

## TERMS OF SERVICE

These Terms of Service (“Terms”) apply to your access to and use of: (i) the websites located at [www.tactacam.com](http://www.tactacam.com) (or any successor links) and all associated web pages, websites, and social media pages (the “Site(s)”) provided by Deer Management Systems LLC (“Company”, “we”, “our” or “us”); (ii) software applications that may be downloaded to your smartphone, tablet or other device, (each, an “App(s)”); (iii) any software, including firmware, that may be pre-installed or downloaded (the “Software”) to any of the Company’s products (the “Products”) or contained in any App, regardless of whether those Products are purchased from any of the Site(s) or elsewhere; (iv) telecommunication services that we provide for the Products (the foregoing, including the Site(s), the App(s), the Software, and the telecommunication services, together, the “Services”).

**Please refer to our Product Terms of Sale which are available here, [Tactacam Terms of Sale](#) which govern the sale of Products from any of the Site(s).**

**By registering for, signing in, or otherwise using our Services, you agree to these Terms and any other terms as referenced herein, including the payment and subscription renewal provisions in Section 7, and the mandatory arbitration provision and class action waiver in Section 18. BY AGREEING TO THESE TERMS, EXCEPT FOR (I) CERTAIN TYPES OF DISPUTES DESCRIBED IN SECTION 18, (II) WHERE YOU EXERCISE YOUR RIGHT TO OPT OUT OF ARBITRATION AS DESCRIBED IN SECTION 18, OR (III) TO THE EXTENT PROHIBITED BY LAW, DISPUTES BETWEEN YOU AND COMPANY WILL BE RESOLVED SOLELY ON AN INDIVIDUAL BASIS AND NOT AS A CLASS ARBITRATION, CLASS ACTION, ANY OTHER KIND OF REPRESENTATIVE PROCEEDING OR BY JURY TRIAL. If you do not agree to these Terms, do not use our Services.**

We may supply different or additional terms in relation to some of our Services, including charging fees for the Services, and those different or additional terms become part of your agreement with us if you use those Services. If there is a conflict between these Terms and the additional terms, the additional terms will control for that conflict.

We may make changes to these Terms from time to time. The “Last Updated” date above indicates when these Terms were last changed. If we make changes, we will provide you with notice of such changes, such as by sending an e-mail, providing a notice through our Services or updating the date at the top of these Terms. Unless we say otherwise in our notice, the amended Terms will be effective immediately, and your continued use of our Services after we provide such notice will confirm your acceptance of the changes. If you do not agree to the amended Terms, you must stop using our Services.

If you are an individual accessing or using the Services on behalf of, or for the benefit of, any corporation, partnership or other entity with which you are associated (an “Organization”), then you are agreeing to these Terms on behalf of yourself and such Organization, and you represent and warrant that you have the legal authority to bind such Organization to these Terms. References to “you” and “your” in these Terms will refer to both the individual using the Services and to any such Organization.

If you have any questions about these Terms or our Services, please contact us at [support@feathersnapcam.com](mailto:support@feathersnapcam.com).

**Privacy.**

You may provide certain information to Company in connection with your access or use of our Products or Services, or we may otherwise collect certain information about you when you access or use our Products or Services. You agree to receive e-mails, SMS or text messages, and other types of communication from Company via the Services using the e-mail address or other contact information you provide in connection with the Services. You represent and warrant that any information that you provide to Company in connection with the Services is accurate. For information about how we collect, use, share or otherwise process information about you, please see our [Privacy Policies](#).

**Eligibility and Use Restrictions.**

You must be at least 18 years of age (or the age of legal majority where the user lives) to use our Services. Users under 18 years of age (or the age of legal majority) may only use our Services under the supervision of a parent or legal guardian who agrees to be bound by these Terms. The parent or legal guardian of a user under the age of 18 (or the age of legal majority) is fully responsible for the acts or omissions of such user in relation to our Services. If you are a parent or legal guardian and you believe that your child under the age of 18 (or the age of legal majority) is using our Services without your consent, please contact us at [support@feathersnapcam.com](mailto:support@feathersnapcam.com). If you use our Services on behalf of another person or entity, (i) all references to “you” throughout these Terms will include that person or entity, (ii) you represent that you are authorized to accept these Terms on that person’s or entity’s behalf, and (iii) in the event you or the person or entity violates these Terms, the person or entity agrees to be responsible to us. If you are an individual, you acknowledge that the Services are for your personal, non-commercial use.

**Jurisdiction.**

You may only use our Services in jurisdictions authorized by Company. Use of our Services is currently authorized only in the United States and Canada.

**Use and Sharing.**

You may only use our Services for personal, family or household purposes and expressly excluding any commercial use. You may not share our Services.

