



therapyappointment

Terms of Service for Agents

Last Updated: 03/10/2021

These Terms of Service together with the Privacy Policy, located [here](#), of Psych Select Software, LLC (collectively the Terms of Service and Privacy Policy are hereinafter the "Terms") form an agreement between Psych Select Software, LLC d/b/a Therapy Appointment (hereinafter "Psych Select") and you (hereinafter "Agent") and govern your use and access to the therapyappointment.com mental health practice management software system (hereinafter the "Service"). By clicking the "AGREE" button, Agent consents to be bound by the Terms. If you are accessing and using the Service on behalf of an entity you confirm that you are authorized to do so and are binding that entity to the Terms. If Agent does not agree to the Terms, Agent may not use the Service.

1. **MODIFICATIONS AND UPGRADES.** Psych Select may amend the Terms, at any time, by posting a revised version of the Terms on the therapyappointment.com website. Psych Select's notice to Agent may include sending a message to the email address provided to Psych Select, or by providing notice through the Service. Psych Select will also update the "Last Updated" date at the top of these Terms when Psych Select makes changes. Agent's continued use of the Service will confirm Agent's acceptance of the revised Terms. If Agent does not agree to the revised Terms, then it must stop using the Service and delete its Account. The revised Terms shall govern any software upgrades provided by Psych Select that replace and/or supplement the original version of the Service, unless such upgrades are accompanied by a separate license, in which case the terms of that license will govern.

2. **AGENT ACCOUNT.** To use the Service, an Agency must register for an Agency account with therapyappointment.com (hereinafter "Account") by completing the account registration for the Service. Once the Agency account is established, individual Agent accounts can be linked to one or more accounts under a validly purchased subscription by a subscriber (hereinafter "Subscriber"). In the TherapyAppointment system, Agents can link to a new Subscriber by logging into the system to perform an active identify verification step with the Subscriber. Once this identify verification requirement is complete, the Agent account will be linked to the Subscriber. Agent agrees to: (a) provide true, accurate, complete, and current information about Agent as prompted by the account registration page(s); and (b) maintain and promptly update all such registration data to ensure it remains true, accurate, complete, and current. HIPAA requires that Subscriber and Agent shall also establish a separate business associate agreement. This relationship is not covered under the Business Associate Agreement that is established between the Subscriber and TherapyAppointment. Agent further agrees to maintain in strict confidence Agent's username and password and to not share such username or password with any third party or allow another person to access the Service using Agent's username or password. In the event Agent becomes aware or suspects that Agent's username and/or password has been lost, compromised, or misused in any way, Agent shall immediately reset Agent's credentials and notify Psych Select. Agent is fully and solely responsible for any and all use of the Service using Agent's username and password.

Psych Select reserves the right to revoke Agent's Account at any time and for any reason, including, but not limited to, use of the Service that is inconsistent with the Terms.

3. LICENSE GRANT. Psych Select grants Agent a non-exclusive, non-assignable, personal, non-transferable, limited, revocable license to use the Service in furtherance of Subscriber's internal business use, subject to the Terms, during the term that Agent has an account with Subscriber^[DWT4].

4. AGENT QUALIFICATIONS. By using the Service, Agent represents and warrants that: (a) it has all rights and authority necessary to agree to the Terms; and (b) is appropriately registered under a qualifying Subscriber. Agent will immediately notify Psych Select if: (1) Agent becomes aware of any development rendering untrue or misleading Agent's representations, warranties, and/or covenants under these Terms; (2) Agent becomes aware that their Account is no longer attached to a valid Subscriber; or (3) Agent becomes aware of any medical incident, error, or adverse event arising out of any service rendered by Agent within, through, or related to the Service that may reasonably be expected to give rise to a claim being made against Agent or if Agent has been named in a claim or suit arising out of any service rendered by Agent within, through, or related to the Service.

