



Photostream Terms of Use

1. About

- (a) Thank you for choosing and using our Platform located at <https://photostream.live> ("**Platform**"). This Platform is owned and operated by Mutual Information Technologies Pty Ltd (ABN 46 638 913 425) ("**Photostream**").
- (b) These terms of use ("**Terms**") govern your use of our Platform. Any reference to "PhotoStream", "we", "our", or "us" means PhotoStream (ABN 23 639 714 287). Any reference to "you, or "your" means you as a subscriber ("**Subscriber**") to our Platform.
- (c) These Terms, along with our '**Privacy Policy**', which form a part of these Terms, govern Subscribers use of the Platform and our Services.
- (d) Please read our Terms and Privacy Policy carefully before using the Platform and accessing our Services because these Terms and **Privacy Policy** create a binding contract between Photostream and Subscriber.
- (e) If you are entering these Terms on behalf of a legal entity, you represent that you have the authority to bind the entity to these Terms. You must be at least 16 years of age to create an account and use our Services. If you are a minor, a Subscriber who has legal authority must agree to these Terms on your behalf. If you do not have such authority, you must not accept these Terms and must not use our Services.
- (f) We may update these Terms from time to time. Any changes to these Terms will be effective from the date published on our Platform.

2. Services

- (a) The Platform is an easy-to-use live stream software tool for Subscribers to create an event livestream of photos and videos ("**Live Stream**") for their events guests through a private webpage hosted on our Platform for Subscribers to display through their device (e.g., your computer, mobile, TV, tablet, projector, screen or virtual stream). The systems of the Platform and how you should expect it to run are set out on our Platform for the advertised packages. The features available to you will depend on the package that you select including available bandwidth and storage capabilities.

(our '**Services**')

- (b) You agree that Photostream acts solely as the operator of the Platform where Subscribers are granted access to our software tool to Live Stream events. Any decision made to use Live Stream, submit or publish Subscriber Data is in your sole discretion and at your sole risk. You accept that:
 - (i) you are responsible for all activity that occurs under your Subscriber Account. If you become aware of unauthorised access to your Subscriber Account, you must change your Login Details and notify us immediately; and

- (ii) you may only submit content that you are allowed to share and must not submit any content that infringes the intellectual property rights of others or is scraped, reproduced, redistributed, recompiled, reverse engineered or is a derivative work of others.
- (c) We reserve the right but are not obliged to monitor the content in your Live Stream. Photostream in its sole discretion may remove or limit your access to your Subscriber Account for objectionable content in its sole discretion. Objectionable content includes content that is hateful, abusive, harassing, threatening, discriminatory, defamatory, fraudulent, misleading or deceptive, promotes money-making schemes, offensive, distributes “spam”, collects the personal information of others, unlawful, infringes intellectual property rights or contains mature or sexually explicit or is otherwise inappropriate.
- (d) Subscriber warrants that:
 - (i) Subscriber is legally capable of entering into contracts; and
 - (ii) Subscriber is authorised to access our Platform and that all relevant consents have been obtained to use our Services.
- (e) Our Services include:
 - (i) Subscriber selects a package to run a live stream through the Platform;
 - (ii) Available packages advertised on the Platform vary according to the number of unique participants that can post to the Subscribers live stream and the maximum length of the live stream;
 - (iii) A unique participant is any unique username, email or phone number that posts to the live stream via the Twitter, Instagram, email or SMS/MMS;
 - (iv) SMS/MMS number sending is only available in Australia, USA and Canada;
 - (v) At the end of the live stream, Subscriber may download shared photos and videos or share a gallery that is viewable to anyone with a gallery link;
 - (vi) Use of third-party artificial intelligence services to moderate posted media. Moderation through these services are in no way guaranteed to stop unwanted content being posted to the Subscriber’s live stream;
 - (vii) Use of self-serve manual moderation requiring the Subscriber to approve or archive all posted media before they appear on the Subscriber’s live stream;
- (f) We may update our Live Stream from time to time to add new features and fix bugs.
- (g) Please contact our support team via the support page on our Platform located at <https://photostream.live/contact> or using the contact details provided below to inquire our fees and discounted rates for:
 - (i) custom packages;
 - (ii) multi-event packages;
 - (iii) monthly subscriptions for a fixed number of event live streams; and

- (iv) customised branding of a Live Stream for a specific event.

