

# Everest Microbial Defense, LLC

## Terms and Conditions

These Terms and Conditions (“T&C”) apply to the Peak Health Advantage system provided by Everest Microbial Defense, LLC (“Everest,” “we,” or “our”) as detailed in the Quotation that we have provided to you (the “Service(s)”).

**Acceptance.** You are deemed to have accepted these T&C when you sign the Quotation, together these form the Agreement, click "I accept" on our website, or upon the first date and time of performance of the Service, whichever comes first. You acknowledge and agree that (a) you have not relied on any statement, promise, or representation made or given by or on our behalf, and (b) these T&C, along with the written Quotation that you received from Everest, make up the entire agreement between you and Everest.

By using our Services, accessing our website, or interacting with our platform, you agree to be bound by these T&C. We reserve the right to modify, update, or change these T&C at any time, without prior notice. In the event of any material changes to these T&C, we will make reasonable efforts to notify you by posting an announcement on our website, sending an email to the address you have provided, or through other appropriate communication channels. Your continued use of our Services, website, or platform after such modifications or updates have been made constitutes your acceptance of the revised T&C. Please review these T&C periodically to stay informed about any changes or updates.

**Services and Warranty.** We represent and warrant that we will perform the Services in accordance with the Quotation, and in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services. We further warrant that we will maintain complete and accurate records relating to the Services provided. Our warranty is valid for a period of 90 days from the date of completion of the Services. We further represent and warrant that we use disinfection and / or antimicrobial protection products that have been registered with the EPA. You may request to see the EPA registration information for the products used by Everest at any time.

**Disclaimer of Other Warranties.** EXCEPT AS EXPRESSLY PROVIDED ABOVE, EVEREST DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, REPRESENTATIONS, OR GUARANTEES, INCLUDING WITHOUT LIMITATIONS ANY REPRESENTATION OR WARRANTY IN REGARD TO QUALITY, PERFORMANCE, EFFECTIVENESS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. EVEREST DOES NOT WARRANT THAT ITS SERVICES WILL BE EFFECTIVE AGAINST ALL SPECIFIC PATHOGENS, VIRUSES, OR BACTERIA. EVEREST PRODUCTS AND SERVICES ARE NOT INTENDED TO DIAGNOSE, TREAT, CURE, OR PREVENT ANY DISEASE.

**Your Obligations.** You represent and warrant that you have obtained any permissions, permits, licenses, approvals or otherwise that we may need to provide the Services at your location. This may include, but is not limited to, obtaining necessary permissions from property owners, managers, or local authorities.

**Fees; Payment.** The fees for the Services (the “Fees”) are as provided in the separate Quotation. You are responsible for any taxes associated with the Fees, and we reserve the right to charge

reasonable additional fees (“Additional Fees”) and expenses that we incur in connection with the Services outside the scope of the Quotation, provided that we provide you with a detailed explanation of such expenses. Payment of the Fees and any Additional Fees is due in full upon completion of the Services unless we have agreed in advance upon a different payment timeframe.

**Termination.** We can terminate performance of the Services immediately if you: (a) materially breach your obligations under the T&C; (b) fail to pay Fees or Additional Fees when due; (c) become insolvent or subject to any proceeding under any bankruptcy law that is not fully stayed within 7 days or dismissed within 45 days after filing; (d) are dissolved or liquidated; or (e) make a general assignment for the benefit of creditors.

You can terminate the Services at any point with 30 days written notice, provided that all Fees and Additional Fees for Services incurred by Everest are paid in full.

**Liability; Indemnification.** Everest’s liability for the Services shall be limited to money damages in an amount not to exceed the total Fees and Additional Fees actually paid by you for the Services. This liability shall be the extent of Everest’s liability regardless of the form in which any legal or equitable action may be brought and the foregoing shall constitute your exclusive remedy. In no event will Everest be held liable or be responsible for anything Everest knew or should have known regarding the likelihood of any losses or damages. Additionally, in no event shall Everest be held liable or responsible for:

- (a) any loss of profits, anticipated profits, loss of business, loss of data, loss of reputation or goodwill, business interruption, or any third-party claims;
- (b) any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and
- (c) any losses caused directly or indirectly from the choice of Services and how they will meet your requirements.

