



# DONORSEARCH

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## TERMS AND CONDITIONS



# Terms & Conditions

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*PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY*

This Agreement is a binding, contractual agreement between the client (“Client” or “You”) and Tedesco and Affiliates, LLC d/b/a DonorSearch (“DonorSearch”). This Agreement applies to your access to and/or use of the Services (defined below) pursuant to this Agreement. By using a service of DonorSearch, you are indicating your acceptance of the Agreement. You represent that you have the authority to bind Client and its affiliates to the terms and conditions of this Agreement. If you do not have such authority, or if you do not accept and agree to all of the Terms and Conditions, contact DonorSearch by email at: info@donorsearch.net

“Addendum” or “Addenda” means the document(s) attached hereto and incorporated herein at any time, and only to the extent applicable, that set(s) forth additional descriptions and requirements of particular hosting-specific terms, subscription information, and test file submission matters.

If You and DonorSearch have executed a written Agreement, that agreement shall apply and govern the relationship between You and DonorSearch, instead of these Terms.

## **A. Confidentiality**

1. DonorSearch acknowledges that the data submitted to DonorSearch by Client (the “Data”) is to be used by DonorSearch for the sole purpose of enhancing the Data. DonorSearch certifies that from the time that DonorSearch receives the Data until the analysis process has been completed, no person or persons who are not employees of DonorSearch, or consultants working for DonorSearch, will have access to the Data.
2. Each party acknowledges and agrees that any and all information emanating from the other party’s business in any form that is marked confidential or reasonably should be deemed confidential, including and not limited to marketing information, prospective plans, activities of technical and other personnel, and any compilations of otherwise non-public information, including the terms of this Agreement, are confidential and proprietary information (collectively, the “Confidential Information”). Each party agrees that it will not, during or after the term of this Agreement, permit the duplication, use or disclosure of any such Confidential Information to or by any person (other than any of its employees, agents, independent contractors or other representatives who must have such information for the performance of such party’s obligations hereunder), unless such duplication, use or disclosure is specifically authorized in writing by the other party.
3. DonorSearch shall notify Client of any unauthorized or inadvertent disclosure of Data in accordance with the requirements set forth in any Addendum hereto.

## **B. Information Delivery Schedule**

1. DonorSearch will deliver to Client the results of DonorSearch’s analysis of the Data (the “Information”) not later than fifteen (15) days from receipt of the Data, provided the subscription payment has been received by DonorSearch.

2. DonorSearch will make every effort to have the online research service available (the "Services") seven (7) days a week, twenty-four (24) hours a day, with the exception of planned and unplanned outages not to exceed five (5) business days in any one calendar year.
3. Client shall purchase the Information and/or Services from DonorSearch at the price (the "Price") listed on the Order Summary. Unless otherwise stated in the Order Summary or any quote provided by DonorSearch, prices quoted shall be good for a period of thirty (30) days. Unless otherwise stated in the Order Form, full payment is due within thirty (30) days of Client's receipt of any Information or Services. Payment to DonorSearch is not contingent upon payment to Client from a third party. Late payments shall be cause for suspension of Services and shall accrue a finance charge equal to the lesser of ten percent (10%) or the highest rate allowable by law. DonorSearch shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, arising out of Client's failure to make all payments due in a timely manner. Where required by law, sales and use tax shall be charged in addition to all quoted fees.

### **C. Rights of Client**

1. Client acknowledges that DonorSearch, or the data owners who provided the Information to DonorSearch, own the Information, and that Client has no proprietary rights to the Information used by DonorSearch to enhance the Data.
2. Client has the right to use all Information provided via DonorSearch's Data analysis process or via the Services, without limitation, solely in connection with Client marketing programs.
3. Client may not sell, lease, rent or otherwise provide to any other party its own Data as enhanced with the Information or any direct marketing list, model, analysis, code or report utilizing or derived from the Information, except that Client may provide without charge its own Data as enhanced with the Information or any direct marketing list, model, analysis, code or report utilizing or derived from the Information to an employee, agent, independent contractor, or other representative of Client providing assistance to Client in connection with the marketing programs permitted under Section C.2 above.