3. Registration and Acceptance

- (a) To obtain access to the Services on our Platform, Subscriber must sign up for a customer account ("**Subscriber Account**").
- (b) By signing up for a Subscriber Account, Subscriber will be required to accept the Terms by clicking "I accept" in the user interface as a condition of joining our Platform. By clicking the "I accept" button you agree to the Terms of Photostream which gives notice to you through our user interface as follows:

*By **Registering**, you agree that you have read and accepted our Platform Terms and you consent to our Privacy Policy.*

- (c) As part of the registration process for our Services, Subscriber must provide current, complete and accurate identification, and other information required during the registration process including but not limited to:
 - (i) name;
 - (ii) address;
 - (iii) phone number;
 - (iv) a valid email address;
 - (v) username and password ("**Login Details**");
 - (vi) other information as applicable to set up and administer Subscriber Account to access the Services.

("Subscriber Data").

A reference to Subscriber Data in these Terms includes all content of Subscriber such as information, data, works and materials (including without limitation, text, graphics, images, audio material, video material, audio-visual material, scripts, software and files) that a Subscriber submits to us or our Platform for storage, or publication on, processing by, or transmission via, our Platform.

- (d) By visiting, registering for, or using the Platform, Subscriber agrees that Photostream may:
 - (i) facilitate livestreams of photos and videos to the devices which you make available (e.g., your computer, mobile, TV, tablet, projector, screen or virtual stream); and
 - (ii) send direct communications including short message service (SMS) to the email addresses and devices that Subscriber makes available.
- (e) Subscriber own all right, title and interest in Subscriber's Data.
- (f) If Subscriber Data changes, Subscriber must promptly update Subscriber Account to reflect those changes.
- (g) As a Subscriber of the Platform, Subscriber agrees that:
 - (i) a Subscriber Account is personal to Subscriber;
 - (ii) Subscriber is solely responsible for maintaining the confidentiality of Subscriber Account and the secrecy of the Login Details;

- (iii) Subscriber must not authorise or permit anyone else to access Subscriber Account by using the Login Details;
 - (iv) Subscriber accepts sole responsibility for the Live Stream that is posted to any device including any inappropriate content;
 - (v) if Subscriber Account has been compromised in any way, Subscriber must contact Photostream immediately;
 - (vi) Subscriber's access to and use of the Platform is non-transferable except as permitted by these Terms;
 - (vii) Subscriber will use the Platform only for purposes permitted by these Terms; and
 - (viii) Subscriber will abide by any applicable law, regulation or generally accepted practices or guidelines related to the Services in the relevant jurisdictions.
- (h) Photostream reserve the right to deny anyone access to a Subscriber Account at any time.

4. Fees

- (a) Subscriber agrees to pay the selected subscription fee ("**Package Fee**") advertised on our Platform for the purchase of our Services.
- (b) The pricing for our Services is currently available in the following currencies: AUD, USD, GBP, EUR, JPY, NZD, CAD.
- (c) Payment of the selected Package Fee may be made through Stripe, Inc. ("**Payment Processing Service**"). Subscriber authorises Photostream to charge Subscriber the Package Fee through the Payment Processing Service, together with any processing or other associated fees charged by the Payment Processing Service.
- (d) In using the Payment Processing Service, you warrant that you have familiarised yourself with, and agree to be bound by, the applicable Terms and Conditions of Use, Privacy Policy and other relevant legal documentation provided by the Payment Processing Service including the relevant fees and charges applied by the Payment Processing Service for online payment gateway services.
- (e) After registration, Subscriber can log into Subscriber Account to gain access to our Services. Subscriber Account must be active and current to obtain access to our Services.
- (f) Photostream reserves the right to increase or change the Package Fee at any time and without notice subject to your right of termination in accordance with these Terms.
- (g) The Package Fee paid is non-refundable except where required by law.
- (h) Subscribers are responsible for ensuring that sufficient funds are available at the time of payment processing and that credit card details are correct in order to access our Services.
- (i) If there are payment failures due to insufficient funds, incorrect or outdated payment information, Photostream reserves the right to:

- (i) recover payment and deny a Subscriber access to our Services; or
 - (ii) cancel or suspend a Subscriber's Account if we are unable to process the fees for our Services.
- (j) All payments for our Services are in Australian Dollar (AUD). Photostream will be entitled to add on GST for any supply of its Services in Australia.
- (k) Subscriber agrees that Photostream may electronically store Subscriber Data and Subscriber's payment information to process Package Fees.
- (l) The Services delivered to Subscriber is exclusive and personal to Subscriber. Subscriber must not allow another user without a licence to use any of the Services that Photostream delivers to Subscriber under these Terms.
- (m) We may suspend or terminate a Subscriber Account for any misuse, breach of these Terms or if fraudulent activity is detected.
- (n) Subscriber access to the Services will be disabled when Subscriber Account is suspended, terminated or Subscriber's subscription ends.

