

Birdseye Terms Of Service

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OVERVIEW

This website is operated by Birdseye Global Inc.

Throughout the site, the terms “Birdseye”, “we”, “us” and “our” refer to Birdseye Global Inc. Birdseye Global Inc. offers this website, including all information, tools and services available from this site to you, the user, conditioned upon your acceptance of all terms, conditions, policies and notices stated here. By visiting the website and/or purchasing something from us, you engage in our “**Service**” and agree to be bound by the following terms and conditions (“**Terms of Service**”, “**Terms**”), including those additional terms and conditions and policies referenced herein and/or available by hyperlink. These Terms of Service apply to all users of the website, including without limitation, users who are browsers, vendors, customers, merchants, and/ or contributors of content. Please read these Terms of Service carefully before accessing or using our website. **BY ACCESSING OR USING ANY PART OF THE SITE, YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU MAY NOT ACCESS THE WEBSITE OR USE ANY SERVICES. BY USING THE SERVICE IN ANY WAY, YOU:**

(A) REPRESENT AND WARRANT THAT (I) YOU HAVE REACHED THE AGE OF MAJORITY IN YOUR JURISDICTION, (II) YOU HAVE THE CAPACITY TO ENTER INTO BINDING OBLIGATIONS, AND (III) ALL INFORMATION SUPPLIED BY YOU TO US THROUGH THE SERVICE IS TRUE, ACCURATE, CURRENT AND COMPLETE; AND

(B) AGREE TO BE BOUND BY AND COMPLY WITH THESE TERMS OF SERVICE AS UPDATED FROM TIME TO TIME. IF YOU ARE USING THE SERVICE ON BEHALF OF ANOTHER PERSON OR A CORPORATE ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH PERSON OR ENTITY TO THESE TERMS OF SERVICE. YOU MAY NOT ACCESS THE WEBSITE OR SERVICE FOR PURPOSES OF MONITORING AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES. BIRDSEYE’S DIRECT COMPETITORS ARE PROHIBITED FROM ACCESSING THE WEBSITE AND SERVICE, EXCEPT WITH BIRDSEYE’S PRIOR WRITTEN CONSENT.

Any new features or tools which are added to the Service shall also be subject to the Terms of Service. You can review the most current version of the Terms of Service at any time on this page. We reserve the right to update, change or replace any part of these Terms of Service by posting updates and/or changes to our website. It is your responsibility to check [this page](#) periodically for changes. Your continued use of or access to the website following the posting of any changes constitutes acceptance of those changes.

SECTION 1 – USER ACCOUNT

- (a) To access certain features of the Service, you may be required to successfully sign up for a user account using the available interfaces of the services, and select a username and password login credentials (the “**User ID**”).
- (b) If you select a User ID, you will keep your User ID secure and will not grant access to or otherwise share your User ID with any other person.
- (c) You must provide us with true, accurate, current and complete information for your User ID. If we believe or suspect that your information is not true, accurate, current or complete, we may deny or terminate your access to the Services.
- (d) We reserve the right to disable any User ID issued to you at any time in our sole discretion. If we disable access to a User ID issued to you, you may be prevented from accessing the Services (or any portion thereof).
- (e) Birdseye is entitled to act on instructions received through your account. Birdseye is not responsible for any actions taken or transactions made to or from your account by any other party using your User ID. You are solely responsible for any and all use of your User ID and all purchases and activities that occur under or in connection with the User ID. Without limiting any rights which we may otherwise have, we reserve the right to take any and all action, as we deem necessary or reasonable, to ensure the security of the Services and your account, including without limitation terminating your account, changing your password, or requesting additional information to authorize transactions on your account. You agree to be responsible for any act or omission of any users that access the Services under your User ID that, if undertaken by you, would be deemed a violation of these Terms of Service.

SECTION 2 – ELECTRONIC COMMUNICATIONS

- (a) When you use or view the Services or send e-mails, texts or other electronic messages to us, you are communicating with us electronically and you consent to receive communications from us electronically. We will communicate with you by e-mail, by text message or by posting notices on the website. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.
- (b) By creating an account to access the Service, you acknowledge that Birdseye will send you service-related e-mails relating to your account, including service updates. Your consent to receive communications and do business electronically, and our agreement to do so, applies to all of your interactions and transactions with us. You may withdraw your consent to receive communications electronically by contacting us in the manner described below. If you withdraw your consent (excluding [consent](#) to receive marketing communications), from that time forward, you must stop using the Services. The withdrawal of your consent will not affect the legal validity and enforceability of any obligations or any electronic communications exchanged or business transacted between us prior to the time you withdraw your consent. Please keep us informed of any changes in your email or mailing address so that you continue to receive all communications without interruption.

