

PIXEVETY AUSTRALIA PLATFORM USER TERMS OF SERVICE

Last Updated: 5 August 2024

1. WHO WE ARE AND HOW TO CONTACT US

The **pixe**vety Platform, available as both web and mobile apps, is operated by Pixevey Pty Ltd ACN 160 684 677 (**pixe**vety, **we**, **us** and **our**).

To contact us, please refer to the Contact Us page available at <https://pixevey.com/contact-us/>.

2. ACCEPTANCE OF THESE TERMS

- 2.1 A Schedule of Definitions at the end of this document sets out the definitions for capitalised terms used within.
- 2.2 The terms and conditions (**Terms**) set out in this document represent our contract with you. You will be required to acknowledge your understanding of, and agreement with, the Terms before accessing and using the **pixe**vety Platform and Services. These Terms take effect when you click the "Submit" button in the Registration form or a similar button or check box presented to you as part of the sign-up process when you first use the Services, or by accessing or using the Services, whichever occurs first (the **Effective Date**), and will remain in effect for as long as you access or use the Services, or until terminated as specified in these Terms.
- 2.3 It is a strict condition of these Terms that you must also read and understand the **pixe**vety [Platform Privacy Policy](#), which explains how we collect and handle personal information.
- 2.4 If you do not agree to the Terms, you must not use the **pixe**vety Platform or the Services.

3. Platform and Services

- 3.1 We provide a Platform where:
 - (a) Individuals or Organisations can create accounts to become Account Holders;
 - (b) Account Holders can invite other Account Holders to become Users with access to their Gallery to collect, organise, edit, store and share photographic and electronic media content (**Content**) in a private and secure environment. We will only deal with your Content for this limited purpose.
- 3.2 Access and use of the **pixe**vety Platform's basic functionality is free (**Starter Plan**), however, Account Holders can access certain additional features and functionality (**Subscription Services**) by purchasing a paid plan (**Plus Plan**) and then scaling that plan by purchasing add-ons. If you are an individual Account Holder, some of the Subscription add-ons may not be available to you. This is because some features are designed exclusively for Organisations (**Enterprise Plan**).
- 3.3 If your Subscription Plan includes multiple users (**Authorised Users**) you may give access only to that number of Authorised Users as specified in your Subscription Plan, provided that each Authorised User agrees to comply with these Terms and the terms and conditions set forth in any applicable Enterprise Service Agreement or Subscription Plan.
- 3.4 Whether you are a paid or unpaid User invited to a Gallery by an Account Holder with an Agreement, you will have access to Subscription Services. These terms apply to both paid and unpaid Users.
- 3.5 Access and use of the **pixe**vety Platform may be via your web browser (<https://pixevey.com>) or the **pixe**vety

mobile app (downloaded to your mobile device via the applicable App Store).

- 3.6 Access and use of the [pixevety](#) Platform via the [pixevety](#) mobile app may not offer the full functionality experience when accessing the [pixevety](#) Platform via the web.
- 3.7 You must read the [pixevety](#) Platform Privacy Policy before the [pixevety](#) mobile app is downloaded to your mobile device.

4. YOUR ACCOUNT

- 4.1 You must create an Account using an email address and such other identification as we may reasonably request from time to time.
- 4.2 You will be required to create a username and password to access and use the [pixevety](#) Platform. You are solely responsible for any use of your login and password details, and you:
 - (a) Must not disclose your password or login details to any third-party; and
 - (b) Must contact us immediately at privacy@pixevety.com if you believe that your login details have been compromised or disclosed to a third-party.
- 4.3 As an Account Holder, you are responsible and liable for all uses of the Services, Software, Documentation, and Pixevety Materials resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of these Terms.
- 4.4 The Services may include tools to help us verify your identity (**Verification Tools**). Verification Tools may include mobile phone verification technology, verification of payment information, or any other two-factor verification technology. The Verification Tools may be modified by us at any time.
- 4.5 If you are between the ages of 13 and 16, you may use the [pixevety](#) Platform and Services only under the supervision of a parent or legal guardian who agrees to be bound by these Terms.
- 4.6 If you are under the age of 13, please do not create your own account on the [pixevety](#) Platform or Services.
- 4.7 [pixevety](#) is not in the business of managing consent on behalf of Organisations – that responsibility sits solely with the Organisation. If an Organisation chooses to invite its users under the age of 16 to have access to the [pixevety](#) Platform, parental/legal guardian consent is required. The responsibility of managing and verifying that consent lies solely with the Organisation and not [pixevety](#).
- 4.8 Your access to and ability to use the Services may be suspended or terminated if you are an Authorised User and the account of the Customer who has provided you with access to the Services is terminated or suspended for any reason. You agree that we will have no liability to you for any loss or damage in such an event.