5. Refund Policy

- (a) Except as required by law, any Package Fees paid by Subscriber are final and non-refundable.
- (b) Should Subscriber wish to obtain a refund, Subscriber may contact Photostream within fourteen (14) calendar days of performance of our Services or any part thereof to report any discrepancies or faults to make a claim.
- (c) Refunds are made in our discretion subject to any guarantees that cannot be excluded by law.
- (d) Photostream will facilitate a refund if Photostream is unable to facilitate the completion of the Services or if the delivery of our Services is defective or if Photostream determines, in our absolute discretion, it is reasonable to do so.

6. Intellectual Property

- (a) In these Terms:

"Intellectual Property (Rights)" means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, circuit layouts, domain names, know-how and other rights of a similar nature worldwide, whether registered or not, and any applications for registration or rights to make such an application.

"Works" means any material made available on the Platform and included our Services, including (without limitation) written texts, documents, articles, news, newsletters, posts, commentaries, surveys, data, photographs, pictures, graphic works, video, or images.

- (b) Subscriber acknowledge that ownership of the Intellectual Property Rights relating to the Platform or our Services is the property of, licensed by or vest on creation in Photostream.
- (c) The Works on the Platform or generated by or related to any of our Services (**"Copyright Material"**) are subject to copyright and owned by the copyright owner. The

Copyright Material on the Platform is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Copyright Material and compilation of the Platform (including but not limited to text, graphics, logos, button icons, video images, audio clips, code, scripts, design elements and interactive features) are owned or controlled by us. Data procured from a third party may be the subject of copyright owned by that third party.

- (d) The Platform and the Copyright Material or any part of it (including, without limitation, any content or images) may not be copied, reproduced, adapted, publicly displayed, duplicated, translated or distributed in any way (including mirroring) to any other device, server, Platform or other medium for publication or distribution without our express prior written consent. Subscribers shall take due care to protect the Intellectual Property Rights licensed via our Services from unauthorised use, copying, reproduction, lending, reselling, manipulation, disassembly, distribution or publication.
- (e) All Intellectual Property including any trade marks, service marks, trade names and any other proprietary designations are owned, registered or licensed by us. Any other trade marks, service marks, logos, trade names and any other proprietary designations are the trade marks or property of the respective parties.
- (f) Unless otherwise stated, Photostream retain all rights, title and interest in and to the Copyright Material on the Platform and delivered under our Services. Nothing Subscriber does on or in relation to the Platform or our Services will transfer any:
 - (i) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright;
 - (ii) right to use or exploit a business name, trading name, domain name, trade mark or industrial design;
 - (iii) thing, invention, design, system, work or process that is the subject of a patent, registered design or copyright or any other Intellectual Property Right (or an adaptation, improvement, modification of such a thing, invention, design, system, work or process); or
 - (iv) any proprietary rights to our database, know-how or technology.
- (g) "Photostream" and all associated trade marks on the Platform are our trade marks or any related entities. Subscriber must not use our trade marks:
 - (i) in or as the whole or part of Subscriber own trade marks;
 - (ii) in connection with activities, products or Services which are not ours; or
 - (iii) in a manner which may be confusing, misleading or deceptive.
- (h) The obligations accepted by Subscribers under this clause survive termination or expiry of these Terms.

7. Licence Grant

- (a) Photostream grants to Subscriber a limited, non-exclusive, non-transferable, non-sublicensable and revocable license ("**License**") to access the Platform and to interact with and use our Services for the term of Subscriber's subscription solely in connection with Subscriber rights under these Terms.
- (b) These Terms do not constitute a sale or transfer of any of Photostream's Copyright Material and Subscriber must not use, post or upload the Copyright Material or any version of it on any application that enables other people to create and share content or use our Copyright Material on the Internet including on any social networking Platforms or applications.