**Your Account, Account Security.**

You must create an account to access some or all of our Services. You may not share or permit others to use your Account credentials. You must use a strong password for your account that is unique to our Services and not used by you in any other website or online service. You must provide accurate account information and promptly update this information if it changes. You must maintain the security of your Account, including not authorizing others to use your Account credentials, and promptly notify us if you discover or suspect that someone has accessed your Account without your permission. You are responsible for the activities of such users that occur in connection with your Account. We reserve the right to reclaim usernames, including on behalf of businesses or individuals that hold legal claim, including trademark rights, in those usernames.

**User Content.**

Our Services may allow you and other users to create, post, store, and share content, including reviews, messages, text, photos, videos, software, and other materials (collectively, “User Content”). When you post or otherwise share User Content on or through our Services, you understand that your User Content and any associated information (such as your username, profile photo and other personal information) may be visible to others. **If you choose to make any of your information publicly available through the Services, you do so at your own risk.**

Except for the license you grant below, as between you and Company, you retain all rights in and to your User Content. You grant Company and its subsidiaries and affiliates a nonexclusive, royalty-free, worldwide, fully paid, perpetual, irrevocable, and sublicensable (through multiple tiers) license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, publicly or otherwise perform and display, and exploit your User Content and any name, username or likeness provided in connection with your User Content in all media formats and channels now known or later developed without compensation to you or any third-party. You hereby irrevocably waive any “moral rights” or other rights with respect to attribution of authorship or integrity of materials regarding User Content that you may have under any applicable law or under any legal theory.

You may not create, post, store, or share any User Content for which you do not have all the rights necessary to grant us the license described above, and you represent and warrant that your User Content, and our use of such User Content as permitted by these Terms, will not violate any rights of any person or entity, including any third-party rights, or cause injury to any person or entity. You will not create, post, store, or share any User Content that is, or that causes our Services to provide, transmit, or receive any content that, as determined by us in our sole discretion:

- is not G-rated material; is unlawful, libelous, defamatory, obscene, pornographic, sexually explicit, indecent, lewd, suggestive, offensive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, fraudulent or promotes violence or discrimination;
- would constitute, encourage, or provide instructions for a criminal offense, violate the rights of any party or otherwise create liability or violate any local, state, national or international law;
- would constitute, encourage or provide instructions for dangerous activities or self-harm;
- is deliberately designed to provoke or antagonize people, especially trolling and bullying or is intended to harass, harm, hurt, scare, distress, embarrass or upset people;
- is racist or discriminatory, including discrimination on the basis of someone’s race, religion, age, gender, disability or sexuality;
- may infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party;
- contains or depicts any statements, remarks or claims that do not reflect your honest views and experiences;
- impersonates any person or entity, or falsely state or otherwise misrepresents your affiliation with, any person or entity;
- contains any unsolicited promotions, political campaigning, advertising or solicitations; contains any private or personal information of a third-party, including addresses, phone numbers, e-mail addresses, number and feature in the personal identity document (e.g., driver’s license numbers, passport numbers) or credit card numbers; contains any viruses, corrupted data or other harmful, disruptive, or destructive files or content; or

- is objectionable, restricts or inhibits any other person from using or enjoying our Services, or may expose Company or others to any harm or liability of any type.

Enforcement of this Section 4 is solely at Company's discretion, and failure to enforce this Section 4 in some instances does not constitute a waiver of our right to enforce it in other instances. This Section 4 does not create any right or private right of action on the part of any third-party or any reasonable expectation that the Services will not contain any content that is prohibited by these Terms or that objectionable material will be promptly removed after it has been posted.

We do not undertake to review all User Content, and we expressly disclaim any duty or obligation to undertake any monitoring or review of any User Content. Although we have no obligation to screen, edit, or monitor User Content, we may:

- delete or remove User Content or refuse to post any User Content at any time and for any reason with or without notice, including without limitation for any violations of applicable law or these Terms;
- terminate or suspend your access to all or part of the Services, temporarily or permanently, if your User Content is reasonably likely, in our sole determination, to violate applicable law or these Terms;
- take any action with respect to your User Content that is necessary or appropriate, in Company's sole discretion, to ensure compliance with applicable law and these Terms, or to protect Company's rights, or to protect any third-party rights, including third-party intellectual property and privacy rights (e.g., providing information to copyright owners in furtherance of Digital Millennium Copyright Act takedown requests); and
- as permitted by law, cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any User Content on or through the Services.

### **Right to Use Services.**

Subject to your continuing compliance with these Terms, you may, on a non-exclusive, non-transferable, non-sublicensable, revocable basis, use the Services solely for your individual, non-commercial purposes. Any use of the Services other than as specifically authorized herein, without our prior written permission, is strictly prohibited, and we will have the right to immediately terminate the rights granted herein and terminate your access to the Services. We reserve the right to retroactively approve, disapprove, disable, block and remove any unapproved integrations or interactions with the Services. You are responsible for obtaining and maintaining any software, computer hardware, equipment, network services and connectivity, telecommunications services and other products and services necessary to access and use the Services.

