

Pixie Terms of Service

Last Updated: March 31, 2017

Welcome, and thank you for your interest in Pixie Technology Inc. (“**Pixie**,” “**we**,” or “**us**”) and our websites at www.getpixie.com, www.pixietechnology.com, along with our related websites, networks, applications, mobile applications, other related services provided by us (collectively, the “**Service**”), and Pixie Points (defined below). These Terms of Service (“**Terms**”) are a legally binding contract between you and Pixie regarding your use of the Service and purchase of the Pixie Points.

PLEASE READ THE FOLLOWING TERMS CAREFULLY.

BY CLICKING “I ACCEPT,” OR BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE SERVICE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SERVICE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING PIXIE’S PRIVACY POLICY (TOGETHER, THESE “TERMS”). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICE. YOUR USE OF THE SERVICE, AND PIXIE’S PROVISION OF THE SERVICE TO YOU, CONSTITUTES AN AGREEMENT BY PIXIE AND BY YOU TO BE BOUND BY THESE TERMS.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 17, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and **BY ACCEPTING THESE TERMS, YOU AND PIXIE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 17).**

1. **Pixie Service Overview.** The Service allows you to purchase Pixie Point location tracking hardware devices (“**Pixie Points**”), attach Pixie Points to certain objects (like your keys or wallet for example), and locate the Pixie Points to assist you in finding the items they are attached to.
2. **Eligibility.** You must be at least 18 years old to use the Service. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Service; and (c) your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms and you agree to be bound by these Terms.

3. **Accounts and Registration.** To access most features of the Service, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself, such as your name, email address, or other contact information. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you must immediately notify us at support@getpixie.com.
4. **General Payment Terms.** Certain features of the Service may require you to pay fees or permit you to make purchases. Before you pay any fees or make a purchase, you will have an opportunity to review and accept the amounts that you will be charged. All amounts are in U.S. Dollars and are non-refundable, unless otherwise provided below.
 - 4.1 **Price.** Pixie reserves the right to determine pricing for the Service and Pixie Points. Pixie will make reasonable efforts to keep pricing information published on the website up to date. We encourage you to check our website periodically for current pricing information. Pixie may change the fees for any feature of the Service, including additional fees or charges, if Pixie gives you advance notice of changes before they apply. Pixie, at its sole discretion, may make promotional offers with different features and different pricing to any of Pixie's customers. These promotional offers, unless made to you, will not apply to your offer or these Terms.
 - 4.2 **Authorization.** You authorize Pixie and its designated payment processors to charge all sums for the orders that you make and any level of Service you select as described in these Terms or published by Pixie, to the payment method specified in your account. If you pay any fees with a credit card, Pixie and its designated payment processors may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase.
 - 4.3 **Delinquent Accounts.** Pixie may suspend or terminate access to the Service for any account for which any amount is due but unpaid. In addition to the amount due for the Service, a delinquent account will be charged with fees or charges that are incidental to any chargeback or collection of any the unpaid amount, including collection fees.
 - 4.4 **Shipping Terms.** All Pixie Points will be shipped EXW (Incoterms 2010) Pixie's (or its authorized retailer's) facility. Any claims for damages relating to delivery of Pixie Points must be filed directly with the carrier. Any planned shipment date provided is an estimate only and Pixie will not be subject to liability for failure to ship on or before a planned shipment date

under any circumstances. Any carrier selected by Pixie will not be deemed an agent of Pixie. Subject to your payment of all applicable fees, all right, title, and interest, and all risk of loss, damage, theft, or destruction to the Pixie Points passes to you immediately upon delivery.

- 4.5 **Returns.** Please refer to Pixie’s website for details regarding Pixie’s 30-day money back guarantee and Pixie’s warranty terms for Pixie Points.

5. Licenses

- 5.1 **Limited License.** Subject to your complete and ongoing compliance with these Terms, Pixie grants you, solely for your personal, non-commercial use, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to: (a) install and use one object code copy of any mobile application associated with the Service obtained from a legitimate marketplace (whether installed by you or pre-installed on your mobile device by the device manufacturer) on a mobile device that you own or control; and (b) access and use the Service.

- 5.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Service; (b) make modifications to the Service; or (c) interfere with or circumvent any feature of the Service, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, you may not use it.

- 5.3 **Feedback.** If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service (“**Feedback**”), then you hereby grant Pixie an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services.

