

## **TERMS AND CONDITIONS OF SERVICE**

**EFFECTIVE DATE: DECEMBER 13, 2019.**

### **TERMS AND CONDITIONS OF SERVICE**

IMPORTANT – PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY USING THIS SITE, APP OR SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS AND YOU UNDERSTAND THE RIGHTS, OBLIGATIONS, AND CONDITIONS SET FORTH HEREIN AND AGREE TO BE BOUND BY THEM.

This is a legal agreement between you and Gardens Neurology PLLC (“Gardens Neurology”), a Florida professional limited liability company, and its authorized agents and affiliates (collectively, “Gardens Neurology”, “we”, “us” or “our”). You agree to be bound by these terms and conditions of service (these “Terms”) when you access or use any website, mobile application, or any service that is organized or provided by Gardens Neurology or which is used as a platform to provide you with certain services and consultations conducted by its physicians and/or clinical staff (your “Providers”). IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN YOU MAY NOT VISIT, DOWNLOAD, ACCESS OR USE THE WEBSITE, AND YOU MUST PROMPTLY UNINSTALL ANY APPLICATION FROM YOUR DEVICES.

#### **(A) Who May Use The Website.**

By using the Website, you represent that you are at least eighteen (18) years of age, and if you are not, you may only use the Website with the full and express consent of your parent or legal guardian, or else you must immediately stop using the Website. You acknowledge that your use of the Website contemplates our receipt and use of personally identifiable information relating to minors under the age of eighteen (18) years (“Minors”). If you are using the Website on behalf of a Minor, you represent that you are fully authorized to accept these Terms and use the Website on such Minor’s behalf, and to provide us with personal and health information about such Minor. Any other use is unauthorized and constitutes an infringement and violation of these Terms and of Gardens Neurology’ intellectual property and other rights.

#### **(B) Provision of Information.**

We may also require you to create and use an account with Gardens Neurology to use all or certain features of the Website. For instance, to access Providers for certain enhancements to the services provided by your Providers in First Choice Neurology (“Enhancements”), you may first establish an individual user account (an “Account”) by providing us with certain information. You agree that you will not create more than one Account, or create an Account for anyone other than yourself (with the exception of subaccounts established for minor children of whom you are a parent or legal guardian). You agree to provide true, accurate, current, and complete information when creating your Account and that you will update such information as needed thereafter. If you provide any information which is untrue, inaccurate, not current or incomplete, or if we have reasonable grounds to suspect that such Account information is untrue, inaccurate, not current, or incomplete, we reserve the right to suspend or terminate your Account and refuse to provide you any and all current or future use of the Website.

**(C) No Medical Advice; Not a Medical App.**

Our Website is not intended to function as medical advice. Gardens Neurology does not provide any health care services itself. You acknowledge and agree that Gardens Neurology is not engaged in the practice of medicine. Gardens Neurology shall not be liable for any professional advice you obtain from an outside medical provider, including one employed or engaged by First Choice Neurology, including but not limited to liability for medical malpractice. **IN THE EVENT OF ANY MEDICAL EMERGENCY OR OTHER EMERGENCY SITUATION, YOU WILL CONTACT A HOSPITAL, LOCAL 911 SERVICES, URGENT CARE PROVIDER OR YOUR OR YOUR MINOR'S PHYSICIAN.**

**(D) Scope of License.**

Gardens Neurology grants you a limited, personal, non-exclusive, non-transferable, revocable right to use the Website and features provided therein solely in connection with the purposes for which the Website was designed. You may download, view and/or run a copy of the Website on one or more of your mobile devices or computers, solely to use the features and information provided therein for the purposes for which they were designed. You agree that all features of the Website may not work well or at all on any device or computer.

**(E) Restrictions.**

You may not do any of the following: (1) copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Website, any updates, or any part thereof; (2) intercept, examine or otherwise observe any proprietary communications protocol used by the Website, whether through the use of a network analyzer, packet sniffer or other device; (3) use any type of bot, spider, virus, clock, timer, counter, worm, software lock, drop dead device, Trojan horse routing, trap door, time bomb or any other codes, instructions or third party software that is designed to provide a means of surreptitious or unauthorized access to, or distort, delete, damage or disassemble, the Website or any website, application or service organized or provided by Gardens Neurology or existing on any of our network hardware or infrastructure; (4) use the Website to institute, assist, or become involved in any type of attack, including denial of service attacks, upon any party; (5) commit trespass or act in a manner that intentionally burdens network capacity; (6) use the Website in any manner to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of any other party; (7) provide us sensor data (such as microphone, camera, fitness or other data) that you are not authorized to provide; or (8) engage in any other conduct that restricts or inhibits any person from using or enjoying the Website or that, in our sole judgment, exposes us or any of our users, affiliates, or any other third party to any liability, damages, or detriment of any type. Any attempt to do any of the foregoing is a breach of these Terms and automatically subjects you to any and all claims and liability available under the law, including without limitation contract breach and intellectual property infringement. If you breach any of these restrictions, you may be subject to prosecution and damages. These Terms will govern any upgrades provided by Gardens Neurology that replace and/or supplement the Website.

