

TERMS AND CONDITIONS FOR USE OF PNYX SERVICE

This is a legal agreement ("Agreement") between you (and your organisation) and Pnyx Pty Ltd ACN 161 619 567 ("Pnyx"). By completing the Registration Form and using any of the Services (as defined below), you become a user and agree to, and are bound by, the terms and conditions of this Agreement for as long as you continue to use the Services.

This Agreement is subject to change by Pnyx in its sole discretion at any time, and any such changes will be posted on our Website. Your continued use of our Services after the posting of revisions to this Agreement will constitute your acceptance of such revisions.

1. ABOUT PNYX

- 1.1. Pnyx is an integrated, client-centred Case Management platform, specifically developed for community care agencies with the direct participation of carers.
- 1.2. The services are the provision of case management social business software (System) for community care organisations ("the Service"). The System is offered via the Internet in a 'software as a service' model. Your employees, service providers, their Clients and their carers can create and store records relevant to the Client and manage and communicate interactively in a secure and private environment.
- 1.3. The Services enable healthcare professionals and community service providers to develop a plan, discuss service options, schedule appointments, record service events, and keep track of progress, engaging the Client, their guardian and their carer in a collaborative way.
- 1.4. The System is hosted on the cloud.
- 1.5. By using the Service you confirm that you agree to be bound by the terms of this Agreement and Pnyx Privacy Policy contained on this Website ("Privacy Policy").

2. CREATING AN ACCOUNT WITH PNYX

- 2.1. In order for Pnyx to provide you the Service, you are required to register your profile, which involves creation of an Account. Registration can be only be done through Pnyx's online registration form on the Website ("Registration Form").
- 2.2. The minimum information you are required to provide Pnyx for creation of an Account are your full legal name, the name of your organisation, your ABN, street address, email address and contact number. You warrant to Pnyx that the information that you provide is true and accurate.
- 2.3. By completing the Registration Form
 - (a) you warrant to Pnyx that you are duly authorised by your organisation to enter into this agreement with Pnyx
 - (b) You agree to acquire from us and we agree to provide to you the Services in accordance with this agreement .
- 2.4. Following completion of the Registration Form, you will be provided with a unique Account Name ("the Account"). You will require your Account Name and password to access the Service.
- 2.5. Each Account Holder can create unlimited number of Users to view and access the Account.
- 2.6. Depending on the User level of access and the document, you are able to create, read, update or delete a document on the System, in accordance with your preferences.

3. PROVISION OF SERVICES

- 3.1. We will use reasonable skill and care in providing the Services to you.
- 3.2. We will comply with all applicable laws, in connection with providing the Services under this agreement, including any relevant privacy laws.
- 3.3. We will ensure that sufficient capacity is at all times maintained to enable you to access and use the Services.
- 3.4. We will use all reasonable efforts to ensure that any system downtime attributable to upgrades or maintenance activities does not prevent access by you to, or your use of, the Services.

4. TERM

- 4.1. This agreement:
 - (a) commences upon completion of the Registration Form; and
 - (b) will continue until it is terminated by either party in accordance with clause 14.
- 4.2. During the course of this agreement, we may, at our discretion, revise any of the terms contained in this agreement by providing you with thirty days written notice of the changes.

5. PAYMENT OF FEES

- 5.1. Each Account Holder has a Credit Account with Pnyx ("Pnyx Account"), which is the running balance of the pre-paid credit that you have paid Pnyx ("Credits") either by credit card or by electronic transfer into Pnyx nominated bank account.
- 5.2. If you choose to make payment by credit card:
 - (a) you warrant to Pnyx that you are the/an authorised user of the credit card; and
 - (b) you irrevocably authorise Pnyx to debit the specified amount from the credit card.
- 5.3. All users can access both the Free Service and the Paid Service contained in the Schedule.
- 5.4. To access the Paid Service, you must have sufficient Credit in your Pnyx Account to pay for the charges associated with the Paid Services that you have selected. The charges associated with the Paid Service will be debited against your Pnyx Account.
- 5.5. To continue using the Paid Service, you must have sufficient Credit in your Pnyx Account to meet the required ongoing monthly charges associated with your Paid Services, failing of which your access to the Paid Service will cease immediately.
- 5.6. If, at the time of registration, you have selected the Optional Features, then such features will only become available when you have deposited the required Credits into your Pnyx Account. To continue using the Optional Features you must ensure there is sufficient Credit in your Pnyx Account to meet the required ongoing charges associated with your Optional Features, failing of which your access to the Optional Features will cease immediately.
- 5.7. All paid Credits are non-refundable in whole or in part.
- 5.8. At your request in writing, Pnyx can transfer all or any of your Credits to other Users of the Service.

