

## Terms of Use - EarlyBird

**Last Updated:** September 28, 2020

Our website and mobile application is provided by EarlyBird Central, Inc. (“EarlyBird,” “we,” or “us”), an SEC-registered investment adviser. These terms of use (“Terms”) constitute a legal contract between you and EarlyBird and govern all aspects of your use of EarlyBird’s website and mobile application (“Site”). Please read these Terms carefully. By downloading or using any of the information, materials, or functions available on the Site, you agree to be bound by these Terms.

### Your Information and Disclosure to Third Parties

EarlyBird has made a commitment to protecting the privacy of those who use our Site. Please review the Site’s [Privacy Policy](#). The Site’s Privacy Policy is incorporated by reference in the Terms. By using the Site, you are consenting to the Privacy Policy.

### Site Services

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. 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), 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.

### 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 three 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.
2. **Giver Accounts:** This account type is for friends and family who choose to give gifts.
3. **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.

### **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 regarding the investment strategies and related risks of exchange-traded funds (“ETFs”) can be found in the prospectus and statement of additional information (“SAI”) of each ETF. For more information about the ETFs, including copies of their prospectuses, SAIs, and annual reports, contact the ETFs. Information presented 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.**

All of EarlyBird's clients are advised on a discretionary basis; EarlyBird will select the investment 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 will be based on the personal information you provide to us through our website. We do not provide any investment advice through other means.

### **Uniform Gifts to Minors Act**

Ownership of an account established under the Uniform Gifts to Minors Act (UGMA) is governed by the terms of this agreement 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).

### **Fees**

EarlyBird does not charge an account opening fee. EarlyBird does not require a monthly minimum to maintain your account.

### **Payment Providers**

In order to use the payment functionality of our Site, you must 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](mailto:support@getearlybird.io) and/or

### **Custodian Accounts**

Custodian accounts that have an AUM of \$200 or less will not be charged a monthly fee. AUM is calculated across one or multiple custodial accounts owned by the same account owner. If the total AUM exceeds \$200, a custodian account owner will pay a \$3/month wealth management fee for the first custodial account, and \$1/month for each additional custodial account. If the total AUM exceeds \$15,000, a custodian account owner will no longer pay a monthly wealth management fee(s), and instead he or she will pay an annual wealth management fee in an amount of 0.25% of the average AUM over the course of the year and such fee is charged monthly. All fees mentioned in this paragraph will not be deducted from a minor's custodial account, and instead will be deducted from the funding source connected to the user's EarlyBird account.

Transaction processing fee do not apply to custodian accounts.

### **Giver Accounts**

A giver account will not be charged monthly or annual wealth management fee without active custodial accounts. A giver account will pay a \$2 gift transaction processing fee per transaction. All fees mentioned in this paragraph will not be deducted from the gift to the minor's custodial

account, and instead will be deducted from the funding source connected to the user's EarlyBird account.

### **Child Accounts**

When a child assumes control of his or her account, there will be no monthly minimums or account opening fee. [EARLYBIRD TO PROVIDE ADDITIONAL INFORMATION REGARDING WHETHER THE MONTHLY/ANNUAL FEE AND TRANSACTION PROCESSING FEE WILL APPLY TO CHILD ACCOUNTS]

### **Change in Fees**

You acknowledge and agree that the fees described above may be increased or decreased as EarlyBird shall determine to be appropriate.

### **Referral Program**

EarlyBird may, in EarlyBird's sole discretion, provide offers, programs and promotions ("Promotions") that allow you to obtain account credits or other rewards. EarlyBird credit is a specified dollar value that can be applied to a user's one-time investment in a custodial account they control/manage, or can be applied when sending a gift to another minor's custodial account. Credits cannot be redeemed or used outside of EarlyBird. EarlyBird credits may expire at the discretion of EarlyBird. EarlyBird credits cannot be shared or transferred to another account. Promotions may be subject to additional terms and conditions that EarlyBird establishes from time to time.

By referring your friends and family members to EarlyBird, you agree that:

1. Promotions must be used for the intended audience and purpose, and in a lawful manner;
2. Promotions may not be duplicated, sold or transferred in any manner, or made available to the general public (whether posted to a public form or otherwise), unless expressly permitted by EarlyBird;
3. Promotions may be changed, terminated or disabled by EarlyBird at any time for any reason without prior notice or liability to EarlyBird;
4. One Promotion cannot be combined with any other Promotions unless expressly permitted by EarlyBird in the terms of the Promotions; and
5. Promotions rewards may only be used pursuant to the specific terms that EarlyBird establishes for the applicable Promotions.

Certain Promotions may only be available to new users. New users are natural persons who have not yet created an EarlyBird account. New users may also be required to set up an account or give a gift before being eligible for any Promotions offer and the Promotions benefits. Additional terms and conditions specific to new user Promotions may be specified by EarlyBird from time to time.

EarlyBird reserves the right to delay delivery of Promotions rewards pending verification that a user has complied with the terms of the Promotions, including verification of the user's identity.

EarlyBird users that make a referral URL available to others must not make any false or misleading representations related to EarlyBird or the benefits a new user may receive upon signing-up for EarlyBird. EarlyBird reserves the right to deduct or cancel Promotions rewards in the event that EarlyBird determines or believes that the use or redemption of the Promotions was in error, fraudulent, illegal, or in violation of the applicable Promotions terms or these Terms.

Unless otherwise prohibited by applicable law, EarlyBird reserves the right to cancel and/or expire any credit in your account after one year of account inactivity.

### **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.

### **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;
- f. attempts to gain unauthorized access to EarlyBird's computer network or user accounts;
- g. encourages conduct that would constitute a criminal offense or that gives rise to civil liability;
- h. violates the Terms or any other EarlyBird policies;
- i. attempts to damage, disable, overburden, or impair EarlyBird servers or networks;
- j. fails to comply with applicable third-party terms; or
- k. 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.

### **Severability/No Waiver**

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.

### **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 Term.

### **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.

### **Contact Us**

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

Email: [support@getearlybird.io](mailto:support@getearlybird.io)

Phone: (224) 706-0232