(c) If you are a member of our mailing list you will also receive email communications from us regarding our products, services and initiatives (including collaborations and partnerships). If you do not wish to receive these communications, you can unsubscribe from such promotional e-mails at any time by clicking on the unsubscribe link in any of our e-mail communications. Users who unsubscribe from receiving such promotional communications may continue to receive certain transactional and/or account-related communications.

(d) You acknowledge and agree that you are solely responsible for providing Birdseye with accurate contact information, including your mobile device number and email address, where we may send communications in accordance with these Terms of Service and our Privacy Policy.

SECTION 3 – CUSTOMER DATA AND PRIVACY

(a) YOU GRANT US A NONEXCLUSIVE, WORLDWIDE, ROYALTY-FREE, IRREVOCABLE, SUBLICENSABLE, AND FULLY PAID-UP RIGHT TO ACCESS, COLLECT, USE, PROCESS, STORE, DISCLOSE AND TRANSMIT ANY DATA, INFORMATION, CONTENT, RECORDS OR FILES (“**CONTENT**”) THAT YOU LOAD, SUBMIT, TRANSMIT OR THAT YOU OTHERWISE PROVIDE TO BIRDSEYE IN CONNECTION WITH THE SERVICES AND/OR THESE TERMS OF SERVICE (“**CUSTOMER DATA**”) TO: (I) PROVIDE THE SERVICES; (II) EXERCISE ITS RIGHTS AND PERFORM ITS OBLIGATIONS UNDER THESE TERMS OF SERVICE, INCLUDING ENSURING YOU ARE COMPLYING WITH THESE TERMS OF SERVICE, ANY RESPONSIBLE USE GUIDELINES WE PROVIDE TO YOU OR ARE POSTED ON THE WEBSITE; AND (III) IMPROVE AND ENHANCE THE SERVICES AND OUR OTHER OFFERINGS AND BENCHMARK THE FOREGOING, INCLUDING BY SHARING API DATA AND FINETUNING DATA WITH THIRD PARTIES WHO MAY USE THE FINETUNING DATA AND API DATA TO PROVIDE SERVICES TO BIRDSEYE AND FOR OTHER PURPOSES PERMITTED UNDER THEIR TERMS AND CONDITIONS. FOR CLARITY AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OF SERVICE, BIRDSEYE WILL NOT SHARE A CUSTOM MODEL WITH ANY THIRD PARTY BUT MAY SHARE FINETUNING DATA USED TO FINETUNE OR TRAIN A CUSTOM MODEL WITH THIRD PARTIES. THE TERM “API DATA” MEANS CUSTOMER DATA SUBMITTED BY YOU TO THE BIRDSEYE API. THE TERM “FINETUNING DATA” MEANS CUSTOMER DATA COMPRISED OF ANY TRAINING OR FINETUNING DATA SUBMITTED BY YOU TO BIRDSEYE IN [CONNECTION](#) WITH THE SERVICES. THE TERM “CUSTOM MODEL” MEANS AN AI-POWERED NEURAL NETWORK FOR NATURAL LANGUAGE PROCESSING BASED ON PARAMETERS THAT ARE TRAINED USING CUSTOMER DATA.

(b) BIRDSEYE DOES NOT REPRESENT, WARRANT, OR COVENANT THAT IT HAS REVIEWED ANY THIRD PARTY TERMS AND CONDITIONS AND IS NOT RESPONSIBLE FOR ANY API DATA OR FINETUNING DATA SHARED WITH THIRD PARTIES. BIRDSEYE DOES NOT ENDORSE ANY THIRD PARTY SERVICE AND YOU ACKNOWLEDGE THAT IF YOU CHOOSE TO SUBMIT ANY API DATA OR FINETUNING DATA TO BIRDSEYE IN CONNECTION WITH THE SERVICES, YOU DO SO ENTIRELY AT YOUR OWN RISK. YOU FURTHER ACKNOWLEDGE THAT ANY THIRD PARTY TERMS AND CONDITIONS MAY NOT HAVE THE SAME OR SIMILAR