### **Prohibited Conduct.**

You will not use our Services if you are not eligible to use our Services in accordance with Section 2 and will not use our Services other than for their intended purpose. You will not violate any applicable law, contract, intellectual property right or other third-party right or commit a tort, and you are solely responsible for your conduct while using any of our Services. In addition, you will not:

- use the Services to violate any applicable law, contract, intellectual property right, or other third-party right, or commit a tort or promote or encourage any other person to do so;
- promote or encourage any activity that violates these Terms;
- exceed or circumvent any credit, access or usage limitations associated with the Services; sell, or resell the Services or provide the Services as a service bureau, absent having a separate written agreement with us that allows for such additional uses of the Services;
- use any of the Services to engage in any harassing, threatening, intimidating, predatory or stalking conduct;
- use or attempt to use another user's Account;
- impersonate any person or entity, or falsely state or otherwise misrepresent you or your affiliation with any person or entity;
- copy, reproduce, distribute, publicly perform or publicly display all or portions of our Services, except as expressly permitted in writing by us or our licensors; modify any of the Services, remove any proprietary rights notices or markings, or otherwise make any derivative works of the Services;
- use any of the Services other than for their intended purpose and in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying the Products or Services or that could damage, disable, overburden or impair the functioning of the Services in any manner;
- reverse engineer any aspect of our Products or Services or do anything that might discover source code or bypass or circumvent measures employed to prevent or limit access to any part of our Products or Services, except that the foregoing does not limit any rights you may have under applicable law;
- use any data mining, robots or similar data gathering or extraction methods designed to scrape or extract data from or through our Services;
- except as expressly permitted with a separate agreement with us, develop or use any applications that interact or integrate with our Services without our prior written consent;
- use the Services to send, distribute or post including, without limitation, commercial advertising and informational announcements, spam, unsolicited or bulk commercial electronic communications, chain letters, or pyramid schemes;
- bypass or ignore instructions contained in our robots.txt file;
- use the Services to engage in unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network;
- use the Services to engage in unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network;
- use the Services to interfere with service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks; or
- use the Service to forge any TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting.

You will comply with all applicable international and national laws, including the U.S. Export Administration Regulations, as well as end-user, end use and destination restrictions by U.S. and

other governments, and all applicable laws pertaining to the protection of minors, including when appropriate, reporting cases of child exploitation to the National Center for Missing and Exploited Children. For more information about online safety, visit [www.ncmec.org](http://www.ncmec.org). You have read, accepted and agree to comply with the acceptable use policies of our data providers, including those found at <https://www.att.com/legal/terms.aup.html>, <https://www.verizon.com/business/terms/aup/> and <https://.vodafone.com/business/AcceptableUsePolicy>, as applicable to the Subscription Services that you are receiving.

Enforcement of this Section 6 is solely at our discretion, and failure to enforce this Section 6 in some instances does not constitute a waiver of our right to enforce it in other instances. In addition, this Section 6 does not create any private right of action on the part of any thirdparty or any reasonable expectation that the Services will not contain any content that is prohibited by such rules. Without limiting any of our rights or remedies, we reserve the right to retain any and all fees collected from you if we terminate, deactivate or cancel your account or your access to the Services due to your breach of these Terms.

### **Service Terms of Sale.**

Our Services may include both paid-for Services ("**Paid Service(s)**") and free Services, for which no fees are charged ("**Free Service(s)**"). We may also offer certain Paid Services to be paid for on a recurring basis ("**Subscription Service(s)**") and others on an as-used basis ("**A La Carte Service(s)**"). Subscription Services may subject you to recurring fees and/or terms. By signing up for a Subscription Service, including after any free trial period, you agree to pay us the subscription fee and any applicable taxes, charges, fees, levies or other assessments imposed by any domestic or foreign taxing authority ("**Taxes**") (collectively, "**Subscription Fee(s)**"). A La Carte Services may subject you to fees and Taxes charged per usage and/or terms, including transaction volume ("**A La Carte Fee(s)**") and, together with Subscription Fees, the "**Paid Services Fee(s)**". We will invoice you on the first of each month for any A La Carte Fee(s) incurred during the immediately preceding month. By using an A La Carte Service, you agree to pay the A La Carte Fee(s) within thirty (30) days from the invoice date, unless otherwise stated in an order form. Unless otherwise stated, all Paid Services Fees are exclusive of any Taxes. You are responsible and liable for determining any and all Taxes required to be assessed, incurred, collected, paid or withheld for your use of the Services.

