

## Terms of Use Agreement

**IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE USING THE WEBSITE AND THE BIRD.I SERVICE. BY CLICKING ACCEPT OR CONTINUING TO USE THE BIRD.I SERVICE YOU ARE AGREEING TO BE BOUND BY THE TERMS CONTAINED HEREIN:**

Welcome to hibirdi.com, the website and online service of Birdi Ltd (company number 09194409) whose registered office is at 30 Upper High Street, Thame, Oxfordshire, OX9 3EZ ("Company, "Bird.i," "we," "Us" or "Our"). This page explains the terms by which you may use our online facilities, tools, services or information that Bird.i makes available through the Website or Service either now or in the future. You agree to comply with on an ongoing basis and be bound by this Terms of Use Agreement (the "Agreement") and Our use of your information as set forth in the Company Privacy Policy [www.hibirdi.com/#PrivacyAndCookiePolicy](http://www.hibirdi.com/#PrivacyAndCookiePolicy) . If you do not agree to be bound by these Terms of Use, you should stop using the Website and/or Service immediately. The Company reserves the right to make unilateral modifications to these terms. This Agreement applies to all visitors, users, any third party that accesses the Website and others who access the Service ("Users").

### 1. Age Restrictions

The Website or Service is usable by persons of all ages, however, subscriptions may only be completed by persons over the age of eighteen.

### 2. Intellectual Property

2.1 Subject to the exceptions in Clause 5 of these Terms of Use, all Content included on the Website or via the Service, including, but not limited to, text, graphics, logos, icons, images, sound clips, video clips, data compilations, page layout, underlying code and software is the property of Bird.i, or Our affiliates or other relevant third parties. By continuing to use the Website or the Service you acknowledge that such material is protected by applicable United Kingdom and international intellectual property and other laws.

2.2 Subject to Clause 3 and 4 you may not reproduce, copy, distribute, store or in any other fashion re-use Material from the Website or Service unless otherwise indicated on the Website or Service or unless given Our express written permission to do so.

### 3. Use of Free Content

Subject to the provisions of this Clause 3, you may use the Service for viewing purposes only and the User is prohibited from printing, reproducing, copying, distributing, storing or in any other fashion re-using Free Content. The service will be made available for a period of up to 10 days, commencing from the creation of an Account on the Website (the "Trial Period"). Subject as below, a User during the Trial period will have the same rights and limitations as those with a Subscription as detailed in Clause 4, and is granted a Licence on the same terms. You specifically agree that you will not systematically copy Free Content from the Website or Service with a view to creating or compiling any form of comprehensive collection, compilation, directory or database for commercial use after the Trial Period. The User is permitted to use the Service for technical internal evaluation of the Free Content only during the Trial Period, and is prohibited from sharing or posting any results or feedback in relation to the Service on any platform, including social media.

The Trial Period is limited to a maximum of 10 days per User. Users and any organisation or company they represent, or are employed by or are a member of, are not entitled to further trials of the Service. For the avoidance of doubt, only one trial is available to one individual in an organisation or company, any additional individuals, employees or members of an organisation or company in which a User has undertaken a trial are expressly prohibited from creating an Account for the purposes of accessing Free Content during a Trial Period.

### 4. Use of Paid Content and Licence Terms

Upon payment of a Subscription Fee Bird.i grants you a Licence to use all Paid Content via the Service for the duration of your subscription. You may use such Content in the following ways:

- 4.1.1 to develop, operate and sell online services;
- 4.1.2 to develop and operate online web and mobile applications or desktop solutions; and
- 4.1.3 make the Paid Content available to end users in connection with the User's business, as permitted by the features of the Subscription Plan for integration and utilisation in the User's web, mobile or desktop applications.

4.2 Under such a Licence, you agree that:

- 4.2.1 you will not systematically copy Paid Content from the Website or Service with a view of reselling it or to creating or compiling any form of comprehensive collection, compilation,

directory or database for the purposes of reselling such content to other businesses, either during or after the subscription period, unless given Our express written permission to do so;

- 4.2.2 you may use the Services for internal and external purposes, more specifically for commercial web, mobile and desktop applications which are publicly accessible, with or without charge;
- 4.2.3 Bird.i reserves the right, at its sole discretion, to modify, add, or delete portions of or otherwise change the Terms or Use at any time without notice. The continued use of the Services after the posting of changes constitutes your binding acceptance of such changes;
- 4.2.4 you may, as a student of a recognised Learning Establishment, use the Paid Content of the Website or the Service for educational purposes provided an appropriate reference is given for all Content so applied using a suitable referencing system of your choice or as stipulated by your Learning Establishment; and
- 4.2.5 employees of Learning Establishments may use the Paid Content of the Website or Service for teaching purposes;
- 4.3 Under such a Licence you agree and will ensure that:
  - 4.3.1 your End Users accept the Terms of Use of this agreement and do not use the Material in any way that would violate the terms of this agreement;
  - 4.3.2 you will take reasonable steps to prevent unauthorised use of the Material by End Users;
  - 4.3.3 the End User is aware that all Intellectual Property Rights in the Material belong to Bird.i, or Our affiliates or other relevant third parties and that rights in the Material are licensed (not sold) to the User or subsequently to the End User
  - 4.3.4 the End User is aware that you have no rights in, or to, the Material other than the right to use the Material, in accordance with the terms of this Agreement; and
  - 4.3.5 you will promptly notify Bird.i in writing if you become aware of any misappropriation or unauthorised use of the Material by any End User.
- 5. Third Party Intellectual Property and Material
  - 5.1 Material on this Website and via the Service is always accompanied by the details of its respective author, creator and/or owner. The Material is the property of the author, creator and/or owner detailed. Such ownership extends to any free previews of Material that may be available on this Website or via the Service.
  - 5.2 Subject to Clause 4, the Material is to be used only in accordance with these Terms of Use.
  - 5.3 Free Content may only be used for internal technical evaluation purposes. Under no circumstances is Free Content, or any work containing them, to be commercially exploited during or after the Trial Period.

## 6. Links to Other Websites

This Website may contain links to other sites. Unless expressly stated, these sites are not under the control of Bird.i or that of Our affiliates. We assume no responsibility for the content of such websites and disclaim liability for any and all forms of loss or damage arising out of the use of them. The inclusion of a link to another site on this Website does not imply Our endorsement of the sites themselves or of those in control of them.