5. CONTENT

- 5.1 All Content must comply with the [Content Standards Policy](#). We reserve the right to permanently remove, hide or censor Content in whole or in part if we believe in good faith that such Content is in breach of the Content Standards Policy. In such an event, we will not be liable for any loss or damage suffered by you in connection with such removal, hiding or censorship.
- 5.2 We do not claim ownership rights over any Content, and we will only deal with such Content in accordance with your specific instructions, subject to clause 5.1.
- 5.3 If we engage any subcontractor to provide some or all of the Services, we will ensure that they will deal with your Content solely in accordance with your instructions and in compliance with our obligations under

Australian privacy law.

- 5.4 You hereby grant to **pixevety** a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display User Data and perform all acts with respect to User Data as may be necessary for **pixevety** to provide the Services to you. You will ensure that all User Data does not and will not violate any policy or terms referenced in or incorporated into these Terms, or any Applicable Law, including without limitation the Applicable Data Law. You are solely responsible for the accuracy, quality, integrity, legal compliance, input, reliability, appropriateness, and ownership rights in all User Data. You are further solely responsible for the development, content, operation, maintenance, and use of User Data.
- 5.5 In your use of the Services, you may upload, post, provide, publish, display, share or otherwise make available Content through the Pixevety Systems. You will ensure that all Content you make available via the Services does not and will not violate any policy or terms referenced in or incorporated into these Terms, or any Applicable Law, including without limitation, Applicable Data Law. You are solely responsible for the accuracy, quality, integrity, legal compliance, input, reliability, appropriateness, and ownership rights in all Content that you make available via the Services. You are further solely responsible for the development, content, operation, maintenance, and use of Content that you make available via the Services.
- 5.6 You acknowledge and agree that we are providing a private cloud platform service, and your use of our Service is a use by you of your Content rather than a disclosure of that Content by you to us.
- 5.7 As an Account Holder you can set the default access controls for your Account. Account Holders can vary access settings for their own Content. By setting access controls within your Account, you will control who can access your Content, for what purposes and in what circumstances.
- 5.8 Depending on the access rights and restrictions you place on your Content, Content that you upload to the **pixevety** Platform may be accessed, used, downloaded, indexed, archived, linked to or republished by your invited Users.
- 5.9 We provide you with the tools to control access or restrict how Content is used within the **pixevety** Platform and cannot be held responsible for the consequences of misuse of Content by a User, such as when the Content is downloaded off, or otherwise removed from, the Platform.
- 5.10 We take reasonable steps to secure your Content, however, we cannot prevent, nor are we liable for, image capturing or similar technology used to take unauthorised screen shots or otherwise copy, retain, or save Content.
- 5.11 Moreover, you acknowledge and agree that we provide the tool to manage Content, but we do not own or control any Content. Therefore, we cannot and do not warrant, verify or guarantee the quality, accuracy, safety or integrity of any Content made available on the **pixevety** Platform. You are solely responsible for ensuring that all information that you upload, provide or otherwise make available on the **pixevety** Platform is accurate, complete, up-to-date and not misleading.
- 5.12 The Services may permit access to Third-Party Materials. Such Third-Party Materials are governed by the terms and conditions of the relevant third party, and not by these Terms. You further agree that **pixevety** cannot control and will not be liable for the integrity, functionality, reliability, or appropriateness, of such Third-Party Materials. If you do not agree to abide by the applicable terms for any such Third-Party Materials, then you should not access, use, or install such Third-Party Materials.
- 5.13 You acknowledge and agree that the facial recognition technology incorporated into the **pixevety** Platform and Services made available only in Enterprise Plans is not error-free and may not result in an accurate result for all Content. The facial recognition technology requires human intervention from time to time to ensure the correct individual has been identified.
- 5.14 You are responsible for keeping your passwords and Access Credentials associated with the Services confidential. You must not sell or transfer them to any other Person. You must promptly notify us about any unauthorised access to your passwords or Access Credentials.

6. YOUR USE OF THE PLATFORM

- 6.1 You must not, and must not permit any other Persons to, use the Services, Software, Documentation, or Pixevety Materials for any purposes beyond the scope of the access granted in these Terms. You must not, at any time, directly or indirectly, and must not permit any other Persons to:
- (a) copy, modify, or create derivative works or improvements of the Services or Pixevety Materials, in whole or in part;
 - (b) combine or incorporate any part of the Services in any other program or system, in whole or in part;
 - (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Pixevety Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
 - (d) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Pixevety Materials, in whole or in part;
 - (e) bypass or breach any security device or protection used by the Services or Pixevety Materials or access or use the Services or Pixevety Materials other than through the use of a User's own, then-valid Access Credentials;
 - (f) input, upload, transmit, or otherwise provide to or through the Services or Pixevety Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;
 - (g) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Pixevety Systems, or **pixevety's** provision of Services to any third party, in whole or in part;
 - (h) remove, delete, alter, or obscure any trademarks, Specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices relating in any way to the Services or Pixevety Materials, including any copy thereof;
 - (i) access or use the Services or Pixevety Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorised access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other **pixevety** customer), or that violates any Applicable Law, including without limitation any Applicable Data Law;
 - (j) use the Services to store, upload, or transmit infringing, libellous, sexually explicit, discriminatory, or otherwise tortious or unlawful material, or to store or transmit material in violation of third-party privacy rights;
 - (k) access or use the Services or Pixevety Materials for purposes of competitive analysis of the Services or Pixevety Materials, the development, provision, or use of a competing software service or product or any other purpose that is to **pixevety's** detriment or commercial disadvantage;
 - (l) access or use the Services or Pixevety Materials in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage;
 - (m) use the Services in any way that could damage the reputation or goodwill of **pixevety**, or the goodwill or other rights associated with the Services;
 - (n) otherwise access or use the Services or Pixevety Materials beyond the scope of the authorisation granted under clause 3.4; or