**IF YOU ENTER INTO A SUBSCRIPTION SERVICE, *UNLESS YOU CANCEL THE SUBSCRIPTION SERVICE BEFORE RENEWAL, BY DEFAULT (AND WITH PRIOR NOTICE TO THE EXTENT REQUIRED BY APPLICABLE LAW), YOUR SUBSCRIPTION SERVICE WILL AUTOMATICALLY RENEW FOR THE AGREED UPON MONTHLY OR ANNUAL TERM, AND THE APPLICABLE SUBSCRIPTION FEE WILL BE AUTOMATICALLY CHARGED TO YOU AT THE TIME OF RENEWAL WITH AN ACTIVE PAYMENT METHOD ON FILE IN YOUR ACCOUNT.***

**IF YOU DO NOT WANT YOUR SUBSCRIPTION SERVICE TO AUTOMATICALLY RENEW, YOU CAN CANCEL YOUR SUBSCRIPTION SERVICE AT ANY TIME PRIOR TO RENEWAL BY MANAGING YOUR SUBSCRIPTION SERVICE ON THE "MANAGE SUBSCRIPTIONS" PAGE ON THE APP OR BY CONTACTING OUR SUPPORT TEAM AT [SUPPORT@TACTACAM.COM](mailto:SUPPORT@TACTACAM.COM). YOU MAY ALSO CANCEL YOUR SUBSCRIPTION SERVICE BY SENDING THE FOLLOWING CANCELLATION E-MAIL TO US.**

You may cancel a Subscription Service at any time, but if you cancel your Subscription Service before the end of the current subscription period, we will not refund any Paid Services Fees already paid to us. We may change the Paid Services Fees at any time, but any such change will not apply to you until such time as your current Subscription Service expires or is renewed (whichever is earlier). After such time, your use of the applicable Services will be charged at the then current Paid Services Fees. If you do not agree to these price changes, you must cancel your Subscription Services before the changes take effect through the processes set forth above in Section 7(c). If you do not cancel your Subscription Services accordingly, your Subscription Services will automatically renew at the then-current price at the time of renewal and for the same duration as the initial subscription term, and we will charge your on-file payment card or method on the first day of the renewal of the subscription term. Where a Paid Services Fee has increased, we will notify you of the relevant fee increase prior to the renewal of your Subscription Service. If you switch to a Subscription Service with higher Subscription Fees, we will restart your billing period on the date you switch to the new Subscription Service and apply a pro-rated credit of the amount not used for the old Subscription Service to the first month's payment for the new Subscription Service. We may establish, limit, revoke and otherwise change credit and credit usage limits and terms at any time, in our sole discretion, with or without notice to you.

All financial transactions conducted for the Paid Services are made using one or more third party payment processors we may engage from time to time. All such transactions are governed by the payment processors' respective terms of use and privacy policies, which we do not control. We discuss our collection of financial information through our Privacy Policy and our third-party payment processors [HERE](#). We encourage you to review our third-party payment processors' terms of service and privacy policies before submitting your payment information. We do not process or retain your credit card, debit card, or other payment information. This information is used solely for the purpose of allowing you to sign up for and access and use the Paid Services. All billing information you provide to our third-party payment processor must be truthful and accurate and you represent that you are authorized to use the payment method in the manner contemplated here. You expressly authorize us (via our third-party payment processors) to charge the payment method you provide for any Paid Services you use. Your selection of the "Accept" or similar button on the checkout page is your electronic signature and you agree that (i) this signature is the legal equivalent of your wet or manual signature and (ii) this transaction is equivalent to an in-person transaction where your payment method is physically present.

If your payment details change, your card or other payment method provider may provide us with updated payment details. We may use these new details or details from other payment methods on file in order to help prevent any interruption to your use of the Paid Services. If you do not want to have your card or other payment method automatically updated, you can opt out of these services by contacting your financial institution. If you would like to use a different payment method or if there is a change in payment method, please send an e-mail to us informing us of such request or changes at [support@tactacam.com](mailto:support@tactacam.com).

The billing date will depend on the type of Paid Service (e.g., monthly or annual Subscription Service) that you choose and will be charged on the billing date indicated on your "Manage Subscription" page in the App(s). In certain circumstances, your billing date may change. For instance, if we are unable to successfully charge your card on a given day (e.g., a federal holiday or due to technical failures). If we cannot charge your payment method for any reason (such as expiration or insufficient funds), and you have not cancelled the Subscription Service, you remain responsible for any uncollected amounts for the Subscription Service as well as any A La Carte

Fees, and we will attempt to charge the payment method as you may update your payment method information. We reserve the right to cancel or suspend your Service if we are unable to successfully charge your payment method for any Paid Services.

From time to time, we may offer free trials to access some or all of the Services. Such Free Services are subject to these Terms except as otherwise stated in the free trial offer. Unless you enter into a Subscription Service or A La Carte Service agreement with us to access some or all of the Services prior to the end of your free trial period, your access to the Services will automatically terminate at the end of such period.

#### **Termination of Use or Access.**

Company may terminate your use of the Site(s) and the App(s) at any time for any reason, including if you are in breach of any of these Terms which cover your use of the Site(s) and the App(s). By using the Site(s) and the App(s), you will be responsible (in accordance with these Terms) for any orders you make or charges you incur prior to such termination. Company may change, discontinue or otherwise suspend the Site(s) and the App(s) at any time, for any reason, and without prior notice to you.

