If you have submitted a Sample or otherwise provided your own Personal Information, you will defend and hold harmless BIOHM, its employees, contractors, successors, and assigns 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 BIOHM, its employees, contractors, successors, and assigns from any and all liability arising from such disclosure or use of your Microbiome and/or Self-Reported Information.

## **NOTICE**

Notices to you may be made via either email or regular mail. BIOHM may also provide notices of changes to the TOS or other matters by displaying notices or links to notices to you generally on or through the Services.

Official notices related to this TOS must be sent to us at:

BIOHM Health LLC  
ATTN: Chief Legal and Regulatory Officer  
737 Bolivar Road, Suite 200  
Cleveland, Ohio 44115

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

## **CHANGES TO THE TERMS OF SERVICE**

BIOHM may make changes to the TOS from time to time. When these changes are made, BIOHM will make a new copy of the TOS 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 TOS have changed, BIOHM will treat your use as acceptance of the updated TOS.

## **MISCELLANEOUS**

- a. **Entire Agreement.** The TOS constitute the entire agreement between you and BIOHM and govern your use of the Services, 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
- a. **Waiver.** The failure of BIOHM to exercise or enforce any right or provision of the TOS shall not constitute a waiver of such right or provision. If any provision of the TOS 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 TOS remain in full force and effect.
- b. **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 TOS must be filed within one (6) months after such claim or cause of action arose or be forever barred.
- c. **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.
- d. **Section titles.** The section titles in the TOS are for convenience only and have no legal or contractual effect.
- e. **Severability Clause.** If any portion of these TOS is found to be unenforceable, the remaining portion will remain in full force and effect.
- f. **Amendments.** We reserve the right to modify, supplement or replace the terms of the Agreement, effective upon posting at [www.BIOHMHealth.com](http://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 per Section 18 (Termination).
- g. **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 August 15, 2018.***