

Terms of Use: EarlyBird Central Inc.**Last Updated:** November 6, 2023

Our website and mobile application are provided by EarlyBird Central, Inc. (“EarlyBird,” “we,” or “us”), an SEC-registered investment adviser. These Terms of Use (the “Terms”) constitute a legal and binding contract between you and EarlyBird and, along with any other binding policies, terms, or agreements, govern all aspects of your use of EarlyBird’s website, mobile application, and any other platform (collectively, the “Site”). Please read these Terms carefully.

By downloading or using any information, materials, or functions available on the Site (the “Services”), you agree to be bound by these Terms, as well as the applicable additional terms, conditions, policies, and other binding agreements, some of which can be found [here](#). All such terms, conditions, policies, and other binding agreements are expressly referenced and incorporated herein. Please be sure to read all applicable terms, conditions, policies, and other binding agreements.

ARBITRATION NOTICE: THESE TERMS INCLUDE A MANDATORY ARBITRATION AGREEMENT, WHICH MEANS THAT YOU AGREE THAT EITHER YOU OR EARLYBIRD MAY ELECT TO HAVE ANY CLAIM (AS DEFINED BELOW) SUBMITTED TO BINDING INDIVIDUAL ARBITRATION RATHER THAN PROCEEDING IN COURT OR BEFORE A JURY. THE ARBITRATION AGREEMENT ALSO INCLUDES A CLASS ACTION WAIVER, WHICH MEANS THAT YOU AGREE TO PROCEED WITH ANY CLAIM INDIVIDUALLY AND NOT AS A MEMBER OF A CLASS ACTION. YOU HAVE A RIGHT TO REJECT THE ARBITRATION AGREEMENT AS DESCRIBED BELOW. PLEASE READ THE ARBITRATION AGREEMENT CAREFULLY.

EarlyBird Services Overview

EarlyBird is a financial services company that provides parents, family members, and friends the ability to collectively invest in a child’s financial future. EarlyBird provides parents the ability to receive monetary gifts on behalf of their children from loved ones and friends for investment in various exchange-traded funds (“ETFs”), public company stocks (“Stocks”), and cryptocurrencies (“Cryptocurrency”). Loved ones and friends can gift a child funds to be invested in ETFs, Stocks, and/or Cryptocurrency while also having the ability to attach a multimedia message to memorialize the special occasion and create a lasting memory.

Your Information and Disclosure to Third Parties

EarlyBird is committed to protecting the privacy of those who use our Services. Please review the Site’s [Online Privacy Policy](#) and [GLBA Privacy Notice](#), which are incorporated herein by reference in the Terms. By using the Site, you are consenting to the Online Privacy Policy and the GLBA Privacy Notice.

When you use the Site, you consent to receive communications from us electronically via the Site. You agree to provide accurate, current, and complete information about yourself when you use the Site and to update such information while you continue to use the Site. **Eligibility**

You represent and warrant that you: (a) are above the legal age of majority in your jurisdiction of residence, (b) have not previously been suspended or removed from the Site, (c) do not have more than one (1) account at any given time for the Site; (d) you will only provide us with true,

accurate, current and complete information if you register for an account; and (e) that you have full power and authority to enter into the Terms and in doing so will not violate any other agreement to which you are a party. If we believe or suspect that your information is not true, accurate, current, or complete, we may deny or terminate your access to the Site or Services (or any portion thereof).

Accounts and Registration

To access the Service, you must register for an account. When you register you will be required to provide us with some information about yourself and your child. There are four types of accounts:

- 1. Custodian Accounts:** This account type is for a custodian who is the parent or guardian of a minor to control gifts on behalf of the minor. A custodian account owner may elect to add a “Trusted Contact” to his or her EarlyBird account. The Trusted Contact has view-only rights to a custodial account, as assigned by the custodian account owner. Please see “Custodian Accounts” for more information regarding Trusted Contacts.
- 2. Giver Accounts:** This account type is for friends and family who have sent a gift to a child
- 3. Nest Member Accounts:** This account type is invited by the Custodian to join a child’s Nest on EarlyBird, giving them the ability to add and view Moments as well as make contributions to that account. .
- 4. Child Accounts:** This account type is for the beneficiary of the gifts. This account is only available to the child after they have turned 18 years old.

You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. We reserve the right to restrict certain areas of information on the Site to such registered users. If you provide any information that is untrue, inaccurate, not current or incomplete, or we have reasonable grounds to suspect such, we reserve the right to terminate your account and refuse any and all current or future use of the Site by you. When you register, you will be asked to create a PIN. You are responsible for maintaining the confidentiality of your account and PIN. EarlyBird is not liable for any harm related to the theft of your access credentials, your disclosure of access credentials, or your decision to allow another person or entity to access and use the Site using your access credentials. You agree to accept responsibility for all activities that occur under your account. If you have reason to believe that your account is no longer secure, then you must immediately notify us by using the contact information below.

You are responsible for all use of your account, regardless of whether you authorized such access or use, and for ensuring that all use of your account complies fully with the provisions of these Terms. Any conduct that in our sole discretion restricts or inhibits anyone else from using or enjoying the Services will not be permitted. We reserve the right in our sole discretion to remove or edit any content and to terminate your account for any or no reason.

Mobile Devices and Mobile Applications

If you use a mobile device to access the Services optimized for mobile-viewing or use a mobile application, the following additional terms and conditions ("**Mobile Terms**") also apply to you. Your access to the Services via your mobile device or use of a mobile application confirms your

agreement to these Mobile Terms, as well as the rest of the Terms.