6. YOUR OBLIGATIONS

- 6.1. To provide the Services, we require your timely co-operation, including:
 - (a) providing in a timely fashion all information, documents and access to equipment, systems and premises that we reasonably require; and
 - (b) arranging access to your Personnel (where applicable).
- 6.2. You must:
 - (a) comply with any Pnyx policies placed on the Pnyx website, or otherwise notified to you, and all applicable laws, regulations, rules and standards in connection with this agreement;
 - (b) keep confidential and secure all passwords required for accessing the Services;
 - (c) ensure, where relevant, that your Personnel comply with the terms of this agreement;
 - (d) not use the Services for any purpose other than your legitimate internal business purposes;
 - (e) not attempt to gain unauthorised access to the Services or our systems or networks;
 - (f) not use the Services to send any spam or unsolicited electronic mail messages to anyone;
 - (g) not provide false identity information in order to access or use the Services;
 - (h) not enter incorrect, false or misleading or deceptive data, files, documents, information or records in the System;
 - (i) not use the Services for any purpose except the purpose they are designed for, including not using the Services to test the vulnerability of any part of the Services;
 - (j) ensure that you own or are licensed to use all data, files, documents, information or records you store or process on the System;
 - (k) not misuse, tamper with, damage, hinder the operation of or make unauthorised modifications to the Services; or
 - (l) not knowingly transmit any bug, virus or other disabling feature to or through the Services, or do anything which diminishes or has negative impact on the user experience for any of our other customers.
- 6.3. You acknowledge that the Services are provided over the internet and we therefore do not guarantee (but will use our best efforts to ensure) that they will be uninterrupted, error free and protected against malicious or harmful code or activities of third parties.

7. CIRCLES AND OTHER FEATURES IN THE SCHEDULE

- 7.1. Circles contain certain information, data, files and records, or content, which relate to a Client. More than one Circle can be created in respect of a Client.
- 7.2. No charges will be incurred if you access a Circle simply to view its content (the Free Service as set out in the Schedule).
- 7.3. If you access the Circle for a purpose other than strictly limited to the functionality offered under the Free Service (e.g. to create, edit or delete a Progress Note in the Circle's Timeline), then you are deemed to have selected a Paid Service and your charges will be calculated as follows:
 - (a) You will be charged only once per month for a specific Circle, regardless of the number of users using the

Paid Services on that given month

- (b) The charges associated with the Circle commences on the 1st day of each month and ends on the last day of that month.
 - (c) the charges are calculated on a "per Circle" basis. For example, if you have 3 different Circles for the same Client (say "Bob"), then you will be charged \$21/month (3 x \$7/month) to access all 3 Circles for Bob'
- 7.4. Other Pnyx customers may also be allowed to view the content of that Circle and Access the same Circle, and therefore you are in the position to share your organisations' files and records.

7.5. INVOICING AND PAYMENT SUMMARIES

- 7.6. You will be issued with an invoice when you purchase Credits in your Pnyx Account.
- 7.7. At your request, we can provide you with a summary of your usage of the Paid Services.
- 7.8. Except as otherwise provided in this agreement, all payments under or in connection with this agreement must be made without set-off, counter-claim or deduction.
- 7.9. The consideration payable for any supply under this agreement is exclusive of any goods and services tax (GST).

8. MINIMUM SERVICES AVAILABILITY

- 8.1. It is Pnyx's aim to provide an excellent Service and user experience, to add value to your organisation and help you provide your services in better way.
- 8.2. We will provide the Services in accordance with the Minimum Services Availability.
- 8.3. To the extent the Minimum Services Availability are not met, we may, but need not, at our sole discretion provide a credit or other benefit to you in a manner we see fit.
- 8.4. The periods during which the Services are unavailable as a result of or in connection with the following events are not to be counted in calculating whether we have achieved the Minimum Services Availability:
 - (a) reasonable scheduled maintenance windows;
 - (b) Force Majeure Events;
 - (c) suspension of the Services by us due to any security threat;
 - (d) suspension of the Services by us due to multiple incorrect password attempts;
 - (e) any unauthorised or illegal action or omission of you or any third party, including any internet service provider, hacker or electricity provider; and
 - (f) failure of your hardware or software.

