

**Effective on:** January 1, 2023

**Last Revised/Reviewed on:** January 1, 2023

These Terms of Use (“Terms”) are a binding, contractual agreement between you (“you”) and BirdShack, LLC and its subsidiaries and affiliates (“BirdShack”, “Company”, “us”, “our”, or “we”) under which you may use our website and associated online services (“Online Services”) including, but not limited to, computer applications, scripts, browser plugins, applets, and websites. These Terms apply solely to your use of our Online Services, including all enhancements, versions, and modifications of the Online Services.

***THESE TERMS CONTAIN A MANDATORY ARBITRATION CLAUSE THAT LIMITS YOUR RELIEF. READ THE MANDATORY ARBITRATION SECTION CAREFULLY.***

## **CONDITIONS OF USE**

You must have reached the age of majority in your jurisdiction of residence or older to use the Online Services or must have the agreement of your parent/legal guardian to be bound to these terms on your behalf. By downloading, accessing, or using the Online Services, you represent and warrant that (i) you are not located in a country that is subject to a United States or Canadian government embargo, or that has been designated by the United States or Canadian government as a “terrorist supporting” country; and (ii) you are not listed on any United States or Canadian government list of prohibited or restricted parties.

By downloading, accessing, or using the Online Services, including through using the services to make a purchase, you are indicating your: (i) acceptance of, and agreement to be legally bound by, all of the terms and conditions of these Terms; and (ii) consent to the installation of any software including, but not limited to, scripts and browser plugins as part of the Online Services on the computer or mobile device you are using to access the Online Services. If you do not accept and agree to these Terms, you must not install, access or use the Online Services.

## **MODIFICATION OF THESE TERMS**

Company reserves the right, in its sole and absolute discretion, to modify all or any portion of these Terms at any time without incurring any liability or obligation whatsoever to you or any other person or entity. If we modify these Terms, we will post the changes to the Terms and will indicate the date the Terms were last revised. Your continued use of the Online Services after any such changes constitutes your acceptance of, and agreement to be legally bound by, these Terms, as revised. It is your sole responsibility to regularly check these Terms to determine if there have been any changes to these Terms and to review such changes.

## **PROVIDER OF ONLINE SERVICES**

You acknowledge that some or all the services may be provided by one or more third parties. This agreement is between you and Company, not any third party.

To use the Online Services, you may also be required to agree to be bound by terms and conditions specified by the third party. You represent and warrant to Company that, as a condition of using the Online Services, you will abide by any required terms and conditions specified by the third party.

In addition to other disclaimers and exclusions contained in these Terms, Company expressly disclaims to the maximum extent permitted by law: (i) any and all liability related to the Online Services involving “content,” as defined in the **ONLINE SERVICES AND CONTENT** section herein, which belongs to any third party; (ii) any and all liability related to maintenance or support with respect to the Online Services provided by any third party; and (iii) any and all liability related to claims with respect to product liability, intellectual property rights, consumer protection, privacy, or failure to conform to any applicable legal or regulatory requirements involving any third party’s conduct or content.

## **ONLINE SERVICES AND CONTENT**

You acknowledge that content may be made available to you through the Online Services, including, but not limited to, information, comments, data, software (whether applications, scripts, plug-ins or applets), photographs, graphics, text, sound, images and other material (“Content”). All content is owned by Company or a third party. Content is protected by copyright laws, trademark laws, other intellectual property laws and treaties, both in Canada, the United States, and world-wide, and all rights therein are reserved by their respective owners. You may not modify, remove, delete, augment, add to, publish, transmit, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Content, in whole or in part, except as expressly allowed by these Terms or applicable law (including, without limitation, U.S. copyright, trademark and patent law). Subject to the terms and conditions described herein, we grant you a non-exclusive, non-transferable, limited right to access, use and display this website and the materials thereon.

