

MTA Terms

Background

- A QUT owns or co-owns the Material.
- B The Recipient has requested the Material from QUT for Internal Research Use.
- C QUT agrees to provide the Material, and may provide the Recipient with Confidential Information, on the terms and conditions of this agreement.

Operative terms

1 Definitions

1.1 Definitions

In this agreement:

Access Fee	means the amount described as such in the Details for access to the Material.
Affiliate	means every corporation or entity which, directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with the Recipient, as well as every officer, director, employee, agent and representative of any such corporation or entity.
Approved User	means the approved user specified in the Details.
Australian Consumer Law	means the Australian Consumer Law as contained in Schedule 2 to the <i>Competition and Consumer Act 2010</i> (Cth).
Business Day	means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.
Confidential Information	means any documentation, data or information relating to the Material that may be disclosed to the Recipient by QUT including any technical data, practices, plans, specifications, know-how or other information relating to the Material or with respect to culturing, reproducing or using the Material.
Details	means the Details section set out at the start of this agreement.
Intellectual Property Rights	includes all registered and unregistered rights in relation to all inventions, trade marks, business names, domain names, copyright, patents, designs, plant breeders rights, circuit layouts, know

how, the right to have any information kept confidential, data and databases, the right to apply for any of the foregoing and any other intellectual or industrial property rights anywhere in the world.

Field	means the field described in the Details.
GST	means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
GST Law Internal Research Use	has the same meaning as in the GST Act. means to use the Material for internal, non-commercial research and academic purposes. For the avoidance of doubt this does not include any use of the Material for a financial gain or benefit (whether or not such gain or benefit is ultimately obtained).
Material	means the microbial isolate samples described in the Details, and includes any progeny and any derivatives, variants or by-products of the samples or any progeny, together with any data provided by QUT that relates to the Material.
Owner	the owner or co-owner of the Material as specified in the Details.
Permitted Purpose	Internal Research Use of the Material by the Recipient.
Services Fee	means the amount described as such in the Details for any additional processing/work performed by QUT prior the Recipient accessing the Material.
Term	means the period described as such in the Details.

2 Supply of Material

- (a) The Recipient must pay the Access Fee and the Services Fee upon execution of this agreement. QUT will provide the Recipient with a tax invoice for the Access Fee and the Services Fee.
- (b) Subject to the Recipient first paying the Access Fee and the Services Fee, QUT will deliver or make available for collection the Material as described in the Details within the time, and at the place, agreed by QUT and the Recipient. QUT will have no liability with respect to any delay in delivery of the Material or failure to deliver the



Material, except that QUT must refund the Access Fee and the Services Fee if it fails to deliver the Material.

- (c) QUT may disclose Confidential Information to the Recipient at its discretion.

3 Licence for use of Material

3.1 Grant

- (a) Subject to clause 3.2, QUT grants to the Recipient a non-exclusive, non-transferable right to use the Material solely for Internal Research Use in the Field and the Territory.
- (b) The Recipient must not grant any sublicences of the right granted in clause 3.1(a) without the prior written consent of QUT, which consent may be given or withheld at the discretion of QUT. Any sublicense granted in breach of this clause will be of no effect.

3.2 Reserved rights

Notwithstanding the grant in clause 3.1, the Recipient does not obtain any exclusivity with respect to any non-commercial use of the Material including non-commercial use for teaching, learning, research and development purposes.

3.3 Recipient obligations

The Recipient:

- (a) must ensure that the Material is used only in the Approved User's laboratory for the Approved Purpose under the direction of the Approved User or others working under the Approved User's direct supervision;
- (b) may not give, sell, loan or otherwise provide the Material to any third party (excluding any of the Recipient's Affiliates or Representatives who agree to be bound by this clause 3.3 and the confidentiality obligations in this agreement, for the sole purpose of providing services to the Recipient) for any purpose;
- (c) upon becoming aware of a request for the Material from any person (other than those working under the Approved User's direct supervision), the Recipient will refer that person to QUT via the admin@ahmb.com.au email address
- (d) takes responsibility for compliance, and must comply, with all applicable laws, regulations and codes of conduct in relation to the storage, handling, use or disposal of the Material; and
- (e) must not use the Material in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of QUT; and
- (f) must not use the Material other than as permitted by clause 3.1(a); and
- (g) will ensure that any publications or presentations resulting from the use of the Material for the Approved Purpose acknowledge the contribution of the Australian Human Microbiome Biobank as the source of the Material in the following form (or any other form notified by QUT):

'The [insert description of the material/data] was sourced from the Australian Human Microbiome Biobank operated by Queensland University of Technology, see <https://ahmb.com.au/>.'