We will not be liable for any delays in the receipt of any messages. Delivery is subject to effective transmission from your network operator. You understand that wireless service through Wi-Fi or a participating mobile service provider may not be available in all areas at all times and may be affected by product, software, coverage or other service changes made by your mobile service provider or otherwise. You agree that you are solely responsible for all message and data charges that apply to use of your mobile device to access the Services or use of a mobile application. All such charges are billed by and payable to your mobile service provider. Please contact your participating mobile service provider for pricing plans, participation status and details.

If you use our mobile application, you can delete your account by submitting a request to support@getearlybird.io. However, as an SEC-registered investment advisory firm, we have certain legal obligations to retain some data for regulatory compliance purposes. To the extent your account includes such data, we will retain it only for legal compliance purposes and not use it for any other purpose. We will also delete any data not subject to the regulatory retention.

Investments

You should carefully read these Terms and consider the investment objectives, risks, charges, and expenses of EarlyBird before investing. As with many investment programs, there can be no assurance that the value of your investment will grow at any particular rate or that it will not decline. For more information about our investment strategies, contact us using the information below. Information presented related to specific ETFs, Stocks, and Cryptocurrency represents past performance. PAST PERFORMANCE IS NOT A GUARANTEE OR INDICATION OF FUTURE RESULTS. Investment return and principal value of an investment will fluctuate; so that an investor's shares, when redeemed, may be worth more or less than their original cost; current performance may be lower or higher than the performance data quoted. All funds are subject to market risk. No investment strategy or allocation can guarantee a profit or protect against a loss in a declining market. No investments are guaranteed or insured by the Federal Deposit Insurance Corporation.

Investment Advice

All of EarlyBird's clients are advised on a discretionary basis; EarlyBird will provide recommendations based on information provided by the client. You confirm that you do not need, require, or desire in-person or other personal investment advice. Our investment advice and recommendations will be based on the personal information you provide to us through the Site. We do not provide any investment advice through other means. Based on the information you provide, EarlyBird may recommend investment in ETFs, Stock, Cryptocurrency, or a combination thereof. While EarlyBird may make certain recommendations based on available information, you make the final decision in the type of account to open and which investments to make.

Uniform Gifts to Minors Act

Ownership of an account (excluding cryptocurrency wallets) established under the Uniform Gifts to Minors Act (UGMA) is governed by these Terms and UGMA law. The account may be

accessed only by the owner of the parent account (“Custodian”) (or the successor Custodian), and the funds must be used for the benefit of the child. We presume the Custodian is carrying out her or his duties in accordance with the law, and we have no duty or obligation whatsoever to monitor or ensure that the acts of the Custodian (or successor Custodian) are conducted according to law or for the child’s benefit. We are not responsible to either the Custodian or the child for monitoring the age or eligibility of a minor for an UGMA account, even though our records may include the minor’s date of birth, and will not send any notices regarding the termination of the UGMA account for such reasons to anyone except and unless explicitly required to do so by state law. As clearly set forth by state law, it is the Custodian’s responsibility to properly distribute the funds in the account including upon the child’s death or attainment of the age of eighteen (18) (or the age of distribution under applicable state law).

Cryptocurrency wallets are not offered under the UGMA or Uniform Transfers to Minors Act (UTMA) at this time and do not provide the same tax benefits as accounts established under the UGMA or UTMA. See “Custodian Accounts” and “Cryptocurrency and Cryptocurrency Wallets” for more information regarding cryptocurrency wallets.

EarlyBird does not and cannot provide any tax or legal advice about the UGMA, UTMA, or otherwise. You should consult with your own tax and experts to determine the applicability of any particular laws and tax implications your actions may have.

Fees

EarlyBird does not charge an account-opening fee. See “Custodian Accounts” for more information regarding recurring minimum contributions for certain accounts. EarlyBird reserves the right to adjust all applicable fees expressed herein at any time in their sole and absolute discretion upon 30 days’ notice. To learn more about the relevant EarlyBird Fees, please see section 11 of our Investor Agreement.

Payment Service Provider

In order to use the payment functionality of our Site, you may be required to open a "Dwolla Platform" account provided by Dwolla, Inc. and you must accept the [Dwolla Terms of Service](#) and [Privacy Policy](#). Any funds held in the Dwolla account are held by Dwolla's financial institution partners as set out in the [Dwolla Terms of Service](#). You must be 18 years of age or older to use the service. You authorize EarlyBird to collect and share with Dwolla your personal information including full name, date of birth, social security number, physical address, email address and financial information, and you are responsible for the accuracy and completeness of that data. You understand that you will access and manage your Dwolla account through our Site, and Dwolla account notifications will be sent by EarlyBird, not Dwolla. EarlyBird will provide customer support for your Dwolla account activity, and can be reached at support@getearlybird.io.

We also use Plaid Technologies, Inc. (“Plaid”) to gather your data from financial institutions. This data may include information from all your sub-accounts (*e.g.*, checking, savings, and credit card) accessible through a single set of account credentials, even if only a single sub-account is designated by you. By using the Services, you grant us and Plaid the right, power, and authority to act on your behalf to access and transmit your personal and financial information from the relevant financial institution.

We may also use Stripe, Inc. to allow us to process debit and credit card payments through our Services. Stripe may allow you to submit payments through other methods, such as Apple Pay or Google Pay. Stripe collects and processes personal data, including your financial information and identifiers, to quickly and securely process your payments. Stripe may use the information it collects to operate and improve the services it provides to us, including by providing fraud detection and prevention.