Your use of the Online Services does not grant or transfer to you any ownership or other rights in the Online Services or the Content, and except as expressly provided, nothing herein or within the Online Services shall be construed as conferring on you or any other person any license under any of Company’s, or any third party’s intellectual property rights. Any rights not expressly granted to you in these Terms are expressly reserved by Company. For greater certainty, you agree that you will not take any action that is inconsistent with Company’s ownership of any portion or all of the Online Services and Content, or with any third party’s ownership of any portion or all of the Content. You are hereby expressly prohibited from removing any proprietary notice of Company or any third party, from any copy of the Online Services or Online Services Content.

## **ONLINE SERVICES DISCLAIMERS**

Company provides you with access to the Online Services on an “as is” and “as available” basis only, and, to the maximum extent permitted by law, excludes all representations, warranties, conditions, and other terms. Company does not warrant that the Online Services or any content will be uninterrupted or error-free, that defects will be corrected or that the Online Services or the servers hosting the Online Services will be free of viruses or other harmful components.

The Online Services may be used to facilitate other services such as the purchase and sale of food and beverage, food quality, nutrition and allergen information, food safety, payment or any other issues, none of which are covered by these Terms. These Terms apply only to the Online Services, other services such as those listed that may be facilitated by the Online Services are not subject to these Terms and Company makes no representations or warranties as to those services. In providing the Online Services pursuant to these Terms, Company makes no representations or warranties as to the lawfulness or merchantability of the underlying services, which may be subject to other agreements. In these Terms,

Company makes no representations or warranties as to food quality, nutrition and allergen information, food safety, ingredient listings or any other issue relating to the services facilitated by the Online Services.

## **YOUR ACCOUNT**

The Online Services, or certain features and/or portions of the Online Services may be password-protected and may require you to complete a registration process in order to obtain access. When registering to use any such features and/or portions of the Online Services, you agree: (i) that you will provide complete and accurate information about yourself; and (ii) to update such information if it changes. In the event that you do not provide or update such information, or if we have reasonable grounds to suspect that you have not provided or updated such information, we shall have the right, in our sole and absolute discretion, to disable your username and/or password and prevent you from using the Online Services, or any features or portions of the Online Services. You agree to be responsible for: (a) the accuracy of all information that you provide to us; (b) maintaining the confidentiality and security of any passwords or other account identifiers that you choose or that are otherwise assigned to you; and (c) all activities that occur under such password(s) or account(s). It is your responsibility to keep your username and any password that you register or that is provided to you confidential and secure. In the event that your username or password is used without your consent or that you discover any other breach of security, you agree to promptly notify the Company. We are not responsible for your failure to comply with this clause, or for any delay in shutting down your account after you have reported a breach of security to us. You are solely responsible for any and all activities which occur under your user account.

## **ORDERS AND PAYMENT**

Any orders made through the Online Services are subject to any terms and conditions outlined in the Online Services relating to the purchase in question in addition to these Terms.

Pricing and other terms and conditions relating to a purchase may be changed at any time without notice. Prices may differ from those for purchases made through other channels. We reserve the right to change the prices offered through the Online Services at any time. You have a legal obligation to pay for any orders that appear to be made by you or through your account.

By completing a purchase transaction (“Order”) through the Online Services, you are agreeing to pay, in full, the prices and all applicable taxes and specified fees in relation to your Order, either by credit card or other permitted payment method as we may make available through the Online Services. Payments are processed by third-party service providers. We reserve the right to change the permitted methods of payment, including without limitation, the credit cards accepted, at any time. If complete payment for your Order is not received and verified by us, your Order will not be processed. If you do not complete or improperly complete your Order, it may not be accepted or acknowledged. We reserve the right to verify the validity of all Orders and cancel any Order if we find any evidence of fraud, tampering and/or any other violation of this agreement.

## **RESTRICTIONS AND GEOGRAPHIC LIMITATIONS**

The Online Services are provided for access and use only by persons located in the United States and Canada. You acknowledge that you will not attempt to use the Online Services or access any services through the Online Services outside of the United States or Canada.

