

1. INTRODUCTION

1. DonorPlus App – A product produced by Kaye Price and Patricia Hunt. DonorPlus App provides both web & mobile system for supporting living kidney donors by providing information and organising the donors experiences.

DonorPlus App works in partnership with various organ donor institutions, research organisations and nephrology specialists to help improve the living donor experience on a global scale.

2. IMPORTANT TERMS

1. KEY DEFINITIONS

1. The following terms are used regularly throughout these Terms of Service and have a particular meaning (additional definitions are found in the General Conditions):
 1. **Agreement** means these Terms of Service.
 2. **Appointment** means an appointment record, or reminder created within DonorPlus App.
 3. **DonorPlus App** means the:
 1. Web application accessible from <https://www.donorplus.org>; and/or
 2. The DonorPlus App mobile application available from the Apple® App Store®, Google Play® and other mobile application marketplaces.
 4. **Donor** means the person who is considering living kidney donation, going through the process of living kidney donation or has donated their living kidney
 5. **Donor Information** means general information regarding process, test results and general information around different renal disease, but does not include Medical Advice.
 6. **Team Member** means a user of DonorPlus App that a donor has authorised to access such information (including information contained in the Donor's electronic health record (EHR, e-Health, epic etc) and features associated with the Donor's account, as the Donor may determine.
 7. **Company** means DonorPlus
 8. **EHR (Electronic Health Record)** means the record of an Individual's Health Information in DonorPlus App.
 9. **e-Health** represents government electronic health record systems
 10. **EPIC** represents USA Health system
 11. **Fee** means any fee payable by a User for access to, or use of DonorPlus App.
 12. **Health Information** has the same meaning as in the Australian Privacy Act 1988 (but generally refers to information about the health, injury or a disability of an Individual at any time).
 13. **Individual** means a Donor with an EHR about them in DonorPlus App.
 14. **Institution** means a medical or healthcare provider, hospital or other such a kidney illness support or research organisation that sponsors the DonorPlus App and that a Donor may acknowledge a connection with in DonorPlus App.

15. **Invitation** means an invitation sent via SMS or email by a Donor to a person in order to create a Team Member account, connected with the Donor's account.
16. **Journal** means the features of DonorPlus App that allows a User to upload User Content to track and share experiences.
17. **Journey Organiser** means the set of DonorPlus App features to which a User may supply User Content, comprising of the following modules:
 1. Record;
 2. Appointments;
 3. Journals;
 4. Questions; and
 5. Such other features of the Journey Organiser that the Company may make available from time-to-time.
18. **Medical Advice** means any medical advice or information specific to a Donor that is required by law to be provided by a Practitioner.
19. **Medical Team Member** means a Team Member that is a Practitioner, authorised to access an Individual's EHR.
20. **Donor** means a user of DonorPlus App that has been diagnosed with organ transplant, and includes a Recipient where implied by context.
21. **Practitioner** means (without limitation) a medical practitioner, doctor, medical specialist, physician, or other healthcare provider qualified to provide Medical Advice.
22. **Privacy Policy** means DonorPlus App's privacy policy as updated from time-to-time, which can be found at <https://www.donorplus.org/terms>
23. **Question** means a question entered into DonorPlus App by a User to be answered by DonorPlus App or another User connected to the User's account.
24. **Recipient** means the person who is awaiting a kidney or has received a kidney transplant.
25. **Record** means the features of DonorPlus App that allows the User to record upload content to the Individual's EHR.
26. **Research Data** means any User Content that has been de-identified and which is no longer capable of identifying the User that supplied it, or other User that is the subject of that data.
27. **Research Organisation** means an organisation that conducts research on a type, or a kidney illness generally, and may include an Institution.
28. **Staff Member** means any employee or other personnel of a Medical team that may be authorised to access an Individual's EHR but are not qualified to provide Medical Advice or treatment.
29. **Study** means a medical research study of a kidney illness or a Type, conducted by a Research Organisation.
30. **Third Party** means any person that is not a User.

31. **TPS** means a third party social media service that DonorPlus App may support some integrations with, including where available and without limitation Facebook, Twitter and Instagram.
32. **Type** means a type of a kidney illness that a Donors recipient may be diagnosed with.
33. **User** means any without limitation Donor, Recipient, Medical team, Individual or Staff Member that uses DonorPlus App.
34. **User Content** means data that is uploaded or input into DonorPlus App by the User or that forms part of the User's Intellectual Property.

