

Welcome to Garder, a software app owned by Backflow Software Solutions, Inc. (**'BSS', 'we', 'our' or 'us'**). These Terms of Service (**the 'Terms of Service' and/or 'Terms'**) contain legal terms and conditions that govern your use and access to the Garder App and [www.bssbr.net](http://www.bssbr.net) (**'Site'**) as well as our Agents, Software, Documentation, Forums and Content (the Site and the Services are referred to as the **'Services'**).

By using Garder, clicking on the 'I Agree' Button, completing the registration process, and/or browsing the Site or downloading any of our Agents, you represent that (1) you have read, understand, and agree to be bound by the Terms of Service, (2) you are of legal age to form a binding contract with BSS, and (3) you have the authority to enter into the Terms of Service personally or on behalf of the company or other organization you have named as the user, and to bind that entity to these Terms of Service. In the event you are agreeing to these Terms on behalf of a company or organization, **'you'** and **'your'** will refer to the entity you are representing.

- 1. General Terms.** These Terms constitute the entire and exclusive agreement between BSS and you with respect to the Services and supersede and replace any other agreements, terms and conditions applicable to the Services. These Terms create no third party beneficiary rights. BSS's failure to enforce a provision is not a waiver of its right to do so later. If a provision is found unenforceable the remaining provisions of the Agreement will remain in full effect and an enforceable term will be substituted reflecting our intent as closely as possible. You may not assign any of your rights in these Terms, and any such attempt is void, but BSS may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with the Services. You and BSS are not legal partners or agents; but rather we have an independent contractor relationship. BSS will not be responsible for any failure to perform or delay in performing any of its obligations under these Terms where and to the extent that such failure or delay results directly or indirectly from an event beyond BSS's reasonable control.
- 2. Suspension of Services.** BSS may choose to modify, suspend or discontinue the Services including any portions of the Services as we update our offerings and add more features. We may stop, suspend, or modify the Services at any time without prior notice to you.
- 3. Modification of Terms.** BSS may update these Terms on occasion. When changes are made to Garder Software, BSS will make a new copy of the Terms available at the Site. Any changes to the Terms will be effective immediately for new users of Garder and, for all other users, any changes to the Terms will be effective thirty (30) days after posting changes. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using Garder. Otherwise, your continued use of Garder constitutes your acceptance of such change(s).

4. **Use of Garder.** Subject to compliance with these Terms of Service, BSS grants to you a limited, non-exclusive, non-transferrable, non-sub licensable right to: (i) access and use Garder for your internal business purposes; (ii) use the Documentation in support of such access and use of Garder; otherwise specified by BSS in a separate license, your right to use Garder is subject to the Terms.
5. **Updates.** You understand that Garder is evolving. As a result, BSS may require you to accept updates to Garder that you have installed on your mobile device. You acknowledge and agree that BSS may update Garder with or without notifying you.
6. **Free Trials and Other Promotions.** Any free trial or other promotion that provides you with free access to Commercial Services (defined below) must be used within the specified time of the trial. At the end of the trial period, your use of that Commercial Service will expire and any further use of such Commercial Service is prohibited unless you pay the applicable fees.
7. **Fees.** Fees paid to BSS constitutes an agreement to obtain a license. This license allows a user access to Garder. All pricing and fees are quoted in United States Dollars. All fees are to be paid in United States Dollars.
8. **Availability of the Services.** Information describing the Services is accessible worldwide but this does not mean the Services, or certain portions of the Services, are available in your country. We may restrict access to portions of the Services in certain countries. It is your responsibility to make sure your use of the Services is legal in the country where you reside. The Services may not be available in all languages. If at BSS's reasonable determination, you are using Garder in a manner that violates laws, creates an excessive burden or potential adverse impact on BSS's systems; in addition to any of its other rights or remedies, BSS may (without liability) suspend your access to Garder.
9. **Accounts.** In registering for the Services, you agree to (1) provide true, accurate, current and complete information about yourself as prompted by our registration form ('**Registration Data**'); and (2) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are not a person barred from using Garder under the laws of the United States, your place of residence or any other applicable jurisdiction. You agree not to create an account using a false identity or information. You agree not to create an account or use Garder if you have been previously removed by BSS, or if you have been previously banned from using Garder. It is your responsibility to safeguard the login and password that you use to access the Services and the Forums and you agree not to share your login and password with any third party including not sharing your login amongst two or more users. You are responsible for any activity originating from your account, regardless of whether such activity is authorized by you. You should notify BSS immediately of any unauthorized use of your account.

