

MetaBiome™

PLATFORM TERMS OF USE

The following terms and conditions (“**Terms**”) constitute a legally binding agreement between you and Microba Pty Ltd ABN 30 628 603 225 (“**Microba**”). By clicking the “I accept these terms and conditions” button or otherwise using the Platform, you are accepting and agreeing to be bound by these Terms. If you do not agree to be bound by these Terms, you must not register an Account or otherwise use the Platform.

Definitions for certain capitalised terms are set out at the end of these Terms.

Acknowledgements

You acknowledge and agree that any and all information provided by Microba to you or any other person (including in any Report and any other information provided in connection with the MetaBiome™ Products):

- is provided for information purposes only; and
- is not intended to diagnose conditions, nor prescribe the use of any remedy, diet or lifestyle practice.

You further acknowledge and agree that nothing in these Terms requires or obliges you to endorse, recommend or promote Microba or the MetaBiome™ Products, and any such endorsement, recommendation or promotion is entirely at your discretion and at your own risk based on your professional judgement.

Account registration

By registering an Account, you warrant and represent that all information you provide in connection with registering an Account is true and correct in all material respects.

Registration is non-transferable. You are responsible for all of the activities that occur under your Account. You should carefully choose your password and user name and protect them from unauthorised use. You must inform Microba immediately of any unauthorised use of your Account or any other breach of security. Microba is not liable for any loss if someone else uses your password or Account.

You must update your details in the Platform if they change.

Platform and MetaBiome™ Product Activation

The Platform is intended to facilitate the activation of each MetaBiome™ Product supplied by you to your Patients (**Activation**). Activation must be performed in the manner set out on the Platform. You must Activate each MetaBiome™ Product that you supply to your Patients before Microba will provide any Microbiome Services with respect to that MetaBiome™ Product.

Without limitation, Activation of the MetaBiome™ Product(s) may be conditional upon you confirming (via the Platform or in such other manner that Microba reasonably determines) that you have complied with these Terms in each instance.

Your Obligations and Responsibilities

Prior to supplying any MetaBiome™ Products to a Patient, you must ensure that the Patient:

- has been supplied with the MetaBiome™ Product T&Cs and understands that the MetaBiome™ Product T&Cs apply to, and govern the use of, the MetaBiome™ Product;
- understands that the MetaBiome™ Product and associated Microbiome Services are a non-diagnostic test, and are not intended to diagnose conditions, nor prescribe the use of any remedy, diet or lifestyle practice;
- understands that the biological sample collected, packaged and sent by the Patient to Microba will be used by Microba to provide the Microbiome Services (including to produce the Report);
- has consented to Microba disclosing the Report and the Patient's personal information (including health information):
 - to you;
 - to other third party service providers solely to enable such third party service providers to provide you and the Patient with support and other services relating to and to facilitate the Microbiome Services; and
 - otherwise in accordance with the MetaBiome™ Product T&Cs and Microba's Privacy Policy.

Without limiting your obligations above, you must:

- comply with all of your professional, legal and ethical obligations in respect of the MetaBiome™ Products and the Reports, and otherwise in connection with these Terms;
- act in good faith at all times towards Microba and not disparage, adversely comment on or call into disrepute Microba or the MetaBiome™ Products by words or conduct (whether in person, online or on social media);
- use your own professional judgement in connection with any endorsement, promotion or recommendation of MetaBiome™ Products to any person, including without limitation through the practice of Evidence Based medicine;
- be honest and transparent with your Patients regarding any interest you may have in the supply of the MetaBiome™ Products (including under any agreement with a third party), and to the extent you choose to sell, recommend, promote and/or endorse Microba or the MetaBiome™ Products, fully disclose such interest to your Patients and otherwise comply with all of your professional, legal and ethical requirements in respect of such endorsement;
- fairly and accurately represent Microba and the MetaBiome™ Products and not make any promises, representations, warranties or guarantees in connection with Microba or the MetaBiome™ Products except to the extent that Microba has given its prior written approval for such promise, representation or warranty;
- cease using the Platform and not provide any health care services

with respect to the MetaBiome™ Products or any Reports if you cease to be registered as a Health Practitioner for any reason; and

- provide Microba with such information reasonably requested by Microba from time to time in connection with the Platform, the MetaBiome™ Products and any Reports.