2. **AGREEMENT**

1. This Agreement governs the use of DonorPlus App by any User and limits the liability of the Company to any User. This Agreement has specific terms of use (in addition to the General Conditions) that apply to:
 1. Donors, Recipients and Individuals (**Item E**)
 2. Team Members (**Item F**)
 3. Medical Team (**Item G**)
 4. Staff Members (**Item H**)
2. In addition to any other express or implied consents, by using DonorPlus App the User accepts and agrees to the terms of:
 1. This Agreement; and
 2. The Privacy Policy.

3. **USING DONORPLUS APP**

1. **Kidney illness Information.**

1. DonorPlus App provides kidney illness Information as a guideline relative to the Donor's recipient illness type, including:
 1. Symptoms;
 2. Known causes;
 3. Screening;
 4. Diagnosis;
 5. Treatment;
 6. Prognosis;
 7. Prevention;
 8. Studies;
 9. Practitioners with specialist knowledge of the Type; and
 10. News regarding treatment and clinical trials of the Type.
2. The Company makes best endeavours to ensure that kidney illness Information is kept accurate and up-to-date, however the Company does not warrant the accuracy of kidney illness Information at any time.
3. Kidney illness Information is provided as a guideline only, and is not intended as Medical Advice or as a substitute for a consultation with a Practitioner. The Company strongly advises each Donor and Recipient to verify the accuracy of any kidney illness Information with a Practitioner before relying on it.

4. The Company does not provide Medical Advice, whether via DonorPlus App or otherwise. Each Individual, Donor and Recipient is advised to always consult a Practitioner regarding the Individual or Donor's medical circumstances.
 5. DonorPlus App may only provide answers to Questions with kidney illness Information, not Medical Advice.
2. **User Content, EHRs and Research Data.**
1. DonorPlus App may allow Users to enter User Content for the purposes of:
 1. Creating and Updating the Donor's EHR;
 2. Creating Appointments;
 3. Record and track a Donor's status, test results and experiences in a Journal entry;
 4. Ask Questions; or
 5. Communicating and sharing with other Users.
 2. The Donor shall be able to grant such permissions to other Users to view the information and access such features associated with the Donor's account as the Donor may determine.
 3. DonorPlus App shall not grant a User access to an EHR without the consent of the User to whom the EHR relates.
 4. Each User acknowledges that any User Content, Personal Information or Health Information that they enter into DonorPlus App may be de-identified in order to create Research Data for the purpose of generating statistical data for:
 1. Assisting Research Organisations to conduct a kidney illness research (including for a Study); and
 2. Improving the DonorPlus App.
 5. The Company will use any Personal Information in compliance with the Privacy Policy at all times.
3. **Recipients, Individuals and Donors**
1. A Donor account may only be created and managed by:
 1. An Individual; or
 2. A person authorised by the donor as their prospective recipient or individual.
 2. The Company may require written evidence that a user is authorised to create or use a Donor account as a Recipient, or Individual including (without limitation):
 1. Written authorisation provided by an Individual;
 2. Power of Attorney; or
 3. Such other written evidence as the company may deem acceptable in its discretion.
 3. The Company may suspend access to any user that the Company cannot verify is authorised to use a Donor account as a Recipient or Individual.
4. **Authorising Team Members**
1. A Donor may authorise up to 10 team member accounts to be connected with the Donor's account.
 2. The Donor may send an Invitation to such persons that the Donor wishes to be a Team Member via SMS or email.

3. A person that has received an invitation to create a Team Member account must follow the link in the SMS or email in order to create a Team Member account.
 4. The Donor shall determine what features, information or other privileges are associated with the Team Member account at the Donor's sole discretion, including without limitation:
 1. Kidney illness Information;
 2. Access to the Donor's EHR;
 3. Journal Entries;
 4. Appointments;
 5. Records;
 6. Ask or answer Questions;
 7. Permissions for sharing via TPS; and
 8. Such other features and information that DonorPlus App may allow a Donor to control from time to time.
 5. Each Team Member acknowledges that their use of DonorPlus App is at the discretion of the Donor, and that the Donor may revoke their access to DonorPlus App at any time.
- 5. Institutions.**
1. Institutions are not Users of DonorPlus App, but work with the Company to use Research Data for a kidney illness research, and otherwise undertake initiatives to assist Donors and other people diagnosed with a kidney illness.
 2. Institutions may grant the Company a licence to use their logo and branding for use within DonorPlus App.
 3. Institutions may also refer users to DonorPlus App, and allow Donors to associate their DonorPlus App account with the Institution.
 4. By connecting the Donor's account with an Institution, the Donor authorises the Company to provide the Institution with the Donor's EHR, Personal Information or Health Information.
 5. The Company shall not provide an EHR, Personal Information or Health in conflict with the Privacy Policy.
 6. The Company is not responsible for any use of an EHR made by an Institution, or the Institution's compliance with privacy laws. The Institution may have its own privacy policy which applies to the use of Personal Information received by the Institution. The Company recommends each Donor to inspect an Institution's privacy policy before connecting their account within DonorPlus App.
- 6. Studies.**
1. DonorPlus App may advise Users of Studies that are being conducted, and that a Donor may be eligible to take part in.
 2. DonorPlus App may allow a User to contact a Research Organisation regarding participating in a Study.
 3. DonorPlus App may also allow Users to participate in a Study.
 4. Where a User takes part in a Study via DonorPlus App, the User acknowledges and accepts that:
 1. The User does so at the User's own risk;