COMMITMENTS OR PROTECTIONS AS THOSE CONTAINED IN THESE TERMS OF SERVICE AND ANY FINETUNING DATA OR API DATA SHARED BY BIRDSEYE WITH THIRD PARTIES WILL BE ACCESSED, USED, AND OTHERWISE HANDLED BY SUCH THIRD PARTIES IN ACCORDANCE WITH THEIR TERMS AND CONDITIONS, WHICH MAY PERMIT SUCH THIRD PARTY TO USE FINETUNING DATA OR API DATA FOR ITS OWN PURPOSES.

(c) Please review our current [Privacy Policy](#), which contains important information about our practices in collecting, storing, using and disclosing information about identifiable individuals (“**Personal Information**”) and which is hereby incorporated into and forms a part of these Terms of Service.

SECTION 4 – GENERAL CONDITIONS

We reserve the right to refuse service to anyone for any reason at any time. You understand that your Customer Data (not including credit card information), may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Service, or access to the Service or any contact on the website through which the service is provided, without express written permission by us.

SECTION 5 – MODIFICATIONS TO THE SERVICE, FEES AND PAYMENT

(a) Fees for the Service (or any part or content thereof) are subject to change without notice and we reserve the right at any time to modify or discontinue the Service (or any part or content thereof) without notice at any time. We shall not be liable to you or to any third-party for any modification, fee/price change, suspension or discontinuance of the Service.

(b) You agree to pay to Birdseye all fees and applicable taxes set out in a signed order form and/or all fees and applicable taxes otherwise provided or communicated to you. You are responsible for paying all fees and applicable taxes associated with <https://www.birdseyeglobal.com/terms> the Services in a timely manner with a valid payment method. If your payment method fails or your payment is past due, we may collect fees owed using other collection mechanisms, including, but not limited to, charging other payment methods on file, retaining collection agencies and legal counsel.

(c) All payments are made through a third-party payment processor (the “Payment Processor”) with the information necessary to process payment from you, including the billing information requested on the Website or through the applicable Payment Processor’s platform. The processing of payments will be subject to the terms, conditions and privacy policies of the Payment Processor.

SECTION 6 – INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

(a) All right, title and interest, including intellectual property rights, in the Services, the source code in the software we use to provide the Services (the “Software”) and all other materials provided by us hereunder, and any updates, adaptation, translation, customization or derivative

works thereof, will remain the sole property of Birdseye (or our third-party suppliers, if applicable).

(b) The Service and all materials provided by us hereunder are made available or licensed and not “sold” to you.

(c) The Software and all other materials provided by us hereunder, including content we make available through or in the Services, are protected by copyright in Canada. You are prohibited from modifying, copying, reproducing, publishing, posting, transmitting, distributing, creating derivative works from, decompiling, transferring or selling any of the Services, the Software or other materials provided by us hereunder, or sharing or granting access in any of the foregoing to any third party for any purpose.

(d) Any use of third-party software provided in connection with the Service will be governed by such third parties’ licences and not by these Terms of Services.

(e) Any trademarks, graphics or logos appearing in or on the Website or any component of the Services are the exclusive property of Birdseye (or its third-party suppliers) and may not be used in any manner without our express written consent.

(f) All rights not expressly granted to you in these Terms of Service are reserved by Birdseye.

SECTION 7 – LICENSE TO THE SERVICES

Subject to these Terms of Service, we grant you a non-exclusive, non-transferable, non-sublicensable and revocable licence to use the Services in accordance with these Terms of Service.

SECTION 8 – ADDITIONAL TERMS

(a) Your access to and use of certain functionalities provided in or through the Service may be subject to additional terms and conditions presented to you by Birdseye or <https://www.birdseyeglobal.com/terms> its service providers. Such additional terms and conditions are incorporated herein by reference. If there is a conflict or inconsistency between the terms and conditions of such additional terms and these Terms of Service, then the provisions of these Terms of Service will govern to the extent of such conflict or inconsistency. If you do not purchase such additional functionalities or do not agree to such additional terms, you may not have access to, and you should not access or use, those functionalities.

(b) These Terms of Service relate to the Service only and do not alter in any way the terms or conditions of any purchase order that may apply to your use of the Service available thereon. For greater certainty, if there is a conflict or inconsistency between the terms and conditions of your purchase order and these Terms of Service, then the provisions of the purchase order will govern to the extent of such conflict or inconsistency.