5. RESTRICTIONS. Agent agrees that it will not: (a) copy, reproduce, modify, translate, create derivative works of, disclose or publicly display the Service; (b) decompile, disassemble, reverse engineer or otherwise attempt to determine the functionality of the Service; (c) directly or indirectly license, distribute, resell, rent, lease, subcontract, operate as a service bureau or otherwise make the Service available to any third party; (d) use the Service to develop a product or service that is the same or substantially similar to the Service; (e) disclose or share any passwords or other security or authentication with respect to the Service to or with any other person or entity; (f) use the Service for a purpose other than that set forth in the Terms or in a manner that violates any applicable law, rule or regulation; (g) remove, conceal or alter any personally identifiable information, identification, copyright or proprietary rights notices or labels from or on the Service; (h) access or permit any third party to access (or attempt or permit any third party to attempt to access) any content or information (including, personally identifiable information) other than as authorized under the Terms; (i) attempt to disrupt the operation of the Service or use the Service in any manner that could damage Psych Select's services or networks; or (j) post or transmit any information that is unlawful, libelous, defamatory, obscene, fraudulent, predatory of minors, harassing, threatening, or hateful to any person, or that infringes or violates any intellectual property right or privacy or publicity right of another party.

6. OTHER LINKS. In addition to the third party services described above, the Service may additionally contain links to other third-party websites. Such third-party websites are owned and operated by the third parties and/or their licensors, and Psych Select has no responsibility for or control over such websites. Agent acknowledges and agrees that Psych Select is not responsible or liable for the availability or accuracy of third-party websites, the security or regulatory compliance of such websites, or the content, advertising, or products or services on or available from such websites, and inclusion of any link or application on the Service does not imply any endorsement of such website or Services. It is Agent's responsibility to take precautions to ensure any linked material Agent selects is free of viruses and other harmful or destructive items.

7. TERM AND TERMINATION. Subscriber may terminate the link to an Agent at any time. In addition, an Agent may terminate the link to a Subscriber's account at any time. Agent's right to use the Service and Account are provided contingent to being validly linked to an authorized Agency account. If a Subscriber account that the Agent is linked to becomes inactive, e.g., for non-payment, in the TherapyAppointment

system, the Agent will no longer have access to the Subscriber's data. If Agent breaches the Terms, Agent's right to use the Service and Agent's Account will terminate immediately and without notice. In addition, Psych Select may terminate Agent's Account for any reason by giving written notice of the effective date of such termination to facilitate the export of the data from the Agent's Account. Further, all provisions of the Terms except Section 1 (License Grant) will survive termination and continue in full force and effect. Upon termination of Agent's Account for any reason, Agent must cease access to the Service, except to the extent specifically permitted under Section 18 (Storage of Agent Data Following Termination) and subject to all of the Terms.

8. CONFIDENTIAL INFORMATION. In using the Service, Agent may have access to confidential and or proprietary information of Psych Select, its providers, its licensors and suppliers that may include, but is not limited to, software, codes, technology, logic, techniques, formats, tools, designs, concepts, methods, processes, ideas, functional specifications, technical materials and information, patient information and related documentation (hereinafter "Confidential Information"). Agent will maintain such Confidential Information in confidence and use such information only for purposes of Agent's use of the Service, in accordance with the Terms.

9. PROPRIETARY RIGHTS. THE SERVICE IS LICENSED, NOT SOLD. All right, title and interest in and to the Service and all Intellectual Property Rights therein are and shall remain exclusively with Psych Select, its licensors and their respective successors and assigns. Agent is not granted any right, title or interest whatsoever in the Service or any Intellectual Property Rights (as defined below) associated with the Service. To the extent Agent provides any verbal or written ideas or feedback to Psych Select concerning the Service (hereinafter "User Feedback"), Agent hereby assigns, transfers and conveys to Psych Select, or its designee, all worldwide right, title, and interest in and to any and all User Feedback, including any ideas, findings, conclusions, concepts, improvements and Intellectual Property Rights in such User Feedback and Psych Select reserves the right to use any User Feedback, including any comments, endorsements, and contributions by Agent in advertising for the Service and Psych Select. "Intellectual Property Rights" means all intellectual property and other similar proprietary rights, in any jurisdiction, including rights in and to: (a) trade secrets, know-how and other confidential or non-public business information; (b) original works of authorship and any moral rights relating thereto; (c) trademarks, service marks, trade dress and other indications of origin; and (d) patents, invention disclosures, inventions and discoveries. Agent grants Psych Select license to use data and content it provides hereunder, and data about Agent's and its patients' use of the Service, for Agent's own business purposes, to the extent permitted by applicable law and so long as such uses do not competitively disadvantage Agent or compromise the privacy or security of confidential information of or about Agent or its patients. Use of Agent and patient information will be subject to the Terms.