9. LIABILITY

- 9.1. Subject to any condition, warranty or right implied by law which cannot lawfully be excluded by agreement:
 - (a) we give no warranties, and you have no other rights, apart from those, if any, expressly set out in this agreement; and
 - (b) all implied conditions, warranties and rights are excluded.
- 9.2. To the extent permitted by law, we do not give any warranty of reliability, quality, fitness for purpose, merchantability or accuracy nor accept any responsibility arising in connection with any errors in, or omissions from the Services, except as set out in this agreement.
- 9.3. Where any condition, warranty or right is implied by law and cannot be excluded, we limit our liability for breach of that implied condition, warranty or right, in connection with the supply of Services to one of the following, as we may determine:
 - (a) the supplying of the Services again; or
 - (b) the payment of the costs of having the Services supplied again.
- 9.4. We are not liable to you in respect of any:
 - (a) indirect or consequential loss or damage;
 - (b) loss of profits, reputation, business, goodwill, customers or labour costs;
 - (c) deletion, correction, destruction, corruption, damage, accuracy of any data back ups, whether of a direct, indirect or consequential nature in respect of any records;
 - (d) negligence, wilful or fraudulent act or omission by you;
 - (e) suspension of the Services by us due to any security threat;
 - (f) suspension of the Services by us due to multiple incorrect password attempts;
 - (g) losses due to the interruption of or errors in respect of the Services;
 - (h) malicious or harmful code or activities, unauthorised or illegal actions or omissions of any third party, including any internet service provider, hacker or electricity provider; or
 - (i) failure of your hardware or software, arising under or in connection with this agreement.
- 9.5. Our aggregate liability for loss to you is limited to the aggregate of the Credit spent by you on the Paid Services

in the month (or part thereof) preceding the event giving rise to the loss.

9.6. Despite clause 10.5, nothing in this agreement limits our liability under clause 12.3.

9.7. You indemnify us for any loss or damage caused by the Users that you have nominated under Your Account, including loss or damage caused by the User's negligence, fraud, default or breach of a Pnyx policy, or a breach of a term of this agreement (as if that User was a party to this agreement).

10. SECURITY

10.1. We will maintain the security of our systems.

10.2. As soon as we become aware of a breach of our security that may affect you in a material way, we will notify you.

11. CONFIDENTIALITY AND PRIVACY

11.1. Each party acknowledges and agrees that all information which is provided to it by the other party in connection with this agreement is confidential information for the purposes of this agreement. A party must maintain as confidential, and protect and preserve the confidentiality of, the confidential information of the other party. A party may only use the other party's confidential information for the purpose of carrying out its obligations under this agreement.

11.2. A party is not obliged to maintain as confidential, information:

(a) for which it has obtained from the disclosing party prior written approval to disclose;

(b) which is already in the public domain, other than as a result of an unauthorised disclosure in breach of this agreement;

(c) which it can prove was known to it at the time of disclosure by the disclosing party; and

(d) which it is required by law, a securities exchange or regulatory authority to disclose.

11.3. We will ensure that any personal information that you supply to us will be treated in accordance with all applicable privacy laws.

11.4. Upon your request we will provide you with a copy of the latest versions of all your Records free of charge. Any extra information which you request (and we agree to provide to you) would be provided subject to you paying our reasonable costs.

12. INTELLECTUAL PROPERTY

12.1. We warrant that:

(a) in providing the Services to you, we will not infringe the Intellectual Property Rights or Moral Rights of any person;

(b) we have the right to supply the Services; and

(c) use of the Services by any person in accordance with this agreement will not infringe the Intellectual Property Rights of any person.

12.2. If a notice is received by either party (which must promptly be notified to the other party) of a claim that use of any of the Services infringes the Intellectual Property Rights of a third party, we must:

(a) procure the right to continue to use those allegedly infringing Services in Australia; or

(b) replace or modify the allegedly infringing Services in order to make those Services noninfringing in Australia.

12.3. We must:

(a) provide, at our own cost, all assistance required by you to defend any claim that the Services or their use infringes the Intellectual Property Rights of any person (Claim) or any proceedings arising from any Claim (Proceedings);

(b) indemnify you against all Losses that you may sustain or incur as result of a Claim or Proceedings; and

(c) satisfy any settlement or judgement given in any Claim or Proceedings.