### **D. Representations and Warranties by DonorSearch**

1. DonorSearch represents and warrants to Client as follows:
2. DonorSearch has all rights and licenses necessary to deliver the Information to Client and to grant Client all rights granted in this Agreement to analyze and use the Information.
3. To the knowledge of DonorSearch's principals without investigation, the Information does not infringe upon or otherwise violate any copyright, trade secret, trademark, patent, invention, right of privacy, known third party rights, or non-disclosure requirements of any third party. In furtherance of these representations and Client's reliance thereon, DonorSearch shall indemnify and hold Client, its officers, directors, agents, and employees harmless against all claims, demands, or liabilities of or to third

parties arising from or in connection with DonorSearch's breach of its representations or warranties as to third party infringement under this Section D(2). Said indemnification shall survive the expiration or termination of this Agreement.

4. DonorSearch will obtain the Information from sources it considers reliable and will run reasonable control checks on the Information, but will not be subject to liability for truth or accuracy of the Information conveyed or for its completeness or for errors or mistakes made by humans or machines. DonorSearch shall take reasonable steps to control continuing quality of the Information. Application of such quality control procedures constitutes the full extent of warranty with regard to the Information provided. Client acknowledges that it may be necessary or advisable from time to time, in the ordinary course of DonorSearch's business, for DonorSearch to add, delete, and substitute Information it makes available to its clients, including Client. DonorSearch expressly reserves the right to revise the Information and to make changes in content. DonorSearch will give Client written prior notification of any such changes.
5. DONORSEARCH MAKES NO WARRANTIES EXCEPT FOR THOSE SET FORTH ABOVE AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DONORSEARCH MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. These disclaimers must be conveyed to all Client authorized users of the Information. DonorSearch's sole and exclusive liability and Client's sole and exclusive remedy for breach of the limited warranty set forth in this Section D shall be reperformance of the affected services or, at DonorSearch's option, a refund to Client of a portion of the fees previously paid by Client corresponding to the defective services.
6. DonorSearch acknowledges that information received from Client may be subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations, in each case as amended and as set forth more fully in any Addendum hereto. The parties acknowledge that these regulations may supersede the confidentiality items in this Agreement with respect to any information to which HIPAA applies.

#### **E. Limitation of Liability**

1. IN EVENT SHALL DONORSEARCH BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY (A) LOSS OF USE, INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (B) LOSS OF GOODWILL OR REPUTATION; (C) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (D) FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT DONORSEARCH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES,

AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

2. IN NO EVENT SHALL DONORSEARCH'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO DONORSEARCH FOR THE INFORMATION AND SERVICES THAT ARE THE SUBJECT OF THE APPLICABLE CLAIM.

## **F. Term and Termination**

1. This Agreement shall be effective for a term of the Agreement beginning on the Effective Date of the Order and shall continue for a period of one (1) year (the "Initial Term").
2. Upon any material default under this Agreement by either party, the other party shall give written notice of such default to the defaulting party. Unless the default shall be cured within thirty (30) days after delivery of such notice, then, without limitation of any other remedy available herein, the non-defaulting party may terminate this Agreement by delivery of a notice of termination to the defaulting party at any time before such default has been cured. Notwithstanding the foregoing, if the default cannot be cured within the thirty (30) day cure period despite the defaulting party's good faith efforts and diligence, and if the defaulting party commences the cure within the thirty (30) day cure period and thereafter uses good faith efforts and reasonable diligence to cure the default, then the non-defaulting party shall not be entitled to terminate this Agreement until the sixtieth (60th) day after delivery of the default notice. Notwithstanding anything to the contrary contained herein, in the event that Client fails to pay to DonorSearch any amount as and when due hereunder, DonorSearch may at its sole discretion discontinue any or all Information and/or Services provided hereunder and/or exercise any rights it may have at law, in equity, under this Agreement or otherwise, all without any obligation to provide notice or an opportunity for Client to cure in connection therewith.
3. Client may terminate this Agreement at any time, without cause, by providing at least thirty (30) days' prior written notice to DonorSearch; provided, however, that no such termination shall relieve Client of its obligation to pay for: (a) any Services provided up to the effective date of termination; or (b) any Information supplied or being processed by DonorSearch. In addition to the foregoing, as consideration for the right to terminate this Agreement under this Section F(3), Client shall, upon termination, pay to DonorSearch a termination fee in an amount equal to Termination Fee.
4. After the Initial Term, the Agreement shall automatically renew for successive one (1) year periods (the "Renewal Terms"), unless one party has given at least 90 days' written notice to the other party prior to such term end date that it desires to terminate the Agreement in which event the Agreement shall end at the end of the current Initial Term or Renewal Term, as applicable. The terms of each Renewal Term shall be on the same terms as the preceding term, except that the fee(s) shall automatically be increased by 10%. Notwithstanding the terms of Section F(1) and this Section F(4), particular Services may be subject to specific renewal and cancellation terms pursuant to any applicable Addendum (including without limitation any Addendum concerning

