

# pixevety Terms and Conditions

Welcome to **pixevety**, an all-in-one web and mobile accessible photo storage, management and sharing platform.

The **pixevety** website (**Brochure Site**) and any associated web and mobile apps (**pixevety Platform**) and services that we provide through the **pixevety** Platform (**Services**) are operated by Pixevety Pty Ltd ACN 160 684 677 (**Pixevety Pty Ltd, we, our or us**).

The terms and conditions set out in this document (**Terms**) represent our contract with you. You will be required to acknowledge your **understanding** of, and **agreement** with, the Terms before accessing and using the **pixevety** Platform and Services.

It is strict condition of the Terms that you must also read and understand the [pixevety Platform Privacy Policy](#), which explains how we collect and handle personal information.

If you do not agree to the Terms, you must not use the **pixevety** Platform or the Services.

If you access the **pixevety** Platform and Services on behalf of a company or other entity (**Organisation**), you must be an authorised representative of the Organisation and have the authority to agree to these Terms.

These Terms were last updated on: 2 September 2020.

## 1. PLATFORM AND SERVICES

1.1 We provide a Platform where:

- (a) Individuals or Organisations can create accounts (**Account Holders**);
- (b) Account Holders can invite other Account Holders as their invited users (**Users**),

to collect, organise, edit, store, share, buy and sell photographic and electronic media content (**Content**) in a private and secure environment. We will only deal with your Content for this limited purpose.

1.2 Access and use of the **pixevety** Platform's basic functionality is free (**Starter Plan**), however Account Holders can access additional 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**). Please [click here](#) to see the Subscription Plans we offer.

1.3 Access and use of the **pixevety** Platform may be via your web browser (<https://pixevety.com>) or the **pixevety** mobile app (downloaded to your mobile device via the App Store).

1.4 Access and use of the **pixevety** Platform via the **pixevety** mobile app may not offer the full functionality experienced when accessing the **pixevety** Platform via the web.

- 1.5 You must read the **pixevely** Platform Privacy Policy before the **pixevely** mobile app is downloaded to your mobile device.

## 2. YOUR ACCOUNT

- 2.1 You must create a user account (**Account**) using an email address and such other identification as we may reasonably request from time to time.
- 2.2 You will be required to create a username and password to access and use the **pixevely** Platform. You are solely responsible for any use of your login and password details, and you:
  - 2.2.1 Must not disclose your password or login details to any third-party; and
  - 2.2.2 Must contact us immediately at [privacy@pixevely.com](mailto:privacy@pixevely.com) if you believe that your login details have been compromised or disclosed to a third-party.
- 2.3 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.
- 2.4 If you are between the ages of 13 and 16, you may use the **pixevely** Platform and Services only under the supervision of a parent or legal guardian who agrees to be bound by these Terms.
- 2.5 If you are under the age of 13, please do not create your own account on the **pixevely** Platform or Services.
- 2.6 Pixevely Pty Ltd is not in the business of managing consent on behalf of Organisations – that responsibility lies solely between the Organisation and its families. If an Organisation chooses to invite its members under the age of 16 to have access to the **pixevely** Platform, parental/legal guardian consent is required. The responsibility of managing and verifying that consent lies solely with the Organisation and not Pixevely.
- 2.7 Organisations using the **pixevely** Platform and Services to manage the personal information of individuals must only do so in accordance with these Terms and applicable laws (e.g. Australian privacy law). Depending on the nature of the Services, this may include:
  - 2.7.1 Seeking **consent** of the parent or legal guardian of a person aged 16 or under before the personal information of that person is provided to us; and
  - 2.7.2 Making a person from whom consent has been sought aware of the **pixevely** [Platform Privacy Policy](#).

## 3. CONTENT

- 3.1 Any Content that you submit to the **pixevely** Platform is owned by you (or your licensors), and we will only deal with such Content in accordance with your specific instructions.

- 3.2 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.
- 3.3 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.
- 3.4 By setting access controls, you will control who can access your Content, for what purposes and in what circumstances.
- 3.5 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, purchased, printed or republished by your invited Users.
- 3.6 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.
- 3.7 We take reasonable steps to ensure the security of your Content, however we cannot prevent, nor are we liable for, Users taking unauthorised screen shots of your Content or using other image capturing tools.
- 3.8 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 on the **pixevety** Platform. You must ensure that all information you provide via the **pixevety** Platform is accurate, complete, up-to-date and not misleading.
- 3.9 Where requested by you, and offered as part of your Subscription Services, the Services may include **pixevety** staff uploading personal information held by your Organisation's personal data on your behalf or the use of tools to help you and your invited Users to identify individuals appearing in photographs, such as geo-location tagging and facial recognition. We cannot ensure, and are not liable for, the accuracy of these Services or tools.