To learn more about Dwolla's and Plaid's privacy practices, please visit <https://www.dwolla.com/legal/privacy> and <https://plaid.com/legal>. You can learn more about Stripe and its processing of your data by visiting its privacy policy at <https://stripe.com/privacy>.

Custodian Accounts

This account type is for a Custodian who is the parent or guardian of a minor to control gifts on behalf of the minor.

As of October 15 2022, new custodian account owners will pay a subscription fee of \$2.95/month for accounts with a single child and \$4.95/month for accounts with two or more children. Any change in the pricing caused by the addition of a child to a Custodian account will be reflected in the next billing cycle. Custodians will also be required to establish a minimum monthly recurring contribution of at least \$15.00. All fees mentioned in this paragraph will be payable in accordance with the terms of the authorization identified in Section 11 of the Investment Advisory Agreement. EarlyBird reserves the right to adjust all applicable fees expressed herein at any time in their sole and absolute discretion. EarlyBird reserves the right to amend, modify, and update all fee structures, whether current or prior, upon 30 day notice as required under these Terms.

In addition to our standard Custodian accounts, we offer the option to open Baby Funds and Piggy Banks. These account types allow Custodians to begin investing for a child that has not yet been born or without a Social Security Number. Baby Funds will not be subject to the minimum monthly recurring contribution of at least \$15.00, but Piggy Banks will be subject to the minimum recurring contribution of at least \$15.00. To learn more about these accounts~~please see the~~ Investment Agreement.

EarlyBird reserves the right to add or adjust all applicable fees expressed herein at any time in their sole and absolute discretion.

Custodians can also add a "Trusted Contact" to their account, which will result in the Trusted Contact receiving a text message inviting them to EarlyBird. Custodians are solely responsible for ensuring that they have the permission to add, and have obtained any necessary consents to contact, Trusted Contacts. Custodians expressly agree to indemnify EarlyBird for any damages, losses, claims, or other costs, including legal fees, arising from the adding, or contacting of a Trusted Contact.

As part of our Moments feature, Custodians and Nest Members are permitted to add photos or videos of their children to build a timeline of moments and milestones in the life of the child. Custodians may invest in the moment or share the moment through our Services, or externally through a public link. Any information collected or processed through this Moments program will be processed in accordance with the terms of our Privacy Policy.

Custodians who would like to invest in Cryptocurrency will have to establish a cryptocurrency wallet through our partnership with Gemini Trust Company, LLC, a New York trust Company (“Gemini”). The cryptocurrency wallet will be custodied with Gemini and all transactions will be executed through Gemini. In order to establish a cryptocurrency wallet, Custodians are required to input certain bank account information with Gemini and make a minimum contribution of \$15.00 to the cryptocurrency wallet which can be a one-time or recurring contribution.

Cryptocurrency wallets established with Gemini shall be separate from the managed holdings of ETFs and Stocks by EarlyBird and will not be automatically rebalanced by EarlyBird. A Custodian may request to close their cryptocurrency wallet at any time by contacting: support@getearlybird.io. Upon closure, funds will be deposited into the funding source on file for the custodian account holder.

Giver and Nest Member Accounts

A Giver and Nest Member account will not be charged a monthly or annual wealth management fee without active custodial accounts. A giver account may be required to pay gift transaction processing fees, the price of which may be set by EarlyBird or our payment processors.

When a giver account sends a gift to an individual who does not already have a custodial account, it will result in a text message sent to that individual’s parent or guardian. Givers are solely responsible for ensuring that they have the permission to add, and have obtained any necessary consents to contact via text message, the individual, parent, or guardian. Givers expressly agree to indemnify EarlyBird for any damages, losses, claims, or other costs, including legal fees, arising from contacting such individuals, parents, or guardians.

Givers may suggest their gift be accepted in ETF’s, Stocks, or Cryptocurrency but it is merely a suggestion and the Custodian will make the final determination as to how to accept the gift. Please note that gifts that are not accepted will expire one year after the date of gifting. Prior to a gift being accepted, Givers may cancel their un-expired gifts and receive a refund for the amount gifted, minus any applicable transaction fees. If a gift is rejected by the recipient prior to the gift expiring, the gifted funds will be refunded to the original form of payment, minus any applicable transaction fees.

Custodians may also invite individuals to create Nest Member Accounts. A Custodian can add Nest Members to their child’s EarlyBird Account. Nest Members have the ability to view information about the child and their account, add Moments, view Moments shared with them, and contribute financially to the account.

One-Time and Recurring Gifts

EarlyBird allows parents/guardians and givers to make a one-time gift or recurring gifts on a predetermined frequency. EarlyBird does not guarantee future scheduled gifts will be executed on the date(s) specified. One-time and recurring gifts can be made in ETFs, Stocks, and Cryptocurrency.

You may make a gift through the website or mobile app and parents/guardians may accept a gift on behalf of their minor child through the parent/guardian’s Dwolla account. See the above “Payment Service Provider” section for more information about Dwolla.

Parents/guardians may use EarlyBird credit earned from a referral or affiliate program for a one time transaction or gift in cryptocurrency as well as for investing into a child's custodian account. However, EarlyBird reserves the right to withhold, rescind, or reclaim any credits offered by EarlyBird to the extent that the applicable Account is not in good standing, as reasonably determined by EarlyBird, or that the terms of obtaining the credit, such as the additional funding of an Account, have not been fulfilled. For example, if a user has received a credit and has not completed a successful deposit into a child's account with their own funds and has not also successfully paid at least 1 monthly fee (where fees apply), EarlyBird reserves the right to remove the credit or sell positions from the account in the equivalent value of the credit to recoup the credit.