**(F) Privacy; Collection and Transmission of Data and Information.**

You agree that Gardens Neurology may collect, use and disclose information and data as described in the Privacy Policy and that is gathered periodically to facilitate the provision of software updates, product support and other services to you related to the Website or any of its features. When you provide information using the Website, that information may be transmitted over the internet to systems organized by Gardens Neurology or agents acting on its behalf. You hereby consent to all such transmissions and acknowledge that information exchanged over the Internet may in some cases be intercepted and read by third parties. Subject to the Privacy Policy, Gardens Neurology shall have no responsibility for any such interception.

You are solely responsible for the security of your Account username and password. You should not share your username and password with any third party or allow any third party to access the Website using your username and password. You agree to notify us if you have any reason to believe that your username or password has been lost, compromised, or misused in any manner. You will be solely and fully responsible for any damage to the Website or any computer system, any loss of data, or any improper use or disclosure of information on the Website caused by you or any person using your username or password. We reserve the right to revoke or deactivate your username and password at any time, for any reason or no reason.

**(G) Suspension; Termination.**

Gardens Neurology reserves the right to change, suspend, remove, disable or terminate access to the Website at any time without notice, for any or no reason, and with no liability or responsibility to you. Gardens Neurology may also impose limits on the use of or access to the Website, in any case and without notice or liability. These Terms and your license to use the Website are effective until terminated by you or Gardens Neurology. You may terminate your agreement with these Terms and your obligations hereunder by ceasing all use of the Website and deleting any mobile or other application related to the Website from each of your devices. If you fail to comply at all times with these Terms, your license to use the Website will terminate automatically and without any notice from Gardens Neurology, and your continued use after termination exposes you to legal liability to Gardens Neurology, which Gardens Neurology may pursue to the fullest extent permitted by law, including the pursuit of monetary damages or injunctive relief at our discretion. Upon any termination of the license, you shall cease all use of the Website and destroy all copies, full or partial, of the Website.

**(H) NO WARRANTY**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE WEBSITE IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. THE WEBSITE AND INFORMATION CONTAINED THEREIN IS PERFORMED OR PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. GARDENS NEUROLOGY MAKES NO, AND HEREBY DISCLAIMS ALL, WARRANTIES AND CONDITIONS WITH RESPECT TO THE WEBSITE, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO: IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY OR PERFORMANCE, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, CURRENCY OR COMPLETENESS OF INFORMATION, OF ACCURACY OR CURRENCY OF GEOLOCATION DATA, OF ACCURACY OR CURRENCY OF DRIVING OR TRANSPORTATION DIRECTIONS, OF QUIET ENJOYMENT, OF NON-INFRINGEMENT, OF FUNCTIONALITY, OF AVAILABILITY, OF NETWORK CONNECTIVITY AND TRANSMISSION, OF ABILITY TO ACCESS OR USE THE WEBSITE AT THE TIMES OR LOCATIONS OF YOUR CHOOSING, OF QUALITY OF TRANSLATIONS, OF NON-INTERFERENCE WITH YOUR ENJOYMENT OF THE WEBSITE, THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE WEBSITE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS IN THE WEBSITE WILL BE CORRECTED, OR THAT THE WEBSITE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY GARDENS NEUROLOGY OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE ANY WARRANTY. Gardens Neurology cannot and does not assume any responsibility for any loss, damages, or liabilities arising from the failure of any telecommunications infrastructure, or the internet, or for your misuse of any protected health information, advice, ideas, information, instructions, or guidelines accessed through the Website. Some jurisdictions do not allow the exclusion of certain implied warranties or limitations on

applicable statutory rights of a consumer, so certain of the above exclusions and limitations may not apply to you.

**(I) LIMITATION OF LIABILITY.**

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL GARDENS NEUROLOGY BE LIABLE FOR PERSONAL INJURY OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR SALES, LOSS OR CORRUPTION OF DATA, LOSS OF USE OF YOUR DEVICE, BUSINESS INTERRUPTION OR ANY OTHER DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE WEBSITE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF APPLICATION PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. GARDENS NEUROLOGY SHALL HAVE NO (ZERO) LIABILITY TO YOU IN CONNECTION WITH THESE TERMS OR THE WEBSITE, THE USE OF WHICH IS PROVIDED TO YOU FREE OF CHARGE.