## 7. Links to this Website

Those wishing to place a link to this Website on other sites may do so only to the home page of the site [www.hibirdi.com](http://www.hibirdi.com). Deep linking (i.e. links to specific pages within the site) requires Our express written permission. To find out more please contact Us by email at [info@hibirdi.com](mailto:info@hibirdi.com).

## 8. Use of Service and Communications Facilities

- 8.1 When using the Service or any System on the Website you should do so in accordance with the following rules and warrant that you will not:
  - 8.1.1 use the Services for any purpose that is unlawful or prohibited by these terms, conditions, or notices;
  - 8.1.2 use the Services in any manner which could damage, disable, overburden, or impair the Services or interfere with any other party's use and enjoyment of the Services;
  - 8.1.3 violate local laws and regulations regarding online conduct and acceptable content;
  - 8.1.4 use obscene or vulgar language;

- 8.1.5 submit Content that is unlawful or otherwise objectionable. This includes, but is not limited to, Content that is abusive, threatening, harassing, defamatory, ageist, sexist or racist;
  - 8.1.6 disseminate, store, or transmit files, graphics, software, or other material that actually or potentially infringes the copyright, trademark, patent, trade secret, or other intellectual property right of any person;
  - 8.1.7 create a false identity or to otherwise attempt to mislead any person as to the identity or origin of any communication;
  - 8.1.8 export, re-export, or permit downloading of any content in violation of any export or import law, regulation, or without all required approvals, licenses, or exemptions;
  - 8.1.9 interfere, disrupt, or attempt to gain unauthorised access to other accounts or any other computer network;
  - 8.1.10 disseminate, store, or transmit viruses, trojan horses, or any other malicious code or program
  - 8.1.11 use Content that is intended to promote or incite violence;
  - 8.1.12 not violate these Terms of Use or any applicable laws by the means in which you identify yourself;
  - 8.1.13 engage in any form of commercial advertising without obtaining Bird.i's written consent;
  - 8.1.14 impersonate other people, particularly employees and representatives of Bird.i or Our affiliates; and
  - 8.1.15 use Our System for unauthorised mass-communication such as "spam" or "junk mail"
  - 8.1.16 transfer use of the Services and Material to anyone without prior written consent of Bird.i; and
  - 8.1.17 copy, loan, rent, time-share, sublicense, assign, transfer, lease, sell or otherwise dispose of the Service or Material, data, or other content on a temporary or permanent basis except as expressly provided herein.
- 8.2 You acknowledge that Bird.i reserves the right to monitor your use of the Service and any and all communications made to Us or using Our System.
- 8.3 You acknowledge that Bird.i may retain copies of documents pertaining to your use of the Service and any and all communications made to Us or using Our System.
- 8.4 You acknowledge that any information you send to Us through your use of the Service or use of Our System may be modified by Us in any way and you hereby waive your moral right to be identified as the author of such information. Any restrictions you may wish to place upon Our use of such information must be communicated to Us in advance and We reserve the right to reject such terms and associated information.

## 9. Accounts

- 9.1 In order to access Material on this Website or via the Service and to use certain other parts of the Website and the Service you are required to create an Account which will contain certain personal details (including Payment Information) which may vary based upon the type of Account that you choose. You will be required to set up a user name and password. By continuing to use this Website you represent and warrant that:
- 9.1.1 all information you submit is accurate and truthful;
  - 9.1.2 you have permission to submit Payment Information where permission may be required; and
  - 9.1.3 you will keep this information accurate and up-to-date.
- Your creation of an Account is further affirmation of your representation and warranty.
- 9.2 Sharing of accounts is not permitted unless We expressly authorise it in writing. You are required to keep your Account details confidential and must not reveal your username and password to anyone. If you use a shared computer, it is recommended that you do not save your Account details in your internet browser.
- 9.3 If you have reason to believe that your Account details have been obtained by another without consent, you should contact Us immediately to suspend your Account. Please be aware that due to the instantaneous nature of Material delivery, completed Image Views cannot be cancelled and will therefore such view will be deducted from your allowance, as per your Subscription plan (see Clause 11).
- 9.4 When choosing your username you are required to adhere to the terms set out above in Clause 8.

Any failure to do so could result in the suspension and/or deletion of your Account.

## 10. Subscriptions and Cancellation

- 10.1 Subscription charges commence on the date that you activate your subscription. Your credit / debit card / bank account will be billed on the day of activation and a monthly recurring payment will be taken on or around the date in the month that your initial/ first subscription was activated until you cancel your recurring subscription under sub-Clause 10.7.
- 10.2 Your first payment will be at the price advertised on the Website. Bird.i reserves the right to change Subscription Fees from time to time and any such changes may affect your subscription rate.
  - 10.2.1 increases in price will be reflected in your subscription on the date of the immediately subsequent renewal; and
  - 10.2.2 decreases in price will be reflected in your subscription on the date of the immediately subsequent renewal.

For further information on subscriptions and pricing, please visit Our Subscriptions page [www.hibirdi.com](http://www.hibirdi.com).

The number of Image Views referred to in the Subscription Plan (see Clause 11 and on the Website) refers to the number Image Views per calendar month as part of that Subscription Plan. If, in any monthly subscription period, the number of Image Views accessed exceeds 90% of the maximum number of Images Views offered within your current subscription package, you will receive an email alert notifying you of this. Such email may also include details of our next tier of subscription package and recommend that you upgrade your current subscription package. If you reach the maximum number of Image Views in a calendar month, your access to the Service will be restricted until you upgrade your subscription or until the commencement of a new subscription month.

