

# TERMS & CONDITIONS OF USE

## 1. About the Application

- (a) Welcome to the DiabHQ Patient Portal (“DiabHQ”). The Application allows you to access and use the DiabHQ Platform (**Services**).
- (b) The Application is operated by The Kids Research Institute Australia (“The Kids”) ABN 86 009 278 755. Access to and use of the Application, or any of its associated products or Services, is provided by The Kids. Please read these terms and conditions (**Terms**) carefully. By using, browsing and/or reading the Application, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Application, or any of Services, immediately.
- (c) You must not self-register or accept the Terms of this Application if you are under the age of 16. If you are under the age of 18 years, you should read this document with your parent or guardian and both consent to the Terms before registering. You may grant access to minors or other individuals in your care as parent or guardian (**Dependants**) through functionality offered by the Application, in which case, you consent to these Terms and the collection of information in accordance with these Terms on the behalf of such Dependents.
- (d) The Kids reserves the right to review and change any of the Terms by updating this page at its sole discretion. When The Kids updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

## 2. Acceptance of the Terms

You accept the Terms on your behalf and on behalf of your Dependents by remaining on the Application.

## 3. About the Service

- (a) The DiabHQ Platform is a Web-based service that provides current and previous Type 1 diabetes patients of the Perth Children’s Hospital Diabetes Service (your **Health Care Provider**) and their families/carers with access to functionality and resources to help to manage Type 1 diabetes.
- (b) The Kids does not itself provide any healthcare or medical services to you or your Dependents, but merely provides the platform by which you can access

information from your Health Care Provider and by which you can upload and manage your information.

- (c) Provided your consent has been given by way of separate patient information and consent form (**Research Consent Form**), The Kids may also use your data and that of your Dependents provided for research purposes, in the manner outlined in the relevant Research Consent Form.
- (d) If you are accessing the Application as an invited member of the care circle for a participant of the DiabHQ Research Project, we may also use your and your Dependents aggregated and de-identified data collected during the use of the Application for research purposes.
- (e) You acknowledge and agree that your account features may change from time to time, and may be governed by separate terms which apply specifically to the type of account or access you are provided with. Where special account-specific terms apply, you will be informed and must accept those terms before you are given such an account. For the avoidance of doubt, these Terms apply unless otherwise agreed or amended by account-specific terms.
- (f) Some accounts may be governed by a separate Software Licensing Agreement with The Kids, which may amend the terms of use. For the avoidance of doubt, these Terms apply unless otherwise agreed or amended by the terms of an applicable Software Licensing Agreement.

#### **4. Acceptable use of the Service**

- (a) The DiabHQ Platform, its related features, and its Application must only be used lawfully. The Kids reserves the right to suspend, cancel, or otherwise deny access to users and accounts who use the service:
  - (i) To engage in any act that would disrupt the access, availability, and security of the DiabHQ Platform and other The Kids services, including but not limited to:
    - (A) Tampering with, reverse-engineering, or hacking our servers.
    - (B) Modifying, disabling, or compromising the performance of the DiabHQ Platform or other The Kids services.
    - (C) Overwhelming, or attempting to overwhelm our infrastructure by imposing an unreasonably large load on our systems that consume extraordinary resources.
    - (D) Compromising the integrity of our system, including probing, scanning and testing the vulnerability of our system unless expressly permitted by The Kids.
- (b) For any illegal purpose, or to violate any laws, including and without limitation to data, privacy, and export control laws.
- (c) To stalk, harass or threaten users and any member of the public.
- (d) To misrepresent or defraud any user or member of the public through phishing, spoofing, manipulating headers or other identifiers, impersonating anyone else, or falsely implying any sponsorship or association with The Kids or any third party.
- (e) To access or search any part of the Service, or any other Service owned by The Kids other than our publicly supported interface, or otherwise allowed for in an applicable Software Licensing Agreement.
- (f) To post, upload, share, or otherwise circulate content that is defamatory, illegal, inappropriate, harmful to others, or is considered by The Kids as unacceptable in their sole discretion.

#### **5. Security and Data Privacy**

The Kids takes your privacy and the privacy of your Dependents seriously and information provided through your use of the Application and/or Services are subject to The Kids' Privacy Policy, which is available on the Application. The Privacy Policy also addresses The Kids' processes, policies, and obligations in respect of DiabHQ Platform security breaches.

## **6. Data Use and Privacy**

The Kids collects, stores, and processes your data on the DiabHQ Platform. The data is used to provide Services to you and your Dependents, and de-identified and aggregated data collected throughout your use of the Application may also be used for research purposes. If separate Research Consent has been provided, your personal information may be used to facilitate and assist with the research projects you have consented to. The Privacy Policy outlines how your data and the data of your Dependents is collected, stored, and processed by The Kids. The Privacy Policy also addresses The Kids' processes, policies, and obligations in respect of data encryption and removal requests.

