

# PixelDrive Terms of Service

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Effective: 29 August 2018

Thanks for using PixelDrive! These Terms of Service ("**Terms**") cover your use of and access to our services, client software and websites ("**Services**"). Your agreement is with MLVX Technologies Inc (A Canadian BC corporation). Our Privacy Policy explains how we collect and use your information. By using our Services, you're agreeing to be bound by these Terms and our Privacy Policy. If you're using our Services for an organisation, you're agreeing to these Terms on behalf of that organisation.

## Your Uploads & Your Permissions

When you use our Services, you provide us with things like your files, content, messages, contacts and so on ("**Your Uploads**"). Your Uploads is yours. These Terms don't give us any rights to Your Uploads except for the limited rights that enable us to offer the Services. We need your permission to do things like hosting Your Uploads, backing it up and sharing it when you ask us to. Our Services also provide you with features such as compressing photos, generate photo thumbnails, document previews, commenting, easy sorting and searching. These and other features may require our systems to access, store and scan Your Uploads. You give us permission to do those things, and this permission extends to our affiliates and trusted third parties we work with.

## Sharing Your Uploads

Our Services let you share Your Uploads with others, so please think carefully about what you share.

## Your Responsibilities

You're responsible for your conduct. You and Your Uploads must comply with our Acceptable Use Policy. Content in the Services may be protected by others' intellectual property rights. Please don't copy, upload, download or share content unless you have the right to do so. We may review your conduct and content for compliance with these Terms and our Acceptable Use Policy. That said, we have no obligation to do so. We aren't responsible for the content people post and share via the Services.

Help us keep you informed and Your Uploads protected. Safeguard your password to the Services, and keep your account information current. Don't share your account credentials or give others access to your account.

You may use our Services only as permitted by applicable law, including export control laws and regulations. Finally, to use our Services, you must be at least 13 years old or, in some cases,

older. If you live in France, Germany or the Netherlands, you must be at least 16 years old. Please check your local law for the age of digital consent. If you don't meet these age requirements, you cannot use the Services.

## Software

Some of our Services allow you to download client software ("**Software**") which may be updated automatically. As long as you comply with these Terms, we give you a limited, non-exclusive, non-transferable, revocable licence to use the Software, solely to access the Services. To the extent any component of the Software may be offered under an open source licence, we'll make that licence available to you and the provisions of that licence may expressly override some of these Terms. Unless the following restrictions are prohibited by law, you agree not to reverse engineer or decompile the Services, attempt to do so or assist anyone to do so.

## Beta Services

We sometimes release products and features that we are still testing and evaluating. Those Services have been marked as beta, preview, early access or evaluation (or words or phrases with similar meanings) and may not be as reliable as PixelDrive's other services, so please bear that in mind.

## Our Stuff

The Services are protected by copyright, trademark, and other US and foreign laws. These Terms don't grant you any right, title or interest in the Services, others' content in the Services, PixelDrive trademarks, logos and other brand features. We welcome feedback, but please note that we may use comments or suggestions without any obligation to you.

## Copyright

We respect the intellectual property of others and ask that you do too. We respond to notices of alleged copyright infringement if they comply with the law, and such notices should be reported to PixelDrive. We reserve the right to delete or disable content alleged to be infringing and terminate accounts of repeat infringers. You can get in touch with us via [hello@pixeldrive.co](mailto:hello@pixeldrive.co).

## Paid Accounts

*Billing.* You can increase your storage space and add paid features to your account (turning your account into a "Paid Account"). We'll automatically bill you from the date you convert to a Paid Account and on each periodic renewal date until cancellation. If you're on an annual plan, we'll send you a notice email reminding you that your plan is about to be renewed within a reasonable period of time prior to the renewal date. You're responsible for all applicable taxes,

and we'll charge tax when required to do so. Some countries have mandatory local laws regarding your cancellation rights, and this paragraph doesn't override these laws.

*No refunds.* You can cancel your PixelDrive Paid Account at any time. Refunds are only issued if required by law.

*Downgrades.* Your Paid Account will remain in effect until it's cancelled or terminated under these Terms. If you don't pay for your Paid Account on time, we reserve the right to suspend it or reduce your storage to free space levels.

*Changes.* We may change the fees in effect but will give you advance notice of these changes via a message to the email address associated with your account.