Warranties

You represent, warrant and undertake to Microba that:

- you are of full legal capacity and are able to enter into and perform these Terms;
- you are a registered Health Practitioner;
- the information you have provided or will provide to Microba is not false or misleading;
- you will comply with all applicable laws, statutes and regulations (including Privacy Laws) in connection with:
 - the supply of the MetaBiome™ Products to any Patient(s);
 - any information Microba may provide (including any Report);
 - any health care services you may provide to any Patient(s) which relate to the MetaBiome™ Products or any Report; and
 - these Terms; and
- if you are accepting these Terms on behalf of another party, you have authority to bind that party for that purpose.

Your relationship with third party suppliers

You are solely responsible for any relationship, arrangement and/or agreement you may have with any third party with respect to the supply of the MetaBiome™ Products to you (**Third Party Arrangements**).

Microba is not party to any Third Party Arrangement, and Microba is not responsible for resolving, or otherwise obliged to be involved in, any dispute in relation to any Third Party Arrangement.

You release Microba (and its directors, employees and agents) from any and all claims, demands and damages (actual and consequential) of every kind and nature, known or unknown, arising out of or in connection with any Third Party Arrangement.

MetaBiome™ Products and their availability

Microba may change or improve the MetaBiome™ Products at any time. For example, Microba may develop updates, enhancements or new features. Microba may also stop making MetaBiome™ Products available or modify their availability in any way.

Nothing in these Terms obliges Microba to supply you with any MetaBiome™ Products or any replacement or refund with respect to any MetaBiome™ Products.

Intellectual property rights

Microba (and its licensors, as applicable) owns all Intellectual Property Rights in and to the Platform, the MetaBiome™ Products and the Microbiome Services (including without limitation text, graphics, architecture and coding and any copyright subsisting in them). Except as provided in these Terms, you do not obtain any rights, title and or interest in or to the Platform, the MetaBiome™ Products or the Microbiome Services.

Liability and indemnity

To the maximum extent permitted by law, Microba excludes all liability (whether in contract, tort or otherwise) to you and/or any Patient for any loss, costs, claims or damage of any kind (including, without limitation, resulting from any loss of income, loss of profits, loss of goodwill, loss of contract, loss of business, loss of reputation, loss suffered as a result of claims by any third party or any other special, consequential, indirect or incidental damages) arising out of or in connection with the Platform, the MetaBiome™ Products, your

treatment of any Patient or otherwise in connection with these Terms, however caused.

You agree to indemnify, defend and hold Microba (and Microba's directors, employees and agents) harmless from and against all claims, liabilities, losses and expenses (including reasonable legal fees on a full indemnity basis) that arise from:

- any health care services, advice, recommendations or treatment that you provide to any Patient (whether or not such health care service, advice, recommendation or treatment is based on any Report or other information that Microba provides to you and/or the Patient in the course of providing the Microbiome Services);
- any breach of these Terms by you;
- any breach of any person's rights by you; or
- any breach of any applicable law (including Privacy Laws) by you.

Suspension and termination

Microba may immediately suspend or terminate Your Account if Microba reasonably considers that you are in breach of any provision of these Terms or that you have ceased to be registered as a Health Practitioner for any reason.

Any clause that by its nature is intended to survive termination or expiry of these Terms will survive termination or expiry of these Terms for any reason.

Relationship

Nothing in these Terms creates a relationship of principal and agent, employer and employee, partnership or joint venture between you and Microba. You acknowledge that you do not have the power or authority, directly or indirectly or through your servants or agents, to bind Microba to any agreement with any person or otherwise to contract, negotiate or enter into a binding relationship for or on Microba's behalf.