6. **Ownership; Proprietary Rights.** The Service is owned and operated by Pixie. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service (“**Materials**”) provided by Pixie are protected by intellectual property and other laws. All Materials included in the Service are the property of Pixie or its third party licensors. Except as expressly authorized by Pixie, you may not make use of the Materials. Pixie reserves all rights to the Materials not granted expressly in these Terms.

7. Third Party Terms

- 7.1 **Third Party Services and Linked Websites.** Pixie may provide tools through the Service that enable you to export information, including User Content, to third party services, including through features that allow you to link your account on Pixie with an account on the third party service,

such as Twitter or Facebook, or through our implementation of third party buttons (such as “like” or “share” buttons). By using one of these tools, you agree that Pixie may transfer that information to the applicable third party service. Third party services are not under Pixie’s control, and Pixie is not responsible for any third party service’s use of your exported information. The Service may also contain links to third party websites. Linked websites are not under Pixie’s control, and Pixie is not responsible for their content.

- 7.2 **Third Party Software.** The Service and Pixie Points may include or incorporate third party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components (“**Third Party Components**”). Although the Service is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third Party Components under the applicable third party licenses or to limit your use of Third Party Components under those third party licenses.

8. User Content

- 8.1 **User Content Generally.** Certain features of the Service may permit users to upload content to the Service, including messages, reviews, photos, video, images, folders, data, text, and other types of works (“**User Content**”) and to publish User Content on the Service. You retain any copyright and other proprietary rights that you may hold in the User Content that you post to the Service.
- 8.2 **Limited License Grant to Pixie.** By providing User Content to or via the Service, you grant Pixie a worldwide, non-exclusive, royalty-free, fully paid right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify for the purpose of formatting for display, and distribute your User Content, in whole or in part, in any media formats and through any media channels now known or hereafter developed.
- 8.3 **Limited License Grant to Other Users.** By providing User Content to or via the Service to other users of the Service, you grant those users a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Service.
- 8.4 **User Content Representations and Warranties.** Pixie disclaims any and all liability in connection with User Content. You are solely responsible for your User Content and the consequences of providing User Content via the Service. By providing User Content via the Service, you affirm, represent, and warrant that:

- a. you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize Pixie and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by Pixie, the Service, and these Terms;
- b. your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (i) infringe, violate, or misappropriate any third party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iii) cause Pixie to violate any law or regulation; and
- c. your User Content could not be deemed by a reasonable person to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate.

8.5 User Content Disclaimer. We are under no obligation to edit or control User Content that you or other users post or publish, and will not be in any way responsible or liable for User Content. Pixie may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You understand that when using the Service you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent, or objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against Pixie with respect to User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, Pixie does not permit copyright-infringing activities on the Service.

8.6 Monitoring Content. Pixie does not control and does not have any obligation to monitor: (a) User Content; (ii) any content made available by third parties; or (iii) the use of the Service by its users. You acknowledge and agree that Pixie reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Service for operational and other purposes. If at any time Pixie chooses to monitor the content, Pixie still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our Privacy Policy.

9. Prohibited Conduct. BY USING THE SERVICE YOU AGREE NOT TO:

- a. use the Service or Pixie Points for any illegal purpose or in violation of any local, state, national, or international law;

- b. violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third party intellectual property right;
- c. interfere with security-related features of the Service or Pixie Points, including by: (i) disabling or circumventing features that prevent or limit use or copying of any content; or (ii) reverse engineering or otherwise attempting to discover the source code of any portion of the Service or Pixie Points except to the extent that the activity is expressly permitted by applicable law;
- d. interfere with the operation of the Service, Pixie Points, or any user's enjoyment of the Service or Pixie Points, including by: (i) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Service; (iii) collecting personal information about another user or third party without consent; or (iv) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service;
- e. perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other Service account without permission, or falsifying your age or date of birth;
- f. sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 6) or any right or ability to view, access, or use any Materials; or
- g. attempt to do any of the acts described in this Section 9 or assist or permit any person in engaging in any of the acts described in this Section 9.