Cryptocurrency & Cryptocurrency Wallets

You may choose to gift or receive on behalf of a child, Cryptocurrency, such as Bitcoin and Ethereum, through our partnership with Gemini. At the present time, available Cryptocurrency investments will be limited to Bitcoin and Ethereum, both of which have a substantial track record. You acknowledge that you and the recipient are solely responsible for complying with any applicable laws and regulations relating to your investing in or gifting of Cryptocurrency.

Custodians will have the ability to buy and sell Cryptocurrency through the EarlyBird Site and such withdrawn funds shall be deposited into the funding source on file for the Custodian. All investments in Cryptocurrency will incur an exchange fee equal to 1.5% of the total amount to be invested. Exchange fees are subject to change by Gemini. Such fee shall be deducted from the total investment amount and will not be in addition to it.

You must evaluate your particular financial circumstances to determine whether investments in Cryptocurrency is appropriate for you. Acquiring Cryptocurrency can result in substantial losses, including most if not all of an investment.

EarlyBird expects to expand your ability to gift different cryptocurrencies in the future. Gemini will serve as the custodial partner and all transactions will be executed through Gemini. By accepting these Terms with the Company, you also agree to enter into the Gemini (1) User Agreement; (2) Privacy Policy; (3) Custody Agreement; and all other applicable agreements, copies of which may be found here: <https://www.gemini.com/legal>.

Cryptocurrencies are digital instruments intended to function as a store of value or a medium of exchange. Although cryptocurrencies are often exchangeable for various fiat currencies, unlike fiat currencies, cryptocurrencies are not backed by any government or central bank and do not constitute legal tender in the United States. The price of cryptocurrencies is based on the agreement of the parties to a transaction, which may or may not be based on the market value of the cryptocurrency at the time of the transaction.

Insurance

Accounts holding cryptocurrencies are not protected by Securities Investor Protection Corporation ("SIPC") coverage. Cryptocurrencies are also not covered by the Federal Deposit Insurance Corporation ("FDIC"), which covers fiat currency held in member banks. Existing insurance products are likely inadequate to cover potential losses if an exchange fails and/or digital wallets are hacked.

Price Volatility

You understand that cryptocurrencies derive their value from the markets in which they trade, and the markets for cryptocurrencies are global. The price of cryptocurrencies is based on the fair market value of the cryptocurrency and subject to changes in sentiment, which make these products volatile and unpredictable. The fluctuations of cryptocurrency prices are much greater than the price fluctuations of fiat currencies. Certain cryptocurrencies have experienced daily price volatility of more than 20%, including sudden drops in price. If participants in a given cryptocurrency market change their view about the value of a given cryptocurrency versus fiat currency, the price of the cryptocurrency can decline precipitously. It may be difficult to liquidate cryptocurrencies holdings at all or, if possible, such liquidation may occur at a significant loss. It is possible that the market for a given cryptocurrency can collapse altogether.

Valuation and Liquidity

You understand that cryptocurrencies can be traded through privately negotiated transactions and through numerous cryptocurrency exchanges and intermediaries around the world, each with its own pricing mechanism and/or order book. Generally accepted auditing methods for cryptocurrencies do not fully exist. The lack of generally accepted auditing methods and a centralized pricing source pose a variety of valuation challenges. In addition, the dispersed liquidity may pose challenges for market participants trying to exit a position, particularly during periods of stress.

Cybersecurity

You understand that cybersecurity risks of cryptocurrencies and related “wallets” or spot exchanges include hacking vulnerabilities, cybersecurity attacks and a risk that publicly distributed ledgers may not be immutable. A cybersecurity event could result in a substantial, immediate, and irreversible loss for market participants that hold cryptocurrencies. Cryptocurrency transactions may be irreversible, and, accordingly, losses due to a cybersecurity event may not be recoverable. Even a minor cybersecurity event in a cryptocurrency is likely to result in downward price pressure on that product and potentially other cryptocurrencies. In addition, the trading of cryptocurrencies may be adversely affected by network connectivity issues and dissemination of inaccurate data. You understand that a gift may incur losses due to software or hardware failures and system failures.

Cryptocurrency Exchanges, Intermediaries and Custodians

Cryptocurrency exchanges, as well as other intermediaries, custodians and vendors used to facilitate cryptocurrency transactions, are relatively new and sometimes unregulated outside the United States. In certain jurisdictions, there are no standard capital requirements for cryptocurrency platforms nor are there guarantors in the event a cryptocurrency exchange fails. The opaque underlying spot market and lack of regulatory oversight creates a risk that a cryptocurrency exchange may not hold sufficient cryptocurrencies or other funds to satisfy its obligations and that such deficiency may not be easily identified or discovered.

In addition to a higher level of operational risk compared to other regulated futures or securities exchanges, cryptocurrency exchanges can experience volatile market movements, flash crashes, fraud, various forms of market manipulation, theft, transaction processing delays and other cybersecurity risks. Trading in cryptocurrencies may be halted by the various trading venues due

to unusual trading activity, outages, or other problems with a cryptocurrency platform. If Gemini experiences such technical difficulties, those difficulties could prevent you from accessing the cryptocurrency in your Account. You understand EarlyBird lacks control over the Gemini exchange and therefore is not responsible for any loss incurred due to problems with Gemini.