- (o) otherwise use the Services in a manner that could be regarded by **pixevety**, using its reasonable judgement (and with regard to the nature of the Services) to be unacceptable.

6.2 As a condition of your use of the **pixevety** Platform and Services, you agree that:

- (a) you will use the **pixevety** Platform and Services only in accordance with these terms and consistently with the features intended to be made available to your Account through the Platform;
- (b) you will comply with all applicable laws;
- (c) you are solely responsible for any Content that you upload to the **pixevety** Platform;
- (d) you either own or have all necessary rights to post Content to the **pixevety** Platform; and
- (e) any information that you provide is accurate and complete, and will not be misleading, deceptive or likely to mislead or deceive.

6.3 Subject to and conditional on your compliance with these Terms, **pixevety** grants you a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Services during the applicable term, solely for your internal purposes and in connection with your use of the Services.

6.4 Subject to and conditional on your compliance with these Terms, **pixevety** grants you a revocable, non-exclusive, non-sublicensable, non-transferable licence to use Documentation during the applicable term, solely for your internal purposes and in connection with your use of the Services.

6.5 Nothing in these Terms grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Pixevety Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Pixevety Materials, and the Third-Party Materials are and will remain with **pixevety** and the respective rights holders in the Third-Party Materials.

6.6 You must not:

- (a) attempt to circumvent any restrictions imposed or intended to be imposed on your Account by the Platform;
- (b) use the Platform with respect to a Gallery in a manner that is inconsistent with the media usage settings communicated to you through the Platform by an administrator of that Gallery, where access to that Gallery was granted to you by an administrator subject to those settings.
- (c) frame or mirror any part of the **pixevety** Platform, or engage in any screen scraping or data acquisition or consolidation, without our prior written approval;
- (d) except to the extent permitted by law, modify, adapt, sublicense, translate, sell, reverse engineer, decipher, decompile or otherwise disassemble any portion of the **pixevety** Platform or cause any other person to do so; or
- (e) use or attempt to use any engines, software, tools, or other mechanisms (including browsers, spiders, robots, avatars or intelligent agents) to navigate or search the **pixevety** Platform other than the commonly recognised search engine and agents, and other than generally available third-party web browsers.
- (f) alter, delete or interfere with any copyright or trademark notice which appears as part of the Subscription Service;

6.7 Excess use occurs where you and/or any other person accessing your Content on the **pixevety** Platform either view or download a volume of Content that is more than 3 times the level of storage included in your Subscription Plan in any one month (**Excess Use**).

- 6.8 Unreasonable use occurs where your access to the **pixevety** Platform, or any other person's access to your Content, adversely affects the **pixevety** Platform, our network, or the ability of others to use the **pixevety** Platform or our network, as determined by us (**Unreasonable Use**).
- 6.9 If we form the view that you, or a person who accesses your Content, have engaged in any Excess Use or Unreasonable Use, we may:
- (a) contact you to discuss the Excess Use or Unreasonable Use;
 - (b) without notice to you, suspend your access to the Platform; and/or
 - (c) without notice to you, terminate your Account.