SECTION 9 – PROHIBITED USES AND USER RESPONSIBILITIES

(a) In addition to other prohibitions as set forth in the Terms of Service, you are prohibited from using the site or its content: (i) for any unlawful purpose; (ii) to solicit others to perform or participate in any unlawful acts; (iii) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (iv) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (v) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (vi) to submit false or misleading information; (vii) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Service or of any related website, other websites, or the Internet; (viii) to collect or track the personal information of others; (ix) to spam, phish, pharm, pretext, spider, crawl, or scrape; (x) for any obscene or immoral purpose; or (xi) to interfere with or circumvent the security features of the Service or any related website, other websites, or the Internet.

We reserve the right to terminate your use of the Service or any related website for violating any of the prohibited uses.

(b) You agree to: (i) use reasonable efforts to prevent unauthorized access to or use of the Service; (ii) keep your User IDs and all other login information confidential; (iii) not register for more than one account, register for an account on behalf of an individual other than yourself without such individual's authorization, or register for an account on behalf of any group or entity; (iv) monitor and control all activity conducted through your account in connection with the Service; (v) upload and disseminate only data to which you own all required rights under law and do so only consistent with applicable law; (vi) promptly notify us if you become aware or reasonably suspect any illegal or unauthorized activity or a security breach involving your account, including any loss, theft, or unauthorized disclosure or use of a User ID or account; (vii) not use anyone else's User ID at any time, without the permission of the User ID holder; (viii) not attempt, in any manner, to obtain the password, account, or other security information from any other user; and (ix) comply with all applicable laws and regulations, including, but not limited to, all intellectual property, data and privacy laws. Except as authorized by applicable law, you agree not to export, re-export or transfer the Services or any part thereof to any country, person, entity or end user subject to applicable export controls or sanctions. For greater certainty, you are responsible for complying with all applicable trade restrictions, regulations and laws both foreign and domestic.

SECTION 10 – USER COMMENTS, FEEDBACK AND OTHER SUBMISSIONS

If, at our request, you send certain specific submissions or without a request from us you send creative ideas, suggestions, proposals, plans, or other materials, whether online, by email, by postal mail, or otherwise (collectively, “**comments**”), you agree that we may, at any time, without restriction, edit, copy, publish, distribute, translate and otherwise use in any medium any comments that you forward to us. We are and shall be under no obligation (1) to maintain any comments in confidence; (2) to pay compensation for any comments; or (3) to respond to any comments. We may, but have no obligation to, monitor, edit or remove content that we determine in our sole discretion are unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property or these Terms of Service. You agree that your comments will not violate any right of any third-party, including

copyright, trademark, privacy, personality or other personal or proprietary right. You further agree that your comments will not contain libelous or otherwise unlawful, abusive or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Service or any related website. You may not use a false e-mail address, pretend to be someone other than yourself, or otherwise mislead us or third-parties as to the origin of any comments. You are solely responsible for any comments you make and their accuracy. We take no responsibility and assume no liability for any comments posted by you or any third-party.

SECTION 11 – THIRD-PARTY LINKS AND TOOLS

(a) Certain content, products and services available via our Service may include materials from third-parties. Third-party links on this site may direct you to third-party websites that are not affiliated with us. We are not responsible for examining or evaluating the content or accuracy and we do not warrant and will not have any liability or responsibility for any third-party materials or websites, or for any other materials, products, or services of third-parties. We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any third-party websites. Please review carefully the third-party's policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to the third-party.

(b) We may provide you with access to third-party tools over which we neither monitor nor have any control nor input. You acknowledge and agree that we provide access to such tools “as is” and “as available” without any warranties, representations or conditions of any kind and without any endorsement. We shall have no liability whatsoever arising from or relating to your use of optional third-party tools. Any use by you of optional tools offered through the site is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which tools are provided by the relevant third-party provider(s).