2. The User may be required to provide written authority to the Company to provide the User's Personal Information (including Health Information, or EHR) to the Research Organisation, in addition to Research Data;
3. The User may be required to accept the relevant Research Organisation's terms for taking part in the Study;
4. The Company makes no representation as to the safety or outcome of any Study, nor the safety or efficacy of the methods used by a Research Organisation in relation to a Study.
5. The Company shall not be responsible to a User in relation to a Study under any circumstance. Any dispute in relation to a Study is strictly to be dealt with between the User and the relevant Research Organisation.
5. A User may be required to provide to the Company and/or Research Organisation written consent in order to take part in Study. Such consent may be required to be written on paper and signed by the User, and may include acceptance of the Research Institution's terms for participating in the Study.
6. In the event of conflict between this Agreement and a Research Organisation's terms for participating in a Study, this Agreement shall prevail.
7. **Appointments.**
 1. Each user acknowledges that DonorPlus App may require access to the User's third-party calendar application in order to create an Appointment and/or notification.
 2. The Company cannot warrant the efficacy of an Appointment or notification of an Appointment if the User:
 1. Does not authorise DonorPlus App to connect the User's account with the third -party calendar application; or
 2. Disables notifications on their mobile device.

4. **SHARING USER CONTENT**

1. **Social Media**

1. DonorPlus App may allow a User to share certain types User Content via a connected TPS account (e.g. Journal entries).
2. Each User must exercise the utmost discretion when sharing User Content via a TPS, particularly if the User Content relates to a Donor.
3. Each User is responsible for ensuring that any User Content that they share via a TPS:
 1. Is authorised to share the User Content by the owner of the User Content;
 2. Does not breach any policy or terms of service that apply to the TPS;
 3. Does not breach the Intellectual Property Rights of a Third Party; and
 4. Does not otherwise breach this Agreement.

2. **Conduct.** The User acknowledges and accepts that:
 1. The Company accepts no responsibility for the conduct of any User of DonorPlus App.
 2. The Company accepts no responsibility for any interaction between Users, whether that interaction occurs via DonorPlus App or not (including via a TPS or a personal meeting).
 3. The Company makes no warranty or representation as to the accuracy of any information provided by any User.
 4. The Company makes no warranty as to the character or credentials of any User.
3. **Lodging a Complaint.**
 1. If a User believes that another user's behaviour is threatening, discriminatory, deliberately offensive, or breaches confidentiality or trust with another User, the User may lodge a complaint to the Company via email at info@Donorplus.org
 2. The Company may suspend or delete the account of any User that DonorPlus App determines conducts itself inappropriately.
 3. The Company will advise the User of a suspended or deleted account of the decision to do so, but is under no obligation to identify a complainant.
 4. The Company's decision whether or not to suspend or remove a User account is at its absolute discretion. The Company's decision shall be final and not subject to review.
5. **DONORS, RECIPIENTS & INDIVIDUALS TERMS OF USE**
 1. DonorPlus App may enable Donors, Recipients and Individuals to:
 1. Access kidney illness Information;
 2. Record and track their journey in a Journal, including:
 1. Emotions;
 2. Activities;
 3. Videos; and
 4. Personal experiences.
 3. Edit the Donor's EHR;
 4. Create Appointments;
 5. Receive reminders;
 6. Authorise up to 10 Team Member accounts;
 7. Participate in a Study;
 8. Communicate with other Users and share User Content via DonorPlus App or TPS; and
 9. Use such other features as the Company may allow from time-to-time.
 2. The Donor, Recipient and/or Individual agrees and accepts that:
 1. Where the Donor provides Personal Information relative to a Team Member (including the telephone number for the purposes of inviting the person to become a Team Member) the Donor warrants that they are authorised to do so.
 2. The Donor uses DonorPlus App at its own risk. To the extent permitted by law, under no circumstance will DonorPlus App be liable for any injury, illness, malpractice or death resulting from the use of DonorPlus App. It is the Donor's responsibility

to use DonorPlus App responsibly, and in accordance with any instructions from the Donor's Practitioner.