Notices

Without limitation to how notices may be provided at law, Microba may provide you with notices in connection with these Terms to any email address that you have provided to Microba. Any notices you provide to Microba under these Terms must be emailed to healthcare@microba.com.

Subcontract

You must not subcontract or otherwise arrange for another person to perform any part of these Terms or to discharge any of your obligations under any part of these Terms without Microba's prior written consent.

Entire contract

These Terms constitute the entire understanding between the parties as to their subject matter and supersede all prior agreements, understandings and communications, whether written or oral, in relation to their subject matter.

The parties acknowledge that the MetaBiome™ Product T&Cs govern the use of the MetaBiome™ Products by Patients and any other persons.

Variation

Microba may change these Terms at any time. Microba will use reasonable endeavours to notify you of such changes before they take effect, however you are expected to stay up to date with any such changes that Microba makes to these Terms from time to time, as they are binding on you. If you continue to use the Platform after such changes take effect, you are taken to have agreed to the changes.

Severability

If and to the extent any term or part of a term of these Terms is void, voidable or unenforceable, such provision or part of a provision will be severed from these Terms and will not affect the continued operation of the remaining terms of these Terms.

Assignment

Microba may assign Microba's rights or obligations under these Terms at any time by notice in writing to You. You may only assign Your rights or obligations under these Terms with Microba's prior written consent.

Governing Law

This Contract shall be governed by the laws of Queensland and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland.

Interpretation

In these Terms, unless the context otherwise requires:

- singular includes plural and plural includes singular;
- 'including', or similar words, does not limit what else might be included;
- another grammatical form of a defined expression has a corresponding meaning;
- reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
- reference to a person includes a corporation, a firm and any other entity;
- reference to a party includes that party's personal representatives, successors and permitted assigns;
- if a party comprises more than one person, each of those persons is jointly and severally liable under these Terms;
- headings do not affect interpretation;
- a provision must not be construed against a party only because that party put the provision forward.

Definitions

In these Terms, unless the context otherwise requires:

Account means a user account on the Platform intended for Health Practitioners;

Health Practitioner means a person registered as an accredited health practitioner under the Health Practitioner Regulation National Law Act as in force in each state and territory and the *Health Practitioner Regulation National Law Act 2009* (Cth), and who hold all necessary approvals, authorisations and permits (however described) from all relevant and competent authorities to practise as an accredited health practitioner;

Intellectual Property Rights means any registered or unregistered rights in any copyrights, patents, inventions, discoveries, trade marks, processes, systems, methods, know-how, designs or confidential information or any rights of a similar nature under the laws of Australia or anywhere else in the world;

MetaBiome™ Product means the microbiome sampling kit and associated Microbiome Services collectively known as "MetaBiome™";

MetaBiome™ Product T&Cs means Microba's terms and conditions of use applicable to the MetaBiome™ Products, as amended by Microba from time to time;

Microbiome Services means the microbiome genotyping, analytical and sequencing services, research, information, products and/or resources provided or conducted by Microba;

Patient means any patient that you provide health services for in the ordinary course of your practice as a Health Practitioner;

Platform means the online platform made available by Microba for the purposes of, amongst other things, facilitating the activation of MetaBiome™ Products by Health Practitioners and the provision of Reports; and

Privacy Laws means the *Privacy Act 1988* (Cth) and other any legislation or administrative requirement (as amended from time to time) imposing an obligation in relation to the collection, use, disclosure, storage and transmission of personal information, including any codes, principles or guidelines contained in or arising out of such legislation;

Privacy Policy means Microba's privacy policy as amended from time to time and accessible at <https://www.microba.com/privacy-policy/>; and

Report means the report and any other information produced by Us from conducting the Microbiome Services in connection with any MetaBiome™ Products you may supply to a Patient.