

Last Updated: March 2011

YOURDOCTORSADVICE.COM HEALTH RECORD

TERMS AND CONDITIONS OF USE

THE FOLLOWING TERMS AND CONDITIONS OF USE (“TERMS AND CONDITIONS”) APPLY TO YOUR USE OF THE WEBSITE WWW.YOURDOCTORSADVICE.COM (THE “WEBSITE”) OFFERED BY PATIENT ALWAYS FIRST. PLEASE READ THIS AGREEMENT CAREFULLY. IT IS IMPORTANT TO UNDERSTAND THAT THIS IS A LEGALLY BINDING AGREEMENT BETWEEN THE MEMBER (“YOU” OR “USER”) AND YOURDOCTORSADVICE.COM. IF A USER GRANTS ONE OR MORE INDIVIDUALS ACCESS TO THE USER’S HEALTH INFORMATION MAINTAINED ON THE WEBSITE, SUCH INDIVIDUALS ALSO ARE BOUND BY THESE TERMS AND CONDITIONS. DO NOT USE THE WEBSITE IF YOU DO NOT ACCEPT ALL OF THESE TERMS AND CONDITIONS. PATIENT ALWAYS FIRST MAY REVISE THESE TERMS AND CONDITIONS FROM TIME TO TIME IN ITS SOLE DISCRETION AND POST A NOTICE OF SUCH CHANGES OR MODIFICATIONS ON THE WEBSITE. THE CHANGES OR MODIFICATIONS WILL BE EFFECTIVE UPON POSTING OF THE NOTICE, AND YOUR USE OF THIS WEBSITE FOLLOWING THE NOTICE WILL CONSTITUTE YOUR ACCEPTANCE OF THE REVISED TERMS AND CONDITIONS.

YOU ACKNOWLEDGE THAT THIS WEBSITE IS PROVIDED TO YOU AS A CONVENIENCE AND THAT PATIENT ALWAYS FIRST IS NOT A HEALTH CARE PROVIDER AND DOES NOT PROVIDE ANY HEALTHCARE SERVICES, INCLUDING DIAGNOSIS, TREATMENT OR ADVICE. THIS WEBSITE INCLUDES INFORMATION INDIVIDUALIZED FOR THE MEMBER AND SHOULD NOT BE USED FOR TREATMENT OF SOMEONE ELSE. THE INFORMATION YOU FIND HERE SHOULD AUGMENT AND NOT BE USED IN PLACE OF A VISIT, CALL, CONSULTATION WITH OR ADVICE OF A HEALTH CARE PROVIDER. FURTHERMORE, PATIENT ALWAYS FIRST MAKES NO WARRANTY OR REPRESENTATION REGARDING THE CONTENT OF ANY INFORMATION STORED IN A WEBSITE MEMBER’S HEALTH RECORDS. ANY USE OF THE WEBSITE INDICATES THAT YOU HAVE READ, ACCEPTED AND AGREED TO ABIDE BY THESE TERMS AND CONDITIONS.

1. DEFINITIONS

Patient Always First is a nonprofit corporation that promotes the involvement of individuals in their own health care. Patient Always First is the developer and the owner of the Website.

Member means an individual, who has accepted the Terms and Conditions and uses the Website to create and access voice recordings of instructions, goals and/or health issues that relate to the Member’s health.

Care Team Members means the persons who have been granted the right, by the Member, to create and/or access voice recordings of instructions, goals and/or health issues that relate to the Member’s health.

Members and Care Team Members are collectively addressed as “Users.”

2. AGE OF USER

All Users of this Website must be at least 18 years of age or older (the “Age of User”). Notwithstanding the foregoing, the health information of a person below the Age of User may be entered into the Website by a parent or legal guardian. Only the parent or legal guardian of such minor individual has the right to choose the Care Team Members who may have the right to access such minor’s health information. By using this Website you acknowledge that you are over the age of legal majority and in no event less than 18 years.