Nothing in these T&C shall limit or exclude our liability for any matters for which it would be unlawful to exclude or limit liability. You shall indemnify us against all damages, costs, claims, and expenses suffered by us arising from any loss or damage to any equipment (including that belonging to third parties) caused by you, your agents, or employees.

**Insurance.** We represent and warrant that we maintain in full force and effect, and at our sole expense, insurance policies protecting Everest against claims for injuries to persons or damages to property arising from or in connection with our performance of the Services.

**Intellectual Property.** We own all intellectual property rights, including but not limited to copyrights, trademarks, service marks, trade secrets, know-how, and other confidential information (collectively, “Intellectual Property Rights”) in and to all documents and any other materials related to the Services. You are granted a non-exclusive, non-transferable, revocable license to use the Intellectual Property Rights solely for your internal purposes in connection with the Services.

**Intellectual Property Rights Protection.** We acknowledge and agree that both our and your Intellectual Property Rights are valuable assets. You recognize our ownership and exclusive rights to our Intellectual Property Rights. We reserve the right to take any necessary and appropriate action, including legal action, to protect and enforce our Intellectual Property Rights against any unauthorized use, infringement, or misappropriation by you or any third party. You shall promptly notify us of any known or suspected infringement of our Intellectual Property Rights and shall cooperate fully with us in any action taken to protect such rights.

**Assignment.** You may not assign, transfer, delegate, or subcontract any of your rights or delegate any of your obligations under this Agreement without Everest's prior written consent, which shall not be unreasonably withheld. We may assign any of our rights or delegate any of our obligations to any affiliate or to any person acquiring all or substantially all of our assets without your consent.

**Governing Law.** This Agreement, and all matters arising out of or relating to this Agreement, is governed by, and construed in accordance with, the laws of the State of Colorado, without giving effect to the conflict of laws provisions thereof.

**Waiver of Jury Trial.** The parties agree to resolve any disputes or controversies arising out of or relating to this Agreement or the Services through binding arbitration in accordance with the rules of the American Arbitration Association. The arbitration shall be held in Denver, Colorado and shall be conducted by a single arbitrator who is knowledgeable in the area of law related to the dispute. The arbitrator's decision shall be final and binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

BOTH EVEREST AND YOU HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF ANY CONTROVERSY THAT MAY ARISE UNDER THIS CONTRACT OR THE SERVICES.

The parties further agree that any arbitration award shall be subject to the limitation of liability as stipulated in this Agreement and shall be confined to the actual damages incurred by the prevailing party, excluding any indirect, consequential, or punitive damages. The prevailing party shall have the right to recover reasonable attorneys' fees and costs associated with the arbitration process. All arbitration proceedings and information disclosed during such proceedings shall remain confidential.

The parties acknowledge and agree that this arbitration provision constitutes a waiver of their right to participate in a class action or any other proceeding where they are not the named party. The parties further agree that they will not join any action or proceeding against the other party as a class representative or class member.

This arbitration provision shall survive the termination of this Agreement and any subsequent renewal or extension thereof.

**Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered personally, sent by registered or certified mail (postage prepaid, return receipt requested), or sent by a nationally recognized overnight courier service (with delivery confirmation), to the parties at their respective addresses that are set forth

as either party may designate by notice to the other party. Notices shall be deemed given on the date of receipt if delivered personally, three (3) business days after deposit in the mail if sent by registered or certified mail, or one (1) business day after deposit with an overnight courier service if sent by overnight courier.

**Amendments; Waivers.** No amendment to or modification of this Agreement will be binding unless in writing and signed by both parties. No waiver of any provision of this Contract will be binding unless in writing and signed by the party waiving such provision. No waiver of any provision of this Agreement on any occasion will be deemed a waiver of such provision on any subsequent occasion.

**Severability.** If any provision of the Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the parties will negotiate in good faith to amend the Agreement to give effect to the original intent of the parties as closely as possible.

**Entire Agreement.** This Agreement, including these T&C and any applicable Quotation, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior understandings, agreements, representations, and warranties, whether written or oral, relating to the subject matter hereof.

**Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of the Agreement by facsimile or electronic transmission (e.g., PDF) will be as effective as delivery of a manually executed counterpart of the Agreement.