3. The Donor indemnifies DonorPlus App against all costs, claims damages and expenses for any injury or damage caused to the person or property of a Third Party as a result of the Donor's use of DonorPlus App;
4. DonorPlus App may share such aspects of the Donors EHR and other personal information of the Individual with any other User or Third-Party authorised by the Donor and/or Individual, as the Donor may determine;
5. Any information shared by DonorPlus App with a Medical Team Member authorised by the Donor and/or Individual may be retained by the Medical Team Member for the purposes of treating the Donor and updating their administrative records;
6. Any information shared by DonorPlus App with a Research Organisation authorised by the Donor and/or Individual may be retained by the Research Organisation for the purposes of treating the Donor and updating their administrative records;
7. DonorPlus App may send the Donor and/or Individual emails, text messages, push notifications and other alerts on behalf of Team Members and other Users connected to the Donor's account;
8. Any consent made by a Donor and/or Individual through DonorPlus App is valid and binding unless and until revoked by the Donor and/or Individual, and a Medical Team Member may rely on a consent made through DonorPlus App without any need to further verify the veracity of that consent;
9. All information about an Individual is used and controlled by the Donor, Individual, Recipient or Team Member, not the DonorPlus App;
10. All information input to DonorPlus App about an Individual is provided with that Individual's consent.
11. Each Medical Team Member, Research Organisation or Institution authorised by the Donor and/or Individual to receive the EHR and other personal information may have its own policy governing access to this information and the use of DonorPlus App by its staff members.
12. DonorPlus App may be hosted on servers located in United States of America by Amazon Web Services operated by Amazon Web Services Inc. DonorPlus App may also use email servers located outside of Australia using SendGrid operated by SendGrid, Inc. Such services may host or transmit a Donor's EHR.

6. TEAM MEMBER TERMS OF USE

1. DonorPlus App may enable a Team Member to:
 1. Access kidney illness Information;
 2. Contribute information to a Donor's EHR;
 3. Upload User Content;
 4. Participate in a Study;
 5. Answer Questions;

6. Communicate with other Users and share User Content via DonorPlus App or TPS; and
 7. Receive notifications and monitor the progress of a Donor;
 2. The Team Member agrees and warrants that:
 1. It shall not disclose any information about a User to any other person or party other than as authorised by the User;
 2. It shall ensure all Personal Information it has access to through its use of DonorPlus App is kept and used in accordance with applicable privacy laws in the jurisdiction;
 3. It shall only use DonorPlus App for its intended purpose as set out in this Agreement.
 4. The Donor may revoke the Team Member's access to DonorPlus App (including any feature or information within it) at any time, at the Donor's discretion.
 3. Any person who registers a Team Member in DonorPlus App warrants that he or she is the person authorised by the Donor to do so.
7. **MEDICAL TEAM MEMBER TERMS OF USE**
 1. In addition to features available to a Team Member, DonorPlus App may enable a Medical Team Member to:
 1. Answer Questions;
 2. Provide Medical Advice;
 3. Print information stored in DonorPlus App;
 4. Receive notifications and monitor the progress of Donors;
 5. Authorise Staff Members to access and use DonorPlus App;
 6. Communicate with Donors.
 2. In addition to the warranties provided as a Team Member pursuant to item 2, the Medical Team Member agrees and warrants that:
 1. It is solely responsible for ensuring that its use of DonorPlus App and storage of EHRs in DonorPlus App is compliant with the local laws of the Medical Team Member and/or the Medical Team Member's Donors; and
 2. The Medical Team Member must ensure that its own privacy policy and other statements about how it handles Donor information are accurate in respect of the Medical Team Member's use of DonorPlus App.
 3. To the extent permitted by law the Medical Team Member indemnifies and will hold DonorPlus App harmless against all costs, claims damages and expenses for any:
 1. Penalty imposed upon the Medical Team Member;
 2. Injury, illness or death caused to a Donor, Individual or Third Party;
 3. Damage to the property of any Donor, Individual or Third Party;
 4. Claim of infringement of intellectual property rights made by a Third Party;
 5. Claim of breach of confidentiality by any Third Party; As a result of the Medical Team Member's use of DonorPlus App.

