

PIXEVETY U.S. PLATFORM TERMS OF SERVICE

Last Updated: 20 May 2024

These pixevety U.S. Platform Terms of Service (the **Terms**) are entered into by and between the user or subscriber of the Services (**User, you, or your**) and PIXEVETY, INC. (**pixevety, we, us, and our**) and govern your access to and use of the Services (collectively the **Parties** and each a **Party**). Capitalized terms used in these Terms are defined throughout and in Section 18.

PLEASE READ THIS DOCUMENT CAREFULLY. THESE TERMS CONSTITUTE A BINDING LEGAL AGREEMENT BETWEEN YOU AND PIXEVETY, AND CONTAIN IMPORTANT LEGAL INFORMATION REGARDING THE DURATION OF THE SERVICES, OUR RIGHTS TO CHANGE THESE TERMS, LIMITATIONS OF OUR LIABILITY, WARRANTY DISCLAIMERS, TERMS REGARDING YOUR AND OTHER PERSONS' PRIVACY RIGHTS, AND **BINDING MANDATORY ARBITRATION, CLASS ACTION WAIVER, AND JURY TRIAL WAIVER PROVISIONS SET FORTH IN SECTION 16**, WHICH GOVERN THE RESOLUTION OF DISPUTES AND REQUIRE THE USE OF INDIVIDUAL ARBITRATION TO RESOLVE DISPUTES.

To contact us regarding any questions about these Terms, please refer to the Contact Us page available at <https://pixevety.com/contact-us/>.

1. ACCEPTANCE AND COMPLIANCE

- 1.1 Generally. Your access to and use of the Services is expressly conditioned upon your acceptance of and compliance with these Terms.
- 1.2 Effective Date. 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 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.
- 1.3 Effect of Clicking "Accept" or Use of Services. By clicking on the "Submit" button in the Registration form or by accessing or using the Services, you: (a) acknowledge that you have read and understand these Terms; (b) represent and warrant that you have the right, authority, and permission to access the Services; (c) accept these Terms and agree that you are legally bound by the terms and conditions stated therein; (d) are legally and financially responsible for your access to and use of the Services; and (e) agree to comply with the terms and conditions set forth in these Terms.
- 1.4 Effect of Not Agreeing to Entirety of These Terms. IF YOU DO NOT AGREE TO ANY PART OF THESE TERMS, INCLUDING THE BINDING MANDATORY ARBITRATION, CLASS ACTION WAIVER, AND JURY TRIAL WAIVER PROVISIONS, YOU MUST CLICK THE "CANCEL" BUTTON IN THE REGISTRATION FORM AND YOU MAY NOT ACCESS OR USE THE SERVICES IN ANY MANNER FOR ANY PURPOSE.

2. SERVICES

- 2.1 Access. There are a number of ways in which you may access pixevety, including: (a)

where you are an individual or Organization, by setting up an Account with **pixevety** and becoming an Account Holder; or (b) where you are an individual, by being granted access to a Gallery by an Organization and becoming a **pixevety** User. An Organization may also provide access to a Gallery on their own website, and Account Holders can invite other Account Holders and Users to access their Gallery to collect, organize, edit, store, and share Content in a private and secure environment. These Terms apply regardless of how you use or access the Services or a Gallery.