subscription Services). In the event of a conflict between the terms of this Section (F) and the terms of any applicable Addendum as it relates to renewal or cancellation of such particular Services, the terms of the applicable Addendum shall control with respect to such matters.

## **G. Notices**

1. All notices given under this Agreement must be in writing and sent by registered or certified or express mail, return receipt requested and postage prepaid, or by Federal Express or other reputable courier, or delivered personally to the Client contact for notices at the Client's address and to the DonorSearch contact for notices at the DonorSearch address, in each case as found on the E-Sign agreement, or to such persons or addresses as either party may designate by written notice to the other.

## **H. Miscellaneous**

1. Subject to the following sentence, this Agreement shall be binding upon the parties, their successors and assigns. Neither this Agreement nor any interests or duties hereunder may be assigned by either party without the prior written consent of the other.
2. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, excluding its choice of law rules regardless of its place of execution. In the event of a dispute hereunder, the parties agree to submit to the exclusive jurisdiction of the state courts of, and federal courts sitting in, the State of [Maryland].
3. No waiver of any term or condition of this Agreement shall be deemed to be a waiver of any subsequent breach of any term or condition.
4. If any part of this Agreement shall be held unenforceable, the remainder of this Agreement will nevertheless remain in full force and effect.
5. Except as provided in Section D of this Agreement and any Addendum hereto, DonorSearch is not responsible for any loss or damage incurred by any person or party as a result of the use of or reliance on the Information or Services supplied. In no event will DonorSearch be liable for loss or damage incurred by any person or party as a result of the use of Client's software, data, or equipment.
6. DonorSearch shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of DonorSearch including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

7. Each party represents and warrants that its respective representative whose signature appears below is duly authorized by all necessary corporate actions to execute this Agreement.
8. This Agreement, including all Addenda and Appendices, contains the entire understanding between DonorSearch and Client and supersedes all prior written and oral understandings relating to the subject matter hereof.
9. This Agreement may be executed in counterparts, and the signature pages of such counterparts may be assembled to form a single, integrated document.
10. Only by written agreement of the parties may this agreement be modified or amended in any manner whatsoever.
11. The Client acknowledges DonorSearch is not a consumer reporting agency, or subject to the Fair Credit Reporting Act (FCRA). No service provided by DonorSearch shall, under any circumstance, be utilized for any purpose covered under the FCRA.
12. The details of the method and manner for performance of the services by DonorSearch shall be under its own control. DonorSearch shall be solely responsible for supervising, controlling and directing the details and manner of the completion of the services. Nothing in this Agreement shall give Client the right to instruct, supervise, control, or direct the details and manner of the completion of the services. DonorSearch is for all purposes hereunder an independent contractor and in no event will DonorSearch be considered an agent or employee of Client for any purpose.

