

**LAST UPDATED: June 19, 2018**

## **MyPHD Direct Secure Messaging Service**

### **Authorized User Agreement**

Welcome to the MyPHD® Direct Secure Messaging Service (the “Service”) operated by Janie Appleseed Network, a Rhode Island nonprofit organization (“Janie Appleseed”, “we”, or “us”). This Authorized User Agreement (“Agreement”) constitutes a binding agreement between us and you, the authorized user (“Authorized User”, “you” or “your”), and governs your use of the MyPHD Service.

**BY CLICKING ON THE “I ACCEPT” BUTTON AFTER THIS AGREEMENT, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, PLEASE DO NOT CLICK ON THE “I ACCEPT” BUTTON AND DO NOT ACCESS OR USE THE SERVICE.**

**BY CLICKING ON THE “I ACCEPT” BUTTON, OR BY ACCESSING OR USING THE SERVICE, YOU REPRESENT AND WARRANT THAT (A) YOU ARE AT LEAST 18 YEARS OLD AND THE AGE OF MAJORITY AND LEGAL CONSENT IN THE JURISDICTION IN WHICH YOU LIVE OR RESIDE, AND (B) YOU AGREE TO BE BOUND BY THIS AGREEMENT.**

**THIS AGREEMENT IS IN ADDITION TO THE MEMBER TERMS AND CONDITIONS BETWEEN YOU AND JANIE APPLESSEED WHICH MEMBER TERMS AND CONDITIONS ARE INCORPORATED INTO AND FORM A PART OF THIS AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE MEMBER TERMS AND CONDITIONS AND THIS AGREEMENT, THIS AGREEMENT SHALL CONTROL WITH RESPECT TO USE OF THE MYPHD SERVICE.**

**You agree to execute a written copy of this Agreement upon our request.**

**THIS AGREEMENT MAY BE AMENDED OR CHANGED BY US IN OUR DISCRETION AT ANY TIME AS PROVIDED IN THE MEMBER TERMS OF USE.** We indicate at the top of the page when this Agreement was last updated.

We are committed to protecting the privacy of the personal information and any protected health information (collectively, “Personal Data”) provided by you to Janie Appleseed or transmitted by or to you through the Service. Any Personal Data provided by you or transmitted through the Service is subject to our Privacy Policy located at <https://www.directmdemail.com/documents/PrivacyPolicy>, which is also incorporated herein by reference.

#### **1. Medical Advice Disclaimer.**

If you believe you or any other individual has a medical emergency or any other health problem, you should promptly call an emergency medical service provider or consult your physician or

healthcare provider. If you think you may be suffering from any medical condition, you should seek immediate medical attention. The Service is not designed to, and does not provide, medical advice, professional diagnosis, opinions, or treatment to you or to any other person. Never disregard medical or professional advice, or delay seeking it, because of something you read through the Service or on any linked website. You should also ask your physician or other healthcare provider to assist you in interpreting any information provided through the Website, Service or any linked website, or in applying any such information to your individual case.

## **2. Accounts.**

Upon completion of the identification and registration process for the Service, you will be assigned a unique user name and a Direct Address for use of the Service (an “Account”). This Account is separate and distinct from any account you establish to participate in the Janie Appleseed Member Program. You will also be required to set up a password. You are responsible for all activity that occurs under your Account and password. If your name legally changes after setting up an Account, you should follow the procedures in the Member Terms and Conditions. However, following receipt by Janie Appleseed of the documentation described in the Member Terms and Conditions, you will be required to set up a new Account under your new name to continue using the Service under your name. After doing so, you can contact Janie Appleseed at [Support@JanieAppleseed.org](mailto:Support@JanieAppleseed.org) to have any messages directed from your old Account to your new Account.

## **3. Service.**

- a. License to Use Service. Upon completion of the identification and registration process to use the Service and your acceptance of this Agreement, Janie Appleseed grants you a limited, non-exclusive, non-transferrable and non-sub-licensable license to access and use the Service solely for the transmission and receipt of Personal Data and related information through the Service. This license terminates automatically if you breach any of the terms and conditions of this Agreement or upon termination of this Agreement or the Member Terms and Conditions for any reason. All rights (including but not limited to all intellectual and proprietary rights) in and to the Service, and Janie Appleseed’s and its licensors’ and service providers’ software and systems used to provide the Service, are hereby exclusively reserved to Janie Appleseed and its licensors and service providers. All restrictions on use of the Service set forth in the Member Terms and Conditions shall also apply.
- b. Parents and Legal Guardians. As parent of an unemancipated child under the age of 18 or as the legal guardian of another person or ward, you may use your existing account or set up an Account and Direct Address in your name for the exchange of Personal Information related to your child or ward (a “Guardian Account”). However, it is your sole responsibility to provide all required paperwork, notices and consents to any sender of direct messages to your Direct Address to prove your relationship. If you chose to set up a Guardian Account, you represent and warrant to Janie Appleseed that you have legal authority to do so and will be

responsible for all activity that occurs under the Guardian Account. Janie Appleseed reserves the right to suspend any such Guardian Account at any time if it believes that there is any improper exchange of Personal Data.