4 Confidentiality

- (a) The Recipient must:
- (i) keep the Confidential Information secret and confidential;
- (ii) keep the Confidential Information secure, including by establishing and maintaining effective security measures to safeguard the Confidential Information from unauthorised access and use;
- (iii) not use or copy the Confidential Information for any purpose other than the Permitted Purpose;
- (iv) only allow access to the Confidential Information to the Affiliates or Representatives of the Recipient who have a need to know the Confidential Information for the Permitted Purpose and who are bound by obligations of confidence to the Recipient to at least the standard contemplated by this agreement; and
- (v) not disclose the Confidential Information to any third party without the prior written consent of QUT, which consent may be given or withheld at the discretion of QUT.
- (b) If the Recipient discloses Confidential Information in accordance with the written consent of QUT then the Recipient must ensure that the relevant third party complies with the requirements of clause 4(a).

5 Exceptions

The obligations of confidence imposed by clause 4 do not apply to Confidential Information:

- (a) that was in the rightful possession of the Recipient, or was independently developed by employees of the Recipient who did not have access to the Confidential Information, in good faith and free of any obligation of confidence;
- (b) the Recipient can show is in the public domain otherwise than by a breach of this agreement or other obligation of confidence; or
- (c) that is required to be disclosed under applicable law or the rules of any stock exchange, but only if the Recipient has given QUT all legally permissible and commercially reasonable advance notice to enable QUT to attempt to remove that requirement and the Recipient only discloses the minimum information required.

6 Term of confidentiality obligations

- (a) The parties acknowledge that the confidential nature of the Confidential Information can subsist for an indefinite period of time.



- (b) The Recipient acknowledges that the elapsing of a predetermined period of time does not by reason of that alone cause the Confidential Information to cease having its confidential character, and that the passage of any particular period of time does not extinguish the need to maintain the secrecy of the Confidential Information.
- (c) The Recipient acknowledges and agrees that the confidentiality obligations placed upon the Recipient in this agreement continue to subsist until one of the events set out in this agreement ending the obligation of confidentiality occurs.

7 Obligation to disclose breaches

If the Recipient suspects or becomes aware that:

- (a) any unauthorised person has come into possession of any part of the Material or the Confidential Information; or
- (b) any person is doing anything inconsistent with the rights of QUT with respect to the Material or the Confidential Information,

then the Recipient must immediately notify QUT and provide QUT with all information and assistance requested by QUT in connection with that breach.

8 Return of Confidential Information

- (a) QUT may at any time following the termination of this agreement require the Recipient to return any Confidential Information (including copies of the Confidential Information) that is in the possession or control of the Recipient. The Recipient must comply with such a request within 7 days.
- (b) Any part or copy of the Confidential Information which cannot be conveniently delivered by the Recipient to QUT must be completely destroyed or permanently deleted, provided that the Recipient may retain copies of the Confidential Information that are stored on the Recipient's computer backup systems until they are deleted in the ordinary course. The Recipient will continue to be bound by the terms and conditions of this agreement with respect to such retained Confidential Information.
- (c) If requested by QUT, the Recipient must deliver to QUT a statutory declaration as to the destruction or permanent deletion of all Confidential Information in the manner required by this clause.

9 Term

9.1 Term

This agreement is effective from its execution date and continues for the Term.

9.2 Mutual termination rights

Either party may by notice to the other party immediately terminate this agreement in the following circumstances:

- (a) the other party is in material breach of this agreement and the breach cannot be remedied;

- (b) the other party is in material breach of this agreement and the breach is not remedied within 30 days after receipt of a notice of breach from the terminating party; or
- (c) the fraud or wilful misconduct of the other party.

