



therapyappointment

Terms of Service for Subscribers

Last Updated: August 6th, 2019

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 "Subscriber") and govern your use and access to the therapyappointment.com mental health practice management software system (hereinafter the "Service"). By clicking the "AGREE" button, Subscriber 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 Subscriber does not agree to the Terms, Subscriber may not use the Service.

1. LICENSE GRANT. Psych Select grants Subscriber a non-exclusive, non-assignable, personal, non-transferable, limited, revocable license to use the Service for their own internal business use, subject to the Terms, during the term of Subscriber's subscription with Psych Select.

2. MODIFICATIONS AND UPGRADES. To the extent permitted by applicable law, Psych Select may amend the Terms without prior notice to Subscriber, at any time, by posting a revised version of the Terms on the therapyappointment.com website. The 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.

3. SUBSCRIBER ACCOUNT. To use the Service, Subscriber must purchase a subscription and register for an account with therapyappointment.com (hereinafter "Account") by completing the account registration for the Service. Subscriber agrees to: (a) provide true, accurate, complete, and current information about Subscriber 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. Subscriber further agrees to maintain in strict confidence Subscriber'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 Subscriber's username or password. In the event Subscriber becomes aware or suspects that Subscriber's username and/or password has been lost, compromised, or misused in any way, Subscriber shall immediately reset Subscriber's credentials and notify Psych Select. Subscriber is fully and solely responsible for any and all use of the Service using Subscriber's username and password. Psych Select reserves the right to revoke Subscriber's Account at any time and for any reason, including, but not limited to, use of the Service that is inconsistent with the Terms.

4. SUBSCRIBER QUALIFICATIONS. By using the Service, Subscriber represents and warrants that: (a) it has all rights and authority necessary to agree to the Terms and to provide access to any data or other information it provides hereunder; and (b) that it is duly licensed and appropriately qualified to provide the services it provides to its patients in connection with the Service. Subscriber will immediately notify Psych Select if: (1) Subscriber becomes aware of any development rendering untrue or misleading Subscriber's representations, warranties, and/or covenants; (2) Subscriber's professional license has been revoked, suspended, or restricted in any way; or (3) Subscriber becomes aware of any medical incident, error, or adverse event arising out of any service rendered by Subscriber within, through, or

related to the Service that may reasonably be expected to give rise to a claim being made against Subscriber or if Subscriber has been named in a claim or suit arising out of any service rendered by Subscriber within, through, or related to the Service.

5. RESTRICTIONS. Subscriber 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. THIRD PARTY SERVICES. Subscriber may elect to allow automatic electronic communication between the Service and certain third party services (e.g., for claims and payment processing). Such third party services are offered by independent third parties, not Psych Select. PSYCH SELECT DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING ANY WARRANTY OF ACCURACY, COMPLETENESS, PERFORMANCE, CURRENCY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE WITH RESPECT TO SUCH THIRD PARTY SERVICES. IF SUBSCRIBER ALLOWS SUCH AUTOMATIC ELECTRONIC COMMUNICATION BETWEEN THE SERVICE AND THIRD PARTY SERVICES, SUBSCRIBER DOES SO AT SUBSCRIBER'S OWN RISK, AND SUBSCRIBER AGREES THAT PSYCH SELECT IS NOT LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, OR SIMILAR DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOSS OF WORK SERVICE, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, WHETHER IN TORT, CONTRACT, OR OTHERWISE, FOR THE RESULTS OF ANY DATA PROCESSING THAT MAY OCCUR WHILE SUBSCRIBER'S HEALTHCARE CLAIMS OR CHARGE CARD TRANSACTIONS ARE BEING HANDLED BY THESE EXTERNAL AND COMPLETELY INDEPENDENT BUSINESS ENTITIES.

7. 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. Subscriber 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 Subscriber's responsibility to take precautions to ensure any linked material Subscriber selects is free of viruses and other harmful or destructive items.

8. TERM AND TERMINATION. Subscriber's right to use the Service and Account are provided on a monthly basis by subscription. If Subscriber breaches the Terms, Subscriber's right to use the Service and Subscriber's Account will terminate immediately and without notice. In addition, Psych Select may terminate Subscriber's Account for any reason by giving written notice of the effective date of such termination. In the even Psych Select terminates Subscriber's Account for any reason, Subscriber will be given read-only access to the data in Subscriber's Account for a period not to exceed sixty (60) days, in order to facilitate Subscriber's export or transition of such data. Further, all provisions of the Terms except Section 1 (License Grant) will survive termination and continue in full force and effect. Upon termination of Subscriber's Account for any reason, Subscriber must cease access to the Service, except to the extent specifically permitted under Section 18 (Storage of Subscriber Data Following Termination) and subject to all of the Terms.