SECTION 12 – DISCLAIMER OF WARRANTIES

(a) THE LAWS OF CERTAIN JURISDICTIONS, WHICH MAY INCLUDE QUEBEC, DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN LEGAL WARRANTIES, CONDITIONS OR REPRESENTATIONS. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS IN THESE TERMS OF SERVICE (INCLUDING THE FOLLOWING DISCLAIMERS) MAY NOT APPLY, AND YOU MAY HAVE ADDITIONAL RIGHTS. TO THE EXTENT THAT WE MAY NOT, AS A MATTER OF APPLICABLE LAW, DISCLAIM ANY IMPLIED WARRANTY OR CONDITION, THE SCOPE AND DURATION OF SUCH WARRANTY OR <https://www.birdseyeglobal.com/terms> CONDITION WILL BE THE MINIMUM PERMITTED UNDER SUCH APPLICABLE LAW.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU ACKNOWLEDGE, UNDERSTAND, AND AGREE THAT THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE”, WITH ALL FAULTS AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. EXCEPT FOR ANY SPECIFIC WARRANTIES OR CONDITIONS PROVIDED IN AN APPLICABLE SUBSCRIPTION AGREEMENT OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, TO THE FULLEST EXTENT

PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY KIND WITH RESPECT TO THE SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY OR COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AND CONDITIONS OF MERCHANTABILITY, QUALITY, DURABILITY, COMPATIBILITY, TITLE, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, CURRENCY, TIMELINESS, INTEGRATION, FITNESS FOR A PARTICULAR OR GENERAL PURPOSE AND NON-INFRINGEMENT, AND/OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, AND/OR THAT THE SERVICES ARE OR WILL BE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY KIND WITH RESPECT TO THIRD PARTY COMMUNICATIONS AND ANY THIRD-PARTY MATERIALS, WEBSITES OR CONTENT DIRECTLY OR INDIRECTLY ACCESSED THROUGH THE SERVICES. ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS, WEBSITES OR CONTENT IS STRICTLY BETWEEN CUSTOMER AND THE THIRD PARTY.

(c) IN THE EVENT THAT THERE IS AN INTERRUPTION OR DISRUPTION IN ANY OF THE SERVICES OFFERED BY BIRDSEYE FOR WHATEVER REASON, EVEN IF BIRDSEYE HAS BEEN MADE AWARE OF AN ISSUE THAT COULD RESULT IN OR IS LIKELY TO RESULT IN AN INTERRUPTION OR DISRUPTION OF SERVICES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BIRDSEYE WILL NOT BE REQUIRED TO ISSUE A REFUND FOR ANY PURCHASE MADE BY YOU. AS SOON AS BIRDSEYE HAS IDENTIFIED THE CAUSE OF AN INTERRUPTION OR DISRUPTION, BIRDSEYE WILL USE REASONABLE EFFORTS TO RETURN SERVICE AS SOON AS REASONABLY POSSIBLE.

SECTION 13 – LIMITATION OF LIABILITY

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR OUR PARENTS, SUBSIDIARIES OR AFFILIATES AND OUR AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, LICENSEES AND SERVICE PROVIDERS AND ITS AND THEIR SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “BIRDSEYE PARTIES”), BE LIABLE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR LOST PROFITS, LOSS OF USE, LOSS OF DATA, PERSONAL INJURY, FINES, FEES, PENALTIES OR OTHER LIABILITIES (COLLECTIVELY, “LOSSES”), IN EACH CASE, WHETHER OR NOT WE WERE ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM OR RELATED TO THE SERVICES OR THE INABILITY TO MAKE USE OF THE SERVICES, OR THESE TERMS OF SERVICE[, INCLUDING, FOR CLARITY, ANY LOSSES RESULTING FROM THE ACCESS, COLLECTION, USE, PROCESSING, STORING, DISCLOSING OR TRANSMITTING OF API DATA OR FINETUNING DATA BY THIRD

PARTIES.] IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICES, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICES.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL OUR TOTAL AGGREGATE LIABILITY IN CONNECTION WITH OR UNDER THESE TERMS OF SERVICE, OR YOUR USE OF, OR INABILITY TO MAKE USE OF, THE SERVICES, EXCEED \$100 CAD. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THESE TERMS OF SERVICE WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT.

(c) Without limiting the foregoing, under no circumstances will any of the Birdseye Parties be held liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or causes beyond our or their reasonable control, including, without limitation, Internet failures, computer equipment failures, telecommunication equipment failures, other equipment failures, electrical power failures, strikes, labour disputes, riots, insurrections, civil disturbances, shortages of labour or materials, fires, floods, storms, explosions, pandemics, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals, or non-performance of third parties.