- 2.2 Free Services and Subscription Services. You can use the Services as a paid or unpaid User. As an unpaid User, you will have access only to certain limited functionality within the Services that **pixevety** elects to make available on an unpaid or free basis (**Free Services**). As a paid User under a Subscription Plan, you will have access to certain additional features and functionality (**Subscription Services**). These Terms apply regardless of whether you use the Free Services or the Subscription Services. At any time, we may update, vary, modify, or cancel the Subscription Services upon providing reasonable notice to you.
- 2.3 Right to Access and Use. Subject to and conditioned 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 operations and in accordance with the terms and conditions herein.
- 2.4 Documentation License. Subject to and conditioned on your compliance with these Terms, **pixevety** hereby grants you a non-exclusive, non-sublicensable, non-transferrable license to use the Documentation during the applicable Term, solely for your internal purposes and in connection with your use of the Services.
- 2.5 Reservation of Rights. 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.
- 2.6 Authorized Users. If your Subscription Plan includes multiple users (**Authorized Users**), you may give access only to that number of Authorized Users as specified in your Subscription Plan, provided that each Authorized User agrees to comply with these Terms and the terms and conditions set forth in any applicable Enterprise Service Agreement or Subscription Plan.
- 2.7 Suspension or Termination. Notwithstanding anything to the contrary in these Terms, **pixevety** may temporarily suspend, terminate, or otherwise deny your access to or use of all or any part of the Services or Pixevety Materials if: (a) **pixevety** reasonably determines that: (i) there is a threat or attack on any of the Pixevety IP; (ii) your use of the Pixevety IP disrupts or poses a security risk to the Pixevety IP or to any other customer or vendor of **pixevety**; (iii) you are using the Pixevety IP for fraudulent or illegal activities; (iv) subject to Applicable Law, being an organization, you have ceased to continue your business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (v) **pixevety's** provision of the Services to you, directly or indirectly, is prohibited by Applicable Law; (b) any vendor of **pixevety** has

suspended or terminated pixevety's access to or use of any of third-party services or products required to enable you to access the Services; or (c) in accordance with Section 6.2 (any suspension described in subclause (a), (b), or (c), a **Service Suspension**). pixevety shall use commercially reasonable efforts to provide written notice of any Service Suspension to you and to provide updates regarding resumption of access to the Services following any Service Suspension. pixevety shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Services Suspension is cured. pixevety shall have no liability for any damage, liabilities, losses (including any loss of profits), or any other consequences that you or any other Person may incur as a result of a Service Suspension.

3. USE RESTRICTIONS; SERVICE USAGE

- 3.1 Use Restrictions. You shall not, and shall 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 shall not, at any time, directly or indirectly, and shall 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 unauthorized 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 authorization granted under Section 2.2; or (o) otherwise use the Services in a manner that could be regarded by **pixevety**, using its reasonable judgment (and with regard to the nature of the Services) to be unacceptable.

- 3.2 Age Restrictions and Limitations. If you are between the ages of thirteen (13) and eighteen (18), you may register for an individual Account to use the Services only under the supervision of a parent or legal guardian who agrees to be bound by these Terms, unless you have been granted access by an Organization/school Account Holder. If you are **under the age of thirteen (13)**, you may **not** use the Services.
- 3.3 Suspension or Termination of Related or Associated Accounts. Your access to and ability to use the Services may be suspended or terminated if you are an Authorized User and the Account of the Customer or Individual User who has provided you with access to the Services is suspended or terminated. You agree that we will have no liability to you or any other Person for any loss or damage incurred by you or any other Person in such an event.
- 3.4 Service Usage.
- (a) Excess Use. Excess use occurs where a User views or downloads a volume of User Content that is more than three (3) times the level of storage included in an applicable Subscription Plan in any one (1) month (**Excess Use**).
 - (b) Unreasonable Use. Unreasonable use occurs where a User's access to or use of the Services adversely affects **pixevety's** provision of the Services to other Persons, as reasonably determined by **pixevety** (**Unreasonable Use**).
 - (c) Corrective Action by Pixevety. If we reasonably determine that you have engaged in Excess Use or Unreasonable Use, we may:
 - (i) contact you to discuss the Excess Use or Unreasonable Use;
 - (ii) without notice to you, suspend your access to the Services; and/or
 - (iii) without notice to you, terminate your access to the Services.

4. YOUR RESPONSIBILITIES

- 4.1 Content Standards Policy. Use of the Services must comply with our Content Standards Policy. We reserve the right to permanently remove, hide, or censor any User Content or User Data, in whole or in part, if we reasonably believe that such User Content or User Data is in violation of our Content Standards Policy. In such event, we will not be liable for any loss or damage suffered by you or any other Person in connection with any such removal.
- 4.2 Account Use. 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.