12.4. Except for any information that you provide to us under this agreement (including data), you agree that all Intellectual Property Rights in the Services, including any information, software and tools accessed via the Services, will be vested in us or our third party licensors.

12.5. The Services do not convey to you any right or licence to use any business name, product name, logo or trademarks, including those of any of our third party licensors.

12.6. You must not:

(a) copy, reproduce, modify, reverse engineer, make any derivative works, disassemble, decompile, transmit or communicate to the public the Services, any information in relation to our networks, or any of our or our third party licensors' information, software and tools accessed via the Services; or

(b) rent, lease, sub-licence, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available the Services to any third party, without our prior written consent.

12.7. We grant you, and the Users you have nominated under Your Account, a non-exclusive, non-transferable

- licence for the term of this agreement to use our Intellectual Property Rights for the purpose of this agreement.
- 12.8. You acknowledge and agree that neither you nor your Users have any proprietary right in any of our Intellectual Property Rights, and that nothing in this agreement constitutes a transfer of those rights. All rights and interests in any new Intellectual Property Rights developed in respect of the Services or System belong to us, and you agree to assign to us (or will ensure that the Users you have nominated under Your Account assigns) those new Intellectual Property Rights as soon as those rights come into existence.
13. TERMINATION
- 13.1. If a party is in material breach of any of its obligations under this agreement and does not remedy the breach after receiving 7 days notice in writing from the other party to do so, then the nondefaulting party may terminate this agreement by giving written notice of termination to the defaulting party, which will be effective immediately unless otherwise stated in the notice.
- 13.2. Either party may terminate this agreement at any time by giving written notice to the other party if an Insolvency Event occurs in relation to such other party.
- 13.3. Either party may terminate this agreement without cause upon giving 30 days' notice in writing to the other party. All accrued charges and expenses incurred by us up to the date of termination remain payable to us.
- 13.4. We may, at our absolute discretion, terminate this agreement by giving you 30 days' notice if you have not used any of the Paid Service for 3 consecutive months. If there is any remaining Credits in Pnyx Account at the time of termination, you can assign those Credits to other Organisations.
- 13.5. On termination of this agreement, and upon your request, we will provide you with a copy of the latest versions of all your Records free of charge. Any extra information which you request (and we agree to provide to you) would be provided subject to you paying our reasonable costs.
- 13.6. We reserve the right to retain a copy of your Records for purposes such as sharing the Records between other involved organisations. If there are no other users sharing the documents, we will delete or de-identify the records within a reasonable period of time.
- 13.7. Clauses 12 and 13 will survive termination of this agreement.
14. FORCE MAJEURE
- 14.1. A party is not liable for any failure to observe its obligations under this agreement (other than any failure to pay any amount of money) where such failure is due to a Force Majeure Event.
- 14.2. Where the Force Majeure Event prevents a party from performing a material obligation under this agreement for a period in excess of 45 days, then the other party may by notice terminate this agreement, which will be effective immediately, unless otherwise stated in the notice.
15. DISPUTES
- 15.1. The parties will use reasonable efforts to resolve any dispute which arises between them under this agreement, by mediation or any of the other recognised methods of alternative dispute resolution, before commencing court proceedings to resolve that dispute. A party may seek urgent interlocutory relief in connection with any dispute.
16. ASSIGNMENT
- 16.1. We may assign this agreement on providing notice to you.
- 16.2. You may assign this agreement on obtaining our written consent.
17. SUBCONTRACTORS
- 17.1. We may subcontract the performance of all or any part of our obligations under this agreement to another person chosen by us.
- 17.2. We are not relieved from any of our liability or obligations under this agreement and that we will be liable to you for the acts, defaults and omissions of any subcontractor or any employee or agent of the subcontractor as if they were our acts, defaults or omissions.
18. INSURANCE
- 18.1. We will, at all times, maintain appropriate product and indemnity insurance for the Services, and provide evidence of currency of this insurance if requested by you.
19. ENTIRE AGREEMENT
- 19.1. This agreement records the entire agreement between the parties and supersedes all previous negotiations, understandings, representations and agreements in relation to its subject matter.