- 10.3 No part of this Website constitutes a contractual offer capable of acceptance. Your order for a subscription constitutes a contractual offer that We may, at Our sole discretion, accept. Our acceptance is indicated by Us sending to you a subscription confirmation email. Only once We have sent you a subscription confirmation email will there be a binding contract between Bird.i and you.
- 10.4 Subscription confirmations under sub-Clause 10.3 will be sent to you immediately upon your activation of a subscription and shall contain the following information:
  - 10.4.1 Confirmation of the subscription including full details of the plan type (Evaluation, Basic, Advanced or Premium) and the main characteristics of the Free Content (if applicable) or Paid Content available through your subscription;
  - 10.4.2 Fully itemised pricing for your subscription including, where appropriate, taxes and any other additional charges;
  - 10.4.3 The applicable times and dates for your subscription (including the commencement date
  - 10.4.4 A confirmation of your express request that the Paid Content is made available to you immediately and that this will constitute a waiver of your statutory right to cancel as detailed below in sub-Clause 10.5; and
  - 10.4.5 A unique token to access the API.
- 10.5 Provision of Paid Content shall commence immediately upon Our confirmation of your subscription. When completing the subscription process, you expressly acknowledge that you wish the Paid Content to be available immediately. You will also be required to expressly acknowledge that by doing so, you will lose your statutory right to cancel your contract with Bird.i as detailed below in sub-Clause 10.6.
- 10.6 If you are a consumer based within the European Union, you have a statutory right to a “cooling-off” period with respect to the purchase of certain goods and services. This period, if applicable, begins once the contract between Bird.i and you is formed (as explained under sub-Clause 10.3) and ends at the end of 14 calendar days after that date. Under normal circumstances, the provision of Paid Content begins immediately upon Our confirmation of your subscription. As set out in sub-Clause 10.5, by expressly requesting this, you waive your right to the cooling-off period and may not cancel the contract merely because you have changed your mind.
- 10.7 You may cancel at any time after subscribing, however subject to sub-Clause 10.8, no refunds can be provided and you will continue to have access to the Paid Content for the remainder of the monthly Subscription Period you are currently in up until the monthly recurring renewal date whereupon access will cease unless you chose to pay the Subscription Fee and reactivate your subscription.
- 10.8 If you subscribe in error you must inform Us within 24 hrs of subscribing and must not use the Paid Content during that time. This provision also applies to automatic renewals of subscriptions which you

may have forgotten to cancel. If any use of Paid Content during this time period can be traced to your Account, no refund can be provided and you will continue to have access to the Paid Content for the duration of the relevant Subscription Period.

**11. Subscription Plans and Restrictions for Internal and External Users**

11.1 You (which may be an individual, an organisation or a company) are entitled to subscribe for multiple Internal User Subscription Plans for the same or different applications and/or platforms your internal users might be developing and/or operating and/or you are entitled to subscribe to only one External User Subscription Plan. You are prohibited from having multiple External User subscriptions e.g. subscribing for two Basic packages in place of the Advanced package. Bird.i reserves the right to audit any User to ensure compliance with this Clause 11.1.

11.2 Internal User Subscriptions Plans

| Subscription Plan | Maximum Number of Image Views per Internal User Per Calendar Month | Number of Internal Users per Subscription Package | Subscription price   |
|-------------------|--|---|--|
| Evaluation        | 1,000  | 1   | One-off 10 day free trial of the Service                               |
| Basic             | 10,000   | 1 - 5   | See <a href="http://www.hibirdi.com/#price">www.hibirdi.com/#price</a> |
| Advanced          | 10,000   | 6 - 15  |  |
| Premium           | 10,000   | 16 – 25   |  |
| Bespoke           | Number of Image Views per User on Enquiry                          | 25+   | Price on Enquiry   |

11.4 External User Subscription Plans

| Subscription Package | Maximum Number of Image Views per Calendar Month | Subscription Price   |
|----------------------|--|--|
| Evaluation           | 10,000   | One-off 10 day free trial of the Service                               |
| Basic                | 100,000  | See <a href="http://www.hibirdi.com/#price">www.hibirdi.com/#price</a> |
| Advanced             | 300,000  |  |
| Premium              | 1,000,000  |  |
| Bespoke              | In excess of 1,000,000                           | Price on Enquiry   |

**12. Image Views**

12.1 Where a single User views a single image over a single location at a time, it will constitute a single Image View. For the avoidance of doubt, if the same image is viewed multiple times by a User, it will be recorded as multiple Image Views and not a single Image View.

12.2 Where a User views multiple images over a single location, the Image Views will be recorded as multiple Image Views and not a single Image View.

12.3 Where a single User views an image over multiple locations, it will be recorded as multiple Image Views.

12.4 Where multiple Users view the same image over a single location simultaneously, it will be recorded as multiple Image Views and not a single Image View.

12.5 The above is not an exhaustive list. For the avoidance of doubt, an Image view is an API call and each time an API call is made an Image View will be logged, irrespective of whether such Image View relates to the same location, zoom level, user and image source as a previous Image View.

**13. Material, Pricing and Availability**

- 13.1 Whilst every effort has been made to ensure that all representations of Material available from the Website or Service correspond to the actual Material, We are not responsible for any variations from these descriptions.
- 13.2 Where appropriate, you may be required to select the required size, quality, resolution or format of the Material that you are ordering via your Subscription.
- 13.3 We neither represent nor warrant that such Material will be available. Material may be temporarily unavailable due to problems with the Service, maintenance or similar. Alternatively, Material that is no longer available (after, for example, being removed by its author, creator and/or owner) may remain referenced on the Website of the Service for a short time before removal.
- 13.4 All pricing information on the Website is correct at the time of going online. We reserve the right to change prices and alter or remove any special offers from time to time and as necessary.
- 13.5 All prices on the Website exclude VAT, VAT will be charged at the time of the subscription. Bird.i's VAT number is 194 6951 58.

**14. Termination**

- 14.1 Either Bird.i or you may terminate your Account and (where relevant) your subscription at any time. If We terminate your Account or subscription, you will be notified by email and an explanation for the termination will be provided. Notwithstanding the foregoing, We reserve the right to terminate without giving any reasons.
- 14.2 If We terminate your Account as a result of your breach of these Terms of Use, you will not be entitled to any refund. Such terminations can be appealed by email at [info@hibirdi.com](mailto:info@hibirdi.com).
- 14.3 If We terminate your account or subscription for any other reason, you will be refunded any remaining balance of your Subscription Fee. Such a refund will be calculated based upon the Subscription Fee being divided by the number of days in the applicable Subscription Period and multiplied by the number of days remaining until the end of the Subscription Period.
- 14.4 If We terminate your Account or subscription, you will cease to have access to Paid Content from the date of termination.
- 14.5 If you terminate your Account or subscription, you will continue to have access to Paid Content for the remainder of your Subscription Period as per sub-Clause 10.7.
- 14.6 If you terminate your account or subscription, no refunds can be provided and you will continue to have access to the Paid Content for the remainder of the monthly Subscription Period you are currently in up until the monthly recurring renewal date whereupon access will cease unless you chose to pay the Subscription Fee and reactivate your subscription.