4. It shall not store or record any Health Information that it can access through DonorPlus App unless it is fully compliant with the Privacy Act;
 5. It shall not disclose any information, other than to its authorised Staff Members, about an Individual to any other person or party other than as authorised by the Individual or the Donor;
 6. It shall ensure all personal information it has access to through its use of DonorPlus App is kept and used in accordance with applicable privacy laws in the jurisdiction;
 7. It shall only use DonorPlus App for its intended purpose as set out in this Agreement; and
 8. It shall comply with all anti-SPAM legislation in its jurisdiction.
3. Any person who registers a Medical Team Member in DonorPlus App warrants that he or she is an authorised representative of that Medical Team Member, with the requisite authority to bind the Medical Team Member to this Agreement.
- 8. STAFF MEMBER TERMS OF USE**
1. Staff Members agree to use DonorPlus App in accordance with the rights and obligations of the Medical Team Member that authorises their access, except a Staff Member may not use DonorPlus App to:
 1. Answer Questions; or
 2. Provide Medical Advice.
- 9. INDIVIDUAL TERMS OF USE**
1. DonorPlus App can enable an Individual to access information uploaded by:
 1. The Individual;
 2. The Individual's Recipient; or
 3. The Individual's Medical Team Member.
 2. If an Individual is under the age of 18 he or she must obtain consent from their parent before using DonorPlus App.
- 10. FEES**
1. DonorPlus App shall generally be free to use. However the Company may charge Fees (if any) as advertised for the use of certain accounts or features of DonorPlus App, and the terms of those Fees are set out in the General Conditions.
 2. Where a Fee is paid for a particular term of access to DonorPlus App, the User shall not be entitled to a pro-rata refund of any Fees if it elects to stop using DonorPlus App within that term.
- 11. ELECTRONIC TRANSACTIONS**
1. The User agrees that when it provides any consent, authority or agreement through DonorPlus App it does so as an electronic transaction and warrants that such transaction shall be binding on the party.
 2. The User agrees that any request for a consent, authority or agreement it sends to other Users through DonorPlus App as an electronic transaction shall be sent directly from its email address.
- 12. VERIFICATION**
1. The User is solely responsible for verifying the identity of a signatory to any electronic transaction it is a party to.

2. The Company does not guarantee the validity of any electronic transaction.

13. ACCOUNT ACCESS USING THIRD-PARTY SERVICES

1. Registration & Login.

1. A User may be able to register as a User, and access DonorPlus App, by using their account with certain third party services (TPS) (e.g, Facebook, Twitter etc.);
2. As part of the functionality of DonorPlus App the User may connect their profile with a TPS by:
 1. Providing their TPS login information to the Company through DonorPlus App; or
 2. Allowing the Company to access their TPS in accordance with its terms & conditions of service; and
3. When connecting to DonorPlus App using a TPS the User warrants that they are not in breach any of the TPS' terms & conditions of service.

2. Ongoing Availability.

1. The User agrees that User access to DonorPlus App may be unavailable if the TPS becomes unavailable, and that the User may lose functionality or content that is shared between the TPS and DonorPlus App;
2. The User may disconnect the connection between DonorPlus App and the TPS at any time.
3. The Company has no relationship with any TPS and cannot guarantee the efficacy of any TPS connection.

3. **Data from TPS.** Where a User connects and or registers their profile using a TPS, the User authorises the Company to use data from that TPS to create the User's profile within DonorPlus App.

14. TERM & LIMITATIONS

The User's license to access DonorPlus App shall be ongoing until terminated by The Company in accordance with this Agreement.

1. **Limitations on Use.** The Company may limit or restrict access to DonorPlus App from time-to-time as it sees fit, including (but not limited to):
 1. The Company may restrict access only to reputable and/or registered Medical Team Members; and
 2. The Company may restrict access to DonorPlus App to certain jurisdictions where it is able to offer DonorPlus App.

15. REGISTRATION

1. The User must register an account in DonorPlus App to use DonorPlus App.
2. The Company may set any registration requirements in its absolute discretion.

16. CONFIDENTIAL INFORMATION

1. The Company will keep confidential all information that it becomes aware of regarding the User's:
 1. Health Information;
 2. Personal information;
 3. Business, employees and contractors;

17. TERMINATION

1. This Agreement may be terminated at any time by:
 1. Written notice of one party to the other; or
 2. By cancelling or otherwise terminating your account through DonorPlus App.
2. Deleting DonorPlus App does not constitute termination of this Agreement, although the Company may terminate this Agreement in the event it determines in its reasonable discretion that DonorPlus App has been deleted and the User's intention is to cancel or terminate their account and this Agreement.
3. The User agrees and accepts that deletion of DonorPlus App may result in loss of data for which the Company is in no way liable.