- (c) This Licence may be terminated at any time in our sole discretion if Subscriber uses the Platform or the Services except as permitted by these Terms.
- (d) Subscriber grants to Photostream, or to any third parties used by us a non-exclusive, worldwide, perpetual, irrevocable and royalty free license to use, copy, display, perform, distribute, disseminate, transmit, translate, edit, cache and create derivative works of your Subscriber Data and any associated intellectual property rights (including name, likeness, trade marks and other identifiers) in order for Photostream to perform its obligations under these Terms. By submitting Subscriber Data, you grant Photostream a licence to Live Stream your content through Live Stream software tool via your devices and make it available for publication and download to end users.

8. Subscriber's Obligations

- (a) Subscriber will:
 - (i) exercise reasonable care, skill and diligence in using the Services;
 - (ii) use the Services in a responsible manner and only in accordance with its intended use;
 - (iii) be liable for giving any third-party access to the Services and use of Services through Subscriber's Account;
 - (iv) access and use the Services only in accordance with these Terms;
 - (v) advise Photostream of any issues with the Services as and when they occur;
 - (vi) keep secure all Login Details and notify Photostream immediately of any unauthorised access;
 - (vii) implement, maintain and enforce suitable virus protection in relation to use of the Services;
 - (viii) use best efforts to ensure that no virus or similar computer programs are transmitted to the Services as a result of access being granted to the Services.
- (b) Subscriber will not:
 - (i) distribute, sell, publish, enable or allow access to Subscriber Account except directly to access the Services;
 - (ii) hack, attempt to hack, modify, adapt, merge, translate, decompile, disassemble, reverse engineer or create derivative works out of the Platform or the Services or our Copyright Material or any part of it;
 - (iii) use the Services in any way prohibited by law, regulation, governmental order or decree;
 - (iv) introduce any computer code or routine that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial or service, unauthorised disclosure or destruction or corruption of data, including viruses, worms, spyware, adware, keyloggers, trojans, time bombs and any new types of programmed threats; or
 - (v) remove, disable, modify, add to or tamper with any program code or data, copyright, trade mark or other proprietary notices contained on the Platform or in the Services; and
 - (vi) not sell, lease, publish, redistribute or sub-license any of our Copyright Material.

9. Subscribership Termination

- (a) These Terms will continue to apply until terminated by either the Subscriber or by us as set out below.

- (b) Subscriber may terminate the Services by cancelling the Subscriber's Account at any time through the cancellation option in the user interface in Subscriber's Account.
- (c) Photostream may terminate these Terms without notice to Subscriber if:
 - (i) Subscriber has breached any provision of the Terms;
 - (ii) Photostream believes that Subscriber is making unauthorised or improper use of the Services;
 - (iii) Photostream is required to do so by law;
 - (iv) without cause or notice if the provision of the Services to Subscriber by Photostream is, in the opinion of Photostream, no longer commercially viable.
- (d) Photostream reserves the right to discontinue Subscriber Account at any time and may suspend or deny, in our sole discretion, Subscriber's access to all or any portion of the Services without notice if Subscriber's conduct impacts our name or reputation or violates the rights of any other party.
- (e) The early termination of Subscriber Account or the Services is not a ground for a refund.
- (f) If Subscriber has not logged into Subscriber Account within a six (6) month period and the status of Subscriber Account is dormant, Photostream reserve the right to unilaterally terminate Subscriber Account.

10. Warranties and Representations

- (a) No warranty of any kind whether express or implied is made in relation to the accuracy of the Copyright Material or any content on the Platform.
- (b) Photostream does not warrant that the Services will be performed error-free, uninterrupted or free of bugs or viruses.
- (c) It is Subscriber's sole responsibility to determine that the Services or any part of these meet the needs of Subscriber or are otherwise suitable for the purpose for which they are purchased.
- (d) Photostream excludes from these Terms all other warranties, conditions and terms implied by law except for any, the exclusion of which would contravene any law.
- (e) Subscriber represents and warrants that Subscriber:
 - (i) is legally permitted to use and access the Services;
 - (ii) takes full responsibility for the selection and use of and access to the Services;
 - (iii) is solely responsible for the accuracy of the Subscriber Data that Subscriber submits in relation to the supply of the Services;
 - (iv) agrees that Photostream does not control, verify, or endorse the Subscriber Data;
 - (v) is solely responsible for creating backups of Subscriber Data; and
 - (vi) in relation to Subscriber Data, that Subscriber owns it or is licensed to use the Intellectual Property Rights in it and that the use of the Subscriber Data will not result in the infringement of any of the proprietary rights of third parties.
- (f) Subscriber warrants that:
 - (i) the Subscriber Data is not in contravention of any legislation or any advertising or marketing laws or any other third-party rights;
 - (iii) you have the right to submit the content to Photostream;