- 4.3 User Data. 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 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.
- 4.4 Incorporated Facial Recognition Technology for Enterprise Plans. 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.
- 4.5 User Content. In your use of the Services, you may upload, post, provide, publish, display, share, or otherwise make available User Content through the Pixevety Systems. You hereby grant to **pixevety** a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display all such User Content that you make available via the Pixevety Systems and perform all acts with respect to User Content as may be necessary for **pixevety** to provide the Services to you. You will ensure that all User 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 User Content that you make available via the Services. You are further solely responsible for the development, content, operation, maintenance, and use of User Content that you make available via the Services. We take reasonable steps to secure User Content; however, we cannot prevent, nor are we liable for, any image capturing, or similar technology used to take unauthorized screenshots or otherwise copy, retain, or save User Content. Moreover, you acknowledge and agree that we provide a tool to manage User Content, but we do not own or control any User Content. Therefore, we cannot, and do not, warrant, verify, or guarantee the quality, accuracy, safety, or integrity of any User 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.
- 4.6 Passwords and Access Credentials. You are responsible for keeping your passwords and Access Credentials associated with the Services confidential. You will not sell or transfer them to any other Person. You will promptly notify us about any unauthorized access to your passwords or Access Credentials.
- 4.7 Third-Party Materials. The Services may permit access to Third-Party Materials. For purposes of these Terms, 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. SUPPORT SERVICES AND DATA BACKUP

- 5.1 Support. For Users of Subscription Services, the level of technical Support Services provided by **pixevety** is dependent upon your applicable Subscription Plan. For Users of both Subscription Services and Free Services, **pixevety** makes available access to our online help and FAQ resource pages.
- 5.2 Data Backup. While **pixevety** has implemented commercially reasonable technical and organizational measures designed to secure User Content and User Data from misuse, interference, loss, unauthorized access, modification, or disclosure, you are solely responsible for creating and maintaining backup copies of your User Content and User Data.

6. FEES AND PAYMENT

- 6.1 Fees. Users of Subscription Services 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 in 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.
- 6.2 Add-On Payments. 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.
- 6.3 Payment. You shall pay **pixevety** all Subscription Fees within thirty (30) days from the applicable invoice date, without setoff or deduction. You shall make all payments in U.S. 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 1.5% per month (18% per annum) or the maximum rate permitted by Applicable Law, whichever is less; (b) you shall 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 Section 2.6, 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 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 U.S. Governmental Authority on any amounts payable by you hereunder, other than any taxes imposed on **pixevety**'s income.

- 6.4 Third-Party Payment Processor. We use a third-party payment processor to facilitate payments of Subscription Fees. The processing of such payments is subject to the terms, conditions, and privacy policies of the third-party payment processor, and not by these Terms. We do not control, and are not liable for, the security or performance of the third-party payment processor. You agree to pay us, through the payment processor, all Subscription Fees at the prices then in effect in accordance with the applicable payment terms. You agree to make payment using the payment method specified in the relevant invoice, Subscription Plan, or as otherwise agreed with pixevety in writing in a written Proposal or other writing signed by pixevety and you. We reserve the right to correct, or to instruct our third-party payment processor to correct, any errors or mistakes, even if payment has already been requested or received.

7. **CONFIDENTIAL INFORMATION**

- 7.1 Confidential Information. 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 User 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. 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. 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.

8. **PRIVACY AND SECURITY**

- 8.1 Personal Data. You acknowledge and agree that where a User uses the Services to manage the Personal Data of Persons (*i.e.*, a school using the Services to manage student images): (a) the User, not pixevety, owns and controls the Personal Data used by the Services; and (b) the User is solely responsible for satisfying all legal requirements and obligations under Applicable Law, including without limitation, Applicable Data Law, pertaining to such use of Personal Data.