7. SUBSCRIPTION PLANS

- 7.1 Users of Subscription Services or Enterprise Service Agreements will be charged fees for the Services as set forth in the relevant Subscription Plan or as otherwise agreed with **pixevety** in writing in a written Proposal or other writing signed by **pixevety** and you (**Subscription Fees**). The Subscription Fees will remain fixed during the Initial Term of your Subscription Plan as described in the applicable Subscription Plan. Upon renewal, the Subscription Fees will be adjusted to the then-current market rate at the time of renewal. We will notify you at least thirty (30) days in advance of your renewal and the increased fees will apply at the start of the next Renewal Term.
- 7.2 We offer a variety of Subscription Plans, Enterprise Proposals and Enterprise Service Agreements. When purchasing a Subscription Plan you must:
- (a) pay all associated Subscription Fees and other charges (if any, including any additional fees for Subscription Services); and,
 - (b) not transfer or assign your Subscription Plan to anyone else.
- 7.3 The features on the Platform that are available or restricted to you will depend on the Subscription Plan that you select. These features or restrictions are published on our website. By choosing a Subscription Plan and registering an Account accordingly, you agree to the features and restrictions specific to that Subscription Plan. If you are registering for an Account and accessing the Platform as an authorised user of an Organisation that has an Enterprise Service Agreement with us, the features available or restrictions imposed on your Account may differ to the Subscription Plans available on our website and may be subject to the terms of that Enterprise Service Agreement.
- 7.4 Unless otherwise specified, all Subscription Plans are annual plans (12 months) that provide you access to the Platform for the term of your Plan or Enterprise Service Agreement (**Initial Term**). Subscription Fees are payable in advance and will renew automatically on the anniversary of your subscription or as stated in your Enterprise Service Agreement (**Renewal Term**) unless the Subscription or Enterprise Service Agreement is cancelled before then.
- 7.5 You agree that the credit card or other designated payment method you provide to us will be billed with the applicable Subscription Fee on a billing date as designated by us and communicated to you at the time you purchase a Subscription Plan. You may cancel your Subscription Plan at any time by sending an email to us providing clear written notice of such a request or by cancelling your Account in your Account settings.
- 7.6 You must pay **pixevety** all Subscription Fees within thirty (30) days from the applicable invoice date, without setoff or deduction. You must make all payments in Australian Dollars by electronic funds transfer to **pixevety's** nominated bank account, as indicated in the applicable Subscription Plan, or otherwise in accordance with the terms stated in an applicable invoice, or as **pixevety** may specify in writing from time to time, on or before the due date. If you fail to make any payment when due, in addition to all other remedies that may be available:

- (a) any sum not paid when due shall bear interest until paid at a rate of 10% per annum or the maximum rate permitted by Applicable Law, whichever is less;
- (b) you must reimburse **pixevety** for all reasonable costs incurred in collecting any late payments or interest, including attorney's fees, court costs, and collection agency fees; and
- (c) if such payment failure continues for thirty (30) days following written notice from **pixevety** thereof, **pixevety** may:
 - (i) suspend performance of the Services, in accordance with clause 13, until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to you or any other Person by reason of suspension; or
 - (ii) terminate these Terms and deny your access to the Services and the Pixevety Materials.

All Subscription Fees and other amounts payable by you under these Terms and any applicable Subscription Plan are exclusive of taxes (including GST) and similar assessments. You are responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Australian Governmental Authority on any amounts payable by you hereunder, other than any taxes imposed on **pixevety's** income.

- 7.7 Where your Subscription Plan is part of an Enterprise Service Agreement, your Subscription Plan can only be cancelled in accordance with the terms of the Enterprise Service Agreement and cannot be cancelled under this clause.
- 7.8 You may choose to add additional functionality to your Subscription Plan at any time. If you do this, you will be billed the difference in price, pro-rated for the remainder of your Subscription Plan. There are some limitations to the add-on functionalities you can seek, depending on the type of your Account and your chosen Subscription Plan.
- 7.9 We may, not more than once annually, vary the Subscription Fees, which will apply as and from the immediately following anniversary of your Subscription. Your sole remedy if you disagree with such changes is to cancel your Subscription Services.
- 7.10 At any time, we may update, vary, modify or cancel the Subscription Services upon providing reasonable notice to you. If we cancel the Subscription Services in circumstances where you have not breached these terms, your Subscription Plan will terminate and we will have no further liability to you other than a pro-rata refund of your Subscription Plan in respect of any paid-for unused period.

8. INTELLECTUAL PROPERTY OWNERSHIP AND FEEDBACK

- 8.1 You own (or are the permitted licensee of) the rights to any Content that you submit to the **pixevety** Platform, but give:
 - (a) Users such rights in accordance with any preferences that you have accepted or otherwise requested, including through media usage settings or a consent management module; and,
 - (b) Us a worldwide, non-exclusive, royalty-free sub-license and transferable licence to host such Content and to use such Content as is reasonably necessary in order to enable **pixevety** to provide the Services, including to display the Content on the Platform.
- 8.2 If you have access to the Gallery Administration Module, you may invite other Users and allocate those Users roles which provide access and various rights to your Content by using the Gallery Management Tools and the Security Management Tools. You can view the types of access rights you can grant in the Gallery Administration Module.
- 8.3 You must not copy, modify, distribute, prepare derivative works of, display, publish, or adapt any Content on

the **pixe**vey Platform without obtaining the prior written consent of the owner of that Content.

- 8.4 You acknowledge that **pixe**vey is the exclusive owner or licensee of, and retains all rights, title and interest to all Intellectual Property Rights (whether registered or not), in the **pixe**vey Platform.

9. SUPPORT SERVICES AND BACKUP

- 9.1 The level of technical support we provide depends on your Subscription Plan. We provide live on-line chat support as part of a Subscription Plan. Only Organisations (and not individuals) may purchase phone support. All Users have access to the online help desk centre and FAQs.
- 9.2 While we have implemented commercially reasonable technical and organisational measures designed to secure the Content from misuse, interference, loss and unauthorised access, modification or disclosure, you are solely responsible for creating and maintaining backup copies of your Content.