#### **4. YOUR USE**

- 4.1 As a condition of your use of the **pixevety** Platform and Services, you promise that:
  - (a) you will use the **pixevety** Platform and Services only in accordance with these Terms;
  - (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.
- 4.2 When using the **pixevety** Platform and Services, you must not (and must not permit or direct any other third party to):
- (a) pretend to be someone else;
  - (b) do anything unlawful or illegal;
  - (c) provide any Content that:
    - (i) is false, inaccurate, unauthorised, fraudulent, threatening, defamatory, libellous, obscene, indecent, inappropriate, harmful, abusive, racist, inflammatory, or pornographic;
    - (ii) infringes any third party's rights (such as intellectual property, privacy, publicity or contractual rights);
    - (iii) contains any harmful components such as viruses, trap doors, hidden sequences, hot keys, or time bombs;
    - (iv) could give rise to civil or criminal proceedings;
    - (v) reveals anyone's identification documents or sensitive financial information;
  - (d) restrict anyone else from using the **pixevety** Platform or Services;
  - (e) stalk, bully, intimidate or harass any User;
  - (f) upload or transmit any virus or other disabling feature;
  - (g) interfere with, disrupt, or create an undue burden on the **pixevety** Platform or any associated systems;
  - (h) 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;
  - (i) 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
  - (j) 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.
- 4.3 Any delay or failure in Organisation performing its obligations:
- (a) may result in delay or failure by **pixevety** to provide the Subscription Services;
  - (b) **pixevety** will not be made responsible for any delay or failure to provide the Subscription Services as a result; and

- (c) the Organisation must pay any additional costs reasonably incurred by **pixevety** due to any delay or failure by the Organisation in performing its obligations.

## 5. ACCESS AND RESTRICTIONS

5.1 Account Holders who have administration access may use gallery management tools (**Gallery**) to:

- (a) upload and organise their Content into galleries, folders and albums (**Galleries**);
- (b) add or invite Users to access and view some or all of their Galleries;
- (c) give their invited Users different roles and permissions, such as:
  - (i) Gallery administrator;
  - (ii) Gallery manager;
  - (iii) Gallery contributor
  - (iv) Gallery user;
  - (v) View only; and
  - (vi) Custom roles.

5.2 For the avoidance of doubt, these Terms apply to each person who accesses the Platform, regardless of their method of access and their role.

5.3 Without limitation, if you are an Organisation it is your responsibility to ensure that your administrator and/or manager and/ or any staff member and/ or any volunteer who has access to the **pixevety** Platform and Services is aware of and complies with these Terms.

5.4 If you have access to the Gallery Administration, we provide security options and privacy settings which you can use to manage the security of your Content (**Security Management Tools**). This includes:

- (a) the ability to designate your Gallery as public or private;
- (b) the ability to allow Users to connect to your Gallery;
- (c) the ability to limit Users' access to one or a combination of:
  - (i) viewing of Content;
  - (ii) viewing tags associated with Content;
  - (iii) printing Content;
  - (iv) purchasing, transferring or otherwise acquiring your Content for their Gallery;