- (iii) you have obtained appropriate releases (if necessary) from all persons who appear in the content ;
 - (iv) your content does not infringe the intellectual property rights of others or their moral rights, rights of publicity and privacy rights; and
 - (v) the content complies with these Terms and all laws in the applicable jurisdictions.
- (g) This clause survives the termination or expiry of these Terms for whatever reason.

11. Disclaimer

- (a) Subscriber acknowledges that Photostream does not make any terms, guarantees, warranties, representations or conditions whatsoever regarding the Services other than pursuant to these Terms.
- (b) All the information and content on the Platform is published for general information purposes. This information is not intended to provide legal, business, or other expert or professional advice. Photostream does not accept any responsibility or liability for the accuracy, completeness, legality or reliability of any content published or transmitted through the Live Stream. Photostream will not be held liable for any damage or loss whether indirect, consequential, or otherwise which may arise because of the content or your use or inability to use the content.
- (c) We do not make any warranties about the completeness, reliability, and accuracy of any Live Stream. No warranties promise or representations of any kind, express or implied are given as to the nature, standard, accuracy or completeness of the Live Stream nor as to the fitness for purpose of the Live Stream for your particular circumstances.
- (d) The views expressed on the Platform are not necessarily those of the Photostream. No responsibility is accepted by the Photostream, its subsidiaries, officers or employees for the accuracy of any statement, opinion or advice contained in any content, text or advertisements, and to the full extent allowed by law, the Photostream excludes liability for any damage or loss sustained by readers and users arising from, or in conjunction with, the supply or use of content on the Platform through any cause.
- (f) Any action you take in relation to the content on our Platform is strictly at your own risk and in your sole discretion. By using any information on the Platform, you are responsible for assessing the accuracy of the material and rely on at your own risk. To the extent permitted by law, all representations, conditions, or warranties, whether based in statute, common law (including in negligence) or otherwise are excluded. Photostream does not accept any liability for any damage or loss (including loss of profits, loss of revenue, indirect and consequential loss) incurred by any person as a result of using the Platform or relying on information or content published on the Platform.
- (g) The products and claims made about specific products or services on this Platform have not been evaluated by the Photostream. References to any specific product or entity does not constitute an endorsement or recommendation by the Photostream. We accept no responsibility for any advertisements or endorsements.
- (i) The nature of Internet communications means that your communications may be susceptible to data corruption or loss, unauthorised access, interception and delays (the '**Disruptions**') and you agree that you bear the sole risk for such Disruptions. We do not guarantee that all posts to the Live Stream will be processed as these may be lost or corrupted due to large file sizes, corrupted files, incompatible file formats or

similar technical or Internet issues. Photostream disclaims any liability for these Disruptions or any of your lost or corrupt data, incomplete information, inaccuracies or typographical errors, whether caused by the Platform or users of the Platform or by any of the equipment or programming associated with or utilised in the Platform or by any technical or human error which may occur.

- (j) Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- (k) Subject to this clause, and to the extent permitted by law:
 - (i) all terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and
 - (ii) Photostream will not be liable for any indirect, special or consequential loss or damage, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- (l) Use of the Platform and the Services is at Subscriber's own risk. Everything on the Platform and the Services is provided to Subscriber on an "as is" and "as available" basis, without warranty or condition of any kind, except as otherwise expressly provided in these Terms.
- (m) None of the affiliates, directors, officers, employees, agents, contributors, third party content providers or licensors of Photostream (including any third-party providers) make any express or implied representation or warranty about the Services. This includes (but is not restricted to) loss or damage Subscriber might suffer as a result of any of the following:
 - (i) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third-party conduct, or theft, destruction, alteration or unauthorised access to records;
 - (ii) the accuracy, suitability or currency of any information on the Platform (including third party material and advertisements on the Platform);
 - (iii) costs incurred because of Subscriber using the Platform and the Services;
 - (iv) Platform links which are provided for the Subscriber's convenience;
 - (v) any failure to complete a transaction, or any loss arising from e-commerce transacted on the Platform; or
 - (vi) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.
- (n) This clause survives the termination or expiry of these Terms for whatever reason.