10. DISCLAIMER OF WARRANTY. THE SERVICE IS PROVIDED "AS IS" WITH ALL FAULTS. TO THE EXTENT PERMITTED BY LAW, PSYCH SELECT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES THAT THE SERVICE IS FREE OF DEFECTS, MERCHANTABILITY, FIT FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. AGENT BEARS THE ENTIRE RISK AS TO SELECTING THE SERVICE FOR AGENT'S PURPOSES AND AS TO THE QUALITY AND PERFORMANCE OF THE SERVICE. Without limiting the generality of the foregoing or the limitation of liability set forth in Section 11 (Limitation of Liability), Agent acknowledges and agrees that: (a) Agent is using the Service at its own discretion and risk; and (b) neither Psych Select nor any of its suppliers or licensors shall be responsible for any data or output that results from Agent's use of the Service. This limitation will apply notwithstanding the failure of essential purpose of any remedy. Some jurisdictions do not allow the exclusion or limitation of implied warranties, so this disclaimer may not apply to Agent.

11. LIMITATION OF LIABILITY. EXCEPT AS REQUIRED BY LAW, PSYCH SELECT WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THE USE OF OR THE INABILITY TO USE THE SERVICE, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, AND COMPUTER FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH SUCH CLAIM IS BASED. ALTHOUGH EVERY REASONABLE EFFORT WILL BE MADE TO ENSURE THE CONSISTENT ONLINE AVAILABILITY OF THE SERVICE, AGENT BEARS THE ENTIRE RISK FOR ANY LOSSES INCURRED BY THE UNAVAILABILITY OF THE SERVICE FOR ANY REASON. PSYCH SELECT'S COLLECTIVE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE GREATER OF \$500 (FIVE HUNDRED DOLLARS). Some jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so this exclusion and limitation may not apply to Agent.

12. AGENT INDEMNIFICATION. Agent shall defend, indemnify, and hold harmless Psych Select and its officers, directors, members, managers, equity holders, employees, agents, contractors, suppliers, and licensors against all costs, expenses, losses, and damages (including reasonable attorneys' fees and costs) incurred or awarded as a result of or in connection with claims of third parties against Psych Select based on or arising directly or indirectly out of: (a) Agent's use of the Service; (b) a breach by Agent of any terms and conditions in these Terms; (c) Agent's violation of any applicable laws or regulations; (d) any negligence, willful misconduct, or fraud by Agent; or (e) defamation, libel, violation of privacy rights, unfair competition, or infringement of any third party's intellectual property rights or allegations thereof to the extent caused by Agent.

13. EXPORT CONTROLS & DISCLAIMER. Agent's right to use the Service is subject to all applicable export restrictions. Agent must comply with all export and import laws and restrictions and regulations of any United States or foreign agency or authority relating to the Service and its use. Psych Select offers the Service only in the United States and makes no representations that any aspect of the Service is appropriate or available for use outside of the United States. Those who access the service outside of the United States are responsible for compliance with applicable laws.

14. U.S. GOVERNMENT END-USERS. The Service is a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 and 48 C.F.R. 227.7202. Consistent with 48 C.F.R. 12.212, 48 C.F.R. 27.405(b)(2) and 48 C.F.R. 227.7202, all U.S. government end users acquire the Service with only those rights as set forth herein.