# Addendum - Hosting-Specific Terms

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## **A. Data Safeguards**

DonorSearch shall provide to Client and implement technical, administrative, physical and organizational safeguards and security measures that are consistent with industry standards and practices and otherwise meet the requirements of applicable federal, state and local law, including applicable state data privacy laws, to (i) protect Client Data and all other Client Confidential Information against unauthorized destruction, loss, alteration, access, misuse or disclosure, and (ii) ensure the availability, integrity and confidentiality of Client Data and all other Client Confidential Information in the possession of DonorSearch or its affiliates, contractors and personnel (or to which any of the foregoing has access) during the shipping, transporting, maintenance, electronic transmission and storage thereof (the "Data Safeguards"). In this respect DonorSearch shall employ appropriate methods, including encryption and encrypted devices, and secure communication lines, to secure the privacy and security of Client Data and to minimize the risk of unauthorized access to the DonorSearch data centers. DonorSearch shall ensure that Client Data is segregated from all other DonorSearch and third party data, including its other customer data, and shall secure and restrict access to Client Data solely to Client and those employees, contractors, agents and other authorized individuals associated with DonorSearch who have access to its datacenters in connection with the Information and Services provided by DonorSearch hereunder.

## **B. DonorSearch Data Security Compliance**

DonorSearch warrants and covenants that it shall require all of its employees, contractors, agents and other authorized individuals who have access to its datacenters to adhere to its written security policies and procedures regarding remote electronic access or physical access to a data center which shall be provided to Client upon execution of this Agreement and as requested thereafter. DonorSearch shall enforce such security policies and procedures and shall take appropriate corrective action against any individuals who fail to adhere to such security policies and procedures, including termination.

## **C. Access and Breaches**

DonorSearch will not attempt to access or allow access to Client Data that is not required for the performance of the services hereunder or otherwise authorized by Client. DonorSearch shall notify Client within forty-eight (48) hours of (a) DonorSearch's determination that an actual or suspected breach of Client Data has occurred or (b) in the event of DonorSearch's determination that any actual or suspected unauthorized use, disclosure, acquisition or access to Client Data has occurred that requires Client, under applicable federal or state law, to make a notification to any third party (including, without limitation, to any affected individual) (a "Triggering Event"). To the extent Client is required to notify any third party, including a patient or another Covered Entity, of such breach, unless otherwise required by law, Client shall have the sole right to make such notification, including determining the content, methods, and means of such notification. Notwithstanding the foregoing, DonorSearch shall reasonably cooperate with Client in formulating such notification, but DonorSearch shall not make any such notification at its own initiative without Client's prior written consent.



DonorSearch will pay the reasonable costs and expenses of investigation, remediation, notification and penalties to the extent the Triggering Event is caused by the grossly negligent acts or omissions of DonorSearch, its subcontractors or any DonorSearch personnel or a material breach of this Agreement by DonorSearch or any DonorSearch personnel, subject to the terms and conditions of this Agreement including without limitation the Terms and Conditions.

#### **D. Virus Protection**

DonorSearch shall use commercially reasonable efforts to ensure that the data centers, solutions and/or programs used by DonorSearch in providing the Services are protected against known or suspected Disabling Devices by implementing appropriate processes for detecting, preventing and recovering from virus attacks, including all necessary data and software back-up and recovery tools and arrangements. "Disabling Devices" shall mean any software, equipment, tools or data (a) designed or able to disrupt, disable, harm or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the systems, or any software, equipment, tools or data (e.g., "viruses" or "worms"); (b) that would disable the DonorSearch systems, or Client 's access to the Client Data, or impair in any way their operation including, for example, based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (e.g., "time bombs", "time locks" or "drop dead" devices); (c) that would permit a third party to access Client Data, to cause such disablement or impairment, or otherwise to circumvent the security features of the DonorSearch systems or services, or Client Data hosted by DonorSearch (e.g., "traps", "access codes" or "trap door" devices); or (d) which contains any other harmful, malicious or hidden procedures, routines or mechanisms which would cause the Client systems to cease functioning or to damage or corrupt storage media, software, equipment, tools, data or communications or any part of the DonorSearch systems, or otherwise interfere with operations.