8.2 Enterprise Plan/Gallery Collection and Use of Biometric Data.

- (a) Collection, Use, and Storage. You acknowledge and agree that when a User chooses to enable the facial recognition functionality as part of the Services offered for Enterprise Plans, the Services will collect, use, and store Biometric Data to identify Persons who have been captured in images. Users must not use the facial recognition functionality to identify any Person unless the User has first obtained their consent to do so.
- (b) Control. Where a User uses the facial recognition functionality as part of an Enterprise Plan, you acknowledge and agree that: (i) the User, not **pixevety**, owns and controls the Biometric Data used by the facial recognition functionality and the Services; and (ii) the User is solely responsible for satisfying all legal requirements under Applicable Law, including without limitation, Applicable Data Law, pertaining to such use of Biometric Data.
- (c) User Responsibilities. As the owner of Biometric Data, the User is solely and exclusively responsible for: (i) maintaining all necessary privacy policies, privacy notices, and related disclosures in accordance with Applicable Data Law; (ii) providing all necessary public and individualized notices in accordance with Applicable Data Law; (iii) obtaining all necessary consents in accordance with Applicable Data Law; (iv) satisfying all requirements and limitations with respect to the disclosure and dissemination of Biometric Data in accordance with Applicable Data Law; (v) satisfying all security requirements in accordance with Applicable Data Law; and (vi) otherwise complying with all other requirements of Applicable Data Law consistent with its use of the Services and these Terms.
- (d) Pixevety Disclaimer. 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 User'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.

8.3 Failure to Use Privacy-Enhancing Features. A User's failure to use, or any decision to disable, the privacy-enhancing features offered as part of the Services is at the User's sole risk and liability.

9. **PRIVACY POLICIES AND PIXEVETY PLEDGE**

9.1 Privacy Policy and Biometric Information Privacy Policy. **pixevety** complies with its Platform Privacy Policy (**Privacy Policy**) and its Biometric Information Privacy Policy (**Biometric Information Privacy Policy**) in providing the Services. The Privacy Policy and Biometric Information Privacy Policy are subject to change as described therein. By accessing, using, and providing information, including without limitation, User Content and User Data, through the Services, you acknowledge that you have reviewed and accepted **pixevety's** Privacy Policy and Biometric Information Privacy Policy, and you consent to all actions taken by us with respect to your information in compliance with the then-current version of the Privacy Policy and Biometric Information Privacy Policy.

- 9.2 Pixevely Pledge. When accessing and using the **pixevely** Services, including your access to any Pixevely Materials, User Content, and User Data, you agree to comply with the standard of polite conduct set forth in our Pixevely Pledge.

10. INTELLECTUAL PROPERTY OWNERSHIP AND FEEDBACK

- 10.1 Intellectual Property Ownership. As between you and us: (a) we own all right, title, and interest, including all Intellectual Property Rights, in and to the Services and Pixevely Materials; and (b) you own all right, title, and interest, including all Intellectual Property Rights, in and to User Content and User Data.
- 10.2 Feedback. You hereby grant **pixevely** a royalty-free, fully-paid, irrevocable, perpetual, non-exclusive, worldwide, assignable, and otherwise transferrable license, with the unrestricted and unlimited right to grant sublicenses to: (1) create derivative works based on any communications or materials sent or transmitted to us by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (**Feedback**); and (2) use, copy, display, publish, or otherwise commercialize or exploit in any manner Feedback or derivative works based thereon. You acknowledge and agree that we are free to use such Feedback irrespective of any other obligation or limitation between you and us governing such Feedback, and that any such Feedback is and will be treated as non-confidential. **pixevely** has no obligation to compensate or credit you for Feedback you provide to us, regardless of whether or how we may use or otherwise commercialize it, although we are not required to use any Feedback.