You agree as a condition of using the Online Services, that you will not yourself, or cause any others to do any of the following:

- a. use, copy, modify, download or transfer the Online Services or any component of the Online Services (including, without limitation, the Online Services Content), in whole or in part, except as expressly provided in these Terms;
- b. (i) reverse engineer, disassemble, decompile, or translate the Online Services; (ii) attempt to derive the source code of the Online Services; (iii) create any derivative work from the Online Services; and/or (iv) authorize or assist any third party to do any of the foregoing.
- c. use the for any commercial purpose of your own or to benefit another, including rent, lease, loan, resell for profit, or distribute the Online Services, or any part thereof;
- d. remove or alter any proprietary notice or legend regarding Company's, or any third party's, proprietary rights in the Online Services;
- e. use the Online Services except in accordance with applicable laws and regulations; and/or
- f. use the Online Services: (i) to defraud any third party; (ii) to distribute obscene or other unlawful materials or information; and/or (iii) to disseminate or encourage conduct that could constitute a criminal offence or give rise to civil liability.

#### **LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ONLINE SERVICES AND ONLINE SERVICES CONTENT (INCLUDING, WITHOUT LIMITATION, ANY INFORMATION) IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES WHATSOEVER. THE ENTIRE RISK ASSOCIATED WITH THE USE OF THE ONLINE SERVICES AND ONLINE SERVICES CONTENT RESIDES WITH YOU. COMPANY EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT, SYSTEM INTEGRATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND DATA ACCURACY.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY MAKES NO REPRESENTATION OR WARRANTY THAT: (I) THE ONLINE SERVICES WILL BE COMPATIBLE WITH YOUR DEVICE AND SOFTWARE; (II) THE ONLINE SERVICES WILL BE AVAILABLE OR WILL FUNCTION WITHOUT INTERRUPTION OR ERROR; (III) THE USE OF THE ONLINE SERVICES, INCLUDING, WITHOUT LIMITATION, THE BROWSING AND DOWNLOADING OF ANY INFORMATION, WILL BE FREE OF ANY VIRUSES, TROJAN HORSES, WORMS OR OTHER DESTRUCTIVE, INTRUSIVE OR DISRUPTIVE COMPONENTS; (IV) THE TRANSMISSION OF INFORMATION TO AND FROM THE ONLINE SERVICES WILL BE SECURE; (V) THE USE OF THE ONLINE SERVICES WILL NOT INFRINGE THE RIGHTS (INCLUDING, WITHOUT LIMITATION, INTELLECTUAL PROPERTY RIGHTS) OF ANY PERSON; OR (VI) THE USE OF THE ONLINE SERVICES WILL NOT CAUSE ANY DAMAGE TO YOUR DEVICE, SOFTWARE OR ELECTRONIC FILES.

ANY AND ALL INFORMATION CONTAINED ON OR WITHIN THE ONLINE SERVICES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO PROVIDE SPECIFIC ADVICE AND SHOULD NOT BE RELIED UPON IN THAT OR ANY OTHER REGARD.

THE ONLINE SERVICES ARE OFFERED IN JURISDICTIONS WHERE THEY MAY BE LEGALLY OFFERED. THE ONLINE SERVICES AND THE INFORMATION OFFERED THROUGH IT IS NOT OFFERED TO ANYONE IN ANY

JURISDICTION IN WHICH SUCH AN OFFER CANNOT LEGALLY BE MADE, OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER.

COMPANY WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES WHATSOEVER ARISING FROM, CONNECTED WITH, OR RELATING TO THE ONLINE SERVICES OR ONLINE SERVICES CONTENT. YOU EXPRESSLY ACKNOWLEDGE THAT COMPANY HAS ENTERED INTO THESE TERMS WITH YOU AND MAKES THE ONLINE SERVICES AVAILABLE TO YOU, IN RELIANCE UPON THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND THE DISCLAIMERS SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND COMPANY. YOU EXPRESSLY AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND THE DISCLAIMERS SET FORTH HEREIN WILL SURVIVE AND CONTINUE TO APPLY IN THE CASE OF THE FAILURE OF ESSENTIAL PURPOSE OF CONTRACT, THE FAILURE OF ANY EXCLUSIVE REMEDY, OR TERMINATION OF THESE TERMS.