- (v) downloading Content off the **pixevety** Platform; and/ or
  - (vi) Sharing content within and outside the **pixevety** Platform;
- (d) the ability to inform Users about how you will publish or share Content within their Gallery, including:
- (i) printing in publications;
  - (ii) on-line publishing;
  - (iii) publishing on social media;
  - (iv) use of Content for marketing; and
  - (v) sale of Content.
- 5.5 If you are invited to access another Account Holder's Gallery, that Account Holder may have media usage settings in place. These settings govern how the Account Holder intends to provide access to, and use, the Content in their Gallery. You will be provided with notice of that Account Holder's media usage settings when you first access their Gallery. When you access or contribute to that Account Holder's Content, you are taken to be in agreement with that Account Holder's media usage settings and must not act in a way that is contrary to those settings.
- 5.6 Organisations that use the **pixevety** Platform to manage the Content (i.e., images and other personal information) of individuals (e.g. a school managing the images of its students) may access an additional privacy enhancing feature (the **Consent Management Module**). When an Organisation turns on the Consent Management Module for its Account, Users (e.g. parents) that are invited to access the Organisation's Gallery can:
- 5.6.1 See the overall privacy setting the Organisation has chosen for its Gallery;
  - 5.6.2 Choose to vary the Organisation's overall privacy setting for the treatment of the Content pertaining to them (or the person for whom they are responsible) only;
  - 5.6.3 Set permissions for what the Organisation can do with Content that contains their images (or the images of person for whom they are responsible) across categories relating to access, use, sharing and publication; and,
  - 5.6.4 Vary or revoke their permissions at any time, and the **pixevety** Platform will update the permissions in "real time".
- 5.7 As we only provide the tools to assist Users in relation to the access and use of Content, we cannot be held responsible if an Account Holder does not comply with the wishes of a User, or if a User does not comply with the wishes of the Account Holder. As such:
- 5.7.1 Users, you will indemnify and will keep indemnified Pixevety Pty Ltd for any loss, costs or damage suffered or incurred by us arising from your failure to comply with an Account Holder's preferences communicated to you via media usage settings; and,

- 5.7.2 Account Holders, you will indemnify and will keep indemnified Pixevety Pty Ltd for any loss, costs or damage suffered or incurred by us arising from your failure to comply with a User's preferences communicated to you via the Consent Management Module.
- 5.8 We may temporarily or permanently remove any Content if we form the view that it breaches these Terms.
- 5.9 Should you have any concerns that particular Content breaches these Terms, you may 'flag' that Content, and make a request to the Account Holder to delete or restrict access to the offending Content. In the event that there is a dispute between yourself and the Account Holder, you may contact us. We may contact either the Account Holder or the User who marked the Content with the 'flag' at our sole discretion. Our determination in relation to whether Content breaches these Terms is final.
- 5.10 At all times, you may override the settings applicable to any Content that you own or control, however we are not responsible for any consequences to you or another User of you doing so.

## 6. SUBSCRIPTION PLANS

- 6.1 We offer a variety of Subscription Plans, Enterprise Proposals or Enterprise Agreements. A description of each Subscription Plan and associated Subscription Fees is available [here](#). When purchasing a Subscription Plan you must:
- (a) pay all associated Subscription Fees and other charges; and,
  - (b) not transfer or assign your Subscription Plan to anyone else.
- 6.2 All Subscription Plans are annual plans (12 months) that provide you access to subscription services for the term of your Plan, Enterprise Proposal or Enterprise Agreement (if an Organisation). Subscription Fees are payable in advance and will renew automatically on the anniversary of your subscription.
- 6.3 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. If you cancel your Subscription Plan, your Account will terminate on the date you are due to renew your Subscription. If you cancel your Subscription Plan, Enterprise Proposal or Enterprise Agreement prior to the completion of the agreement term period, billing will remain in effect until the end of the period with no refund applicable. Refunds are only issued to you if required by law.
- 6.4 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 whether you are an individual or Organisational User.
- 6.5 You may change your payment information in your Account settings. It is solely your responsibility to keep your payment information up-to-date. If your payment information cannot be billed on the due date for payment, then we may freeze or

terminate your Subscription Plan or Account for non-payment. We will provide reasonable notice to you via the email address associated with your Account prior to freezing or terminating your Subscription Plan or Account for non-payment. We cannot guarantee that you will receive notice of the termination of your Account if the email you have provided us with is not active. If your Subscription Plan or Account is terminated, your access to the **pixevety** Platform and Services, and any of your Content on the **pixevety** Platform will be blocked for non-payment and we will permanently delete your Account and all Content 30 days after the immediately following anniversary of your subscription to your Subscription Plan, after which it cannot be re-activated.

- 6.6 We may, not more than once annually, vary the Subscription Fees. Your sole remedy if you disagree with such changes is to cancel your Subscription Services.
- 6.7 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 your Subscription Plan will terminate and we will have no further liability to you.