11. LIMITED WARRANTY AND WARRANTY DISCLAIMER

- 11.1 Pixevely Warranty. **pixevely** warrants that it provides the Services using a commercially reasonable level of care and skill. **pixevely** does not make any representations or guarantees regarding availability of the Services. THE FOREGOING WARRANTY DOES NOT APPLY AND **PIXEVETY** STRICTLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO ANY THIRD-PARTY MATERIALS.
- 11.2 Your Warranty. You warrant that you own all right, title, and interest, including all Intellectual Property Rights, in and to User Content and User Data, and that all User Content, User Data, and your use of the Services are in compliance with Applicable Law, including without limitation, Applicable Data Law.
- 11.3 WARRANTY DISCLAIMER. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 11.1, THE SERVICES ARE PROVIDED "AS IS" AND **PIXEVETY** SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. **PIXEVETY** SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. **PIXEVETY** MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY'S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE

OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

12. INDEMNIFICATION

- 12.1 Your Indemnification Obligation to Pixevety. You shall indemnify, hold harmless, and, at **pixevety's** option, defend **pixevety** and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all Losses arising from or relating to any Action concerning: (a) any User Content or User Data, including any Processing of User Content or User Data by or on behalf of **pixevety** in accordance with Intellectual Property Rights or privacy rights; (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of you or any other Person, including **pixevety's** compliance with any specifications or directions provided by or on behalf of you or any other Person to the extent prepared without any contribution by **pixevety**; (c) any material breach by you of any term or condition of these Terms, including but not limited to your warranties, covenants, obligations, and/or representations, as well as any breach of your privacy or information security obligations; (d) any claim arising out of or otherwise related to your failure or alleged failure to comply with Applicable Data Law; and (e) gross negligence or more culpable act or omission (including recklessness or wilful misconduct) by you or by any other Person on behalf of you, in connection with these Terms. You may not settle any Action against **pixevety** unless **pixevety** consents to such settlement, and further provided that **pixevety** will have the right, at its option, to defend itself against any such Action or to participate in the defense thereof by counsel of its own choice.

13. LIMITATIONS OF LIABILITY

- 13.1 LIMITATIONS OF LIABILITY. IN NO EVENT WILL **PIXEVETY** BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL **PIXEVETY'S** AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO **PIXEVETY** UNDER THESE TERMS AND ANY APPLICABLE SUBSCRIPTION PLAN OR ENTERPRISE SERVICE AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

14. TERM AND TERMINATION

- 14.1 Term. 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**).

14.2 Subscription Term and Renewal. If you are a User of Subscription Services, your initial subscription term will be for a period of (1) year from the applicable Effective Date, unless a longer period is specified in writing in the applicable Proposal (**Initial Term**). Following expiration of the Initial Term, your Subscription Plan will renew automatically, commencing on the day following the expiration of the then-current term, for an additional, independent, one (1)-year term, unless a longer period is specified in writing in the applicable Proposal (each a **Renewal Term** and, collectively, together with the Initial Term, the **Subscription Term**), unless the you provide **pixevety** with written notice of non-renewal at least (30) days prior to the expiration of the then-current term. **pixevety** will provide you with notice of any renewal at least thirty (30) days in advance of the expiration of the then-current Initial Term or Renewal Term. Each Renewal Term will proceed and be governed by the same terms as the Initial Term, except that the fee rate will be set by the then-current market rate (and not the original negotiated fee rate for the Initial Term), as set forth in more detail in Section 6.

14.3 Termination. In addition to any other express termination right set forth in these Terms:

- (a) **pixevety** may terminate the agreement entered into between you and **pixevety** pursuant to these Terms, or suspend performance of its obligations under these Terms for such period as specified by **pixevety**, effective on written notice to you, if you: (i) fail to pay any amount due hereunder, and such failure continues more than thirty (30) days after **pixevety**'s delivery of written notice thereof; (ii) breach these Terms, and such breach remains uncured seven (7) days after **pixevety** provides you with written notice of such breach; (iii) being an organization, suspend or cease, or threaten to suspend or cease, carrying on business in a normal manner; (iv) being an organization, 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; (v) being an organization, become insolvent or are generally unable to pay, or fail to pay, your debts as they become due; (vi) being an organization, 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; (vii) being an organization, make or seek to make a general assignment for the benefit of your creditors; (viii) being an organization, 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 (ix) being a natural person, dies.
- (b) 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.
- (c) 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."
- (d) Where your Subscription Plan is part of an Enterprise Agreement, your

Subscription Plan can only be cancelled in accordance with the terms of the Enterprise Agreement and cannot be cancelled under this clause.