15. SECURITY OF PROTECTED HEALTH INFORMATION. Agent may not use the Service in any way that is illegal, fraudulent, or violates the provisions of the Health Insurance Portability and Accountability Act of 1996 and its later extensions and modifications, including the Health Information Technology for Economic and Clinical Health Act (collectively "HIPAA"). These provisions restrict all unauthorized hacking, testing, or assessment which is intended to bypass the security policies and controls of the software. Agent acknowledges that Psych Select is not responsible for violation of these laws or related regulations due to Agent's actions or circumstances outside of Psych Select's control. These actions and circumstances include, but are not limited to the failure of Agent to: (a) choose adequate account passwords, and to protect those passwords from unauthorized disclosure; (b) log out of the Service on any computer or other device; (c) authenticate the identity of any patient or staff member requesting access to patient or staff passwords; (d) ensure that Agency's work members with access to passwords

are aware of HIPAA and have agreed to be bound by them ; (e) use tools provided within the Service to monitor log-in activity for security breaches; (f) guard any protected health information (as defined by HIPAA) (hereinafter "PHI") downloaded to Agent's own storage device in accordance with HIPAA; (g) ensure that any device used to access PHI is free from software viruses and any other hardware or software methods for collecting and disseminating information to unauthorized individuals; (h) if applicable, sign a HIPAA-compliant business associate agreement with Subscriber; (i) promptly report suspicious activity or misuse of the system to Psych Select for further investigation; and (j) cooperate with Psych Select to safeguard against such activity or misuse and to mitigate any harm arising therefrom.

16. PROTECTION OF PATIENT RIGHTS. In accordance with HIPAA, Agent may be subject to certain requirements related to health information that may be stored in or transmitted by the software provided by Psych Select. Agent is solely responsible for establishing and executing processes needed to comply with the standards specified by HIPAA. Agent acknowledges that Psych Select is not responsible for Agent's compliance with any such requirements or for any violation of these laws or related regulations due to Agent's actions or circumstances outside of Psych Select's reasonable control.

17. STORAGE OF AGENT DATA FOLLOWING TERMINATION . Upon termination of Agent's Account, either by Psych Select or Agent, Psych Select will terminate Agent's access. Psych Select will destroy Agent's data according to Psych Select's internal document management and retention policies, procedures, and practices. All protections and guarantees of data security and privacy stated in the Terms or applicable law will remain in effect for this data regardless of Agent's status.

19. ELECTRONIC CONTRACTING AND NOTICES. Agent's agreement to the Terms, by clicking "AGREE" constitutes Agent's electronic signature and agreement to the Terms. Agent acknowledges that he/she is able to electronically receive, download, and print the Terms. Agent further agrees that Psych Select may send to Agent in electronic form any notices, disclosures, reports, documents, communications or other records regarding the services or Service (collectively, hereinafter "Notices"). Psych Select may send Agent electronic Notices: (a) to the e-mail address that Agent provided during Agent's registration process; or (b) by posting the Notice through the Service. The delivery of any Psych Select Notice is effective when sent or posted by Psych Select, regardless of whether Agent reads the Notice. Agent may withdraw consent to receive further Notices electronically by contacting support@therapyappointment.com, but upon withdrawal of such consent, Agent's Account to use the Service will be terminated.

20. MISCELLANEOUS. The Terms constitutes the entire agreement between the Agent and Psych Select concerning the subject matter hereof, and it may only be modified by written amendment signed by an authorized executive of Psych Select. Except to the extent applicable law, if any, provides otherwise, this Agreement will be governed by the laws of the State of North Carolina, excluding its conflict of law provisions. Agent hereby consents to the exclusive jurisdiction of the courts of the State of North Carolina for the resolution of any dispute based upon or relating to the Agent's use of the Service. The Terms will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. If any part of the Terms are held invalid or unenforceable, that part will be construed to reflect the parties' original intent, and the remaining portions will remain in full force and effect. A waiver by Psych Select of any term or condition of the Terms or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof. Psych Select will not be liable for any delay or failure of its performance under the Terms that results from causes beyond its control and is not reasonably foreseeable despite commercially reasonable operations and preparations.

Except as required by law, the controlling language of this Agreement is English. Agent may not assign Agent's rights under the Terms without the written consent of Psych Select. The terms are binding upon and will inure to the benefit of the parties, their successors and permitted assigns. The parties hereto expressly understand and agree that each party is an independent contractor in the performance of each and every part of the Terms.

I accept the Terms of Service as listed above.

Version Control Log

Approved	Susan Whitehead	Effective	3/10/2021
Last Review	N/A	Annual Review by	3/31/2023
Reviewed By	N/A		
Revision History			
03/10/2021	Initial version formalized.		