10. CONFIDENTIAL INFORMATION

- 10.1 From time to time during the Term, we may disclose or make available to you information about our business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether or not marked, designated, or otherwise identified as “confidential” at the time of disclosure. You may also upload Content and/or User Data through the Services, which is treated as confidential to you (collectively **Confidential Information**). Confidential Information does not include information that, at the time of disclosure, is:
- (a) in the public domain;
 - (b) known to the receiving party;
 - (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or
 - (d) independently developed by the receiving party.
- 10.2 The receiving party shall not disclose the disclosing party’s Confidential Information to any person or entity, except to the receiving party’s employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and who are required to protect the Confidential Information in a manner no less stringent than required under these Terms. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent that is required:
- (a) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with Applicable Law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or
 - (b) to establish a party’s rights under these Terms, including to make required court filings.
- 10.3 Each party’s obligations of non-disclosure with regard to Confidential Information are effective as of the date of such Confidential Information is first disclosed to the receiving party and will expire five years thereafter; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under Applicable Law), such obligations of non-disclosure will survive the termination or expiration of these Terms for as long as such Confidential Information remains subject to trade secret protection under Applicable Law.

11. PRIVACY

- 11.1 You must read and understand the **pixe**vey [Platform Privacy Policy](#) before accessing or using the **pixe**vey

Platform or Services.

- 11.2 Where you choose to enable the automated facial recognition functionality as part of the Services offered for Enterprise Plans, the Services will collect, use, and store your Biometric Information to identify you where you have been captured in images. You must not use the facial recognition functionality to identify another person unless you have first received their consent to do so. You can find out more about our collection, use and storage of biometric information in our [Biometric Information Privacy Policy](#).
- 11.3 We may update or change the **pixevety** Platform Privacy Policy and/or Biometric Information Privacy Policy from time to time. Notification of such changes will be made in accordance with the relevant policy.
- 11.4 Where a Customer uses the automated facial recognition functionality as part of an Enterprise Plan (e.g., a school using the Services to manage student images), you acknowledge and agree that:
- (a) the Services will collect, use, and store Biometric Data to identify persons who have been captured in images;
 - (b) the Customer, not **pixevety**, owns and controls the Biometric Data used by the facial recognition functionality and the Services;
 - (c) Users must not use the facial recognition functionality to identify any person unless the Customer has first obtained their consent to do so; and
 - (d) the Customer is solely responsible for satisfying all legal requirements and obligations under Applicable Law, including without limitation, Applicable Data Law, pertaining to such use of Biometric Data.
- 11.5 As the owner of Biometric Data, the Customer is solely and exclusively responsible for:
- (a) maintaining all necessary privacy policies, privacy notices, and related disclosures in accordance with Applicable Data Law;
 - (b) providing all necessary public and individualised notices in accordance with Applicable Data Law;
 - (c) obtaining all necessary consents in accordance with Applicable Data Law;
 - (d) satisfying all requirements and limitations with respect to the disclosure and dissemination of Biometric Data in accordance with Applicable Data Law;
 - (e) satisfying all security requirements in accordance with Applicable Data Law; and
 - (f) otherwise complying with all other requirements of Applicable Data Law consistent with its use of the Services and these Terms.
- 11.6 You further acknowledge and agree that **pixevety** has no responsibility or obligation of any kind with respect to Biometric Data as it relates to any Customer's use of the Services offered for Enterprise Plans, and **pixevety** expressly disclaims all responsibility and liability for Biometric Data, including but not limited to any breach of Applicable Data Law or other Applicable Law relating to Biometric Data.
- 11.7 A Customer's failure to use, or any decision to disable, the privacy-enhancing features offered as part of the Services is at the Customer's sole risk and liability.

12. DISPUTE RESOLUTION

- 12.1 If you have a complaint about the **pixevety** Platform or the Services please contact us at privacy@pixevety.com. You must attempt to resolve any dispute with us in good faith prior to commencing any form of litigation or legal proceedings.

12.2 If your complaint relates to privacy and the protection of Personal Information, please follow the advice about making a complaint set out in the [pixevety Platform Privacy Policy](#).

13. SUSPENSION, RESTRICTION AND TERMINATION

13.1 Unless otherwise stated by [pixevety](#) in writing, these Terms start on the Effective Date and will remain in effect for as long as you access or use the Services (**Term**).

13.2 Where required for system maintenance or security purposes, or where we reasonably suspect that you may have breached any of the Terms, or where required by law, we may impose limits on, or suspend or restrict your access to, certain features or parts of the [pixevety Platform](#) and Services without notice or liability.