**15. Indemnity**

- 15.1 You and the User agrees to indemnify, on a joint and severable basis, and hold harmless Bird.i and its subsidiaries, affiliates, officers, agents, partners, and employees from any claim or demand, including reasonable legal costs, made by any third party due to or arising out of content they submit, post to, or transmit through the Services, their use of the Services, their violation of these Terms, any third party terms or conditions described herein, or their violation of any rights of another, including without limitation that the Material violates or infringes upon any copyright, trademark, patent or other proprietary right.

**16. Privacy**

- 16.1 Use of the Website and Service is also governed by Our Privacy and Cookie Policy [www.hibirdi.com/#PrivacyAndCookiePolicy](http://www.hibirdi.com/#PrivacyAndCookiePolicy) which is incorporated into these Terms of Use by this reference. To view the Privacy and Cookie Policy, please click on the link above.

**17. How We Use Your Personal Information (Data Protection)**

- 17.1 All personal information that We may collect (including, but not limited to, your name and address) will be collected, used and held in accordance with the provisions of the Data Protection Act 1998 and your rights under that Act.
- 17.2 We may use your personal information to:
  - 17.2.1 Provide Our Service to you;
  - 17.2.2 Process your payments to Us; and

17.2.3 Inform you of new products and services available from Us. You may request that We stop sending you this information at any time.

17.3 In certain circumstances (if, for example, you wish to make a purchase on credit), and with your consent, We may pass your personal information on to credit reference agencies. These agencies are also bound by the Data Protection Act 1998 and should use and hold your personal information accordingly.

17.4 We will not pass on your personal information to any other third parties without first obtaining your express permission.

17.5 We may retain and store your browsing data which will only be used to improve Our Service and Website.

## 18. **Legal Rights and Disclaimers**

18.1 Subject to the Terms of Use above, We make no warranty or representation that the Website or Service will be compatible with all systems, or that it will be secure.

18.2 Whilst every reasonable endeavour has been made to ensure that all information provided on this Website and via our Service will be accurate and up to date, We make no warranty or representation that this is the case. We make no guarantee of any specific results from the use of Our service.

18.3 No part of this Website is intended to constitute advice and the Content of this Website should not be relied upon when making any decisions or taking any action of any kind.

18.4 We do not warrant the accuracy of any information provided on the Website or any other information provided pursuant to the Service and accept no liability in respect of (i) any inaccuracy of information provided on the Website or any other information provided pursuant to the Service or (ii) the User's misinterpretation of any information or Material provided pursuant to the Service.

18.5 Commercial use of Paid Content via the Service is permitted, however, We make no representation or warranty that this Content is suitable for use in commercial situations, or the particular use that a User is making of the such Content, or that it constitutes accurate data and / or advice on which business decisions can be based.

18.6 When providing digital content to consumers (in this instance, the Material), We are required to provide digital content that is of satisfactory quality and in accordance with any descriptions given by Us. This includes any digital content we may subsequently modify. If We fail to comply with Our legal obligations, consumers may be entitled to certain legal remedies. For full details of consumers' legal rights, including those relating to digital content, please contact your local Citizens Advice Bureau or Trading Standards Office.

18.7 Whilst We exercise all reasonable skill and care to ensure that the Website and Our Service is secure and free of errors, viruses and other malware, you are strongly advised to take responsibility for your own internet security, that of your personal details and your computers.

18.8 If, as a result of Our failure to exercise reasonable care and skill, any digital content from the Website or Service damages your device or other digital content belonging to you, you may be entitled to certain legal remedies. For more details concerning your rights and remedies as a consumer, please contact your local Citizens Advice Bureau or Trading Standards Office.

## 19. **Availability of the Website, Service and Modifications**

19.1 We accept no liability for any disruption or non-availability of the Website or Service resulting from external causes including, but not limited to, ISP equipment failure, host equipment failure, communications network failure, power failure, natural events, acts of war or legal restrictions and state-mandated censorship.

19.2 We reserve the right to alter, suspend or discontinue any part (or the whole of) the Website or Service including, but not limited to, the Content available. These Terms of Use shall continue to apply to any modified version of the Website or Service unless it is expressly stated otherwise.

## 20. **Limitation of Liability**

20.1 To the fullest extent permissible by law, We accept no liability to any user for any loss or damage, whether foreseeable or otherwise, in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising out of or in connection with the use of (or inability to use) the Website or Our Service or the use of or reliance upon any content included on the Website or the Service.

20.2 To the fullest extent permissible by law, We exclude all representations, warranties, and guarantees (whether express or implied) that may apply to the Website or the Service or any content included on the Website or provided via the Service.