18. DISCLAIMER – THIRD PARTY INFORMATION & SERVICES

1. The User acknowledges that DonorPlus App:
 1. Is dependent on third-party services, including but not limited to:
 1. Telecommunications services;
 2. Hosting services;
 3. Email services;
 4. Analytics services; and
 5. Banks, credit card providers, BPAY.
 2. Provides links to third party websites containing (without limitation) health information.
2. The User agrees that the Company shall not be responsible or liable in any way for:
 1. Interruptions to the availability of DonorPlus App due to third-party services; or
 2. Information contained on any linked third party website.

19. GENERAL

1. **Governing Law.** Victoria, Australia
2. **Reference City.**

1. GENERAL CONDITIONS

1. BACKGROUND

1. The User wishes to access DonorPlus App provided by The Company.
2. The terms and conditions in this Agreement govern the provision of DonorPlus App to the User by the Company.

2. INTERPRETATION

1. The following definitions apply in this document:
 1. **ABN** means Australian Business Number.
 2. **ACN** means Australian Company Number.
 3. **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the Reference City set out in item S of the Important Terms.
 4. **Confidential Information** means all information (whether or not it is described as confidential) in any form or medium concerning any past, present or future business, operations or affairs of either party, including, without limitation:
 1. All technical or non-technical data, formulae, patterns, programs, devices, methods, techniques, plans, drawings, models and processes, source and object code, software and computer records;

2. All business and marketing plans and projections, details of agreements and arrangements with third parties, and customer and supplier information and lists;
 3. All financial information, pricing schedules and structures, product margins, remuneration details and investment outlays;
 4. All information concerning any employee, customer, contractor, supplier or agent of the relevant party;
 5. The party's policies and procedures; and
 6. All information contained in this document, But excludes information that the other party can establish:
 7. Is known by or is in the other party's possession or control other than through a breach of this document and is not subject to any obligation of confidence; or
 8. Is in the public domain other than by a breach of this document or any obligations of confidence.
5. **Corporations Act** means the *Corporations Act 2001* (Cth).
 6. **Fees** mean the fees and charges as set out in the Important Terms.
 7. **General Conditions** means the terms and conditions set out in the section of this Agreement entitled "General Conditions".
 8. **GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
 9. **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property;
 10. **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any Moral Rights, industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.
 11. **Health Information** has the meaning given to it in the Privacy Act.
 12. **Moral Rights** means:
 1. Moral rights pursuant to the *Copyright Act 1968* (Cth);
 2. Or any rights analogous to the rights set out in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works 1886* (as amended from time to time).
 13. **Important Terms** means this Agreement's details and variables set out in the section of this Agreement entitled "Important Terms".
 14. **Pricing** means the pricing as notified to the User in writing by the Company from time-to-time.
 15. **Privacy Act** means the *Privacy Act 1989* (Cth).
 16. **Solution** means the DonorPlus App solution described in the Important Terms.
 17. **Special Conditions** means the terms and conditions set out in the section of this agreement entitled "Special Conditions".
 18. **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

2. Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:
 1. The singular includes the plural and the opposite also applies.
 2. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 3. A reference to a clause refers to clauses in this Agreement.
 4. A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
 5. Mentioning anything after *includes*, *including*, or similar expressions, does not limit anything else that might be included.
 6. A reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
 7. A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
 8. A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

3. APPLICATION OF THIS AGREEMENT

1. This Agreement applies to use of and access to DonorPlus App.
2. Where the User does not accept the terms and conditions of this Agreement, the User must immediately cease using DonorPlus App.
3. This Agreement may be updated by the Company at its absolute discretion from time-to-time, and unless stated otherwise by the Company in writing, such updates shall come into effect for use of DonorPlus App at the User's next login after the User receives written notice of the update(s).

4. THE DONORPLUS APP PRODUCT

1. DonorPlus App is the product described in the Important Terms.
2. DonorPlus App is only accessible to the User for the term set out in the Important Terms.
3. The User agrees and accepts that DonorPlus App is:
 1. Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
 2. Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to DonorPlus App is available to the User unless expressly agreed in writing.
4. As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features and redesign, improve or otherwise alter DonorPlus App.
5. The Company shall not exercise its rights under clause 4 in a manner that would intentionally cause the User to lose access to User Content or fundamentally decrease the utility of DonorPlus App to the User, other than in accordance with the terms of this Agreement.

5. LICENSE

1. By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable license to access and use DonorPlus App for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.
2. The Company may issue the license to the User on the further terms or limitations (including the number of users or volume of use or transactions) as it sees fit.
3. The Company may revoke or suspend the User's license(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in this Agreement by the User or any of its users. The Company will ordinarily advise the User of any suspension or revocation however it is under no obligation to do so.