20. NOTICES

- 20.1. Any notice given in connection with this agreement must be in writing and must be addressed to a party and hand delivered to, or sent by post, or email to, the party's registered office or principal place of business for the time being or at any other address notified for the purpose of the service of notices.
- 20.2. A notice is taken to have been given, in the case of being hand delivered, on the date on which it is delivered; in the case of being sent by post, on the third day after the date of posting; and, in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

21. VARIATION

- 21.1. No provision of this agreement nor a right conferred by it can be varied except in writing signed by the parties.

22. SEVERABILITY

- 22.1. If any part of this agreement is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.

23. RELATIONSHIP OF PARTIES

- 23.1. Except as expressly provided:
- (a) nothing in this agreement constitutes a partnership between the parties or makes a party an agent of the other party for any purpose; and
 - (b) neither party can in any way or for any purpose bind the other party or undertake or accept any obligation or benefit on behalf of or in the name of the other party.

24. TIME

- 24.1. A reference to time in this agreement is to the time in Sydney, Australia. References to months are to calendar months.

25. GOVERNING LAW

- 25.1. This agreement is governed by the laws of New South Wales. The parties submit to the jurisdiction of the courts of New South Wales.

26. DEFINITIONS

- **Business Hours** means the hours between 8.30am and 5.30pm on a day that is not a Saturday, Sunday or public holiday in New South Wales.
- **Charges** means the fees and charges associated with the Paid Service and Optional Features in the Schedule.
- **Circle** means the individual online profile and storage area relating each Client on the System and includes any data, files, documents, information or records saved in respect of that profile.
- **Client** means a person who is your client or patient, and the person whose information will be accessible through the System. A Client may be a group of people (for example, a family who is receiving services as a single client).
- **Free Service** means the services in the Schedule that requires no charges.
- **Force Majeure** Event includes any cause beyond the control of a party, such as strike, industrial action, war, sabotage, terrorist activity, national emergency, blockade or governmental action, inaction or request, power surge, internet failure, power failure and act of God.
- **Insolvency Event** means any of the following events occurring to a party:
 - (a) any step is taken to enter into any scheme of arrangement, deed of company arrangement or composition between that party and its creditors;
 - (b) that party ceases to be able to pay its debts as and when they become due;
 - (c) that party ceases to carry on business;
 - (d) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of that party's assets or business; or
 - (e) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of that party's assets or business.
- **Intellectual Property Rights** means all intellectual property rights, including:
 - (a) patents, copyright, rights in circuit layouts, registered designs, plant varieties, trademarks (including service marks), all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields and the right to have confidential information kept confidential; and

- (b) any application or right to apply for registration of any of those rights.
- **Loss** includes, in each case whether of a direct, indirect or consequential nature, any liability, damage, loss, cost (including, reasonable legal costs on a solicitor and own client basis) and other outgoing, and any diminution in value of, or deficiency of any kind in, any thing.
 - **Minimum Services Availability** means the Services being available 99% of the time during Business Hours.
 - **Moral Rights** means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute anywhere in the world.
 - **Paid Service** means the services in the Schedule that requires charges.
 - **Personnel** means the employees, volunteers, officers, contractors and agents of a person or entity.
 - **Records** means all documents on the System created by you, including all versions of those documents where more than one version exists. For the avoidance of doubt, Records does not mean records on the System created by others and accessed or modified by you, or comments made by any person in respect of any document on the System.

Schedule

Care Collaboration Platform

Free Service (users with no credits)	Paid Service (users with credits)
FREE Sign Up to Pnyx for free.	\$7 Charged on a monthly basis per active Circle
Manage your Organisation profile, services and users	Everything you can do on the Free Service plus;
Create and manage your Circles of Care	Create and manage Progress Notes (Track billable hours)
Create and manage your client's Roadmap support items and appointments	Create and manage Invoices and Statements
Ability to create your client's records (excluding Progress Notes)	Ability to create NDIS Bulk Upload
Invite other Organisations and Individuals to the Circle to Collaborate on client care*	Ability to create Reports (by Circle and Staff)
	Create and manage Organisation Documents and Templates

*provided you have consent from the client

Optional Features

DSS Interface	\$1.00 Per DEX Session sent to DSS
Avoid missing DEX submission dates. Real time DEX approved transaction submission making DEX deadline dates a thing of the past.	

Prices not inclusive of GST

LAST REVISION DATE AND EFFECTIVE DATE

These Terms and Conditions was last revised on 24 December 2018.