9.3 Effect of termination

Upon expiration or earlier termination of this agreement:

- (a) the licence granted in clause 3.1 will immediately also terminate;
- (b) the Recipient must destroy any Material in its possession or control and confirm the same to QUT in writing; and

the following clauses of this agreement will survive termination of this agreement: 1, 3.3, 4, 5, 6, 7, 8, 9.3, 11, 12, 13, 14, 15, 16, 17, 18 and 19.

10 Warranties

10.1 QUT warranties

QUT represents that, to the best of its knowledge and belief, it has the right to grant the licence granted to the Recipient under this agreement.

10.2 General

Each party warrants that:

- (a) it has the capacity to enter into and perform its obligations under this agreement;
- (b) its entry into this agreement will not contravene its obligations under any other agreement; and
- (c) its obligations under this agreement are valid, binding and enforceable against it in accordance with its terms.

11 Liability

11.1 Disclaimer

Subject to clause 11.4, QUT:

- (a) makes no representations or guarantees, and provides no warranties either express or implied, in relation to:
 - (i) the Material or Confidential Information, including that the Material:
 - (A) is safe to use;
 - (B) is fit for any particular purpose or has any particular qualities or characteristics;
 - (C) does not infringe the Intellectual Property Rights or other rights of any person; or
 - (D) is subject to any enforceable Intellectual Property Rights;
 - (ii) the successful development of any product or service;
 - (iii) any product achieving any particular pricing or reimbursement amount or any particular sales level;



- (b) accepts no responsibility for any false, inaccurate or misleading Confidential Information, or for any opinion formed or conclusion drawn by the Recipient as a result of its access to the Material or the Confidential Information; and
- (c) make no representations, and provide no warranties, in relation to the Confidential Information, including:
 - (i) as to the completeness, accuracy, suitability or relevance of any information provided; or
 - (ii) that any of the Confidential Information has been audited, verified or prepared with reasonable care.

11.2 Release

The Recipient releases QUT and its respective Representatives from any liability for loss or damage (including, without limitation, any personal injury, property damage, indirect loss or economic loss or any loss of income, profits or business, loss of opportunity, loss of contract or damage to goodwill and business reputation) suffered or incurred as a direct or indirect consequence of Recipient storing, handling, reproducing, using or disposing of the Material or using or relying on any Confidential Information, even if the loss or damage arises in connection with any defect in the Material or Confidential Information, negligence, default, lack of care, misrepresentation or any other cause and whether it is foreseeable or not.

11.3 Limitation of liability

Subject to clause 11.4 the total liability of QUT to the Recipient for loss or damage of any kind, however caused due to negligence, breach of contract, breach of any law, in equity or otherwise, arising out of all acts, omissions and events whenever occurring is not to exceed in aggregate AUD\$100.

11.4 Continued operation of Australian Consumer Law

Nothing in this agreement excludes any liability of QUT to the extent that liability may not be excluded by law, including the Australian Consumer Law. Where the Australian Consumer Law applies, and liability may be limited under the Australian Consumer Law, the liability of QUT is limited to, at the absolute discretion of QUT, the re-supply of the relevant goods or services or the payment of the cost of acquiring equivalent goods or services.

11.5 Consequential loss

Except with respect to a breach of the Recipient's obligations under clause 4 (Confidentiality), to the maximum extent permitted by law, neither party nor any of their Affiliates or Representatives will be liable to the other party for any incidental, consequential, special, punitive or other indirect damages, lost revenues or lost profits, regardless of whether liability is asserted in contract, tort or statute, and irrespective of whether that party or any representative of that party has been advised of, or otherwise might have anticipated the possibility of, any such loss or damage.

11.6 Indemnity

The Recipient indemnifies QUT and the Representatives of QUT (jointly and severally) against all liability, loss, costs and expenses (including any actions, claims, proceedings or demands brought

by any third party, and any legal fees, costs and disbursements on a lawyer and own client basis) arising from or incurred in connection with:

- (a) any use of the Material or Confidential Information by the Recipient or any of the Recipient's Affiliates or Representatives; or
- (b) any breach by the Recipient of any of its obligations under this agreement.