6. USE

1. The User agrees that it shall only use DonorPlus App for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.

7. AUTHORISED USERS

1. The User shall authorise users to access DonorPlus App in its absolute discretion. The Company accepts no liability for access to User Content by users authorised by the User or using login details of users authorised by the User.
2. The User is solely responsible for the security of its username and password for access to DonorPlus App.
3. The User shall notify the Company as soon as it becomes aware of any unauthorised access of its DonorPlus App account.

8. CUSTOMER DATA

1. The Company obtains no right, title or interest in User Content including any Intellectual Property found within it. The Company accepts no liability for the content of User Content.
2. The User is responsible for the accuracy, quality and legality of User Content and the User's acquisition of it, and the users that create, access and/or use User Content.
3. Despite clause 1 the Company shall be authorised to permanently delete User Content where outstanding Fees remain unpaid in accordance with clauses 10 and 11.
4. The Company shall not access, use, modify or otherwise deal with User Content except where required by compulsion of law or upon the User's authority (such as to provide support for DonorPlus App).

9. PRIVACY

1. The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other customers.
2. The Privacy Policy does not apply to how a Medical Team Member handles personal information. It is the Medical Team Member responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.
3. The Company makes no warranty as to the suitability of DonorPlus App in regards to the Medical Team Member privacy obligations at law or contract, and it is the Medical Team Member's responsibility to determine whether DonorPlus App is appropriate for the Medical Team Member's circumstances.

4. The DonorPlus App website may use cookies (a small tracking code in your browser) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.

10. FEES

1. The User agrees to pay all Fees as and when they fall due and to the extent permissible by law. Fees are non-cancellable and/or non-refundable once ordered or paid.
2. The Company may introduce new services with corresponding Fees by giving the User written notice of their availability and applicability.
3. The Company shall notify the User of any changes to existing Fees no less than 14 days before the end of the term of the User's licence.
4. The Company may revoke or suspend the User's license to access DonorPlus App for unpaid Fees without liability.
5. Where the Company:
 1. Is required to perform any services for the User outside of what is set out in this Agreement or otherwise in writing; and
 2. Is subject to delays caused by changes or complexities outside of its control (and not caused by its breach of this Agreement); then The User agrees that the Company shall be entitled to charge the User an additional amount that is reasonable for the service performed.
6. All transactions are processed in Australian dollars and conversion rates may apply for foreign currencies.
7. GST is applicable to any Fees charged by the Company to Users within Australia. Unless expressed otherwise, all Fees shall be deemed exclusive of GST. The Company will provide the User with a Tax Invoice for its payment.
8. No refunds of Fees are offered other than as specified in this Agreement or as required by law.

11. INVOICING & PAYMENTS

1. The Company shall issue the User a Tax Invoice for all Fees for which GST applies.
2. The terms of payment set out in the Fees shall apply.
3. Should the User dispute a Tax Invoice, the User must notify the Company of the disputed item within 5 Business Days of the date of the Tax Invoice. The User must pay the amount of the Tax Invoice not in dispute within the prescribed payment period.
4. Overdue Tax Invoices shall accrue interest at the rate of 1.5% per month, or in default, the maximum rate of penalty interest prescribed under law.
5. The User authorises the Company to use the User's information for the purposes of obtaining a credit assessment or to otherwise make investigations as to the User's payment history.

12. DATA

1. The Company takes the security of DonorPlus App and the privacy of its users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
2. The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.

3. The Company may limit the amount of data that the User stores in DonorPlus App, and shall advise the User of such. Data that is stored with DonorPlus App shall be stored according to accepted industry standards.
4. The Company shall perform backups of DonorPlus App in as reasonable manner at such times and intervals as are reasonable for its business purposes. The Company does not warrant that it is able to backup or recover specific User Content from any period of time unless so stated in writing by the Company.

13. ACCESS

1. By accepting the terms of this Agreement the User agrees that the Company shall provide access to DonorPlus App to the best of its abilities, however:
 1. Access to DonorPlus App may be prevented by issues outside of its control; and
 2. It accepts no responsibility for ongoing access to DonorPlus App.
2. Users may prepare for unscheduled unavailability of DonorPlus App by:
 1. Keeping their DonorPlus App mobile app up to date, which will store local copies of the data; and
 2. Printing hard copies of reports.