9. CONFIDENTIAL INFORMATION. In using the Service, Subscriber may have access to confidential and or proprietary information of Psych Select and 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, and related documentation (hereinafter "Confidential Information"). Subscriber will maintain such Confidential Information in confidence and use such information only for purposes of Subscriber's use of the Service, in accordance with the Terms.

10. 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. Subscriber 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 Subscriber provides any verbal or written ideas or feedback to Psych Select concerning the Service (hereinafter "User Feedback"), Subscriber 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 Subscriber 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. Subscriber grants Psych Select license to use data and content it provides hereunder, and data about Subscriber's and its patients' use of the Service, for Subscriber's own business purposes, to the extent permitted by applicable law and so long as such uses do not competitively disadvantage Subscriber or compromise the privacy or security of confidential information of or about Subscriber or its patients. Use of Subscriber and patient information will be subject to the Terms.

11. 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. SUBSCRIBER BEARS THE ENTIRE RISK AS TO SELECTING THE SERVICE FOR SUBSCRIBER'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 12 (Limitation of Liability), Subscriber acknowledges and agrees that: (a)

Subscriber is using the Service at its own discretion and risk; (b) Subscriber is responsible for any and all decisions and conclusions made based on the data and output that results from use of the Service and all professional services it provides to its patients, including, without limitation, for all medical, treatment, and other patient care decisions; (c) Subscriber is solely responsible for obtaining all necessary informed consents and providing all notices required to be delivered to the patients in connection with care provided by Subscriber; and (d) neither Psych Select Software LLC nor any of its suppliers or licensors shall be responsible for any data or output that results from Subscriber'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 Subscriber.

12. 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, SUBSCRIBER 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) AND THE FEES PAID BY SUBSCRIBER UNDER THIS LICENSE (IF ANY). Some jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so this exclusion and limitation may not apply to Subscriber.

13. SUBSCRIBER INDEMNIFICATION. Subscriber 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) Subscriber's (including its employees' and agents') use of the Service; (b) a breach by Subscriber (including any of its employees and agents) of any terms of this Agreement; (c) Subscriber's (or its employee's or agent's) violation of any applicable laws or regulations; (d) any negligence, willful misconduct, or fraud by Subscriber (including any of its employees and agents); 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 Subscriber (including any of its employees and agents).

14. EXPORT CONTROLS & DISCLAIMER. Subscriber's right to use the Service is subject to all applicable export restrictions. Subscriber 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.

15. 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.

16. SECURITY OF PROTECTED HEALTH INFORMATION. Subscriber 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. Subscriber acknowledges that Psych Select is not responsible for violation of these laws or related regulations due to Subscriber's actions or circumstances outside of Psych Select's control. These actions and circumstances include, but are not limited to the failure of Subscriber or Subscriber's employees and agents 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 staff 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 Subscriber's own storage device in accordance with HIPAA; (g) ensure that all individuals who are granted access to PHI have a legitimate need for that information in order to conduct healthcare operations (as defined by HIPAA); (h) 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; (i) promptly report suspicious activity or misuse of the system to Psych Select for further investigation; and (k) cooperate with Psych Select to safeguard against such activity or misuse and to mitigate any harm arising therefrom.

17. PROTECTION OF PATIENT RIGHTS. In accordance with HIPAA, Subscriber may be subject to certain requirements related to health information that may be stored in or transmitted by the software provided by Psych Select. The obligations extending to Subscriber may include, without limitation: (a) providing individuals and with copies of patient health information subject in accordance with 45 C.F.R. §164.524 of the Privacy Rule; (b) providing individuals the opportunity to request amendment and to incorporate any amendments to the applicable records in accordance with 45 C.F.R. §164.526 of the Privacy Rule; and (c) provide individuals with an accounting of disclosures in of their protected health information in accordance with 45 C.F.R. §164.528 of the Privacy Rule. In accordance with 45 C.F.R. §164.504(e)(2)(ii) of the Privacy Rule, Psych Select provides Subscribers with tools and processes required to uphold these obligations. It is the policy of Psych Select not to intervene in the relationship between a clinical entity (or individual provider) and a patient, or to fulfill these or other similar responsibilities at the direct request of an individual. Subscriber is solely responsible for establishing and executing processes needed to comply with the standards specified by the Privacy Rule. Subscriber acknowledges that Psych Select is not responsible for Subscriber's compliance with any such requirements or for any violation of these laws or related regulations due to Subscriber's actions or circumstances outside of Psych Select's reasonable control.