- 14.4 Effect of Termination. Upon termination of the agreement entered into between you and **pixevety** pursuant to these Terms, you shall immediately discontinue use of the Services and Pixevety Materials. No expiration or termination of these Terms will affect your obligation to pay all Subscription Fees that may have become due before such expiration or termination or entitle you to any refund.
- 14.5 Insolvency Event. We will notify you in writing if we experience an insolvency event, and will use reasonable efforts to ensure that the Services remain available for two (2) consecutive methods after any such insolvency event. You acknowledge and agree that it is your responsibility to copy or remove your User Content and User Data from the Services during this period. We do not make any warranty or representation that your User Content or User Data will be available to you after this period.
- 14.6 Survival. Any right, obligation, or required performance of the Parties in these Terms which, by its express terms or nature and context is intended to survive termination or expiration of the agreement entered into between you and **pixevety** pursuant to these Terms, will survive any such termination or expiration.

15. MODIFICATIONS

- 15.1 Modifications. You acknowledge and agree that we have the right, in our sole discretion, to modify these Terms from time to time, and that modified terms become effective on posting. You will be notified of modifications through direct email communication from us. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Services after the effective date of the modifications will be deemed acceptance of the modified terms. **pixevety** will provide you with at least thirty (30) days' advance written notice of any changes to any of these Terms that **pixevety** reasonably anticipates may result in a material reduction in the nature or quality of the Services, or which may otherwise materially modify your rights or obligations under these Terms.

16. GOVERNING LAW AND JURISDICTION, ARBITRATION, CLASS ACTION WAIVER, AND JURY TRIAL WAIVER

- 16.1 Governing Law and Jurisdiction. The laws of the State of Delaware, United States govern all matters arising out of these Terms, without reference to its conflicts of laws principles. These Terms will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Notwithstanding the provision above with respect to applicable substantive law, because the agreement entered into between you and **pixevety** pursuant to these Terms is a transaction in interstate commerce, the Federal Arbitration Act (**FAA**), and not state arbitration law, shall govern the interpretation, validity, and enforceability of the arbitration provision set forth below.
- 16.2 Informal Dispute Resolution. The Parties agree that most disputes can be resolved without resort to litigation. If you have any dispute with us, you agree that before taking any formal action, you will contact us at privacy@pixevety.com and provide a brief, written description of the dispute and your contact information (including your Account information, if your dispute relates to an Account). Except for intellectual property and small claims court

claims, the Parties agree to use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation with **pixevety**, and good faith negotiations shall be a condition to either Party initiating any type of formal dispute, including without limitation arbitration.