- 20.3 If you are a commercial user, We accept no liability for loss of profits, sales, business or revenue; loss of business opportunity, goodwill or reputation; loss of anticipated savings; business interruption; or for any indirect or consequential loss or damage.
- 20.4 We exercise all reasonable skill and care to ensure that the Website and Service is free from viruses and other malware. Subject to sub-Clause 20.7 We accept no liability for any loss or damage resulting from a virus or other malware, a distributed denial of service attack, or other harmful material or event that may adversely affect your hardware, software, data or other material that occurs as a result of your use of the Website or the Service (including the downloading of any content from it) or any other site referred to on the Website.
- 20.5 We neither assume nor accept responsibility or liability arising out of any disruption or non-availability of the Website or the Service resulting from external causes including, but not limited to, ISP equipment failure, host equipment failure, communications network failure, natural events, acts of war, or legal restrictions and censorship.
- 20.6 Nothing in these Terms of Use excludes or restricts Our liability for fraud or fraudulent misrepresentation, for death or personal injury resulting from negligence, or for any other forms of liability which cannot be excluded or restricted by law. For full details of consumers' legal rights, including those relating to digital content, please contact your local Citizens' Advice Bureau or Trading Standards Office.
- 20.7 In the event that any of these terms are found to be unlawful, invalid or otherwise unenforceable, that term is to be deemed severed from these Terms of Use and shall not affect the validity and enforceability of the remaining Terms of Use. This term shall apply only within jurisdictions where a particular term is illegal.
21. **Compliance with the EULA**
- You the User shall comply at all times with the EULA, and You, the User, shall procure that at all times Internal Users and External Users comply with the EULA and shall remain in compliance with the EULA.
22. **No Waiver**
- In the event that any party to these Terms of Use fails to exercise any right or remedy contained herein, this shall not be construed as a waiver of that right or remedy.
23. **Third Party Rights**
- Nothing in these Terms of Use shall confer any rights upon any third party. The agreement created by these Terms of Use is between you and Bird.i.
24. **Communications**
- 24.1 All notices / communications shall be given to Us either by post to Our Premises (see address above) or by email to [info@hibirdi.com](mailto:info@hibirdi.com). Such notice will be deemed received 3 days after posting if sent by first class post, the day of sending if the email is received in full on a business day and on the next business day if the email is sent on a weekend or public holiday.
- 24.2 We may from time to time, if you opt to receive it, send you information about Our products and/or services. If you do not wish to receive such information, please tick the unsubscribe box during the registration process.
25. **Law and Jurisdiction**
- 25.1 These Terms of Use, and the relationship between you and Us (whether contractual or otherwise) shall be governed by, and construed in accordance with, the law of England and Wales.
- 25.2 If you are a consumer, any disputes concerning these Terms of Use, the relationship between you and Us, or any matters arising therefrom or associated therewith (whether contractual or otherwise) shall be subject to the jurisdiction of the courts of Scotland.

In this Agreement the following terms have the following meanings:

- “Account”** means collectively the personal information, Payment Information and credentials used by Users to access the Service or Material and / or any communications System on the Website;
- “API”** means a set of functions and procedures that allow the creation of applications which access the features and data of the Licensor's online platform;



|                                       |  |
|---------------------------------------|--|
| <b>API Call</b>                       | means a User initiated call to the Company's application program interface (API), which triggers a set of routines, protocols and tools for providing the User with Material;  |
| <b>"Content"</b>                      | means any text, graphics, images, audio, video, software, data compilations and any other form of information capable of being stored in a computer that appears on or forms part of this Website or forms part of our Service;  |
| <b>"Derivative Works"</b>             | means any products, works or information derived from the Background Data;   |
| <b>"End User"</b>                     | means the end user of the User or other third parties that use the Material as result of the User's exploitation of the Material;  |
| <b>"External Users"</b>               | means users non-affiliated to the Licensee's organisation accessing the Bird.i Service via the internet without user's credentials;  |
| <b>"EULA"</b>                         | means the internal and external end user licence agreement in the appendix of this Agreement;  |
| <b>"Free Content"</b>                 | means any Content accessible only upon the creation of an Account during the Trial Period without the payment of a Subscription Fee;   |
| <b>"Image View"</b>                   | means an API call, which is the combination of a user, a location, a zoom level and an image source;   |
| <b>"Intellectual Property Rights"</b> | means all past, present, and future trade secret rights, patent rights, copyrights, moral rights, contract rights, trademark rights, service marks, and other proprietary rights in any jurisdiction, including those rights in inventions, software, domain names, know-how, technology, methods, processes, information, and technology.   |
| <b>"Internal Users"</b>               | means users affiliated to the Licensee's organisation accessing the Bird.i Service via the internet by means of a specific account, passwords, and API keys, provided by the Licensor;   |
| <b>"Licence"</b>                      | means a non-exclusive, limited, non-transferable, freely revocable license to use the Paid Content;  |
| <b>"Material"</b>                     | means Free Content and Paid Content that Bird.i makes available for Users subject to the terms of the Licence;   |
| <b>"Paid Content"</b>                 | means Content accessible only upon the creation of an Account and the payment of a Subscription Fee;   |
| <b>"Payment Information"</b>          | means any details required for the purchase of Material from this Website or via Our Service. This includes, but is not limited to, credit / debit card numbers, bank account numbers and sort codes;  |
| <b>"Service"</b>                      | means the dissemination of observation imagery, being remote sensing data acquired by satellite, airborne or unmanned aircraft systems, and Content derived from location based information which has been generated from the exploitation of Our affiliates or other relevant third parties data through an Application Programming Interface (API) to be integrated and utilised in the User's web, mobile or desktop applications or collectively any online facilities, tools, services or information that we makes available through the Website or Service either now or in the future; |
| <b>"Subscription Fee"</b>             | means the sum of money paid by Users at monthly intervals to keep their Account active and to enable them to access Paid Content;  |
| <b>"Subscription Period"</b>          | means the period for which a subscription has been purchased and may refer to monthly payments;  |
| <b>"Subscription Plan"</b>            | means either of the basic, advanced or premium subscription package (depending on what the User has opted to purchase);  |
| <b>"System"</b>                       | means any online communications infrastructure that Bird.i makes available through the Website either now or in the future. This includes, but is not limited to, web-based email, forums, live chat facilities and email links;   |
| <b>"Terms of Use"</b>                 | Means the terms of use you are currently reading;  |

|                         |   |
|-------------------------|---|
| <b>“User” / “Users”</b> | means all visitors, users, any third party that accesses the Website and others who access the Service;   |
| <b>“Website”</b>        | means the website that you are currently using ( <a href="http://www.hibirdi.com">www.hibirdi.com</a> ) and any sub-domains of this site unless expressly excluded by their own terms of Use; and |
| <b>“We/Us/Our”</b>      | means Birdi Ltd (company number 09194409) whose registered office is at 30 Upper High Street, Thame, Oxfordshire, OX9 3EZ   |

## Appendix

### Internal and External End User Licence Agreement

IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE USING THE WEBSITE AND THE BIRD.I SERVICE. BY CLICKING ACCEPT OR CONTINUING TO USE THE BIRD.I SERVICE YOU ARE AGREEING TO BE BOUND BY THE TERMS CONTAINED HEREIN:

#### 1 GENERAL

- 1.1 This end user licence agreement ("**EULA**") is a legal agreement between you ("**Licensee**" or "**you**") and **Birdi Ltd** a company registered in England and Wales under number 09194409 whose registered office is at 30 Upper High Street, Thame, Oxfordshire, OX9 3EZ (the "**Licensor**") for the product known as **Observation Imagery API** (the "**Bird.i Service**") which can be accessed through the website at [www.hibirdi.com](http://www.hibirdi.com) hosted by us ("**Website**") using a licence key which you have been provided with (the "**Licence Key**"). For the avoidance of doubt, the Licence Key is a token (or electronic file containing licensing information) provided to you to enable access to the Bird.i Service and certain parts the Website.
- 1.2 By entering details of your Licence Key and clicking on the "Accept" button below you agree to the terms of this EULA which you acknowledge are legally binding.
- 1.3 If you do not agree to the terms of this EULA, the Licensor is unwilling to make the Bird.i Service available to you and you must discontinue use of the Bird.i Service and cease accessing the Website now. In this case you must immediately delete or destroy any details of any Licence Key (as defined below) provided to you.
- 1.4 The Licensor may amend or update the terms of this EULA at any time upon giving the Licensee no less than Fourteen (14) days prior notice (provided that such notice may be posted on the Licensor's website or provided by any other medium determined by the Licensor acting reasonably and with regard to the nature of the changes being made). The Licensee acknowledges and agrees that the amended terms of the EULA shall be binding upon it with effect from the date specified in the notice advising of the changes ("**Change Date**") and that where the Licensee does not wish to be bound by the amended terms it shall notify the Licensor of the same and cease use of the Bird.i Service and accessing the Website from the Change Date.

#### 2 DEFINITIONS

In this EULA, unless the context otherwise requires, the following terms shall have the following meanings:

"**API**" means a set of functions and procedures that allow the creation of applications which access the features and data of the Licensor's online platform;

"**Background Data**" means observation images provided by the Background Data Owners to the Licensor for the purpose of producing Observation Imagery Content to include in the Bird.i Service;

"**Background Data Owners**" means: (1) Bluesky International Limited a company registered in England and Wales under number 04789469 whose registered office is at Unit 3 Coalville Business Park, Jackson Street, Coalville, Leicestershire, LE67 3NR; (2) DigitalGlobe, Inc. ("**DigitalGlobe**"), a Delaware corporation, located at 1300 W. 120<sup>th</sup> Avenue, Westminster, CO 80234; and (3) Airbus DS Geo SA, a corporation incorporated and existing under the laws of France, having its registered office at 5 rue des Satellites 31400 Toulouse ;

"**Disabling Device**" means any computer software, code or device, including any Virus, intended for or capable of (a) disrupting, disabling, harming or otherwise impeding in any matter the operation of, or providing unauthorised access to, the Background Data, Intellectual Property Rights or platforms owned or operated by the Background Data Owners, or (b) damaging or destroying the Licensor's or Backgrounds Data Owners' data platform or the Observation Imagery Content.

"**External Users**" means users non-affiliated to the Licensee's organisation accessing the Bird.i Service via the internet without user's credentials;

"**Government Furnished Content**" means data, information or other materials that have been released by a government or governmental agency into the public domain.

"**Internal Users**" means users affiliated to the Licensee's organisation accessing the Bird.i Service via the internet by means of a specific account, passwords, and API keys, provided by the Licensor;

“**Licence Key**” means unique series of numbers and letters generated for a user account and used for authentication and authorisation purpose;

“**Observation Imagery Content**” means satellite and aerial geometric and radiometric processed remote sensing data including but not limited to as derived from the Background Data; and

“**Virus**” means any computer instructions, devices or techniques that can or were designed to threaten, infect, assault, vandalise, defraud, disrupt, damage, disable, alter, inhibit or maliciously shut down software and/or a processing environment.

### 3 LICENCE AND RESTRICTIONS

- 3.1 The Licensor hereby grants to the Licensee a non-exclusive, non-transferable licence to use the Bird.i Service on the terms set out in this EULA.
- 3.2 The Licensee may use the Bird.i Service for commercial purposes to make Observation Imagery Content available to External and/or Internal Users, via its web, mobile or desktop applications for visualization purposes, with the credit set forth in Clause 5.3 conspicuously displayed;
- 3.3 The Licensee acknowledges that the Bird.i Service is made available by the Licensor and that the Observation Imagery Content is owned and hosted by the Licensor who owns all right, title and interest in the Bird.i Service and the Observation Imagery Content and any misuse of the Bird.i Service or Observation Imagery Content by the Licensee shall entitle the Licensor to terminate the Licensee’s access to the same.
- 3.4 The Licensee acknowledges that the Observation Imagery Content is made available by the Licensor having been derived from Background Data owned by the Background Data Owners and licensed to the Licensor. Each of the Background Data Owners owns all right, title and interest in the Background Data supplied by them respectively to the Licensor and any misuse of the Observation Imagery Content or the Background Data by the Licensee shall entitle the relevant Background Data Owner to require the Licensor to terminate the Licensee’s access to the same.
- 3.5 Government Furnished Content may be available via the Background Data. Government Furnished Content is not subject to the license terms set forth in this EULA. Government Furnished Content is provided “as is” and neither the Licensor nor the Background Data Owners make any representation or warranty with respect to Government Furnished Content and the Licensor and Background Data Owners are not liable for any costs, losses, damages or other amounts relating to any Government Furnished Content.
- 3.6 The Licensee will be prompted to create a user name and a password (“**Login Details**”) during the initial registration process on the Website. The Licensee is responsible for ensuring the security of the Login Details and shall not share these with anyone else. You will be prompted to input certain personal information and the Licensor (and any third party hosts) will store these securely and use these only for making the Bird.i Service or Website available to you, in each case in accordance with clause 6.
- 3.7 Except as expressly set out in this EULA or as otherwise permitted by applicable law, the Licensee undertakes:
- 3.7.1 not (and not seek) to copy the Bird.i Service or Observation Imagery Content nor sell, rent, lease, sub-licence, loan, translate, merge, adapt, vary or modify the Bird.i Service or Observation Imagery Content;
- 3.7.2 not to use an automatic system to perform speed and access tests in respect of the Bird.i Service or harvest Observation Imagery Content by using an automatic scanning system;
- 3.7.3 not (and not seek) to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Bird.i Service, Observation Imagery Content or Background Data nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Bird.i Service with another software program, and provided that the information obtained by you during such activities is used only for the purpose of achieving inter-operability of the Bird.i Service with another software program;
- 3.7.4 not to use the Bird.i Service or other content on the Website to create any software which is substantially similar to the Bird.i Service or the Website.