## 7. PAYMENT

- 7.1 The Organisation must pay to **pixevety**:
- (a) the Subscription licence fee specified in the Proposal (**Subscription Plan**);
  - (b) the fees specified in the Proposal for provision of Subscription Services (**Subscription Services**) (if any); and
  - (c) any other amount agreed by the parties from time to time for the provision of Services during the Term,
- (together, Fees and Charges).
- 7.2 **pixevety** may invoice the Subscription Plan Fee on or prior to the Commencement Date and then at least 30 days before each expiry date thereafter. If a Subscription Services Fee is payable, **pixevety** will invoice that amount at the same time as the Subscription Plan Fee or at the time of purchase.
- 7.3 The Organisation must pay each invoice in full within 14 days after the date of the invoice via electronic fund transfer to the bank account nominated by **pixevety** in writing or via credit card purchase available on the platform.
- 7.4 If the Organisation does not pay an invoice in full by its due date:
- (a) **pixevety** may charge interest on any overdue amount at the rate of 2% above the prime lending rate of the Organisation's principal banker, calculated daily from the due date until date of payment;
  - (b) the parties acknowledge and agree that any interest paid or payable under this clause 7.4 is not a penalty but a reasonable pre-estimate of the loss incurred by **pixevety** because of the Organisation failing to comply with clause 7.3.
- 7.5 If the Organisation does not pay an amount due under these Terms on the due date, then from that due date:



- (a) the Organisation's access to their Gallery will be suspended; and
- (b) **pixevety** may immediately suspend provision of Subscription Services to the Organisation,

until all outstanding amounts are paid. This is without prejudice to any other remedies **pixevety** may have in relation to these Terms at law or otherwise.

## 8. PURCHASING CONTENT

8.1 As an Account Holder, you may specify whether or not Users can purchase Content in your Galleries, in which case additional terms and conditions will apply.

8.2 As a User, where permitted by the Account Holder, you may:

- (a) purchase digital Content from us that has been licensed to us by an Account Holder, which digital Content may be subject to such licences and restrictions as nominated by the owner of that Content; and
- (b) request additional services to create tangible products (**Products**) in relation to that purchased digital Content either from us or through third party vendors and retailers (**Merchants**).

8.3 You acknowledge and agree that the colour, depth and clarity and look of the image you see on the **pixevety** Platform will not necessarily be the same when reproduced on your device or in tangible form due to a number of different factors, including image resolution, printing process, ink quality, colour palette, colour conversion process, and surface of the tangible item on which the digital image is reproduced. You take all risk in relation to application of the digital image to a tangible product, and we are not responsible to you or any third party for any change in the appearance of the digital image once it has been applied to a tangible object.

8.4 Where you purchase Products from Merchants, you create a separate legally binding contract with that Merchant, subject to that Merchant's terms and conditions. We are not responsible for enforcing, or resolving any disputes relating to, the terms of your agreement with that Merchant.

8.5 Where you purchase Products through us, additional terms and conditions will apply.

## 9. FAIR USE

9.1 An Organisation:

- (a) is solely responsible for the use, supervision, management and control of its Subscription Plan and the **pixevety** Platform, and must not authorise use by, or disclosure to, any persons other than the Users without **pixevety's** prior written consent;
- (b) must not use the **pixevety** Platform otherwise than in accordance with these terms;

- (c) must comply with **pixevety**'s instructions in relation to the use of the **pixevety** Platform;
  - (d) must maintain the minimum requirements for operation of the **pixevety** Platform as described in the Materials or otherwise notified by **pixevety**;
  - (e) must not alter, delete or interfere with any copyright or trademark notice which appears as part of the Subscription Service;
  - (f) uses the **pixevety** Platform at its own risk;
  - (g) is solely responsible for the Content uploaded by a Connected User;
  - (h) warrants that it has the rights to use the Content, including to upload the Content to the **pixevety** Platform;
  - (i) is solely responsible for obtaining parental/guardian consent for the Organisation's use of the Content, and managing such Content within the **pixevety** Platform;
  - (j) acknowledges **pixevety** is not liable for any access, publication or storage of Content in error by the Organisation or resulting from the Organisation's application and/or use of the **pixevety** Platform.
- 9.2 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**).
- 9.3 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**).
- 9.4 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.

## 10. INTELLECTUAL PROPERTY

- 10.1 You own (or are the permitted licensee of) 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 Pty Ltd to provide the Services, including to display the Content on the Platform.
- 10.2 If you have access to the Gallery Administration Module, you may designate other Users as members of your Gallery 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.
- 10.3 You must not copy, modify, distribute, prepare derivative works of, display, publish, or adapt any Content on the **pixevety** Platform without obtaining the prior written consent of the owner of that Content.
- 10.4 You acknowledge that Pixevety Pty Ltd 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 **pixevety** Platform.
- 10.5 We may seek the agreement of an Organisation that uses the **pixevety** Platform and Services to publish the Organisation's logo and an advertising testimonial provided by the Organisation on our Brochure Site.