3. WEBSITE USE AND CONTENT

This Website is a restricted access, membership based website which is made available to its Members as a convenience. This Website may be used strictly for the purpose of creating, storing and accessing voice recordings created by Users or Care Team Members that relate to a Member's health. The Website provides a tool to record instructions, goals and health issues for the Member. Each recording may not include all of your Care Team Member's advice given on a particular date, and if you have any questions about the advice, you should consult your Care Team Member. You understand that it is critical that you choose your Care Team Members with careful thought and designate people you trust as Care Team Members. You agree to create periodic back-ups of your health information to ensure that your health information is not lost in the event of any Website malfunction, or system error. Patient Always First is not responsible for (a) the integrity of your health information on the Website, or (b) for the loss of any data stored on the Website due to Website malfunction, system failure or for any cause thereof. It is your duty to maintain hard copies of all information that is included by you or a Care Team Member on the Website.

Patient Always First has no control over anyone other than Yourdoctorsadvice.com's staff or persons authorized by Patient Always First to take measures to safeguard the confidentiality of the information accessed on the Website.

You acknowledge that this Website is provided to you as a convenience, for personal and noncommercial use only. You agree not to use this Website for any other purpose or purposes that are unlawful or prohibited by the Terms and Conditions.

4. RESPONSIBILITIES

The Users agree to the following:

- i. Comply with this Agreement;
- ii. Immediately tell Patient Always First of any concern about an actual or suspected privacy or security breach by sending an email to help@yourdoctorsadvice.com which will trigger Yourdoctorsadvice.com's audit process.
- iii. Not to access another Member's health information by using false identification;
- iv. Not to, under any circumstances, (a) make a voice recording of anything that is untrue, hurtful, harmful, threatening, abusive, hateful, indecent, obscene, or pornographic; (c) record anything that would violate the property rights of others, including copyrights; (d) use the Website to threaten, harass, stalk, abuse or violate the legal rights (including the right of privacy) of others; (e) try to sell anything to other users through this Website; (f) upload files that contain viruses, worms, Trojan horses, corrupted data, or other code that have contaminating or destructive properties; (g) use the Website in a way that limits access of the Website by other Users; (h) falsely claim to be an employee or an authorized contractor of Patient Always First; (i) cause disruptive incidents; (j) act, or not act in a way that is illegal or use the Website for illegal means or in an illegal manner;
- v. Not to misuse or disclose health information of a Member without the Member's express authorization;
- vi. Not to delete or alter information on the Website that could result in physical or emotional harm to any Member.
- vii. Not to post or allow to be posted, incorrect or misleading information on the Website.
- viii. Not to disclose another person's username or password without the person's permission.
- ix. Not to access the Website by using another person's username or password.

Patient Always First reserves the right to immediately terminate the membership or the authorization of a User and deny access to the Website of any User that violates these Terms and Conditions. Patient Always First reserves the right to seek civil redress or press criminal charges against any User that contravenes the provisions of this Section 4.

5. ACCESS

The Website has the ability for you to grant others the right to access your health information. A Care Team Member could be a family member, a friend, a physician or a healthcare provider. If you have elected to grant access to others, Patient Always First makes no guarantee regarding the (i) integrity of your health information, and (ii) professional standing of anyone to whom you have granted access.

6. SECURITY

This Website uses Secured Sockets Layer (SSL) for secure transmission. However, due to the nature of the Internet and the ability of the Member to allow others to access the Member's health information, Patient Always First makes no representation or warranties about the security and integrity of the health information stored on the Website. It is the User's responsibility to keep the username, password or other access information safe and confidential to protect against unauthorized access to the Website. It is the Users responsibility to (i) select a unique username and password for the User's Google "Gmail" account, which are used to access voice recordings created by User that are maintained on the Website, (ii) take all appropriate actions to maintain the confidentiality of and prevent the unauthorized use of the username and password, and (iii) immediately notify Patient Always First in writing if the User has reason to believe that an unauthorized party has gained access to the username or password of any User. Member authorizes Patient Always First and any party claiming through Patient Always First to rely upon any information posted as the Member's health information, without making further investigation or inquiry, regardless of the actual identity of the user posting the health information of the Member. The use of the assigned username or password of any User shall be the sole responsibility of the User and Patient Always First will not be responsible for any damages to the Member relating to any use, misuse or unauthorized use of the Member's username or password.