Technology

The relatively new and rapidly evolving technology underlying cryptocurrencies introduces unique risks. For example, a unique private key is sometimes required to access, use, or transfer a cryptocurrency via a blockchain or distributed ledger. The loss, theft or destruction of a private key may result in an irreversible loss. Changes in the technology of a given cryptocurrency platform or changes resulting from cybersecurity attacks include but are not limited to a “fork,” which can have a negative impact on the value of a particular cryptocurrency and can result in the loss or cancellation of a cryptocurrency position or a sudden loss of value.

RISKS:

There are material risks associated with using, owning, acquiring, or transferring digital currencies involved in EarlyBird’s features, including but not limited to:

- digital currencies are not backed by the government, and accounts and value balances are not subject to FDIC or SIPC protections;
- legislative and regulatory changes or actions at the state, federal, or international level as applied to cryptocurrencies, e.g., Bitcoin, may adversely affect the use, transfer, exchange, and value of digital currencies;
- financial intermediaries who EarlyBird relies on such as Gemini Trust Company, LLC as well as the blockchain networks accessed by these intermediaries (such as the Bitcoin or Ethereum Blockchains on which the crypto assets are distributed), currently are relatively undeveloped and untested and are likely to rapidly evolve. Legislative and regulatory changes may vary and may conflict among international, federal, state and local jurisdictions and the potential applications of existing regulations remain subject to significant uncertainty in many respects. In addition, various legislative and executive bodies in the United States and other countries may in the future adopt new laws, regulations, guidance, or other actions (including applying existing laws and regulations in ways that are adverse), which may severely impact the ability to access the digital currencies, and the structure, rights, value and transferability of the digital currencies could be impacted;
- the nature of digital currency may lead to an increased risk of fraud or cyberattack;
 - EarlyBird does not own or control the underlying software protocols which govern the operation of digital currency and any technological difficulties experienced by EarlyBird or Gemini Trust Company, LLC may prevent the access or use of a customer’s digital currency;

- a person or entity that accepts digital currency as payment today might not continue to do so in the future; and
- the value of digital currency may be derived from the continued willingness of market participants to exchange fiat currency for digital currency;
- The value of digital currencies such as Bitcoin and Ether have historically been subject to dramatic fluctuations and are highly volatile, and the market price of the digital currencies may also be highly volatile. Several factors may influence the market price of the digital currencies, of which EarlyBird has no control or influence over.

Individuals who participate in the Services acknowledge and accept the risks associated with digital currency and agree that EarlyBird is not liable for any loss of value that may be experienced as a result of changes in digital currency operating rules.

Change in Fees

You acknowledge and agree that the fees described in these Terms may be increased or decreased as EarlyBird shall determine to be appropriate. [EarlyBird retains the right to provide discounts or waive fees at its sole discretion.](#)

Your License

Subject to these Terms, EarlyBird grants you a personal, non-exclusive, non-transferable, limited and revocable license to access the Site for your personal use (“Your License”). EarlyBird reserves the right to revoke Your License to use the EarlyBird Site at any time, including if we detect any unauthorized use by you in violation of these Terms.

User Content

You are solely responsible for the content and information including, but not limited to, any messages you send to a gift recipient (collectively referred to as “User Content”) that you post or upload to the Site. By submitting User Content to the Site, you automatically grant EarlyBird the royalty-free, perpetual, irrevocable, non-exclusive right and license, but not the obligation, to use, publish, reproduce, modify, adapt, edit, translate, create derivative works from, incorporate into other works, distribute, sub-license and otherwise use such User Content (in whole or in part) worldwide in any form, media or technology now known or hereafter developed for the full term of any copyright or other intellectual property right that may exist in such User Content, without payment to you or to any third parties.

User Content uploaded or otherwise communicated on the Site shall comply with all applicable law and regulations, which you are responsible for knowing and understanding. You are prohibited from posting or otherwise communicating to us, or any other user of the Site any offensive, inaccurate, incomplete, abusive, obscene, profane, threatening, intimidating, harassing, racially offensive, or illegal material, or any material that infringes or violates another person’s rights (including intellectual property rights, and rights of privacy and publicity).

You understand and agree that we, without any obligation to do so, may monitor or review any User Content you post, upload or otherwise communicate through the Site. We reserve the right

to remove any such User Content, in whole or in part, at our sole discretion, that violates these Terms, is likely to harm our reputation, is deemed inappropriate or otherwise poses a risk of harm to any other person. We reserve the right to deactivate your account or otherwise prevent your use of the Site or Services at any time and for any reason.

You agree that we may access, preserve and disclose your account and any User Content posted, uploaded, received or otherwise communicated if required to do so by law or with the good faith belief that such access, preservation or disclosure is reasonably necessary to: (i) comply with an enforceable subpoena or other legal process; (ii) enforce these Terms; (iii) respond to claims that any information violates the rights of third parties; (iv) respond to your requests for customer service or allow you to use the Site or Services in the future; or (v) protect the rights, property or personal safety of EarlyBird or its members, employees, agents, affiliates, partners, communities or any other person.