#### **Ownership; Limited License.**

The Services are owned by us or our licensors and are protected under both United States and foreign laws. You retain all rights in and to User Content provided by you to the Services. Except as explicitly stated in these Terms, all rights in and to the Services are reserved by us or our licensors. Any use of the Services other than as specifically authorized herein, without our prior written permission, is strictly prohibited and will terminate the license granted herein and violate our intellectual property rights. We reserve the right to apply technical or numerical limitations on use of the Services and other features we now make available and will make available in the Services, which may vary depending on the Services you obtain or purchase from us.

#### **Trademarks and Publicity.**

Our trademarks and our logos, our product or service names, our slogans and the look and feel of the Services, including Company Content, are our intellectual property and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned on the Services are the property of their respective owners. Reference to any products, services, processes or other information by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation by us.

You hereby grant the Company a worldwide, royalty-free, perpetual, irrevocable, transferable, sublicensable license and right to publicly display, reproduce, perform and otherwise use any User Content on Company's Site(s) and App(s), in Company's marketing, promotional and exhibition materials and at any public forum (including conventions, conferences and symposiums) solely for the purpose of marketing, promoting and otherwise demonstrating the Services.

#### **Feedback.**



You may voluntarily post, submit or otherwise communicate to us any questions, comments, suggestions, ideas, original or creative materials or other information about us or our Services (collectively, “**Feedback**”). You hereby grant to Company a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up license to use and otherwise exploit the Feedback for any purpose, commercial or otherwise, including to develop, copy, publish, or improve the Feedback, the Products or Services You understand that we may use Feedback to develop, copy, publish, or improvement We will exclusively own all improvements to, or new, Company products, services, or Services based on any Feedback. You understand that we may treat Feedback as nonconfidential.

### **Repeat Infringer Policy; Copyright Complaints.**

**Our Policy.** In accordance with the Digital Millennium Copyright Act (“**DMCA**”) and other applicable law, we have adopted a policy of terminating, in appropriate circumstances, the accounts of users who repeatedly infringe the intellectual property rights of others (our “**DMCA Policy**”).

**Reporting Claims of Copyright Infringement.** If you believe that anything on our Services infringes any copyright that you own or control, you may notify our designated agent (your notification, a “**DMCA Notice**”) as follows:

Designated Agent:	DMCA Agent
Address:	BIRD MANAGEMENT OPCO LLC
	1668 Jordan West Rd
	Decorah, Iowa 52101
Telephone Number:	(218) 282-7121
E-Mail Address:	<a href="mailto:support@tactacam.com">support@tactacam.com</a>

Please see [17 U.S.C. § 512\(c\)\(3\)](#) of the DMCA for the requirements of a proper notification. If you fail to comply with all of the requirements of Section 512(c)(3) of the DMCA, your notice may not be effective. Also, please note that if you knowingly misrepresent that any activity or material on our Services is infringing, you may be liable to us for certain costs and damages.

### **Our Response to DMCA Notices.**

Upon receipt of a DMCA Notice meeting the requirements of Section 512(c)(3) of the DMCA, we may: (i) remove or disable access to the allegedly infringing content (the “**Allegedly Infringing Content**”); (ii) take reasonable steps to notify the user who provided the Allegedly Infringing Content (the “**Allegedly Infringing User**”) that access to the Allegedly Infringing Content has been disabled or the Allegedly Infringing Content has been removed; (iii) notify the party who provided the DMCA Notice with respect to the Allegedly Infringing Content (the “**Original Complaining User**”) of any counter notices that we receive in accordance with Section 11(d) from the Allegedly Infringing User; and (iv) replace or restore the Allegedly Infringing Content in accordance with Section 11(e). In accordance with our DMCA Policy, if we determine that the Allegedly Infringing User has provided Allegedly Infringing Content numerous times on or through

our Services, we may also terminate the account of such user or terminate the ability of such user to add content to our Services.

### **Counter Notices.**

If you believe that your content was removed or disabled in accordance with this Section 11 by mistake or misidentification, you may send a counter notice to our designated agent as specified above (your counter notice, a “**DMCA Counter Notice**”). Please see Section 512(g)(3) of the DMCA for the requirements of a proper counter notification. If you knowingly materially misrepresent that any content on our Services was removed or disabled by mistake or misidentification, you may be liable to us for certain costs and damages.

### **Our Response to DMCA Counter Notices.**

When we receive a DMCA Counter Notice meeting the requirements of Section 512(g)(3) of the DMCA with respect to any Allegedly Infringing Content, we may send a copy of the DMCA Counter Notice to the Original Complaining User informing that user that we will replace or restore the Allegedly Infringing Content. Unless our designated agent described in Section 12(b) receives notice that the Original Complaining User files an action seeking a court order against the Allegedly Infringing User within fourteen (14) business days of receiving the copy of the Allegedly Infringing User’s DMCA Counter Notice, we may restore the removed or disabled content.