This Website also collects certain information. For example, this Website will retain a Members' or User's name, email address and Open ID URL, which may be obtained either directly from the Member or User or from Google as a part of the login/verification process. The retained email address may be used to send notices to a Member of User or their next of kin. Such notices may include but are not limited to notices pertaining to upgrades, special offers and, if deemed appropriate by Patient Always First, next-of-kin information. Further, this website may collect next-of-kin addresses, either electronic mail or physical addresses, for the purposes of providing such notices. This Website may also collect Member's telephone numbers in order to identify incoming calls.

This Website uses "Cookies," which are pieces of data stored on a Member's or a User's hard drive containing information relating to the Member's or User's visit(s) to the Website. The use of "cookies" is in no way linked to any of Member's or User's personally identifiable information. Cookies are used by the Website to facilitate its operation. Cookies are not used by the Website for any other purpose, and no information related thereto will be made available to a third party.

This Website works with and cooperates with certain vendors in order to perform the voice recording and playback services provided. For example, this Website cooperates with a telephony applications service provider ("Telephony App Provider") that facilitates provision of the services. The Telephony App Provider communicates with the Website, Yourdoctorsadvice.com, by means of a unique URL that is secure and private to Patient First Always. The Telephony App Provider, and its cloud communications provider, have momentary access to unencrypted data recorded through the Website. However, promptly after the unencrypted data is provided to the Website via this URL, the data is encrypted by the Website and deleted by Telephony App Provider, leaving the recorded and encrypted data stored only in a system managed by the Website. The Telephony App Provider, its cloud communications provider and other third party vendors may have access to the encrypted data files but no authorization to open same. The Website will provide authorized access to unencrypted files to the Member and other individuals to whom the Member grants access by disclosing the Member's username and password. The Website also will provide access to authorized unencrypted files to other entities as required by law. The Website

provider is committed to protecting the privacy and confidentiality of Member and User content, and commercially reasonable practices are being employed to insure such privacy and confidentiality. By acceptance of these terms and conditions, or by use of this Website, you expressly agree that Patient Always First and the Website provider have implemented procedures and practices that are commercially reasonable to maintain the security of all data and the Member's or User's personal information.

This Website may occasionally update this security statement as new best practices are implemented in regards to security. Patient Always First therefore encourages periodic review of this statement so that its Members and Users can remain informed regarding steps taken and practices implemented to protect information and maintain security.

7. LINKS

The Website contains links of resources to other websites. Patient Always First is not responsible for the privacy policies and/or practices of other websites. When linking to another website the Users should read the privacy policy stated on that website.

8. TERMINATION

Members or their legal guardians may terminate the use of the Website for any reason at any time by providing a written notification to Patient Always First at help@yourdoctorsadvice.com. Termination will be effective thirty days following the date of receipt of the Member's notice of termination. Upon termination, a Member or a legal guardian shall have 30 days to access Member's health information and create copies. After the 30 days period, Patient Always First may destroy the health information and will not be liable for any lost records. Member acknowledges that, upon termination, Member has created and will retain a back-up or duplicate of all patient health information.

Except for the termination under Section 4, where the termination may occur immediately, Patient Always First reserves the right to terminate any User's access to the Website, for any reason, provided that Patient Always First provides the User with a 30-day advance notification.