If it is determined that you retain moral rights (including rights of attribution or integrity) in the User Content, you hereby declare that (a) you do not require that any personal data, personal information, personally identifying information, or equivalent term be used in connection with the User Content, or any derivative works of or upgrades or updates thereto; (b) you have no objection to the publication, use, modification, deletion and exploitation of the User Content by EarlyBird or its licensees, successors and assigns; (c) you forever waive and agree not to claim or assert any entitlement to any and all moral rights of an author in any of the User Content; and (d) you forever release EarlyBird, and its licensees, successors and assigns, from any claims that you could otherwise assert against EarlyBird, or any of its assigns or affiliates, by virtue of any such moral rights. You also permit any other user to access, view, store, or reproduce the User Content for that user's personal use.

User Content submitted by you will be considered non-confidential and EarlyBird is under no obligation to treat such User Content as proprietary information. Without limiting the foregoing, we reserve the right to use any User Content as it deems appropriate, including, without limitation, deleting, editing, modifying, rejecting, or refusing to post it. EarlyBird is under no obligation to edit, delete or otherwise modify User Content once it has been submitted to us. We shall have no duty to attribute authorship of User Content to you, and shall not be obligated to enforce any form of attribution by third parties.

Intellectual Property

The Site, the content, any materials downloaded, and all intellectual property pertaining to or contained on the Site (including but not limited to copyrights, patents, database rights, graphics, designs, text, logos, trade dress, trademarks, and service marks) are owned by EarlyBird or third parties; all rights, title, and interest will remain the property of EarlyBird and/or such third-party owner, as applicable. All content is protected by trade dress, copyright, patent, and trademark laws, as well as various other intellectual property and unfair competition laws. You are authorized to view and retain a copy of pages of the Site only for your own personal, non-commercial use. You may also view and make copies of relevant documents, pages, images, or other materials on the Site for the purpose of transacting business with EarlyBird. You agree that you will not duplicate, publish, modify, create derivative works from, participate in the transfer of, post on the World Wide Web, or in any way distribute or exploit the Site, or any portion of the Site, for any public or commercial use, without the express written consent of EarlyBird. Additionally, you agree that you (i) will not remove or alter any author, trademark, other proprietary notice, or legend displayed on the Site (or printed pages produced from the

Site), and (ii) will not make any other modifications to any documents obtained from the Site other than in connection with completing information required to transact business with EarlyBird.

Use of Information and Materials

The information and materials contained on the Site, and the Terms, policies, and descriptions on the Site, are subject to change. You accept sole responsibility for all of your activities using the Site. Your use of the Site is limited to the intended function of the Site. Unauthorized use of the Site and systems, including but not limited to unauthorized entry into EarlyBird's systems or misuse of any information posted on the Site, is strictly prohibited. You may not use the Site in a manner that:

- a. harasses, abuses, stalks, threatens, defames, or otherwise infringes or violates the rights of any party (including but not limited to rights of publicity or other proprietary rights);
- b. is unlawful, fraudulent, or deceptive;
- c. uses technology or other means to access content or systems of EarlyBird in a manner that is not authorized by EarlyBird;
- d. uses or launches any automated system, including without limitation, "robots," "spiders," or "offline readers," to access content or systems of EarlyBird;
- e. attempts to introduce viruses or any other computer code, files, or programs that interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment, or attempts to gain unauthorized access to EarlyBird's computer network or user accounts;
- f. encourages conduct that would constitute a criminal offense or that gives rise to civil liability;
- g. violates the Terms or any other EarlyBird policies;
- h. attempts to damage, disable, overburden, or impair EarlyBird servers or networks;
- i. fails to comply with applicable third-party terms; or
- j. constitutes any other inappropriate conduct, as determined by us in our sole discretion.

System Outages, Slowdowns, and Capacity Limitations

At times you may experience difficulty accessing the Site or communicating with EarlyBird through the Internet, or other electronic wireless services, as a result of high Internet traffic, transmission problems, systems capacity limitations, or other problems. Any computer system or other electronic device, whether it is yours, an Internet service provider's, or EarlyBird's, can experience unanticipated outages or slowdowns or have capacity limitations. EarlyBird is not responsible for failure or delay of performance caused by such problems.

Security

EarlyBird makes no warranty whatsoever to you, express or implied, regarding the security of

the Site, including with respect to the ability of unauthorized persons to intercept or access information transmitted by you through the Site. You acknowledge and agree that you are solely responsible for maintaining the security of your devices. EarlyBird is not responsible for any losses resulting from the loss or theft of your device, the loss or theft of your information transmitted from or stored on your devices, or any losses arising from the use of your device by someone whom you have given access. You are required to notify us of any unauthorized use of the Site by using the contact information below.

To protect the security of your information, EarlyBird may require you to authenticate your identity (i.e., prove that you are who you say you are) when you use the Site.

Links to Other Websites and Services

The Site may contain links to outside services and resources, the availability and content of which EarlyBird does not control. We are not responsible for examining or evaluating, and we do not warrant the offering of these services and resources or the content of these websites. EarlyBird does not assume any responsibility or liability for the actions, products, and content of these and any other websites. Any concerns regarding any such services or resources should be directed to the service or resource.

EarlyBird also uses affiliate marketing networks to promote EarlyBird and its Services on other websites. EarlyBird requires affiliate disclosures that clearly and conspicuously disclose the relationship with EarlyBird on the websites of EarlyBird's affiliate marketers.

Severability/No Waiver

Except as set forth in the Arbitration Agreement, if any provision of the Terms shall be deemed unlawful, void, or unenforceable for any reason, then such provision shall be deemed severable from the Terms and shall not affect the validity and enforceability of any remaining provisions. EarlyBird's failure to enforce the strict performance of any provision of the Terms or the additional terms and conditions for any product or service will not constitute a waiver of our right to subsequently enforce such provision or any other provisions of the Terms or the additional terms and conditions.

Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR ANY DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES THAT MAY ARISE IN CONNECTION WITH THIS SITE, OR FROM YOUR USE OF, OR INABILITY TO USE THIS SITE; OR IN CONNECTION WITH ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, OR LINE OR SYSTEM FAILURE EVEN IF WE ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR EXPENSES. Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages. In such jurisdictions, our liability is limited to the greatest extent permitted by law.

Disclaimers

THE SITE IS PROVIDED TO YOU ON AN "AS-IS" AND "AS-AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EARLYBIRD MAKES NO WARRANTY THAT (i) THE SITE WILL MEET YOUR REQUIREMENTS, (ii) THAT OPERATION OF THE SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR (iii) THE CONTENT THAT MAY BE OBTAINED FROM THE USE OF THE SITE WILL BE ACCURATE OR RELIABLE. EARLYBIRD UNDERTAKES NO OBLIGATION TO UPDATE THE SITE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM EARLYBIRD, OR THROUGH THE SITE SHALL CREATE ANY WARRANTY REGARDING THE SITE NOT EXPRESSLY STATED IN THIS AGREEMENT. YOU UNDERSTAND AND ACKNOWLEDGE THAT ADDITIONAL DISCLAIMERS, LIMITATIONS, AND NOTICES REGARDING THE SITE AND ITS CONTENT AND DATA MAY BE PROVIDED BY EARLYBIRD FROM TIME TO TIME WITHIN THE SITE.

WE DO NOT WARRANT THAT THE SITE WILL OPERATE ERROR-FREE OR THAT THE SITE AND ITS SERVERS ARE FREE OF COMPUTER VIRUSES OR OTHER HARMFUL CONTENT. IF YOUR USE OF THE SITE, THE MATERIAL, OR THE SOFTWARE RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, WE ARE NOT RESPONSIBLE FOR THOSE COSTS.

Indemnification

You will defend, indemnify, and hold us harmless from and against any actual or threatened suit, actions, proceedings (at law or in equity), claims, damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs, and expenses (including reasonable attorneys' fees, costs, penalties, interest, and disbursements) arising from or related to your conduct with respect to the Site or violation (or alleged violation) of these Terms. Under no circumstance will EarlyBird be liable for damages of any kind that result from your use of, or the inability to use, the Site.

Arbitration Agreement

Solely for purposes of this Arbitration Agreement, the terms “we,” “us,” and “our” mean EarlyBird Central, Inc. and any of its affiliated companies, their predecessors, successors and assigns, and all of the respective officers, directors, employees and agents of any of the foregoing. These terms also mean any third party providing any product or service related to these Terms, the Site, the Services, or your account that you bring a claim against at the same time you bring a claim against us.

You agree that unless you reject this Arbitration Agreement, you and we may elect to have any and all claims arising from or relating to these Terms, the Site, the Services, your account(s), any products or services provided to you by us, any marketing or advertising by us, or the relationship between you and us resulting from any of the foregoing submitted to binding arbitration under the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 et seq. This includes claims based on contract, tort, intentional tort, consumer rights, equity, statute, local ordinance, or otherwise. This also includes data breach or privacy claims arising from or relating directly or indirectly to our disclosure of any non-public personal information about you. The term “claim” has the broadest reasonable meaning and includes initial claims, counterclaims, cross-claims, third-party claims, and federal, state, local, and administrative claims, and claims which arose before the effective date of this Arbitration Agreement. Notwithstanding the foregoing, disputes

regarding the validity, scope, coverage, or enforceability of this Arbitration Agreement or any part thereof or the arbitrability of any claim shall be determined by a court, not an arbitrator. However, disputes regarding the validity or enforceability of these Terms as a whole shall be determined by the arbitrator. Individual small claims court actions by you or us are not subject to this Arbitration Agreement as long as they remain in that court; however, if the dispute is transferred, removed, or appealed to a different court, the dispute will be subject to arbitration.

If arbitration is elected, a single arbitrator who is either a lawyer with at least ten years of experience or a retired judge shall decide all claims and shall render a final written decision. You may choose the American Arbitration Association (“AAA”) or JAMS to administer the arbitration. If neither of them can serve, a court with jurisdiction will select the arbitrator or administrator, who must agree to abide by the terms of this Arbitration Agreement. The appropriate AAA or JAMS rules shall apply, as determined by the arbitrator. These rules are found at www.adr.org and www.jamsadr.com. In the event of any conflict or inconsistency between this Arbitration Agreement and the administrator’s rules or other provisions of these Terms, this Arbitration Agreement will govern. This Arbitration Agreement shall survive any termination of your access to the Site or Services, the termination or suspension of your account, or any bankruptcy by you.

Each party to the arbitration shall pay his, her, or its own costs of arbitration as specified by the relevant rules. If you cannot afford your arbitration costs, you may apply for a waiver under the relevant rules. We will pay any costs we are required to pay by law or the administrator’s rules or that we must pay in order for this Arbitration Agreement to be enforced. The parties will bear their respective attorney, expert, and witness fees and costs, unless applicable law, these Terms, or the administrator’s rules provide otherwise.