10. **Location Based Services.** Some of the features of the Service enable Pixie to tailor your experience based on your location ("**Location-based Services**"). In order to use certain Location-based Services, you must allow Pixie access to your localized position through your device, which Pixie may accomplish through a variety of means, including GPS location, Bluetooth, iBeacon, or other available mechanisms. If you choose to disable Location-based Services on your device, you will not be able to utilize certain features of the Service. By authorizing Pixie to access your location or media files containing location based meta data, you agree and acknowledge that (a) location data we collect from you is directly relevant to your use of the Service and (b) Pixie may, for so long as you allow Pixie to access such location data or meta data, provide Location-based Services related to your then-current location. PLEASE NOTE THAT LOCATION DATA MAY NOT BE ACCURATE, WHETHER COLLECTED ORIGINALLY BY THE SERVICE OR A THIRD PARTY APPLICATION, AND PIXIE DISCLAIMS ANY AND ALL WARRANTIES RELATED TO LOCATION DATA AND LOCATION-BASED SERVICES.

11. **System Requirements and Limitation on Use**

- 11.1 **System Requirements.** You acknowledge that the Service will not be fully accessible or functional without: (i) a working Wi-Fi network or cellular connection that is positioned to communicate reliably with the Pixie Points; (ii) a Pixie account; (iii) a mobile device such as a supported phone or tablet; (iv) enablement of Bluetooth, access to accelerometer data, notifications, access to camera; and (v) other system elements or specifications that may be specified by Pixie. If you do not have all system requirements, you will not be able to access and use the Service.
- 11.2 **Intended Use of Hardware.** The Service is intended to be used in connection with the Pixie Points as set forth in the user guide, currently found at: <https://support.getpixie.com/hc/en-us/articles/207014936-Pixie-2-0-User-Guide-English>. Please refer to the user guide for detailed information on the intended use of Service in connection with the Pixie Points.
- 11.3 **Outages.** While we aim for the Service to be highly reliable and available, the Service is subject to interruptions and failures for a variety of reasons beyond Pixie's control, including power outages, Wi-Fi intermittency and service provider uptime, among others. You acknowledge these limitations and agree that Pixie is not responsible for any damages allegedly caused by the failure or delay of the Service due to such reasons beyond Pixie's control.
- 11.4 **No Life-Safety or Critical Uses of the Service.** You acknowledge and agree that the Service is not certified for use with any emergency response or healthcare related electronics or products. YOU AGREE THAT YOU WILL NOT RELY ON THE SERVICE FOR ANY LIFE SAFETY OR CRITICAL PURPOSES.
12. **Modification of these Terms.** We reserve the right to change these Terms on a going-forward basis at any time upon 7 days' notice. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, you will be required to accept the modified Terms in order to continue to use the Service. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in this Section 10, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.
13. **Term, Termination and Modification of the Service**
- 13.1 **Term.** These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Service, and ending when terminated as described in Section 13.2.
- 13.2 **Termination.** If you violate any provision of these Terms, your authorization to access the Service and these Terms automatically

terminate. In addition, Pixie may, at its sole discretion, terminate these Terms or your account on the Service, or suspend or terminate your access to the Service, at any time for any reason or no reason, with or without notice. You may terminate your account and these Terms at any time by contacting customer service at support@getpixie.com. If you transfer Pixie Points to a new owner, your right to use the Service with respect to such Pixie Points automatically terminates, and the new owner will have no right to use the Service under your account and will need to register for a separate account with Pixie.

13.3 **Effect of Termination.** Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Service; (b) you will no longer be authorized to access your account or the Service; (c) you must pay Pixie any unpaid amount that was due prior to termination; and (d) all payment obligations accrued prior to termination and Sections 5.3, 6, 13.3, 14, 15, 16, 17 and 18 will survive.

13.4 **Modification of the Service.** Pixie reserves the right to modify or discontinue the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. Pixie will have no liability for any change to the Service or any suspension or termination of your access to or use of the Service.

14. **Indemnity.** You are responsible for your use of the Service and Pixie Points, and you will defend and indemnify Pixie and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the “**Pixie Entities**”) from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or connected with: (a) your use of, or misuse of, the Service or Pixie Points; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

15. **Disclaimers; No Warranties**

THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. PIXIE DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. PIXIE DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION

OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND PIXIE DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR PIXIE ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE PIXIE ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SERVICE AND YOUR DEALING WITH ANY OTHER SERVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SERVICE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE) OR ANY LOSS OF DATA, INCLUDING USER CONTENT. THE SERVICE IS DESIGNED AND TO BE USED SOLELY TO HELP FIND PERSONAL POSSESSIONS OR OBJECTS. THE SERVICE SHOULD NOT BE RELIED ON TO FIND PERSONS OR MONITOR A PERSON'S LOCATION. THE SERVICE DOES NOT SUBSTITUTE PARENTAL, ADULT, OR PROFESSIONAL SUPERVISION.