9. NO WARRANTIES AND LIMITATION OF LIABILITY

THIS WEBSITE GIVES YOU THE ABILITY TO CHOSE CARE TEAM MEMBERS AND GRANT THEM THE RIGHT TO CREATE AND/OR ACCESSHEALTH INFORMATION RELATING TO YOU. THUS, OWING TO THE NATURE OF THIS WEBSITE, NATURE OF ELECTRONIC DISTRIBUTION VIA THE WORLD WIDE WEB, AS WELL AS OTHER FACTORS, THIS WEBSITE, INCLUDING ALL INFORMATION AND MATERIALS CONTAINED ON THIS WEBSITE ARE PROVIDED ON AN "AS IS," AND "AS AVAILABLE" BASIS. PATIENT ALWAYS FIRST AND ITS EMPLOYEES:

- i. MAKE NO WARRANTIES OR REPRESENTATIONS REGARDING THE WEBSITE INCLUDING ALL PATIENT HEALTH INFORAMTION STORED ON THE WEBSITE;
- ii. DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE WEBSITE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON INFRINGEMENT OF THIRD PARTY RIGHTS, FREEDOM FROM VIRUSES OR OTHER HARMFUL CODE, OR FITNESS FOR A PARTICULAR PURPOSE;
- iii. WILL NOT BE LIABLE FOR ANY DELAY, DIFFICULTY IN USE, COMPUTER VIRUSES, MALICIOUS CODE, OR OTHER DEFECT IN THIS WEBSITE, OR ANY OTHER PROBLEMS EXPERIENCED BY THE USER DUE TO CAUSES BEYOND OUR CONTROL.

WHILE PATIENT ALWAYS FIRST ENDEAVORS TO MAKE YOUR HEALTH INFORMATION REASONABLY AVAILABLE, PATIENT ALWAYS FIRST MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACTUAL AVAILABILITY OF YOUR HEALTH INFORMATION AND THEREFORE, PATIENT ALWAYS FIRST ACCEPTS NO LIABILITY FOR THE INABILITY OF ANY

PERSON, PERSONS OR ENTITIES TO ACCESS YOUR HEALTH INFORMATION AT ANY TIME. FURTHERMORE, PATIENT ALWAYS FIRST MAKES NO REPRESENTATION REGARDING THE UNAUTHORIZED ACCESS, THE INTEGRITY OR THE LOSS OF ANY DATA DUE TO ANY REASON, INCLUDING BUT NOT LIMITED TO WEBSITE MALFUNCTION, SYSTEM FAILURE, UNAUTHORIZED USE OF THE USERNAME AND PASSWORD, ACTS OR OMISSIONS OF A CARE TEAM MEMBER, ETC.

UNDER NO CIRCUMSTANCES AND UNDER NO THEORY OF ANY APPLICABLE LAW AND/OR REGULATION SHALL PATIENT ALWAYS FIRST BE LIABLE TO ANYONE FOR ANY DAMAGES ARISING IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE FROM ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THIS WEBSITE OR FROM ANY ACTION TAKEN OR NOT TAKEN AS A RESULT, REGARDLESS OF WHETHER THEY ARE DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER EVEN IF PATIENT ALWAYS FIRST KNEW OR HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES, CLAIM OR DEMAND. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL DAMAGES OF ANY KIND INCLUDING COMPENSATORY, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF DATA, LOSS OF OR DAMAGE TO PROPERTY, AND CLAIMS OF THIRD PARTIES. YOU AGREE THAT THE AGGREGATE LIABILITY OF YOURDOCTORSADVICE.COM, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM IN ANY WAY CONNECTED TO THIS WEBSITE WILL NOT EXCEED \$10.00. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN CATEGORIES OF DAMAGES OR IMPLIED WARRANTIES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN SUCH STATES, THE LIABILITY OF PATIENT ALWAYS FIRST IS LIMITED TO THE FULLEST EXTENT PERMITTED BY SUCH STATE LAW.

10. GOVERNING LAW

These Terms and Conditions are governed by the laws of the State of Texas (without reference to its rules as to conflict of law).

11. DISPUTE RESOLUTION

Any and all claims, disputes and other matters in question arising out of or relating to these Terms and Conditions for damages or any other relief, and all defenses thereto ("Claims"), shall be resolved by binding arbitration. The arbitration shall be conducted in accordance with the rules of Arbitration of the Federal Arbitration Act and, to the extent an issue is not addressed by the federal law of arbitration, by the Commercial Arbitration Rules of the American Arbitration Association ("Rules").