12 Intellectual Property Rights

The Recipient acknowledges and agrees:

- (a) subject to the express provisions in this agreement, nothing in this agreement will be deemed by implication or otherwise to convey or licence to the Recipient any of QUT's or any third party's Intellectual Property Rights or any other proprietary right, title or interest in respect of the Material or the Confidential Information;
- (b) the Recipient will not claim ownership, or challenge the ownership, of any Intellectual Property Rights in respect of the Material or any Confidential Information; and
- (c) the Recipient will not apply for registration of any patents or any other form of Intellectual Property Rights with respect to the Material or any Confidential Information.

13 Insurance

- (a) The Recipient must take out, maintain and keep current for the term of this agreement (and for 6 years thereafter in the case of policies held on a claims made basis):
 - (a) a comprehensive public liability policy with a limit of liability of not less than AUD\$20 million for each and every event; and
 - (b) a product liability policy with a limit of liability of not less than AUD\$20 million for each and every event, from the time that any Licensed Products are first sold in any country.
- (b) The Recipient must, upon the written request of QUT, provide QUT with evidence of the currency of the insurance policies referred to in this clause, within 14 days of the request.

14 GST

14.1 Definitions

Capitalised expressions which are not defined in this agreement but which have a defined meaning in the GST Act have the same meaning in this clause.

14.2 GST payable in addition to consideration

If a party (Supplier) makes a Taxable Supply under this agreement, then the Recipient of the Taxable Supply, must pay the Supplier the GST payable on the Taxable Supply in addition to the consideration for the Supply.



14.3 Tax Invoice

Within seven days of a Supply being made under this agreement, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Act.

15 Injunctive relief

The Recipient acknowledges and agrees that:

- (a) if the Recipient breaches this agreement then QUT may suffer loss or damage as a result of that breach for which monetary remedies would not be adequate; and
- (b) if the Recipient attempts to breach or threatens to breach this agreement, QUT may seek injunctive relief without the necessity of proving that any actual loss or damage has been sustained or is likely to be sustained by QUT.

16 Use of party's names

The Recipient agrees that it will not use the name or trade marks of QUT in any advertising or publicity material, or make any form of representation or statement which could constitute an express or implied endorsement by QUT of any products or services, and will not authorise others to do so, without the prior written consent of QUT.

17 Announcements

No party to this agreement will make or permit any of its personnel to make any public announcement or communication in connection with this agreement without previously agreeing the contents with the other party.

18 Notices

18.1 Service of notices

A notice, consent, approval or other communication under this agreement (Notice) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in the Details; and
- (b) delivered by personal service, sent by pre-paid mail or transmitted by email or any other lawful means.

18.2 Effect of receipt

A Notice given in accordance with this clause is treated as having been given and received:

- (a) if personally delivered, on delivery;
- (b) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the tenth Business Day after the date of posting if sent to or from an address outside Australia); and
- (c) if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

18.3 Particulars for Delivery

The particulars for delivery of Notices for each party are initially those set out in the Details. A party may change its address for the delivery of Notices by notifying that change to each other party. The notification is effective on the later of the date specified in the Notice or five Business Days after the Notice is given.

19 General

19.1 Special Conditions

The Special Conditions form part of this agreement. To the extent of any inconsistency between the Special Conditions and the remainder of this agreement, the Special Conditions prevail.

19.2 Relationship

This agreement does not create a relationship between the parties of trust, agency, partnership or employment.

19.3 Entire agreement

This agreement contains the entire agreement of the parties with respect to its subject matter and supersedes all prior representations, conduct and agreements, with respect to its subject matter.

19.4 Jurisdiction

The laws of Queensland, Australia apply to this agreement and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.

19.5 Severability

To the extent that any portion of this agreement is void or otherwise unenforceable then that portion will be severed and this agreement will be construed as if the severable portion had never existed.

19.6 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this agreement and to perform its obligations under it.

19.7 Assignment

- (a) QUT may assign its rights under this agreement without the consent of the Recipient, and if requested by QUT, the Recipient must sign a deed of novation of this agreement.
- (b) The Recipient may not assign any of its rights under this agreement without the prior written consent of QUT.

19.8 Counterparts

This agreement will be validly executed if signed in any number of counterparts and the counterparts taken together will constitute one agreement. Each party may communicate its execution of this agreement by successfully transmitting an executed copy of this agreement by email to the other party.



19.9 **Electronic execution**

The parties consent to the electronic execution of this agreement.