## **INDEMNIFICATION**

At our request, you agree to defend, indemnify, and hold harmless Company, its parent and other affiliated companies, and their employees, contractors, officers, and directors from any and all claims, suits, damages, costs, lawsuits, fines, penalties, liabilities, expenses (including legal fees and attorneys' fees) that arise from your use or misuse of the Online Services, violation of these Terms, or violation of any rights of a third party. Company reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate in asserting any available defenses.

## **PRIVACY**

Please read the Company Privacy Policy ("Privacy Policy") provided at <https://www.birdshackchicken.com/privacy> carefully to understand how Company collects, uses and discloses information, including personally identifiable information. We may revise and update the Privacy Policy from time to time in our sole discretion. All changes are effective immediately when we post them and apply to our collection, use and disclosure of information thereafter. You acknowledge and agree that it is your responsibility to review the Privacy Policy when accessing or using the Online Services so that you are aware of any changes.

## **GOVERNING LAW**

These Terms are governed by and construed in accordance with the internal laws of the State Alabama without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to these Terms or the Online Services shall be instituted exclusively in the federal courts of the United States or the courts of the State of Alabama in each case located in the City of Birmingham and Jefferson County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

## **MANDATORY ARBITRATION**

THESE TERMS CONTAIN A MANDATORY ARBITRATION OF DISPUTES PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS. THIS PROVISION REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM THE COMPANY. Any controversy, dispute, or claim arising

out of or relating to these Terms shall be settled by binding arbitration by the American Arbitration Association (“AAA”) in accordance with the AAA’s Commercial Arbitration Rules. Arbitration shall be conducted in Birmingham, Alabama before an arbitrator who is an attorney licensed in Alabama. If the parties cannot agree upon an arbitrator, the AAA shall appoint the arbitrator according to AAA’s selection procedures. Judgment upon any award of the arbitrator may be entered in any court having jurisdiction thereof (such judgment to include an award of reasonable attorneys’ fees and expenses, including the expense of arbitration, to the prevailing party). Notwithstanding the foregoing, any party to these Terms may seek any appropriate equitable relief, including injunction, to which it may be entitled.

## **TERMINATION**

If you breach any provision of these Terms you may no longer use the Online Services. We may, in our sole discretion, change, suspend or terminate, temporarily or permanently, the Online Services or any part thereof or any of its features at any time, for any reason, without any notice or liability to you or any other entity. If these Terms or your permission to use the Online Services is terminated by us for any reason, the agreement formed by your acceptance of these Terms will nevertheless continue to apply and be binding upon you in respect of your prior use of the Online Services and anything relating to or arising from such use. If you are dissatisfied with the Online Services, then your sole and exclusive remedy is to discontinue using the Online Services.

## **EXPORT CONTROLS**

You acknowledge that the Online Services, Online Services Content, information, and the underlying technology may be subject to applicable export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Online Services, Online Services Content, information, and the underlying technology, as well as end-user, end use, and destination restrictions issued by Canada, the United States, and other governments. By downloading or using the Online Services, you agree to the foregoing and you represent, warrant and covenant that you are not located in, under the control of, or a national or a resident of any country identified in any applicable legislation, regulation, deny order or prohibition list issued by any governmental or regulatory body, and that you will otherwise comply with all applicable export control laws.

## **SEVERABILITY AND ENTIRE AGREEMENT**

If any provision of these Terms is deemed by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

These Terms constitute the whole agreement between us and you specifically regarding your use of our website and associated online services and shall supersede all previous discussions, correspondence, negotiations, previous arrangements regarding your use of our website and associated online services. If you are a licensee, a vendor, or another third-party business with which we do business, these Terms do not affect or supersede any of our previous or future agreements.