The arbitration may be initiated by either party by written notice specifying the Claims to be arbitrated. If a party refuses to honor its obligations under this agreement to arbitrate, the other party may compel arbitration in either federal or state court. The making, validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the arbitration conducted pursuant to this agreement to arbitrate, including but not limited to, the determination of the issues that are subject to arbitration (i.e. arbitrability) shall be decided by the arbitrator. Unless as otherwise set forth in these Terms and Conditions, the arbitrator shall apply federal law and the substantive laws of the State of Texas (excluding Texas choice-of-law principles that might call for the application of some other State's law) as applicable. The parties will provide each other with production of all requested documents and records reasonably related to the dispute in a manner that will minimize the expense and inconvenience of both parties. Further discovery will be as the arbitrators expressly allow on a showing of need. All arbitrator's orders and decisions may be enforceable in, and judgment upon any award rendered in the arbitration proceeding may be confirmed and entered by, any federal or state court of competent jurisdiction. All proceedings shall be conducted in English and, unless otherwise set forth in these Terms and Conditions, shall take place in Houston, Texas.

The arbitration conducted pursuant hereto shall be decided by a single arbitrator appointed in accordance with the relevant provisions of the Rules. The damages awarded shall be subject to the limitation of liability provision of this Agreement excludes punitive, special, consequential, indirect or exemplary damages. Costs and fees of the arbitration will be borne by the non-prevailing party, unless the arbitrator determines otherwise. The award of the arbitrator will be final. The arbitrator's award shall be specifically enforceable in a court of competent jurisdiction

and located in Houston, Texas. All proceedings conducted hereunder and the decisions of the arbitrators shall be kept confidential. No Claim may be brought as a class action, combined or consolidated with any other proceeding, nor may any proceeding be pursued in a representative capacity or on behalf of a class. Neither party has the right to act as a class representative or participate as a member of a class of claimants with respect to any Claim. Unless otherwise provided by applicable law, neither party has the right to bring a Claim or other legal action under these Terms and Conditions more than two years after the cause of action arose.

12. INTELLECTUAL PROPERTY

Any and all intellectual property rights (“Intellectual Property”) associated with this Website and its content are the property of Patient Always First or a third party, provided, however, that certain source codes used by the Website are subject to Open Source licenses. The content of the website is protected by copyright and other laws in both the United States and other countries. Elements of the website may also be protected by trade dress, trade secret, unfair competition and other laws, and may not be copied or reproduced in whole or in part. All graphics, icons, and other symbols or indicia that appear on the website are trademarks, service marks or trade dress (“Marks”) of Yourdoctorsadvice.com, or another entity that has granted to Patient Always First the right, license or otherwise permitted such use of the Marks by Patient Always First and may not be used in any manner without the express written consent of Yourdoctorsadvice.com. Except as otherwise expressly authorized by these Terms and Conditions of Use or otherwise permitted by applicable law, you shall not copy, reproduce, modify, lease, loan, display, publicly perform, sell, create derivative works from, upload, transmit, or distribute the Intellectual Property of the website in any way without the express written permission of Patient Always First or the appropriate third party. Except as expressly provided herein, Patient Always First does not grant any express or implied rights in or to Yourdoctorsadvice.com’s or any third party’s Intellectual Property. Accordingly, except to the extent required by law or expressly provided herein, none of the content of this website or other protected information may be reverse-engineered, modified, reproduced, republished, translated, redistributed or retransmitted without express prior written consent of Yourdoctorsadvice.com.

13. COMPLETE AGREEMENT

The Terms and Conditions are the full and complete agreement between Patient Always First and each User for the use of this Website.

14. CONTACT INFORMATION

If the User has any questions concerning these Terms and Conditions or the use of this website, please contact Administrative Director, Patient Always First, 6500 River Place Blvd, Building 4, Suite 100, Austin, TX 78730.