### **Third-Party Content.**

We may provide information about third-party products, services, activities or events, or we may allow third parties to make their content and information available on or through the Services (collectively, “Third-Party Content”). We provide Third-Party Content as a service to those interested in such content.

Our Services may rely on, interoperate with or be provided with third-party products, software and/or services, including data storage services, communications technologies, Internet of Things (“IoT”) platforms, third-party platforms, engines, tools, applications, app stores and application programming interfaces, and internet and mobile operators (collectively, “Third-Party Materials”). These Third-Party Materials are beyond our control, but their operation may impact, or be impacted by, the use and reliability of our Services. The use and availability of the Services is dependent on third-party product vendors and service providers; and these Third-Party Materials may not operate reliably all of the time, which may impact the way that our Services operate. You may be required to obtain separate rights to use such Third-Party Materials from the applicable third-party.

We are not responsible for, do not control or endorse or have any obligation to monitor, and make no representations or warranties regarding, any Third-Party Content or Third-Party Materials. The Third-Party Content and Third-Party Materials may be protected by intellectual property rights which are owned by the relevant third-party owners and providers (or by other persons or companies on their behalf). You acknowledge that your access and use of Third-Party Content and/or Third-Party Materials may be subject to separate terms and conditions typically found in: (i) separate terms of service or privacy policies; (ii) separate third-party license agreements or “READ ME” files included with or applicable to such Third-Party Content and/or Third-Party Materials; or (iii) in agreements between you and the relevant third-party, which in that case, these Terms do not affect your legal relationship with such third parties with respect to the relevant Third-

Party Content and/or Third-Party Materials. Your dealings or correspondence with third parties and your use of or interaction with any Third-Party Content or Third-Party Materials are solely between you and the third party. You may not modify, rent, lease, loan, sell, reproduce, distribute, or create derivative works based on Third-Party Content and/or Third-Party Materials (either in whole or in part) unless you have been specifically given permission to do so by the relevant third-party owners and providers. You understand that all Third-Party Content and Third-Party Materials are the sole responsibility of the person or entity from which they originated and that we are not liable for any loss or damage that you may experience as a result of the use or access of any Third-Party Materials. We may block or disable access to any Third-Party Content or Third-Party Materials (in whole or part) through our Services at any time. **THIRD-PARTY CONTENT AND THIRD-PARTY MATERIALS ARE OFFERED “AS IS” AND “AS AVAILABLE.” YOUR ACCESS TO AND USE OF THIRD-PARTY CONTENT AND/OR THIRD-PARTY MATERIALS IS AT YOUR OWN RISK.**

### **Open Source Components.**

Certain components of the Services ("Open Source Components") may be licensed by third parties to you under "open source" software licenses or any substantially similar licenses, including without limitation any license that, as a condition of use or distribution of the software licensed under such license, requires that the user or distributor make the software available in source code format. To the extent required by third-party licenses covering Open Source Components, the terms of such licenses will apply to such Open Source Components in lieu of these Terms. To the extent the terms of the licenses applicable to Open Source Components prohibit any of the restrictions in these Terms with respect to such Open Source Component, such restrictions will not apply to such Open Source Component.

### **Indemnification.**

To the fullest extent permitted by applicable law, you will indemnify, defend and hold harmless Company and our subsidiaries and affiliates, and each of our respective officers, directors, agents, partners and employees (individually and collectively, the "Company Parties") from and against any losses, liabilities, claims, demands, damages, expenses or costs ("Claims") arising out of or related to (a) your access to or use of the Products or Services; (b) your User Content or Feedback; (c) your violation of these Terms; (d) your violation, misappropriation or infringement of any rights of another (including intellectual property rights or privacy rights); or (e) your conduct in connection with the Services. You agree to promptly notify Company Parties of any third-party Claims, cooperate with Company Parties in defending such Claims and pay all fees, costs and expenses associated with defending such Claims (including, but not limited to, attorneys' fees). You also agree that the Company Parties will have control of the defense or settlement, at Company's sole option, of any third-party Claims. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and Company or the Company Parties.

### **Disclaimers.**

**YOUR USE OF OUR SERVICES IS AT YOUR SOLE RISK. EXCEPT AS OTHERWISE PROVIDED IN THESE TERMS, OUR SERVICES, API(S), AND ANY CONTENT OR MATERIALS PROVIDED THEREIN OR THEREWITH (INCLUDING ANY THIRD-PARTY CONTENT AND THIRD-PARTY MATERIALS) ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT**

NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. IN ADDITION, WE DO NOT REPRESENT OR WARRANT THAT OUR SERVICES ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE OR THAT ACCESS TO OUR SERVICES, API(S) OR ANY CONTENT PROVIDED THEREIN OR THEREWITH (INCLUDING THE THIRD-PARTY CONTENT AND THIRD-PARTY MATERIALS) WILL BE UNINTERRUPTED. WHILE WE ATTEMPT TO MAKE YOUR USE OF OUR SERVICES, API(S), AND ANY CONTENT, THIRD-PARTY CONTENT AND THIRD-PARTY MATERIALS PROVIDED THEREIN OR THEREWITH SAFE, WE CANNOT AND DO NOT REPRESENT OR WARRANT THAT OUR SERVICES, API(S), OR ANY CONTENT, THIRD-PARTY CONTENT OR THIRD-PARTY MATERIALS PROVIDED THEREIN OR THEREWITH OR OUR SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU ASSUME THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES AND ANY CONTENT PROVIDED THEREIN OR THEREWITH (INCLUDING THE THIRD-PARTY CONTENT AND THIRD-PARTY MATERIALS). ALL DISCLAIMERS OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THESE TERMS) ARE MADE FOR THE BENEFIT OF COMPANY, COMPANY PARTIES, AND COMPANY'S RESPECTIVE SHAREHOLDERS, AGENTS, REPRESENTATIVES, LICENSORS, SUPPLIERS, AND SERVICE PROVIDERS, AS WELL AS THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

#### **Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE AND THE OTHER COMPANY PARTIES WILL NOT BE LIABLE TO YOU UNDER ANY THEORY OF LIABILITY—WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, OR OTHERWISE—FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES OR LOST PROFITS OR LOSS OF DATA, EVEN IF WE OR THE OTHER COMPANY PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OUR TOTAL LIABILITY AND THE OTHER COMPANY PARTIES FOR ANY CLAIM ARISING OUT OF OR RELATING TO THESE TERMS OR OUR SERVICES, REGARDLESS OF THE FORM OF THE ACTION, IS LIMITED TO THE GREATER OF \$5.00 OR THE AMOUNT PAID BY YOU TO USE OUR SERVICES IN THE TWELVE MONTHS PRIOR TO THE FIRST TIME YOU BRING A CLAIM UNDER THESE TERMS. THE LIMITATIONS SET FORTH IN THIS SECTION WILL NOT LIMIT OR EXCLUDE LIABILITY FOR OUR OR THE OTHER COMPANY PARTIES' GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT OR FOR ANY OTHER MATTERS IN WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. ADDITIONALLY, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

#### **Release**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU RELEASE COMPANY AND THE OTHER COMPANY PARTIES FROM RESPONSIBILITY, LIABILITY, CLAIMS, DEMANDS AND/OR DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN (INCLUDING, BUT NOT LIMITED TO, CLAIMS OF NEGLIGENCE), ARISING OUT OF OR RELATED TO DISPUTES BETWEEN USERS AND THE ACTS OR OMISSIONS OF THIRD PARTIES.

## Transfer and Processing Data

In order for us to provide our Services, you agree that we may process, transfer and store information about you in the United States and other countries, where you may not have the same rights and protections as you do under local law.

## Dispute Resolution; Binding Arbitration

**Please read the following Section 18 carefully because it requires you to arbitrate certain disputes and claims with Company and limits the manner in which you can seek relief from us, unless you opt out of arbitration by following the instructions set forth below. No class or representative actions or arbitrations are allowed under this arbitration provision. In addition, arbitration precludes you from suing in court or having a jury trial.**

**No Representative Actions.** You and Company agree that any dispute arising out of or related to these Terms or our Services is personal to you and Company and that any dispute will be resolved solely through individual action, and will not be brought as a class arbitration, class action or any other type of representative proceeding.

**Arbitration of Disputes.** Except for disputes in which you or Company seeks injunctive or other equitable relief for the alleged infringement, violation or misappropriation of intellectual property, **you and Company waive your rights to a jury trial and to have any dispute arising out of or related to these Terms or our Services**, including claims related to privacy and data security, (collectively, “Disputes”) resolved in court. Instead, for any Dispute that you have against Company you agree to first contact Company and attempt to resolve the claim informally by sending a written notice of your claim (“Notice”) to Company by email at [support@feathersnapcam.com](mailto:support@feathersnapcam.com) or by certified mail addressed to Bird Management OpCo, LLC, 1668 Jordan West Rd, Decorah, Iowa 52101. The Notice must (a) include your name, residence address, e-mail address, and telephone number; (b) describe the nature and basis of the Dispute; and (c) set forth the specific relief sought. Our notice to you will be similar in form to that described above. If you and Company cannot reach an agreement to resolve the Dispute within thirty (30) days after such Notice is received, then either party may submit the Dispute to binding arbitration administered by AAA or, under the limited circumstances set forth above, in court. All Disputes submitted to AAA will be resolved through confidential, binding arbitration before one arbitrator. Arbitration proceedings will be held in the State of Minnesota unless you are a consumer, in which case you may elect to hold the arbitration in your county of residence. For purposes of this Section 18, a “consumer” means a person using the Services for personal, family or household purposes. You and Company agree that Disputes will be held in accordance with the rules of the American Arbitration Association (“AAA Rules”). The most recent version of the AAA Rules are available on the [American Arbitration Association website](#) and are hereby incorporated by this reference. You either acknowledge and agree that you have read and understand the AAA Rules or waive your opportunity to read the AAA Rules and waive any claim that the AAA Rules are unfair or should not apply for any reason.