- 10. Data.** Use of the Services may depend on your transmission of certain data ('**Data**') you retain all rights and ownership in your Data. We do not claim any ownership rights in your Data. You represent and warrant that you have the necessary rights and licenses required to provide your Data to Garder in connection with your use of the Services and that by providing your Data in this manner, you will not violate any intellectual property rights of third parties, confidential relationships, contractual obligations or laws. Without limiting the generality of the foregoing, you shall provide all notices to, and obtain any consents from, any data subject as required by any applicable law, rule or regulation in connection with the processing of any personally identifiable information of such data subjects via the Services by Garder and/or you. You shall be solely responsible for ensuring that any processing of Data by Garder and/or you via the Services does not violate any applicable laws
- 11. Garder Software Proprietary Rights.** Except with respect to your Data and your User Content (defined below), you agree that Garder and our suppliers own all rights, title and interest in the Garder Properties and Content. Garder and other technology that may be used to provide the Services are protected by copyright, trademark, and other laws of both the United States and foreign countries. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Garder. These terms do not grant you any right, title, or interest in any of the Garder or any Content other than your Data and your User Content. These Terms do not grant you any rights to use the Garder trademarks, logos, domain names, or other brand features.
- 12. Commercial Services.** BSS offers several types of paid Services subject to Supplemental Payment Terms ('**Commercial Services**'). Commercial Services are listed on BSS's product information page available at [www.bssbr.net/products](http://www.bssbr.net/products)
- 13. Support.** Technical support is only provided to users of Commercial Services based on your specific purchased Service.
- 14. Account Owners.** You may specify end users as "Administrators" through the administrative console of the Services. Administrators may have the ability to access, disclose, restrict or remove Data in or from Services accounts. Administrators may also have the ability to monitor, restrict, or terminate access to Services accounts for their end users. BSS's responsibilities do not extend to your internal management or administration of the Services. You are responsible for: (I) maintaining the confidentiality of your account and any Administrator accounts; (ii) managing access to Administrator accounts; and (iii) ensuring that Administrators' use of the Services complies with this Agreement.
- 15. Unauthorized Use & Access.** You will prevent unauthorized use of the Services by your Administrators and your end users and terminate any unauthorized use of or access to the Services. You will promptly notify BSS of any unauthorized use of or access to the Services.

- 16. Third Party Technology.** The Services may contain links to third party websites or technology (for example, we may host a library of plugins created by entities other than BSS) ('**Third Party Technology**'). BSS does not endorse and is not responsible or liable for the products or services provided by such third parties. BSS is not responsible for the operation or functionality of such Third Party Technology. You are solely responsible for your use of any Third Party Technology. In addition, we may provide you with software governed by an open source license. If there are provisions in those open source licenses that expressly conflict with these Terms, the relevant open source license terms will apply. ANY THIRD PARTY TECHNOLOGY DOWNLOADED OR OTHERWISE OBTAINED IN CONNECTION WITH YOUR USE OF GARDER IS DONE SO AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR AND HEREBY WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGE TO YOUR COMPUTER SYSTEM, INTERNET ACCESS, DOWNLOAD OR DISPLAY DEVICE, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH THIRD PARTY TECHNOLOGY.
- 17. Indemnification.** You agree to indemnify and hold BSS, its parents, subsidiaries, affiliates, officers, agents, employees, resellers or other partners and licensors harmless from any claim, demand, loss, or damages Including reasonable attorneys' fees, arising out of or related to your Data, or the use thereof Including but not limited to allegations that any processing of your Data by Garder and/or you under this Agreement violates any applicable law or regulation, or infringes the privacy or intellectual property rights of a third party, your User Content, your use of Garder, your violation of these terms, or your violation of any law.
- 18. The Service is Available 'AS-IS' AND WITHOUT WARRANTY.** BSS PROVIDES GARDER 'AS IS' AND ON AN 'AS AVAILABLE' BASIS. YOUR USE OF GARDER IS AT YOUR OWN RISK. BSS PROVIDES GARDER WITHOUT EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND. WE ALSO DISCLAIM ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. BSS makes no warranty or condition that Garder will meet your requirements or be uninterrupted, timely, secure or error-free. BSS makes no warranty or condition that results obtained from your use of Garder will be accurate or reliable or that any errors in Garder will be corrected. BSS will have no responsibility for any harm to your computer system, loss or corruption of data, or other harm that results from your access to or use of Garder. No advice or information, whether oral or written, obtained by you in connection with your use of Garder shall create any warranty not expressly stated in these Terms. FROM TIME TO TIME, BSS MAY OFFER NEW 'BETA' FEATURES OR TOOLS WITH WHICH USERS MAY EXPERIMENT. SUCH FEATURES OR TOOLS ARE OFFERED SOLELY FOR EXPERIMENTAL PURPOSES AND WITHOUT ANY WARRANTY OR CONDITION OF ANY AND MAY BE MODIFIED OR DISCONTINUED AT ANY TIME AT OUR SOLE DISCRETION. THE PROVISIONS OF THIS