14. INTELLECTUAL PROPERTY

1. The Company has moral & registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
2. **Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of DonorPlus App.
3. **The DonorPlus App Application.** The User agrees and accepts that DonorPlus App is the Intellectual Property of the Company and the User further warrants that by using DonorPlus App the User will not:
 1. Copy DonorPlus App or the services that it provides for the User's own commercial purposes; and
 2. Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in DonorPlus App or any documentation associated with it.
4. All content (with the exception of User Content) remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, ideas, Exercises, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to DonorPlus App.

15. CONFIDENTIALITY

1. The information and classes of information set out in the Important Terms are Confidential Information for the purposes of this Agreement. In default, information relating to the business operations, personal information and other information that should be confidential is Confidential Information.
2. Each party acknowledges and agrees that:
 1. The Confidential Information is secret, confidential and valuable to the disclosing party (**Discloser**);

2. It owes an obligation of confidence to the Discloser concerning the Confidential Information;
 3. It must not disclose the Confidential Information to a third party except as permitted in this Agreement;
 4. All Intellectual Property rights remain vested in the Discloser but disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and
 5. Any breach or threatened breach by the receiving party of an obligation under this Agreement may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.
3. A party must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:
 1. Any actual, suspected, likely or threatened breach by it of clause 1;
 2. Any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or
 3. Any actual, suspected, likely or threatened theft, loss, damage, or unauthorised access, use or disclosure of or to any Confidential Information.
 4. The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:
 1. Any actual, suspected, likely or threatened breach of a term of this Agreement; or
 2. Any theft, loss, damage or unauthorised access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

16. LIABILITY & INDEMNITY

1. The User agrees that it uses DonorPlus App at its own risk.
2. The User acknowledges that DonorPlus App does not provide Medical Advice, nor does it hold itself out to provide Medical Advice.
3. The User agrees that it has had reasonable opportunity to obtain legal advice on this Agreement.
4. The User acknowledges that the Company is not responsible for the conduct or activities of any user and that the Company is not liable for such under any circumstances.
5. The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with DonorPlus App, including any breach by the User of these Terms.
6. In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, illness, injury, death, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use DonorPlus App or any content, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and

whether or not the Company knew or should have known of the possibility of such injury, illness, death, damage, or business interruption of any type, whether in tort, contract or otherwise.

7. Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:
 1. The re-supply of services or payment of the cost of re-supply of services; or
 2. The replacement or repair of goods or payment of the cost of replacement or repair.

17. TERMINATION

1. Expiry or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this Agreement up to the date of expiry or termination.
2. The rights and obligations under the relevant provisions of clauses 7, 8, 9, 10, 11, 14, 15, 16, 17, 18 and 19 survive termination of this Agreement.

18. DISPUTES

1. All disputes shall be handled in accordance with the Company's dispute resolution policy.
2. Where the Company does not have a relevant dispute resolution policy for a type of dispute, the following process shall apply:
 1. If there is a dispute between the parties relating to or arising out of this Agreement, then within 5 Business Days of a party notifying the other party of a dispute, senior representatives from each party must meet (or discuss directly via the telephone or internet) and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;
 2. If the dispute between the parties relating to or arising out of this Agreement is not resolved within five Business Days of notification of the dispute under Clause 18.1, the parties must agree to submit the dispute to mediation, administered by lawyers engaged in alternative dispute resolution;
 3. If the dispute between the parties relating to or arising out of this Agreement is not settled by mediation under Clause (b), either party may by written notice to the other refer the dispute to arbitration administered by the Institute of Arbitrators Australia. The arbitrator will be agreed between the parties from a panel suggested by the President of the Institute of Arbitrators Australia or failing Agreement, an arbitrator will be appointed by the President of the Institute of Arbitrators Australia; and
 4. **Court proceedings.** A party may not commence court proceedings in relation to a dispute relating to or arising out of this Agreement until it has exhausted the procedures in this clause (d) unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.

19. ELECTRONIC COMMUNICATION, AMENDMENT AND ASSIGNMENT

1. The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
2. The User can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. The Company will notify the User of a change of details from time-to-time.
3. The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.
4. A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
5. Notices must be sent to the parties' most recent known contact details.
6. The User may not assign or otherwise create an interest in this Agreement.
7. The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

20. GENERAL

1. **Special Conditions.** The parties may agree to any Special Conditions to this Agreement in writing.
2. To the extent that the Important Terms are inconsistent with the General Conditions, the terms of the Important Terms will prevail. To the extent that the Special Conditions are inconsistent with the Important Terms, the Special Conditions will prevail.
3. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
4. The relationship of the parties to this Agreement does not form a joint venture or partnership.
5. No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
6. **Governing Law.** This Agreement is governed by the laws of the state set out in item S of the Important Terms. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
7. Any clause of this Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.