You and Company agree that these Terms affect interstate commerce and that the enforceability of this Section 18 will be substantively and procedurally governed by the Federal Arbitration Act, 9

U.S.C. § 1, *et seq.* (the “FAA”), to the maximum extent permitted by applicable law. As limited by the FAA, these Terms and the AAA Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any Dispute and to grant any remedy that would

otherwise be available in court, including the power to determine the question of arbitrability. The arbitrator may conduct only an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

The arbitration will allow for the discovery or exchange of non-privileged information relevant to the Dispute. The arbitrator, Company, and you will maintain the confidentiality of any arbitration proceedings, judgments and awards, including information gathered, prepared and presented for purposes of the arbitration or related to the Dispute(s) therein. The arbitrator will have the authority to make appropriate rulings to safeguard confidentiality, unless the law provides to the contrary. The duty of confidentiality does not apply to the extent that disclosure is necessary to prepare for or conduct the arbitration hearing on the merits, in connection with a court application for a preliminary remedy or in connection with a judicial challenge to an arbitration award or its enforcement, or to the extent that disclosure is otherwise required by law or judicial decision.

You and Company agree that for any arbitration you initiate, you will pay the filing fee (up to a maximum of \$250 if you are a consumer), and Company will pay the remaining AAA fees and costs. For any arbitration initiated by Company, Company will pay all AAA fees and costs. You and Company agree that the state or federal courts of Minnesota have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

**Any Dispute must be filed within one (1) year after the relevant claim arose; otherwise, the Dispute is permanently barred, which means that you and Company will not have the right to assert the claim.**

**You have the right to opt out of binding arbitration within thirty (30) days of the date you first accepted the terms of this Section 18 by sending an e-mail to [support@feathersnapcam.com](mailto:support@feathersnapcam.com).** In order to be effective, the opt-out notice must include your full name and address and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve Disputes in accordance with Section 18.

If any portion of this Section 18 is found to be unenforceable or unlawful for any reason, (a) the unenforceable or unlawful provision will be severed from these Terms; (b) severance of the unenforceable or unlawful provision will have no impact whatsoever on the remainder of this Section 18 or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to this Section 18; and (c) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims will be stayed pending the outcome of any individual claims in arbitration. Further, if any part of this Section 18 is found to prohibit an individual claim seeking public injunctive relief, that provision will have no effect to the extent such relief is allowed to be sought out of arbitration, and the remainder of this Section 18 will be enforceable.

### **Governing Law and Venue**

Any dispute arising from these Terms and your use of the Services will be governed by and construed and enforced in accordance with the laws of Minnesota, except to the extent preempted by U.S. federal law, without regard to conflict of law rules or principles (whether of Minnesota or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any dispute between the parties that is not subject to arbitration or cannot be heard in small claims

court will be resolved in the state or federal courts of Minnesota and the United States. You and Company waive any objection to venue in any such courts. If your local law requires that consumer contracts be interpreted subject to local law and enforced in the courts of that jurisdiction, this Section 19 may not apply to you only to the extent that local law conflicts with this Section 19.

### **Modifying and Terminating our Services; Survival**

We reserve the right to modify our Services or to suspend or stop providing all or portions of our Services to you at any time. You also have the right to stop using our Services at any time. We are not responsible for any loss or harm related to your inability to access or use our Services. Notwithstanding anything to the contrary herein, Sections 4, 7(a) (solely with respect to your obligation to pay us any and all Paid Services Fees incurred prior to deactivation, termination, expiration or cancellation of your account, subscription, agreement, and/or relationship with us), 7(e), 7(f), 7(g), 8, 9, 10, 13, 14, 15, 16, 18, 19, 21 and 22 will survive deactivation, termination, expiration and cancellation of your account, subscription, agreement and/or relationship with us.

### **Severability**

Each provision contained in these Terms constitutes a separate and distinct provision severable from all other provisions. If any provision (or any part thereof) is unenforceable under or prohibited by any present or future law, then such provision (or part thereof) will be amended, and is hereby amended, so as to be in compliance with such law, while preserving to the maximum extent possible the intent of the original provision. Any provision (or part thereof) that cannot be so amended will be severed from this Terms; and, all the remaining provisions of this Terms will remain unimpaired.

### **Miscellaneous**

The failure of Company to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. These Terms reflect the entire agreement between the parties relating to the subject matter hereof and supersede all prior agreements, representations, statements and understandings of the parties. The section titles in these Terms are for convenience only and have no legal or contractual effect. Use of the word “including” will be interpreted to mean “including without limitation.” Except as otherwise provided herein, these Terms are intended solely for the benefit of the parties and are not intended to confer third-party beneficiary rights upon any other person or entity. You agree that communications and transactions between us may be conducted electronically.