**(J) Indemnification.**

You agree to indemnify, defend and hold harmless the Providers, Gardens Neurology, and its parents, owners, affiliates, subsidiaries, directors, officers, employees, agents, and business partners (collectively, the “Indemnified Parties”) from and against any and all claims, actions, proceedings and suits, and all related liabilities, damages, settlements, penalties, fines, costs and expenses (including, without limitation, reasonable attorney’s fees and other dispute resolution expenses) incurred by any Indemnified Party arising out of or relating to your violation or breach of these Terms or misuse of the Website. We reserve the right to assume the exclusive defense of any claim for which we are entitled to indemnification under this Section. In such event, you shall provide us with such cooperation as we reasonably request.

**(K) Third Party Content, Services and Materials.**

The Website may (1) enable access to services, web sites or platforms (including social media platforms) organized or provided by third parties, or (2) display, include or make available content, data, information, applications or materials from third parties or provide links to certain third party web sites (“Third Party Materials”). Third Party Materials and links to other web sites are provided solely as a convenience to you. By using the Website, you acknowledge and agree that Gardens Neurology is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, language availability, appropriateness, availability or any other aspect of such Third Party Materials. You are responsible for complying with applicable laws and website and online policies for all sites or platforms when you view or use the Website and any Third Party Materials, and also when you use sharing features of the Website to post or share certain content or links on third party platforms. GARDENS NEUROLOGY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES REGARDING THIRD PARTY MATERIALS. WE DO NOT ENDORSE OR ASSUME ANY LIABILITY OR RESPONSIBILITY TO YOU OR ANY OTHER PERSON FOR ANY THIRD PARTY MATERIALS.

Use of all features of the Website may require an Internet access plan, a phone plan, or other third party connectivity service plans, and you are bound by the terms of service of any such third party service plan. Gardens Neurology does not provide any such service plans and has no responsibility for any such plan.

Although Gardens Neurology does not intend for the Website to contain objectionable content, you understand and acknowledge that by using any of the Websites, you may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. Nevertheless, you agree to use the Website at your sole risk and that Gardens Neurology shall not have any liability to you for content that may be found to be offensive, indecent, or objectionable.

**(L) Ownership.**

The Website is licensed and not sold. Gardens Neurology reserves all rights not expressly granted to you by these Terms. The information, text, content, images, videos, data, look and feel, color scheme, logos, and all other material contained on this website are subject to copyright, patent, trademark and other intangible rights protection. You may not use such material except as part of the Website and in accordance with these Terms. No portion of the Website may be reproduced in any form or by any means, except that you may use sharing features available from within the Website (but only to the extent facilitated by such sharing feature). We do not grant you any other rights to such material.

**(M) User Provided Content; Feedback.**

The Website may provide you with an opportunity to submit text or ideas, including question submissions, cover letters, resumes, feedback about the Website, customer service interactions, and any other text, images, ideas or other content and material that you provide (“User Feedback”). You hereby grant us a nonexclusive, worldwide, perpetual, irrevocable, unlimited, fully paid up, royalty-free, transferable, assignable and sublicensable right and license to use and exploit the User Feedback in any manner, in any medium now or hereafter discovered, and for any and all commercial or non-commercial purposes, including modifying and preparing derivative works thereof which Gardens Neurology shall exclusively own. Except as otherwise provided herein or as prohibited by applicable law, Gardens Neurology may use the User Feedback without any duty to provide notice to, obtain the consent of, account to or otherwise be subject to any obligation or duty to you. You irrevocably and forever release and discharge Gardens Neurology and its employees and agents from any and all claims relating to our use of the User Feedback, including any and all attribution or other rights known as “moral rights”.

**(N) Governing Law.**

The laws of the State of Florida (other than rules that would apply the law of other states) govern these Terms and your use of the Website. Your use of the Website may also be subject to other local, state, national, or international laws. The exclusive jurisdiction and venue for any actions that you bring against Gardens Neurology relating to your use of the Websites shall be the courts located in or having jurisdiction over Palm Beach County in the State of Florida. YOU AGREE TO WAIVE YOUR RIGHT TO A JURY TRIAL. UNLESS PROHIBITED BY YOUR JURISDICTION, YOU HEREBY WAIVE ANY RIGHT YOU MAY HAVE TO JOIN OR CONSOLIDATE YOUR CLAIMS AGAINST GARDENS NEUROLOGY WITH THE CLAIMS OF THIRD PARTIES.

**(O) Amendments.**

Gardens Neurology may update these Terms at its discretion and from time to time. It is your responsibility to review these Terms fully and to continue using the Website only if you agree to these Terms. Gardens Neurology may notify you of minor updates to these Terms via email or web notification, and for more significant changes, we may require you to accept such change by a click or other action before you are permitted to continue using the Website (for example, via a pop-up screen or popover

message). Your continued use of the Website constitutes your consent to all amendments made to these Terms, and you must consent to all updates in order to continue using the Website.

**(P) Contact; Miscellaneous.**

If you have questions or requests regarding these Terms, you may direct them to us by calling our office at 561-799-2831. These Terms may not be used or reproduced without our prior written consent.