- 16.3 Binding Individual Arbitration. If the Parties do not reach an agreed-upon solution within a period of thirty (30) days from the time the informal dispute resolution is initiated as set forth above, then either Party may initiate binding arbitration as the sole means to resolve any such disputes, subject to the terms set forth below. Specifically, all claims arising out of or relating to these Terms (including its formation, performance, and breach), the Parties' relationship with each other, and/or your use of the Services shall be resolved exclusively by final and binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. As indicated above, the FAA and federal arbitration law apply to these Terms. There is no judge or jury in arbitration, and court review of an arbitration award is limited. An arbitrator can award on an individual basis the same damages and relief as a court, including injunctive and declaratory relief or statutory damages, and must follow the provisions of these Terms as a court would.
- 16.4 Arbitration Initiation Procedures. To begin an arbitration proceeding, you must send a written notice (**Arbitration Notice**) requesting arbitration and describing your claim to **pixevety**, Attention: Privacy Officer at privacy@pixevety.com. Your Arbitration Notice to **pixevety** must: (a) provide your name, mailing address, and email address; (b) describe the dispute; and (c) state the relief you are requesting (**Arbitration Demand**). The arbitration will be conducted by the American Arbitration Association (**AAA**) under its rules, as modified by these Terms. The AAA's rules are available at www.adr.org or by calling 1-800-778-7879. Payment of all filing, administration, and arbitration fees will be governed by the AAA's rules.
- 16.5 No Class, Consolidated, or Representative Claims or Actions. You and **pixevety** each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated, or representative action. If, for any reason, a claim proceeds in court rather than in arbitration, you and **pixevety** each waive any right to a jury trial. You and **pixevety** both agree either you or **pixevety** may bring suit in state or federal court in the State of Delaware, United States to enjoin infringement or misuse of Intellectual Property Rights.
- 16.6 Opt-Out Procedure. To opt out of the arbitration and class action waiver terms in this Section 16, you must notify **pixevety** in writing within thirty (30) days of the Effective Date of these Terms (unless a longer period is required by Applicable Law). You must mail your written notification to **pixevety**, Attention: Privacy Officer to the address listed in Section 16.4.
- 16.7 Modifications. **pixevety** will provide thirty (30) days' notice of any changes to this Section 16 by posting on the page located at: <https://public-us.pixevety.com/docs/policies/terms-of-service.pdf> . You will be notified of modifications of this Section 16 through direct email communication from us. Amendments will become effective thirty (30) days after they are posted at the foregoing link, or you are notified through direct email communication from us. You may reject any change **pixevety** makes to Section 16 (except address changes) by sending **pixevety** written notice within thirty (30) days after the change has taken effect by providing notification of your intent to opt-out by mail to the address in Section 16.4. If

you opt-out in accordance with Section 16.6, the most recent version of Section 16 before the change you rejected will apply. It is not necessary to send pixevety a rejection of a future change to this Section 16 if you had properly opted out of the arbitration and class action waiver provisions in this Section 16 within the first thirty (30) days after you first accepted these Terms.

17. MISCELLANEOUS

- 17.1 Entire Agreement. These Terms, together with any applicable Enterprise Service Agreement, Subscription Plan, and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of these Terms and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. If you have an Enterprise Service Agreement or Subscription Plan with pixevety, the terms of that Enterprise Service Agreement or Subscription Plan shall prevail in the event of any inconsistency or conflict between the Enterprise Service Agreement or Subscription Plan and these Terms.
- 17.2 Method of Acceptance. These Terms may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent), and your acceptance will be deemed binding between the Parties. Neither Party may contest the validity of these Terms, including under any applicable statute or frauds, because it was accepted and signed in electronic form. Electronically maintained records, when produced in hard copy form, shall constitute business records, and shall have the same validity as any other generally recognized business records.
- 17.3 Electronic Notice. You hereby consent to receiving electronic communications from us, including through direct email communication and the user interfaces through the Services. These electronic communications may include notices regarding these Terms, applicable fees and charges, transactional information, and other information concerning or relating to the Services. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.
- 17.4 Severability. The invalidity, illegality, or unenforceability of any provision of these Terms does not affect any other provision of these Terms or the validity, legality, or enforceability of such provision in any other jurisdiction.
- 17.5 No Third-Party Beneficiaries. The agreement entered into between you and pixevety pursuant to these Terms is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.
- 17.6 Waiver. Any failure to act by us with respect to a breach of these Terms by you or any other Person does not constitute a waiver and shall not limit our rights with respect to such breach or any subsequent breaches.

18. SCHEDULE OF DEFINITIONS

AAA means the American Arbitration Association.

Access Credentials means any user name, 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 authorization to access and use the Services.

Account means a registered account that allows access to the Services.

Account Holder means a Customer or Individual User with an Account.