## **7. Subscription to use the Service**

- (a) In order to access the Services, you must first create a user name or use account to the service.
- (b) As part of the registration process or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including but not limited to Name, email address and phone number.
- (c) You warrant that any information you give to The Kids in the course of completing the registration process will always be accurate, correct and up to date.
- (d) Once you have completed the registration process, you will be a registered user of the Application and agree to be bound by the Terms ("User"). As a User you will be granted immediate access to the Services. As a User, you will be permitted to provide access to, and provide information on behalf of, any Dependents.
- (e) You may not accept the Terms if:
  - (i) you are not of legal age to form a binding contract with The Kids; or
  - (ii) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

## **8. Copyright and Intellectual Property**

- (a) The Application, the Services and all of the related products of The Kids are subject to copyright. The material on the Application is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services and compilation of the Application (including but not limited to text, graphics, logos, button icons, video images, audio clips, Application code, scripts, design elements and interactive

features) or the Services are owned or controlled for these purposes and are reserved by The Kids or its contributors.

- (b) All trademarks, service marks and trade names are owned, registered and/or licensed by The Kids, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a User to:
  - (i) use the Application pursuant to the Terms;
  - (ii) copy and store the Application and the material contained in the Application in your device's cache memory; and
  - (iii) print pages from the Application for your own personal and non-commercial use.
- (c) The Kids does not grant you any other rights whatsoever in relation to the Application or the Services. All other rights are expressly reserved by The Kids.
- (d) The Kids retains all rights, title and interest in and to the Application and all related Services. Nothing you do on or in relation to the Application will transfer any:
  - (i) business name, trading name, domain name, trademark, industrial design, patent, registered design or copyright, or
  - (ii) a right to use or exploit a business name, trading name, domain name, trademark or industrial design, or
  - (iii) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process), to you.
- (e) You may not, without the prior written permission of The Kids and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Application, which are freely available for re-use or are in the public domain.

## **9. General Disclaimer**

- (a) Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- (b) Subject to this clause, and to the extent permitted by law:

- (i) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
- (ii) The Kids will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

(c) The Kids is not a healthcare provider and is not liable in any respect for your medical care or health advice provided to you by any Health Care Provider. The Kids is not responsible for maintaining or holding any health or medical records on behalf of any Health Care Provider.

(d) Use of the Application and the Services is at your own risk. Everything on the Application and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of The Kids make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of The Kids) referred to on the Application, including but not limited to any health care decisions you may make resulting from information presented on the Application. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:

- (i) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
- (ii) the accuracy, suitability or currency of any information on the Application, the Services, or any of its Services related products (including third party material and advertisements on the Application);
- (iii) costs incurred as a result of you using the Application, the Services or any of the products of The Kids and
- (iv) the Services or operation in respect to links to third party sites which are provided for your convenience.

## **10. Limitation of Liability**

- (a) The Kids' total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.
- (b) You expressly understand and agree that The Kids, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

## **11. Termination of Contract**

- (a) The Terms will continue to apply until terminated by either you or by The Kids as set out below.
- (b) If you want to terminate the Terms, you may do so by:
  - (i) providing The Kids with 7 days' notice of your intention to terminate; and
  - (ii) closing your accounts for all of the services which you use, where The Kids has made this option available to you.
- (c) Any notices pursuant to Clause 13.(b) above should be sent, in writing, to The Kids via the 'Contact Us' link on our homepage.
- (d) The Kids may at any time, terminate the Terms with you if:
  - (i) you have breached any provision of the Terms or intend to breach any provision;
  - (ii) The Kids is required to do so by law;
  - (iii) Participant consent for the DiabHQ Research Project is withdrawn; or
  - (iv) the provision of the Services to you by The Kids is, in the opinion of The Kids, no longer commercially viable.
- (e) Subject to local applicable laws, The Kids reserves the right to discontinue or cancel your Subscription or Account at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Application or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts The Kids' name or reputation or violates the rights of those of another party

## 12. Indemnity

You agree to indemnify The Kids, its affiliates, employees, agents, contributors, third party content providers and licensors (**Indemnified Parties**) from and against all liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) suffered by The Kids which arises out of:

- (a) all actions, suits, claims, demands made against any of the Indemnified Parties in connection with your content uploaded to the Services;
- (b) any direct or indirect consequences of you accessing, using or transacting on the Application or attempts to do so; and/or
- (c) any breach of the Terms by you.

## 13. Dispute Resolution

### 13.1. Compulsory:

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

### 13.2. Resolution:

A party to the Terms claiming a dispute (**Dispute**) has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute. The Parties must then endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree. If no resolution is reached within 2 months the parties may take further action as may be appropriate. All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

## 14. Venue and Jurisdiction

In the event of any dispute arising out of or in relation to the Application, you agree that the exclusive venue for resolving any dispute shall be in the courts of Perth, Western Australia.

## **15. Governing Law**

The Terms are governed by the laws of Western Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Western Australia without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

## **16. Severance**

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.