## Termination

You're free to stop using our Services at any time. We reserve the right to suspend or terminate your access to the Services with notice to you if:

- (a) you're in breach of these Terms,
- (b) you're using the Services in a manner that would cause a real risk of harm or loss to us or other users, or
- (c) you don't have a Paid Account and haven't accessed our Services for 12 consecutive months.

We'll provide you with reasonable advance notice via the email address associated with your account to remedy the activity that prompted us to contact you, and give you the opportunity to export Your Uploads from our Services. If after such notice you fail to take the steps we ask of you, we'll terminate or suspend your access to the Services.

We won't provide notice before termination where:

- (a) you're in material breach of these Terms,
- (b) doing so would cause us legal liability or compromise our ability to provide the Services to our other users, or
- (c) we're prohibited from doing so by law.

## Discontinuation of Services

We may decide to discontinue the Services in response to unforeseen circumstances beyond PixelDrive's control or to comply with a legal requirement. If we do so, we'll give you reasonable prior notice so that you can export Your Uploads from our systems. If we discontinue Services in this way before the end of any fixed or minimum term you have paid us for, we'll refund the portion of the fees you have pre-paid but haven't received Services for.

## Services "AS IS"

We strive to provide great Services, but there are certain things that we can't guarantee. TO THE FULLEST EXTENT PERMITTED BY LAW, PIXELDRIVE AND ITS AFFILIATES, SUPPLIERS AND DISTRIBUTORS MAKE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ABOUT THE SERVICES. THE SERVICES ARE PROVIDED "AS IS". WE ALSO

DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Some places don't allow the disclaimers in this paragraph, so they may not apply to you.

## **Limitation of Liability**

WE DON'T EXCLUDE OR LIMIT OUR LIABILITY TO YOU WHERE IT WOULD BE ILLEGAL TO DO SO – THIS INCLUDES ANY LIABILITY FOR PIXELDRIVE'S OR ITS AFFILIATES' FRAUD OR FRAUDULENT MISREPRESENTATION IN PROVIDING THE SERVICES. IN COUNTRIES WHERE THE FOLLOWING TYPES OF EXCLUSION AREN'T ALLOWED, WE'RE RESPONSIBLE TO YOU ONLY FOR LOSSES AND DAMAGES THAT ARE A REASONABLY FORESEEABLE RESULT OF OUR FAILURE TO USE REASONABLE CARE AND SKILL OR OUR BREACH OF OUR CONTRACT WITH YOU. THIS PARAGRAPH DOESN'T AFFECT CONSUMER RIGHTS THAT CAN'T BE WAIVED OR LIMITED BY ANY CONTRACT OR AGREEMENT.

IN COUNTRIES WHERE EXCLUSIONS OR LIMITATIONS OF LIABILITY ARE ALLOWED, PIXELDRIVE, ITS AFFILIATES, SUPPLIERS OR DISTRIBUTORS WON'T BE LIABLE FOR:

- i. ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR
- ii. ANY LOSS OF USE, DATA, BUSINESS OR PROFITS, REGARDLESS OF LEGAL THEORY. THESE EXCLUSIONS OR LIMITATIONS WILL APPLY REGARDLESS OF WHETHER OR NOT PIXELDRIVE OR ANY OF ITS AFFILIATES HAVE BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES.

IF YOU USE THE SERVICES FOR ANY COMMERCIAL, BUSINESS OR RE-SALE PURPOSE, PIXELDRIVE, ITS AFFILIATES, SUPPLIERS OR DISTRIBUTORS WILL HAVE NO LIABILITY TO YOU FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS OPPORTUNITY. PixelDrive AND ITS AFFILIATES AREN'T RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY USERS OF THE SERVICES.

OTHER THAN FOR THE TYPES OF LIABILITY WE CANNOT LIMIT BY LAW (AS DESCRIBED IN THIS SECTION), WE LIMIT OUR LIABILITY TO YOU TO THE GREATER OF \$20 USD OR 100% OF ANY AMOUNT YOU'VE PAID UNDER YOUR CURRENT SERVICE PLAN WITH PIXELDRIVE.

## **Resolving Disputes**

*Let's try to sort things out first.* We want to address your concerns without needing a formal legal case. Before filing a claim against PixelDrive, you agree to try to resolve the dispute informally by contacting [hello@pixeldrive.co](mailto:hello@pixeldrive.co). We'll try to resolve the dispute informally by contacting you via email. If a dispute is not resolved within 15 days of submission, you or PixelDrive may bring a formal proceeding.