12. Limitation of Liability

- (a) To the extent permissible at law, Photostream is not liable for any indirect, punitive,

incidental, special, consequential damages including without limitation any claims, losses, liability, loss of data, loss of profits, revenue, business or goodwill arising out of or in any way connected with the provision of or failure to provide any products or services under these Terms.

- (b) Except as provided in these Terms, Photostream exclude all representations and warranties relating to the subject matter of these Terms, our Platform and the supply of our Services.
- (c) Photostream's Services are provided "as is" and specific results cannot be guaranteed. It is Subscriber sole responsibility to determine that the Services or any part of these meet Subscriber's needs or are otherwise suitable for the purposes for which they are used.
- (d) These Terms are to be read subject to any legislation that prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible Photostream limits its liability as follows, at our option:
 - (i) for any claims relating to these Terms, to the fees payable under this agreement (if applicable) for the preceding one (1) month;
 - (ii) in the case of products including any digital products (a) the replacement of the products or the supply of equivalent products; (b) the repair of the products; (c) the payment of the cost of replacing the products or of acquiring equivalent products; or (d) the payment of having the products repaired; or
 - (iii) in the case of services, the supply of the services again or the payment of the cost of having the services supplied again.

This limitation applies to any supply under or related to these Terms including the supply of the Services and covers loss of data, any viruses or other disabling features that affect Subscriber access to or use of our Services, incompatibility between our Services and Subscriber hardware or software, delays or failures Subscriber may have in using the Services including any connections or transmissions that fail or are not completed in an accurate or timely manner.

- (e) This clause survives the termination or expiry of these Terms for whatever reason.

13. Indemnity

- (a) Subscriber agrees to defend, indemnify and hold Photostream, our affiliates, employees, agents, contributors, third party content providers and licensors harmless from and against all actions, suits, claims, demands, liabilities, costs, expenses, losses and damage (including legal fees on a full indemnity basis) brought against or sustained by Photostream, which:
 - (i) is directly or indirectly caused by Subscriber's breach of these Terms;
 - (ii) is directly or indirectly caused by any willful, reckless or negligent act of Subscriber;
 - (iii) concerns personal injury to any person caused or contributed to by Subscriber;
 - (iv) is caused by Subscriber's act or omission and constitutes a loss of or damage to property;
 - (v) is brought by any third-party in respect of personal injury, death or damage to third-party property; or
 - (vi) arises from Subscriber's act or omission.
- (b) Except as required by law, Photostream will not be liable for any claim, loss or liability

for personal injury, death or damage to Subscriber or its property however it may be caused.

- (c) Photostream reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by Subscriber, and in such case, Subscriber agree to cooperate with our defence of such claim.
- (d) In no event will Photostream be liable to Subscriber for any indirect, incidental or consequential damages including, without limitation, direct, indirect, special, punitive, or exemplary damages.

14. Disputes

(a) Compulsory process

A Party shall not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has complied with this clause.

(b) Notification

A Party claiming that a Dispute has arisen shall notify each other party to the Dispute giving details of the Dispute.

(c) Initial period – efforts to resolve Dispute

During the 30-day period after a notice is given (or longer period agreed in writing by the Parties to the Dispute) (Initial Period) each Party to the Dispute (Disputant) covenants with the other to cooperate and take all reasonable steps necessary to attempt to resolve the Dispute.

(d) Mediation

If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute shall be referred for mediation, at the request of any Disputant, to:

- (i) a mediator agreed on by the Disputants; or
- (ii) if the Disputants are unable to agree on a mediator within seven days after the end of the Initial Period, then the Parties must submit the dispute for mediation through the Chair of Resolution Institute (ACN 008 651 232) or the Chair's designated representative and the Resolution Institute Mediation Rules shall apply to the mediation.

(e) Role of mediator

The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.

(f) Information

Any information or documentation disclosed by a Disputant under this clause shall be kept confidential and may not be used except to attempt to resolve the Dispute.

(g) Costs of mediation

Each Disputant shall pay its own costs of complying with this clause. The Disputants shall pay equally the costs of any mediator engaged.