Action means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

Affiliate of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

Applicable Data Law means all laws and regulations applicable to and binding on the processing of User Data, Personal Data, or Biometric Data by a Party, including, as applicable, the California Consumer Privacy Act of 2018 (including as amended by the California Privacy Rights Act of 2020) (**CCPA**), Colorado Privacy Act (**CPA**), Connecticut Data Privacy Act (**CTDPA**), Utah Consumer Privacy Act (**UCPA**), Virginia Consumer Data Protection Act (**VCDPA**), Illinois Biometric Information Privacy Act (**BIPA**), Texas Capture or Use of Biometric Identifiers Act (**CUBI**), and Washington RCW Chapter 19.375.

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

Arbitration Demand has the meaning set forth at Section 16.4.

Arbitration Notice has the meaning set forth at Section 16.4.

Authorized User means any individual within a Customer's Organization 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.

Biometric Data means Biometric Identifiers and Biometric Information (as defined herein), including but not limited to any information collected in connection with the Services (as defined herein).

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 Authorized User (as defined herein) device, or stored in an internal or external database accessed by the Services.

Confidential Information has the meaning set forth in Section 7.1.

Customer means an entity that has purchased a Subscription Plan through an Enterprise Service Agreement permitting the entity and its Authorized 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 forth in Section 1.2.

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

Excess Use has the meaning set forth at Section 3.4(a).

FAA means the Federal Arbitration Act.

Feedback has the meaning set forth at Section 10.2.

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

Gallery means the gallery module accessible through the Services that allows Persons to upload and organize User Content into galleries, folders, and albums, and allows Persons with administrative access to use the associated gallery management tools.

Governmental Authority means any domestic, foreign, or supranational government, whether federal, provincial, state, territorial, or municipal; and any governmental agency, ministry, department, tribunal, commission, bureau, board, or other instrumentality, including international institutions, exercising or purporting to exercise legislative, judicial, regulatory, or administrative functions of, or pertaining to, government.

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 unauthorized 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 forth in Section 14.2.

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.

Losses means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

Organization means an Account Holder that is not an individual.

Party and **Parties** have the meaning set forth in the preamble.

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

Personal Data means personal data, personal information, personally identifiable information, or other equivalent term, each as defined in Applicable Data Law.

Pixevely 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 **pixevely** 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 **pixevely** or its designee.

Pixevely 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, Pixevely IP does not include User Content or User Data.

Pixevely Materials means the Services, Specifications, Documentation, and Pixevely 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 **pixevely** or any subcontractor in connection with the Services or otherwise comprise or relate to the Services or Pixevely Systems. For the avoidance of doubt, Pixevely Materials include Resultant Data and any information, data, or other content derived from **pixevely's** monitoring of a User's access to or use of the Services, but do not include User Content or User Data.

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

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

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 forth in Section 14.2.

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.

Service Suspension has the meaning set forth in Section 2.6.

Service Level Agreement means the service level agreement if set out in the Proposal.

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 Fees has the meaning set forth in Section 6.1.

Subscription Plan means a paid plan purchased on a subscription basis and which permits access and use the **pixevely** Subscription Services. For more information on Subscription Plans, visit our [Pixevely Plan Overview](#) page.

Subscription Services means, collectively, the services and functionalities made available through the purchase of a Subscription Plan, including optional add-ons.

Subscription Term means the Initial Term of a Subscription Plan, and each subsequent Renewal Term (if any).

Support Services means **pixevely**'s standard customer support services, which are provided to Users at the support level purchased by the User in accordance with the **pixevely** support schedule then in effect.

Term has the meaning set forth at Section 14.1.

Terms has the meaning set forth in the preamble.

Third-Party Materials means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to **pixevely**.

Unreasonable Use has the meaning set forth at Section 3.4.

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

User Content means any photographic or other electronic media content or materials provided, posted, uploaded, inputted, or submitted or otherwise uploaded through use of the Services.

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.

User Systems means a User's (or Customer's or Individual User's, where applicable) information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by a User or through the use of third-party services, including without limitation systems used or required by or on behalf of a User for accessing and making use of the Services, other than the technology provided directly by [pixevely](#) under these Terms.

You has the meaning set forth in the preamble.