- c. Data Recovery. Janie Appleseed will maintain a disaster recovery plan whereby incremental backups of Personal Data shall be done once a day and full backups of databases shall be done once per week. The backup information shall be stored in a secure facility in the United States, currently Rackspace, Inc. and Iron Mountain Incorporated. Upon termination of this Agreement for any reason, Janie Appleseed will make your Personal Data available for retrieval by you at no charge for a period of sixty (60) days. In addition, Janie Appleseed agrees to store your Personal Data for a period of up to six (6) months; provided that if you wish to retrieve your data following the sixty (60) day period following termination, Janie Appleseed's then-current monthly storage charges will apply. At the end of such six (6) month period, Janie Appleseed may delete any of your Personal Data not retrieved by you.
- d. Modifications to Service Due to Changes in Standards or Applicable Law. Janie Appleseed uses commercially reasonable efforts to comply with the Office of the National Coordinator for Health Information Technology ("ONC") certification requirements for EHR service providers under the ONC Health IT Certification Program and DirectTrust accreditation requirements under the DirectTrust Accredited Trust Bundle as a HISP, Registration Authority and Certification Authority (collectively, the "Certification and Accreditation Requirements") in its provision of the Service and will, as part of the Service, use commercially reasonable efforts to the extent practical to modify the Service to comply with any published changes to the Certification and Accreditation Requirements, or any applicable changes to HIPAA or HITECH that directly impact Janie Appleseed's obligations as a data processor in providing the Service, once they have become defined and finalized and will use commercially reasonable efforts to complete such modifications within a commercially reasonable time frame. If Janie Appleseed is unable to do so, Janie Appleseed may terminate this Agreement upon notice to you.

#### **4. Fees and Payments.**

a. Fees and Billing. To subscribe to the Service, you will have to pay a one-time processing fee of U.S. \$1.50 for identity proofing and verification and a handling fee in the amount of U.S. \$1.25 per month to cover direct and indirect expenses associated with fulfilling DirectTrust Certificate Authority and Registration Authority obligations. Otherwise, the Service is provided for a free. We reserve the right to add new products and services and new features to the Service for additional fees and charges. However, we will not charge you additional fees unless you elect to purchase these new products, services or features.

b. Subscriptions. When you subscribe to the Service, the following terms will apply:

- **AUTOMATIC RENEWAL**. If you subscribe to the Service, your monthly handling fee will automatically renew on an ongoing basis for each additional month you subscribe to the Service at the same rate. You may elect to cancel your subscription prior to renewal

by following the cancellation procedures described below. If you do not cancel your subscription, your payment account will be automatically charged seven (7) days prior to the beginning of the next renewal. If payment is declined for any reason, we will send you an email to the email address we have on file alerting you of such payment failure. We may reattempt renewal of your subscription with the payment information we have on file between the time of the initial declined payment and the date your subscription expires.

- **How to Cancel Your Subscription.** To cancel your subscription to the Service, you may do so by following the administrative features available through the Service. If you cancel your subscription, you will not receive a refund for any fees charged to your payment account prior to the date of cancellation.

## **5. Accuracy of Information and Disclaimer of Warranty.**

**EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT AND THE MEMBER TERMS OF USE, THE SERVICE IS PROVIDED "AS-IS" AND WE AND OUR LICENSORS AND SERVICE PROVIDERS EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, FREEDOM FROM COMPUTER VIRUSES, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR TRADE. TO THE EXTENT APPLICABLE LAWS PROHIBIT TERMS OF USE OR CLICK-WRAP AGREEMENTS FROM DISCLAIMING ANY IMPLIED WARRANTY, THE APPLICABLE IMPLIED WARRANTY SHALL BE LIMITED TO THE MINIMUM WARRANTY AND WARRANTY PERIOD REQUIRED BY LAW. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, AND THE MEMBER TERMS OF USE, WE CANNOT GUARANTEE AND DO NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE WEBSITE OR SERVICE. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE WEBSITE OR SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.**

## **6. Limitation of Liability.**

**IN NO EVENT WILL WE OR OUR LICENSORS OR SERVICE PROVIDERS BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF DATA, ARISING OUT OF YOUR USE, OR INABILITY TO USE, THE WEBSITE OR SERVICE, EVEN IF WE OR OUR LICENSORS OR SERVICE PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF THESE TYPES OF DAMAGES. UNDER NO CIRCUMSTANCES SHALL WE OR OUR LICENSORS OR SERVICE PROVIDERS BE LIABLE FOR ANY CLAIM FOR DIRECT OR OTHER DAMAGES IN EXCESS OF THE AMOUNT PAID BY YOU FOR USE OF THE SERVICE DURING THE TWELVE (12) MONTH PERIOD**

**PRECEDING THE CLAIM, OR IF NO FEES WERE PAID BY YOU DURING SUCH PERIOD, THE SUM OF \$1000. THE FOREGOING LIMITATION SHALL APPLY TO USE OF THE SERVICE AND REPLACES THE LIMITATION OF LIABILITY IN THE MEMBER TERMS SOLELY WITH RESPECT TO THE MYPHD SERVICE.**