13.3 [pixevety](#) may terminate the agreement entered into between you and [pixevety](#) pursuant to these Terms ([subject to any law suspending or preventing the exercise of a termination right in the relevant circumstances), or suspend performance of its obligations under these Terms for such period as specified by [pixevety](#), effective on written notice to you, if you:

- (a) fail to pay any amount due hereunder, and such failure continues more than thirty (30) days after [pixevety's](#) delivery of written notice thereof;
- (b) breach these Terms, and such breach remains uncured seven (7) days after [pixevety](#) provides you with written notice of such breach;
- (c) being an Organisation, suspend or cease, or threaten to suspend or cease, carrying on business in a normal manner;
- (d) being an Organisation, experience a deterioration of your financial position such that it is reasonable to conclude that your ability to give effect to these Terms is in jeopardy;
- (e) being an Organisation, become insolvent or are generally unable to pay, or fail to pay, your debts as they become due;
- (f) being an Organisation, file, or have filed against you, a petition for voluntary or involuntary bankruptcy or otherwise become subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;
- (g) being an Organisation, make or seek to make a general assignment for the benefit of your creditors;
- (h) being an Organisation, apply for or have appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of your property or business; or
- (i) being a natural person, die.

13.4 You may terminate the agreement entered into between you and [pixevety](#) pursuant to these Terms, effective on written notice to [pixevety](#), if [pixevety](#) materially breaches these Terms, and such breach remains uncured thirty (30) days after you provide [pixevety](#) with written notice of such breach.

13.5 If you are a User using [pixevety's](#) Free Services, you may terminate your account at any time by navigating to the "My Account" area of the Platform and selecting "Delete my Account".

13.6 Where your Subscription Plan is part of an Enterprise Service Agreement, your Subscription Plan can only be cancelled in accordance with the terms of the Enterprise Service Agreement and cannot be cancelled under this clause.

13.7 We may terminate or suspend your use of the [pixevety Platform](#) and/or your Account where required by law. You may choose to cancel your Account at any time as set out under clause 7. Cancelling your Account does

not automatically remove your obligation to comply with all the Terms.

- 13.8 If your account is terminated, we will permanently delete your Account and all Content on the day your Subscription Plan was due to renew, or as requested in writing by you. If you do not have a Subscription Plan at the time your Account is terminated, we will delete Account and all Content 30 days from the date of termination. Upon request from you at the time of termination, we will download your Content in a format agreed by you and **pixevety** during this 30-day period following termination. If a fee applies, you will be notified of this upon making your enquiry.
- 13.9 Any licence to Content that you have granted to us under these Terms will terminate 30 days after the immediately following anniversary of your subscription to your Subscription Plan, Enterprise Proposal or Enterprise Service Agreement, or if you do not have a Subscription Plan, 30 days after termination of your Account.
- 13.10 We will notify you in writing if we suffer an insolvency event and will use our reasonable commercial endeavours to ensure that the Platform remains available for 2 consecutive months after the insolvency event. It is your responsibility to copy or remove your Content from the Platform during this period although upon written request from you **pixevety** may at its sole discretion download your Content in an agreed format during this period for a fee notified to you upon enquiry. We do not make any warranty or representation that your Content will be available to you after this period.
- 13.11 Unless otherwise agreed with us or stated in these Terms, we are not liable to you or any third-party for any damages, liabilities, or losses that an Account Holder or User or any other third party may incur, as a result of any termination or suspension of your access to the **pixevety** Platform, use of the Services or your Account under these Terms.
- 13.12 Any terms which by their nature should continue to apply will survive any termination or expiration of these Terms.

14. INDEMNITY

- 14.1 You indemnify and must keep **pixevety** indemnified against all Claims arising out of or connected to:
- (a) your use of or access to the **pixevety** Platform or the Services;
 - (b) any failure by you to comply with a warranty you have given;
 - (c) any failure by you to comply with these Terms; or
 - (d) any wilful, unlawful or negligent act or omission by you or any third-party who obtained access to the **pixevety** Platform or Services through you.
- 14.2 A mutual indemnification clause may be made available to Organisations (under an Enterprise Service Agreement) upon request.

15. LIMITATION OF LIABILITY

- 15.1 To the extent permitted by law:
- (a) The **pixevety** Platform is provided “as is”;
 - (b) We do not guarantee, warrant or represent that the **pixevety** Platform or the Services will meet your requirements, be fit for purpose, or be free from, without limitation, interruption, loss, corruption, technologically harmful material, errors, or omissions; and
 - (c) **pixevety** excludes all implied representations, warranties, terms and conditions of any kind whatsoever

(whether implied by common law, statute or otherwise) and the application or availability of any statutory rights.

15.2 You acknowledge and agree that:

- (a) While **pixevety** makes reasonable effort to ensure availability of its Subscription Services, **pixevety** makes no representations, warranties or guarantees in relation to its Subscription Services (or services provided by third parties) being unavailable for any reason;
- (b) **pixevety** does not guarantee that the **pixevety** Platform or its third-party service provider technology is free from errors or corruption (including corruption of the Content);
- (c) the performance of the **pixevety** Platform may deteriorate from time to time if use of a Gallery exceeds the data limitations of the Subscription Plan;

15.3 Nothing in these Terms is intended to exclude, restrict or modify any rights that you may have under the *Competition and Consumer Act 2010* (Cth) (CCA) including without limitation the Australian Consumer Law. Our services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the services resupplied if the services fail to be of acceptable quality and the failure does not amount to a major failure. What constitutes a 'consumer', 'major failure' and 'acceptable quality' is set out in the Australian Consumer Law.