- 3.8 Any breach of Clause 3.6 may be treated by the Licensor or Background Data Owners (as the case may be) as a misuse of the Observation Imagery Content or the Background Data for the purposes of either Clause 3.3 or 3.4.
- 3.9 The Licensee acknowledges and agrees that access to the Bird.i Service and Website is dependent on any access to the internet and may be dependent on access to third party websites and as such the Licensor (and its third party representatives) do not and cannot ensure the availability of such access and hereby disclaim any liability for any restriction on usage of the Bird.i Service or Website which may result from said unavailability.
- 3.10 The Licensee acknowledges and agrees that neither the Bird.i Service (including the Observation Imagery Content and the Background Data) nor the Website have been developed to meet the Licensee's individual requirements and that it is therefore the Licensee's responsibility to ensure that the facilities and functions of the Bird.i Service and Website meet its requirements.
- 3.11 The Licensee Acknowledges that it shall not, and will not allow any third party to: (a) prepare any Derivative Work from the Observation Imagery Content or any part thereof; (b) sublicense, transfer, assign, rent, lease, or otherwise convey the Observation Imagery Content or a Derivative Work or any right with respect thereto, to any third party including, without limitation, as a single product or on a stand alone basis; (c) modify any Observation Imagery Content in a manner that infringes upon the Intellectual Property Rights of the Licensor or Background Data owners or violates any laws; or (d) use the Observation Imagery Content or Derivative Works for its own internal business operations, unless the Licensee is an Internal User. Without limiting the generality of the foregoing, Observation Imagery Content is not permitted to be sold, distributed, or provided to third parties for a fee, whether as a standalone product or in a bundle, with an increase in the bundle price as a result of inclusion of the Observation Imagery Content.
- 3.12 The Licensee acknowledges that neither the Bird.i Service, nor the Observation Imagery Content, nor the Background Data, nor the Website will be free of bugs, Virus or errors at any particular time.

#### 4 **LIABILITY**

- 4.1 Nothing in this EULA shall limit or exclude the liability of either party or the Background Data Owners for: (a) death or personal injury resulting from negligence; or (b) fraud or fraudulent misrepresentation; or (c) any deliberate default or wilful misconduct of that party, its employees, agents or subcontractors; or (d) any other liability that cannot properly be limited or excluded by applicable law.
- 4.2 Subject to Clause 4.1, neither the Licensor nor the Background Data Owners shall be liable under, or in relation to the subject matter of, this EULA for (i) any indirect or consequential loss or damage or for any loss of income; (ii) loss of business profits or contracts; (iii) business interruption; loss of anticipated savings;(iv) loss of information; (v) loss of opportunity, goodwill or reputation; (vi) any loss of, damage to or corruption of data; or (vii) for any loss arising from, or any matter arising in respect of, any inaccuracy of any Background Data or Observation Imagery Content or any other information provided pursuant to the Bird.i Service or any loss arising from, or any matter arising in respect of, the Licensee's misinterpretation of any Background Data or Observation Imagery Content or any other information provided pursuant to the Bird.i Service.
- 4.3 Subject to Clause 4.1 and 4.2, the maximum aggregate liability of each of the Licensor and each of the Background Data Owners (to the extent that the latter may have any liability at all) under or in connection with this EULA, whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to the greater of £500 or the fee paid for the Licence Key.
- 4.4 This EULA sets out the full extent of the Licensor's obligations and liabilities (and the Background Data Owners' obligations and liabilities to the extent they may have any obligations or liabilities at all) to the Licensee in respect of the Bird.i Service and Website and the Licensee acknowledges and agrees that there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor (or the Background Data Owners) except as specifically stated in this EULA. Any condition, warranty, representation or other term concerning the Bird.i Service or the Website which might otherwise be implied into, or incorporated in, this EULA, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by applicable law.
- 4.5 The Licensor warrants that it has sufficient ownership rights in the Bird.i Service to make it available to the Licensee under the terms hereof. To the extent permitted by applicable law, all Observation Imagery Content is provided "as is" without any representations or warranties of any kind and all warranties whether express or implied, oral or written, arising by law or otherwise, are expressly disclaimed and excluded, including without limitation all implied warranties of merchantability, title, non-infringement, and fitness for a particular purpose.

## 5 INTELLECTUAL PROPERTY

- 5.1 The Licensee acknowledges and agrees that any and all Intellectual Property Rights in the Bird.i Service and/or the Observation Imagery Content and/or the Website belong to the Licensor (or its third party licensors) and no rights therein are being sold or transferred to the Licensee.
- 5.2 Further and in addition to Clause 5.1, the Observation Imagery Content, and all worldwide intellectual property and proprietary rights therein and related thereto, including, without limitation, all patents, copyrights, trademarks, trade secrets, moral rights, sui generis rights and other right in databases, and all rights arising from or pertaining to the foregoing rights, are and will remain the exclusive property of the Licensor, Background Data Owners and its licensors and suppliers, as applicable. All rights in and to the Observation Imagery Content not expressly granted to you are reserved by the Licensor, Background Data Owners and their licensors and suppliers, as applicable.
- 5.3 The Licensee acknowledges and agrees that it has no right to any access to the Bird.i Service or Website in source code form or to unlock any coding whatsoever.
- 5.4 The Licensee acknowledges that copyright subsists in the Background Data and that all property and other rights in the Background Data and all trademarks and logos used on or in relation to the Background Data shall remain with the Background Data Owners. Copyright Statements as follows will be used in relation to the Observation Imagery Content and Background Data as follows (and as advised from time to time):
- Image View Copyright © Birdi Ltd. 2017
    - Image © 2017 DigitalGlobe, Inc.
    - Image © CNES /Airbus DS
    - Image © Bluesky International Ltd

## 6 DATA PROTECTION

- 6.1 The terms Data Processor, Data Controller, Process(es) and personal data shall have the meanings afforded to them in the Data Protection Act 1988.
- 6.2 To the extent that the Licensee makes available to the Licensor any Personal Data under or in relation to the use of the Website or Bird.i Service (including as part of the registration process and creation of Login Details), the Licensee acknowledges that the Licensor shall be entitled to store and use that data for the purposes set out in this EULA and shall be entitled to share the same with any third party host or service provider of the Bird.i Service or Website and shall control and Process (or have Processed for it) such personal data in accordance with the DPA.