*Judicial forum for disputes.* You and PixelDrive agree that any judicial proceeding to resolve claims relating to these Terms or the Services will be brought in the federal or state courts of

Vancouver, British Columbia, subject to the mandatory arbitration provisions below. Both you and PixelDrive consent to venue and personal jurisdiction in such courts. If you reside in a country (for example, European Union member states) with laws that give consumers the right to bring disputes in their local courts, this paragraph doesn't affect those requirements.

**IF YOU'RE A US RESIDENT, YOU ALSO AGREE TO THE FOLLOWING MANDATORY ARBITRATION PROVISIONS:**

*We both agree to arbitrate.* You and PixelDrive agree to resolve any claims relating to these Terms or the Services through final and binding arbitration by a single arbitrator, except as set forth under 'Exceptions to agreement to arbitrate' below. This includes disputes arising out of or relating to interpretation or application of this 'Mandatory arbitration provisions' section, including its enforceability, revocability or validity.

*Opt-out of agreement to arbitrate.* You can decline this agreement to arbitrate by submitting the opt-out form within 30 days of first registering your account. However, if you agreed to a previous version of these Terms that allowed you to opt out of arbitration, your previous choice to opt out or not opt out remains binding.

*Arbitration procedures.* The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. The arbitration will be held in the United States county where you live or work, in San Francisco (CA) or in any other location we agree to.

*Arbitration fees and incentives.* The AAA rules will govern payment of all arbitration fees. PixelDrive will pay all arbitration fees for individual arbitration for claims less than \$75,000. If you receive an arbitration award that is more favourable than any offer we make to resolve the claim, we will pay you \$1,000 in addition to the award. PixelDrive will not seek its legal fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.

*Exceptions to agreement to arbitrate.* Either you or PixelDrive may assert claims, if they qualify, in a small claims court in San Francisco (CA) or any United States county where you live or work. Either party may bring a lawsuit solely for injunctive relief to stop unauthorised use or abuse of the Services, or intellectual property infringement (for example, trademark, trade secret, copyright or patent rights) without first engaging in arbitration or the informal dispute resolution process described above. If the agreement to arbitrate is found not to apply to you or your claim, you agree to the exclusive jurisdiction of the state and federal courts in San Francisco County, California, USA to resolve your claim.

**NO CLASS ACTIONS.** You may only resolve disputes with us on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated or representative action. Class arbitrations, class actions, private attorney general actions and consolidation with other arbitrations aren't allowed. If this specific paragraph is held unenforceable, the entirety of this 'Mandatory arbitration provisions' section will be deemed void.

## **Controlling Law**

These Terms will be governed by British Columbia law except for its conflicts of laws principles. However, some countries (including those in the European Union) have laws that require agreements to be governed by the local laws of the consumer's country. This paragraph doesn't override those laws.

## **Entire Agreement**

These Terms constitute the entire agreement between you and PixelDrive with respect to the subject matter of these Terms, and supersede and replace any other prior or contemporaneous agreements, or terms and conditions applicable to the subject matter of these Terms. These Terms create no third-party beneficiary rights.

## **Waiver, Severability & Assignment**

PixelDrive's failure to enforce a provision is not a waiver of its right to do so later. If a provision is found to be unenforceable, the remaining provisions of the Terms will remain in full effect and an enforceable term will be substituted reflecting our intent as closely as possible. You may not assign any of your rights under these Terms, and any such attempt will be void. PixelDrive may assign its rights to any of its affiliates or subsidiaries, or to any successor in the interest of any business associated with the Services.

## **Modifications**

We may revise these Terms from time to time to better reflect:

- (a) changes to the law,
- (b) new regulatory requirements, or
- (c) improvements or enhancements made to our Services.

If an update affects your use of the Services or your legal rights as a user of our Services, we'll notify you prior to the update's effective date by sending an email to the email address associated with your account or via an in-product notification. These updated terms will be effective no less than 30 days from when we notify you.

If you don't agree to the updates we make, please cancel your account before they become effective. Where applicable, we'll offer you a pro rata refund based on the amounts you have prepaid for Services and your account cancellation date. By continuing to use or access the Services after the updates come into effect, you agree to be bound by the revised Terms.