15.4 To the extent permitted by applicable law, we will have no liability to you for any interruption, suspension, discontinuance or unavailability of the Services for any reason, or for any loss or inability to access any media or materials on the Services.

15.5 To the extent permitted by applicable law, we will not be liable to you or any third party for any indirect, incidental, punitive, special or consequential loss, damage or claim including loss of profits or data; loss of goodwill; damage to reputation; loss of revenue, contract, business or anticipated savings.

15.6 To the extent permitted by law our aggregate liability for all claims relating to the **pixevety** Platform and the Services will not exceed the amount paid by you to **pixevety** for the Services the subject of the claim.

16. DATA BREACH

16.1 If we, an Organisation or another party becomes aware of, or reasonably suspects, that personal information has been subject to unauthorised access or disclosure (**Data Breach**), the parties agree to take all appropriate action required under Australian privacy law including, but is not limited to:

- (a) Each party, at its cost, immediately investigating the nature and extent of the Data Breach;
- (b) Each party providing all reasonable assistance to the other party in relation to the investigation being undertaken; and
- (c) Upon a party determining that a Data Breach is an "eligible data breach" within the meaning of Australian privacy law,
 - (i) if the Organisation is using the **pixevety** Platform and services to manage the personal information of individuals, the Organisation making notifications of the Data Breach in the manner prescribed in Australian privacy law; OR
 - (ii) if we are providing access to the **pixevety** Platform and Services directly – e.g. to an individual account holder, rather than via an Organisation, **pixevety** making notifications of the Data Breach in the manner prescribed in Australian privacy law.

17. PIXEVETY PLEDGE

- 17.1 When accessing and using the **pixevety** Platform and Services, including your access to any Content, you are agreeing to abide by the standard of polite conduct set out in the **pixevety** Pledge on our website, [here](#).

18. GENERAL

- 18.1 If any part of the Terms is unenforceable the enforceability of any other part of the Terms will not be affected. All other terms will remain in full force and effect.
- 18.2 No agency, partnership, joint venture, employee-employer or other similar relationship is created under these Terms. In particular, you have no authority to bind **pixevety**, its related entities or affiliates in any way whatsoever.
- 18.3 No waiver of any term of this Terms will be deemed a further or continuing waiver of that term or any other term, and our failure to assert any right or provision under these Terms will not constitute a waiver of that right or provision unless otherwise specified in an Enterprise Service Agreement.
- 18.4 The benefit of our contract with you may be assigned by us to a third party. We will advise you of such assignment and in the event of an assignment, you will remain bound by these Terms.
- 18.5 The use of “including”, “such as”, “for example” and similar words, abbreviations (of the words, like: incl., i.e., and e.g.) or phrases are not words, abbreviations or phrases of limitation.
- 18.6 These Terms are to be construed in accordance with the laws of New South Wales, and in the event of any dispute or claim associated with these terms and conditions, that dispute or claim shall be subject to the exclusive jurisdiction of the courts of New South Wales, Australia, unless otherwise specified in an Enterprise Service Agreement.
- 18.7 We may change or update the Terms from time to time at our sole discretion subject to the following:
- (a) where the amendments to the Terms do not materially affect your access to the **pixevety** Platform or use of the Services, such modifications will be effective and incorporated into these Terms immediately upon us providing you with written notice of the change or update;
 - (b) where the amendments to the Terms are likely to materially affect your access to the **pixevety** Platform or use of the Services, such modifications will be effective and incorporated into these Terms 30 days after we provide you with written notice of the change or update.
- 18.8 Your continued use of the **pixevety** Platform is subject to your acceptance of any modified Terms. If you do not wish to accept any modified Terms, you may elect to terminate your Subscription Plan within 30 days of receiving written notice of the modified Terms.

SCHEDULE OF DEFINITIONS

Access Credentials means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorisation to access and use the Services.

Account means an account that allows access to the Platform.

Account Holders means individuals or Organisations with an Account.

Authorised User means any individual within a Customer's organisation that has been assigned a User connection by the Customer to access and use the Services in accordance with these Terms and pursuant to the rights granted to the Customer under its Subscription Plan

Applicable Data Law means the *Privacy Act 1988* (Commonwealth of Australia) and all other applicable privacy legislation in force from time to time governing the collection, use, disclosure and handling of Personal Information and/or Biometric Data.

Applicable Law means all laws and regulations applicable to and binding on a party.

Biometric Data means Biometric Identifiers and Biometric Information including but not limited to any information collected in connection with the Services.

Biometric Identifier means a scan or record of face geometry.