## **11. THIRD PARTY SERVICES**

- 11.1 We may make third-party content and services available on or through the **pixevety** Platform or Services (e.g. secure printing). If you choose to engage with any third-party service provider, we are not a party to the agreement and the agreement will be directly between you and that third-party service provider.
- 11.2 We make no representation or warranty as to third-party service providers.
- 11.3 Some areas of the **pixevety** Platform, and some types of Services, may have additional terms and conditions. Where additional terms apply, we will make them available for you to read. By using those areas of the **pixevety** Platform or those Services, you agree to the additional terms.
- 11.4 The Platform may contain links to websites not owned or operated by us. These are not referrals, sponsorships, or endorsements of the linked sites by us. We are not responsible for the contents of any linked websites. You should familiarise yourself with the terms and conditions and privacy policy of any website to which you link.

## **12. SUPPORT SERVICES AND BACKUP**

- 12.1 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.

- 12.2 At our discretion, we may provide Organisations with on-site assistance or remote assistance (e.g. via video conferencing) to enable the operation of the **pixevety** Platform and Services.
- 12.3 Organisations must use best endeavours to provide in-house support services to all Users using their own personnel and other resources, and to address any support issues internally using such resources before requesting assistance via our phone or help-desk support services. Best endeavours relate to matters such as determining and resolving organisational policy, procedural and communication issues impacting use of the **pixevety** Platform and Services; training new staff to use the **pixevety** Platform; establishing whether technical issues are, in fact, caused by the **pixevety** Platform and are not due to a failure or shortcoming in the Organisation’s infrastructure (e.g. WiFi or bandwidth connection issues, browser security settings or insufficient training of staff)
- 12.4 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.
- 12.5 Organisations must assign at least one representative over the age of 18 who has authority to register the Gallery on behalf of the Organisation and who will become the Administrator of that Gallery (“Administrator”). That person will be the project leader to ensure the Organisation’s use of the **pixevety** platform is in accordance with these Terms and applicable laws. Should this Administrator need to cease their activity, the Organisation must appoint another Administrator and then revoke the previous Administrator’s access to the Gallery.

### **13. DISPUTE RESOLUTION**

- 13.1 If you have a complaint about the **pixevety** Platform or the Services please contact us at [privacy@pixevety.com](mailto: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.

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](#).

### **14. SUSPENSION, RESTRICTION AND TERMINATION**

- 14.1 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.
- 14.2 We may terminate or suspend your use of the **pixevety** Platform and/or your Account where you have (or we reasonably suspect that you may have) breached any of the Terms, or where required by law.

- 14.3 You may choose to cancel your Account at any time. Cancelling your Account does not automatically remove your obligation to comply with all the Terms.
- 14.4 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 your 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.
- 14.5 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 Agreement, or if you do not have a Subscription Plan, 30 days after termination of your Account.
- 14.6 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 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.
- 14.7 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.
- 14.8 Any terms which by their nature should continue to apply will survive any termination or expiration of these Terms.

## 15. INDEMNITY

- 15.1 You indemnify and will keep indemnified Pixevety Pty Ltd against all claims, actions, suits, demands, damages, liabilities, costs or expenses (including legal costs and expenses on a full indemnity basis), including in tort, contract or negligence, 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.