(h) Location, timing and attendance

The mediation will be held in Sydney, Australia, within 30 days after expiry of the Initial Period. Each Disputant agrees to attend the mediation by a representative having full

authority to resolve the dispute. At the mediation each Disputant may be represented by one or more legal representative.

(i) Failure to resolve

If the dispute fails to resolve at mediation or if one of the Disputants fails or refuses to attend the mediation, the mediator will be requested to inform each Disputant in writing that the mediation has been terminated without resolution (Mediation Termination Notice). Upon receipt of Mediation Termination Notice, the dispute resolution process will be terminated. A party to a dispute will only be entitled to pursue other remedies available to it at law or otherwise, after receipt of Mediation Termination Notice.

(j) Confidentiality

All communications concerning negotiations made by the Disputants arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as “without prejudice” negotiations for the purpose of applicable law of evidence.

15. Privacy

Please refer to our '[Privacy Policy](#)' which is made a part of these Terms.

16. Advertising and Links

The Platform may contain links and other pointers to other websites or applications operated by third parties. Photostream does not control these linked Platforms and is not responsible for the contents of any linked application. The links are provided solely for Subscriber convenience and do not indicate, expressly or impliedly, any endorsement by us of the Platform or the products or services provided at those Platforms. Subscriber's access to any such advertisement or link is entirely at Subscriber's own risk. Subscriber should contact the relevant third-party directly to enquire on that information prior to entering into a transaction in relation to the third-party products and services.

17. No Waiver

Any failure on our part to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision.

18. Assignment

- (a) Subscriber agree that Photostream may assign, transfer, sub-licence or otherwise deal with our rights and/or obligations under these Terms.
- (b) Subscriber may not without our prior written consent assign, transfer, sub-licence or otherwise deal with any of Subscriber rights and obligations under these Terms.

19. Third Party Rights

An agreement under these Terms is for our benefit and Subscriber benefit and is not intended to benefit or be enforceable by any third party.

20. Entire Agreement

Unless otherwise stated, these Terms and our '[Privacy Policy](#)' shall constitute the entire agreement between Subscriber and us in relation to Subscriber's use of the Platform and our Services.

21. Severability

If any part of provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part of the provision otherwise it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.

22. Law and Jurisdiction

- (a) The Terms and information on this Platform are governed by and construed in accordance with the laws of the State of New South Wales, Australia. Subscriber submits to the non-exclusive jurisdiction of the Courts of New South Wales and Courts of Appeal from them for determining any dispute concerning these Terms.
- (b) If any provision of these Terms is found to be invalid or unenforceable by a Court of Law, such invalidity or unenforceability will not affect the remainder of the Terms which will continue in full force and effect.

23. Force Majeure

Notwithstanding any other provision of these Terms, Photostream need not act if it is impossible to act due to force majeure, meaning any cause beyond our control (including war, pandemic, riot, natural disaster or law taking effect after the date of these Terms). Subscriber agrees that Photostream have no responsibility or liability for any loss or expense suffered or incurred by Subscriber because of not acting for so long as the force majeure continues.

24. Feedback and Authorisations

- (a) Subscriber feedback is important to us. Photostream encourages Subscribers to provide feedback, reviews, comments and suggestions for improvements to the Platform and our Services ("**Feedback**"). Subscriber may submit Feedback by emailing us at contact@photostream.live;
- (b) Subscriber authorise us to use Feedback for the purpose of promoting and marketing our services by consenting to us displaying Subscriber client name as follows:
 - (i) on our portfolio list;
 - (ii) on our Platform, our partner websites and in media releases;
 - (iii) by making representations of our work in the Services in any media publicity for news, review and on social media.

("Marketing")

- (c) Subscriber grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully-paid, royalty-free, sub-licensable and transferable license under all intellectual property rights that Subscriber own or control to use, copy, modify, publish, display, create derivative works based upon and otherwise use the Feedback and Marketing for any purpose, including (but not limited to) media publicity and advertising, promotional and review purposes.

25. How to Contact Us

- (a) Owner and Data Controller: Mutual Information Technologies Pty Ltd (ABN 46 638 913 425).

(b) Address: 2/23 Foster Street Surry Hills NSW 2010 Australia

(c) Email: contact@photostream.live

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Terms and Conditions last updated 18 March 2021.