18. STORAGE OF SUBSCRIBER DATA FOLLOWING TERMINATION. Upon termination of Subscriber's subscription, either by Psych Select or Subscriber, Psych Select will maintain, retain, and/or destroy all copies of Subscriber data residing in Psych Select's systems, in accordance with Psych Select's internal document management and retention policies, procedures, and practices and the following:

(a) Subscribers will be given restricted, read-only access to the system for a period of up to sixty (60) days after the effective date of termination to support Subscriber's data export and transition (the

“Transition Period”); such access will not allow Subscriber or Subscriber’s patients to use the Service to set appointments, submit insurance claims, record progress notes, or perform any other activities that involve the storage of new information in Subscriber's Account,

(b) At the close of the Transition Period, Subscriber shall have no access to Subscriber’s account, and Subscriber’s data, including all Protected Health Information received from or created or received by Psych Select on Subscriber's behalf, will be moved to encrypted storage outside of the TherapyAppointment system (“Archived Data”). Archived data is subject to additional security controls and may be automatically purged 365 days after termination of Subscriber's account access or otherwise in accordance with Psych Select’s internal policies, procedures, and practices (the “Archived Storage Period”),

(c) At any time during the Archived Storage Period, a Subscriber may submit a written request to expedite destruction of Subscriber’s data, which Psych Select may grant in its sole discretion,

(d) Data may be retrieved during the Archived Storage Period at Subscriber's written request; Psych Select reserves the right to charge a nominal fee for retrieving this data and to request additional identity verification prior to release;

(e) At the conclusion of the Archived Data Period, Psych Select will have no further obligation to maintain or provide access to Subscriber's data and may delete or destroy all remaining copies of the information in accordance with its internal applicable policies, procedures, and practices unless Subscriber has subscribed to a long-term data storage service offered by Psych Select,

(f) Psych Select will retain system and application logs and audit records necessary to maintain the integrity of the system as allowed for in 45 CFR 164.504(e)(3)(iii). Due to disaster recovery and business continuity requirements, Subscriber data may also be kept in system backups for a limited period following termination of Subscriber’s Account. All protections and guarantees of data security and privacy stated in the Terms, Business Associate Agreement, or applicable law will remain in effect for this data regardless of Subscriber's status.

19. PAYMENT FOR SERVICES AND TERMINATION FOR NONPAYMENT. Subscriber's payment for the Service, including the fee for the first month plus any additional "signup" fees, must be made prior to obtaining an Account. All payment terms can be found on the therapyappointment.com website. If the initial payment is made by a credit or debit card, subsequent renewal prepayments for a monthly subscription to the Service will be debited to this card account without additional notification except as may be required by law, and monthly debits will continue to occur until a request for termination of services is received. Subscriber hereby authorizes Psych Select to automatically charge Subscriber's credit or debit card on file for these payments when due. If the charge card used to prepay for services is declined for any reason, Psych Select will attempt to contact Subscriber via email at the email address Subscriber has recorded in Subscriber's account to inform Subscriber of the non-receipt of payment. If no payment is received within 15 calendar days of the date of the first email message, Subscriber's Account may be placed into a suspended status. While in this status, Subscriber may be granted access to patient information that Subscriber has previously entered, but Subscriber and Subscriber's patients will not be permitted to use the Service to set appointments, submit insurance claims, record progress notes, or perform any other activities that involve the storage of new information in Subscriber's Account. If non-payment is the only reason for suspension of service, the payment of past due amounts

will promptly restore Subscriber's full Account.

20. **MONEY BACK GUARANTEE.** If Subscriber has subscribed to use the Service for less than 30 days, Subscriber may request and receive a full refund of fees paid, provided that Subscriber has attended (via online "webinar" telepresence) a live demonstration of the features of the software and its proper use within that 30 day period. If more than 30 days have elapsed from the time of fee payment to the time of the request or if Subscriber has not attended a live Service demonstration, Subscriber is not eligible for a refund and no refund is due.

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

22. **MISCELLANEOUS.** The Terms constitutes the entire agreement between the Subscriber 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. Subscriber 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 Subscriber'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. Subscriber may not assign Subscriber'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	10/15/2018
-----------------	-----------------	------------------	------------

Last Review	8/6/2019	Annual Review by	8/31/2021
Reviewed By	Susan Whitehead	Serina Isch	
Revision History			
10/15/2018	Terms of Service Initialized (Changed from the previous EULA)		
8/6/2019	Updated details of data retention following termination of the use of application. Added mention of long-term data storage option. Clarified language throughout to make intent clear.		