Biometric Information means any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier, and used to identify an individual, including but not limited to any face images added to, collected by, and/or stored as part of the Services, whether stored in the local memory of a particular Authorised User device, or stored in an internal or external database accessed by the Services.

Claim means any claim, action, suit or demand made against **pixevety** by a third party, including in tort, contract or negligence, including any damages awarded or agreed and all associated costs and expenses (including legal costs and expenses on a full indemnity basis),

Confidential Information has the meaning set out in clause 10.1.

Content means any photographic or electronic media content submitted or otherwise uploaded to the **pixevety** Platform.

Customer means an entity that has purchased a Subscription Plan through an Enterprise Service Agreement permitting the entity and its Authorised Users to access and use the Subscription Services.

Documentation means the documents, user manuals, guides, technical documentation, and any other materials with respect to the operation, use, and functionality of the Services.

Effective Date has the meaning set out in clause 2.2.

Enterprise Service Agreement means the written agreement by and between **pixevety** and a Customer in relation to the Customer's purchase of a Enterprise Subscription Plan

Enterprise Service Agreement means a written agreement between **pixevety** and an Organisation in relation to the Organisation's subscription to a customised enterprise Subscription Plan.

Free Service means those Services made available by us to you on a free basis.

Gallery means the Gallery module on the Platform that allows users to upload and organise Content into galleries, folders and albums, and allows users with administration access to use the associated Gallery management tools.

Gallery Administration Module means the feature set that enables the management, organisation, and customisation of a **pixevety** Gallery. This module is designed to provide the Gallery administrator with tools to control various aspects of the gallery such as Gallery settings, access controls and integrations.

Harmful Code means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorised access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent any Users from accessing or using the Services or Pixevety Systems as intended by these Terms. Harmful Code does not include any Pixevety Disabling Device.

Individual User means an individual who: (a) uses **pixevety's** Free Services; or (b) has purchased a Subscription Plan permitting the individual to use **pixevety's** Subscription Services.

Initial Term has the meaning set out in clause 7.4.

Intellectual Property Rights means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

Merchants means third party vendors and retailers.

Organisation means an Account Holder that is not an individual.

Person means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organisation, trust, association, or other entity.

Personal Information has the meaning given to that term (or equivalent terms) in the Applicable Data Laws.

Pixevety Disabling Device means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by **pixevety** or its designee to disable any User's access to or use of the Services automatically with the passage of time or under the positive control of **pixevety** or its designee.

Pixevety IP means the Services, Documentation, and any and all intellectual property provided to a User in connection with the foregoing. For the avoidance of doubt, Pixevety IP does not include Content or User Data.

Pixevety Materials means the Services, Specifications, Documentation, and Pixevety Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by **pixevety** or any subcontractor in connection with the Services or otherwise comprise or relate to the Services or Pixevety Systems. For the avoidance of doubt, Pixevety Materials include Resultant Data and any information, data, or other content derived from **pixevety's** monitoring of a User's access to or use of the Services, but do not include Content or User Data.

Pixevety Systems means the information technology infrastructure used by or on behalf of **pixevety** in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by **pixevety** or through the use of third-party services.

Platform means the online platform and mobile applications offered by **pixevety** to access and use the Services.

Products means tangible products available to be created from digital Content as permitted by the owner of the Content.

Process, Processing, and Processed means to take any action or perform any operation or set of operations that

the Services are capable of taking or performing on any data, information, or other content.

Proposal means the photo management proposal, as set out at Schedule 1 of an applicable Enterprise Service Agreement, and all other commercial documents which contain a description of the Services purchased from [pixevely](#).

Renewal Term has the meaning set out in clause 7.4.

Resultant Data means data and information related to Customer's use of the Services that is used by [pixevely](#) in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the services.

Security Management Tools means the security and privacy settings in the Platform for the display, access and management of Content.

Services means, collectively, the service offering provided by [pixevely](#) through the [pixevely](#) Platform, and includes both Free Services and Subscription Services.

Software means the operating system software, and other related software and applications made accessible to Users as part of the Services or otherwise used to provide the Services to Users.

Specifications means the specifications for the Services set forth in a Proposal.

Subscription Fee has the meaning set out in clause 7.1.

Subscription Plan means a paid plan made available by us on a subscription basis through which an individual or Organisation can access and use the [pixevely](#) Platform.

Subscription Services means services and functionality available for Subscription Plans, including optional addons.

Term has the meaning set out in clause 13.1.

Terms has the meaning set out in clause 2.1.

User means a user or subscriber of the Service, and includes Customers, Individual Users, and Authorised Users.

User Data means data, content, documents, files, or other information (including, without limitation, all text, sound, video, or image files), in any form or medium, that a User may upload to the Pixevely Systems, or that may be collected, downloaded, or otherwise received, directly or indirectly by [pixevely](#) from a User by or through use of the Services, or that incorporates or is derived from the Processing of such information, data, or other content by or through the Services.