## 7 Disabling Devices

- 7.1 The Licensee will use commercially reasonable efforts, including using a Virus detection/scanning program, in order to remove any Disabling Devices from its systems that may be transmitted to or otherwise present any harm to the Licensor or Background Data Owners. If the Licensee determines that a Disabling Device has been transmitted to the Licensor or computers of the Licensor, the Licensee will notify the Licensor promptly of the transmission and the nature of the Virus or other device. The Licensor may disable the Licensee's access to the Bird.i Service to protect Licensors computing systems and/or networks from a Disabling Device on the Licensee's computing systems and/or networks or if the Licensee breaches any of the security measures established by Licensor, including access or attempted access to the Bird.i Service by any unauthorised person. The Licensor will notify the Licensee if it disables the Licensee's access as soon as reasonably possible.

## 8 TERMINATION

- 8.1 The Licensor may terminate this EULA where the Licensor is required to do so as a result of the cessation of any licence, consent or permission granted to the Licensor by a third party in respect of the Licensor's use, access to or interest in the Bird.i Service or Website. In such cases the Licensor shall endeavour to give the Licensee not less than fourteen (14) days prior written notice of such termination, subject to it being prevented from doing so by the relevant the relevant third party.

- 8.2 The Licensor may terminate this EULA immediately by written notice to the Licensee if the Licensee commits a material or persistent breach of this EULA which it fails to remedy (if remediable) within fourteen (14) days after the service on it of written notice requiring it to do so.

This EULA remains in full force until terminated by Licensor due to a breach by you of any provision of this EULA. Upon termination of this EULA, all rights granted to you hereunder shall immediately cease and you will: (a) discontinue all use of the Observation Imagery Content; (b) purge all copies of the Observation Imagery Content or any portion thereof from all computer storage devices or medium on which you have placed or permitted others to place the Observation Imagery Content; and (c) give the Licensor a written certification that you have complied with all of your obligations hereunder.

## 9 CONTACT DETAILS

- 9.1 If you wish to contact the Licensor in writing you can do so by sending an e-mail to [account@hibirdi.com](mailto:account@hibirdi.com). The Licensor will confirm receipt of this by contacting you in writing, normally by e-mail.
- 9.2 If the Licensor has to contact you or give you notice in writing, it will do so by e-mail or by posting details of the update on the Website.

## 10 MISCELLANEOUS

- 10.1 **Entire Agreement.** The Licensee acknowledges and agrees that in entering into this EULA, it does not rely on any statement, representation, warranty, undertaking or other assurance given or made by any person (whether the Licensor or otherwise) other than as expressly set out or referred to in this EULA. The Licensee waives all rights and remedies howsoever arising which, but for this Clause 10.1, might otherwise be available to it in respect of any such representation, warranty, undertaking or other assurance. Nothing in this EULA is intended to or will be construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.
- 10.2 **Waiver.** The Licensor will not be treated as having: (a) waived a right or remedy arising under this EULA or otherwise in law; and/or (b) elected to abandon a right or remedy arising under this EULA or otherwise in law; and/or (c) where applicable, thereby affirmed this EULA; except if and to the extent that it has expressly documented such waiver or election (and any resultant affirmation) in writing signed and delivered to the Licensee.
- 10.3 **Independent Contractors.** This EULA does not create a partnership or joint venture between the parties to it, nor authorise either party to act as agent for the other
- 10.4 **US Export Control.** Any export, re-export or retransfer of the Licensed Product is subject to U.S. export control, sanctions and embargo laws. Accordingly, you will comply with all applicable export control laws, rules and regulations, including, without limitation the U.S. International Traffic In Arms Regulations (ITAR) (22 C.F.R Parts 120-130, as amended) and the U.S. Export Administration Regulations (EAR) (15 C.F.R. Parts 730-774, as amended). You will also comply with all applicable economic sanctions and trade embargo laws, rules and regulations as promulgated by the U.S. Treasury Office of Foreign Assets Controls (OFAC) and the Bureau of Industry and Security (BIS). The export, sanctions and embargo laws prohibit you from selling, reselling, exporting, re-exporting, trading, or otherwise transferring U.S. products and services with certain countries, entities and persons.
- 10.5 **Assignment and subcontracting.** The Licensee shall not without the prior written consent of the Licensor assign, transfer, charge or deal in any other manner with this EULA or its rights under it or part of it, or purport to do any of the same, nor sub-contract any or all of its obligations under this EULA. The Licensor may transfer, assign, charge, sub-contract or otherwise dispose of this EULA, or any of its rights or obligations arising under it.
- 10.6 **Severability.** If any provision (or part of a provision) of this EULA should be found not to be valid, lawful or enforceable by a court having proper authority, or if the law changes so that it becomes invalid, unlawful or not enforceable to any extent, then this Clause will apply and the provision (or part affected) will be treated as having been deleted from the remaining terms of this EULA which will remain in full force and effect.
- 10.7 **Third Party Rights.** Except as expressly provided in Clauses 3, 4 and 5 in relation to Background Data Owners, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 10.8 **Governing Law and Jurisdiction.** This EULA and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed

in accordance with the law of England and Wales[, with the exception Clause 10.4, which is governed by the US Federal Law]. The parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this EULA or its subject matter or formation (including non-contractual disputes or claims) [with the exception of any dispute of claim arising from Clause 10.4 which is under the jurisdiction of US Federal law.



**Document History**

| Version | Revision | Modification   | Date            |
|---------|----------|--|-----------------|
| 1       | 0        | First Release  | 18 January 2017 |
| 1       | 1        | Background Data Owner updated with DigitalGlobe<br>Copyrights (5.4) updated with DigitalGlobe<br>US Export Control (10.4) added<br>Use of Free Content (3) Trial period reduced to 10 days | 08 March 2017   |