#### **E. Data Availability and Disaster Recovery Plan**

DonorSearch shall implement a disaster recovery plan to ensure that all Client Data is preserved for as long as Client requires such Client Data to be preserved, and readily available at all times to Client. The disaster recovery plan shall include the following procedures: DonorSearch shall ensure that a backup of its systems, including the Client Data, is conducted every other night by DonorSearch, which at a minimum, shall include daily incremental backups. Backups are conducted digitally and maintained in encrypted form at DonorSearch's expense. DonorSearch shall ensure that all Client Data hosted by DonorSearch is securely stored and preserved on both a primary and back-up data centers and in the event of failure of the primary data center or other interruption of access to the Client Data, that the redundant copy of such Client Data and the hosting services shall be readily restored, accessible and usable by Client (from the back-up data center or other location or means as agreed by the parties).

#### **F. Off-Shore Resources**

DonorSearch shall not directly or indirectly transmit or transfer to, or allow access from any offshore location to any information or Client Data without Client's prior written consent, which consent may be withheld for any or no reason.

# Addendum - Subscription Information

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*This Addendum applies to the 12-, 24-, and 36-month subscriptions as well as monthly renewals.*

## **A. Intellectual Property**

The Client agrees that the Service and Information is and will remain the property of DonorSearch, and that the Client does not have any license or right to use any trade or service mark displayed in any part of the Service and Information without the express written permission of DonorSearch. DonorSearch's intellectual property rights in and to the product are protected by United States copyright and trademark laws, and the Client agrees that its employees are not authorized to reproduce, copy, republish, upload to a third party or distribute any part of the Service or Information, except in accordance with this Agreement. The Client agrees not to use any Information obtained through the Service for any unlawful or unauthorized purpose.

## **B. Network Security**

Violations of this Agreement include, but are not limited to, any attempt to avoid user authentication or security of any host, network, or account. This includes accessing content that is not intended for visitors and logging into an account you are not expressly permitted to access. Attempting to force a denial of service by email bombing, packet spoofing or ping flooding, among other measures, is strictly prohibited. Client is forbidden to perform any kind of network monitoring, including probing the security of networks or attempting to intercept data not intended for Client.

## **C. Restrictions**

The Client must ensure that only users who are a part of their organization and who have authorization can access and use the Service in accordance with this Agreement, and that such access and use is only for the purpose of enabling the Client to carry on its business in the normal course. The Client agrees to take all necessary precautions to ensure that no unauthorized persons have access to the product and that all authorized persons having access refrain from unauthorized disclosure, duplication, reproduction or storage on locations accessible by users who do not have authorization.

## **D. Payment, Cancellation, Refunds**

## **E. Subscription**

A new Client chooses the 12-, 24-, or 36-month subscription. DonorSearch asks for credit card information to be used for payment at the start of each month. A credit card on file is a prerequisite for preferential pricing.

## **F. Renewal**

At the end of the 12, 24, or 36 months the subscription will auto-renew to a month-to-month

basis. At the start of each month, DonorSearch will charge the credit card on file unless otherwise notified anytime in the previous month that the Client wishes to cancel.

DonorSearch may increase the monthly subscription pricing by a maximum of 15% for month-to-month users once every 12 months, starting at the expiration of the 12-, 24-, or 36-month subscription.

## **G. Cancellation**

A Client on month-to-month auto-renewal may cancel at any time with no termination fee. A Client on the 12-, 24-, or 36-month subscription that cancels 90 days or fewer before the expiration date also does not have to pay a termination fee. For Clients on such subscriptions that cancel more than 90 days prior to the expiration date, DonorSearch asks that they pay a termination fee equivalent to 50% of the balance remaining on the subscription.

A Client that has canceled their subscription (whether yearly or monthly) may purchase it again but will have to begin anew from the 12-, 24-, or 36-month subscription.

## **H. Refunds**

DonorSearch does not give refunds. Not notifying DonorSearch in advance of a desire to cancel subscription effectively continues the subscription and the monthly payment charged automatically on the credit card on file.

See Sections B and D of the Agreement for details on information delivery and warranties.