The arbitrator shall be empowered to grant whatever substantive relief would be available in a court under applicable law or in equity on an individual claim, including, without limitation, compensatory, statutory, and punitive damages (which will be governed by the constitutional standards applicable in judicial proceedings), declaratory, injunctive, and other equitable relief (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim), and attorneys’ fees and costs. The arbitrator shall apply applicable statutes of limitations and privilege rules that would apply in a court proceeding. If the arbitrator determines that any party’s claim or defense is frivolous or wrongfully intended to oppress or harass the other party, the arbitrator may award sanctions in the form of fees and expenses reasonably incurred by the other party if such sanctions could be imposed under Rule 11 of the Federal Rule of Civil Procedure. The arbitration hearing will take place in the federal judicial district where you reside, or at another place mutually agreeable to the parties.

Jury Trial Waiver.

If a claim is arbitrated, the parties waive any right to a jury trial.

Class Action Waiver.

If a claim is arbitrated, the parties waive any right to bring representative claims in court or in arbitration on behalf of a class of individuals, as a private attorney general or otherwise, or to join or consolidate claims with claims of other persons or entities. An arbitration award shall determine the rights and obligations of the named parties only, and only with respect to the claims in arbitration. No arbitration administrator or arbitrator shall have the power or authority to waive or modify this section, and any attempt to do so, whether by rule, policy, arbitration decision, or otherwise, shall be invalid and unenforceable.

This Arbitration Agreement may be severed or modified if necessary to render it enforceable, except that: (A) if the class action waiver is declared invalid in a proceeding between you and us, and that determination becomes final after all appeals have been exhausted, this entire Arbitration Agreement (other than this sentence) shall be null and void in such proceeding; and (B) if a claim is brought seeking public injunctive relief and a court determines that the restrictions in the class action waiver or elsewhere in this Arbitration Agreement prohibiting the arbitrator from awarding relief on behalf of third parties are unenforceable with respect to such claim (and that determination becomes final after all appeals have been exhausted), the claim for public injunctive relief will be determined in court and any individual claims seeking monetary relief will be arbitrated. In such a case, the parties will request that the court stay the claim for public injunctive relief until the arbitration award pertaining to individual relief has been entered in court.

The arbitrator's award shall be binding on the parties, except for any appeal rights under the FAA, and may be entered as a judgment in any court of competent jurisdiction. No arbitration award involving the parties will have any preclusive effect as to issues or claims in any dispute involving anyone who is not a party to the arbitration, nor will an arbitration award in prior disputes involving other parties have preclusive effect in an arbitration between the parties to this Arbitration Agreement.

RIGHT TO REJECT ARBITRATION AGREEMENT: You may reject this Arbitration Agreement by mailing a signed rejection notice to EarlyBird Central, Inc., 2814 N. Spaulding, Chicago, IL 60618 within thirty (30) calendar days after the date you first use our Site. Any rejection notice must include your name, address, email address, telephone number, and a statement that you reject the Arbitration Agreement in the Terms. If you reject this Arbitration Agreement, that will not affect any other part of these Terms. Rejecting this Arbitration Agreement will not constitute a rejection of any other arbitration agreement between you and us.

Termination

We may terminate or suspend your access to the Site, delete your profile and any content or information that you have posted on the Site and/or prohibit you from using or accessing the Site (or any portion, aspect or feature of the Site) if you violate the Terms, effective immediately, which may result in the forfeiture and destruction of all information associated with you and your activities in connection with the Site. If you wish to terminate your account, you may do so by following the instructions on the Site. Any fees paid hereunder are non-refundable. In the event of termination, you will still be bound by your obligations under these Terms. Termination of these Terms will not affect any court or arbitration proceedings between you and EarlyBird that were commenced prior to the termination.

Changes

You are responsible for reviewing these Terms regularly. EarlyBird reserves the right, at any time, without notice to you, and in its sole discretion, to modify or discontinue the Site, the Terms, or any EarlyBird policies related to use of the Site. Revisions to the Terms or EarlyBird's policies may be provided through the Site, including by posting the revisions on the Site. Such revisions will go into immediate effect once posted to the Site. Continued use of the Site following such modifications to the Site, the Terms, additional terms and conditions for any service, or other EarlyBird policies will constitute your acceptance of such modifications and revisions. Notwithstanding the foregoing, we will not amend the Arbitration Agreement in a manner that adversely affects your rights or responsibilities in a material manner unless we give you a right to reject the amendment and/or the Arbitration Agreement in its entirety.

Influencer Content

All content generated by individuals, including users of the Site, providing media advertising, marketing, promotion, endorsement, and other influencer services (“Influencers”) for EarlyBird Services must comply with all legal and EarlyBird requirements. For example:

- any material connection between the Influencer and EarlyBird must be clearly and conspicuously disclosed in the Influencer’s content, including all posts, blogs, publications, testimonials, and endorsements, such as whether the Influencer is receiving any payments, EarlyBird Referral Program rewards, or free products or Services from EarlyBird (*e.g.*, #Paid, #Ad, #Sponsored); and
- Influencers must not make any false or misleading statements about EarlyBird’s Services, and
- any disclosures regarding the Influencer’s financial, employment, personal, or family relationship with EarlyBird must be in the same language as the Influencer’s content. Influencer content that constitutes endorsements (*i.e.*, any advertising message—including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying characteristics of EarlyBird) must reflect the honest opinions, findings, beliefs, or experiences of the endorser. Endorsements may not be presented out of context or reworded so as to distort in any way the Influencer’s opinion or experience with EarlyBird’s Services. When endorsing EarlyBird’s Services, the Influencer must have actually used the Services.

Contact Us

If you have any questions regarding the Site, these should be directed to:

support@getearlybird.io.