## 16. PRIVACY

- 16.1 You must read and understand the [pixevety Platform Privacy Policy](#) before accessing or using the **pixevety** Platform or Services.
- 16.2 We may update or change the **pixevety** Platform Privacy Policy without notice to you.
- 16.3 Where an Organisation uses the **pixevety** Platform and Services to manage the personal information of individuals (e.g. a school using the **pixevety** Platform to manage images of students):
- 16.3.1 The responsibility for ensuring compliance with the privacy law that applies to them lies with the Organisation; specifically:
- 16.3.1.1 The Organisation must have issued an appropriate 'collection statement' (also called a 'privacy notice') in accordance with the privacy law that applies to them, and
- 16.3.1.2 Having regard to its 'collection statement', the Organisation must not use or disclose personal information in any other manner without the express consent of the individual concerned;
- 16.3.2 We are not liable for unauthorised access, use, disclosure or loss of personal information made in error by the Organisation or resulting from the Organisation's access and use of the **pixevety** Platform and Services generally; and
- 16.3.3 Failure to use, or a decision to disable, privacy enhancing features of the **pixevety** Platform (e.g. the Consent Management Module) is at the Organisation's own risk and liability.
- 16.4 Where an Organisation asks us to interrogate or audit the **pixevety** Platform in order to fulfil an obligation set out in the privacy law that applies to them (e.g. where the Organisation is investigating a data breach event), we will assist in a manner consistent with the Terms and our obligations under Australian privacy law.
- 16.5 An Organisation may seek clarification of the Terms and our approach to privacy as set out in the **pixevety** Platform Privacy Policy (e.g. where the Organisation is conducting a Privacy Impact Assessment to fulfil an obligation set out in the privacy law that applies to them). This cannot and does not alter or limit the Terms.
- 16.6 Where an Organisation seeks to enter into an agreement with Pixevety Pty Ltd in respect of privacy (e.g. to fulfil an obligation set out in the privacy law that applies to them), any such agreement cannot and does not alter or limit the Terms.

## 17. LIMITATION OF LIABILITY

- 17.1 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 Pty Ltd 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.

17.2 An Organisation acknowledges and agrees 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 an Enterprise Gallery exceeds the data limitations as advised in its Enterprise Subscription Plan;
- (d) the facial recognition technology incorporated in an Enterprise Gallery is not error-free and does require human intervention, and as such may not result in accurate results on certain Content;
- (e) the accuracy of tags created by a Subscription Service are contingent on the Organisation using the **pixevety** Platform in accordance with **pixevety's** instructions, including a strict requirement to ensure each Member has a master face template for facial recognition 'Member matching' that is unobstructed, full frontal view and a minimum requirement of face height and width within a photo of 100 x 100 pixels in quality.

17.3 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 goods 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 goods repaired or replaced if the goods 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.

17.4 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.

17.5 To the extent permitted by applicable law, we will not be liable to you or any third party for any direct, 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.

- 17.6 If we are not able to exclude liability, 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 Pty Ltd for the Services the subject of the claim.

## 18. DATA BREACH

- 18.1 If we, an Organisation or another party become aware of, or reasonably suspect, that personal information has been subject to unauthorised access or disclosure (Data Breach), the appropriate action required under Australian privacy law must be taken.
- 18.2 Appropriate action includes, but is not limited to:
- 18.2.1 Each party, at its cost, immediately investigating the nature and extent of the Data Breach;
  - 18.2.2 Each party providing all reasonable assistance to the other parties in relation to the investigation being undertaken; and
  - 18.2.3 Upon determining that a Data Breach is an “eligible data breach” within the meaning of Australian privacy law,
    - 18.2.3.1 The Organisation making notifications of the Data Breach in the manner prescribed in Australian privacy law (if the Organisation is using the **pixevety** Platform and services to manage the personal information of individuals); OR
    - 18.2.3.2 Pixevety Pty Ltd making notifications of the Data Breach in the manner prescribed in Australian privacy law (if we are providing access to the **pixevety** Platform and Services directly – e.g. to an individual account holder, as opposed to via an Organisation).
- 18.3 Where the responsibility for notification of an “eligible data breach” falls to an Organisation, the Organisation must obtain our prior written consent as to the form and content of the notification.

## 19. PIXEVETY PLEDGE

- 19.1 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](#).

## 20. GENERAL

- 20.1 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.



- 20.2 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 Pty Ltd, its related entities or affiliates in any way whatsoever.
- 20.3 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
- 20.4 These Terms may be assigned or novated by us to a third party without your consent. In the event of an assignment or novation you will remain bound by these Terms.
- 20.5 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.
- 20.6 These Terms are to be construed in accordance with the laws of New South Wales, Australia, 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.
- 20.7 We may change or update the Terms from time to time at our sole and absolute discretion with or without prior notice to you, provided they do not materially affect your access to the **pixevety** Platform or use of the Services. Such modifications will be effective immediately and incorporated into these Terms, with a "last updated" notation to be made in the preamble of the Terms. Your continued use of the **pixevety** Platform acknowledges your acceptance of the modified Terms.