SECTION 14 – INDEMNIFICATION

You will defend, indemnify and hold harmless the Birdseye Parties from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature including reasonable legal and accounting fees, arising out of or in connection with:

(a) your use (or the use by any third party using your User ID) of the Services (except to the extent prohibited by law)

(b) your breach of any provision of these Terms of Service or any documents referenced herein;

(c) your violation of any law or the rights of a third party (including intellectual property rights);

(d) your Customer Data; or

(e) any viruses, Trojan horses, worms, time bombs, spyware, malware, cancelbots or other similar harmful or deleterious programming routines input by you in connection with your use of the Services. Birdseye reserves the right, at its own cost, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with us in asserting any available defences. You agree that the provisions in this section will survive any termination of your account, the Terms of Service or your access to the Services.

SECTION 15 – SEVERABILITY

In the event that any provision of these Terms of Service is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms of

Service, such determination shall not affect the validity and enforceability of any other remaining provisions.

SECTION 16 – TERM AND TERMINATION

(a) These Terms of Service will commence on the day you first use the Service and will continue for as long as you use the Service or until terminated in accordance with the provisions of these Terms of Service. At any time, Birdseye may (i) suspend or terminate your rights to access or use the Service or (ii) terminate these Terms of Service, in Birdseye’s sole discretion, for any reason, including if Birdseye in good faith believes that you have used the Service in violation of these Terms of Service or any other responsible use guidelines we provide to you or are posted on the Website, or have engaged in fraudulent activity. You may terminate these Terms of Service at any time and with immediate effect by requesting by email that your User ID be deleted and ceasing use of the Service. For greater certainty, your termination of these Terms of Service will not automatically terminate an active purchase order and if you continue to use any portion of the Service after these Terms of Service have been purportedly terminated by you as described above, including any use pursuant to an active purchase order, these Terms of Service will continue to apply to the extent of such use. In the event of termination, you are no longer authorized to access the benefits of the Service.

(b) The following sections, together with any other provision of these Terms of Service which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of these Terms of Service, will survive expiration or termination of these Terms of Service for any reason:

SECTION 3 – Customer Data and Privacy SECTION

6 – Intellectual Property Rights and Ownership SECTION

8 – Additional Terms SECTION

11 – Third Party Links and Tools SECTION

12 – Disclaimer of Warranties SECTION

13 – Limitation of Liability SECTION

14 – Indemnification SECTION

16 – Survival and SECTION

17 – General Provisions

SECTION 17 – GENERAL PROVISIONS

(a) Except as restricted by applicable law, these Terms of Service will be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein (without giving effect to any principles of conflicts of law), and such laws apply to your access to or use of the Service

notwithstanding your physical location. You will only use the Service in jurisdictions where the Service may lawfully be used. Except as restricted by applicable law, you hereby consent to the exclusive jurisdiction and venue of courts in Toronto, Ontario in all disputes arising out of or relating to the use of the Service. This choice of jurisdiction does not prevent us from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

(b) These Terms of Service, any applicable purchase order entered into by the parties that reference these Terms of Service and any policies or operating rules posted by us on this site or in respect to the Service constitutes the entire agreement and understanding between you and us and govern your use of the Service, superseding any prior or contemporaneous agreements, communications and proposals, whether oral or written, between you and us (including, but not limited to, any prior versions of the Terms of Service).

(c) The failure of us to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such right or provision. A waiver of any provision of these Terms of Service must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.

(d) If any of the provisions contained in these Terms of Service are determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such provision will be severed from these Terms of Service and all other provisions of these Terms of Service will remain in full force and effect.

(e) You will not assign these Terms of Service to any third party without our prior written consent. We may assign these Terms of Service or any rights under these Terms of Service to any third party without your consent. Any attempted assignment, subcontract, delegation, or transfer in violation of this Section will be null and void. The terms of these Terms of Service will be binding upon permitted assignees. These Terms of Service will inure to the benefit of and be binding upon the parties, their permitted successors and permitted assignees.

(f) If you believe that Birdseye has not adhered to these Terms of Service, please contact Birdseye using the contact information listed below. We will do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation.

SECTION 18 – CONTACT INFORMATION

Questions about the Terms of Service should be sent to us at [**support@birdseyeglobal.com**](mailto:support@birdseyeglobal.com)