SECTION APPLY WITH FULL FORCE TO SUCH FEATURES AND TOOLS. Some states do not allow the types of disclaimers in this paragraph, so they may not apply to you.

**19. Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL GARDER, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS) DAMAGES, REGARDLESS OF LEGAL THEORY, WHETHER OR NOT BSS HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BSS'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THE SERVICES, THE SITE, THE AGENTS AND THE FORUMS WILL AT ALL TIMES BE LIMITED TO THE GREATER OF FIFTY U.S. DOLLARS (U.S. \$50) OR THE AMOUNTS YOU PAID TO BSS IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN BSS AND YOU. Some states do not allow the types of limitations in this paragraph, so they may not apply to you.

**20. Termination.** We reserve the right to suspend or cease providing Garder or any portion of Garder, at any time, with or without cause, and with or without notice. We may suspend or terminate your use of Garder if you are not complying with these Terms, or if you use the Services in any way that could cause us legal liability or disrupt others' use of the Services. If you want to terminate the Services at any time, you may do so by (a) notifying Garder and (b) closing your account for the Services that you use. Your written notice should be sent to Garder's address set forth in the Notice section below or to: [garder@bssbr.net](mailto:garder@bssbr.net).

**21. Effect of Termination.** Termination of any Service includes removal of access to such Service and barring of further use of the Service. Termination of all Services also includes deletion of your password and all related information, files, backflow test information, and data associated with or inside your backflow testing account including your Data. Upon termination of any Service, your right to use such Service will automatically terminate immediately. You understand that any termination of Services may involve deletion of your Data associated therewith from our live databases. BSS will not have any liability whatsoever to you for any suspension or termination including for deletion of your Data. All provisions of these Terms, which by their nature should survive, shall survive termination of Services including without limitation ownership provisions, warranty disclaimers and limitations of liability.

**22. Electronic Communications** The communications between you and Garder use electronic means, whether you visit the Garder or send us e-mails, or whether we post notices on the Garder or communicate with you via e-mail. For contractual purposes, you (a) consent to receive

communications from us in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. Your consent in this section does not affect your statutory rights.

- 23. Notice.** Where Garder requires that you provide an e-mail address, you are responsible for providing us with your most current e-mail address. In the event that the last e-mail address you provided to us is not valid, or for any reason is not capable of delivering to you any notices required/permitted by the Terms, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to us at the following address: Backflow Software Solutions, Inc. 799 Gardere Ln., Baton Rouge, LA 70820.
- 24. Government Use.** If you are a U.S. government entity, you acknowledge that any Services provided are "Commercial Items" as defined at 48 C.F.R. 2.101, and are being provided as commercial computer software subject to the restricted rights described in 48 C.F.R. 2.101 and 12.212.
- 25. Governing Law.** The Terms, and any action related thereto, will be governed and interpreted by and under the law of the State of Louisiana, without giving effect to any principles that provide for the application of the law of another jurisdiction.
- 26. Copyright Infringement** Garder respects the intellectual property rights of others and we expect our users to do the same. We respond to notices of copyright infringement consistent with the Digital Millennium Copyright Act ('DMCA'). If you believe that your work has been infringed in connection with the Services or access to your content was disabled or removed by Garder as a result of an improper copyright infringement notice, please contact us at: [garder@bssbr.net](mailto:garder@bssbr.net).

Our designated agent for notice of alleged copyright infringement is:

Elise M. Stubbe  
Hardy, Carey, Chautin & Balkin LLP  
1080 West Causeway Approach, Mandeville, LA 70471-3036  
(985) 629-0777