HOWEVER, PIXIE DOES NOT DISCLAIM ANY WARRANTY OR OTHER RIGHT THAT PIXIE IS PROHIBITED FROM DISCLAIMING UNDER APPLICABLE LAW.

If you have purchased any Pixie Points, please see Pixie's website for details regarding Pixie's limited warranty applicable to such Pixie Points.

16. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE PIXIE ENTITIES BE LIABLE TO YOU FOR ANY LOST PROPERTY, LOST DATA OR REVENUE, OR FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE, ANY MATERIALS OR CONTENT ON THE SERVICE, OR PIXIE POINTS. WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY PIXIE ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

EXCEPT AS PROVIDED IN SECTION 17.4(III) AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE PIXIE ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE, PIXIE POINTS, OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR

OTHERWISE, IS LIMITED TO THE GREATER OF: (A) THE AMOUNT YOU HAVE PAID TO PIXIE FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO CLAIM; OR (B) \$100.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 16 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

17. **Dispute Resolution and Arbitration**

17.1 **Generally.** In the interest of resolving disputes between you and Pixie in the most expedient and cost effective manner, and except as described in Section 17.2, you and Pixie agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND PIXIE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

17.2 **Exceptions.** Despite the provisions of Section 17.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.

17.3 **Arbitrator.** Any arbitration between you and Pixie will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“**AAA**”) under its Consumer Arbitration Rules (collectively, “**AAA Rules**”) as modified by these Terms. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting Pixie. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.

- 17.4 **Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail ("**Notice of Arbitration**"). Pixie's address for Notice is: Pixie Technology Inc., 171 Main St., Los Altos, CA 94022. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("**Demand**"). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Pixie may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Pixie must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in your favor, Pixie will pay you the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by Pixie in settlement of the dispute prior to the arbitrator's award; or (iii) \$10,000.
- 17.5 **Fees.** If you commence arbitration in accordance with these Terms, Pixie will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Santa Clara County, California, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Pixie for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.
- 17.6 **No Class Actions.** YOU AND PIXIE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Pixie agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

- 17.7 **Modifications to this Arbitration Provision.** If Pixie makes any future change to this arbitration provision, other than a change to Pixie's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to Pixie's address for Notice of Arbitration, in which case your account with Pixie will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
- 17.8 **Enforceability.** If Section 17.6 is found to be unenforceable or if the entirety of this Section 17 is found to be unenforceable, then the entirety of this Section 17 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 18.1 will govern any action arising out of or related to these Terms.
18. **General Terms.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and Pixie regarding your use of the Service. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word "including" means "including but not limited to". If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 18.1 **Governing Law.** These Terms are governed by the laws of the State of California without regard to conflict of law principles. You and Pixie submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Santa Clara County, California for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Service from our offices in California, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.
- 18.2 **Privacy Policy.** Please read the [Pixie Privacy Policy](#) carefully for information relating to our collection, use, storage, disclosure of your personal information. The Pixie Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
- 18.3 **Additional Terms.** Your use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to from the Service (the “**Additional**

Terms”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.

- 18.4 **Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 18.5 **Contact Information.** The Service is offered by Pixie Technology Inc., located at 171 Main St., Los Altos, CA 94022. You may contact us by sending correspondence to that address or by emailing us at support@getpixie.com. You can access a copy of these Terms by clicking [here](#):
- 18.6 **Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.
- 18.7 **No Support.** We are under no obligation to provide support for the Service. In instances where we may offer support, the support will be subject to published policies.
- 18.8 **International Use.** The Service is intended for visitors located within the United States. We make no representation that the Service is appropriate or available for use outside of the United States. Access to the Service from countries or territories or by individuals where such access is illegal is prohibited.
19. **Notice Regarding Apple.** This Section 19 only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and Pixie only, not with Apple Inc. (“**Apple**”), and Apple is not responsible for the Service or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Service. If the Service fails to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Service. Apple is not responsible for addressing any claims by you or any third party relating to the Service or your possession and/or use of the Service, including: (a) product liability claims; (b) any claim that the Service fails to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not

responsible for the investigation, defense, settlement and discharge of any third party claim that the Service and/or your possession and use of the Service infringe a third party's intellectual property rights. You agree to comply with any applicable third party terms when using the Service. Apple and Apple's subsidiaries are third party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms. You hereby represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.